COMMISSION IMPLEMENTING DECISION

of 19 December 2011

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(2011) 9269)

(2011/861/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 16 February 2011 Kenya requested, in accordance with Article 36 of Annex II to Regulation (EC) No 1528/2007, a derogation from the rules of origin set out in that Annex for a period of one year. On 20 September 2011 Kenya submitted additional information relating to its request. The request covers a total quantity of 2 000 tonnes of tuna loins of HS heading 1604. The request is made because catches and supply of originating raw tuna have decreased and because of the problem of piracy.

(2) According to the information provided by Kenya catches of raw originating tuna are unusually low even compared to the normal seasonal variations and have led to a decrease in production of tuna loins. In addition, Kenya has pointed out the risk involved due to piracy during the supply of raw tuna. This abnormal situation 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.

(3) To ensure continuity of importations from the ACP countries to the Union as well as a smooth transition from the ACP-EC Partnership Agreement to the Agreement establishing a framework for an Interim Economic Partnership Agreement (EAC-EU Interim Partnership Agreement), a new derogation should be granted with retroactive effect from 1 January 2011.

(4) A temporary derogation from the rules of origin laid down in Annex II to Regulation (EC) No 1528/2007 would not cause serious injury to an established Community industry taking into account the imports concerned, provided that certain conditions relating to quantities, surveillance and duration are respected.

(5) It is therefore justified to grant a temporary derogation under Article 36(1)(a) of Annex II to Regulation (EC) No 1528/2007.

(6) Kenya will benefit from an automatic derogation from the rules of origin for tuna loins of HS heading 1604 pursuant to Article 41(8) of the Origin Protocol attached to the EAC-EU Interim Partnership Agreement, when that Agreement enters into force or is provisionally applied.

(7) 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 from them are to be superseded by the rules of the EAC-EU Interim Partnership Agreement, the entry into force or provisional application of which is expected to take place in 2012. The derogation should therefore apply until 31 December 2011. Whilst a derogation is still to be granted in 2011, the overall situation, including the state of ratification of the EAC-EU Interim Partnership Agreement, will be reassessed in 2012.

(8) In accordance with Article 41(8) of the Origin Protocol attached to the EAC-EU Interim Partnership Agreement, the automatic derogation from the rules of origin is limited to an annual quota of 2 000 tonnes of tuna loins for the countries having initialled the EAC-EU Interim Partnership Agreement (Kenya, Uganda, Tanzania, Rwanda, Burundi). Kenya is the only country in the region that currently exports tuna loins to the Union. It is therefore appropriate to grant to Kenya a derogation under Article 36 of Annex II to Regulation (EC) No 1528/2007 in respect of 2 000 tonnes of tuna loins, quantity which does not exceed the full annual quota granted to the EAC region under the EAC-EU Interim Partnership Agreement.

[1] OJ L 348, 31.12.2007, p. 1.

(9) Accordingly a derogation should be granted to Kenya in respect of 2 000 tonnes of tuna loins for a period of one year.

(10) 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] lays down rules relating to the management of tariff quotas. In order to ensure efficient management carried out in close cooperation between the authorities of Kenya, the customs authorities of the Member States and the Commission, those rules should apply *mutatis mutandis* to the quantities imported under the derogation granted by this Decision.

(11) In order to allow efficient monitoring of the operation of the derogation, the authorities of Kenya should communicate regularly to the Commission details of the EUR.1 movement certificates issued.

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

HAS ADOPTED THIS DECISION:

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 HS heading 1604 manufactured from non-originating materials shall be regarded as originating in Kenya in accordance with the terms set out in Articles 2 to 6 of this Decision.

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 Union from Kenya during the period from 1 January 2011 to 31 December 2011.

Article 3

The quantities set out in the Annex to this Decision shall be managed in accordance with Articles 308a, 308b and 308c of Regulation (EEC) No 2454/93.

Article 4

The customs authorities of Kenya shall take the necessary measures to carry out quantitative checks on exports of the products referred to in Article 1.

All the EUR.1 movement certificates they issue in relation to those products shall bear a reference to this Decision.

The competent authorities of Kenya shall forward to the Commission a quarterly statement of the quantities in respect of which EUR.1 movement certificates have been issued pursuant to this Decision and the serial numbers of those certificates.

Article 5

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

'Derogation — Implementing Decision 2011/861/EU'.

Article 6

This Decision shall apply from 1 January 2011 until 31 December 2011.

Article 7

This Decision is addressed to the Member States.

Done at Brussels, 19 December 2011.

For the Commission
Algirdas ŠEMETA
Member of the Commission

[1] OJ L 253, 11.10.1993, p. 1.

ANNEX

Order No	CN code	Description of goods	Period	Quantities
09.1667	1604 14 16	Tuna loins	1.1.2011 to 31.12.2011	2 000 tonnes