

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 20 June 2002

on the AIEM tax applicable in the Canary Islands

(2002/546/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 299(2) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Whereas:

- (1) Pursuant to Article 299(2) of the Treaty, the provisions of the Treaty apply to the outermost regions and hence the Canary Islands, account being taken of their structural social and economic situation, which is compounded by their remoteness, insularity, small size, difficult topography and climate and economic dependence on a few products, the permanence and combination of which factors severely restrain their development.
- (2) Specific measures should therefore be adopted in order to establish the conditions for applying the Treaty to those regions. Specific tax policy measures may be adopted. They must take account of the special characteristics and constraints of these regions, but without undermining the integrity and coherence of the Community legal order, including the internal market and common policies. The Council, the European Parliament, the Committee of the Regions and the Economic and Social Committee have on several occasions stressed the need to adopt these specific measures.
- (3) On the question of taxation, specific measures to be implemented must be based on the instruments most appropriate to regional development and support of

these regions including long-term tax derogations, in accordance with the criteria of coherence of Community law and the internal market and provided that these measures are necessary and proportionate to the objectives pursued.

- (4) The indirect taxation arrangements applicable to the Canary Islands comprise a number of taxes including the Impuesto General Indirecto Canario (IGIC) and the 'Arbitrio sobre la Producción y sobre las Importaciones' (APIM) (tax on production and imports) authorised until 31 December 2001 by Article 5 of Council Regulation (EEC) No 1911/91 of 26 June 1991 on the application of the provisions of Community law to the Canary Islands ⁽³⁾.
- (5) When Regulation (EC) No 2674/1999 ⁽⁴⁾ was adopted, the Council requested the Commission to examine with the Spanish authorities the impact of suspending the dismantling of the APIM tax on the economic sectors concerned and more especially the products forming the subject of the suspension measure. It also asked the Commission to present to it, where appropriate in the light of the results of this examination, a proposal concerning the measures to be taken on the basis of the Treaty, in order to avoid jeopardising certain particularly vulnerable local production activities, while ultimately abolishing the tax. This objective of ultimate abolition of the tax must now be included in the framework of measures adopted on the basis of Article 299(2) of the Treaty, which authorises specific long-term measures to take account of the handicaps listed.

⁽¹⁾ OJ C 75 E, 26.3.2002, p. 328.

⁽²⁾ Opinion delivered on 13 June 2002 (not yet published in the Official Journal).

⁽³⁾ OJ L 171, 29.6.1991. Regulation as last amended by Regulation (EC) No 1105/2001 (OJ L 151, 7.6.2001, p. 1).

⁽⁴⁾ OJ L 326, 18.12.1999, p. 3.

- (6) In their letters of 25 July 2000 and 12 June 2001, the Spanish authorities sent the Commission, on the basis of Article 299(2) of the Treaty, details concerning a new tax known as 'Arbitrio sobre las Importaciones y Entregas de Mercancías en las islas Canarias (AIEM)'. This is a tax on supplies of goods in the Canary Islands effected by the producers of the goods and on imports of comparable or similar goods of the same type defined by reference to the Common Customs Tariff nomenclature. The taxable base for imported goods will be based on the customs value and that of supplies of goods effected by producers in the Canary Islands will be based on the total amount of the consideration. As with the APIM, locally produced goods may be exempted from the AIEM. The Commission evaluated this proposed tax in the light of the undertakings it gave the Council when Regulation (EC) No 2674/1999 was adopted and in the light of the handicaps affecting industrial production in the Canary Islands.
- (7) At the top of the list of handicaps identified is the predominance of the services sector and in particular tourism in the regional product and also the dependence of the Canary Islands' economy on this sector and the small share of industry in the Canary Islands' GDP. The AIEM tax should serve the objective of the autonomous development of the Canary Islands' industrial production sectors and of diversifying the Islands' economy.
- (8) In second place is the isolation inherent in an island which hinders the free movement of persons, goods and services. Dependence on certain modes of transport, air transport and maritime transport, is increased since these are modes of transport which have not yet been fully liberalised. Production costs are greater because these modes of transport are less efficient and more expensive than road, rail or the trans-European networks.
- (9) As a further consequence of this isolation, higher production costs result from dependence in terms of raw materials and energy, the obligation to build up stocks and difficulties affecting the supply of production equipment.
- (10) The small size of the market and the low level of export activity, the geographical fragmentation of the archipelago, and the obligation to maintain diversified but only small production lines in order to meet the requirements of a small market, restrict the opportunities for economies of scale.
- (11) It is in many cases more difficult or more expensive to obtain specialised and maintenance services, and training for managers and technicians, or to subcontract or promote business expansion beyond the Canary Islands' market. The narrow range of distribution methods also results in overstocking.
- (12) As regards the environment, the disposal of industrial waste and the treatment of toxic waste give rise to higher environmental costs. These costs are higher because there are no recycling plants, other than for certain products, and waste has to be transported to the mainland and toxic waste has to be treated outside the Canary Islands.
- (13) Generally speaking, the present trend towards the globalisation of markets, which is characterised by the concentration of production and consequently specialisation of production sectors, does not enable business in the Canary Islands to derive benefits comparable with business situated in less isolated, larger markets. As a result, to varying degrees depending on the sector and product, local production in the Canary Islands is gradually being replaced by imports. On top of this, a common feature of local production is interdependence of local firms, in a form which resembles vertical integration, so that when activities are relocated in one sector this triggers the loss of activities in other related sectors.
- (14) On the basis of all this information and the notification from the Spanish authorities, it is advisable to authorise the application of a tax to a list of industrial products for which exemptions for local products may be allowed.
- (15) It is nevertheless advisable to combine the requirements of Articles 299(2) and 90 of the Treaty and observance of the need for coherence of Community law and the internal market. This means applying only the measures strictly necessary and proportionate to the objectives set, account being taken of the handicaps of a remote location. The proposed Community framework therefore comprises a list of sensitive products for which the Canary Islands' authorities are authorised to provide for exemptions within limits determined by Council decision for products which are produced locally.
- (16) Industrial products for which there is exemption fall into the following categories: agricultural and fisheries products, building materials, chemicals, products of the metalworking industries, foodstuffs and beverages, tobacco products, textiles and leather, paper, graphic arts and publishing. These sectors and products largely correspond to the sensitive sectors identified by Regulation (EC) No 2674/1999. The provisions of this Decision shall apply to the implementation of these exemptions without prejudice to the possible application of Articles 87 and 88 of the Treaty.

