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Proposal for a

COUNCIL REGULATION

on the suspension of customs duties applicable to imports of certain heavy oils and other similar products

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The purpose of the present proposal for a Council Regulation is the suspension of the autonomous common customs tariff duties on certain goods contained in Chapter 27 (heavy oils), which are currently classified under CN code 2707 99 99.

According to Note 2 to Chapter 27, oils in which the weight of non-aromatic constituents exceeds that of the aromatic fall under heading 2710, thus the products enjoy duty exemption, when for undergoing some specific process. However, oils in which the weight of aromatic constituents exceeds that of non-aromatic are to be classified since April 2013 under heading 2707 (CN 2707 99 9) and are, thus, subject to a duty rate of 1,7 %.

The technical characteristics of the products concerned are listed in the Explanatory Notes to the Combined Nomenclature¹ of subheadings 2707 99 91 and 2707 99 99; those notes were amended in April 2013 in order to clarify the scope of the products covered by heading 2710 and to remove a contradiction between the Explanatory Notes to the Combined Nomenclature and Note 2 to Chapter 27. Therefore, such oils are classified under different subheadings because of the proportion of aromatic constituents they contain and, consequently, obtain different tariff treatment. As a consequence, those oils were subject to a duty of 1,7% since April 2013.

However, in the interest of the economic operators, both such oils, independently of their aromatic content, when they are intended to undergo a 'specific process' as defined in the Additional Note 5 to Chapter 27 (vacuum distillation, cracking, reforming and etc.) and subject to end-use procedure laid down in Commission Regulation (EEC) No 2454/93², should autonomously be exempted from customs duty, provided the process has taken place. It also has to be noted that, since 1 July 2014, a temporary suspension of the autonomous common customs tariff duties for these products has been granted by Council Regulation (EU) No 1387/2013 of 17 December 2013³.

Hence, this draft aims at proposing the same tariff treatment for the same categories of products, independently of their respective classification at the date of the publication of the above mentioned Explanatory Note to the Combined Nomenclature, in order to provide a fair treatment for all economic operators and to avoid a gap in the duty free treatment of such products which they enjoyed since 1968.

The attached proposal is considered to be a balanced approach taking into account the legal context and the interests of the different stakeholders, as it is providing, without any interruption, the same tariff treatment over the times.

The proposal is in line with the Union's external trade and industry policies.

In the light of the foregoing it is proposed to amend Council Regulation (EEC) No 2658/87 accordingly.

¹ Explanatory Notes to the Combined Nomenclature (OJ C 96, 4.4.2013, p. 23).

² Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1).

³ Council Regulation (EU) No 1387/2013 of 17 December 2013 suspending the autonomous Common Customs Tariff duties on certain agricultural and industrial products (OJ L 354, 28.12.2013, p. 201).

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

The Tariff and Statistical Nomenclature Section of the Customs Code Committee (CN sector) was consulted on 23 May 2014 and on 17-18 July 2014.

The Tariff and Statistical Nomenclature Section of the Customs Code Committee (Agriculture/Chemistry sector) was consulted on 4-6 June 2014.

The Economic Tariff Questions Group was consulted on 19-21 May 2014, 18 June 2014 and on 14-15 July 2014.

Stakeholders have already asked for the suspension of the autonomous common customs tariff duties for these products which was granted by Council Regulation (EU) No 722/2014. The aim of the present regulation is to allow the repayment of duties paid between April 2013 and June 2014.

3. LEGAL ELEMENTS OF THE PROPOSAL

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

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

The proposal complies with the proportionality principle given that, as foreseen in the Treaty, it promotes trade between Member States and third countries and balances the commercial interests of economic operators without changing the EU WTO schedule.

By virtue of Article 31 of the Treaty on the Functioning of the European Union the autonomous tariff rate is fixed by the Council acting by qualified majority on the basis of a Commission proposal.

4. BUDGETARY IMPLICATION

It is difficult to estimate the loss of own resources involved because of the lack of detailed statistics on imports of these products during the period when they were not exempted from duties. Loss of revenue in Traditional Own Resources is estimated to be in the range of 29,4 Million Euros on an annual basis (based on the import statistics under the concerned TARIC code during July-August 2014). For the period of 15 months (between 04/04/2013 and 31/06/2014), the amount is estimated to be in a range of 36,7 Million Euros having in mind that no duties were paid until 04/04/2013 and that no duties are paid since 01/07/2014.

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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 the Combined Nomenclature laid down in Annex I to Council Regulation (EEC) No 2658/87⁴, under heading 2710, customs duties are suspended, autonomously, on certain oils for which the weight of non-aromatic constituents exceeds that of the aromatic constituents when those oils are intended for undergoing specific processes, provided that those products are subject to the end-use procedure laid down in Commission Regulation (EEC) No 2454/93⁵.
- (2) Certain oils and other products in which the weight of the aromatic constituents exceeds that of the non-aromatic constituents were, until April 2013, also classified under heading 2710, thus enjoying a duty free treatment for an indefinite period.
- (3) However, since 4 April 2013, those oils and other products have been classified under heading 2707, without any duty free treatment. With effect from 1 July 2014, Council Regulation (EU) No 1387/2013⁶ granted them a temporary autonomous suspension of duties.
- (4) As, in the Union, there is no supply of such oils and other products in which the weight of the aromatic constituents exceeds that of the non-aromatic constituents, that favourable tariff treatment should have been applied without any interruption as long as those products were intended to undergo specific processes and the end-use procedures were met.
- (5) Therefore, with a view to adequately ensuring the benefit of the suspension of customs duties in respect of those products falling under CN code 2707 99 99, the suspension should apply with retroactive effect from 4 April 2013 to 30 June 2014,

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).

