

COMMISSION IMPLEMENTING DECISION

of 27 June 2011

amending Decisions 2008/603/EC, 2008/691/EC and 2008/751/EC as regards extension of the temporary derogations from the rules of origin laid down in Annex II to Council Regulation (EC) No 1528/2007 to take account of the special situation of Mauritius, Seychelles and Madagascar with regard to tuna and tuna loins

(notified under document C(2011) 4322)

(2011/377/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1528/2007 of 20 December 2007 applying the arrangements for products originating in certain states which are part of the African, Caribbean and Pacific (ACP) Group of States provided for in agreements establishing, or leading to the establishment of, Economic Partnership Agreements⁽¹⁾, and in particular Article 36(4) of Annex II thereof,

Whereas:

- (1) On 17 July 2008 Commission Decision 2008/603/EC⁽²⁾ was adopted granting a temporary derogation from the rules of origin laid down in Annex II to Regulation (EC) No 1528/2007 to take account of the special situation of Mauritius with regard to preserved tuna and tuna loins. By Commission Decisions 2009/471/EC⁽³⁾ and 2010/560/EU⁽⁴⁾ extension of that temporary derogation was granted. On 27 December 2010 Mauritius requested in accordance with Article 36 of Annex II to Regulation (EC) No 1528/2007 a new derogation from the rules of origin set out in that Annex. According to the information received from Mauritius the catches of raw tuna remain unusually low even compared to the normal seasonal variations. Given that the abnormal situation since 2008 remains unchanged and because of the problem of piracy in the Indian Ocean a new derogation should be granted with effect from 1 January 2011.
- (2) On 14 August 2008 Commission Decision 2008/691/EC⁽⁵⁾ was adopted granting a temporary derogation from the rules of origin laid down in Annex II to

Regulation (EC) No 1528/2007 to take account of the special situation of Seychelles with regard to preserved tuna. By Decisions 2009/471/EC and 2010/560/EU extension of that temporary derogation was granted. On 8 November 2010 Seychelles requested in accordance with Article 36 of Annex II to Regulation (EC) No 1528/2007 a new derogation from the rules of origin set out in that Annex for 4 000 tonnes of canned tuna. For the first time, Seychelles requested a derogation from the rules of origin for tuna loins. That request was for a quantity of 1 000 tonnes. According to the information provided by Seychelles the catches of raw tuna remain very low even compared to the normal seasonal variations. Furthermore, the threat of piracy results in a reduced number of fishing days in lucrative but high risk areas. Given that the abnormal situation since 2008 remains unchanged, a new derogation should be granted with effect from 1 January 2011.

- (3) On 18 September 2008 Commission Decision 2008/751/EC⁽⁶⁾ was adopted granting a temporary derogation from the rules of origin laid down in Annex II to Regulation (EC) No 1528/2007 to take account of the special situation of Madagascar with regard to preserved tuna and tuna loins. By Decisions 2009/471/EC and 2010/560/EU extension of that temporary derogation was granted. On 11 January 2011 Madagascar requested in accordance with Article 36 of Annex II to Regulation (EC) No 1528/2007 a new derogation from the rules of origin set out in that Annex. On 28 January 2011 Madagascar provided additional information. According to this information sourcing of raw originating tuna remains difficult due to the problem of piracy in the Indian Ocean. Given that the abnormal situation since 2008 remains unchanged, a new derogation should be granted with effect from 1 January 2011.
- (4) Decisions 2008/603/EC, 2008/691/EC and 2008/751/EC applied until 31 December 2010 because the Interim 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 (ESA-EU Interim Partnership Agreement) did not enter into force or was not provisionally applied before that date.

⁽¹⁾ OJ L 348, 31.12.2007, p. 1.

⁽²⁾ OJ L 194, 23.7.2008, p. 9.

⁽³⁾ OJ L 155, 18.6.2009, p. 46.

⁽⁴⁾ OJ L 245, 17.9.2010, p. 35.

⁽⁵⁾ OJ L 225, 23.8.2008, p. 17.

⁽⁶⁾ OJ L 255, 23.9.2008, p. 31.

(5) In accordance with Article 4(2) of Regulation (EC) No 1528/2007 the rules of origin set out in Annex II to that Regulation and the derogations to them are to be superseded by the rules of the ESA-EU Interim Partnership Agreement of which the entry into force or the provisional application is foreseen to take place in 2011. Whilst a derogation is still to be granted in 2011, the overall situation, including the state of ratification of the ESA-EU Interim Partnership Agreement, will be reassessed in 2012.

(6) It is necessary to ensure continuity of importations from the ACP countries to the Union as well as a smooth transition to the ESA-EU Interim Economic Partnership Agreement. Decisions 2008/603/EC, 2008/691/EC and 2008/751/EC should therefore be prolonged with effect from 1 January 2011 to 31 December 2011.

