COMMISSION DECISION

of 29 July 2002

derogating from Council Decision 2001/822/EC as regards the rules of origin for fishery products from the Falkland Islands

(notified under document number C(2002) 2865)

(2002/644/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Decision 2001/822/EC of 27 November 2001 on the association of the overseas countries and territories with the European Community [1], and in particular Article 37 of Annex III thereto,

Whereas:

(1) On 16 April 2002, the United Kingdom submitted a request for a derogation under Article 37 of Annex III to Decision 2001/822/EC from the rule of origin laid down in Article 3(2)(d) of that Annex, which requires, in case of fishery products taken from the sea outside the relevant territorial waters by vessels and factory ships from the overseas countries and territories, hereinafter referred to as 'OCT', that at least 50 % of the crew, master and officers included, must be OCT, Member State or ACP nationals.

(2) The request for a derogation concerned four different categories of fishery products, to be exported from the Falkland Islands over a period of five years, namely, an annual quantity of 10 320 tonnes of various species of frozen fish, 7 100 tonnes of various species of frozen fish fillets, 57 800 tonnes of frozen *Loligo* squid and 47 200 tonnes of frozen *Illex* squid.

(3) The United Kingdom based its request on the fact that for frozen fish, frozen fish fillets and *Loligo* squid, it is becoming increasingly difficult for the Falkland Islands to recruit crews for their fishing vessels and factory ships from the OCT, the Community or the ACP States. As regards *Illex* squid, the United Kingdom indicates that not all specific fishing expertise required is currently available from crew from the OCT, the Community or the ACP States. The lack of crew from the OCT, the Community or the ACP States, stems in particular from the specific geographical situation of the Falkland Islands and cannot be remedied by increasing the presence of Community fishing fleets in the Falkland area.

(4) As regards frozen fish and frozen fish fillets, the requested derogation is justified under Annex III to Decision 2001/822/EC and, specifically, under Article 37(1) thereof, and would not cause serious injury to an established Community industry, provided that the relevant fish species are clearly specified, that at least 25 % of the crew are OCT, Member State or ACP nationals, and that certain conditions relating to quantities, surveillance and duration are respected.

(5) As regards *Loligo* squid, the requested derogation is justified under Annex III to Decision 2001/822/EC and, specifically, under Article 37(1) thereof, and, limited in quantities, would not cause serious injury to an established Community industry, provided that at least 25 % of the crew are OCT, Member State or ACP nationals. However, certain conditions relating to quantities, surveillance and duration should be respected.

(6) As regards frozen *Illex* squid, the requested derogation is justified under Annex III to Decision 2001/822/EC and, specifically, under Article 37(1) thereof, and should allow the Falkland Islands to build up progressively the capacity and specific expertise required for this type of fishing. The derogation, limited in quantities, would not cause serious injury to an established Community industry, provided that certain conditions relating to quantities, surveillance and duration were respected.

(7) Granting a derogation would also contribute to support and possibly deepen the long-standing cooperation and joint ventures between Falkland and Community companies, with a positive effect on economic activities and employment in both regions.

(8) A derogation should be granted with due regard to specific problems, which the Falkland Islands are facing at this juncture, so as to enable the Falkland Islands to satisfy as far as possible all rules of origin laid down in Article 3(2) of Annex III to Decision 2001/822/EC by stages.

(9) The current legal framework of the Falkland Islands maritime registry and its monitoring by the concerned authorities prevent the risk of unfair competition practices associated with flags of convenience which might cause a prejudice to a Community industry.

[1] OJ L 314, 30.11.2001, p. 1.

(10) The derogation should not prejudice any measures adopted at international level for the management and conservation of certain fish stocks.

(11) Accordingly, a derogation should be granted to the Falkland Islands in respect of certain fishery products and for limited quantities for the period from 1 September 2002 to 31 August 2007.

(12) Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code [1], as last amended by Regulation (EC) No 444/2002 [2], lays down rules for the management of tariff quotas. Those rules should be applied *mutatis mutandis* to the management of the quantities in respect of which the derogation in question is granted.

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

HAS ADOPTED THIS DECISION:

Article 1

1. By way of derogation from Annex III to Decision 2001/822/EC, the fishery products referred to in this Decision taken from the sea outside the territorial waters shall be regarded as originating in the Falkland Islands under the conditions set out in this Decision.

2. The derogation shall apply to the quantities set out in the Annexes which are imported into the Community from the Falkland Islands from 1 September 2002 to 31 August 2007.

3. The derogation shall not prejudice any measures adopted in the framework of the Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR).

Article 2

1. The derogation provided for in Article 1 shall apply to:

(a) frozen fish falling within CN heading 0303 of the species specified in Annex I and within the annual quantities set out in that Annex;

(b) fish fillets falling within CN heading 0304 of the species specified in Annex II and within the annual quantities set out in that Annex;

(c) frozen squid of the specie *Loligo gahi (Loligo patagonica)* falling within CN code 0307 49 35 and within the annual quantity set out in Annex III.

2. The derogation provided for in paragraph 1 shall apply to fish taken from the sea by vessels or factory ships that meet the conditions of Article 3(2)(a), (b) and (c) of Annex III to Decision 2001/822/EC and of which at least 25 % of the crew, master and officers included, are OCT, Member State or ACP nationals.

Article 3

1. The derogation provided for in Article 1 shall apply to frozen squid of the genus *Illex* falling within CN code 0307 99 11 and within the annual quantities set out in Annex IV.

