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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 7.9.2009
COM(2009) 370 final

2009/0125 (CNS)

Proposal for a

COUNCIL REGULATION

temporarily suspending autonomous Common Customs Tariff duties on imports of certain industrial products into the autonomous regions of Madeira and the Azores

EXPLANATORY MEMORANDUM

Context of the proposal

Grounds for and objectives of the proposal

The regional authorities of Madeira and Azores have requested with the support of the Portuguese Government to introduce autonomous tariff suspensions in order to strengthen the competitiveness of the local economic operators and thus securing a more stable employment on these islands.

General context

Madeira and Azores belong to the outer most regions of the Community for which special measures may be foreseen in accordance with Article 299 (2) of the Treaty establishing the European Community in order to overcome the economic disadvantages these areas suffer due to their geographical situation.

Existing provisions in the area of the proposal

Similar provisions have been introduced with Council Regulation (EC) No 704/2002 for the Canary Islands.

Consistency with the other policies and objectives of the Union

Not applicable.

Consultation of interested parties and impact assessment

Consultation of interested parties

The members of the Commission's expert working group "Economic Tariff Questions" had been consulted and didn't raise any economic objections against the suspensions proposed.

Collection and use of expertise

There was no need for external expertise.

Impact assessment

An individual impact assessment of the measure as such is not possible given the fact that the suspension of duties is only one measure in a whole row measures enacted for the improvement of the social and economic situation on these islands. To this effect the Commission publishes frequently communications setting out the effects of these measures for the different outer most regions. The last communication was forwarded to the Council on 17.10.2008 (COM/2008/0642 final)

Legal elements of the proposal

Summary of the proposed action

The proposed suspension of the Common Customs Tariff duties allows the local economic operators in Madeira and Azores to import a certain number of raw materials, parts, components and finished products duty free. In order to avoid any misuse or change in traditional trade flows of these goods it is foreseen that goods benefitting from duty suspension are subject to end use controls.

Therefore, finished goods will have to be used by local companies on the islands for a period of at least two years before they could be sold freely to other companies located in the other part of the customs territory of the European Community.

Raw materials, parts and components will have to be used for agricultural purposes, and industrial transformation and maintenance in the autonomous regions in order to benefit from the duty suspension.

Legal basis

Article 299 (2) of the Treaty establishing the European Community

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 reasons:

The form of action is regularly used as instrument to strengthen the competitiveness of the economic operators. The imposition of end use controls in accordance with the provisions of the Community Customs Code and its implementing provisions is an established procedure in this context and does not create significant supplementary administrative burdens to the regional and local authorities and economic operators.

Choice of instruments

Proposed instruments: Regulation.

The treaty does not allow any other means for the implementation of such measures

Budgetary implication

The proposal has implications for the Community budget. The application of the suspension will lead to loss in revenue of Community's own resources.

Proposal for a

COUNCIL REGULATION

temporarily suspending autonomous Common Customs Tariff duties on imports of certain industrial products into the autonomous regions of Madeira and the Azores

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 Commission¹,

Having regard to the opinion of the European Parliament²,

Having regard to the opinion of the European Economic and Social Committee³,

Having regard to the opinion of the Committee of the Regions⁴,

Whereas:

1. In August and December 2007 the regional authorities of Madeira and Azores requested with the support of the Portuguese Government an autonomous suspension of the common customs tariff duties for a number of products in accordance with Article 299 (2) of the Treaty establishing the European Community. They justified their requests that in view of the remoteness of those islands the economic operators suffer severe commercial disadvantages which have negative effects on demographic trends, employment and social and economic developments.
2. The local economies of Madeira and the Azores are to a large extent dependant on national and international tourism, a fairly volatile economic resource. It is determined by factors on which the local authorities and the Portuguese government have hardly any influence. As a result the economic development of Madeira and the Azores is severely restrained. In these circumstances it is necessary to support those economic sectors which are less dependent on the tourist industries in order to compensate the fluctuations of the touristic sector and thus to stabilise local employment.
3. Council Regulation (EEC) No 1657/93 of 24 June 1993 temporarily suspending the autonomous Common Customs Tariff duties on certain industrial products intended to equip the free zones of the Azores and Madeira⁵) did not have the wished effect in the last years before its expiry on 31.12.2008. This is very likely due to the fact that these suspensions laid down in that Regulation have been limited to the free zones of the Azores and Madeira and have therefore no longer been used in the last years before their expiry. It is therefore appropriate to provide for new suspensions which are not

¹ OJ C , , p. .

² OJ C , , p. .

³ OJ C , , p. .

⁴ OJ C , , p. .

⁵ OJ L 158, 30.6.1993, p. 1

restricted to industries located in free zones but can benefit to all types of economic operators located on the territory of those regions. The scope of commercial sectors benefitting from the suspensions should therefore cover the fishery, agricultural, industrial and service sectors.

