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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.7.2009  
COM(2009) 345 final

2009/0092 (ACC)

Proposal for a

**COUNCIL DECISION**

**on the procedure concerning derogations from the rules of origin set out in the Origin  
Protocols annexed to Economic Partnership Agreements with ACP States**

## **EXPLANATORY MEMORANDUM**

Annex V of the Cotonou Agreement<sup>1</sup> including Protocol No 1 concerning the definition of the concept of originating products and methods of administrative cooperation, expired on 31 December 2007. By virtue of Article 37 of this Agreement, the Commission services have been negotiating the revised Economic Partnership Agreements (EPAs) with the ACP States. Negotiations of comprehensive EPAs with the African ACP States are still ongoing whilst the interim EPAs are progressively being signed since the beginning of 2008.

The proposed decision will confer to the Commission the implementing powers for the decision-making by the Community on requests for derogations from the rules of origin set out in the Origin Protocols annexed to the EPAs. It will repeal the Council Decision 2000/399/EC which was applied previously in the framework of the Cotonou Agreement.

Article 39 of the Protocol I concerning the definition of the concept of originating products and methods of administrative cooperation of the CARIFORUM-EC EPA, as well as similar provisions of Origin Protocols of other EPAs still to be signed with other ACP countries, provide for a procedure for granting derogations from the rules of origin on request by a ACP State signatory to the EPA. Decisions on derogations should be taken by a competent Committee, to be set up in the framework of the relevant EPA, within a deadline of 75 working days after the request is received by the Community. It is therefore necessary to ensure that the Community position is adopted before the expiry of the above deadline and communicated in time to the ACP States signatories to EPAs.

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<sup>1</sup> 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 (OJ L 317, 15.12.2000, p. 3)

Proposal for a

## COUNCIL DECISION

### **on the procedure concerning derogations from the rules of origin set out in the Origin Protocols annexed to Economic Partnership Agreements with ACP States**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) Annex V of the Partnership agreement between the members of the African, Caribbean and Pacific Group of States (ACP States) of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000<sup>2</sup> (ACP-EC Partnership Agreement) and its Protocols, among which the Protocol No 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 foreseen in Article 37(1) of the ACP-EC Partnership Agreement, Economic Partnership Agreements (EPAs) were negotiated with regional groups of 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 (hereinafter ‘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<sup>3</sup> (CARIFORUM-EC EPA) - the first Economic Partnership Agreement signed with ACP States - provides for a procedure for granting derogations from the rules of origin on request by an ACP State signatory to the EPA. The Community position on derogations should be adopted by a competent Committee. It is appropriate to provide for a procedure for that Committee in a way that it can also apply to similar provisions of Origin Protocols to other EPAs 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 seventy-five working days after the request is received by the Community. If the Community does not inform the ACP State having

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<sup>2</sup> OJ L 317, 15.12.2000, p. 3.

<sup>3</sup> OJ L 289, 30.10.2008, p. 1.

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<sup>4</sup> 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 No 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. The Community position with regard to such requests should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>5</sup>.
- (8) For the sake of clarity, Decision 2000/399/EC should 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.

#### *Article 2*

1. The Commission shall be assisted by the Customs Code Committee set up by Article 248a(1) of Regulation (EEC) No 2913/92<sup>6</sup>.

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

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<sup>4</sup> OJ L 151, 24.6.2000, p. 16.

<sup>5</sup> OJ L 184, 17.7.1999, p. 23.

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 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.

Done at Brussels,

*For the Council*  
*The President*

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<sup>6</sup> OJ L 302, 19.10.1992, p.1.