



54TH ORDINARY SESSION OF THE AUTHORITY OF HEADS OF STATE AND GOVERNMENT OF ECOWAS

Abuja, 22ND DECEMBER, 2018

SUPPLEMENTARY ACT A/SA.7/12/18 FIXING COMMUNITY RULES OF ORIGIN AND PROCEDURES APPLICABLE TO GOODS ORIGINATING IN THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)

THE AUTHORITY OF HEADS OF STATE AND GOVERNMENT

HAVING REGARD TO articles 7, 8 and 9 of the ECOWAS Treaty on the establishment of the Authority of Heads of State and Government and defining its composition and functions;

HAVING REGARD TO articles 35, 54 and 55 of the revised treaty, on liberalization of trade, establishment and completion of customs and monetary union in the community,

HAVING REGARD TO the Supplementary Act A/SA.2/12/17 on the adoption of the ECOWAS customs code of 16th December 2017

HAVING REGARD TO the Supplementary Act A/SA.2/01/10 of 16th February 2010 on electronic transactions in the ECOWAS region

HAVING REGARD TO the Protocol A/P5/5/82 on the Mutual Administrative Assistance in customs matters Convention of 29th May 1982

WILLING to align the definition of the notion of products originating from members States to the rules of the World Trade Organization and modify;

ACKNOWLEDGING that a high degree of certainty on the origin of goods is crucial to the development of a strong industrial base and intra-community trade

AFFIRMING that a high degree of mutual trust between member States is of utmost importance;

MINDFUL OF the need to harmonize the integration programs of the Economic Community of West African States and the West African Economic and Monetary Union with a view to establish a unified regional economic zone in West Africa;

HAVE AGREED AS FOLLOWS:-

CHAPTER I: GENERAL PROVISIONS

ARTICLE ONE: DEFINITIONS

For the purpose of this Supplementary Act,

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« **Treaty** » means The Revised Treaty of the Economic Community of West African States, signed on 24th July 1993 in Cotonou.

« **Community** » means The Economic Community of West African States whose establishment was reaffirmed under article 2 of the Treaty.

« **Member State** » or « **Members States** » means A Member State of the Community

« **Authority** » means The Authority of Heads of State and Government established under article 7 of the Treaty

« **Council** » means The Community Council of Ministers, established under article 10 of the Treaty

« **Commission** » means The ECOWAS Commission established under article 17 of the Treaty;

« **Committee** » means **Technical Committee on Trade, Customs and Free Movement of People** established under article 22, paragraph 1 new, of the Supplementary Protocol A/SP.1/06/06 ;

« **Rules of origin** » means specific provisions put in place and implemented to determine the origin of goods and that should be applied in order to grant preferential tariff treatment or other trade policy measures;

« **Origin Criteria** » means conditions that should be fulfilled in relation to the manufacturing of goods so that the originating status of goods may turn out to conform to applicable rules of origin;

« **Invoice declaration of origin** » means an appropriate indication, relating to the origin of the goods written on the commercial invoice or any other document linked to the goods at the point of export by the manufacturer, producer, supplier, exporter or any other authorized person

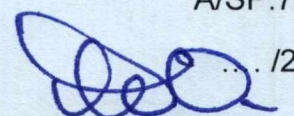
« **Certificate of origin** » means a prescribed form used in identifying the goods and wherein the authority or body empowered to issue it expressly certifies that the goods linked to the certificate are originating from the Member State.

« **Certification of origin** » means a series of procedures which allow to establish the originating status of goods by tendering a proof of origin;

« **Certified declaration of origin** » means a declaration of origin certified by an authority or a body empowered to do so;

« **Documentary proof of origin** » refers to a document or an attestation (in paper or electronic format) that serve as evidence to the fact that the goods linked to it conform to the criteria of origin in accordance with the applicable rules of origin. It can be a certificate of origin, a self-issued certificate of origin or a declaration of origin.

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« **Material** » refers to a product used to manufacture another product

« **Non-originating product or non-originating material** » refers to a product or a material that is not eligible to be accepted as originating product or material in accordance with this Supplementary Act;

« **Product** » refers to any good, article or material;

« **Originating product or originating material** » refers to a product or a material that is eligible to be accepted as originating product or originating material in accordance with this Supplementary Act

« **Import duties** » means all customs duties and taxes of equivalent effect which appears in the ECOWAS Common External Tariff, levied on goods at importation

« **Preferential tariff treatment** » means exemption arrangements from import duties on imported goods

« **Electronic signature** » means any data resulting from the use of a reliable identification process which ensures its connection to the act relating to it;

« **Customs value** » means the value that is determined in accordance with Regulation C/REG.2/06/13 relating to the determination of customs value of goods in ECOWAS

« **Value of materials** » means the implemented customs value at the time of importing non-originating materials or if not known or cannot be determined, the first ascertainable payment for the materials in the manufacturing country

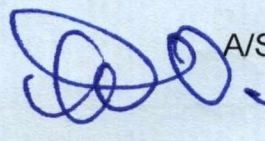
« **Input** » means all material, product involved in the manufacturing process

« **Chapters** » « **headings** » and « **subheadings** » refer to the chapters (two digits), the headings (four digits) and the subheadings (ten digits) used in the ECOWAS nomenclature based on the Harmonized commodity description and coding System (HS)

« **Shipment** » means products shipped simultaneously from a single exporter to a single consignee or shipped under the cover of a single transport document from the exporter to the consignee or in the absence of such document, covered by the invoice only

« **Community Customs territory** » means the customs territory of the Community as defined by article 3 of the ECOWAS Customs Code

« **Free zone** » means a part of the territory of a member State where goods introduced there are generally regarded as not located on the customs territory in terms of import duties and taxes.

