

DECISIONS

COMMISSION DECISION

of 20 January 2011

on a derogation from the rules of origin set out in Council Decision 2001/822/EC as regards sugar from the Netherlands Antilles

(notified under document C(2011) 140)

(2011/47/EU)

THE EUROPEAN COMMISSION,

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

Having regard to Council Decision 2001/822/EC of 27 November 2001 on the association of the overseas countries and territories with the European Community ('Overseas Association Decision')⁽¹⁾, and in particular Article 37 of Annex III thereof,

Whereas:

- (1) Annex III to Decision 2001/822/EC concerns the definition of the concept of 'originating products' and methods of administrative cooperation. Article 37 thereof provides that derogations from those rules of origin may be adopted where justified by the development of existing industries or the creation of new industries in a country or territory.
- (2) By Commission Decision 2009/699/EC⁽²⁾, the request submitted in 2009 for extension of the previous derogation was rejected whereas the requested new derogation was granted for the quantities for which import licences for sugar were allocated to the Netherlands Antilles for 2009 and 2010.
- (3) According to the quarterly statements of the quantities used under Decision 2009/699/EC forwarded by the Netherlands Antilles to the Commission, the consumption of the derogation granted in respect of 7 000 tonnes for 2010 is currently at around 2 500 tonnes in that year.
- (4) On 24 August 2010 the Netherlands requested on behalf of the Netherlands Antilles a new derogation from the rules of origin set out in Annex III to Decision

2001/822/EC for the period from 1 January 2011 until 31 December 2013, date of expiry of Decision 2001/822/EC. On 8 September and 11 October 2010 additional information was provided by the Netherlands Antilles. The request covers a total annual quantity of 7 000 tonnes of sugar products originating in third countries and processed in the Netherlands Antilles for export to the Union.

- (5) The request for a new derogation aims at allowing the use of raw sugar from third countries to be aromatized, coloured, milled and processed into sugar lumps in the Netherlands Antilles while conferring OCTs (Overseas Countries and Territories) origin. Moreover, the Netherlands Antilles request that for the years 2011, 2012 and 2013 the yearly amount for which ACP/EU-OCTs cumulation may be temporarily allowed by virtue of Article 6 of Annex III to Decision 2001/822/EC would be set at 7 000 tonnes.
- (6) The request for a new derogation is based on quality requirements stating that ACP sugar in the Caribbean region does not meet the criteria for a production of high quality sugar destined to Union customers, and on availability stating that ACP sugar from the Caribbean is subject to continuous shortfalls due to climatic conditions. Furthermore, ACP States are increasingly exporting their sugar production directly to the United States and the Union. Further, the Union does not produce raw cane sugar which is used for the end product. Therefore it would be justified that the Netherlands Antilles source raw sugar in neighbouring third countries that are not part of the ACP States, the OCTs or the Union.
- (7) In its additional information, the Netherlands indicated that the sugar industry in the Netherlands Antilles, which should benefit from the requested derogation, aims to diversify into producing mixtures and 'biosugar', which both address distinctively different markets than the sugar products for which the requested derogation is submitted. At the moment diversification is still insufficient and the derogation would be needed to earn the necessary capital for the investments required for further diversification.

⁽¹⁾ OJ L 314, 30.11.2001, p. 1.

⁽²⁾ OJ L 239, 10.9.2009, p. 55.

