

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(90) 280 final

Brussels, 3 July 1990

Proposal for a  
COUNCIL DECISION

on the procedure concerning derogations from the  
rules of origin set out in Protocol No 1 to the  
ACP-EEC Convention

---

(presented by the Commission)



## Explanatory Note

### Background

1. The trade provisions of the Lomé Convention grant a preferential tariff treatment to products which are originating in the ACP States. The definition of 'originating products' is laid down in Protocol N° 1 to the Convention.
2. Article 31 of the same Protocol allows derogations from this definition on a case by case basis, provided that certain conditions are fulfilled, in particular:
  - 2.1 a derogation has to be justified for developing existing ACP Industries, or for creating new ones;
  - 2.2 serious injury should not be caused to an established Community Industry.

Derogations are adopted by the ACP-EEC Customs Cooperation Committee, which is set up under Article 30 of the Protocol.

### Reason for the proposal

3. The fourth Convention has also introduced a new provision in the derogation procedure to the effect that any ACP request for a derogation is tacitly approved if the Community has not reacted within 60 working days from receiving the request. This new condition makes it necessary to improve and speed up the decision-making process in the Community, given that in the past a decision by the Community took much longer than 3 months (sometimes even one year).
4. The Council, conscious of this need, unanimously decided to delegate to the Committee on Origin the competence to adopt the Community common position on ACP requests for derogations from the rules of origin. (see Annex I to this Explanatory Note - available in French only).
5. The present procedure by which this Committee acts, which is laid down in Article 14 of Council Regulation No 802/68 (1), is not appropriate for this specific task. The Committee on Origin acts in accordance with the rules procedure, which gives the Commission the power to adopt a measure after it has received an opinion on the basis of a qualified majority in the Committee. Otherwise, the draft has to be referred to the Council, which has three months to take a decision. This makes it difficult or even impossible to respect the new three month period laid down in Protocol No 1. It is therefore proposed to adopt a different procedure for the derogations in question.

---

(1) O.J. No L 148, 28.6.1968.

Proposed procedure

6. The Commission proposes to authorize the Origin Committee to act in this field according to the management committee procedure, as laid down in Article 2, procedure II, variant (a) of Council Decision 87/373/EEC of 13.7.1987 (O.J. No L 197 of 18.7.1987).
  
7. The management committee procedure entitles the Commission to adopt measures which are immediately applicable. However, if these measures are not in accordance with the opinion of the Committee, their application is deferred and they must be submitted to the Council. The Council can then modify them acting by qualified majority and it is proposed that this has to be done within twenty working days so as to respect the deadline of 60 days fixed by the Convention.  
  
In the absence of a modification by the Council within the twenty working days, the measures proposed by the Commission constitute the Community common position and are then transmitted to the ACP States.
  
8. As a further measure aimed at simplifying and accelerating the administrative work involved, a standard text will be used for approving a derogation, of which a specimen is given in Annex II to this Explanatory Note.

Proposal for a  
COUNCIL DECISION

on the procedure concerning derogations  
from the rules of origin  
set out in Protocol No 1 to the ACP-EEC Convention

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,  
and in particular Article 113 thereof,

Having regard to the proposal from the Commission,

Whereas the fourth ACP-EEC Convention was signed on 15 December 1989 in  
Lomé;

Whereas Article 2 of Decision 2/90 of the ACP-EEC Council of Ministers (1)  
lays down that Protocol No 1 to the Convention applies from 1 March 1990;  
whereas Article 31 of the said Protocol provides that requests of the ACP  
States for derogations from the rules of origin of the same Protocol shall  
be deemed to have been accepted if the Community does not inform the ACP  
States of its position on the requests within 60 working days from their  
reception by the EEC Co-Chairman of the ACP-EEC Customs Cooperation  
Committee, set up by Article 30 of Protocol No 1,

Whereas the appropriate procedure ensuring timely decision-making by the  
Community in this field is the procedure laid down in Article 2, procedure  
II, variant (a) of Council Decision 87/373/EEC(2),

Whereas it is therefore necessary to adopt a procedure ensuring that the  
Community position can be adopted and communicated to the ACP States  
within the 60 working days period,

---

(1) OJ No L 84, 30.3.1990, p.2.

(2) OJ No L 197, 18.7.1987, p.33.

Whereas Council Regulation (EEC, EURATOM) No 1182/71<sup>(3)</sup> lays down the rules applicable to periods, dates and terms,

HAS DECIDED AS FOLLOWS:

Article 1

The common position of the Community with regard to a request presented by the ACP States derogation from the rules of origin laid down in Protocol No 1 to the ACP-EEC Convention shall be adopted by the Commission in accordance with the procedure laid down in Article 2.

