



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

Abidjan, 20 - 21 June 2013

**REGULATION C/REG.4/06/13 RELATING
TO SAFEGUARD MEASURES**

THE COUNCIL OF MINISTERS,

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

MINDFUL of Articles 35, 36, and 37 of the said Treaty relating to trade liberalization, customs duties, and the common external tariff concerning all imported products from third countries into Member States with the view to establishing a customs union in the community;

MINDFUL of Decision A/DEC.17/10/06 adopting the ECOWAS Common External Tariff, notably article 9 of the said Decision authorizing the Council of Minister to determine through a Regulation the list of products, tax base, rate and duration of the imposition of the Import safeguard tax;

CONSIDERING that safeguard measures constitute an additional protection mechanism to protect community production;

DESIROUS of ensuring a smooth implementation of the Common External Tariff by the adoption within this framework of a mechanism for the application of the Import safeguard tax, and in this regard, adopt safeguard measures to achieve the above mentioned objectives ;

ON THE PROPOSAL of the 13th meeting of the joint ECOWAS-UEMOA committee for the management of the ECOWAS common external tariff held in Dakar on 29-30 April, 2013:

UPON THE RECOMMENDATION of the fifty second session of the Technical Committee on Trade, Customs, and Free movement held in Dakar, on 02-03 May 2013; H

ENACTS

CHAPTER 1: GENERAL PRINCIPLES

Article 1: Definitions

For the purpose of this Regulation:

Authority: the Authority of Heads of States and Government of member States of the Community created by article 7 of the ECOWAS Revised Treaty;

ECOWAS means the Economic Community of West African States, the creation of which was reaffirmed by Article 2 of the Revised Treaty signed in Cotonou on 24 July 1993;

Commission means the ECOWAS Commission created by article 17 of the ECOWAS Revised Treaty as amended by Supplementary Protocol A/SP1/06/06 on the amendment of the said treaty;

Community means the Economic Community of West African States, the creation of which was reaffirmed by article 2 of the Revised Treaty signed in Cotonou on 24 July 1993;

Community Industry means all producers of identical, like or directly competing products operating within the territory of the Community or producers whose collective productions of, like or directly competing products account for a major proportion of the total community production of such products.

Council: the Council of Ministers created by article 10 of the ECOWAS Revised Treaty as amended by Supplementary Protocol A/SP1/06/06;

Member State: Member State of the Community;

“Serious injury: means a significant overall impairment in the position of an industry within the Community.”

Third countries: countries other than Member States of the Community;

“Threat of serious injury”: means a serious injury that is clearly imminent based on facts and not merely on allegation, conjecture or remote possibility;

Treaty: the Revised ECOWAS Treaty signed in Cotonou on 24th July 1993 and all its subsequent amendments.

Article 2: Establishment and Objective of safeguard measures

1. It is hereby established within ECOWAS safeguard measures in the application of the provisions of article 9 of Decision A/DEC17/10/06 adopting the ECOWAS Common External Tariff;
2. The objective of the safeguard measures under paragraph 1 is to protect a specific community industry against increased imports of any product which is causing or threatening to cause a serious injury to the said industry.

Article 3: Scope

The scope of the safeguard measures shall cover imports of products originating from third countries for home consumption within the Community.

Article 4: Conditions for application

These safeguard measures shall apply if the following conditions exist:

- a. An increase in volume either in absolute figures or in relation to local production of a product similar to, or competing with the local production ;
- b. Existence of a serious injury or threat of serious injury due to the increase in imports ;
- c. A causal link between the increase in imports and the injury.

Article 5: Application of safeguard measures

- a. These safeguard measures shall be applicable on the Community territory as much as necessary, to prevent or remedy a serious injury and facilitate adjustment in the industry concerned.
- b. The safeguard measures may be applied in the form of a quantitative restriction, or additional duty.
- c. The Community may apply a safeguard measure referred to in paragraph 1 above as a single unit or on behalf of a member State.
- d. When the community applies a safeguard measure as a single unit, all the requirements for the determination of serious injury or threat thereof under this Regulation shall be based on the conditions existing in the Community as a whole.
- e. When a safeguard measure is applied on behalf of a member State, all the requirements for the determination of serious injury or threat thereof shall be based on the conditions existing in that member State and the measure shall be limited to that member State.

Article 6: Assessment and collection of revenue from Safeguard measures

- a. Where the safeguard measure takes the form of an additional duty, the said duty shall be based on the customs value of the product concerned.

- b. The procedure for assessment and collection of the revenues from the safeguard measures shall be the same as in the case of the Community Levy (CL)

Article 7 : Payment of Revenue

Revenues from safeguard measures shall be paid into a special fund to be created by the Authority of Heads of States and Government

CHAPTER II : PROCEDURE FOR COMMUNITY INFORMATION AND CONSULTATION

Article 8: Information on Safeguard Measures

Where trends in imports call for safeguard measures, any Member State can inform the Commission. Information transmitted by one of the Member States and which can warrant the application of safeguard measures shall cover the following:

- a) Imports, where such imports have significantly increased in volume either in absolute figures or in relation to local production or consumption;
- b) The import value, especially in case of erratic fluctuations or significant drop compared to the value of an identical, similar or competing product;
- c) The consequent impact for producers of the Community as reflected in the following elements:
 - Production ;
 - Capacity utilisation;
 - Stocks ;
 - Sales ;
 - Market share;
 - Price and inflexibility related to the increase in prices ;
 - Profits ;
 - Returns on invested capital ;
 - Liquidity flow ;
 - Employment.
- d) Factors other than trends in imports which are causing or are likely to cause injury to community producers concerned.

Article 9 : Creation of National Committee

In this regard, a national committee to be created by the Council of Ministers through a regulation shall receive the dossier from the industry concerned.

