

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(81) 40 final

Brussels, 9 February 1981

Proposal for a
COUNCIL REGULATION (EEC)

Laying down provisions for granting derogations from the definition
of the concept of originating products under the second Convention
of Lomé

(submitted to the Council by the Commission)

COM(81) 40 final



EXPLANATORY NOTE

During the application of the Lomé Convention which expired on 29 February 1980 the ACP States presented a number of requests for derogations from the origin rules contained in the Origin Protocol. The Community agreed in all cases to these requests.

However, the ACP States complained about the long period taken to consider their requests and to put the derogations into effect.

There are basically 4 reasons for this delay:

1. The elements presented justifying a derogation request have not been sufficient basis for a reasonable judgement of the case. Supplementary information has been slow in forthcoming.
2. The cumbersome Community procedure for arriving at a common position.
3. The complex ACP-EEC procedures for adopting decisions.
4. The procedural delays for applying such decisions in the Community.

In the framework of the negotiations of the 1979 Lomé Convention the procedure concerning derogations to the origin rules was an important point of discussion and a number of procedural improvements have been included in the new Convention with a view to shortening the procedure from the moment a request for a derogation has been presented to the Community until its application. Thus the delay for the Community consideration of a request was reduced from 6 to 3 months as provided for in Article 30(6) of Protocol No. 1 concerning the definition of the concept of "originating products" and methods of administrative cooperation, which says that "the Committee shall take steps necessary to ensure that a decision is reached as quickly as possible and in any case not later than three months after referral to the Community ...".

.../...

Furthermore, the Community made the following declaration (Annex XXXVI to the 1979 Lomé Convention):

"The Community recognizes the special importance for the ACP States of implementing the measures for applying derogation decisions as swiftly as possible after their adoption.

It will introduce procedures which enable it to take such application measures in the shortest possible time, with a view notably to being able to deal with emergency situations, and within the context of Article 31 of the Protocol. "

It is evident that under the present procedures, neither the reduced delay of 3 months nor the commitment to speed up application procedures can be respected and that it is therefore necessary to provide for new and more rapid procedures within the Community. The Commission is of the opinion that the use of existing instruments rather than the creation of new ones will fulfil the requirement in this area.

The procedure embodied in this draft regulation is based upon the 'Comité de gestion' procedure as set out in Council Regulation 802/68 of 27 June 1968 on the concept of the origin of goods:

- With regard to the adoption of a common Community position on a derogation request in the ACP-EEC Customs Cooperation Committee the Origin Committee set up by Regulation 802/68 shall deliver an opinion on the measures to be taken, submitted to it by the Commission.
- After the Origin Committee has delivered an opinion, the Commission or where necessary the Council, shall adopt the draft on the measures to be taken, which is then to be submitted to the ACP States.
- Following the adoption of a Decision on a derogation by the ACP-EEC Customs Cooperation Committee the provisions concerning the enactment of the Decision in the Community will be taken by way of a Commission Regulation.

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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 Article 30 of Protocol No 1 to the second ACP-EEC Convention of Lomé provides that derogations from the provisions of the said Protocol may be adopted in respect of the definition of the concept of originating products where the development of existing industries or the creation of new industries justifies them and in accordance with terms of the said Article;

Whereas the same Article 30 provides that derogation decisions must be taken by the Customs Cooperation Committee established under the Convention not later than three months after referral to the Community and whereas procedures should accordingly be implemented to enable the Community to adhere to this deadline;

Whereas, in order to adhere to the deadlines referred to in Article 30(6) of Protocol No 1 to the Convention, the Community's position should be decided by the Commission, following the opinion of the Committee on Origin established under Council Regulation (EEC) No. 802/68 (1), and in accordance with a special procedure;

Whereas in its declaration in Annex XXXVI to the said Convention, the Community undertook to implement by expedited procedure the measures for applying derogation decisions;

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

HAS ADOPTED THIS REGULATION :

Article 1

Where a request for derogation submitted by an ACP State is referred to the Community in accordance with Article 30 of Protocol No. 1 to the second ACP-EEC Convention of Lomé, the Commission shall forward to the Committee on Origin set up under Regulation (EEC) No. 802/68 a draft of the provisions to be adopted. The Committee on Origin shall deliver an opinion on the draft within a time limit set by the Chairman having regard to the urgency of the matter. Decisions shall be taken by a majority of 45 votes, the votes of the Member States being weighted as stipulated in Article 148(2) of the Treaty. The Chairman shall not vote.

- 2(a) The Commission shall adopt the proposed provisions if they are in accordance with the opinion of the Committee on Origin.
 - (b) If the proposed provisions are not in accordance with the opinion of the Committee on Origin, the Commission may either accept that opinion or submit to the Council without delay a proposal on the provisions to be adopted. The Council shall act by a qualified majority.
 - (c) If, within one month of referral to it, the Council has not acted, the proposed provisions shall be adopted by the Commission.
3. The proposed provisions as adopted by the Commission or, where appropriate by the Council, shall constitute the Community's joint position; they shall be communicated forthwith to the ACP States.

Article 2

Derogation decisions taken by the Customs Cooperation Committee or, where appropriate, by the other institutions established under the second Convention of Lomé, shall be implemented in the Community by means of a Commission regulation.

Article 3

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council

The President

