

COUNCIL DECISION

of 10 November 2009

on the procedure concerning derogations from the rules of origin set out in the Origin Protocols annexed to Economic Partnership Agreements with ACP States, and repealing Decision 2000/399/EC

(2009/832/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133, in conjunction with the second paragraph of Article 300(2) and Article 300(4) thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) Annex V to the Partnership agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 ⁽¹⁾ (ACP-EC Partnership Agreement) and its Protocols, among which the Protocol 1 concerning the definition of the concept of 'originating products' and methods of administrative cooperation, expired on 31 December 2007, according to Article 37(1) of that Agreement.
- (2) As provided for in Article 37(1) of the ACP-EC Partnership Agreement, Economic Partnership Agreements (EPAs) were negotiated with regional groups of members of the African, Caribbean and Pacific Group of States (ACP States). Those EPAs are progressively being signed since 1 January 2008.
- (3) Article 39 of Protocol I concerning the definition of the concept of 'originating products' and methods of administrative cooperation (Origin Protocol) of the Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part ⁽²⁾ — the first EPA signed with the ACP States — provides for a procedure for granting derogations from the rules of origin on request by an ACP State signatory to the EPA. Derogations should be adopted by a competent Committee. It is appropriate to provide for a procedure for establishing the Community position within that Committee in such a way that it can also apply to similar provisions of Origin Protocols to other EPAs to be signed with ACP States in the future.
- (4) Article 39(8) of the Origin Protocol provides that a decision should be reached as soon as possible and in any case not later than 75 working days after the request is received by the Community. If the Community does not inform the ACP State having submitted a request for derogation of its position within this period, the request will be deemed to have been accepted.
- (5) It is therefore necessary to adopt a procedure ensuring that the Community position can be adopted and communicated to the ACP States signatories to EPAs sufficiently in advance for ensuring that the relevant decision may be taken before the expiry of that deadline.
- (6) Council Decision 2000/399/EC of 16 June 2000 on the procedure concerning derogations from the rules of origin set out in Protocol No 1 to the ACP-EC Partnership Agreement ⁽³⁾ provided for a delegation of powers to the Commission with regard to the adoption of a common position of the Community following a request by ACP States for derogation from the rules of origin laid down in Protocol 1 to Annex V to the ACP-EC Partnership Agreement.
- (7) A similar delegation of powers to the Commission should now be provided for with regard to requests for derogations from the rules of origin laid down in the Origin Protocols of EPAs.
- (8) Decision 2000/399/EC should therefore be repealed,

HAS DECIDED AS FOLLOWS:

Article 1

The Community position with regard to a request presented by ACP States signatory to Economic Partnership Agreements (EPAs) for derogation from the rules of origin laid down in the Origin Protocols to EPAs shall be adopted by the Commission in accordance with the procedure laid down in Article 2.

⁽¹⁾ OJ L 317, 15.12.2000, p. 3.

⁽²⁾ OJ L 289, 30.10.2008, p. 1.

⁽³⁾ OJ L 151, 24.6.2000, p. 16.

Article 2

1. The Commission shall be assisted by the Customs Code Committee set up by Article 248a(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ⁽¹⁾.

2. The representative of the Commission shall submit to the Customs Code Committee a draft Community position, within 25 working days from the receipt of a request for derogation by the Community. The Customs Code Committee shall deliver an opinion on the draft within a time limit determined by its Chairman according to the urgency of the matter concerned. The opinion shall be delivered by the majority laid down in Article 205(2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States shall be weighted in the manner set out in that Article. The Chairman shall not vote.

3. The Commission shall adopt the Community position and transmit it immediately to the competent Committee set up by the relevant EPA. However, if the Community position is not in accordance with the opinion of the Customs Code Committee, it shall be submitted by the Commission to the Council forthwith. In that event, the Commission shall defer its transmission to the competent Committee set up in the framework of the relevant EPA for a period of 25 working days from the date of the vote in the Customs Code Committee.

4. The Council, acting by a qualified majority, may adopt a different Community position within the period provided for in paragraph 3.

Article 3

1. Decision 2000/399/EC is hereby repealed.

2. References to the repealed Decision shall be construed as references to this Decision.

Article 4

This Decision shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Article 5

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels, 10 November 2009.

For the Council

The President

A. BORG

⁽¹⁾ OJ L 302, 19.10.1992, p. 1.