



**SEVENTIETH ORDINARY SESSION OF THE COUNCIL
OF MINISTERS**

Abidjan, 20 - 21 June, 2013

**REGULATION C/REG.2/06/13 DETERMINING THE CUSTOMS
VALUE OF PRODUCTS IN ECOWAS**

THE COUNCIL OF MINISTERS,

MINDFUL of Articles 10, 11, and 12 of the ECOWAS Treaty as amended establishing the Council of Ministers and defining its composition and functions;

MINDFUL of Decision A/DEC.17/01/06 adopting the ECOWAS Common External Tariff,

MINDFUL of Decision A/DEC.14/01/06 on the creation, organization, and functioning of the joint ECOWAS-UEMOA committee for the management of the ECOWAS Common External Tariff;

MINDFUL of the Supplementary Act A/SA.1/06/09 on the amendment to Decision A/DEC.17/01/06 on the adoption of the ECOWAS Common External Tariff;

MINDFUL of Regulation C/REG.1/5/09 on the adoption of the 2007 version of the Harmonized Commodity Description and Coding System (HS);

MINDFUL of Regulation C/REG.1/06/13 defining the list comprising the categories of products contained in the ECOWAS Tariff and Statistical Nomenclature;

DETERMINED to implement the provisions of articles 35, 36, and 37, of the ECOWAS Treaty relating to the establishment of the ECOWAS Common External Tariff and concerning all products imported from third countries into member States, and in this regard determine the customs value of products in ECOWAS;

ON THE PROPOSAL of the Twelfth meeting of the joint ECOWAS-UEMOA committee for the management of the ECOWAS Common External Tariff held in Abidjan from 11 to 14 December 2012;

UPON THE RECOMMENDATION of the Fifty-first meeting of the Ministerial Committee on Trade, Customs, and Free Movement held in Praia on 18-19 March 2013.

ENACT

CHAPTER 1

Article 1: Definitions

1. In this Regulation:

- (a) "customs value of imported goods" means the value of goods for the purposes of levying duties and taxes contained in the Common External Tariff;
- (b) "produced" includes grown, manufactured and mined.
- (c) "identical goods" means goods which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearance would not preclude goods otherwise conforming to the definition from being regarded as identical;
- (d) "similar goods" means goods which, although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable. The quality of the goods, their reputation and the existence of a trademark are among the factors to be considered in determining whether goods are similar;
- (e) "identical goods" and "similar goods" do not include, as the case may be, goods which incorporate or reflect engineering, development, artwork, design work, and plans and sketches for which no adjustment has been made under paragraph 1(b)(iv) of Article 4 because such elements were undertaken in the Community;
- (f) goods shall not be regarded as "identical goods" or "similar goods" unless they were produced in the same country as the goods being valued;
- (g) goods produced by a different person shall be taken into account only when there are no identical goods or similar goods, as the case may be, produced by the same person as the goods being valued.
- (h) The expression "goods of the same class or kind" means goods which fall within a group or range of goods produced by a particular industry or industry sector, and includes identical or similar goods.
- (i) "Agreement" means the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994.

2. For the purposes of this Regulation, persons shall be deemed to be related only if:

- (a) they are officers or directors of one another's businesses;
- (b) they are legally recognized partners in business;
- (c) they are employer and employee;
- (d) any person directly or indirectly owns, controls or holds 5 per cent or more of the outstanding voting stock or shares of both of them;
- (e) one of them directly or indirectly controls the other;
- (f) both of them are directly or indirectly controlled by a third person;
- (g) together they directly or indirectly control a third person; or
- (h) they are members of the same family.

3. Persons who are associated in business with one another in that one is the sole agent, sole distributor or sole concessionaire, however described, of the other shall be deemed to be related for the purposes of this Agreement if they fall within the criteria of paragraph 2.

