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2020/0004 (NLE)

Proposal for a

**COUNCIL REGULATION**

**on amending Council Regulation (EU) 2018/1977 opening and providing for the management of autonomous Union tariff quotas for certain fishery products for the period 2019-2020**

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE PROPOSAL**

Council Regulation No 2018/1977 opening and providing for the management of autonomous Union tariff quotas (ATQs) for certain fishery products for the period 2019-2020 was adopted on 14 December 2018.

The objective of the Regulation is to ensure the competitiveness of the Union processing industry and avoid jeopardising Union production of fishery products by guaranteeing an adequate supply of fishery products to the industry. To this end, the Regulation reduces or suspends import duties for a number of fishery products within tariff quotas of an appropriate volume. It also defines which processing operations ('qualifying operations') allow the use of the tariff quotas and which do not.

### **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES**

Following the adoption of Council Regulation No 2018/1977, some EU processors and a Member State informed the Commission that since CN code 1604 32 00 (caviar substitute) had been deleted from the ATQ 09.2750 set out in the previous Council Regulation (No 2015/2265), processors could no longer import processed hard fish roes falling under that specific CN code as they had done under the previous regime. In the current ATQ regulation (2019-2020), CN code 1604 32 00 (caviar substitute) was replaced by CN code 0305 20 00 (livers, roes and milt of fish, dried, smoked, salted or in brine) to better reflect the product description (hard fish roes, washed, cleaned of adherent organs and simply salted or in brine, for manufacture of caviar substitutes).

The deletion of the CN code 1604 32 00 resulted in an increase in duty from 0% to 20% for these products, since they can no longer benefit from the ATQ regime. This resulted in significant losses due to the amounts concerned and the existence of ongoing long-term contracts. Since the Commission proposal had retained CN code 1604 32 00 and the new Regulation, which came into force on 1 January 2019, was adopted only on 14 December 2018, the companies argue that this change was unpredictable and did not provide them with sufficient time to adapt since the contracts with their suppliers run over long periods.

An in-depth analysis has confirmed a significant drop in the imports concerned due to the change of code (only 400 tonnes of the 1 500 tonnes of the ATQ has been used, compared to 958 tonnes in 2018).

On the other hand, the objective of the ATQs is to create added value and employment. In this perspective, thawing, repacking and pasteurising cannot be considered as 'processing' that would create significant added value. It is in this context that CN code 1604 32 00 (caviar substitute) was replaced by CN code 0305 20 00 (livers, roes and milt of fish, dried, smoked, salted or in brine).

In discussions on the 2019-2020 ATQ regulation with regards to hard fish roes, the Customs Code Committee adopted new Explanatory Notes to the Combined Nomenclature (CNEN) for

subheading 0305 20 00, clarifying the scope of that subheading by providing further definitions. The new CNENs explain that salted fish roes that are unsuitable for immediate consumption as caviar or caviar substitutes in the state as presented without further processing but are intended for the manufacture of caviar substitutes are classified under this subheading.

It can therefore be concluded that the replacement of CN code 1604 32 00 by CN code 0305 20 00 in the new ATQ Regulation (2019-2020) is in line with the objectives of the ATQs. However, the late adoption of the Regulation with a CN code for the same ATQ 09.2750 that differed from that mentioned in the Commission proposal and in the previous legislation, and the lack of clear understanding by industry of the difference between the two CN codes (reinforced by the fact that they fall under the same order number), had a significant negative impact on the fish roe industry in the EU. Trade flows should not abruptly be discontinued due to this change of CN code.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

Article 31 TFEU.

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

Common Customs Tariff duties fall under the exclusive competence of the Union. The subsidiarity principle therefore does not apply to these provisions.

- **Proportionality**

The policy choice is proportionate because for each product only a limited quantity is authorised, taking account of the utilisation rate, a level playing field between EU and non-EU producers, value added and other trade preferences.

The proposal complies with the principle of proportionality because the customs union is a common policy and should therefore be implemented through a regulation adopted by the Council.

- **Choice of the instrument**

Not applicable.

## **3. BUDGETARY IMPLICATIONS**

The proposal has a budgetary impact on revenue.

