COMMISSION REGULATION (EC) No 2188/2004

of 20 December 2004

amending Regulation (EC) No 1615/2000 derogating from Regulation (EEC) No 2454/93 in respect of the definition of the concept of originating products used for the purposes of the scheme of generalised preferences to take account of the special situation of Nepal regarding certain exports of textiles to the Community

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code [1], and in particular Article 247 thereof,

Having regard to 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 [2], and in particular Article 76 thereof,

Whereas:

(1) By Council Regulation (EC) No 2501/2001 of 10 December 2001 applying a scheme of generalised tariff preferences for the period 1 January 2002 to 31 December 2004 [3], the Community granted generalised tariff preferences to Nepal.

(2) Regulation (EEC) No 2454/93 of 2 July 1993 establishes the definition of the concept of originating products to be used for the purposes of the scheme of generalised tariff preferences (GSP). However, Regulation (EEC) No 2454/93 provides for derogations in favour of least-developed GSP-beneficiary countries which submit an appropriate request to that effect to the Community.

(3) Nepal has benefited from such a derogation for certain textiles since 1997, in the last instance by virtue of Commission Regulation (EC) No 1615/2000 of 24 July 2000 derogating from Regulation (EEC) No 2454/93 in respect of the definition of the concept of originating products used for the purposes of the scheme of generalised preferences to take account of the special situation of Nepal regarding certain exports of textiles to the Community [4], as amended by Regulation (EC) No 293/2002 [5], which extended its validity until 31 December 2004. By letter dated 14 June 2004, Nepal has submitted a request for the renewal of this derogation.

(4) The request submitted by Nepal has been considered by the Commission and has been found to be duly substantiated.

(5) When the validity of Regulation (EC) No 1615/2000 was extended, it was considered that its expiry should coincide with the ending of the current GSP scheme, which was due to end on that date. However, Council Regulation (EC) No 2211/2003 [6] extended the validity of the GSP scheme for a further year, until 31 December 2005.

(6) On 18 December 2003, the Commission published a Green Paper on the future of rules of origin in preferential trade arrangements [7] which opened a wide-ranging debate on the subject. On 7 July 2004, it published a Communication to the Council, the European parliament and the Economic and Social Committee entitled 'Developing countries, international trade and sustainable development: the function of the Community's generalised system of preferences (GSP) for the 10-year period from 2006 to 2015' [8], which also acknowledged the need for change in rules of origin. However, no decisions have yet been taken and no new rules will be in place before 31 December 2004.

[1] OJ L 302, 19.10.1992, p. 1. Regulation as last amended by the 2003 Act of accession.
[2] OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 2286/2003 (OJ L 343, 31.12.2003, p. 1).
[3] OJ L 346, 31.12.2001, p. 1. Regulation as last amended by Regulation (EC) No 1828/2004 (OJ L 321, 22.10.2004, p. 23).
[4] OJ L 185, 25.7.2000, p. 54.
[5] OJ L 46, 16.2.2002, p. 16.
[6] OJ L 332, 19.12.2003, p. 1.
[7] COM(2003) 787 final.
[8] COM(2004) 461 final.

(7) A prolongation of the derogation should not prejudge or prejudice the outcome of discussions on possible new rules of origin for GSP. However, the interests of traders concluding contracts both in Nepal and in the Community, as well as the stability and the sustained development of the Nepalese industry in terms of ongoing investment and employment, require that the derogation should be prolonged for a period of time sufficient to permit the continuation or conclusion of longer-term contracts, while facilitating the transition to possible new rules of origin for GSP.

(8) The provisions of Regulation (EC) No 1615/2000, in particular the existence of quantitative limits, which apply on an annual basis, reflecting the Community market's capacity to absorb the Nepalese products, Nepal's export capacity and actual recorded trade flows, were designed to prevent injury to the corresponding branches of Community industry.

(9) The derogation should therefore be renewed until 31 December 2006. However, in order to ensure fair treatment both for Nepal and for other least developed countries, the continuing need for the derogation should be reviewed once any new rules of origin are adopted in the context of the new generalised system of preferences.

(10) Regulation (EC) No 1615/2000 should therefore be amended accordingly.

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1615/2000 is amended as follows:

— in Article 2, '31 December 2004' is replaced by '31 December 2006', and

— the following paragraph is added:

'The continuing need for the derogation shall however be reviewed not later than 31 December 2005, in accordance with the new provisions to be adopted with regard to the generalised system of preferences and the rules of origin related thereto.'

Article 2

This Regulation shall enter into force on the seventh day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2005.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 20 December 2004.

For the Commission
László KOVÁCS
Member of the Commission