Commission Implementing Regulation (EU) No 440/2012 of 24 May 2012 amending Implementing Regulation (EU) No 439/2011 on a derogation from Regulation (EEC) No 2454/93 in respect of the definition of the concept of originating products used for the purposes of the scheme of generalised tariff preferences to take account of the special situation of Cape Verde regarding exports of certain fisheries products to the European Union

COMMISSION IMPLEMENTING REGULATION (EU) No 440/2012

of 24 May 2012

amending Implementing Regulation (EU) No 439/2011 on a derogation from Regulation (EEC) No 2454/93 in respect of the definition of the concept of originating products used for the purposes of the scheme of generalised tariff preferences to take account of the special situation of Cape Verde regarding exports of certain fisheries products to the European Union

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code[(1)], and in particular Article 247 thereof,

Having regard to 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[(2)], and in particular Article 89(1)(b) thereof,

Whereas:

(1) By Regulation (EC) No 815/2008[(3)] the Commission granted Cape Verde a derogation from the rules of origin laid down in Regulation (EEC) No 2454/93. By Implementing Regulation (EU) No 439/2011[(4)] the Commission granted Cape Verde a new derogation from those rules of origin[(5)]. That derogation expired on 31 December 2011.

(2) By letter dated 21 November 2011, Cape Verde submitted a request for a prolongation of that derogation for three years, i.e. from 2012 until 2014. That application concerns a volume of 2 500 tonnes for prepared or preserved mackerel fillets and 875 tonnes for prepared or preserved frigate tuna or frigate mackerel.

(3) Between 2008 and 2011, the total annual derogation quantities that were granted to Cape Verde contributed, to a significant extent, to improving the situation in the Cape Verdean fishery processing sector. Those quantities also led, to a certain extent, to the revitalisation of Cape Verde's artisanal fleet, which is of vital importance for the country. However, fully revitalising the Cape Verdean fleet to the degree envisaged requires a renewal of the increased available capacity to provide enough originating raw materials to Cape Verde's fish processing industries.

(4) The request demonstrates that, without the derogation, the ability of the Cape Verdean fish processing industry to continue to export to the Union would be significantly

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) No 440/2012. (See end of Document for details)*

affected, which might deter further development of the Cape Verdean fleet for small pelagic fishing.

(5) The derogation should give Cape Verde sufficient time to prepare itself to comply with the rules for the acquisition of preferential origin. Additional time is needed to consolidate the results already obtained by Cape Verde in its efforts to revitalise its local fishing fleet.

(6) In order to ensure that the temporary derogation be limited to the time needed for Cape Verde to achieve compliance with the rules, the derogation should be granted for a period of three years, i.e. from 2012 until 2014, in respect of yearly quantities of 2 500 tonnes for prepared or preserved mackerel fillets and 875 tonnes for prepared or preserved frigate tuna or frigate mackerel.

(7) In order to ensure continuity of exports from Cape Verde to the Union, the derogation should be granted with retroactive effect from 1 January 2012.

(8) In the interest of clarity, it is appropriate to set out explicitly that the only non-originating materials to be used for the manufacture of prepared or preserved fillets of mackerel, and prepared or preserved fillets of frigate tuna and frigate mackerel of CN codes 1604 15 11 and ex 1604 19 97 should be mackerel or frigate tuna or frigate mackerel of HS headings 0302 or 0303, in order for the prepared or preserved fillets of mackerel, frigate tuna and frigate mackerel to benefit from the derogation.

(9) Since with effect from 1 January 2012 CN code 1604 19 98 was replaced by CN code 1604 19 97, it is appropriate to update the CN codes for the products for which the derogation is granted.

(10) Implementing Regulation (EU) No 439/2011 should therefore be amended accordingly.

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

HAS ADOPTED THIS REGULATION:

Article 1

Implementing Regulation (EU) No 439/2011 is amended as follows:

(1) Articles 1 and 2 are replaced by the following:

Article 1

By way of derogation from Articles 72, 73 and 75 to 79 of Regulation (EEC) No 2454/93, the following goods shall be regarded as originating in Cape Verde in accordance with the arrangements set out in Articles 2, 3 and 4 of this Regulation:

(a) prepared or preserved fillets of mackerel of CN codes 1604 15 11 and ex 1604 19 97 produced in Cape Verde from non-originating mackerel of HS headings 0302 or 0303;

(b) prepared or preserved fillets of frigate tuna or frigate mackerel of CN code ex 1604 19 97 produced in Cape Verde from non-originating frigate tuna or frigate mackerel of HS headings 0302 or 0303.

Article 2

The derogation provided for in Article 1 shall apply to products exported from Cape Verde and declared for release for free circulation in the Union, where the conditions specified in Article 74 of Regulation (EEC) No 2454/93 are satisfied, during the periods from 1 January 2011 until 31 December 2011, 1 January 2012 until 31 December 2012, 1 January 2013 until 31 December 2013 and 1 January 2014 until 31 December 2014, up to the quantities listed in the Annex against each product imported.;

(2) the Annex is replaced by the text set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2012.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels, 24 May 2012.

For the Commission

The President

José Manuel BARROSO