

COMMISSION IMPLEMENTING REGULATION (EU) 2021/966**of 11 June 2021****granting Cabo Verde a temporary derogation from the rules on preferential origin laid down in Delegated Regulation (EU) 2015/2446, in respect of prepared or preserved tuna fillets, prepared or preserved mackerel fillets and prepared or preserved frigate tuna or frigate mackerel fillets**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code ⁽¹⁾, and in particular Article 64(6) and Article 66, point (b), thereof,

Whereas:

- (1) Cabo Verde is a country benefiting from the special incentive arrangement for sustainable development and good governance provided under Article 1(2), point (b), of Regulation (EU) No 978/2012 of the European Parliament and of the Council ⁽²⁾, referred to as the Generalised System of Preferences (GSP+). The rules on preferential origin for the purposes of the Generalised System of Preferences (GSP), other than procedural rules, are laid down in Commission Delegated Regulation (EU) 2015/2446 ⁽³⁾.
- (2) By letter dated 18 March 2020, Cabo Verde submitted a request for a prolongation of the temporary derogations from the rules on preferential origin laid down in Delegated Regulation (EU) 2015/2446, which had been granted by Commission Implementing Regulations (EU) 2019/561 ⁽⁴⁾ and (EU) 2019/620 ⁽⁵⁾. The request concerned an annual volume of 5 000 tonnes of prepared or preserved tuna fillets, 3 000 tonnes of prepared or preserved mackerel fillets and 1 000 tonnes of prepared or preserved frigate tuna or frigate mackerel fillets. Under the requested derogation, those products would be considered as originating in Cabo Verde even if they were produced from non-originating fish.
- (3) Cabo Verde supported its request for a prolongation of those derogations by relying on the arguments put forward in previous requests, which they allege to be still relevant, namely, low quantities of tuna and mackerel caught in its territorial waters, scarce fishing opportunities outside its territorial waters and a limited duration of the fishing season. Another element highlighted in the request is that Cabo Verde has recently developed its port infrastructure. As a result, larger quantities of fish can be handled to provide supply to the local fish processing industry to maintain

⁽¹⁾ OJ L 269, 10.10.2013, p. 1.

⁽²⁾ Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008 (OJ L 303, 31.10.2012, p. 1).

⁽³⁾ Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code (OJ L 343, 29.12.2015, p. 1).

⁽⁴⁾ Commission Implementing Regulation (EU) 2019/561 of 8 April 2019 granting Cape Verde a temporary derogation from the rules on preferential origin laid down in Delegated Regulation (EU) 2015/2446, in respect of prepared or preserved fillets of tuna (OJ L 98, 9.4.2019, p. 13).

⁽⁵⁾ Commission Implementing Regulation (EU) 2019/620 of 17 April 2019 granting Cape Verde a temporary derogation from the rules on preferential origin laid down in Delegated Regulation (EU) 2015/2446, in respect of prepared or preserved mackerel fillets and prepared or preserved frigate tuna or frigate mackerel fillets (OJ L 108, 23.4.2019, p. 1).

its production capacities. Lastly, the request emphasised the difficulties that Cabo Verde faces as a result of delays in the entry into application of the Economic Partnership Agreement between the European Union and West Africa. Cabo Verde develops an argumentation to emphasise its need for a derogation from the GSP rules on preferential origin in order to compensate for the fact that it is not yet possible to rely on the origin quotas or cumulation rules under the Economic Partnership Agreement which is not yet provisionally applied.

