

ACTS ADOPTED BY BODIES CREATED BY INTERNATIONAL AGREEMENTS

DECISION No 1/2021 OF THE ESA-EU CUSTOMS COOPERATION COMMITTEE

of 2 August 2021

on a derogation from the rules of origin laid down in Protocol 1 to the Interim Agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States, of the one part, and the European Community and its Member States, of the other part, to take account of the special situation of Mauritius with regard to salted snoek [2021/1316]

THE CUSTOMS COOPERATION COMMITTEE,

Having regard to the Interim Agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States ('ESA'), of the one part, and the European Community and its Member States, of the other part, and in particular Article 43(4) of Protocol 1 thereto,

Whereas:

- (1) The Interim Agreement establishing a framework for an Economic Partnership Agreement between the Eastern and Southern Africa States, of the one part, and the European Community and its Member States, of the other part ⁽¹⁾ ('the interim EPA') applies provisionally as from 14 May 2012 between the Union and the Republic of Madagascar, the Republic of Mauritius, the Republic of Seychelles and the Republic of Zimbabwe. It applies as well, provisionally, as from 7 February 2019 between the European Union and the Union of Comoros.
- (2) Protocol 1 to the EU-ESA interim EPA, concerning the definition of the concept of 'originating products' and methods of administrative cooperation, has been amended by Decision No 1/2020 of the EPA Committee of 14 January 2020, with effect on 31 March 2020 ⁽²⁾.
- (3) Pursuant to Article 44(1) of Protocol 1, the ESA-EU Customs Cooperation Committee may adopt a Decision granting a derogation from the rules of origin set out in that Protocol.
- (4) On 2 October 2017 the ESA-EU Customs Cooperation Committee adopted Decision No 2/2017, granting a derogation from the rules of origin with regard to 120 tonnes of salted snoek imported into the European Union from 2 October 2017 to 1 October 2018.
- (5) On 14 January 2019 the ESA-EU Customs Cooperation Committee adopted Decision No 1/2019, granting a second derogation from the rules of origin with regard to 100 tonnes of salted snoek imported into the European Union from 14 January 2019 to 13 January 2020.
- (6) On 5 May 2020 the ESA-EU Customs Cooperation Committee adopted Decision No 1/2020, granting a third derogation from the rules of origin with regard to 100 tonnes of salted snoek imported into the European Union from 5 May 2020 to 4 May 2021.
- (7) On 31 March 2021, Mauritius has submitted, in accordance with Article 44(1) of Protocol 1 to the interim EPA, a fourth request for derogation from the rules of origin with regard to 120 tonnes of salted snoek of HS Heading 0305 69 to be imported into the Union from June 2021 to June 2022. On 17 May 2021, in response to a letter from the Commission, Mauritius provided additional information.

⁽¹⁾ OJ L 111, 24.4.2012, p. 2.

⁽²⁾ OJ L 93, 27.3.2020, p. 1.

