

ACTS ADOPTED BY BODIES CREATED BY INTERNATIONAL AGREEMENTS

DECISION No 1/2013 OF THE ESA-EU CUSTOMS COOPERATION COMMITTEE

of 7 August 2013

on a derogation from the rules of origin laid down in Protocol 1 to the Interim Agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States, on the one part, and the European Community and its Member States, on the other part, to take account of the special situation of Mauritius with regard to preserved skipjack

(2013/449/EU)

THE CUSTOMS COOPERATION COMMITTEE,

Having regard to the Interim Agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States, on the one part, and the European Community and its Member States, on the other part, and in particular Article 41(4) of Protocol I thereto,

Whereas:

- (1) The Interim Agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States, on the one part, and the European Community and its Member States, on the other part ⁽¹⁾ ('the interim EPA') applies provisionally as from 14 May 2012 between the Union and the Republic of Madagascar, the Republic of Mauritius, the Republic of Seychelles and the Republic of Zimbabwe.
- (2) Protocol 1 to the interim EPA concerning the definition of the concept of 'originating products' and methods of administrative cooperation contains the rules of origin for the importation of products originating in the ESA States into the Union.
- (3) In accordance with Article 42(1) of Protocol 1 to the interim EPA, derogations from those rules of origin are granted where the development of existing industries in the ESA States justifies them.
- (4) In accordance with Article 42(5), when a request for derogation concerns an island state, its examination shall be carried out with a favourable bias having particular regard to the economic and social impact of the decision to be taken especially in respect of employment and the need to apply the derogation for a period taking into account the particular situation of the island state and its difficulties.

- (5) On 29 November the ESA-EU Customs Cooperation Committee granted, in accordance with Article 42(8) of Protocol 1 to the interim EPA, an automatic derogation ⁽²⁾ to the beneficiary ESA States (Mauritius, Seychelles and Madagascar) for 8 000 tonnes of preserved tuna and 2 000 tonnes of tuna loins.
- (6) In addition to the automatic derogation referred to before, Mauritius has requested a derogation covering a quantity of 6 000 tonnes of preserved tuna of CN codes 1604 14 11, 1604 14 18 and 1604 20 70 manufactured from tuna of the species *Katsuwonus pelamis* (skipjack), *Thunnus alalunga* (albacore tuna), *Thunnus albacares* (yellow fin tuna) and *Thunnus obesus* (big eye tuna) imported into the Union from 1 April 2013 to 31 December 2013 in accordance with Article 42(1) of Protocol 1 to the interim EPA.
- (7) Mauritian tuna processors heavily rely on the supply by EU purse seiners of originating tuna under the interim EPA. Recent catches of originating skipjack (*Katsuwonus pelamis*) in the Indian Ocean have decreased causing new challenges for Mauritian processors confronted with an increasing demand for skipjack-based products in the Union. Granting a derogation for yellow fin tuna-based products (*Thunnus albacares*) is not justified as catches of originating yellow fin tuna in the Indian Ocean have increased. Derogation should therefore be granted for skipjack only.
- (8) Exports of canned tuna from Mauritius to the Union have been constantly increasing over the last five years.
- (9) Mauritius benefits from the global quota provided for by the automatic derogation granted to all beneficiary ESA states (Mauritius, Seychelles and Madagascar). In case of partial use of the quota by the other beneficiary ESA states, Mauritius could also benefit from possible

⁽¹⁾ OJ L 111, 24.4.2012, p. 2.

⁽²⁾ OJ L 347, 15.12.2012, p. 38.

annual re-allocations of unused quantities by these states. Given the recent provisional application of the interim EPA, an appropriate monitoring of the utilization rate of the automatic derogation has not yet been possible in order to verify the re-allocation patterns of unused quantities among the beneficiary ESA states.