4. For the purposes of this Regulation, the term "person" applies, where appropriate, to a legal person.

Article 2: Method of Evaluation of Imported Goods

1. Articles 3, 5, through 10 define how the customs value of imported goods is to be determined under the provisions of this Regulation. The methods of valuation are set out in a sequential order of application. The primary method for customs valuation is defined in Article 3 and imported goods are to be valued in accordance with the provisions of this Article whenever the conditions prescribed therein are fulfilled.

2. Where the customs value cannot be determined under the provisions of Article 3, it is to be determined by proceeding sequentially through the succeeding Articles to the first such Article under which the customs value can be determined. Except as provided in Article 7, it is only when the customs value cannot be determined under the provisions of a particular Article that the provisions of the next Article in the sequence can be used.

3. If the importer does not request that the order of Articles 8 and 9 be reversed, the normal order of the sequence is to be followed. If the importer does so request but it then proves impossible to determine the customs value under the provisions of Article 9, the customs value is to be determined under the provisions of Article 8, if it can be so determined.

4. Where the customs value cannot be determined under the provisions of Articles 3, 5, through 9 it is to be determined under the provisions of Article 10 of this Regulation.

Article 3: Transaction Value of Imported Goods

1. The customs value of imported goods shall be the transaction value, that is the price actually paid or payable for the goods when sold for export to the Community adjusted in accordance with the provisions of Article 4, provided:

(a) that there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which:

- are imposed or required by law or by the public authorities in the country of importation;
- limit the geographical area in which the goods may be resold; or
- do not substantially affect the value of the goods;

(b) that the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;

- (c) that no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Article 4; and
 - (d) that the buyer and seller are not related, or where the buyer and seller are related, that the transaction value is acceptable for customs purposes under the provisions of paragraph 2 of this Article.
2. (a) In determining whether the transaction value is acceptable for the purposes of paragraph 1 of this Article, the fact that the buyer and the seller are related within the meaning of Article 1 shall not in itself be grounds for regarding the transaction value as unacceptable. In such case the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship did not influence the price. If, in the light of information provided by the importer or otherwise, the customs administration has grounds for considering that the relationship influenced the price, it shall communicate its grounds to the importer and the importer shall be given a reasonable opportunity to respond. If the importer so requests, the communication of the grounds shall be in writing.
- (b) In a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with the provisions of paragraph 1 of this Article whenever the importer demonstrates that such value closely approximates to one of the following occurring at or about the same time:
- (i) the transaction value in sales to unrelated buyers of identical or similar goods for export to the Community;
 - (ii) the customs value of identical or similar goods as determined under the provisions of Article 5;
 - (iii) the customs value of identical or similar goods as determined under the provisions of Article 6;
- (c) In applying the foregoing tests, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in Article 4 and costs incurred by the seller in sales in which the seller and the buyer are not related that are not incurred by the seller in sales in which the seller and the buyer are related.
- (d) The tests set forth in paragraph 2(b) are to be used at the initiative of the importer and only for comparison purposes. Substitute values may not be established under the provisions of paragraph 2(b).

Article 4: Components of Custom Value for Imported Goods

1. In determining the customs value under the provisions of Article 3, there shall be added to the price actually paid or payable for the imported goods:

- (a) the following, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods:
 - (i) commissions and brokerage, except buying commissions;
 - (ii) the cost of containers which are treated as being one for customs purposes with the goods in question;
 - (iii) the cost of packing whether for labour or materials;
 - (b) the value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable:
 - (i) materials, components, parts and similar items incorporated in the imported goods;
 - (ii) tools, dies, moulds and similar items used in the production of the imported goods;
 - (iii) materials consumed in the production of the imported goods;
 - (iv) engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the country of importation and necessary for the production of the imported goods;
 - (c) royalties and license fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;
 - (d) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller.
 - (e) the cost of transport of the imported goods to the port or place of importation;
 - (f) loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation; and
 - (g) the cost of insurance.
2. Additions to the price actually paid or payable shall be made under this article only on the basis of objective and quantifiable data.
 3. No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this Article.

