II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 4 June 1985

amending Annex II to Decision 80/1186/EEC on the association of the overseas countries and territories with the European Economic Community

(85/273/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 136 thereof,

Having regard to the draft Decision submitted by the Commission,

Whereas Decision 80/1186/EEC (1), as last amended by Decision 85/159/EEC (2), continues to apply until the entry into force of new provisions applying the principles set out in Articles 131 to 135 of the Treaty and at the latest until 28 February 1986, without prejudice to more favourable provisions to be adopted by the Community in respect of imports of products from the overseas countries and territories;

Whereas it is laid down in Article 4 of Decision No 2/85 of the ACP-EEC Council of Ministers on transitional measures valid from 1 March 1985, brought into force in the Community by Regulation (EEC) No 485/85 (3), that the provisions concerning the procedure for derogating from the rules of origin, contained in Article 30 of Protocol 1 to the Third ACP-EEC Convention signed in Lomé on 8 December 1984 shall be applied in advance; whereas the effect of these provisions is to improve the derogation procedure;

Whereas the same improvements should be introduced in the context of trade between the Community and the overseas countries and territories; whereas to this end it is necessary to amend Annex II to Decision 80/1186/EEC,

HAS DECIDED AS FOLLOWS:

Article 1

Article 28 of Annex II to Decision 80/1186/EEC is hereby replaced by the following:

'Article 28

1. Derogations from this Annex may be adopted by the Council where the development of existing industries in a country or territory or the creation of new industries in a country or territory justifies them.

The Member State concerned or, where appropriate, the competent authority of the country or territory concerned, shall notify the Community of its request for a derogation together with the reasons for the request in accordance with Explanatory Note 10.

2. The examination of requests shall in particular take into account:

(a) the level of development or the geographical situation of the country or territory concerned;

(1) OJ No L 361, 31. 12. 1980, p. 1.
(2) OJ No L 61, 1. 3. 1985, p. 25.
(3) OJ No L 61, 1. 3. 1985, p. 1.

(b) cases where the application of the existing rules of origin would affect significantly the ability of an existing industry in a country or territory to continue its exports to the Community, with particular reference to cases where this could lead to cessation of its activities;

(c) specific cases where it can be clearly demonstrated that significant investment in an industry could be deterred by the rules of origin and where a derogation favouring the realization of the investment programme would enable these rules to be satisfied by stages.

3. In every case an examination shall be made to ascertain whether the rules relating to cumulation of origin do not provide a solution to the problem.

In addition, when a request for derogation concerns a least-developed country or territory, its examination shall be carried out with a favourable bias having particular regard to:

(a) the economic and social impact of the decision to be taken, especially in respect of employment;

(b) the need to apply the derogation for a period taking into account the particular situation of the least-developed country or territory concerned and its difficulties.

4. The examination of requests shall in particular take into account on a case-by-case basis the possibility of conferring originating status on products which include in their composition products originating in neighbouring developing countries or least-developed countries provided that satisfactory administrative cooperation can be established.

5. Without prejudice to paragraphs 1 to 4, the derogation shall be granted where the value added to the non-originating products used in the country or territory, or countries or territories, concerned, is at least 60 % of the value of the finished product, provided that the derogation is not such as to cause serious injury to an economic sector of the Community or of one or more Member States.

6. The Council, on the basis of a report from the Committee on Origin, shall examine these requests as soon as possible and take the necessary steps to ensure that a decision is reached as quickly as possible and in any case no later than three months after the request has been received.

7. (a) The derogations shall be valid for a period which shall generally be of three years; this period may be extended to a maximum of five years to take account of the particular situation of the requesting country or territory.

(b) Subject to the conditions laid down in paragraph 6, the derogation decision may provide for renewals for periods of a maximum of two years, without exceeding a total period of five years and without the necessity of a further Council decision, provided that the countries or territories concerned submit, three months before the end of each period, proof that they are still unable to meet the conditions of this Annex which have been derogated from.'

Article 2

This Decision shall be published in the *Official Journal of the European Communities.*

It shall take effect on 1 March 1985.

Done at Luxembourg, 4 June 1985.

For the Council

The President

L. GRANELLI