- (8) In its request, Mauritius reiterates recurrent sourcing problems to meet the rules of origin. It invokes notably, the unavailability of barracoota originating in the Union or in Mauritius and the unprofitability of investing in vessels to meet the conditions set up by Article 6(2) of Protocol 1 for fishing barracoota. Mauritius submits that barracoota from other African, Caribbean and Pacific EPA States ('other ACP EPA States'), with whom cumulation is possible, is too expensive (e.g. barracoota from Namibia) or does not meet the requirements regarding quality and regular supply. Mauritius concludes that it cannot but continue sourcing non-originating raw materials for its processing industry, more specifically barracoota imported from New Zealand. According to the figures submitted by Mauritius, the value added in Mauritius accounts for only 17,5 % of the value of the finished products .
- (9) Article 44(1) of Protocol 1 provides that derogations from the Protocol may be adopted by the Customs Cooperation Committee where the development of existing industries or the creation of new industries in the ESA States justifies them, and that the Union should respond positively to all the ESA States' requests which are duly justified in conformity with this Article and which cannot cause serious injury to an established Union industry.
- (10) Articles 44(3) and (5) of Protocol 1 adds that the examination of requests shall in particular take into account: the geographical situation of the ESA State concerned, with a favourable bias for island ESA States; and cases where the application of the existing rules of origin would significantly affect the ability of an existing industry in an ESA State to continue its exports to the Union.
- (11) Following analysis, it was concluded that the application of the existing rules of origin for the products at stake would affect the ability of the existing small industry of production of salted snoek in Mauritius to continue its exports to the Union; the geographical situation of Mauritius, being a small island remote from its export markets and sources of imports, should be taken into account; the requested derogation would not cause serious injury to an established Union industry; and the derogations previously granted did not exceed five years.
- (12) Derogations foreseen by in Article 44 of Protocol 1 should however remain temporary solutions and should not be used as a way to permanently altering the agreed rules of origin.
- (13) Nonetheless, the request and the further clarifications provided by Mauritius do not indicate any concrete steps which have been taken to overcome the existing situation and permanently meet the agreed rules of origin. Mauritius indicates that developing their own fleet to catch barracoota is not feasible, and that meeting the rule of origin in the future relies on the possibility of eventually concluding business agreements with Namibian suppliers or to convince the EU fleet operating in the region to fish barracoota.
- (14) This derogation should for those reasons be the last one granted for the same products and under the same terms.
- (15) Mauritius requested the derogation for an amount of 120 tonnes of salted snoek for the year 2021/2022. Based on the actual use of the previous derogation resulting from Decision 1/2020, it does not appear appropriate to increase the quota for the requested period as compared to the quota granted for the year 2020/2021. Mauritius should therefore be provided with a derogation for 100 tonnes of salted snoek of HS Heading 0305 69, which respects the ability of the existing industry to continue its exports to the Union, for one additional year.
- (16) Commission Implementing Regulation (EU) 2015/2447 ⁽³⁾ lays down rules for the management of tariff quotas. Those rules should be applied to the management of the quantity in respect of which the derogation is granted by this decision.
- (17) In order to allow efficient monitoring of the operation of the derogation, the Mauritian authorities should communicate regularly to the Commission details of the EUR.1 movement certificates issued or invoice declarations made out for the products concerned,

⁽³⁾ Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558).

HAS DECIDED AS FOLLOWS:

Article 1

By way of derogation from Protocol 1 to the interim EPA and in accordance with Article 44(1) of that Protocol, salted snoek of HS Heading 0305 69 (CN code 0305 69 80) manufactured from non-originating snoek (barracoota) of HS Heading 0303 89 shall be regarded as originating in Mauritius 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 product and the quantity set out in the Annex to this Decision, declared for release for free circulation into the Union from Mauritius for a period limited to one year from the date of adoption of this Decision.

Article 3

The quantity set out in the Annex shall be managed in accordance with Articles 49 to 54 of Commission Implementing Regulation (EU) 2015/2447.

Article 4

The customs authorities of Mauritius shall carry out quantitative checks on exports of the products referred to in Article 1.

Before the end of the month following each quarter, the customs authorities of Mauritius shall forward to the Commission, via the Secretariat of the Customs Cooperation Committee, a statement of the quantities in respect of which movement certificates EUR.1 have been issued or invoices declarations made out pursuant to this Decision and the serial numbers of those certificates or references of those invoice declarations.

Article 5

Box 7 of movement certificates EUR.1 issued or invoice declarations made out under this Decision shall contain one of the following indications:

“Derogation - Decision No 1/2021 of the ESA-EU Customs Cooperation Committee of 2 August 2021”;

“Dérégation - Décision n° 1/2021 du Comité de Coopération Douanière AfoA-UE du 2 août 2021”.

Article 6

1. Mauritius and the Union shall take the measures necessary on their part to implement this Decision.
2. Where the Union has made a finding, on the basis of objective information, of irregularities or fraud or of a repeated failure to respect the obligations laid down in Article 4, the Union may seek temporary suspension of the derogation referred to in Article 1 in accordance with the procedure provided for in Article 22(5) and (6) of the interim EPA.

Article 7

The derogation provided for in Article 1 shall not be renewed.

Article 8

This Decision shall enter into force on 2 August 2021.

Done at Brussels, 2 August 2021.

Beryl Shirley SAMSON
*ESA States Representative
on behalf of the ESA States*

Jean-Michel GRAVE
*European Commission
on behalf of the European Union*

ANNEX

Order No.	CN Code	TARIC code	Description of goods	Period	Net weight (in tonnes)
09.1611	ex 0305 69 80	25	snoek (barracoota), salted	7.8.2021 – 6.8.2022	100