Article 2

The representative of the Commission shall submit to the Committee on Origin set up by Council Regulation (EEC) No 802/68<sup>(4)</sup> (the "Committee") a draft common position within 20 working days after the receipt of a request for derogation by the EEC Co-Chairman of the EEC-ACP Customs Cooperation Committee.

The Committee shall deliver an opinion on the draft within twenty working days from the date on which it is submitted.

---

(3) OJ No L 124, 8.6.1971, p.1.

(4) OJ No L 148, 28.6.1968, p.1.

The opinion shall be delivered by the majority laid down in Article 148(2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission.

The votes of the representatives shall be weighted in the manner set out in that Article. The Chairman shall not vote.

The Commission shall adopt the common position and transmit it immediately to the ACP States. However, if the common position is not in accordance with the opinion of the Committee, it shall be submitted by the Commission to the Council forthwith. In that event the Commission shall defer its transmission to the ACP States for a period of twenty working days from the date of the vote in the Committee.

The Council, acting by a qualified majority, may adopt a different common position within the time period referred to in the previous paragraph.

#### Article 3

The definition of working days for the purposes of this Decision shall be that laid down in Council Regulation (EEC, EURATOM) No 1182/71.

#### Article 4

This Decision shall take effect on the date of its publication in the Official Journal of the European Communities.

Done at Brussels,

For The Council

Annex I to the Explanatory Note  
Annexe I à l'Exposé des motifs

ANNEXE II

REGLES D'ORIGINE

DEROGATIONS

- a) abaissement du critere de valeur ajoutée de 60 % à 45 % ;
- b) Préparation d'un formulaire-type pour les demandes de dérogation ;
- c) définition exacte de la date à laquelle la procédure est engagée ;
- d) délégation de compétence au Comité de l'Origine ;
- e) approbation automatique des requêtes auxquelles la Communauté n'a pas répondu dans un délai de trois mois <sup>(1)</sup> ;
- f) allongement de la durée des dérogations, pour une durée normale de 5 années, avec possibilité de prolongation éventuelle.

---

(1) La Commission transmettra les requêtes pour examen au Comité de l'Origine dans un délai d'un mois à compter de leur réception ; le Comité de l'Origine se prononcera sur ces requêtes dans un délai de deux mois à compter de sa saisine.





Whereas the requested derogation is justified under the relevant provisions of Protocol No 1 and it cannot cause serious injury to an established Community industry, provided that certain conditions relating to quantities, surveillance or duration are respected,

HAS DECIDED AS FOLLOWS:

#### Article 1

Notwithstanding the special provisions of [Article of/ Annex to] Protocol No 1, [description of the product or the 'products listed in the Annex to this Decision'] manufactured in [ACP State] [In case of a single product: and falling within NC Code ....] shall be considered as originating in the ACP States subject to the following conditions.

#### Article 2

The derogation provided for in Article 1 shall relate to [quantity] per year exported from [ACP State] to the Community between [ 19 and 19 ] [This derogation may be tacitly renewed for [No] consecutive period(s) of [No] year(s) subject to the right of each party to denounce it by written notification given one month before the date on which [any one of these][this] period(s) expire(s).]

#### Article 3

The competent authorities of [ACP State] shall take the necessary steps to carry out quantitative checks on exports of the products referred to in Article 2 and shall forward to the Commission every three months a statement of the quantities in respect of which movement certificates EUR.1 have been issued pursuant to this Decision.

**Article 4**

The ACP States, the Community and the Member States shall be bound, each to the extent to which it is concerned, to take the measures necessary to implement this Decision.

**Article 5**

This Decision shall enter into force on the day of its adoption.

Done at

For the ACP-EEC Customs  
Cooperation Committee

The Chairmen

**Financial sheet**

---

**This proposal only concerns procedural matters. It has no direct effect on the budget.**

SME IMPACT STATEMENT

The present proposal only concerns procedural matters and it has not direct impact on employment and competition in the Community.

COM(90) 280 final

# DOCUMENTS

**EN**

**19**

---

Catalogue number : CB-CO-90-307-EN-C  
ISBN 92-77-61619-9

PRICE	1 - 30 pages: 3.50 ECU	per additional 10 pages: 1.25 ECU
-------	------------------------	-----------------------------------

Office for Official Publications of the European Communities  
L-2985 Luxembourg