- (10) Mauritius may source originating raw tuna from outside the Indian Ocean in accordance with Articles 4 and 5 of Protocol 1 to the interim EPA.
- (11) The on-going EPA negotiations between the European Union and other ACP states from which Mauritius may source originating raw tuna for its processing industry may offer alternative supply opportunities of originating tuna in the near future.
- (12) It is therefore appropriate to provide Mauritius with a derogation for 2 000 tonnes of preserved skipjack which respects the ability of the existing industry to continue its exports to the Union.
- (13) The potential re-allocation of unused quantities between the beneficiary ESA states and the cumulation provided for in the interim EPA justify that the derogation is granted temporarily. To provide for legal certainty for operators, the derogation should be granted for a period of 1 year with effect from 1 April 2013.
- (14) In order to benefit from the derogation, the non-originating materials to be used for the manufacture of preserved skipjack of CN codes 1604 14 11, 1604 14 18 and 1604 20 70 should be frozen skipjack (*Katsuwonus pelamis*) of HS Heading 0303.
- (15) Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code⁽¹⁾ lays down rules relating to the management of tariff quotas. In order to ensure efficient management carried out in close cooperation between the authorities of the ESA States, the customs authorities of the Union and the Commission, those rules should apply mutatis mutandis to the quantities imported under the derogation granted by this Decision.
- (16) In order to allow efficient monitoring of the operation of the derogation, the authorities of the ESA States should communicate regularly to the Commission details of the EUR.1 movement certificates issued.

HAS DECIDED AS FOLLOWS:

Article 1

By way of derogation from Protocol 1 to the interim EPA and in accordance with Article 42(1) and (5) of that Protocol, preserved skipjack of HS Heading 1604 manufactured from

non-originating skipjack (*Katsuwonus pelamis*) of HS Heading 0303 shall be regarded as originating in Mauritius in accordance with the terms set out in Articles 2 to 5 of this Decision.

Article 2

The derogation provided for in Article 1 shall apply for one year for the product and the quantity set out in the Annex to this Decision which are declared for release for free circulation into the Union from Mauritius during the period of 1 April 2013 to 31 March 2014.

Article 3

The quantities set out in the Annex shall be managed in accordance with Articles 308a, 308b and 308c of Regulation (EEC) No 2454/93.

Article 4

The customs authorities Mauritius shall carry out quantitative checks on exports of the products referred to in Article 1.

All the EUR.1 movement certificates they issue in relation to the products referred to in Article 1 shall bear a reference to this Decision.

Before the end of the month following each quarter, the customs authorities Mauritius shall forward to the Commission, via the Secretariat of the Customs Cooperation Committee, a statement of the quantities in respect of which movement certificates EUR. 1 have been issued pursuant to this Decision and the serial numbers of those certificates.

Article 5

Box 7 of movement certificates EUR.1 issued under this Decision shall contain one of the following indications:

‘Derogation — Decision No 1/2013 of the ESA-EU Customs Cooperation Committee of 7 August 2013’;

‘Dérogation — Décision n° 1/2013 du Comité de Coopération Douanière AfOA-UE du 7 août 2013’.

Article 6

1. Mauritius and the Union shall take the measures necessary on their part to implement this Decision.

2. Where the Union has made a finding, on the basis of objective information, of irregularities or fraud or of a repeated failure to respect the obligations laid down in Article 4, the Union may seek temporary suspension of the derogation referred to in Article 1 in accordance with the procedure provided for in Article 22(5) and (6) of the interim EPA.

⁽¹⁾ OJ L 253, 11.10.1993, p. 1.

Article 7

This Decision shall enter into force on the date of its adoption.

This Decision shall apply from 1 April 2013.

Done at Brussels, 7 August 2013.

For the ESA-EU Customs Cooperation Committee

The Joint Chairmen

Vivianne FOCK TAVE

Péter KOVÁCS

ANNEX

Order No	CN Code	Description of goods	Period	Quantities (in tonnes)
09.1620	ex 1604 14 11, ex 1604 14 18, ex 1604 20 70	Preserved skipjack (<i>Katsuwonus pelamis</i>) ⁽¹⁾	1.4.2013 – 31.3.2014	2 000

⁽¹⁾ In any form of packaging whereby the product is considered as preserved within the meaning of HS heading 1604.
