



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 09.01.2007
COM(2006)861 final

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

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

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

European market for raw aluminium is to a wide extent dominated by industrial holdings located outside the EU which are highly integrated. They offer via their subsidiaries the whole range of aluminium products from basic raw aluminium to all kinds of semi-finished industrial products made of aluminium. This has led to the situation that SMEs in the EU using unwrought, not alloyed aluminium for industrial transformation have little access to Community produced or duty free imports of such products with the result that those companies risk to become uncompetitive due to the payment of import duties. The suspension of the import duties has therefore the aim to restore the competitiveness of these companies and thus maintain competition on the internal market of EU for semi finished aluminium products.

At the same time, the European aluminium producers are facing competition from third country producers that benefit from lower energy prices. In this context, it should be noted that the costs of energy are of particular relevance for this sector.

However, taking account of the fact that the product concerned is manufactured in the Community, mainly for captive use of the producers, it is appropriate to foresee a transitional period of two years in which the autonomous rate of duty is reduced to 3 % before it is fully suspended. This proposal will allow the manufacturers to adapt to the more competitive situation following the suspension and thus balance the interest of both economic operators in this market.

- **General context**

The suspension of the customs duty for unwrought, not alloyed aluminium had been discussed with the MS authorities for quite some time. The changes in the market situation of the EU in recent years (i.e. enlargement of the EU, takeover of Community industries in this sector by foreign companies, further concentration of the manufactures of this product on world market level, development of energy prices) has caused that several MS have lodged requests within the context of the 133 Committee to suspend this duty although there are still manufacturing plants within the EU producing product concerned. A majority of MS has, however, expressed their support for the present proposal.

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

Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff, as last amended by Commission Regulation (EC) No 1549/2006 of 17 October 2006 (OJ L 301, 31.10.2006, p. 1).

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

In line with trade, enterprise, development, external relation, and competition policies. Given the shortage of supply of the product concerned this proposal is not at the expense of developing countries enjoying a preferential trading agreement with the

EU (e.g. GSP, ACP regime).

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Consultation methods, main sectors targeted and general profile of respondents

Discussion within the Commission's experts working group on economic tariff questions representing each Member State and consultations within the 133 Committee.

Summary of responses and how they have been taken into account

A clear majority of MS expressed their support for the present proposal.

- **Collection and use of expertise**

Scientific/expertise domains concerned

Experts representing the MS on the Economic Tariff Questions Group

Methodology used

Open consultation

Main organisations/experts consulted

Experts designated by each of the MS

Summary of advice received and used

The existence of potentially serious risks with irreversible consequences has not been mentioned.

Means used to make the expert advice publicly available

Publication of the Proposal

- **Impact assessment**

Extensive consultations with experts representing the aluminium sector have provided a good overview of the possible impacts of the measure on the EC aluminium market. Overall, such impacts will be positive for the European aluminium market and the broader EU economy, for the following reasons :

The development of the world economy put the market for raw aluminium under pressure. This situation is reflected on the market (unwrought aluminium is commodity with a worldwide price) : in the last two years, aluminium prices increased dramatically: the LME 3 months quotation increased by 58%. Between the second quarter of 2004 and the third quarter of 2006, EU import prices for not-alloyed unwrought aluminium increased by 68,3%. Given the existing pressure on the

Community market, one could not expect a significant price reduction for this commodity product in the foreseeable future.

Over the same period the EU aluminium producers experienced a substantial increase in production costs which are primarily the result of increased electricity prices within the EU. Electricity is a major cost factor in aluminium production and producers expect an improvement of electricity prices in 2007.

The Community production of not alloyed unwrought aluminium is mostly used for captive use, i.e. for the production of unwrought aluminium alloys. No significant quantities of not alloyed unwrought aluminium from these companies are available on the open market for sale to independent transformers. The proposed measure will therefore not affect large corporations whose inputs are secured by both domestic production and duty free imports.

The share of duty free imports has increased over time as a consequence of the development of capacity in countries exempted from the duties. Currently, in terms of market supply, 80.5 % of total EU consumption of primary aluminium (unwrought not alloyed and alloyed), is not subject to any import duty. Indeed, one half is supplied by EC production whereas the other half is imported (2.7 million tonnes) **duty free** from preferential trading partners. The share of imported not alloyed unwrought aluminium subject to the 6% import duties therefore represents only 15 % of total consumption (1.197.187,9 tonnes were imported duty free in 2005, representing 52.9% of imports, and 1.067.810,9 tonnes were imported under the 6% duty, representing 47.1% of imports). Due to the EU's preferential trade agreements, maintaining a customs duty on imports of aluminium will not protect EU producers from foreign competitors which have a comparative costs advantage in terms of electricity and supply of raw material.

As mentioned above, EU import prices for not-alloyed unwrought aluminium increased dramatically. This means that independent SMEs had to pay in 2004 about € 85 /tonne of import duty, i.e. a cost which more than 80 % of the primary aluminium available in the Community had not to bare. This cost has now increased to more than € 125 / tonne. The proposed two-stage approach therefore aims at reducing this cost differential in the interest of the SMEs, while not putting existing EU production at risk.

The proposed measure intends to avoid the elimination of SMEs from the Community market, which would result in reduced competition for semi-finished aluminium products and therefore further price increases for downstream consumers. Moreover, disappearance of these SMEs would have negative effects on employment, especially in disadvantaged regions in the Community, where no job alternatives exist as of today.

The suspension of customs duties on imports of non-alloyed aluminium would therefore restore to a certain extent the competitiveness of the most viable SMEs. It would also help their present investment prospects in the sector to materialise, in an increasingly profitable market. Since SMEs need a stable and accountable

environment to make their investment decisions, it is highly preferable to fix the situation of import duties for the medium term (i.e. beyond 2009) as soon as possible.

