# COMMISSION

## COMMISSION DECISION

**of 15 June 2009**

**amending Decisions 2008/603/EC, 2008/691/EC and 2008/751/EC as regards extension of the temporary derogations from the rules of origin laid down in Annex II to Council Regulation (EC) No 1528/2007 to take account of the special situation of Mauritius, Seychelles and Madagascar with regard to tuna and tuna loins**

*(notified under document number C(2009) 4543)*

(2009/471/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1528/2007 of 20 December 2007 applying the arrangements for goods 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 thereto,

Whereas:

(1) On 17 July 2008 Commission Decision 2008/603/EC [2] was adopted 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 Mauritius with regard to preserved tuna and tuna loins. On 29 October 2008 Mauritius requested in accordance with Article 36 of Annex II to Regulation (EC) No 1528/2007 a new derogation from the rules of origin set out in that Annex. According to the information received from Mauritius the catches of raw tuna remain unusually low even compared to the normal seasonal variations. Given that the abnormal situation in 2008 remains unchanged for 2009 a new derogation should be granted with effect from 1 January 2009.

(2) On 14 August 2008 Commission Decision 2008/691/EC [3] was adopted 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 Seychelles with regard to preserved tuna. On 18 December 2008 Seychelles requested in accordance with Article 36 of Annex II to Regulation (EC) No 1528/2007 a new derogation from the rules of origin set out in that Annex. According to the information provided by Seychelles the catches of raw tuna remain very low even compared to the normal seasonal variations. Given that the abnormal situation in 2008 remains unchanged for 2009 a new derogation should be granted with effect from 1 January 2009.

(3) On 18 September 2008 Commission Decision 2008/751/EC [4] was adopted 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 Madagascar with regard to preserved tuna and tuna loins. On 10 December 2008 Madagascar requested in accordance with Article 36 of Annex II to Regulation (EC) No 1528/2007 a new derogation from the rules of origin set out in that Annex. According to the information provided by Madagascar sourcing of raw originating tuna remains difficult due to their unavailability. Given that the abnormal situation in 2008 remains unchanged for 2009 a new derogation should be granted with effect from 1 January 2009.

(4) Decisions 2008/603/EC, 2008/691/EC and 2008/751/EC applied until 31 December 2008 because the Interim 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 (ESA-EU Interim Partnership Agreement) did not enter into force or was not provisionally applied before that date.

(5) In accordance with Article 4(2) of Regulation (EC) No 1528/2007 the rules of origin set out in Annex II to that Regulation and the derogations to them are to be superseded by the rules of the ESA-EU Interim Partnership Agreement of which the entry into force or the provisional application is foreseen to take place in 2009.

[1] OJ L 348, 31.12.2007, p. 1.
[2] OJ L 194, 23.7.2008, p. 9.
[3] OJ L 225, 23.8.2008, p. 17.
[4] OJ L 255, 23.9.2008, p. 31.

(6) It is necessary to ensure continuity of importations from the ACP countries to the Community as well as a smooth transition to the Interim Economic Partnership Agreement. Decisions 2008/603/EC, 2008/691/EC and 2008/751/EC should therefore be prolonged with effect from 1 January 2009.

(7) Mauritius, Seychelles and Madagascar will benefit from an automatic derogation from the rules of origin for tuna of HS heading 1604 pursuant to the relevant provisions of the Origin Protocol attached to the ESA-EU Interim Partnership Agreement signed by them, when this Agreement enters into force or is provisionally applied. It would be inappropriate to grant by this Decision derogations in accordance with Article 36 of Annex II to Regulation (EC) No 1528/2007 which exceed the annual quota granted to the ESA region under the ESA-EU Interim Partnership Agreement. Therefore, it has been agreed to include a Joint Interpretative Declaration to the ESA-EU Interim Partnership Agreement at the time of its signature reflecting the common understanding that the annual quotas provided in the ESA-EU Interim Partnership Agreement are to be appropriately adjusted for the year 2009. Consequently the quota amounts for 2009 should be set at the same level as for 2008.

(8) Decisions 2008/603/EC, 2008/691/EC and 2008/751/EC should therefore be amended accordingly.

