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2022/0380 (NLE)

Proposal for a

COUNCIL REGULATION

amending Regulation (EU) 2021/2278 suspending the Common Customs Tariff duties referred to in Article 56(2), point (c), of Regulation (EU) No 952/2013 on certain agricultural and industrial products

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

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

In order to ensure sufficient and uninterrupted supplies of certain agricultural and industrial products which are insufficiently produced or not produced at all in the Union and to avoid any disturbances on the market for these products, some Common Customs Tariff duties have been partially or totally suspended by Council Regulation (EU) No 2021/2278 (hereinafter "the Regulation")¹.

The Regulation is updated every six months to accommodate the needs of Union industry.

The Commission, assisted by the Economic Tariff Questions Group, has reviewed all requests from the Member States for autonomous tariff suspensions.

Following this review, the Commission considers that the suspension of duties is justified for some new products, currently not listed in the Annex of the Regulation. In relation to some other products, it is necessary to modify the conditions in terms of product description, classification, date envisaged for mandatory review and supplementary unit. Products for which a tariff suspension is no longer in the Union's economic interest are proposed to be withdrawn.

- **Consistency with existing policy provisions in the policy area**

This proposal does not affect countries that have a preferential trading agreement with the Union nor candidate countries or potential candidates for preferential agreements with the Union (e.g. Generalised System of Preferences; the African, Caribbean and Pacific group trade regime; Free Trade Agreements).

- **Consistency with other Union policies**

The proposal is in line with Union policies in the area of agriculture, trade, enterprise, environment, development and external relations.

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 a number of products originating in Russia and Belarus from the tariff reduction, in order to ensure consistency with the restrictive measures taken by the Union against these countries following Russia's aggression against Ukraine. However, in order to ensure appropriate supply and avoid serious disturbances in some EU markets, it is necessary to retain the suspension of CCT duties for certain products originating from Belarus and Russia.

¹ OJ L 466, 29.12.2021, p.1

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

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

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

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

- **Proportionality**

The proposal complies with the principle of proportionality. The measures envisaged are in line with the principles for simplifying procedures for operators engaged in foreign trade, as stated in the Commission communication concerning autonomous tariff suspensions and quotas². This Regulation does not go beyond what is necessary to achieve the objectives pursued in accordance with Article 5(4) of the Treaty on European Union (TEU).

- **Choice of the instrument**

By virtue of Article 31 of the TFEU, "Common Customs Tariff duties shall be fixed by the Council on a proposal from the Commission". Therefore, a Council regulation is the appropriate instrument.

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

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

The autonomous suspensions scheme was subject to an evaluation study carried out in 2013. The evaluation concluded that the core rationale for the scheme remains valid. The cost savings for EU businesses importing goods under the scheme can be significant. In turn, depending on the product, company and sector, these savings can have wider benefits, such as boosting competitiveness, making production methods more efficient, and creating or keeping jobs in the Union. Details of the savings stemming from this regulation can be found in the attached legislative financial statement.

- **Stakeholder consultations**

The Economic Tariff Questions Group (ETQG), which consists of representatives from all Member States plus Turkey, assisted the Commission in the preparation of this proposal

The ETQG carefully examined each case to ensure that it would not cause any harm to Union enterprises and would strengthen and consolidate the competitiveness of Union's production. The members of the ETQG carried out the assessment through discussions, and Member States, in turn, consulted the concerned industries, associations, chambers of commerce and other stakeholders involved.

² OJ C 363, 13.12.2011, p. 6.

All listed suspensions correspond to agreements or compromises reached in the discussions of the ETQG. No potential serious risk with irreversible consequences was identified.

- **Impact assessment**

The proposed amendment is of a purely technical nature and concerns only the coverage of the suspensions currently listed in the Annex to Council Regulation (EU) No 2021/2278. An impact assessment was not carried out because the proposed changes in the list of products that would benefit from the autonomous Common Customs Tariff duties suspension are not expected to have significant impacts.

- **Fundamental rights**

The proposal has no consequences on fundamental rights.

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 EUR 70 747 802 per year. The negative effect on the budget's traditional own resources is EUR 53 060 852 per year (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 shall be compensated by Member States Gross National Income (GNI) based on resource contributions.

5. OTHER ELEMENTS

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

The proposed measures are managed within the framework of the Integrated Tariff of the European Union (TARIC) and applied by customs administrations of the Member States.

