COMMISSION IMPLEMENTING DECISION

of 24 May 2013

on a temporary derogation 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 Swaziland with regard to peaches, pears and pineapples

(notified under document C(2013) 2906)

(2013/243/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 23 April 2012 the Commission adopted Implementing Decision 2012/213/EU [2], 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 Swaziland with regard to peaches, pears and pineapples.

(2) On 28 February 2013 Swaziland 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 for two years from 1 January 2013 to 31 December 2014. The request covers a total quantity of 780 tonnes of peaches, pears and mixtures of peach and/or pear and/or pineapple in fruit juice of CN codes ex 2008 70 98, 2008 40 90 and ex 2008 97 98.

(3) According to the information received from Swaziland, it is unable to satisfy the product specific rule of origin as laid down in Appendix 1 of Annex II to Regulation (EC) No 1528/2007 which, inter alia, requires that all the materials used be classified within a heading other than that of the final product. Swaziland sources non-originating diced peaches and pears in juice not containing sugar of CN codes ex 2008 70 92 and 2008 40 90 in neighbouring South Africa for manufacture of the final product because it has no local production of peaches and pears of commercial scale. In accordance with Article 6(7) of Annex II to Regulation (EC) No 1528/2007, the products are also excluded from cumulation with South Africa. Hence, the final product does not comply with the rules laid down in that Annex.

(4) Article 36 of Annex II to Regulation (EC) No 1528/2007 states that the Community shall respond positively to all requests by ACP States which are duly justified in accordance with the provisions of that Article and which cannot cause serious injury to an established Community industry.

(5) In accordance with Article 36(1)(b) of Annex II to Regulation (EC) No 1528/2007, Swaziland requests more time to prepare itself to comply with the rules of origin as economic operators are undertaking a trial, using fresh peaches and/or pears from South Africa, peeled, cut and packed in drums in cold water and transported to Swaziland in a refrigerated state for further processing there. The use of such materials, which are classified within Chapter 8 of the Harmonised System, could allow the final product manufactured in Swaziland to comply with the abovementioned rule.

(6) Swaziland explained the need to meet demands from European buyers for a range of canned products, including limited quantities of pears and peaches that are not grown on its territory. If the European retailers are not able to buy the full product range from their supplier in Swaziland, it may result in the loss of the jelly, pineapple and citrus cup business for Swaziland.

(7) Given that Swaziland needs more time to prepare itself to comply with the rules of origin, a temporary derogation should be granted. The temporary derogation should be limited to the length of time needed for the beneficiary company to achieve compliance with the rules in accordance with Article 36(2) of Annex II to Regulation (EC) No 1528/2007.

(8) In order to allow Swaziland to make full use of the quantities granted, and taking into account that Swaziland could utilise the past derogation only in the second semester of 2012, the temporary derogation should have retroactive effect from 1 January 2013.

(9) In accordance with Article 36(4) of Annex II to Regulation (EC) No 1528/2007, the temporary derogation from the rules of origin would not cause serious injury to an established Union industry, provided that certain conditions relating to quantities, surveillance and duration are respected.

[1] OJ L 348, 31.12.2007, p. 1.
[2] OJ L 113, 25.4.2012, p. 12.

(10) It is therefore duly justified to respond positively to the request of Swaziland and to grant a temporary derogation under Article 36(1)(b) of Annex II to Regulation (EC) No 1528/2007.

(11) According to the information received from Swaziland, exports under derogation of products of HS heading 2008 were around 250 tonnes for the period from July to December 2012. The quantities to be allocated for 2013 and 2014 should be consistent with this utilisation. It is appropriate to provide for 500 tonnes yearly which respects the ability of the existing industry to continue its exports to the Union.

(12) Accordingly, a temporary derogation for two years should be granted to Swaziland in respect of 500 tonnes per year of peaches, pears and mixtures of peach and/or pear and/or pineapple in fruit juice of CN codes ex 2008 70 98, 2008 40 90 and ex 2008 97 98.

(13) 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 Swaziland, the customs authorities of the Member States and the Commission, those rules should apply to the quantities imported under the derogation granted by this Decision.

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

(15) 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)(b) of that Annex, peaches, pears and mixtures of peach and/or pear and/or pineapple in fruit juice of CN codes ex 2008 70 98, 2008 40 90 and ex 2008 97 98 in the manufacture of which non-originating diced peaches in juice not containing sugar of CN codes ex 2008 70 92 and diced pears in juice not containing sugar of CN code 2008 40 90 are used, shall be regarded as originating in Swaziland in accordance with the terms set out in Articles 2 to 5 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 release for free circulation into the Union from Swaziland during the period from 1 January 2013 to 31 December 2014.

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 Swaziland 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 the products referred to in Article 1 shall bear a reference to this Decision.

Before the end of the month following each quarter, the competent authorities of Swaziland 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 2013/243/EU'.

Article 6

This Decision shall apply from 1 January 2013 until 31 December 2014.

Article 7

This Decision is addressed to the Member States.

Done at Brussels, 24 May 2013.

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	Total annual quantity (tonnes)
09.1628	2008 40 90	Preparations of pears	1.1.2013 to 31.12.2013	500
	ex 2008 70 98	Preparations of peaches		
	ex 2008 97 98	Preparations of fruit; Mixtures of peach and/or pear and/or pineapple in fruit juice	1.1.2014 to 31.12.2014	500