



**REGULATION C/REG.1/09/13 on Supplementary Protection
Measures (SPM) for the Implementation of the ECOWAS
Common External Tariff**

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 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 a view to establishing a customs union in the Community;

Mindful of Decision A/DEC.17/01/06 of the 12th January 2006 on the adoption of 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;

Recognizing that certain sectors in some of the Member States might experience increases in imports resulting from the adoption of the CET;

Recognizing the need for a harmonious transition to the ECOWAS CET and **emphasizing** the need for a relatively simple and flexible mechanism that is easy to apply;

Convinced that ECOWAS Supplementary protection measures constitute an additional protection mechanism to protect productions within the Community;

Upon the proposal of the 14th meeting of the joint ECOWAS-UEMOA committee for the management of the ECOWAS common external tariff held in Abuja on 23-24 September, 2013;

Upon the recommendation of the 54th session of the Technical Committee on Trade, Customs, and Free movement held in Abuja, on 25 September, 2013;

Having met in an extraordinary session of the Council of Ministers of Finance, Integration and Trade on 30th September 2013 in Abidjan;

ENACTS:

Article 1 – Definitions

For the purpose of this Regulation:

“**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;

“**Council**” means the Council of Ministers established by article 10 of the ECOWAS Revised Treaty as amended by Supplementary Protocol A/SP1/06/06;

“**MFN duty**” means Duty applied to the Most Favoured Nation

“**Member State**” means Member State of the Community;

“**Third countries**” mean territories other than the customs territory of the Member States of the Community;

“**Treaty**” means the ECOWAS Revised Treaty signed in Cotonou on 24 July 1993 and all subsequent amendments

“**CET**” means ECOWAS Common External Tariff as adopted by Decision A/DEC.17/01/06 of 12 January 2006;

“**UEMOA**” means West African Economic and Monetary Union;

“**WTO**” means World Trade Organisation;

Article 2 – Objective

1. This Regulation establishes an Import Adjustment Tax and a Supplementary Protection Tax applicable to goods originating from third countries. Member States may have recourse to these taxes without prejudice to the duties and taxes contained in the ECOWAS CET.

2. In the application of the provisions in paragraph 1 of this Article, Member States can apply MFN duties which are different from those defined in the CET for not more than three percent (3%) of the tariff lines during a period of five years from the date of entry into force of this Regulation.

Article 3 – Import Adjustment Tax

1. The Import Adjustment Tax is a temporary tax which enables adjustment to be made to the levels of the ECOWAS CET. It is applied exclusively to goods originating from third countries during a period of five (5) years from the date of adoption of this Regulation.

2. The Import Adjustment Tax can only be applied when the MFN duty specified in the ECOWAS CET is lower than the MFN duty applied by a Member State at the date of the entry into of this Regulation.

3. Notwithstanding paragraph 2 of this Article, the Import Adjustment Tax can be applied to products listed in an Annex attached to this Regulation.

4. The maximum level of the Import Adjustment Tax is the difference between the MFN duty applied by a Member State and the ECOWAS CET at the date of the entry into force of this Regulation.

5. A Member State wishing to apply an Import Adjustment Tax shall notify the Commission within thirty (30) days and the Commission shall inform all Member States of same. The notification shall comprise the following information:

- a) products affected;
- b) corresponding tariff lines in the ECOWAS CET;
- c) current applied rate in national tariff;
- d) level of Adjustment Tax;
- e) final MFN duty with Adjustment Tax;
- f) expected duration of the Adjustment Tax;
- g) proposed time schedule for reduction and eventual removal.

6. Member States shall not resort to an Import Adjustment Tax if it did not notify the Commission within thirty (30) days of the intention to apply the tax.

7. The Commission shall take the necessary measures to ensure respect for the conditions of this tax within twenty (20) days.

Article 4 – Supplementary Protection Tax

1. The Supplementary Protection Tax is an additional duty to the ECOWAS CET that a Member State can apply to goods imported from third countries when:

- (a) the increase in the volume of imports of a product entering the customs territory of a Member State during any year equals or exceeds twenty five percent (25%) of the average imports during the last three preceding years for which data are available,
 - (b) the average Cost, Insurance and Freight (CIF) import price of shipments entering the customs territory of a Member State during any month, expressed in terms of its domestic currency, falls below eighty percent (80%) of the average c.i.f. import price of the last three years for which data are available.
2. The calculations required for paragraph 1 of this Article shall be on the basis of MFN imports only.
3. Where, formally, the conditions of paragraph 1(a) or 1(b) are met, but the absolute level of MFN imports is manifestly negligible in relation to national production and consumption, the Supplementary Protection Tax shall not be applied.
4. Member States are free to determine the level of Supplementary Protection Tax consistent with their WTO commitments. However, the maximum MFN duty including the Import Adjustment tax and the Supplementary Protection Tax shall not exceed seventy percent (70%).
5. The Supplementary Protection Tax may be maintained for a maximum period of two (2) years from the initial invocation of the measure in case the conditions in paragraph 1(a) are met, and for a maximum period of one (1) year in case the conditions in paragraph 1(b) are met.

Article 5 – Operation of the Supplementary Protection Tax

1. The operation of the Supplementary Protection Tax shall be carried out in a transparent manner. Hence:
- (a) When the conditions of paragraph 1(a) or 1(b) of Article 4 have been met, and a Member State has the intention to apply a Supplementary Protection Tax on one or more tariff lines, it shall first consult the Commission to explore alternative solutions. This consultation shall be undertaken on the basis of request for authorization submitted by the Member State.
 - (b) Where after consultations, the Member State still wishes to apply a higher duty than the ECOWAS CET, the ECOWAS Commission shall

seek the advice of the CET Management committee for the authorization of the application of the Supplementary Protection Tax.

2. The request for authorization under paragraph 1(a) above shall be supported with the following information:

- a. Proposed products and tariff lines affected;
- b. Trade statistics on the product(s) for the last three (3) years as well as calculations of averages of import volumes, or c.i.f. import prices, as the case may be;
- c. Proposed level of Supplementary Protection Tax and the applied MFN duty including Supplementary Protection Tax and the tax base
- d. The proposed period of imposition of the Supplementary Protection Tax;
- e. Other relevant information so that the Commission and Member States can be fully informed of potential actions that may be taken.

3. The Commission shall verify the information provided by a Member State, and may request additional information from that Member State. It shall take the necessary measures to ensure that a decision is reached within thirty (30) days from the meeting of the CET management committee.

4. The authorization to apply a Supplementary Protection Tax shall be published in the Official Journal of the Community.

Article 6 – Final provisions

1. Where a Member State breaches this Regulation a report shall be submitted to the ECOWAS Council of Ministers who would decide on appropriate measures.

2. In order to ensure the harmonized application of this Regulation, the ECOWAS Commission shall carry out an annual evaluation of the implementation of the provisions of this Regulation and submit the results of the evaluation to the Council of Ministers for its consideration.

3. The notifications to be made under Article 3 paragraph 6 and Article 5 paragraph 2 of this Regulation shall be made by the Competent Authority of each Member State following advice from a national committee.

4. The ECOWAS Commission is empowered to establish enforcement rules for the implementation of this Regulation.

5. This Regulation shall be published in the Official Journal of the Community within thirty (30) days of its signature by the Chairman of the Council of Ministers. It shall also be published by each Member State in its National Gazette within the same time frame.

Done in Abidjan this 30th day of September 2013



H.E. Charles Koffi DIBY

Chairman

For Council