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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) In order to ensure a sufficient and uninterrupted supply of certain agricultural and industrial products which are not produced in the Union and thereby avoid any disturbances on the market for those products, Common Customs Tariff duties of the type referred to in Article 56(2), point (c), of Regulation (EU) No 952/2013 of the European Parliament and of the Council¹ ('CCT duties') on those products have been suspended by Council Regulation (EU) 2021/2278². As a result, the products listed in the Annex to Regulation (EU) 2021/2278 can be imported into the Union at reduced or zero duty rates.
- (2) The Union production of certain products that are not listed in the Annex to Regulation (EU) 2021/2278 is inadequate to meet the specific requirements of the user industries in the Union. As it is in the Union's interest to ensure an adequate supply of certain products and having regard to the fact that identical, equivalent or substitute products are not produced in sufficient quantities within the Union, it is necessary to grant a complete suspension of the CCT duties on those products.
- (3) With a view to promoting integrated battery production in the Union, a partial suspension of the CCT duties should be granted in respect of certain products related to battery production that are currently not listed in the Annex to Regulation (EU) 2021/2278 and the respective Union production is inadequate to meet the specific requirements of the user industries in the Union. There should be an early review of those suspensions, envisaged on 31 December 2023, in order to take into account the short-term evolution of the battery production sector in the Union.

¹ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

² Council Regulation (EU) 2021/2278 of 20 December 2021 suspending the Common Customs Tariff duties referred to in Article 56(2), point (c), of Regulation (EU) No 952/2013 on certain agricultural and industrial products, and repealing Regulation (EU) No 1387/2013 (OJ L 466, 29.12.2021, p.1).

- (4) It is necessary to amend the description of the products and classification for certain CCT duty suspensions listed in the Annex to Regulation (EU) 2021/2278 in order to take into account technical product developments and economic trends in the market.
- (5) It is no longer in the interest of the Union to maintain the suspension of CCT duties for certain products listed in the Annex to Regulation (EU) 2021/2278. To avoid administrative burden for national authorities of the Member States, tariff suspensions where the amount of uncollected customs duty is estimated to be less than EUR 15 000 per year cannot be taken into consideration. The suspensions for products which do not reach that threshold, as indicated by the mandatory review, should therefore be removed from the Annex to Regulation (EU) 2021/2278.
- (6) At the same time, relations between the Union and Russia have deteriorated over the past years, particularly due to Russia's disregard for international law and its unprovoked and unjustified invasion of Ukraine. On 6 October 2022, the Council adopted an eighth package of sanctions³ against Russia over its continued war of aggression against Ukraine and the reported atrocities committed by Russian armed forces in Ukraine.
- (7) While Russia is a member of the World Trade Organization, the Union can rely on the exceptions that apply under the Agreement Establishing the World Trade Organization, and in particular Article XXI of the General Agreement on Tariffs and Trade 1994, in particular with regard to the obligation to accord to products imported from Russia the advantages granted to like products imported from other countries (most-favoured-nation treatment).
- (8) In light of the deterioration of the relations between the Union and Russia, in order to ensure the coherence with the Union's actions and principles in the field of the Union's external action, it would therefore not be appropriate to allow products originating from Russia to enjoy duty-free and most-favoured-nation treatment with regard to the products covered by this Regulation. Therefore, it is necessary to remove the suspension on CCT duties for those products.
- (9) The situation between the Union and Belarus has deteriorated over the past years, because of the Belarusian regime's disregard for international law, fundamental rights and human rights. In addition, Belarus has provided extensive support to the Russian military aggression against Ukraine from its very beginning.
- (10) Since October 2020, the Union has progressively imposed restrictive measures against Belarus over continued human rights abuses, the instrumentalisation of migrants and the involvement of Belarus in the Russian military aggression against Ukraine. As Belarus is not a member of the World Trade Organization, the Union is not obliged, by virtue of the Agreement Establishing the World Trade Organization, to accord the most-favoured-nation treatment to products from Belarus. In addition, trade agreements allow for certain actions to be taken that are justified on the basis of applicable exception clauses, in particular security exceptions.

³ Council Regulation (EU) 2022/1903 (OJ 259 I, p.1)
Council Regulation (EU) 2022/1904 (OJ 259 I, p.3)
Council Regulation (EU) 2022/1905 (OJ 259 I, p. 76)
Council Regulation (EU) 2022/1906 (OJ 259 I, p. 79)

