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COMMISSION STAFF WORKING DOCUMENT

**Examination of Council Regulation (EU) No 1412/2013 on autonomous Union tariff
quotas for imports of certain fishery products into the Canary Islands from 2014 to 2020**

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OPTIONS FOR THE PERIOD AFTER 31 DECEMBER 2020

1. THE CONTEXT

1.1. Article 349 TFEU: measures to address the specific structural and economic situation of the outermost regions

Article 349 of the Treaty on the Functioning of the European Union (TFEU) (ex-299(2) TEC) stipulates that the Council must adopt specific measures to address the specific structural and economic situation of the outermost regions. It must do so on a proposal from the Commission and after consulting the European Parliament. These measures must be aimed, in particular, at laying down the conditions for applying the Treaties to those outermost regions, including common policies. When adopting these measures, the Council must take account of the structural social and economic situation of the outermost regions, which is compounded by their remoteness, insularity, small size, difficult topography and climate, as well as by their economic dependence on a few products; and the permanence and combination of these factors severely restrain the development of these regions.

The autonomous Spanish community of the Canary Islands is included among the nine regions that the European Union classifies as ‘outermost’.

1.2. Previous tariff measures for imports of fishery products into the Canary Islands

In 1991, the Spanish authorities requested specific tariff measures for certain sensitive products to take account of particular problems in a given sector of local production intended for local consumption or tourism. These measures were requested on the basis of point 7.1 of the Annex to Council Decision 91/314/EEC of 26 June 1991¹ in order to maintain an exemption from duties for fishery products imported into the Canary Islands equivalent to the exemption applied prior to the entry into force of Regulation (EEC) No 1911/91².

In response to this request from the Spanish authorities, Council Regulation (EEC) No 3621/92 was adopted, temporarily suspending duties on imports of certain fishery products into the Canary Islands. This import regime was intended to apply for the transitional period prescribed by Regulation 1911/91. At the end

¹ Council Decision setting up a programme of options specific to the remote and insular nature of the Canary Islands (Poseican).

² Council Regulation (EEC) No 1911/91 of 26 June 1991 on the application of the provisions of Community law to the Canary Islands.

of this period, i.e. on 31 December 2000, the Canary Islands were to be fully integrated into the EU's customs territory and the Common Customs Tariff was to be fully applied in their territory.

The measures were justified by the fact that ‘the exceptional geographical situation of the Canary Islands in relation to the sources of supply of fishery products which are essential for domestic consumption entails costs that are a severe burden for this sector’³.

With the adoption of the Amsterdam Treaty, and more specifically Article 299(2) on the Outermost Regions, the Spanish authorities requested that these measures be extended beyond 31 December 2000.

Responding to this request, the Commission proposed autonomous tariff quotas. They were implemented with Council Regulation (EC) 704/2002. These tariff quotas replaced the previous measures consisting in two autonomous tariff suspensions (0% duty) for unlimited quantities⁴. The tariff quotas⁵, two of a volume of 20,000 tonnes each, were implemented for a period of 5 years, i.e. from 2002 to 2006. The basic volume of these quotas was increased by 2.5% each year.

Upon expiry of these tariff quotas, the Spanish authorities submitted a request for new measures. In response to this request, the Commission proposed new tariff quotas and Council Regulation (EC) 645/2008 was adopted. It implemented similar tariff quotas, albeit for lower volumes (two quotas of 15,000 tonnes, to bring them in line with the actual level of imports recorded into the Canary Islands), for a five-year period, i.e. from 2008 to 2013.

In September 2012, the Spanish authorities submitted a similar request for 2014-2020 with similar volumes (two quotas of 15,000 tonnes), which was accepted by the Commission and proposed to the Council. The current measures are in force until 31 December 2020⁶.

1.3. Expiry of the current measures (Council Regulation (EU) 1412/2013)

The existing tariff quotas will expire on 31 December 2020. For the period after 2020, Article 3 of Regulation 1412/2013 requires that ‘By 30 June 2019, the Commission shall examine the impact of the measures provided for in Article 1 and, on the basis of its findings, submit any relevant proposals for the period after 31 December 2020.’

³ Recital of Council Regulation (EEC) 3621/92.

⁴ One for products under Combined Nomenclature (CN) heading 03.03. ‘Fish, frozen, excluding fillets and other fish meat of heading No 0304’ and another for products under heading 03.04. ‘Fish fillets and other fish meat’.

⁵ The first tariff quota covered CN headings 03.03 and 03.04 (see above) and the second tariff quota headings 03.06 ‘Crustaceans’ and 03.07 ‘Molluscs and aquatic invertebrates’.

