Commission Implementing Regulation (EU) 2016/1380 of 16 August 2016 on a derogation from Article 55(2)(a) of Delegated Regulation (EU) 2015/2446 as regards the rules of origin applicable to regional cumulation for tuna originating in Ecuador

COMMISSION IMPLEMENTING REGULATION (EU) 2016/1380

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on a derogation from Article 55(2)(a) of Delegated Regulation (EU) 2015/2446 as regards the rules of origin applicable to regional cumulation for tuna originating in Ecuador

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code[(1)], and in particular Article 64(6) and 66(b) thereof,

Whereas:

(1) By Regulation (EU) No 1384/2014 of the European Parliament and of the Council[(2)], the Union granted tariff preferences to Ecuador from 1 January 2015 to 31 December 2016, as an interim reciprocal arrangement to avoid unnecessary trade disruption between the Union and Ecuador following the initialling of the Protocol of Accession of Ecuador to the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part[(3)], on 12 December 2014.

(2) For the purpose of the preferences granted by Regulation (EU) No 1384/2014, the rules of origin laid down in Part I, Title IV, Chapter 2, Section 1 of Commission Regulation (EEC) No 2454/93[(4)] including the rules concerning regional cumulation of origin within a group of countries including Bolivia, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Peru and Venezuela shall apply. Since 1 January 2014, regional cumulation could only apply in the same regional group to countries which, at the time of exportation to the Union, are beneficiaries of the Generalised System of Preferences (GSP) under Regulation (EU) No 978/2012 of the European Parliament and of the Council[(5)].

(3) With effect on 1 May 2016, Regulation (EEC) No 2454/93 was repealed and the rules of origin applicable for the purpose of the tariff preferences granted to goods originating in Ecuador are since that date laid down in Title II, Chapter 2, Section 2, Subsections 2 and 3 of Commission Delegated Regulation (EU) 2015/2446[(6)] and Title II, Chapter 2, Section 2, Subsections 2 to 9 of Commission Implementing Regulation (EU) 2015/2447[(7)], Delegated Regulation (EU) 2015/2446 provides for the same rules concerning cumulation as Regulation (EEC) No 2454/93.

(4) As of 1 January 2016, Colombia, Peru, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama, included in the same regional group as Ecuador, are no

longer GSP beneficiary countries. As a consequence, from 1 January 2016, prepared or preserved tuna and skipjack classified in subheading 1604 14 of the Harmonized Commodity Description and Coding System (HS) and prepared or preserved tuna, skipjack or other fish of the genus *Euthynnus* of subheading 1604 20 70 of the Combined Nomenclature (CN) cannot be considered to be originating in Ecuador under regional cumulation with those countries for the purposes of the tariff preferences granted by Regulation (EU) No 1384/2014.

(5) On 4 April 2016, Ecuador submitted a request for a derogation from the rules on preferential origin so that the Ecuadorian fish processing industry might, for the purposes of determining the origin of prepared or preserved tuna and skipjack classified in HS subheading 1604 14 and prepared or preserved tuna, skipjack or other fish of the genus *Euthynnus* of CN subheading 1604 20 70, consider materials originating in Colombia, Peru, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama to be materials originating in Ecuador by virtue of regional cumulation. The derogation was requested to apply from 1 January 2016. A complement of information on this initial request was submitted on 30 June 2016.

(6) In its request for derogation Ecuador explained that for the production of prepared and preserved tuna exported by Ecuador to the Union important quantities of raw tuna are sourced in the countries of Central America and in the Andean countries. Without the possibility to cumulate with those countries in the same regional group, Ecuadorian exports to the Union of originating prepared and preserved tuna would be reduced by 30 %.

(7) In the meantime, on 16 April 2016, an earthquake with a magnitude of 7,8 struck costal Ecuador. The Manabí province and the areas of Manta, where most of the Ecuadorian fishery sector operates, were highly affected. Massive material damage has also been reported, including on key infrastructures, which aggravates the situation of the fish processing industry in Ecuador.

(8) Considering the circumstances, the reasons provided in Ecuador's request and the further adverse impact of the earthquake on its fish processing industry, Ecuador should benefit from a temporary derogation from the requirement laid down in Article 55(2)(a) of Delegated Regulation (EU) 2015/2446, in accordance with point (a) of the second subparagraph of Article 64(6) of Regulation (EU) No 952/2013. Consequently, the materials originating in Colombia, Peru, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama used for the manufacture of prepared and preserved tuna and skipjack classified in HS subheading 1604 14 and in prepared or preserved tuna skipjack or other fish of the genus *Euthynnus* of CN subheading 1604 20 70 should be considered to be originating in Ecuador, provided that certain conditions are fulfilled.

(9) To avoid trade disruption, and to facilitate the achievement of the objectives of the tariff preferences granted to Ecuador under Regulation (EU) No 1384/2014, the temporary derogation should cover the period from 1 January 2016 to 31 December 2016.

(10) Considering the proof of origin that may be used for the materials originating in Colombia, Peru, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama, cumulation may also apply on the basis of the proof of origin provided for

by the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part, or the Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America, on the other[8], respectively.

(11) In order to guarantee that the measures necessary for the application of cumulation with Colombia, Peru, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama operate properly, Ecuador should ensure that the measures in the field of administrative cooperation are in place.

(12) In order to allow for efficient monitoring of the operation of the derogation, the authorities of Ecuador should communicate to the Commission at the end of the application of the derogation details of the certificates of origin Form A which have been issued within the framework of the derogation.

(13) In order to avoid further delay in the implementation of the derogation, this Regulation should enter into force as a matter of urgency.

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

HAS ADOPTED THIS REGULATION:

Article 1

1 For the purpose of cumulation referred to in Article 86(1)(b) of Regulation (EEC) No 2454/93 and by way of derogation from Article 86(2)(a) of that Regulation, Ecuador shall, for the period from 1 January 2016 to 30 April 2016, be entitled to use materials originating in Colombia, Peru, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua or Panama to produce prepared or preserved tuna and skipjack classified in HS subheading 1604 14 and prepared or preserved tuna, skipjack or other fish of the genus *Euthynnus* of CN subheading 1604 20 70.

The proof of origin for the products referred to in the first subparagraph shall be drawn up in accordance with Article 97l of Regulation (EEC) No 2454/93

2 For the purpose of cumulation referred to in Article 55(1)(b) of Delegated Regulation (EU) 2015/2446 and by way of derogation from Article 55(2)(a) of that Regulation, Ecuador shall, for the period from 1 May 2016 to 31 December 2016, be entitled to use materials originating in Colombia, Peru, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua or Panama to produce prepared or preserved tuna and skipjack classified in HS subheading 1604 14 and prepared or preserved tuna skipjack or other fish of the genus *Euthynnus* of CN subheading 1604 20 70.

The proof of origin for the products referred to in the first subparagraph shall be drawn up in accordance with the provisions of Article 76 of Implementing Regulation (EU) 2015/2447.

3 The competent authorities of Ecuador called on to issue a certificate of origin Form A for the products referred to in paragraphs 1 and 2 may also rely on a movement certificate EUR 1 issued by the competent authorities of Colombia, Peru, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua or Panama in accordance with the provisions of the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of