Article 5: Determination of Transaction Value of Imported Goods Based on Identical Goods

1. (a) If the customs value of the imported goods cannot be determined under the provisions of Article 3, the customs value shall be the transaction value of identical goods sold for export to the Community and exported at or about the same time as the goods being valued.
- (b) In applying this Article, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of identical goods sold at a different commercial level and/or in different quantities,

adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.

2. Where the costs and charges referred to in paragraph 1. (e), (f), (g), of Article 4 are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the identical goods in question arising from differences in distances and modes of transport.
3. If, in applying this Article, more than one transaction value of identical goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

Article 6 Determination of Transaction Value of Imported Goods Based on Similar Goods

1. (a) If the customs value of the imported goods cannot be determined under the provisions of Articles 3 and 5, the customs value shall be the transaction value of similar goods sold for export to the Community and exported at or about the same time as the goods being valued.
 - (b) In applying this Article, the transaction value of similar goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of similar goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.
2. Where the costs and charges referred to in paragraph 1. (e), (f), (g), of Article 4 are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the similar goods in question arising from differences in distances and modes of transport.
3. If, in applying this Article, more than one transaction value of similar goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

Article 7: Reverse Application of Custom Value

If the customs value of the imported goods cannot be determined under the provisions of Articles 3, 5 and 6, the customs value shall be determined under the provisions of Article 8 or, when the customs value cannot be determined under that Article, under the provisions of Article 9 except that, at the request of the importer, the order of application of Articles 8 and 9 shall be reversed.

Article 8: Custom Value of Imported Goods Based on Unit Price

1. (a) If the imported goods or identical or similar imported goods are sold in the Community in the condition as imported, the customs value of the imported goods under the provisions of this Article shall be based on the unit price at which the imported goods or identical or similar imported goods are so sold in the greatest aggregate quantity, at or about the time of the importation of the goods being valued, to persons who are not related to the persons from whom they buy such goods, subject to deductions for the following:
 - (i) either the commissions usually paid or agreed to be paid or the additions usually made for profit and general expenses in connection with sales in such country of imported goods of the same class or kind;
 - (ii) the usual costs of transport and insurance and associated costs incurred within the Community;
 - (iii) where appropriate, the costs and charges referred to in paragraph 1 e, f, g, of Article 4; and
 - (iv) the customs duties and other national taxes payable in the Community by reason of the importation or sale of the goods.
- (b) If neither the imported goods nor identical nor similar imported goods are sold at or about the time of importation of the goods being valued, the customs value shall, subject otherwise to the provisions of paragraph 1(a), be based on the unit price at which the imported goods or identical or similar imported goods are sold in the Community in the condition as imported at the earliest date after the importation of the goods being valued but before the expiration of 90 days after such importation.
2. If neither the imported goods nor identical nor similar imported goods are sold in the Community in the condition as imported, then, if the importer so requests, the customs value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons in the Community who are not related to the persons from whom they buy such goods, due allowance being made for the value added by such processing and the deductions provided for in paragraph 1(a).

Article 9: Custom Value of Imported Goods Based on Computed Value

1. The customs value of imported goods under the provisions of this Article shall be based on a computed value. Computed value shall consist of the sum of:
 - (a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;
 - (b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the Community;
 - (c) the cost or value of all other expenses necessary to reflect the valuation option under paragraph 1 (e), (f), (g) of Article 4.

2. No Member may require or compel any person not resident in the Community to produce for examination, or to allow access to, any account or other record for the purposes of determining a computed value. However, information supplied by the producer of the goods for the purposes of determining the customs value under the provisions of this Article may be verified in another country outside the Community by the authorities of a member state with the agreement of the producer and provided they give sufficient advance notice to the government of the country in question and the latter does not object to the investigation.

