



Council of the
European Union

Brussels, 6 December 2022
(OR. en)

15095/22

Interinstitutional File:
2022/0226(NLE)

UD 261
COEST 850
AGRIORG 124
AGRIFIN 135

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

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

COUNCIL REGULATION (EU) 2022/...

of ...

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

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 Union market for certain nitrogen fertiliser inputs depends considerably on imports from third countries. In 2021, the Union 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 those 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 Union imports a large volume of inputs for nitrogen fertilisers originating in countries subject to the Common Customs Tariff set out in Council Regulation (EEC) No 2658/87¹, with tariff rates currently ranging between 5,5 % and 6,5 %.

¹ 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).

- (3) In the communication of the Commission of 23 March 2022 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 was reflected in agricultural markets through increases in energy and fertiliser costs, and a consequent increase in the prices of agricultural goods. The Commission notes that the invasion of Ukraine and a global commodity price boom have further driven up prices in agricultural 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 farmers in the Union. The Commission stresses that, in the short term, the cost and availability of mineral fertilisers must be priorities, pending the transition to the use of sustainable types of fertilisers or methods of fertilising. During that period, the fertiliser industry in the Union must be able to access the necessary imports, including inputs to produce fertilisers within the Union itself. The Commission also highlights that fertiliser prices and supplies for farmers will be monitored to ensure that the prospects for Union harvests are not jeopardised.
- (4) In light thereof, it is appropriate to take action to reduce the costs faced by Union producers of fertilisers when importing inputs necessary for the production of nitrogen fertilisers.

- (5) Moreover, at a time of scarcity of nitrogen fertilisers on the international markets, tariffs on the importation into the Union of intermediate inputs such as ammonia and urea constitute a disincentive to supply the Union market, compared to other world markets which have no import tariffs. The tariff differential also hinders efforts for the diversification of Union imports.
- (6) 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 of the European Parliament and of the Council¹ for certain nitrogen fertilisers inputs. This temporary measure should apply for a period of six months from the date of the entry into force of this Regulation. In order to allow for the effects of the measure to be assessed, the Commission should carry out a report and submit it to the Council.
- (7) 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.
- (8) 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 war of aggression against Ukraine.

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).

- (9) 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 the Russian Federation's unprovoked and unjustified military aggression against Ukraine is grossly violating international law and the principles of the United Nations Charter and is undermining European and global security and stability.
- (10) Most recently, on 3 June 2022, the Council adopted a sixth package of sanctions against the Russian Federation over its continuous war of aggression against Ukraine and the reported atrocities committed by Russian armed forces in Ukraine.
- (11) 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).
- (12) 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.

- (13) The situation between the Union and Belarus has also deteriorated over the past years, because of the regime's disregard for international law, fundamental rights and human rights. In addition, Belarus has supported the Russian Federation's war of aggression against Ukraine from its very beginning, inter alia by allowing the Russian Federation to fire ballistic missiles from the Belarusian territory, enabling the 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.
- (14) Since October 2020, the Union has progressively imposed restrictive measures against Belarus. On 2 December 2021, the Council adopted a fifth package of sanctions having regard to continued human rights abuses and the instrumentalisation of migrants. Further packages of sanctions were adopted on 24 February, 2 March, 9 March and 3 June 2022, in view of Belarus' involvement in the Russian Federation's unjustified and unprovoked war of 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.

- (15) In light thereof, the exclusion of the Russian Federation and Belarus from the scope of the autonomous tariff suspensions laid out in this Regulation is appropriate, in application of the General Rules concerning duties of Annex I to Regulation (EEC) No 2658/87, in particular Part One, Section I, part B, paragraph 1, thereof.
- (16) Accordingly, imports of inputs for nitrogen fertilisers originating in the Russian Federation and Belarus should not be subject to the duty suspension. Instead, imports of the products concerned by this Regulation from the Russian Federation and Belarus should continue to be subject to the import duty to which they were subject beforehand.
- (17) In view of the significant and sudden price increase of the inputs for production of nitrogen fertilisers, aggravated by the emergency situation that the Russian Federation's war of aggression against Ukraine provoked in the market of fertilisers, this Regulation should enter into force on the day following that of its publication in the *Official Journal of the European Union*.
- (18) Annex I to Regulation (EEC) No 2658/87 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EEC) No 2658/87 is amended as follows:

- (1) In Part Two, Section VI, Chapter 28, the text for CN code 2814 10 00 in column 3 (“Conventional rate of duty (%)”) is replaced by the following:

‘5,5^{*}

* Customs duty autonomously suspended for a period of 6 months starting from ... [date of entry into force of this Regulation], except for Russia and Belarus where rate of 5,5 % applies, pursuant to Council Regulation (EU) 2022/...⁺.’;

- (2) In Part Two, Section VI, Chapter 31, the text for CN codes 3102 10 10 and 3102 10 90 in column 3 (“Conventional rate of duty (%)”) is replaced by the following:

‘6,5^{*}

* Customs duty autonomously suspended for a period of 6 months starting from ... [date of entry into force of this Regulation], except for Russia and Belarus where rate of 6,5 % applies, pursuant to Council Regulation (EU) 2022/...⁺.’.

⁺ OJ: Please insert in the footnote the number of this Regulation.

Article 2

By ... [five months after the date of entry into force of this Regulation], the Commission shall carry out and submit to the Council a report evaluating the consequences of the duty suspension set out in this Regulation. Based on that report, the Commission shall submit, if appropriate, a legislative proposal to extend that duty suspension.

Article 3

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

It shall cease to apply on ... [six months after the date of entry into force of this Regulation].

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

Done at ...,

For the Council

The President