Article 10: Supplementary Measures

When a threat of serious injury is observed, the Commission shall examine whether it is clearly foreseeable that such a threat is likely to develop into a real injury. In this regard, the Commission shall also take into account elements such as:

- a) The rate of increase in exports to the Community ;
- b) The export capacity of the country of origin or export as it stands or is likely to be in the foreseeable future and the likelihood that exports generated by this capacity shall be used for exports to the community.

Article 11: Transmission to Member States

The Commission shall transmit the information referred to in article 9 and 10 to Member States.

CHAPTER III : INVESTIGATION PROCEDURE

Article 12:

- a. Prior to the application of any safeguard measure, the Commission shall inform Member States of the initiation of an investigation procedure.
- b. The Commission, shall inform within a reasonable time, all interested parties in each Member State, particularly producers, importers and exporters and shall gather their views on the application of a safeguard measure.
- c. The CET Management Committee shall be consulted before the implementation of all safeguard measures imposed pursuant to this Regulation. In this regard the Commission shall prepare a report which shall be submitted to the CET Management Committee for their opinion.

Article 13: Confidentiality

- a. Information received by the Commission or gathered from the investigation procedure shall be confidential.
- b. However, when the need arises, Member States and interested parties that have provided confidential information may be requested to furnish a non confidential summary thereof.

Article 14: Publication of Notice

- a. Where it appears, based on its appreciation of information provided pursuant to article 9, that there is sufficient evidence to justify the initiation of an investigation, the Commission shall proceed as follows:

The Commission shall publish a Notice informing Member States of the initiation of an investigation within 45 days of receiving the information. The Notice shall contain a summary of the information received and shall request Member States to gather from the interested parties all the information and opinions and to transmit them in writing to the Commission. The notice shall also set the time frames within which such information must be transmitted to the Commission as well as modalities for cooperation between Member States and the Commission during the investigation.

- b. The Commission may directly verify the information and hear any interested party.

Article 15: Report of Investigation

- a. At the end of the investigation under article 14 of this Regulation, the Commission shall prepare a report to the CET Management Committee for advice.
- b. Where within twelve (12) months of the initiation of the investigation, the Commission considers that a community safeguard measure is not necessary, the investigation shall be terminated after consultation with the CET Management Committee.
- c. The decision to terminate the investigation must include an outline of findings of the investigation and a summary of the reasons behind such a decision which shall be published.
- d. If a community safeguard measure is necessary, the Council of Ministers shall take the necessary decisions within a time frame that cannot exceed twelve (12) months starting from the initiation of the investigation after consulting the CET Management Committee.
- e. All decisions referred to in this article to terminate the investigation shall be taken based on the report stated in article 14 of this Regulation.

CHAPTER IV: IMPLEMENTATION OF SAFEGUARD MEASURES

Article 16: Provisional safeguard measures

- a. Under critical circumstances where any delay may cause an irreversible or irremediable injury, the Council of Ministers shall take provisional safeguard measure after it had been determined on preliminary basis that there is clear evidence suggesting that an increase in import has caused or is threatening to cause a serious injury.
- b. The provisional safeguard measure shall be applied during a period not exceeding 200 days. Such measures shall take the form of an increase in customs duties which shall be refunded if, after the investigation, the injury or threat of injury is not established.

Article 17: Duration and review of safeguard measures

- a. With the exception of cases defined in article 16 above, a safeguard measure shall apply only during a period necessary to prevent or remedy a serious injury and facilitate adjustment on the part of the Community producers. This period shall not exceed four years.
- b. Where at the end of this period, it is proven that the safeguard is still necessary to prevent or remedy an injury, the initial imposition period may be extended by a maximum period of six (6) years.

- c. The extension measures shall be adopted under the conditions stipulated in articles 9 to 17 of this Regulation. Any measure whose duration shall be extended cannot be more restrictive than what it was at end of the initial period.

Article 18: Consultation by the Commission

- a. During the application of a safeguard measure, the Commission shall on its own initiative or that of a Member State initiate consultations with the Member States. With the exception of provisional safeguard measures, these consultations shall be held at the latest by the middle of the application period of the measure.
- b. Pursuant to these consultations, the CET Management Committee shall:
- Assess the effects of the measure;
 - Examine the rationale for maintaining, amending or extending the measure;
 - advise on liberalisation measures as well as the implementation conditions.
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- c. The safeguard measures shall be amended or repealed, subject to the same conditions under which they were enacted.

Article 19: New Safeguard Measure

- a. A new safeguard measure may be applied to the import of a product that had already been subject to such a measure after a period equal to half of that during which this measure has been previously applied, provided that the period of non application is at least two (2) years.
- b. The provisions of this article shall be applied to measures taken under the provision of article 16 of this Regulation.

CHAPTER V: FINAL PROVISIONS

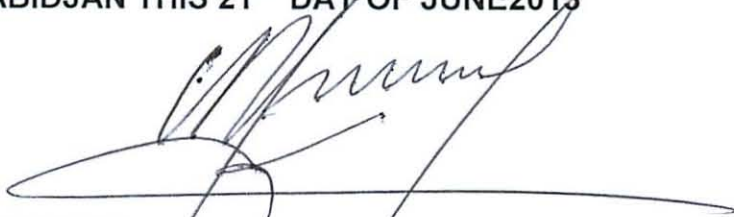
Article 20 **Submission of Annual Report**

- a. The Commission shall submit to the Council of Ministers on an annual basis a report on the application of safeguard measures.
- b. The Commission shall transmit the necessary notifications through the appropriate channels to the WTO Committee on Safeguards. M

Article 21: Entry Into Force and 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



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H.E. CHARLES KOFFI DIBY

CHAIRMAN

FOR COUNCIL