Article 10: Custom Value of Goods Based on International Best Practice

1. If the customs value of the imported goods cannot be determined under the provisions of Articles 3, 5, through 9, inclusive, the customs value shall be determined using reasonable means consistent with the principles and general provisions of this Agreement and of Article VII of GATT 1994 and on the basis of data available in the Community.

2. No customs value shall be determined under the provisions of this

Article on the basis of:

- (a) the selling price in the Community of goods produced in the Community;
 - (b) a system which provides for the acceptance for customs purposes of the higher of two alternative values;
 - (c) the price of goods on the domestic market of the country of exportation;
 - (d) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of Article 9;
 - (e) the price of the goods for export to a country other than the Community;
 - (f) minimum customs values; or
 - (g) arbitrary or fictitious values.
3. If the importer so requests, the importer shall be informed in writing of the customs value determined under the provisions of this Article and the method used to determine such value.

Article 11 : Conversion Rate

1. Where the conversion of currency is necessary for the determination of the customs value, the rate of exchange to be used shall be that duly published by the Central Bank of each member state where such institution exist or by the Central Bank of West African States (BCEAO) at the date of lodgement of the Customs declaration.

Article 12: Confidentiality

All information which is by nature confidential or which is provided on a confidential basis for the purposes of customs valuation shall be treated as strictly confidential by the authorities concerned who shall not disclose it without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.

Article 13: Right of Recourse

1. In case of dispute, concerning the determination of the customs value, the importer or any other person liable for the payment of the duties contained in the common external tariff, has a right of appeal without penalty.
2. An initial right of appeal without penalty may be to the customs administration.
3. Notice of the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing. The appellant shall also be informed of any rights of further appeal.
4. If the dispute is brought before a judicial authority, the rules of court procedure shall be those in force in each Member State.

Article 14: Guarantee

If, in the course of determining the customs value of imported goods, it becomes necessary to delay the final determination of such customs value, the importer of the goods shall nevertheless be able to withdraw them from customs if, where so required, the importer provides sufficient guarantee in the form of a surety, a deposit or some other appropriate instrument, covering the ultimate payment of customs duties for which the goods may be liable.

Article 15: Written Request for Explanation

1. Upon written request, the importer shall have the right to an explanation in writing from the customs administration as to how the customs value of the importer's goods was determined.

Article 16: Proof of Custom Value of Imported Goods

Nothing in this regulation shall be construed as restricting or calling into question the rights of a customs administration to satisfy itself as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes

Where a declaration has been presented and the customs administration has reason to doubt the truth or accuracy of the information or documents provided in support of this declaration, the customs administration may ask the importer to provide further explanation, including documents or other evidence, showing that the declared value represents the total amount actually paid or payable for the imported goods, adjusted in accordance with Article 4. If, after receiving further information, or lack of response, the customs administration still has reasonable doubts about the veracity or accuracy of the declared value, it may be considered, taking into account the provisions of Article 13, the customs value of imported goods cannot be determined in accordance with the provisions of Article 3. Before making a final decision, the customs administration shall communicate to the importer, in writing if the request is made, the reasons for doubting the truth or accuracy of the information or documents provided and the importer shall be given a reasonable opportunity to respond. Once a final

decision has been made, the customs administration shall notify the importer in writing, and the reasons for the decision.

Article 16: Annex to this Regulation

The notes contained in the Annex to this Regulation form an integral part of the regulation. The articles of this regulation shall be read and applied together with the notes contained in the annex.

CHAPTER II: FINAL PROVISIONS

Article 17: Publication

This Regulation shall be published by the Commission in the official journal of the community within thirty (30) days of its signature by the President of the Council of Ministers. It shall equally be published by each member state in her official journal thirty (30) days after notification by the Commission.

DONE AT ABIDJAN THIS 21ST DAY OF JUNE 2013

A large, stylized handwritten signature in black ink, written over a horizontal dotted line. The signature is cursive and appears to be 'Charles Koffi Diby'.

H.E. CHARLES KOFFI DIBY

CHAIRMAN

FOR COUNCIL