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

HAS ADOPTED THIS DECISION:

*Article 1*

Decision 2008/603/EC is amended as follows:

1. 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 free circulation into the Community from Mauritius during the periods of 1 January 2008 until 31 December 2008 and 1 January 2009 until 31 December 2009.'

2. In Article 6, the second paragraph is replaced by the following:

'It shall apply until the rules of origin set out in Annex II to Regulation (EC) No 1528/2007 are superseded by those annexed to any agreement with Mauritius when that agreement is either provisionally applied, or enters into force, whichever is the earlier but in any event not later than 31 December 2009.'

3. The Annex is replaced by the text set out in Annex I to this Decision.

*Article 2*

Decision 2008/691/EC is amended as follows:

1. 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 free circulation into the Community from Seychelles during the periods of 1 January 2008 until 31 December 2008 and 1 January 2009 until 31 December 2009.'

2. In Article 6, the second paragraph is replaced by the following:

'It shall apply until the rules of origin set out in Annex II to Regulation (EC) No 1528/2007 are superseded by those annexed to any agreement with Seychelles when that agreement is either provisionally applied, or enters into force, whichever is the earlier but in any event not later than 31 December 2009.'

3. The Annex is replaced by the text set out in Annex II to this Decision.

*Article 3*

Decision 2008/751/EC is amended as follows:

1. 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 free circulation into the Community from Madagascar during the periods of 1 January 2008 until 31 December 2008 and 1 January 2009 until 31 December 2009.'

2. In Article 6, the second paragraph is replaced by the following:

'It shall apply until the rules of origin set out in Annex II to Regulation (EC) No 1528/2007 are superseded by those annexed to any agreement with Madagascar when that agreement is either provisionally applied, or enters into force, whichever is the earlier but in any event not later than 31 December 2009.'

3. The Annex is replaced by the text set out in Annex III to this Decision.

*Article 4*

This Decision shall apply from 1 January 2009.

*Article 5*

This Decision is addressed to the Member States.

Done at Brussels, 15 June 2009.

*For the Commission*
László KOVÁCS
*Member of the Commission*

*ANNEX I*

*'ANNEX*

| Order No | CN code | Description of goods | Periods | Quantities |
|---|---|---|---|---|
| 09.1668 | ex 1604 14 11,<br>ex 1604 14 18,<br>ex 1604 20 70 | Preserved tuna (1) | 1.1.2008 to 31.12.2008<br>1.1.2009 to 31.12.2009 | 3 000 tonnes<br>3 000 tonnes |
| 09.1669 | 1604 14 16 | Tuna loins | 1.1.2008 to 31.12.2008<br>1.1.2009 to 31.12.2009 | 600 tonnes<br>600 tonnes |

(1) In any form of packaging whereby the product is considered as preserved within the meaning of HS heading ex 1604.'

*ANNEX II*

*'ANNEX*

| Order No | CN code | Description of goods | Periods | Quantity |
|---|---|---|---|---|
| 09.1666 | ex 1604 14 11,<br>ex 1604 14 18,<br>ex 1604 20 70 | Preserved tuna (1) | 1.1.2008 to 31.12.2008<br>1.1.2009 to 31.12.2009 | 3 000 tonnes<br>3 000 tonnes |

(1) In any form of packaging whereby the product is considered as preserved within the meaning of HS heading ex 1604.'

*ANNEX III*

*'ANNEX*

| Order No | CN code | Description of goods | Periods | Quantities |
|---|---|---|---|---|
| 09.1645 | ex 1604 14 11,<br>ex 1604 14 18,<br>ex 1604 20 70 | Preserved tuna (1) | 1.1.2008 to 31.12.2008<br>1.1.2009 to 31.12.2009 | 2 000 tonnes<br>2 000 tonnes |
| 09.1646 | 1604 14 16 | Tuna loins | 1.1.2008 to 31.12.2008<br>1.1.2009 to 31.12.2009 | 500 tonnes<br>500 tonnes |

(1) In any form of packaging whereby the product is considered as preserved within the meaning of HS heading ex 1604.'