(7) Mauritius, Seychelles and Madagascar will benefit from an automatic derogation from the rules of origin for tuna of HS heading 1604 pursuant to the relevant provisions of the Origin Protocol attached to the ESA-EU Interim Partnership Agreement signed by them, when this Agreement enters into force or is provisionally applied. It would be inappropriate to grant by this Decision derogations in accordance with Article 36 of Annex II to Regulation (EC) No 1528/2007 which exceed the annual quota granted to the ESA region under the ESA-EU Interim Partnership Agreement. The ESA signatories to the Agreement have therefore signed a unilateral political declaration concerning the derogations for tuna granted in 2011 whereby these countries renounce to the global annual quantity of the automatic derogation for 2011 in case that the Agreement will either be provisionally applied or enter into force during that year. Consequently the quota amounts for 2011 should be set at 3 000 tonnes of preserved tuna and 600 tonnes of tuna loins for Mauritius, 3 000 tonnes of preserved tuna and 600 tonnes of tuna loins for Seychelles and 2 000 tonnes of preserved tuna and 500 tonnes of tuna loins for Madagascar.

(8) Decisions 2008/603/EC, 2008/691/EC and 2008/751/EC should therefore be amended accordingly.

(9) The measures provided for in this Decision are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2008/603/EC is amended as follows:

1. Article 2 is replaced by the following:

'Article 2

The derogation provided for in Article 1 shall apply to the products and the quantities set out in the Annex which are declared for free circulation into the Community from Mauritius during the periods of 1 January 2008 until 31 December 2008, 1 January 2009 until 31 December 2009, 1 January 2010 until 31 December 2010 and 1 January 2011 until 31 December 2011.;

2. in Article 6, the second paragraph is replaced by the following:

'It shall apply until 31 December 2011.;

3. the Annex is replaced by the text set out in Annex I to this Decision.

Article 2

Decision 2008/691/EC is amended as follows:

1. Article 2 is replaced by the following:

'Article 2

The derogation provided for in Article 1 shall apply to the products and the quantities set out in the Annex which are declared for free circulation into the Community from Seychelles during the periods of 1 January 2008 until 31 December 2008, 1 January 2009 until 31 December 2009, 1 January 2010 until 31 December 2010 and 1 January 2011 until 31 December 2011.;

2. in Article 6, the second paragraph is replaced by the following:

'It shall apply until 31 December 2011.;

3. the Annex is replaced by the text set out in Annex II to this Decision.

Article 3

Decision 2008/751/EC is amended as follows:

1. Article 2 is replaced by the following:

'Article 2

The derogation provided for in Article 1 shall apply to the products and the quantities set out in the Annex which are declared for free circulation into the Community from Madagascar during the periods of 1 January 2008 until 31 December 2008, 1 January 2009 until 31 December 2009, 1 January 2010 until 31 December 2010 and 1 January 2011 until 31 December 2011.;

2. in Article 6, the second paragraph is replaced by the following:

'It shall apply until 31 December 2011.;

3. the Annex is replaced by the text set out in Annex III to this Decision.

Article 4

This Decision shall apply from 1 January 2011.

Article 5

This Decision is addressed to the Member States.

Done at Brussels, 27 June 2011.

For the Commission
Algirdas ŠEMETA
Member of the Commission

ANNEX I

'ANNEX

Order No	CN code	Description of goods	Periods	Quantities
09.1668	ex 1604 14 11, ex 1604 14 18, ex 1604 20 70	Preserved tuna ⁽¹⁾	1.1.2008 to 31.12.2008	3 000 tonnes
			1.1.2009 to 31.12.2009	3 000 tonnes
			1.1.2010 to 31.12.2010	3 000 tonnes
			1.1.2011 to 31.12.2011	3 000 tonnes
09.1669	1604 14 16	Tuna loins	1.1.2008 to 31.12.2008	600 tonnes
			1.1.2009 to 31.12.2009	600 tonnes
			1.1.2010 to 31.12.2010	600 tonnes
			1.1.2011 to 31.12.2011	600 tonnes

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

ANNEX II

'ANNEX

Order No	CN code	Description of goods	Periods	Quantity
09.1666	ex 1604 14 11, ex 1604 14 18, ex 1604 20 70	Preserved tuna ⁽¹⁾	1.1.2008 to 31.12.2008	3 000 tonnes
			1.1.2009 to 31.12.2009	3 000 tonnes
			1.1.2010 to 31.12.2010	3 000 tonnes
			1.1.2011 to 31.12.2011	3 000 tonnes
09.1630	1604 14 16	Tuna loins	1.1.2011 to 31.12.2011	600 tonnes

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

ANNEX III

'ANNEX

Order No	CN code	Description of goods	Periods	Quantities
09.1645	ex 1604 14 11, ex 1604 14 18, ex 1604 20 70	Preserved tuna ⁽¹⁾	1.1.2008 to 31.12.2008	2 000 tonnes
			1.1.2009 to 31.12.2009	2 000 tonnes
			1.1.2010 to 31.12.2010	2 000 tonnes
			1.1.2011 to 31.12.2011	2 000 tonnes
09.1646	1604 14 16	Tuna loins	1.1.2008 to 31.12.2008	500 tonnes
			1.1.2009 to 31.12.2009	500 tonnes
			1.1.2010 to 31.12.2010	500 tonnes
			1.1.2011 to 31.12.2011	500 tonnes

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