At the same time, the phasing-in of the duty elimination will allow the Community industry to adapt to the new competitive situation in a period of two years.

3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

Proposal for a Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff

- **Legal basis**

Art 26

- **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).

This set of measures is in line with the principles set out to simplify the procedures for the operators engaged in foreign trade.

- **Choice of instruments**

Proposed instruments: regulation.

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

By virtue of Article 26 of the EC Treaty autonomous tariff suspensions are approved by the Council acting on a qualified majority on the basis of a Commission proposal.

4) BUDGETARY IMPLICATION

Uncollected customs duties

5) ADDITIONAL INFORMATION

- **Simplification**

Not applicable

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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 establishing the European Community, and in particular Article 26 thereof,

Having regard to the proposal from the Commission¹,

Whereas:

- (1) With the enlargement of the European Union the number of small and medium sized enterprises (SME) using unwrought, not alloyed aluminium for the production of semi-finished and finished industrial goods has significantly increased. Furthermore, the market situation within the European Union has significantly changed due to takeovers of Community industries by global industrial holdings and further concentration of manufacturers of aluminium on the world market. At the same time costs for electricity, an important cost factor in the production of not alloyed aluminium, has dramatically increased and the development of the world economy has led to a shortage of supply of raw aluminium.
- (2) These factors have led to a significant increase in prices for raw aluminium and excluded to a very large extent independent small and medium sized users of not alloyed aluminium from duty free purchases of this product. The payment of customs duties of 6 % for the basic raw material has therefore the effect that the competitiveness of such companies is at risk and creates the danger that a larger number of these companies will not be able to survive.
- (3) The elimination of these companies from the Community market would certainly reduce competition for semi-finished aluminium products on this market. In addition such elimination would have negative effects on the employment in the Community especially in some rural areas of the new Member States of the Community. The full suspension of the customs duty for non alloyed aluminium would therefore restore to a certain extent the competitiveness of the SME and thus improve the competition for semi-finished and finished aluminium products on the Community market.
- (4) This situation has to be weighed against the impact of a customs duty suspension on the manufacturing plants of not alloyed aluminium which still exist within the Community and in countries with a preferential tariff arrangement with the European

¹ OJ C , , p. .

Union. Almost all these plants belong either directly or indirectly to major industrial holdings located outside the European Union. The aluminium supplied duty free is mainly used for further transformation within companies linked to these holdings. Only a relative small share of duty free non alloyed aluminium is made available to independent SME. Nevertheless taking into account the relative high level of the conventional rate of customs duty of 6 % the autonomous suspension of this duty will certainly have a negative impact on the profitability of the production and the subsequent transformation operations of these companies due to an increased price pressure on the products resulting from transformation as well as on the raw aluminium sold on the open market to independent companies.

- (5) In view of this situation it appears therefore appropriate to suspend the autonomous rate of customs duty in two steps. This will allow the independent SMEs to reduce their costs at an early stage and at a final stage to benefit from a significant increase in competitiveness whereas the existing manufacturing plants will be given a transitional period to adapt to the more competitive situation. Therefore a reduction of the autonomous customs duty for unwrought, not alloyed aluminium to 3 % for a period of two years and subsequently a full suspension of this duty is considered appropriate to balance the economic interest of both operators concerned.
- (6) Since the suspension should cover all products falling within CN code 7601 10 00 and given the permanent character of the measure, Annex I to Council Regulation (EEC) No 2658/87² should be amended accordingly.

HAS ADOPTED THIS REGULATION:

Article 1

The entry in column 3 for CN code 7601 10 00 in Section XV, Chapter 76 of Part Two (Schedule of Duties) of Annex I to Council Regulation (EEC) No 2658/87 is replaced by the following:

“6*

* Autonomous rate of duty until 31 December 2008: 3.”

Article 2

The entry in column 3 for CN code 7601 10 00 in Section XV, Chapter 76 of Part Two (Schedule of Duties) of Annex I to Council Regulation (EEC) No 2658/87 is replaced by the following:

“6*

* Customs duty autonomously suspended for an indefinite period.”

² OJ L 256, 7.9.1987. Regulation as last amended by Commission Regulation (EC) No 1549/2006 (OJ L 301, 31.10.2006, p. 1).

Article 3

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

It shall apply from 1 January 2007, with the exception of Article 2.

Article 2 shall apply from 1 January 2009.

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 FOR PROPOSALS HAVING A
BUDGETARY IMPACT EXCLUSIVELY LIMITED TO THE REVENUE SIDE**

1. 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

2. BUDGET LINES:

Chapter and Article: Chap. 12 art. 120

Amount budgeted for the year 2007: € **15 287 900 000**

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:

(€ million to one decimal place)

Budget line	Revenue ³	[Year 2007] ⁴	[Year 2008]	[Year 2009]	[Year 2010]
Article 120	<i>Impact on own resources</i>	- 49.2	- 49.2	- 98.3	- 98.3

4. ANTI-FRAUD MEASURES

The proposal covers a whole CN code (7601 10 00). Given the required purity of the product it seems very unlikely that false declarations of products would pass unnoticed by the customs authorities of the MS.

5. OTHER REMARKS

Third country imports subject to 6 % import duty amounts to about 47 % of total imports and to about 20 % of EU consumption. In view of the structure of the market mainly SME have to pay these import duties.

³ Regarding traditional own resources (agricultural duties, sugar levies, customs duties) the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25% of collection costs.

⁴ Estimated on the basis of annual imports in the year 2005.