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COM(2021) 392 final

2021/0209 (CNS)

Proposal for a

COUNCIL REGULATION

**temporarily suspending autonomous Common Customs Tariff duties on imports of
certain industrial products into the Canary Islands**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

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

Council Regulation (EU) No 1386/2011¹ provided for the temporary suspension of the autonomous Common Customs Tariff duties on imports of certain industrial products into the Canary Islands. The Canary Islands belong to the Outermost Regions of the European Union, for which special measures may be foreseen, pursuant to Article 349 of the Treaty on the Functioning of the European Union (TFEU), in order to overcome the economic disadvantages these regions suffer due to their geographical situation.

The measures provided for in Council Regulation (EU) No 1386/2011, which were aimed at strengthening the competitiveness of the local economic operators and thus securing more stable employment on these islands, are due to expire on 31 December 2021. In April 2021, the government of Spain requested the prolongation of the suspension of the autonomous Common Customs Tariff duties for a number of products. According to the request the constraints faced by the region, being structural and permanent, continue to be related to isolation, the small size of the market and its fragmentation. The Canary Islands, because of those limitations, have a higher cost of production and transport, and higher environmental costs. They are also unable to benefit from globalisation to the same extent as other European regions. The requested suspension scheme is intended to reduce these constraints on the Canary Islands market.

In addition, in the same context, the Spanish authorities requested the suspension of the Common Customs Tariff duties for seven new product categories falling under CN codes 3903 19, 5603 94, 5604 10, 7326 90, 7607 20, 8441 40 and 8479 90.

- **Consistency with existing policy provisions in the policy area**

The 2017 Communication “A stronger and renewed strategic partnership with the EU's outermost regions”² notes that the outermost regions continue to face serious challenges, many of which are permanent. This Communication presents the Commission’s approach in terms of supporting these regions in building on their unique assets and identifying new sectors to enable growth and job creation.

In this context, the aim of this proposal is supporting Spain’s outermost region in building on its assets in order to enable growth and job creation in the local sector. This proposal supplements the Programme of Options Specifically Relating to Remoteness and Insularity (POSEI), which targets support for the primary sector and the production of raw materials, the European Maritime and Fisheries Fund (EMFF) and the funding of the European Regional Development Fund (ERDF) Specific Additional Allocation.

The Canary Islands benefit from other similar measures (autonomous tariff reductions), for instance, Council Regulation (EU) 2020/1785 of 16 November 2020³ provides for the opening of autonomous tariff quotas for imports of certain fishery products into the Canary Islands.

¹ OJ L 345, 29.12.2011, p.1.

² COM(2017) 623 final.

³ OJ L 403, 1.12.2020, p.1.

Moreover, this outermost region benefits from exemptions or partial reductions in the AIEM tax⁴ that are provided for by Council Decision (EU) 2020/1792 of 16 November 2020⁵.

- **Consistency with other Union policies**

This proposal is in line with Union policies, particularly as regards overall policy for the outermost regions and policies in the field of international trade, competition, environment, enterprise, development and external relations.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis of this proposal is Article 349 TFEU. This provision enables the Council, taking into account the structural social and economic constraints of the Union outermost regions (including their remoteness, insularity, small size, difficult topography and climate and economic dependence on a few products) to adopt specific measures adjusting the application of the Treaties to those regions. Those measures concern specific areas, including, among others, customs and trade policies.

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

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

- **Proportionality**

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 Union 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 the instrument**

The proposal is for a Regulation.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

The expert group “Economic Tariff Questions Group” (ETQG) which assists the Commission in preparing its Council proposals in the area of autonomous tariff measures, was consulted on this proposal.

⁴ Tax known as ‘Arbitrio sobre las Importaciones y Entregas de Mercancías en las islas Canarias’ (AIEM tax).

⁵ OJ L 402, 1.12.2020, p.13.

- **Collection and use of expertise**

To examine the impacts of the measures, the Commission requested the necessary information from the Spanish authorities. The Spanish authorities provided data on the products concerned that had been imported to the Canary Islands and included an analysis of these products.

Information was also gathered for specific topics, such as employment (from the Canary Islands Statistical Institute), tourism (official statistics on tourism in the Canary Islands) and consumption (Eurobarometer).

- **Impact assessment**

No impact assessment has been performed. The proposal is aimed at prolonging the current measures that expire at the end of 2021. An impact assessment is not warranted, given the very limited scope of the measures and the fact that there are no significant changes as to their expected effects

- **Fundamental rights**

The proposal has no consequences on fundamental rights.

4. BUDGETARY IMPLICATIONS

This proposal has no financial impact on expenditure, but has a financial impact on revenue. Uncollected customs duties total approximately EUR 3,3 million per year. The effect on the budget's traditional own resources is EUR 2,5 million per year (i.e. 75 % of the total). The legislative financial statement sets out the budgetary implications of the proposal in greater detail.

The loss of revenue in traditional own resources shall be compensated by Member States Gross National Income (GNI) based on resource contributions.

