

COMMISSION IMPLEMENTING DECISION

of 20 April 2012

amending Implementing Decision 2011/861/EU on a temporary derogation from rules of origin laid down in Annex II to Council Regulation (EC) No 1528/2007 to take account of the special situation of Kenya with regard to tuna loins

(notified under document C(2012) 2463)

(2012/208/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 19 December 2011 the Commission adopted Implementing Decision 2011/861/EU ⁽²⁾, 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 Kenya with regard to tuna loins.
- (2) On 1 December 2011, in accordance with Article 36 of Annex II to Regulation (EC) No 1528/2007, Kenya requested a new derogation from the rules of origin set out in that Annex. On 16 January 2012 Kenya submitted additional information to its request. According to the information provided by Kenya, catches of raw originating tuna are unusually low even compared to the normal seasonal variations which has led to a decrease in production of tuna loins. Kenya has pointed out the risk involved due to piracy during the supply of raw tuna. This abnormal situation still makes it impossible for Kenya to comply with the rules of origin laid down in Annex II to Regulation (EC) No 1528/2007 during a certain period. A new derogation should be granted with effect from 1 January 2012.
- (3) Implementing Decision 2011/861/EU applied until 31 December 2011. It is necessary to ensure continuity of importations from the ACP countries to the Union as well as a smooth transition to the Interim Economic Partnership Agreement between the East African Community on the one part and the European Community and its Member States on the other part ('EAC-EU Interim Economic Partnership Agreement'). Implementing Decision 2011/861/EU should therefore be extended from 1 January 2012 to 31 December 2013.
- (4) It would be inappropriate to grant derogations in accordance with Article 36 of Annex II to Regulation

(EC) No 1528/2007 which exceed the annual quota granted to the territory of the East African Community under the EAC-EU Interim Economic Partnership Agreement. The quota amounts for 2012 and 2013 should therefore be set at 2 000 tonnes of tuna loins yearly.

- (5) In the interest of clarity, it is appropriate to set out explicitly that the only non-originating materials to be used for the manufacture of tuna loins of CN code 1604 14 16 should be tuna of HS Headings 0302 or 0303, in order for the tuna loins to benefit from the derogation.
- (6) Implementing Decision 2011/861/EU should therefore be amended accordingly.
- (7) The measures provided for in this Decision are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS DECISION:

Article 1

Implementing Decision 2011/861/EU is amended as follows:

- (1) Article 1 is replaced by the following:

'Article 1

By way of derogation from Annex II to Regulation (EC) No 1528/2007 and in accordance with Article 36(1)(a) of that Annex, tuna loins of CN code 1604 14 16 manufactured from non-originating tuna of HS Headings 0302 or 0303 shall be regarded as originating in Kenya in accordance with the terms set out in Articles 2 to 5 of this Decision.;

- (2) 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 release for free circulation in the Union from Kenya during the period from 1 January 2012 until 31 December 2013.;

- (3) Article 6 is replaced by the following:

'Article 6

This Decision shall apply from 1 January 2012 until 31 December 2013.;

⁽¹⁾ OJ L 348, 31.12.2007, p. 1.

⁽²⁾ OJ L 338, 21.12.2011, p. 61.

(4) The Annex is replaced by the text set out in the Annex to this Decision.

Article 2

This Decision shall apply from 1 January 2012.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 20 April 2012.

For the Commission
Algirdas ŠEMETA
Member of the Commission

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ANNEX

'ANNEX

Order No	CN code	Description of goods	Periods	Quantities
09.1667	1604 14 16	Tuna loins	1.1.2011 to 31.12.2011 1.1.2012 to 31.12.2012 1.1.2013 to 31.12.2013	2 000 tonnes 2 000 tonnes 2 000 tonnes'