2. The derogation provided for in paragraph 1 shall apply to fish taken from the sea by vessels or factory ships that meet the conditions of Article 3(2)(a), (b) and (c) of Annex III to Decision 2001/822/EC.

Article 4

Articles 308a, 308b and 308c of Regulation (EEC) No 2454/93 concerning the management of tariff quotas shall apply *mutatis mutandis* to the management of the quantities set out in the Annexes.

Article 5

1. The customs authorities of the Falkland Islands shall take the necessary steps to carry out quantitative checks on exports of the products referred to in Articles 2 and 3. To that end, all the certificates they issue pursuant to this Decision shall bear a reference to it.

2. The customs authorities of the Falkland Islands shall forward to the Commission every three months a statement of the quantities in respect of which movement certificates EUR.1 have been issued pursuant to this Decision and the serial numbers of those certificates.

Article 6

Box 7 of movement certificates EUR.1 issued under this Decision shall contain one of the following indications:

'— Excepción — Decisión …
— Undtagelse — Beslutning …
— Ausnahme — Entscheidung …
— Παρέκκλιση — Απόφαση …
— Derogation — Decision …
— Dérogation — Décision …
— Deroga — decisione …
— Afwijking — Beschikking …
— Derrogação — Decisão …
— Poikkeus — päätös …
— Undantag – beslut …'

Article 7

This Decision shall apply from 1 September 2002 to 31 August 2007.

[1] OJ L 253, 11.10.1993, p. 1.
[2] OJ L 68, 12.3.2002, p. 11.

Article 8

This Decision is addressed to the Member States.

Done at Brussels, 29 July 2002.

For the Commission
Frederik BOLKESTEIN
Member of the Commission

ANNEX I

Species of frozen fish falling within CN heading 0303 covered by the derogation

Order No	CN code	TARIC subheading	Description of goods	Annual quantities (in tonnes)
09.1901	0303 78 12	00	Argentine hake (Southwest Atlantic hake) *(Merluccius hubbsi)*, frozen	782
	0303 78 13	00	Southern hake *(Merluccius australis)*, frozen	
09.1902	0303 79 85	00	Southern blue whiting *(Micromesistius australis)*, frozen	3 663
09.1903	0303 79 88	00	Patagonian toothfish *(Dissostichus eleginoides)*, frozen	890
09.1904	0303 79 93	00	Pink cusk-eel *(Genypterus blocades)*, frozen	513
09.1905	0303 79 98	30	Patagonian rockcod *(Solilota australis)* and Patagonian grenadier *(Macruronus magellanicus)*, frozen	3 790
09.1906	ex 0303	—	Fish, frozen, excluding fish fillets and other fish meat of heading 0304, other than Argentine hake (Southwest Atlantic hake) *(Merluccius hubbsi)*, Southern hake *(Merluccius australis)*, Southern blue whiting *(Micromesistius australis)*, Patagonian toothfish *(Dissostichus eleginoides)*, Pink cusk-eel *(Genypterus blocades)*, Patagonian rockcod *(Solilota australis)* and Patagonian grenadier *(Macruronus magellanicus)*	686

ANNEX II

Species of fish fillets falling within CN heading 0304 covered by the derogation

Order No	CN code	TARIC subheading	Description of goods	Annual quantities (in tonnes)
09.1907	0304 20 56	00	Frozen fillets of argentine hake (Southwest Atlantic hake) *(Merluccius hubbsi)* and	469
	0304 20 58	00	frozen fillets of other hake of the genus *Merluccius*	
09.1908	0304 20 88	00	Frozen fillets of Patagonian toothfish *(Dissostichus eleginoides)*	59
09.1909	0304 20 95	40	Frozen fillets of the species Patagonian grenadier *(Macruronus magellanicus)* and Patagonian rockcod *(Solilota australis)*	3 917
09.1910	0304 20 95	70	Frozen fillets of southern blue whiting *(Micromesistius australis)*, of pink cusk-eel *(Genypterus blocades)* and of skate and rays (*Rajidae* spp.)	2 116
09.1911	ex 0304 20	—	Fish fillets, frozen, other than of argentine hake (Southwest Atlantic hake) *(Merluccius hubbsi)*, of other hake of the genus *Merluccius*, of Patagonian toothfish *(Dissostichus eleginoides)*, of the species Patagonian grenadier *(Macruronus magellanicus)* and Patagonian rockcod *(Solilota australis)*, of southern blue whiting *(Micromesistius australis)*, of pink cusk-eel *(Genypterus blocades)* and of skate and rays (*Rajidae* spp.)	503

ANNEX III

Frozen squid of the specie *Loligo Patagonica* covered by the derogation

Order No	CN code	TARIC subhead	Description of goods	Annual quantity (in tonnes)
09.1912	0307 49 35	00	Frozen squid of the specie *Loligo Patagonica (Loligo gahi)*	34 600

ANNEX IV

Frozen squid of the genus *Illex* covered by the derogation

Order No	CN code	TARIC subheading	Description of goods	Period	Quantities (in tonnes)
09.1913	0307 99 11	00	Frozen squid of the genus *Illex*	1.9.2002 to 31.8.2003	15 000
				1.9.2003 to 31.8.2004	25 000
				1.9.2004 to 31.8.2005	35 000
				1.9.2005 to 31.8.2006	40 000
				1.9.2006 to 31.8.2007	40 000