- (4) The derogation provided for in Article 64(6) of Regulation (EU) No 952/2013 (Union Customs Code) is of temporary nature and subject to improved compliance with the rules of origin for products concerned and with the requirement regarding the administrative cooperation. In order to be able to manage such a derogation from the rules on preferential origin, the requesting country has to comply with the rules of origin for the products concerned and with the procedures related thereto and has to ensure good administrative cooperation.
- (5) In this respect, the monitoring actions performed by the European Commission over the past few years in the context of the derogation granted pursuant to Article 64(6) of Regulation (EU) No 952/2013 have revealed certain shortcomings regarding Cabo Verde's administrative cooperation with the customs authorities of the Members States in the verification of proofs of origin. Such shortcomings may have resulted on a refusal of the requested derogation on the grounds put forward by Cabo Verde. However, after the submission of that request, Cabo Verde and in particular its fishery industry, had to face a deep crisis due to loss of income caused by the COVID-19 pandemic. The Commission is entitled by Article 64(6) of the code to take into account this new situation, to decide about granting a derogation on its own initiative.
- (6) Cabo Verde should therefore be granted a temporary derogation from the requirement under the rules on preferential origin that the products are considered as originating in the beneficiary country only where incorporating materials of Chapters 3 and 16 of the Combined Nomenclature are wholly obtained in that country. In the first year of its application, the derogation should be granted for an annual volume of 5 000 tonnes prepared or preserved tuna fillets, 3 000 tonnes of prepared or preserved mackerel fillets and for an annual volume of 1 000 tonnes of prepared or preserved frigate tuna or frigate mackerel fillets. In order to take into account the commercial interests of the European Union and to maintain a fair competition between its domestic fisheries industry and the one of third countries, the annual volume should decrease in the following years according to the volumes provided for in Annexes I and II, except for prepared or preserved frigate tuna or frigate mackerel fillets. The duration of the derogation should be limited to a period of three years in order to allow Cabo Verde to recover from the COVID-19 crisis and to endeavour to complete necessary structural adjustments in the fishery sector, with a view to complying with the rules of origin for the products concerned. However, the derogation should be granted on the condition that the customs authorities of Cabo Verde carry out quantitative checks on exports of the products subject to derogation and that they communicate to the Commission a statement of the quantities in respect of which statements on origin have been issued pursuant to this Regulation and serial numbers of those statements.
- (7) Moreover, Cabo Verde should benefit from a derogation provided under the GSP preferential rules of origin for tuna and mackerel on the condition that it reports regularly to the competent services of the Commission on the measures it has taken in order to improve compliance with the rules concerning the origin of the products and with the related procedures and to provide administrative cooperation as required for the implementation of the preferential arrangements under the GSP referred to in Article 1(2) of Regulation (EU) No 978/2012. Those reports should be submitted following a precise time schedule, whereby any delays in meeting the set deadlines should lead to the suspension of the derogation to be notified to the competent authorities of Cabo Verde following a reminder and an invitation to submit the reports within ten working days. Any such suspension shall not prolong the time period provided for in the Regulation and its Annexes I and II. The elements to be included in those reports should be listed in an Annex to this Regulation.
- (8) The quantities set out in the Annexes to this Regulation should be managed in accordance with Articles 49 to 54 of Commission Implementing Regulation (EU) 2015/2447 ⁽⁶⁾ which govern the management of tariff quotas.

⁽⁶⁾ 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).

- (9) The measures provided for in this Regulation should enter into force on the day following that of its publication and be applied retroactively as from 1 January 2021, in order to take into account the difficult situation of Cabo Verde and to allow that country to apply the derogation to products imported in the EU since that date.
- (10) The measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

By way of derogation from Article 41, point (b), and Article 45 of Delegated Regulation (EU) 2015/2446, products referred to in Annexes I and II, produced in Cabo Verde from non-originating fish shall be regarded as originating in Cabo Verde in accordance with Articles 2, 3 and 4 of this Regulation.

Article 2

1. The derogation shall apply to products that have been exported from Cabo Verde and declared for release for free circulation in the Union during the period from 1 January 2021 until 31 December 2023.
2. The derogation shall apply to products up to the annual quantities listed in Annex I (tuna) and Annex II (mackerel and frigate mackerel).
3. Application of the derogation is subject to compliance with the conditions laid down in Article 43 of Delegated Regulation (EU) 2015/2446.

Article 3

The quantities set out in Annexes I and II to this Regulation shall be managed in accordance with Articles 49 to 54 of Commission Implementing Regulation (EU) 2015/2447, which govern the management of tariff quotas.

Article 4

The derogation is granted on the following conditions:

- (1) The customs authorities of Cabo Verde shall take the necessary steps to carry out quantitative checks on exports of the products referred to in Article 1.
- (2) The following mention shall be entered on the statements on origin made out by the registered exporters: 'Derogation – Commission Implementing Regulation (EU) 2021/966'.
- (3) The competent authorities of Cabo Verde shall communicate to the Commission a statement of the quantities in respect of which statements on origin have been made out pursuant to this Regulation and the copies of those proofs. Those reports shall be communicated to the Commission 6 months, 18 months and 30 months after the entry into force of this Regulation.
- (4). The competent authorities of Cabo Verde shall communicate to the Commission, at the same time as the reports referred to in paragraph 3, a report containing a detailed information on the measures taken by them in order to:
 - (a) ensure compliance with the rules concerning the origin of the products and with the related procedures;
 - (b) provide administrative cooperation as required for the implementation of the preferential arrangements under the GSP.

The required information to be reported by the competent authorities of Cabo Verde is listed in Annex III.

Article 5

If the competent authorities fail to fulfil their reporting obligation laid down in Article 4(3) and (4), within the time-limits set therein, the Commission shall send a reminder to the competent authorities of Cabo Verde, requesting them to submit the required information within 10 working days. If the competent authorities of Cabo Verde do not respond to that request within the set deadline, the Commission may suspend the derogation provided for in this Regulation. Any such suspension shall not prolong the time period provided for in this Regulation and its Annex I and Annex II. That suspension shall be notified to the competent authorities of Cabo Verde and published in the Official Journal, C series.