- (11) In the light of the deterioration of the relations between Belarus and Union, in order to ensure the coherence with the Union's actions and principles in the field of the Union's external action, it would therefore not be appropriate to allow products originating from Belarus to enjoy duty-free treatment and most-favoured-nation treatment with regard to the products covered by this Regulation.
- (12) However, in order to ensure appropriate supply and avoid serious disturbances in some EU markets, it is necessary to retain the suspension of CCT duties for certain products, originating in Belarus, falling under TARIC code 2926 90 70 24, and certain products, originating in Russia, falling under TARIC codes 7608 20 89 30 and 8401 30 00 20. For the latter under EURATOM Treaty, there is an obligation to ensure that all users in the Union receive a regular and equitable supply of nuclear fuel. Those products from both of those countries represented more than 50% of the total value of imports into the Union in the years 2019 to 2021 with no or limited alternative suppliers from other third countries. The value of those imports would indicate that the Union industry operators are dependent to a very large extent on those imports and that the removal of the suspension on CCT duties would cause disproportionate hardship to those operators.
- (13) Therefore, in the light of the context above, the removal of the suspension on CCT duties on certain products originating from Belarus and Russia is appropriate and permitted, in application of the General Rules concerning duties set out in Annex I to Council Regulation (EEC) No 2658/87⁴, and in particular Part One, Section I, Part B, point 1, thereof.
- (14) As the granting of the autonomous tariff suspensions is an exception to the application of the common customs tariff duties, the re-introduction of these common customs tariff duties to the imports originating in Belarus and Russia constitutes a return to the normal state of affairs (see points 2.1.2 and 2.2.1 of the Communication from the Commission concerning autonomous tariff suspensions and quotas). Thus, the limited removal of the suspension on CCT duties on certain products originating from Belarus and Russia is not a restrictive or prohibitive measure, but its purpose is to prevent those countries from indirectly benefiting from a unilateral Union measure and to ensure the overall coherence of the Union's actions.
- (15) Regulation (EU) 2021/2278 should therefore be amended accordingly.
- (16) In order to avoid any interruption in the application of the autonomous tariff suspension scheme and to comply with the guidelines set out in the Communication from the Commission concerning autonomous tariff suspensions and quotas, the changes provided for in this Regulation regarding the tariff suspensions for the products concerned should apply from 1 January 2023. This Regulation should therefore enter into force as a matter of urgency,

⁴ Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) 2021/2278 is amended as follows:

- (1) in Article 1, paragraph 2 is replaced by the following:

“2. The suspension of the Common Customs Tariff duties laid down in paragraph 1 does not apply to the following:

 - (a) any mixtures, preparations or products made up of different components containing products as listed in the Annex;
 - (b) products originating in Belarus, with the exception of [products falling under] TARIC code 2926 90 70 24;
 - (c) products originating in Russia, with the exception of [products falling under] TARIC codes 7608 20 89 30 and 8401 30 00 20.”
- (2) the Annex is replaced by the text set out in the Annex to 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 from 1 January 2023.

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

1. NAME OF THE PROPOSAL:

Proposal for amending Regulation (EU) 2021/2278 suspending the Common Customs Tariff duties referred to in Article 56(2) point (c) of Regulation (EU) No 952/2013 on certain agricultural and industrial products

2. BUDGET LINES:

Chapter and Article: Chapter 12, Article 120

Amount budgeted for the year 2023: 21 590 300 000

3. FINANCIAL IMPACT

Proposal has no financial implications

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

(EUR million to one decimal place)

Budget line	Revenue	12 month period, starting dd/mm/yyyy	[Year: 2023]
Article 120	<i>Impact on own resources</i>	01/01/2023	-53

Situation following action	
	[2023 – 2027]
Article 120	- 53 EUR million/ year

The Annex contains 96 new products. The uncollected duties corresponding to these suspensions, calculated on the basis of requesting Member State projections for the period 2023 to 2027, amount to EUR 52 238 757 per year.

On the basis of the existing statistics for preceding years, it would appear, however, necessary to increase this amount by an average factor, estimated at 1,8 to take account of imports into other Member States using the same suspensions. This means uncollected duties of some EUR 94 029 763 per year.

124 products have been withdrawn from this Annex reflecting the reintroduction of customs duties. This represents an increase of EUR 23 281 961 per year in the collection of duties, as estimated on the basis of 2021 statistics.

On the basis of the above, the impact on the loss of revenue for the EU budget resulting from this Regulation is estimated at $94\,029\,763 - 23\,281\,961 = \text{EUR } 70\,747\,802$ (gross amount, including collection costs) $\times 0,75 = \text{EUR } 53\,060\,852$ per year.

4. ANTI-FRAUD MEASURES

Checks on the end-use of some of the products covered by this Council Regulation will be carried out in accordance with Article 254 of Regulation (EU) No 952/2013.

In addition, Member States may carry out any customs controls they deem appropriate under the risk management they undertake, as provided for by Article 46 of Regulation (EU) No 952/2013.