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**COMMISSION DECISION**

**of 18 September 2008**

**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 Madagascar with regard to preserved tuna and tuna loins**

*(notified under document number C(2008) 5097)*

(2008/751/EC)

(OJ L 255, 23.9.2008, p. 31)

Amended by:

		Official Journal		
		No	page	date
► <b><u>M1</u></b>	Commission Decision 2009/471/EC of 15 June 2009	L 155	46	18.6.2009
► <b><u>M2</u></b>	Commission Decision 2010/560/EU of 16 September 2010	L 245	35	17.9.2010
► <b><u>M3</u></b>	Commission Implementing Decision 2011/377/EU of 27 June 2011	L 168	12	28.6.2011
► <b><u>M4</u></b>	Commission Implementing Decision 2012/190/EU of 4 April 2012	L 102	9	12.4.2012

**COMMISSION DECISION****of 18 September 2008****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 Madagascar with regard to preserved tuna and tuna loins***(notified under document number C(2008) 5097)*

(2008/751/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 <sup>(1)</sup>, and in particular Article 36(4) of Annex II thereto,

Whereas:

- (1) On 26 May 2008 Madagascar 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 six months. The request covers a total quantity of 2 000 tonnes of canned tuna and 500 tonnes of tuna loins of HS heading 1604. The request is made because catches and supply of originating raw tuna have decreased in the Indian Ocean.
- (2) According to the information provided by Madagascar catches of raw originating tuna were unusually low in the first four months of 2008 even compared to the normal seasonal variations and have led to a decrease in production of preserved tuna. This abnormal situation makes it impossible for Madagascar to comply with the rules of origin laid down in Annex II to Regulation (EC) No 1528/2007 during a certain period.
- (3) In order to ensure that Madagascar may continue its exports to the European Community, following the expiration of the ACP-EC Partnership Agreement <sup>(2)</sup>, a new derogation should be granted.
- (4) To ensure smooth transition from the ACP-EC Partnership Agreement to the ESA (Eastern and Southern Africa States)-EU Interim Economic Partnership Agreement a new derogation should be granted with retroactive effect from 1 January 2008.
- (5) 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.

<sup>(1)</sup> OJ L 348, 31.12.2007, p. 1.

<sup>(2)</sup> OJ L 317, 15.12.2000, p. 1.

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- (6) It is therefore justified to grant a temporary derogation under Article 36(1)(a) of Annex II to Regulation (EC) No 1528/2007.
- (7) Madagascar will benefit from an automatic derogation from the rules of origin for canned tuna and tuna loins of HS heading 1604 pursuant to Article 42(8) of the Origin Protocol attached to the Interim Agreement establishing a framework for an 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), when that Agreement enters into force or is provisionally applied.
- (8) 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 ESA-EU Interim Partnership Agreement, the entry into force or provisional application of which is expected to take place in 2008. The derogation should therefore apply until 31 December 2008, as requested by Madagascar, unless the ESA-EU Interim Partnership Agreement enters into force or is applied provisionally before that date.
- (9) In accordance with Article 42(8) of the Origin Protocol attached to the ESA-EU Interim Partnership Agreement, the automatic derogation from the rules of origin is limited to an annual quota of 8 000 tonnes of canned tuna and 2 000 tonnes of tuna loins for the countries having initialled the ESA-EU Interim Economic Partnership Agreement (Comoros, Mauritius, Madagascar, Seychelles and Zimbabwe). Mauritius and Seychelles have already lodged a request for a temporary derogation in accordance with Article 36 of Annex II to Regulation (EC) No 1528/2007. It would be inappropriate to grant 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.
- (10) Accordingly a derogation should be granted to Madagascar in respect of 2 000 tonnes of canned tuna and 500 tonnes of tuna loins for a period of one year.
- (11) 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 <sup>(1)</sup> 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 Madagascar, 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.

<sup>(1)</sup> OJ L 253, 11.10.1993, p. 1.

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- (12) In order to allow efficient monitoring of the operation of the derogation, the authorities of Madagascar should communicate regularly to the Commission details of the EUR.1 movement certificates issued.
- (13) The measures provided for in this Decision are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS DECISION:

**▼ M4***Article 1*

By way of derogation from Annex II to Regulation (EC) No 1528/2007 and in accordance with its Article 36(1)(a), preserved tuna and tuna loins of HS Heading 1604 manufactured from non-originating tuna of HS Headings 0302 or 0303 shall be regarded as originating in Madagascar 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 Community from Madagascar during the periods of 1 January 2008 until 31 December 2008, 1 January 2009 until 31 December 2009, 1 January 2010 until 31 December 2010, 1 January 2011 until 31 December 2011 and 1 January 2012 until 31 December 2012.

**▼ B***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 Madagascar shall take the necessary measures to carry out quantitative checks on exports of the products referred to in Article 1.

To that end, all the EUR.1 movement certificates they issue in relation to those products shall bear a reference to this Decision.

The competent authorities of Madagascar 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 certificates issued under this Decision shall contain the following:

‘Derogation — Decision 2008/751/EC’.

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*Article 6*

This Decision shall apply from 1 January 2008 until 31 December 2012.

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*Article 7*

This Decision is addressed to the Member States.

▼ **M4***ANNEX*

Order No	CN code	Description of goods	Periods	Quantities (tonnes)
09.1645	ex 1604 14 11, ex 1604 14 18, ex 1604 20 70	Preserved tuna <sup>(1)</sup>	1.1.2008 to 31.12.2008	2 000
			1.1.2009 to 31.12.2009	2 000
			1.1.2010 to 31.12.2010	2 000
			1.1.2011 to 31.12.2011	2 000
			1.1.2012 to 31.12.2012	2 000
09.1646	1604 14 16	Tuna loins	1.1.2008 to 31.12.2008	500
			1.1.2009 to 31.12.2009	500
			1.1.2010 to 31.12.2010	500
			1.1.2011 to 31.12.2011	500
			1.1.2012 to 31.12.2012	500

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