- (17) The maximum exemptions which may be applied to the industrial products in question vary depending on sector and product, by 5 % to 15 %. The rates applicable to these products correspond, according to the Spanish authorities, to the level of the APIM tax as it resulted in 1996 from the application of Regulation (EEC) No 1911/91 and the acts adopted pursuant to that Regulation and the Regulation on the 'tarifa especial' tax.
- (18) The maximum exemption applicable to finished tobacco products is nevertheless higher, because the tobacco sector is an exceptional case. The tobacco industry, which had greatly expanded in the Canary Islands, has been declining very markedly for a number of years. The traditional handicaps of insularity described above are of course at the root of the decline in local tobacco production in the Canary Islands. The phenomenon of numerous relocations of firms established in the Canary Islands is also the result of the globalisation of the economy and concentration of production and the emergence and development of new markets outside Europe. The decline in local production led to 67 % job losses between 1985 and 2000. The series of relocations and closures has involved the production plants of multinationals which are among the world's leading manufacturers.
- (19) This phenomenon of declining local production is in contrast, furthermore, with a local market on which sales increased steadily over the same period. The increased sales of tobacco are attributed by producers partly to the buoyant market created by tourists. The retail price of tobacco products in the Canary Islands is still very attractive. A comparison shows price differences of about half compared with the selling prices of tobacco in the rest of Spain. Increased taxes on tobacco since 1995, in particular the IGIC, have not slowed down sales of tobacco products, which rose steadily over the corresponding period. A large volume of supply has been maintained on this growing market, despite the drop in local production, solely as a result of the increase in imports from 5 % to 32 % between 1992 and 2000.
- (20) Account being taken of all these factors, there are grounds for a substantial exemption for tobacco. Exemption from taxation is in direct relation with the objective of maintaining production in the Canary Islands.
- (21) It is nevertheless necessary to bear in mind the coherence of the internal market, as required by Article 299(2) of the Treaty. Trade is important in this sector. Imports of tobacco products into the Canary Islands have increased in recent years but the proportion of exports of tobacco from the Canary Islands is also large. At present some 76 % of the Canary Islands' cigarette production is exported and only 24 % goes to the Canary Islands' market. Comparison of the figures reveals that the volume of exports from the Canary Islands has been increasing since 1995, but the volume of imports has increased even more. This means that, in a growing market, local production does not cover all requirements. These findings underpin the argument that substantial exemption from the AIEM is needed as a sufficient incentive to maintain or restore local production given the importance of trade in this sector.
- (22) Account being taken of these factors, and the fact that local producers enjoy a benefit in relation to other producers, comprising the opportunity to import up to 20 000 tonnes a year of raw and semi-manufactured tobacco, the initial proposal drawn up by the Spanish authorities, who suggested a rate of 45 %, seems excessive. For that reason a much higher exemption option than for all the other products but not exceeding 25 % is proposed. In addition, given the importance of an adequate exemption incentive for local production, it is suggested that the Spanish authorities be authorised to fix a specific minimum tax of EUR 6 per 1 000 cigarettes, corresponding to an AIEM level of 25 % for the cheapest cigarette category in 2001. This measure is not an additional safeguard. It is rather an alternative to a maximum exemption of 25 % that will ensure that the latter continues to have a satisfactory impact.
- (23) The objectives of promoting the socio-economic development of the Canary Islands are reflected at national level in the purpose of the tax and the allocation of the revenue it generates. The incorporation of the revenue from this tax in the resources of the Canary Islands' economic and tax system and its use for an economic and social development strategy involving the promotion of local activities is a legal obligation.
- (24) The arrangements are to apply for 10 years. It will nevertheless be necessary to evaluate the proposed system after five years. The Spanish authorities must therefore present to the Commission by 31 December 2005 at the latest a report on the application of the arrangements referred to in Article 1, in order to check the impact of the measures taken and their contribution to promoting or maintaining local economic activities, account being taken of the handicaps affecting the outermost regions. On this basis, the scope and the exemptions authorised under Community rules will be revised if necessary.
- (25) To ensure continuity with the system of indirect taxation applicable in the Canary Islands pursuant to Regulation (EEC) No 1911/91, this Decision should apply as from 1 January 2002,