⁶ Council Regulation 1412/2013: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R1412>

1.4. Similar measures (autonomous tariff reductions) benefiting the Canary Islands and other outermost regions

- 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. This Regulation suspends import duties into the Canary Islands for a number of industrial goods (including fishing nets);
- Council Regulation (EU) No 973/2010 of 25 October 2010 temporarily suspending autonomous Common Customs Tariff duties on imports of certain industrial products into the autonomous regions of the Azores and Madeira (also including fishing nets). This Regulation extended the suspension of duties, previously intended for industrial ‘free zones’, to the whole territory of Madeira and the Azores;
- Council Decision No 376/2014/EU of 12 June 2014 authorising Portugal to apply a reduced rate of excise duty in the autonomous region of Madeira on locally produced and consumed rum and liqueurs and in the autonomous region of the Azores on locally produced and consumed liqueurs and eaux-de-vie, for the period 2014-2020;
- Council Decision No 189/2014/EU of 20 February 2014 authorising France to apply a reduced rate of certain indirect taxes on ‘traditional’ rum produced in Guadeloupe, French Guiana, Martinique and Réunion and repealing Decision 2007/659/EC, for the period 2014-2020.
- Council Decision No 377/2014/EU of 12 June 2014 on the AIEM tax *Arbitrio sobre las Importaciones y Entregas de Mercancías en las islas Canarias* applicable in the Canary Islands, for the period 2014-2020;
- Council Decision No 940/2014/EU of 17 December 2014 concerning the dock dues tax arrangements applied in the French outermost regions. 2014/189/EC (authorising France to apply a reduced rate of certain indirect taxes on ‘traditional’ rum produced in Guadeloupe, French Guiana, Martinique and Réunion), for the period 2014-2020;
- Council Regulation (EC) No 228/2013 of 13 March 2013 laying down specific measures for agriculture in the outermost regions of the Union, i.e. the so called ‘POSEI’ Regulation. This Regulation includes specific supply arrangements aimed at mitigating the additional costs for the supply of essential products for human consumption, for processing and as agricultural inputs. It applies to all the regions mentioned in Article 349 TFEU.

1.5. Rationale for the specific treatment of the Canary Islands

Spain is the only Member State with an outermost region, the Canary Islands, that can import fishery products at reduced tariffs, in addition to benefiting from special import regimes for a number of agricultural and industrial products.

Outermost regions in other Member States have special import regimes for agricultural goods (POSEI) and for industrial goods (Madeira and Azores) but not for fishery products.

This situation is not new. Before Spain's accession to the EU, the Canary Islands enjoyed a 'duty-free' regime for goods entering the region. After Spain's accession in 1985, most fishery products imported into the Canary Islands benefited, until 2001, from a total suspension of duties for unlimited quantities. After that, tariff quotas were introduced, thus limiting not only the products, but also the quantities that could be imported.

The fact that the Canary Islands have benefited for a long time from such a special regime, and the more restrictive measures that the Union has adopted over time in this regard, should be taken into account.

2. EXAMINATION OF THE IMPACTS OF THE MEASURES UNDER REGULATION 1412/2013

2.1. Information used to assess the measures

2.1.1. Information submitted by the Member State concerned (Spain)

To examine the impacts of the measures, as required by the Regulation, the Commission requested the necessary information from the Spanish authorities. On 22 March 2019, the Spanish authorities provided data on and an analysis of the products concerned that had been imported into the Canary Islands.

Following a request from the Commission for additional information, the Spanish authorities provided the requested information on 19 April 2019.

2.1.2. Other information used in the assessment

Other reports provide relevant information on the Canary Islands in areas that are of relevance when examining the impacts of the tariff quotas.

The Commission's Outermost Regions Communication from 2017⁷ is an essential document for analysing the challenges faced by the outermost regions, and the Canary Islands in particular, and coming up with potential solutions.

The report 'Realising the potential of the Outermost Regions for sustainable blue growth'⁸ also identifies opportunities for sustainable growth in the blue economy. Namely, Annex 9 of the report provides detailed information on relevant areas in the Canary Islands.

⁷ COM(2017) 623 final: 'A stronger and renewed strategic partnership with the EU's outermost regions'

⁸ https://ec.europa.eu/regional_policy/en/information/publications/reports/2017/realising-the-potential-of-the-outermost-regions-for-sustainable-blue-growth

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

2.2. Overall functioning of the tariff quotas

Based on the information provided by the Spanish authorities, it appears that applying Regulation 1412/2013 has helped the Canary Islands to cope with the high local consumption, boosted by the growth in tourism, and an insufficient volume of local catches.

