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►**B** **COMMISSION IMPLEMENTING REGULATION (EU) No 439/2011**

of 6 May 2011

on a derogation 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 tariff preferences to take account of the special situation of Cape Verde regarding exports of certain fisheries products to the European Union

(OJ L 119, 7.5.2011, p. 1)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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 89 thereof,

Whereas:

(1) By Commission Regulation (EC) No 815/2008 ([3]) Cape Verde was granted a derogation from the rules of origin laid down in Regulation (EEC) No 2454/93 allowing it to consider as originating in Cape Verde certain processed fishery products produced in Cape Verde from non-originating fish. That derogation expired on 31 December 2010.

(2) By Commission Regulation (EU) No 894/2010 ([4]) Cape Verde was granted an increase in the quantities provided for in 2010 in respect of two of the three categories of fishery products covered by Regulation (EC) No 815/2008. The quantities of the derogation were raised accordingly to 2 500 tonnes for prepared or preserved mackerel fillets and to 875 tonnes for prepared or preserved frigate tuna or frigate mackerel fillets.

(3) By letter dated 21 October 2010 Cape Verde submitted a request for a prolongation of the said derogation. By letters dated 3 and 21 December 2010, and 14 January 2011 it submitted additional information in support of this request.

(4) The request is for a prolongation for 1 year and a volume of 2 500 tonnes for prepared or preserved mackerel fillets and 875 tonnes for prepared or preserved frigate tuna or frigate mackerel.

([1]) OJ L 302, 19.10.1992, p. 1.
([2]) OJ L 253, 11.10.1993, p. 1.
([3]) OJ L 220, 15.8.2008, p. 11.
([4]) OJ L 266, 9.10.2010, p. 39.

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(5) Between 2008 and 2010 the total annual quantities originally granted contributed to a significant extent to improving the situation in the fishery processing sector and, to a certain extent, to the revitalisation of Cape Verde's artisanal fleet, which is of vital importance for that country. However, fully revitalising the Cape Verdean fleet to the degree envisaged requires a further increase in available capacity to provide enough originating raw materials to Cape Verde's fish processing industries.

(6) The request demonstrates that, without the derogation, the ability of the Cape Verdean fish processing industry to continue to export to the Union would be significantly affected, which might deter further development of the Cape Verdean fleet for small pelagic fishing.

(7) The derogation serves to give Cape Verde sufficient time to prepare itself to comply with the rules for the acquisition of preferential origin. Time is needed to ensure that the efforts to revitalise the local fishing fleet continue and Cape Verde thereby improves its ability to supply the local fishery processing sector with originating fish.

(8) Since the prolongation is requested for a period starting on 1 January 2011, in order to ensure continuity of imports from Cape Verde to the Union, a new derogation should be granted with retroactive effect as of 1 January 2011.

(9) In order to allow the temporary derogation to be limited to the time needed for Cape Verde to achieve compliance with the rules, the derogation should be granted for a period of 1 year in respect of 2 500 tonnes for prepared or preserved mackerel fillets and 875 tonnes for prepared or preserved frigate tuna or frigate mackerel.

(10) Regulation (EEC) No 2454/93 lays down rules relating to the management of tariff quotas. In order to ensure efficient management conducted in close cooperation between the authorities of Cape Verde, the customs authorities of the Union and the Commission, those rules should apply *mutatis mutandis* to the quantities imported under the derogation granted by this Regulation.

(11) In order to allow more efficient monitoring of the operation of the derogation, it is necessary to lay down the obligation for the authorities of Cape Verde, in accordance with Article 89(4) of Regulation (EEC) No 2454/93, to communicate regularly to the Commission details of the certificates of origin Form A which have been issued.

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

HAS ADOPTED THIS REGULATION:

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Article 1

By way of derogation from Articles 72, 73 and 75 to 79 of Regulation (EEC) No 2454/93, the following goods shall be regarded as originating in Cape Verde in accordance with the arrangements set out in Articles 2, 3 and 4 of this Regulation:

(a) prepared or preserved fillets of mackerel of CN codes 1604 15 11 and ex 1604 19 97 produced in Cape Verde from non-originating mackerel of HS headings 0302 or 0303;

(b) prepared or preserved fillets of frigate tuna or frigate mackerel of CN code ex 1604 19 97 produced in Cape Verde from non-originating frigate tuna or frigate mackerel of HS headings 0302 or 0303.

Article 2

The derogation provided for in Article 1 shall apply to products exported from Cape Verde and declared for release for free circulation in the Union, where the conditions specified in Article 74 of Regulation (EEC) No 2454/93 are satisfied, during the periods from 1 January 2011 until 31 December 2011, 1 January 2012 until 31 December 2012, 1 January 2013 until 31 December 2013 and 1 January 2014 until 31 December 2014, up to the quantities listed in the Annex against each product imported.

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Article 3

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

Article 4

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

2. The following shall be entered in box 4 of certificate of origin Form A issued by the competent authorities of Cape Verde pursuant to this Regulation: ‘Derogation — Regulation (EU) No 439/2011’.

3. The competent authorities of Cape Verde shall forward to the Commission every quarter a statement of the quantities in respect of which certificates of origin Form A have been issued pursuant to this Regulation and the serial numbers of those certificates.

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Article 5

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

2. It shall apply from 1 January 2011.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

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ANNEX

Order No	CN code	Description of goods	Periods	Quantity (in tonnes net weight)
09.1647	1604 15 11 ex 1604 19 97	Prepared or preserved fillets of mackerel (*Scomber scombrus, Scomber japonicus, Scomber colias*)	1.1.2011 to 31.12.2011	2 500
			1.1.2012 to 31.12.2012	2 500
			1.1.2013 to 31.12.2013	2 500
			1.1.2014 to 31.12.2014	2 500
09.1648	ex 1604 19 97	Prepared or preserved fillets of frigate tuna or frigate mackerel (*Auxis thazard, Auxis rochei*)	1.1.2011 to 31.12.2011	875
			1.1.2012 to 31.12.2012	875
			1.1.2013 to 31.12.2013	875
			1.1.2014 to 31.12.2014	875