Article 6

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2021.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 11 June 2021.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX I

| Order No | CN code | TARIC code | Description of goods | Periods | Annual quantity (in tonnes net weight) |
|---------------|---------------|------------|----------------------------------------------------------------------------------------|------------------------|----------------------------------------|
| 09.1602 | 1604 14 21 00 | 10 | Prepared or preserved fillets and loins of skipjack (<i>Katsuwonus pelamis</i>) | 1.1.2021 to 31.12.2021 | 5 000 tonnes |
| | 1604 14 26 90 | | | 1.1.2022 to 31.12.2022 | |
| | 1604 14 28 00 | | | | |
| | 1604 20 70 50 | | 1.1.2023 to 31.12.2023 | 3 500 tonnes | |
| | 1604 20 70 55 | | | | |
| | 1604 14 31 90 | | Prepared or preserved fillets and loins of yellowfin tuna (<i>Thunnus albacares</i>) | 2 500 tonnes | |
| | 1604 14 36 90 | | | | |
| | 1604 14 38 00 | | | | |
| | 1604 20 70 99 | | | | |
| | 0304 87 00 90 | | | | |
| | 1604 14 41 20 | | Prepared or preserved fillets and loins of bigeye tuna (<i>Thunnus obesus</i>) | | |
| | 1604 14 46 29 | | | | |
| | 1604 14 48 20 | | | | |
| | 1604 20 70 45 | | | | |
| | 0304 87 00 20 | | Prepared white tuna (<i>Thunnus alalunga</i>) | | |
| | 1604 14 41 30 | | | | |
| 1604 14 48 30 | | | | | |

ANNEX II

| Order No | CN code | | Description of goods | Periods | Annual quantity (in tonnes net weight) |
|----------|-----------------------------|--|--------------------------------------------------------------------------------------------------------------------------|------------------------|----------------------------------------|
| 09.1647 | 1604 15 11 ex 1604 19 97 | | Prepared or preserved fillets of mackerel (<i>Scomber scombrus</i> , <i>Scomber japonicus</i> , <i>Scomber colias</i>) | 1.1.2021 to 31.12.2021 | 3 000 tonnes |
| | | | | 1.1.2022 to 31.12.2022 | 2 500 tonnes |
| | | | | 1.1.2023 to 31.12.2023 | 2 000 tonnes |
| 09.1648 | 1604 20 90 ex 1604 19 97 | | Prepared or preserved fillets of frigate tuna or frigate mackerel (<i>Auxis thazard</i> , <i>Auxis rochei</i>) | 1.1.2021 to 31.12.2021 | 1 000 tonnes |
| | | | | 1.1.2022 to 31.12.2022 | 1 000 tonnes |
| | | | | 1.1.2023 to 31.12.2023 | 1 000 tonnes |

ANNEX III

Measures to be reported by the competent authorities of Cabo Verde as referred to in Article 4(4)

The report referred to in Article 4(4) shall contain a detailed description of the measures taken by the competent authorities of Cabo Verde to ensure that:

- (a) verifications of the originating status of products at the request of the customs authorities of the Member States are carried out for each and every request within the deadlines laid down in Article 109 of Implementing Regulation (EU) 2015/2447;
- (b) verifications of the originating status of products of sea fishing referred to in Article 44(1), point (h), of Commission Delegated Regulation (EU) 2015/2446 include a check on the place of catch, and that the verifications of the originating status of other products taken from the sea outside the territorial sea referred to in Article 44(1), point (h), of that Delegated Regulation include a check on the vessel ownership conditions;
- (c) controls referred to in Article 108(1), point (b), of Implementing Regulation (EU) 2015/2447 are carried out on exporters at intervals determined on the basis of appropriate risk analysis criteria in accordance with Article 108(2) of that Implementing Regulation;
- (d) exporters and government officials in Cabo Verde are properly informed of the rules on preferential origin for the purposes of the GSP and of the related procedures through adequate instructions, trainings, seminars and/or web-based information.

The report on measures referred to in point (a) above shall contain for each origin verification request received from the customs authorities of the Member States the following elements:

- the reference and date of the origin verification request;
- the Member State having sent the request [*the requesting Member State*];
- the date of receipt of the request by the competent authorities of Cabo Verde;
- the products concerned (HS code and description of the products);
- the date when the reply was sent to the requesting Member State;
- the reasons for any delay in replying to the request, as appropriate;
- the assessment of the request by the competent authorities of Cabo Verde (i.e. whether the origin declared in the statement on origin was confirmed or not).

The report on measures referred to in point (c) above shall contain the following elements:

- the number of controls performed;
- risk analysis criteria used by the competent authorities to assess the risks and to determine intervals between regular checks on exporters;
- the methodology followed during the controls;
- information on whether the competent authorities have required (some) exporters to provide copies or a list of the statements on origin they have made out, with a view to carry out the controls referred to in Article 108(1), point (b), in accordance with Article 108(2) of Implementing Regulation (EU) 2015/2447;
- information on whether the controls have shown that the exporters in Cabo Verde understand applicable rules of origin and related procedures;
- any corrective measures taken and/or penalties imposed on the exporter for having made out an incorrect statement on origin.

The report on measures referred to in point (d) above shall include the instructions, documents and training materials on rules on preferential origin for the purposes of the GSP and on the related procedures, used to inform exporters and government officials of Cabo Verde.

The reports referred to in Article 4(3) and (4) shall update the information provided in the preceding reports.