Due to the low volume of catches, the Canary Islands have to rely increasingly on imports from non-EU countries. Landings of the products covered by the measures were clearly insufficient to cover market needs. These imports at reduced tariff rates have also enabled the local processing industry to compete (for the products to be sold in the local market) with imports of processing products from non-EU countries that can export to the EU at no (or reduced) duty rates. These imports have been increasing due to the free trade agreements signed by the EU in recent years.

2.3. Overall import volumes – Usage of the tariff quotas

The tables below provide an overview of total imports into the Canary Islands, within and outside the quota, of products that were covered by the measures.

Products under Order No. 09.2997 by CN code (tonnes)

Year	2014	2015	2016	2017	2018	AVERAGE
CN 0303	10303	7723	9971	8786	9008	9158
CN 0304	10197	9930	9867	9687	8756	9688
TOTAL	20500	17653	19837	18473	17764	18845

Products under Order No. 09.2651 by CN code (tonnes)

Year	2014	2015	2016	2017	2018	AVERAGE
CN 0306	5835	6293	6457	7494	6870	6590
CN 0307	11468	11360	14263	12920	11242	12251
CN 0308	0	0	0	0	0	0
TOTAL	17303	17654	20720	20414	18112	18841

Source: Data submitted by the Spanish authorities.

The tables below provide the yearly intake rate for each quota

Quota No	Year	Net weight	% quota intake
09.2651	2014	11147025.65	74.31
09.2651	2015	9069874.86	60.47
09.2651	2016	9389500.90	62.60
09.2651	2017	8747627.23	58.32
09.2651	2018	7691178.50	51.27

Quota No	Year	Net weight	% quota intake
09.2997	2014	13564218.86	90.43
09.2997	2015	12006594.09	80.04
09.2997	2016	11886279.21	79.24
09.2997	2017	10277349.32	68.52
09.2997	2018	10285995.20	68.57

From the above figures it can be seen that for the period 2014-2018, quota usage was relevant for both frozen fish and frozen fish fillets (average of 77%) and crustaceans, molluscs and aquatic invertebrates (average of 61%).

2.4. Main products imported through the quotas and main exporting countries

The table below provides a general overview of the main products that were imported through the quotas and the main exporters.

Tariff quota	CN codes	Main products	Main exporters
09.2997 Frozen fish	CN 0303	Other frozen fish ⁹ , dogfish and other sharks, other frozen flat fish	Japan, Mauritania and Morocco
09.2997 Fish fillets and other fish meat, fresh, chilled or frozen	CN 0304	Coalfish, tuna, other frozen fillets	Vietnam, China and Iceland
09.6251 Crustaceans	CN 0306	Other shrimps and prawns	Ecuador, China and Senegal
09.6251 Molluscs	CN 0307	Other cuttlefish and squid, other frozen cuttlefish and squid, other (flours, meals and pellets)	China, Mauritania and Morocco
09.6251 Other aquatic invertebrates	CN 0308	Jellyfish	China and USA

From these data it appears that some of the products are imported from countries benefiting from duty-free access into the EU. This is the case of a number of ACP countries, Ecuador and Japan.

When asked why the tariff quotas were used to import products from countries which have duty-free access to the EU, the Spanish authorities responded that operators acted in this way to have legal certainty. Free trade agreements have strict rules of origin requirements, usually referring to flag, registration and ownership of the vessel. Imports under the autonomous quotas provided for in Regulation 1412/2013 give more flexibility as they are *erga omnes* and therefore the origin of the product is irrelevant for the duty amount to be paid. The origin of the products imported under Regulation 1412/2013 is recorded only for statistical purposes.

⁹ Significant volumes were imported under various CN codes labelled 'others'. This classification does not allow for more accurate analysis of the statistics provided by the Spanish authorities. This situation is due to the fact that, unlike what happens with most autonomous tariff quotas, the two tariff quotas opened with Regulation 1412/2013 are directly administered by the Spanish Customs authorities (*Agencia Aduanera Española*).

2.5. Social and economic effects of the tariff quotas

2.5.1. Social impacts

The current situation in outermost regions, and in the Canary Islands in particular, was assessed in the Outermost Regions Communication. Despite having made progress over the years, the outermost regions continue to face serious challenges, which are further amplified by globalisation and climate change. Their development is fragile and their economy depends on a limited number of economic sectors, which include tourism and fishing-related activities. Social indicators remain lower than the EU average.