4. In order to ensure economic effect of the suspensions laid down in this Regulation it is appropriate to extend the range of products to finished goods for industrial use, to raw and other materials and to parts and components used for agricultural purposes, industrial transformation, maintenance and other services.
5. In order to give a long term perspective to investors and enable economic operators to reach a level of industrial and commercial activities which stabilises the economic and social environment in the regions concerned, it is appropriate to suspend in full the Common Customs Tariff duties for certain goods for a period of 10 years starting on 1 January 2010.
6. In order to ensure that only economic operators located on the territory of Madeira and the Azores benefit from these tariff measures, the suspensions should be made conditional on the end use of the products in accordance with Council Regulation (EEC) 2913/92 of 12 October 1992 establishing the Community Customs Code⁶ and Commission Regulation (EC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/93 establishing the Community Customs Code⁷.
7. In order to allow efficient operation of the suspension the authorities of Madeira and the Azores should take the necessary implementing measures and inform the Commission thereof.
8. The Commission should be permitted to adopt, if necessary, temporary measures designed to prevent any speculative movement or deflection of trade until a definitive solution for that movement will be adopted by the Community institutions.
9. Amendments to the Combined Nomenclature may not give rise to any substantive changes to the nature of the suspension of duties. The Commission should therefore make the necessary amendments and technical adaptations of the list of goods for which a suspension applies.

HAS ADOPTED THIS REGULATION:

Article 1

From 1 January 2010 to 31 December 2019 the Common Customs Tariff duties applicable to imports into the autonomous regions of Madeira and the Azores of finished goods for agricultural, commercial or industrial use listed in Annex I shall be suspended in full.

These goods shall be used in accordance with the provisions of Council Regulation (EEC) 2913/92 of 12 October 1992 establishing the Community Customs Code and Commission Regulation (EC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/93 establishing the Community Customs Code for a period of at least 24 months after the release into free circulation by economic operators located in the autonomous regions of Madeira and the Azores.

⁶ OJ L 302, 19/10/1992, p.1

⁷ OJ L 253 11.10.1993, p.1

Article 2

From 1 January 2010 to 31 December 2019 the Common Customs Tariff duties applicable to imports into the autonomous regions of Madeira and the Azores of raw materials, parts and components listed in Annex II, and used for agricultural purposes, and industrial transformation or maintenance in the autonomous regions of Madeira and the Azores, shall be suspended in full.

Article 3

The competent authorities of Madeira and the Azores shall take the measures necessary to ensure compliance with Article 1 and 2.

Those authorities shall inform the Commission of those measures before 1 July 2010.

Article 4

The suspension of duties referred to in Articles 1 and 2 shall be subject to end-use in accordance with Articles 21 and 82 of Council Regulation (EEC) No 2913/92 and to the controls provided for in Articles 291 to 300 of Regulation (EC) No 2454/93.

Article 5

1. Where the Commission has reasons to believe that the suspensions laid down in this Regulation has led to a deflection of the trade for a specific product it may, in accordance with the procedure referred to in Article 7(2), provisionally repeal the suspension by Commission Regulation for a period not longer than 12 months. Import duties for products for which the suspension has been provisionally repealed shall be secured by a guarantee, and the release of the products concerned for free circulation in the autonomous regions of Madeira and the Azores shall be conditional upon the provision of such guarantee.
2. When the Council decides on a proposal from the Commission within the 12 months period that the suspension should definitively be repealed the amounts of duties secured by guarantees shall be definitively collected.
3. If no definitive decision has been adopted within the 12 month period in accordance with paragraph 2, the securities shall be released.

Article 6

When necessary the Commission may in accordance with the procedure referred to in Article 8(2) make such amendments and technical adaptations to Annexes I and II of this Regulation as are required as a consequence from amendments of the Combined Nomenclature.

Article 7

1. The Commission is assisted by the Customs Code Committee.
 2. When reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.
- The period laid down in Article 4 (3) of Decision shall be set at three months.

Article 8

1. The Commission is assisted by the Customs Code Committee.
2. When reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 5 (6) of Decision shall be set at three months.

Article 9

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 2010.