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### **on amending Council Regulation (EU) 2018/1977 opening and providing for the management of autonomous Union tariff quotas for certain fishery products for the period 2019-2020**

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) Council Regulation (EU) 2018/1977<sup>1</sup> opens and provides for the management of autonomous Union tariff quotas for certain fishery products for the period 2019-2020. Appropriate volumes have been decided for each tariff quota to ensure an adequate supply to the Union industry for the period 2019-2020.
- (2) Within the autonomous tariff rate quota with order number 09.2750, listed in the Annex to Regulation 2018/1977, the only products that corresponds to the description hard fish roes washed, cleaned of adherent organs and simply salted or in brine, for the manufacture of caviar substitutes is the CN code ex 0305 20 00 with TARIC code 35.
- (3) Under Council Regulation 2015/2265<sup>2</sup> which preceded Regulation (EU) 2018/1977, the tariff quota concerned was however provided differently, and referred to CN code ex 1604 32 00 with TARIC code 20 as the only product covered by the description “hard fish roes washed, cleaned of adherent organs and simply salted or in brine, for the processing of caviar substitutes”.
- (4) The change as regards the CN code for order number 09.2750, resulted in a difficulty for the industry to interpret the provision concerned and in a lack of clear understanding from the industry on the difference between the two CN codes (reinforced by the fact that they fall under the same order number), this caused a negative impact on the EU processing industry.

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<sup>1</sup> Council Regulation (EU) 2018/1977 of 14 December 2018 opening and providing for the management of autonomous Union tariff quotas for certain fishery products for the period 2019-2020 (OJ L 317, 14.12.2018, p. 2).

<sup>2</sup> Council Regulation (EU) 2015/2265 of 7 December 2015 opening and providing for the management of autonomous Union tariff quotas for certain fishery products for the period 2016-2018 (OJ L 322, 8.12.2015, p. 4)

- (5) It is appropriate to modify the products covered by the tariff quota for order number 09.2750 so as to also include, for a limited period of one year, the CN code ex 1604 32 00 with TARIC code 20, as well as a footnote that refers to these CN and TARIC codes mentioning a period from 1 January 2019 to 31 December 2019.
- (6) Regulation (EU) 2018/1977 should therefore be amended accordingly.
- (7) The period in which the quotas opened by Regulation (EU) 2018/1977 apply in the first year runs from 1 January 2019 to 31 December 2019. Since it is necessary to ensure equal treatment of economic operators and taking into account that the tariff quota under order 09.2752 is not yet exhausted, this Regulation should be applied retroactively with effect from 1 January 2019 so as to offer the opportunity for economic operators using hard fish roes (finished products) to keep the benefit of the favourable quota duty without interruption for a limited period of time. For the same reasons, it should enter into force immediately.

HAS ADOPTED THIS REGULATION:

*Article 1*

The third row of the Annex to Council Regulation (EU) 2018/1977 (order No 09.2750), is amended as follows:

- (1) the entry under the column “CN code” is replaced by the following:  
“ex 0305 20 00  
ex 1604 32 00”;
- (2) the entry under the column “TARIC code” is replaced by the following:  
“35  
20”;
- (3) the following footnote is added to the column “description” after the word “caviar substitutes”:  
“For TARIC code 1604 32 00 20 this tariff quota applies from 1 January 2019 to 31 December 2019”.

*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 2019.

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. 1. NAME OF THE PROPOSAL

Proposal for an amendment of Council Regulation (EU) 2018/1977 opening and providing for the management of autonomous Union tariff quotas for certain fishery products for the period 2019-2020.

### 2. BUDGET LINES

Revenue line: Chapter 1 2 , Article 1 2 0 – Customs duties and other duties referred to in point (a) of Article 2(1) of Decision 2014/335/EU, Euratom (*Budgeted amount for financial year 2019 – 21 471,2 mio EUR*)

(only in case of assigned revenues) The revenues will be assigned to the following expenditure chapter:

### 3. FINANCIAL IMPACT

Proposal has no financial implications

X Proposal has no financial impact on expenditure but has a financial impact on revenue

Proposal has a financial impact on assigned revenue – the effect is as follows:

(EUR)

Revenue line <sup>3</sup>	Year 2019
Article – 1 2 0 - Customs duties and other duties	3.561.518

### 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 laying down provisions for the implementation of the Community Customs Code.

### 5. OTHER REMARKS

1. The main impact of the Regulation is the loss of revenue for the European Union, given that the tariff quota for order number 09.2750 is modified so as to also include, for a limited period of one year, the CN code ex 1604 32 00 with TARIC code 20, as well as a footnote that refers to these CN and TARIC codes mentioning a period from 1 January 2019 to 31 December 2019.

2. The gross amount has been calculated on the basis of outstanding balance ATQ 09.2750 (implying maximum utilisation of the quota), average price of the product during the last two years, the 20 % MFN duty rate on the product

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<sup>3</sup> In the case of traditional own resources (agricultural duties, sugar levies, customs duties), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20 % for collection costs.

1.097.066,78 (tonnage)\* 20.29(average price/kg) \* 20% (tariff)

It marks, therefore, the maximum level of loss of revenue since the Community grants more favourable trade preferences to different groups of third countries (GSP, GSP+, FTAs).