In the Canary Islands, the unemployment and long-term unemployment rates have decreased since 2013, when the current measures entered into force. The fish processing sector has contributed to this, with a growing number of companies and employees. According to ISTAC, the Canary Islands Statistical Institute, the number of companies working on the processing of fish, crustaceans and molluscs in 2018 increased to 13, the highest number in at least 10 years. Considering the insufficient volumes of local catches, it can be concluded that the autonomous tariff measures have contributed to this increase.

Other possible impacts, such as the effects of the measures on employment in other sectors such as fisheries and tourism, are difficult to ascertain, mainly because of the difficulties of assessing indirect effects.

2.5.2. Economic impacts

2.5.2.1. Effects on the overall supply of fish

In view of the species and the volumes imported through the tariff quotas, it could be concluded that the measures have helped to diversify the fish products offered in the Canary Islands while also complementing local landings of the same species.

- Diversification of supply: among the products with little or no production in the Canary Islands imported through the quotas, we find salmon, flatfish, tilapia, coalfish, hake and mussels.

- Complementing local production: shrimp, sharks, tuna, cuttlefish and squid are among the species with local production and for which imports have been made through the tariff quotas.

2.5.2.2. Prices of fisheries products and available income

Although it is difficult to ascertain the exact impacts, studies show that tariff measures help to keep down prices of fish products covered by the tariff quotas¹⁰. The fact that no import duty has to be paid for the products imported through the

¹⁰ See, for example, the ‘Study on the possibility to ensure a smarter supply policy for the processing industry and evaluation of EU Regulation No. 1220/2012’, available at: https://ec.europa.eu/fisheries/possibility-ensure-smarter-supply-policy-processing-industry-and-evaluation-eu-regulation-no_fr. This study shows that the value of the applicable custom duty represents between 1% and 7% of the consumer price.

quotas removes an additional cost for operators selling these products to the end consumer. It is likely that operators pass on, at least partially, the benefit of the reduced import price to consumers.

Keeping relatively low prices for fisheries products in the Canary Islands can have positive effects on local consumers. The estimated consumption of fisheries products in the local market is estimated at more than 40,000 tonnes per year, which is almost four times higher than the local catches (11,000 tonnes in 2017).

2.6. Measures in place ensuring that the products were intended solely for the Canary Islands

Article 1.2 of Council Regulation 1412/2013 stipulates that ‘The suspension referred to in paragraph 1 shall be granted exclusively for products intended for the Canary Islands’ domestic market.’ Furthermore, recital (10) of the said Regulation reads as follows: ‘In order to avoid undermining the integrity and the coherence of the internal market, measures should be taken to ensure that fishery products for which suspension is granted are intended solely for the Canary Islands’ domestic market.’

The Spanish authorities have implemented control procedures to ensure that the products imported through the quotas were not re-exported outside the Canary Islands.

The Spanish customs authorities developed an IT validation system in 2002, which was modernised in 2014 and applies a specific filter to track fisheries products that are likely to have benefited from the import tariff quotas under Regulation 1412/2013. It matches imports under the Regulation with exports of both processed and unprocessed products. Then Spanish customs carry out an ex-post verification of supposed irregular situations. Duties were recovered for transactions where irregularities were detected, for the following amounts:

Recovery of import duties		
	Number of cases	Amounts (EUR)
2014	142	193113.44
2015	150	127860.34
2016	247	244458.30
2017	158	248141.71
2018	216	284858.81

3. CONCLUSIONS CONCERNING THE ASSESSMENT OF THE MEASURES

Based on the above analysis, the following conclusions can be drawn:

- For the **utilisation of the available quota volumes**, it can be concluded that importers have made a relevant use of both quota 09.2997 for frozen fish and fish fillets and quota 09.2651 for crustaceans, molluscs and aquatic invertebrates.
- Concerning the **economic and social impacts**, while it is difficult to evaluate the impacts of the measures, it can be concluded from the available information that the reduction in costs for operators, arising from the duty-free import of the products, contributed to an increase in employment.
- As for the measures taken to **safeguard the integrity of the EU's internal market**, more specifically to ensure that the suspension of duties was intended solely for the Canary Islands' domestic market, the Spanish customs authorities implemented control and monitoring schemes. With the help of these schemes, a number of transactions were identified for which duties were recovered, as products imported through the tariff quotas had been unduly dispatched outside the Canary Island domestic market.

4. OPTIONS FOR THE PERIOD AFTER 2020

On the basis of the above assessment of the existing measures, we can contemplate a number of options for the period after 2020:

4.1. Option 1: existing measures are continued for another seven-year period

Under this option, the current volumes and quantities will be maintained.

