

## ACTS ADOPTED BY BODIES CREATED BY INTERNATIONAL AGREEMENTS

### DECISION No 1/2022 OF THE ESA-EU CUSTOMS COOPERATION COMMITTEE

of 19 October 2022

**on an automatic 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, of the one part, and the European Community and its Member States, of the other part, concerning the automatic derogation provided for by Article 44(8) for preserved tuna and tuna loins imported into the EU [2022/2251]**

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, of the one part, and the European Community and its Member States, of the other part, and in particular Article 43(4) of Protocol 1 thereto,

Whereas:

- (1) The Interim Agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States (ESA), of the one part, and the European Community and its Member States, of the other part <sup>(1)</sup> (‘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. The interim EPA provisionally applies between the Union and the union of Comoros as from 7 February 2019.
- (2) Protocol 1 <sup>(2)</sup> 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 44(8) of Protocol 1 to the interim EPA, derogations from those rules of origin are granted automatically within an annual quota of 8 000 tonnes for canned tuna and of 2 000 tonnes for tuna loins.
- (4) On 2 October 2017 the ESA-EU Customs Cooperation Committee adopted Decision No 1/2017 <sup>(3)</sup>, granting an automatic derogation from the rules of origin with regard to preserved tuna and tuna loins imported into the Union in accordance with Protocol 1 to the interim EPA from 1 January 2018 to 31 December 2022.
- (5) On 10 June 2022, the European Commission received from the Republic of Seychelles a request on behalf of the ESA States for a new automatic derogation as of 1 January 2023 in accordance with Article 44(8) of Protocol 1 to the interim EPA, to be valid until the conclusion and application of a new Protocol.

<sup>(1)</sup> OJ L 111, 24.4.2012, p. 2.

<sup>(2)</sup> Decision No 1/2020 of the EPA Committee of 14 January 2020 amending certain provisions of Protocol 1 concerning the definition of the concept of ‘originating products’ and methods of administrative cooperation 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 [2020/425] (OJ L 93, 27.3.2020, p. 1).

<sup>(3)</sup> Decision No 1/2017 of the ESA-EU Customs Cooperation Committee of 2 October 2017 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, of the one part, and the European Community and its Member States, of the other part, to take account of the special situation of the Eastern and Southern Africa States with regard to preserved tuna and tuna loins [2017/1923] (OJ L 271, 20.10.2017, p. 44).

- (6) The current automatic derogation will expire on 31 December 2022. In accordance with Article 44(8) of Protocol 1 to the interim EPA, the ESA-EU Customs Cooperation Committee should automatically grant such derogation to the ESA States.
- (7) The reference in Article 44(8) of Protocol 1 to the interim EPA to 'canned tuna' is to be understood as to cover tuna preserved in vegetable oil or in other ways. For those types of tuna, Annex I to Council Regulation (EEC) No 2658/87 <sup>(4)</sup> ('the Combined Nomenclature') refers to the term 'preserved'. The term 'preserved tuna' comprises canned tuna, but also tuna vacuum-packed in plastic bags or other containers. It is therefore appropriate to use the term 'preserved tuna'.
- (8) In the interest of clarity, it is appropriate to set out explicitly that the non-originating tuna to be used for the manufacture of preserved tuna of CN codes 1604 14 21, 31 and 41, 1604 14 28, 38 and 48, ex 1604 20 70, and tuna loins of CN code 1604 14 26, 36 and 46 should be tuna of HS Headings 0302 or 0303, in order for the preserved tuna and tuna loins to benefit from the derogation.
- (9) Commission Implementing Regulation (EU) 2015/2447 <sup>(5)</sup> lays down rules for the management of tariff quotas. Those rules should be applied to the management of the quantity in respect of which the derogation is granted by this decision.
- (10) The requested automatic derogation should be granted by the ESA-EU Customs Cooperation Committee for the period during which Article 44(8) of Protocol 1 remains in force.
- (11) In order to allow efficient monitoring of the operation of the derogation, the authorities of the ESA States should communicate regularly to the European Commission details of the EUR.1 movement certificates issued or of the invoice declarations made out, pursuant to this Decision.

HAS DECIDED AS FOLLOWS:

#### *Article 1*

By way of derogation from Annex II of Protocol 1 to the interim EPA, for preserved tuna and tuna loins of heading 1604, the rule in the Annex to this Decision shall confer origin to products exported from an ESA State to the Union, 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 on an annual basis to the products and the quantities set out in the Annex to this Decision that are declared for release for free circulation into the Union when imported from an ESA State. It will cease to apply insofar as Article 44(8) of Protocol 1 to the interim EPA is no longer in force or is amended or replaced.

#### *Article 3*

The quantities set out in the Annex shall be managed in accordance with Articles 49 to 54 of Commission Implementing Regulation (EU) 2015/2447.

#### *Article 4*

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

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<sup>(4)</sup> Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).

<sup>(5)</sup> Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558).

Before the end of the month following each quarter, the customs authorities of those countries 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 or invoice declarations made out, pursuant to this Decision, and the serial numbers of those certificates or details of those invoice declarations.

*Article 5*

Box 7 of movement certificates EUR.1 issued or the invoice declarations made out, pursuant to this Decision, shall contain one of the following indications:

- ‘Derogation – Decision No 1/2022 of the ESA-EU Customs Cooperation Committee of 19 October 2022’;
- ‘Dérogation – Décision n° 1/2022 du Comité de Coopération Douanière AfOA-UE du 19 octobre 2022’;

*Article 6*

The ESA States and the Union shall take the measures necessary on their part to implement this Decision.

*Article 7*

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.

*Article 8*

This Decision shall enter into force on 1 January 2023.

Done at Brussels, 19 October 2022.

Beryl Shirley SAMSON  
ESA Representative  
on behalf of the ESA States

Matthias PETSCHKE  
European Commission  
on behalf of the European Union

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## ANNEX

Order No.	Combined Nomenclature	Description of goods	Period	Annual quota for exports from ESA EPA States into the European Union (metric tonnes, net weight)	Product Specific Rule of Origin
09.1618	1604 14 21, 31 and 41 1604 14 28, 38 and 48 ex 1604 20 70 <sup>(1)</sup>	Preserved tuna <sup>(2)</sup>	From 1 January to 31 December	8 000	Manufacture in which all the materials used are classified within a chapter other than that of the product
09.1619	1604 14 26, 36 and 46	Tuna loins	From 1 January to 31 December	2 000	Manufacture in which all the materials used are classified within a chapter other than that of the product

<sup>(1)</sup> TARIC codes 1604 20 70 30, 1604 20 70 40, 1604 20 70 50, 1604 20 70 92 and 1604 20 70 94.

<sup>(2)</sup> In any form of packaging whereby the product is considered as preserved within the meaning of HS heading 1604.