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COMMISSION DECISION

of 22 February 2011

**on a derogation from the rules of origin set out in Council Decision 2001/822/EC as regards certain
fishery products imported from Saint Pierre and Miquelon**

(notified under document C(2011) 986)

(2011/122/EU)

(OJ L 49, 24.2.2011, p. 37)

Corrected by:

► **C1**

Corrigendum, OJ L 183, 13.7.2011, p. 31 (2011/122/EU)



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on a derogation from the rules of origin set out in Council Decision 2001/822/EC as regards certain fishery products imported from Saint Pierre and Miquelon

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(2011/122/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 thereto,

Whereas:

- (1) Annex III to Decision 2001/822/EC concerns the definition of the concept of 'originating products' and methods of administrative cooperation. Pursuant to Article 37 thereof 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) On 19 October 2010 Saint Pierre and Miquelon requested a derogation from the rules of origin set out in Annex III to Decision 2001/822/EC for a period of 8 years. On 12 November additional information was provided by Saint Pierre and Miquelon. The request covers a total annual quantity of 225 tonnes of lobster (*Homarus americanus*) of HS headings 0306 and 1605, 600 tonnes of mackerel and herring (*Scomber scombrus*, *Clupea harengus*) of HS headings 0303, 0304, 0305 and 1604 and 250 tonnes of mussels (*Mytilus edulis*) of HS headings 0307 and 1605 originating in third countries and processed in Saint Pierre and Miquelon for export to the Union.
- (3) Saint Pierre and Miquelon has based its request on the continuing shortfall in the sources of supply of other fish.
- (4) This derogation is justified pursuant to Article 37(1) and (5)(a) and (b) of Annex III to Decision 2001/822/EC, in particular as regards the development of an existing local industry, the economic and social impact and the particular situation of Saint Pierre and Miquelon. As the derogation is being granted for products which involve actual processing, it will contribute to the development of an existing industry. The derogation is essential for the success of the plant in question, which employs a significant number of staff. Therefore current production should be complemented with new species.
- (5) Subject to compliance with certain conditions relating to quantities, surveillance and duration, the derogation would not cause serious injury to an established industry of the Union or one or more of the Member States.

⁽¹⁾ OJ L 314, 30.11.2001, p. 1.

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- (6) As regards products falling within HS heading 0303, however, it follows from the general scheme of Article 37 that a derogation from the rules of origin set out in Annex III to Decision 2001/822/EC may not be granted for these products. These products do not in fact contribute to the development of an existing industry because they are subject of packaging operations, which are not in the nature of genuinely industrial activities.

- (7) The derogation should also not be granted for fresh and frozen fillets of mackerel and herrings of HS heading 0304 since associated filleting operations are characterised by increasingly high levels of mechanisation. The use of labour force in the filleting operations turns out to be too insignificant to have an impact on the employment level. Processing those products will therefore not contribute to the development of the existing industry and any derogation in their favour is not justified.

- (8) As regards mackerel and herring of HS headings 0305 and 1604 the derogation should cover only smoked and processed mackerel and herring. To allow the local industry to fully benefit from the regular and qualitative supply of raw materials and to offer a complementary activity during low season thus generating an economy of scale for the local industry, the requested annual quantity of 600 tonnes should be granted for those products.

- (9) 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. To ensure an efficient management, those rules should be applied *mutatis mutandis* to the management of the quantities in respect of which the derogation in question is granted.

- (10) As Decision 2001/822/EC expires on 31 December 2013, it should be laid down that the derogation will continue to apply after 31 December 2013 if a new decision is adopted on the association of the overseas countries and territories with the European Community or if Decision 2001/822/EC is extended.

- (11) 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, the fishery products processed in Saint Pierre and Miquelon which are listed in the Annex to this Decision shall be regarded as originating in Saint Pierre and Miquelon where they are obtained from non-originating fish, in accordance with the terms of this Decision.

⁽¹⁾ OJ L 253, 11.10.1993, p. 1.



Article 2

The derogation provided for in Article 1 shall apply to the fishery products and to the annual quantities shown in the Annex which are imported into the Union from Saint Pierre and Miquelon during the period from 1 February 2011 to 31 January 2019.

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 quantities set out in the Annex to this Decision.

Article 4

The customs authorities of Saint Pierre and Miquelon shall take the necessary steps to carry out quantitative checks on exports of the products referred to in Article 1.

To that end, all the certificates they issue pursuant to this Decision shall bear a reference to it.

The competent authorities of Saint Pierre and Miquelon shall forward to the Commission every 3 months a 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 certificates issued under this Decision shall contain one of the following entries:

- ‘Derogation — Decision 2011/122/EU’,
- ‘Dérogation — Décision 2011/122/UE’.

Article 6

This Decision shall apply from 1 February 2011 until 31 January 2019.

However, if a new preferential regime is adopted replacing Decision 2001/822/EC beyond 31 December 2013, or if the current regime is extended, this Decision shall continue to apply until the date of expiry of the new regime or of the extended current regime but in any case not later than 31 January 2019.

Article 7

This Decision is addressed to the Member States.

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ANNEX

FISHERY PRODUCTS PROCESSED IN SAINT PIERRE AND MIQUELON

Serial No	HS Code	Description of goods	Period	Total annual quantity (tonnes)
09.1623	ex 0306 12 ex 1605 30	Frozen lobster (<i>Homarus americanus</i>), whole, cooked. Frozen lobster (<i>Homarus americanus</i>), in pieces, cooked or fresh. Frozen lobster meat (<i>Homarus americanus</i>), cooked or fresh. Prepared meals of lobster meat (<i>Homarus americanus</i>), including meals ready for consumption.	1.2.2011 to 31.1.2019	225
09.1624	ex 0305 42 ex 0305 49 ex 1604 12 ex 1604 15 ex 1604 20	Smoked fillets of herrings (<i>Clupea harengus</i>) or mackerel (<i>Scomber scombrus</i>). Prepared or preserved herrings (<i>Clupea harengus</i>) or mackerel (<i>Scomber scombrus</i>).	1.2.2011 to 31.1.2019	600
09.1625	► <u>C1</u> ex 1605 90 ◀	Frozen mussels (<i>Mytilus edulis</i>), cooked, whether in shell or not. Prepared or preserved mussels (<i>Mytilus edulis</i>), and meals containing mussels (<i>Mytilus edulis</i>), including meals ready for consumption.	1.2.2011 to 31.1.2019	250