The advantage of this option is that it ensures predictability of market conditions under the current regime. It provides economic operators with the certainty that they will be able to source products at a lower cost. Thus it allows these same operators to make medium- and long-term investment decisions, especially in the processing and distribution segments of the industry.

Continuing the measures also responds to the request made by the interested Member State, Spain, that asked for the existing tariff quotas to be renewed.

Because of the broad product coverage (at 4-digit level of the Combined Nomenclature), the tariff quotas are a flexible instrument that allows operators to import the products they need.

Negative impacts of the *status quo* scenario are the loss of revenue for the EU budget (import duties), albeit for limited amounts. The maximum expected loss in customs tariffs is around 8 million euros per year. Nevertheless, the actual loss of revenue tends to result in much lower figures, as normal duties often (MFN, most-favoured-nation duties) do not apply, due to the EU trade agreements and unilateral preferences, and the fact that quotas are not always used in their entirety.

Under this option, only a minor adjustment could be considered: the deletion of code 0308 from quota 09.2651. As there are no imports under this code, import volumes would remain unchanged.

4.2. Option 2: the quotas (volumes and/or products) are adjusted

Given the decreasing rate of quota intake, the quotas could be adjusted downwards to better reflect the current import figures.

Under this option, adjustments could be made based on a number of criteria such as: the utilisation rate, the degree of sensitivity of imports (competition with EU products), the change in trade preferences granted to exporting countries (e.g. duty reductions because of free trade agreements, or increases owing to a removal of preferential access), the production in the Canary Islands or in the surrounding waters (e.g. where sustainable fisheries partnerships agreements are in force).

The positive impacts of such an option could be that the quantities/products could better reflect the actual needs of the Canary Islands operators while reducing competition for EU producers.

The impact on the EU budget will depend on the adjustments made. It will hinge on the combination volume/products covered by the quotas. Higher volumes could result in fewer duties collected, as could the inclusion of new products (such as canned fish) subject to higher import duties. Lower volumes, or the withdrawal of certain products, could bring about an increase in revenue due to more duties paid at importation.

This option, however, is difficult to implement. The problems linked to the gathering of data or the uncertainty surrounding some of the criteria make the selection of the products and the setting of corresponding quota volumes an extremely complex process, especially for a period of 7 years, where circumstances can change.

Changes in product coverage, for example by establishing a detailed list of products with their respective quantities, could have negative impacts, as operators would be less able to import the products they need. It could also have negative impacts, as operators might have made long-term investments on the basis of the existing measures.

4.3. Option 3: the tariff quotas are terminated

Total abolishment of the quotas could result in an increase in prices for the end consumers of the products covered by the quotas and suspensions. The increase in input costs will be steeper for products subject to MFN duties, i.e., not benefiting from a preferential import regime.

The consequences are very likely to be negative for the economy of the Canary Islands, as available consumer income could decrease. Costs could increase for operators (processing companies, catering, distribution), and employment could also be negatively affected, including in the tourism sector.

The impact on the EU budget would be positive, as it will translate into increased revenues due to the collection of duties. Nevertheless, those revenues are expected to be modest due to the fact mentioned above that full MFN duty rates would not apply.

5. PRELIMINARY CONCLUSION

This preliminary conclusion is made on the basis of the information currently available.

Taking into account the possible impacts of the scenarios described above and considering other factors that could influence the choice of the options, the best option based on the information currently available is to extend the current measures for another 7 years, with the possible exception of CN code 0308 for which there are no imports.

This option provides for continuing the existing measures, thus ensuring a stable and predictable environment for operators in the Canary Islands and further consolidating the measures in favour of this outermost region, as stipulated in Article 349 TFEU and reconfirmed in the Outermost Regions Communication. The quotas cover the needs of the Canary Islands' domestic market, while ensuring that flows of reduced-duty imports into the Community remain predictable and clearly identifiable.

It also responds to the request of the Spanish Government, gives a long-term perspective to investors and enables economic operators to maintain a level of industrial and commercial activities, which will help to stabilise the economic and social environment on the islands. It is therefore appropriate to extend the tariff quotas for another 7 years.

To date, the Commission has not received any complaint on a possible negative impact of the autonomous tariff quotas for imports of certain fisheries products into the Canary Islands. A possible reduction or elimination of the benefits granted through these measures could prove detrimental for the local industry and in general the economic and social development of the Canaries.

In the light of the above, the Commission concludes that extending the measures currently in place, in accordance with Council Regulation 1412/2013, is still justified and proportionate. Furthermore, the Commission believes that no proposal to adapt the existing provisions of the Regulation is required.