⁵ Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1).

⁶ Council Regulation (EU) No 1387/2013 of 17 December 2013 suspending the autonomous Common Customs Tariff duties on certain agricultural and industrial products (OJ L 354, 28.12.2013, p. 201).

HAS ADOPTED THIS REGULATION:

Article 1

From 4 April 2013 to 30 June 2014, the customs duties on goods falling under CN code 2707 99 99 destined for use as refinery feedstock to undergo one of the specific processes described in additional note 5 to Chapter 27 of Part Two of the Combined Nomenclature laid down in Annex I to Regulation (EEC) No 2658/87 are autonomously suspended subject to the condition that the end-use procedures laid down in Articles 291 to 300 of Regulation (EEC) No 2454/93 are met.

Article 2

This Regulation shall enter into force on the twentieth 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

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

- 1.1. Title of the proposal/initiative
- 1.2. Nature of the proposal/initiative
- 1.3. Objective(s)
- 1.4. Grounds for the proposal/initiative
- 1.5. Duration and financial impact
- 1.6. Management mode(s) planned

2. MANAGEMENT MEASURES

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

Estimated impact on revenue

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

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

1.2. Nature of the proposal/initiative

- The proposal/initiative relates to **a new action**
- The proposal/initiative relates to **a new action following a pilot project/preparatory action**⁷
- The proposal/initiative relates to **the extension of an existing action**
- The proposal/initiative relates to **an action redirected towards a new action**

1.3. Objective(s)

1.3.1. *The Commission's multiannual strategic objective(s) targeted by the proposal/initiative*

To provide, on an autonomous basis, duty free treatment for certain oils in which the weight of non-aromatic constituents do not exceed that of the aromatic, which is destined for undergoing a specific process.

1.3.2. *Expected result(s) and impact*

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

Autonomous duty suspension for certain products (heavy oils) falling under CN code 2707 99 99 of Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the Tariff and Statistical Nomenclature and on the Common Customs Tariff, as it was until 4 April 2013.

1.4. Grounds for the proposal/initiative

1.4.1. *Requirement(s) to be met in the short or long term*

Duty suspension for oils regardless of their aromatic content, provided that those products were intended to undergo specific processes and the end-use procedures were met.

1.4.2. *Added value of EU involvement*

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

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

⁷ As referred to in Article 54(2)(a) or (b) of the Financial Regulation.

1.4.3. *Lessons learned from similar experiences in the past*

The classification of the heavy oils according to the weight of aromatic constituents should not impact its tariff treatment.

1.5. **Duration and financial impact**

- Proposal/initiative of **limited duration**
 - X Proposal/initiative in effect from 04/04/2013 to 30/06/2014
 - Financial impact from YYYY to YYYY
 - Proposal/initiative of **unlimited duration**
 - Implementation with a start-up period from 2013,
 - followed by full-scale operation.

1.6. **Management mode(s) planned⁸**

- Direct management** by the Commission
 - by its departments, including by its staff in the Union delegations;
 - by the executive agencies
- Shared management** with the Member States
- Indirect management** by entrusting budget implementation tasks to:
 - third countries or the bodies they have designated;
 - international organisations and their agencies (to be specified);
 - the EIB and the European Investment Fund;
 - bodies referred to in Articles 208 and 209 of the Financial Regulation;
 - public law bodies;
 - bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;
 - bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;
 - persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.
 - *If more than one management mode is indicated, please provide details in the 'Comments' section.*

Comments

By Member States Customs authorities by application of the provisions of the Customs Code ("end-use" procedure).

2. **MANAGEMENT MEASURES**

Measures subject to Customs Control ("end-use") (Art.291 to 300 of Commission Regulation (EEC) No 2454/93 (OJ L 253, 11.10.1993)).

⁸ Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: http://www.cc.cec/budg/man/budgmanag/budgmanag_en.html

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Estimated impact on revenue

- The proposal/initiative has no financial impact on revenue.
- x The proposal/initiative has the following financial impact:
 - x on own resources
 - on miscellaneous revenue

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative ⁹
		Year N
Article 120		29,396 MEUR

Specify the method for calculating the impact on revenue.

The calculation of the loss of revenue in Traditional Own Resources is based on the value of imports into the EU during the period of 2 months since 1 July 2014 of products under TARIC code 2707 99 99 10.

It has to be pointed out that the products targeted by this draft were not paying any duties until the publication of the Explanatory Note to the Combined Nomenclature (OJ C96/23 of 4.4.2013).

As said, such a tariff suspension is in force since 01/07/2014. Imports under the concerned TARIC code of 192 128 522, 445 € for 1 month without taking into account tariff preferences.

The estimated total loss of revenue in Traditional Own Resources on an annual basis should therefore be calculated as follows:

$$192\,128\,522,445\text{ €} \times 12 = 2\,305\,542\,269,46\text{ €}$$

$$2\,305\,542\,269,46\text{ €} \times 1,7\% = 39\,194\,248,58082\text{ €}$$

$$39\,194\,248,58082\text{ €} \times 75\% = 29\,395\,663,935615\text{ €}$$

⁹

As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25 % for collection costs.