- (8) The requested new derogation from the rules of origin set out in Annex III to Decision 2001/822/EC for a quantity of 7 000 tonnes for products falling within CN codes 1701 11 90, 1701 99 10 and 1701 91 00 is justified according to Article 37(1), (3) and (7) of that Annex under certain conditions, which aim at balancing the legitimate interests of the OCTs operators with the objectives of the external dimension of the Union's common market organisation on sugar.
- (9) It is in favour of the legitimate interests of the Netherlands Antilles that the derogation concerns products which involve actual processing and the value added to the raw sugar is at least 45 % of the value of the finished product. Further, granting the derogation will contribute to the ability of the existing industry to continue its exports to the Union. The requested derogation is expected to generate the required turnover to finance further investments in diversification of products and activities, so that the industry concerned would no longer be required to request derogations of this kind.
- (10) Additionally, the rules relating to cumulation of origin do not provide a solution for the sugar industry in the Netherlands Antilles. Article 6(4) of Annex III to Decision 2001/822/EC sets out the periods and the quantitative limits for which cumulation of origin has been temporarily allowed, and which are compatible with the objectives of the Union's common market organisation whilst taking due account of the legitimate interests of the OCTs operators. These quantities have been progressively reduced and will be finally phased out to zero tonnes on 1 January 2011.
- (11) The phasing out of the ACP/EC-OCTs cumulation with regard to sugar, as provided for in Article 6(4) of Annex III to Decision 2001/822/EC, shows the Union's intention that specific origin rules are to be more restrictive as regards sugar in order to take due account of the Union's operators in the sugar market. That principle should be applied for the purpose of determining the quantities for which derogation is granted. The phasing out is also justified in view of the Union's envisaged negotiation of free trade agreements with Latin American countries, from which sugar may be usually sourced by the Netherlands Antilles. Taking into account the intention of the Netherlands Antilles' industry to diversify away from the sugar production requiring a derogation as the present one, the amounts for derogation should be phased out over time.
- (12) Given the low utilisation of the quantities, provided for in the past derogations, it is appropriate to provide for the double amount of the current utilisation as an initial quantity, which respects the ability of the existing industry to continue its exports to the Union. In line with the envisaged phasing out, the amounts should be reduced progressively over the requested period. Such a phasing out should allow, at the same time, to generate the required turnover to finance further investments in the Netherlands Antilles and to give an incentive for the sugar industry concerned there to promote the intended diversification.
- (13) Consequently, subject to compliance with certain conditions relating to quantities, surveillance and duration, the derogation should be granted for 5 000 tonnes for 2011, 3 000 tonnes for 2012 and 1 500 tonnes for 2013.
- (14) Subject to these conditions the derogation is not such as to cause serious injury to an economic sector or an established industry in the Union.
- (15) 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 Common Customs Code ⁽¹⁾ lays down rules for the management of tariff quotas. Those rules should be applied *mutatis mutandis* to the management of the quantity in respect of which the derogation in question is granted.
- (16) Since the current derogation expires on 31 December 2010, and a new derogation is requested for a period starting on 1 January 2011 until 31 December 2013, the requested derogation should apply from 1 January 2011 for that period.
- (17) 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 III to Decision 2001/822/EC, sugar products processed in the Netherlands Antilles falling within CN codes 1701 11 90, 1701 99 10 and 1701 91 00 shall be regarded as originating in the Netherlands Antilles where they are obtained from non-originating sugar, in accordance with the terms set out in Articles 2, 3 and 4 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 free circulation into the Union from the Netherlands Antilles during the period from 1 January 2011 to 31 December 2013.

Article 3

Articles 308a, 308b and 308c of Regulation (EEC) No 2454/93 relating to the management of tariff quotas shall apply *mutatis mutandis* to the management of the quantity referred to in the Annex hereto.

⁽¹⁾ OJ L 253, 11.10.1993, p. 1.

Article 4

The customs authorities of the Netherlands Antilles shall take the necessary measures to carry out quantitative checks on exports of the products referred to in Article 2.

All the movement certificates EUR.1 they issue in relation to those products shall bear a reference to this Decision.

The competent authorities of the Netherlands Antilles 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 one of the following entries:

— ‘Derogation – Decision 2011/47/EU’,

— ‘Dérogação – Décision 2011/47/UE’.

Article 6

This Decision shall apply from 1 January 2011 until 31 December 2013.

Article 7

This Decision is addressed to the Member States.

Done at Brussels, 20 January 2011.

For the Commission

Algirdas ŠEMETA

Member of the Commission

 ANNEX

Order No	CN code	Description of goods	Period	Quantities (in tonnes)
09.7910	1701 11 90	Sugar products	1.1.2011 to 31.12.2011	5 000
	1701 99 10		1.1.2012 to 31.12.2012	3 000
	1701 91 00		1.1.2013 to 31.12.2013	1 500