HAS ADOPTED THIS DECISION:

Article 1

1. By way of derogation from Articles 23, 25 and 90 of the Treaty, the Spanish authorities shall be authorised until 31 December 2011 to lay down, in respect of products listed in the Annex that are produced locally in the Canary Islands, total exemptions from or partial reductions of the tax known as 'Arbitrio sobre las Importaciones y Entregas de Mercancías en las islas Canarias (AIEM)'. These exemptions must form part of the strategy for economic and social development of the Canary Islands and contribute to the promotion of local activities.

2. Application of the total exemptions or reductions referred to in paragraph 1 may not lead to differences in excess of:

- (a) 5 % for the products listed in the Annex, Section A;
- (b) 15 % for the products listed in the Annex, Section B;
- (c) 25 % for the products listed in the Annex, section C. Nevertheless, the Spanish authorities may establish a minimum tax on cigarettes of not more than EUR 6 per 1 000 cigarettes, applicable only if the AIEM tax resulting from the application of general types of taxation is below this figure.

Article 2

The Spanish authorities shall present to the Commission at the latest by 31 December 2005 a report on the application of the

arrangements referred to in Article 1, in order to check the impact of the measures taken and their contribution to the promotion or maintenance of local economic activities, account being taken of handicaps affecting the outermost regions.

On this basis, the Commission shall present a report to the Council comprising a full analysis of the economic and social aspects and where appropriate a proposal for adapting the provisions of this Decision.

Article 3

This Decision shall be applicable from 1 January 2002.

Article 4

This Decision is addressed to the Kingdom of Spain.

Done at Madrid, 20 June 2002.

For the Council

The President

R. DE RATO Y FIGAREDO

ANNEX

A. List of products referred to in Article 1(2)(a) according to the classification of the Common Customs Tariff nomenclature:*Agricultural and fishery products*

0203 11/0203 12/0203 19/0207 11/0207 13/0302 69 94 00/0302 69 95 00/0701 90/0702/0703/0803

Building materials:

3816/3824 40 00 00/3824 90 45 00/3824 90 70 00/6809

*Chemicals:*2804 30 00/2804 40 00/2851 00 30/3208/3209/3210/3212 90 90 00/3213/3214/3401/3402/3406/
3814 00 90 90/3920 30 00 90/3921 90 60/3923 90 90/4012 11 00/4012 12 00/4012 13/4012 19 00*Metal-working industries:*

7604/7608/8428 39 98 00/8479 50 00 00

*Food industry:*0210 11 11 00/0210 11 31 00/0210 12 19 00/0210 19 40 00/0210 19 81 00/0305 41 00/0901 22 00 00/1101/
1901 20 00 90/1901 90 91 96/2006 00 31 00/1601/1602/1704 90 30 00/1704 90 51 90/1704 90 55 00/
1704 90 71/1704 90 75 00/1806/1901 90 99/1904 10 10/1905/2007 91 10/2008 99 61/2008 99 68/2009 11/
2009 19/2009 41/2009 49/2009 50/2009 71/2009 79/2009 80/2009 90/2105/2309*Beverages:*

2201/2202/2204

Textiles and leather:

6112 31/6112 41

Paper:

4822 90/4823 90 90 90

Graphic arts and publishing:

4910

B. List of products referred to in Article 1(2)(b) according to the classification of the Common Customs Tariff nomenclature*Agricultural and fishery products:*

0407 00 30

Building materials:

2523 29 00 00/2523 90/7010

Chemicals:

3809 91 00/3917/3923 10 00/3923 21 00/3923 30 10/3924 10 00

Metal-working industries:

7309 00/7325/7610/9403 20 99 00/9404

Food industry:

0403/0901 21/1902/2103/2106 90 98

Beverages:

2203/2208 40

Textiles and leather:

6302

Paper:

4808/4818 10/4818 20/4818 30/4818 90 90 10/4819/4821/4823 90 14

Graphic arts and publishing:

4909/4911

C. **List of products referred to in Article 1(2)(c) according to the classification of the Common Customs Tariff nomenclature**

Tobacco:

2402