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

Done at Brussels,

For the Council
The President

ANNEX I

Finished goods for agricultural, commercial or industrial use

CN Code ⁸	CN Code	CN Code	CN Code
4016 94 00	8422 30 00	8501 61 20	9016 00 10
4415 10 10	8423 89 00	8501 64 00	9017 30 10
5608	8424 30 90	8502 39	9020 00 00
6203 31 00	8427 20 11	8504 32 80	9023 00 10
6203 39 19	8440 10 90	8504 33 00	9023 00 80
6204 11 00	8442 50 23	8504 40 90	9024 10
6205 90 80	8442 50 29	8510 30 00	9024 80
6506 99 00	8450 11 90	8515 19 00	9025 19 20
7309 00 59	8450 12 00	8515 39 13	9025 80 40
7310 10 00	8450 20 00	8515 80 91	9025 80 80
7310 29 00	8451 21 90	8516 29 99	9027 10 10
7311 00	8451 29 00	8516 80 80	9030 31 00
7321 81 90	8451 80 80	8518 30 95	9032 10 20
7323 23 90	8452 10 19	8523 21 00	9032 10 81
7326 20 90	8452 29 00	8526 91 80	9032 89 00
7612 90 98	8458 11 80	8531 10 95	9107 00 00
8405 10 00	8464 90	8543 20 00	9201 90 00
8412 29 89	8465 10 90	8543 70 30	9202 90 30
8412 80 80	8465 92 00	8543 70 90	9506 91 90
8413 81 00	8465 93 00	8546 90 90j	9506 99 90
8413 82 00	8465 99 90	9008 10 00	9507 10 00
8414 40 90	8467 11 10	9011 80 00	9507 20 90
8414 60 00	8467 19 00	9014 80 00	9507 30 00
8414 80 80	8467 22 30	9015 80 11	9507 90 00
8415 10 90	8467 22 90	9015 80 19	
8415 82 00	8479 89 97	9015 80 91	
8418 30 20	8501 10 91	9015 80 93	
8418 50	8501 20 00	9015 80 99	

⁸

CN codes applicable on 1 January 2009, adopted by Commission Regulation (EC) No 1031/2008 of 19 September 2008 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and the Common Customs Tariff (OJ L 291, 31.10.2008, p. 1)

ANNEX II

Raw materials, parts and components used for agricultural purposes, industrial transformation or maintenance

CN Code ⁹	CN Code	CN Code	CN Code
3102 40 10	7318 22 00	8415 90 00	8529 10 39
3105 20 10	7320 20 89	8421 23 00	8529 10 80
4008 29 00	7323 99 99	8421 29 00	8529 10 95
4009 42 00	7324 90 00	8421 31 00	8529 90 65
4010 12 00	7326 90 98	8421 99 00	8529 90 97
4015 90 00	7412 20 00	8440 90 00	8531 90 85
4016 93 00	7415 21 00	8442 40 00	8539 31 90
4016 99 97	7415 29 00	8450 90 00	8543 70 90
5401 10 90	7415 33 00	8451 90 00	8544 20 00
5407 42 00	7419 91 00	8452 90 00	8544 42 90
5407 72 00	7606 11 91	8478 90 00	8544 49 93
5601 21 90	7606 11 93	8481 20 10	9005 90 00
5608	7606 11 99	8481 30 99	9011 90 90
5806 32 90	7616 10 00	8481 40	9014 90 00
5806 32 90	7907 00	8481 80 99	9015 90 00
5901 90 00	8207 90 99	8482 10 90	9024 90 00
5905 00 90	8302 42 00	8482 80 00	9029 20 31
6217 90 00	8302 49 00	8483 40 90	9209 91 00
6406 20 90	8308 90 00	8483 60 80	9209 92 00
7303 00 90	8406 90 90	8484 10 00	9209 94 00
7315 12 00	8409 91 00	8503 00 99	9506 70 90
7315 89 00	8409 99 00	8509 90 00	
7318 14 91	8411 99 00	8511 80 00	
7318 15 69	8412 90 40	8511 90 00	
7318 15 90	8413 30 80	8513 90 00	
7318 16 91	8413 70 89	8514 90 00	
7318 19 00	8414 90 00	8529 10 31	

⁹ CN codes applicable on 1 January 2009, adopted by Commission Regulation (EC) No 1031/2008 of 19 September 2008 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and the Common Customs Tariff (OJ L 291, 31.10.2008, p. 1)

**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 temporarily suspending autonomous Common Customs Tariff duties on imports of certain industrial products into the autonomous regions of Madeira and the Azores

2. BUDGET LINES:

Chapter and Article: Chap. 12 art. 120

Amount budgeted for the year 2009: € 17 655 800 000

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 ¹⁰	period, starting dd/mm/aaaa	[Year 2010 –2019]
Article 120	<i>Impact on own resources</i>	01/01/2010 - 31/12/2019	- 0.12/year

4. ANTI-FRAUD MEASURES

Checks on the end-use of all the products covered by this Council Regulation will be carried out in accordance with Articles 291 to 300 of Commission Regulation (EEC) No 2454/93 laying down provisions for the implementation of the Community Customs Code.

5. OTHER REMARKS

To enable the economic operators to make long-term investment decisions the proposed suspensions should remain in force for 10 years

It replaces the measures introduced by Council Regulation (EEC) No 1657/93 which expired on 31.12.2008

¹⁰ 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.

Estimated cost of this operation

On the basis of the information provided by the regional authorities, the impact on the loss of revenue resulting from this Regulation may therefore be estimated at MEUR 0.16 (gross amount, expenses incurred in collection included) x 0.75 = **MEUR 0.12/year for the period 01.01.2010 - 31.12.2019.**

The loss of revenue in Traditional Own Resources shall be compensated by Member States contributions based on the GNI.