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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 349 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) According to Council Regulation (EU) No 1386/2011⁶, the duty suspension for certain capital goods for commercial or industrial use, imported into the Canary Islands, is to expire on 31 December 2021.
- (2) In April 2021, the government of Spain requested the prolongation of the suspension of the autonomous Common Customs Tariff duties for a number of products in accordance with Article 349 of the Treaty. Measures established by Regulation (EU) No 1386/2011 positively contributed to the development of the Canary Islands' economy, in particular in industry and construction, thus reducing the severe impact of economic and commercial disadvantages caused by the remoteness, the insularity and the small size of those islands.
- (3) The Canary Islands' economy continues to be negatively affected by the small size of the islands' market, its fragmentation and remoteness from Europe, particularly high level unemployment and higher costs in production and distribution than those of economic operators in continental Europe. While the Canary Islands' unemployment rate showed some improvement up to 2019, unemployment increased from 20,5 % in 2019 to 22,6 % in 2020, well above the national and Union averages of 15,5 % and 7,1 %, respectively (Eurostat, 2021).
- (4) Moreover, the COVID19 crisis halted tourism activity in the Canary Islands which, in 2020, led to an estimated drop of around 20 % in the GDP. In addition, there was a contraction in the construction and industrial activity with an estimated decline of 13 %, in relation to 2019.

⁶ Council Regulation (EU) No 1386/2011 of 19 December 2011 temporarily suspending autonomous Common Customs Tariff duties on imports of certain industrial products into the Canary Islands (OJ L 345, 29.12.2011, p. 1).

- (5) It is therefore appropriate to prolong the suspension of the Common Customs Tariff duties for certain goods as listed in Annexes I and II to Regulation (EU) No 1386/2011 in order to:
- ensure sustainability of positive effects of Regulation (EU) No 1386/2011;
 - contribute to the diversification of the economy;
 - ensure constant growth and the creation of jobs in industry and construction;
 - enhance innovation;
 - reduce the dependence of the local economy on the service sector;
 - complement other measures dedicated to the stabilisation of the economic and social environment in the Canary Islands.
- (6) In addition to the product categories covered by Regulation (EU) No 1386/2011, in the same context the government of Spain has requested the suspension of the Common Customs Tariff duties for seven new product categories falling under CN codes 3903 19, 5603 94, 5604 10, 7326 90, 7607 20, 8441 40 and 8479 90. That request should be accepted as those suspensions, which include machines for industrial purposes and raw materials, would strengthen the economy of the Canary Islands.
- (7) In order to ensure that only economic operators located on the territory of the Canary Islands benefit from those tariff measures, the suspensions should be made conditional on the end-use of the products, in accordance with Regulation (EU) No 952/2013 of the European Parliament and of the Council⁷ and Commission Implementing Regulation (EU) 2015/2447⁸.
- (8) In case of a deflection of trade and in order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission allowing the Commission to temporarily withdraw the suspension. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁹.
- (9) The measures provided for in this Regulation should ensure continuity after Regulation (EU) No 1386/2011 expires. Therefore, it is appropriate to apply the measures provided in this Regulation from 1 January 2022 until 31 December 2031,

HAS ADOPTED THIS REGULATION:

Article 1

From 1 January 2022 to 31 December 2031, the Common Customs Tariff duties, referred to in Article 56(2), point (c), of Regulation (EU) No 952/2013, applicable to imports into the Canary Islands of capital goods for commercial or industrial use, currently falling under the CN codes listed in Annex I, shall be suspended in full.

⁷ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

⁸ Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of the Union Customs Code (OJ L 343, 29.12.2015, p. 558).

⁹ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

Those goods shall be used in accordance with the relevant provisions of Regulation (EU) No 952/2013 and of Regulation (EU) 2015/2447 for a period of at least 24 months after the release into free circulation by economic operators located in the Canary Islands.

Article 2

From 1 January 2022 to 31 December 2031, the Common Customs Tariff duties, referred to in Article 56(2), point (c), of Regulation (EU) No 952/2013 applicable to imports into the Canary Islands of raw materials, parts and components, currently falling under the CN codes listed in Annex II, and used for industrial transformation or maintenance in the Canary Islands, shall be suspended in full.

Article 3

The suspension of duties referred to in Articles 1 and 2 shall be subject to end-use customs supervision in accordance with Article 254 of Regulation (EU) No 952/2013.

Article 4

1. Where the Commission has reasons to believe that any suspension laid down in this Regulation have led to a deflection of trade for a specific product, it shall be empowered to adopt implementing acts temporarily withdrawing the suspension with regard to that product for a period not longer than 12 months. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 5(2).

Import duties for products for which the suspension has been temporarily withdrawn shall be secured by a guarantee, and the release of the products concerned for free circulation in the Canary Islands shall be conditional upon the provision of such guarantee.

2. When the Council decides, in accordance with the procedure laid down in the Treaty, within a 12-month period, that the suspension should definitively be withdrawn, the amounts of duties secured by guarantees shall be collected definitively.
3. If no definitive decision has been adopted within the 12-month period in accordance with paragraph 2, the guarantees shall be released.

Article 5

1. The Commission shall be assisted by the Customs Code Committee, established by Article 285(1) of Regulation (EU) No 952/2013.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 6

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

It shall apply from 1 January 2022.

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:

Council Regulation temporarily suspending autonomous Common Customs Tariff duties on imports of certain industrial products into the Canary Islands.

2. BUDGET LINES:

Chapter and Article: Chap. 12 art. 120

Amount budgeted for the year 2021: € 17 605 700 000

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 2022 –2031]
Article 120	<i>Impact on own resources</i>	01/01/2022 - 31/12/2031	-2,5/year

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

The proposal replaces the measures introduced by Council Regulation (EU) No 1386/2011 which expires on 31.12.2021.

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 is estimated at MEUR 3,3 (gross amount, expenses incurred in collection included) x 0,75 = MEUR 2,5/year for the period 01.01.2012 - 31.12.2021. However, since the proposal prolongs the measures that are currently in place, there will be practically no change in the level of uncollected Traditional Own Resources, when this regulation enters into force.

4. ANTI-FRAUD MEASURES

Checks on the end-use of the products covered by this Council Regulation will be carried out in accordance with Article 254 of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code.

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.