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ARTICLE 2: OBJECTIVE OF THIS SUPPLEMENTARY ACT

This supplementary Act defines the rules of origin of community products and the procedures applicable to products originating from the community that are sent from a Member State to another Member State and are eligible for the Community preferential tariff treatment.

TITLE II: PROVISIONS ON THE DETERMINATION OF COMMUNITY ORIGIN

ARTICLE 3: RULES OF ORIGIN OF THE COMMUNITY PRODUCTS

1. In accordance with the provisions of article 38 of the ECOWAS Revised Treaty, the following are regarded as originating from the community :
 - a. Products wholly obtained in one or several Member States under article 4 of this supplementary Act;
 - b. Products obtained in one or several Member States and containing non-originating raw materials, provided that these raw materials have undergone sufficient processing or transformation in the Community under article 5 of this Supplementary Act.
2. Originating products made of materials wholly obtained or sufficiently transformed in two or many Member States are regarded as products originating from the Member State where the last processing or transformation took place as long as the processing or transformation carried out goes beyond those covered under article 6 of this Supplementary Act.

ARTICLE 4: PRODUCTS WHOLLY OBTAINED

- 1) The following are regarded as wholly obtained in the community :
 - a. Animals that are given born and raised therein ;
 - b. Mineral products extracted from the community's soils, seabed or sea floor ;
 - c. Mineral products extracted from seabed located outside territorial waters, as long as the Member State, has exclusive rights on this seabed for the purpose of exploitation ;
 - d. vegetable products harvested there;
 - e. Products obtained from live animals that are raised there ;
 - f. Products obtained from hunting and fishing activities conducted therein ;
 - g. Aquaculture products including mariculture, when the animals are raised from eggs, larva or fingerlings ;
 - h. Products obtained from sea fishing and other products obtained from the sea by the ships of Member States outside their territorial waters ;

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- i. Products manufactured on board their factory ships solely from products mentioned in subparagraph (h) above ;
 - j. Used articles that are gathered only for the purpose of recovery of the raw materials or to be used as wastes ;
 - k. Wastes coming from manufacturing operations carried out there ;
 - l. Goods manufactured solely from substances mentioned in paragraph (b) to (k), or from materials not having any element imported from countries other than Member States or of unknown origin ;
 - m. Electric power produced there.
2. The expressions « their ships » and « their factory-ships » mentioned in paragraph 1, subparagraph (h) and (i), only apply to ships and factory-ships which comply with the cumulative conditions hereafter:
- a. To be registered in a Member State ;
 - b. Fly the flag of a Member State ;
 - c. The crew including its command staff should consist of at least 50% of nationals from Member States

ARTICLE 5: PRODUCTS SUFFICIENTLY PROCESSED OR TRANSFORMED


For the purpose of implementing this supplementary Act, the following are regarded as sufficiently processed or transformed within the community:

Either:

1. Products, the manufacture of which, the non-originating materials used are classified under a different tariff heading from that of the final product;
This rule comes with a list of exceptions which indicates cases whereby the change in tariff heading is not decisive or imposes additional conditions.
This list of exception shall be determined by regulation of the Council of Ministers. Or,
2. Products, the manufacture of which the content of all non-originating materials is expressed as a percentage. The rate of the content of the non-originating materials will be determined by Regulation of the Council of Ministers

ARTICLE 6 : INSUFFICIENT PROCESSING OR TRANSFORMATIONS

1. The following operations are considered insufficient processing or transformations to confer the status of originating products whether or not the conditions under article 5 above are fulfilled :

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- a. Operations aimed at keeping the products in good condition during transportation and storage (ventilation, spreading, drying, cooling, putting in salt water, addition of Sulphur or other substances, removal of damaged portions and similar operations) ;
 - b. Simple operations like dust removing, screening, sorting out, classifying, assortment (including the make-up of sets of articles), washing, painting, cutting ;
 - c. Simple packaging operations
 - i. Changing of packaging and division and gathering of parcels ;
 - ii. Simple placing in bottles, flasks, cans, bags, cases, boxes, fixing on cards or boards, etc., as well as any other simple packaging operations ;
 - d. Affixing trade labels or other similar distinctive signs on products directly or on the packaging ;
 - e. Simple mixture of products even of different species, as far as one or many components of the mixture don't adhere to conditions fixed by this Supplementary Act to be considered as originating from the Member States ;
 - f. Simple assembly of parts in order to create a full product ;
 - g. husking, partial or total milling, polishing and glazing of cereals and rice;;
 - h. peeling, stoning or debarking of fruits and vegetables;
 - i. sharpening, simple crushing or simple cutting;
 - j. Slaughtering of animals ;
 - k. Salting, brining, drying or smoking meats, fishes, crustaceans, mollusks and shellfishes ;
 - l. Freezing meats, offal, fishes, crustaceans, mollusks, shellfishes, fruits, vegetables and vegetable crops ;
 - m. The combination of two or more operations mentioned from items a) to l) ;
2. All operations carried out on a product in one or many States shall be jointly considered to decide whether the processing or transformation the product underwent be regarded as insufficient under the first paragraph above..

ARTICLE 7: CONCEPT OF ORIGINATING INDUSTRIAL PRODUCTS

Are considered as originating industrial products, the products mentioned under articles 4.1.1 and 5, other than products that are made by hand, with or without the help of tools, instruments or devices directly operated by the manufacturer.

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ARTICLE 8: IDENTIFICATION OF ORIGINATING INDUSTRIAL PRODUCTS

When technically possible, originating industrial products or their packaging carry labels which help in identifying them.

ARTICLE 9: GOODS MANUFACTURED IN FREE ZONE OR UNDER ECONOMIC, SUSPENSE OR END USE PROCEDURE

Goods manufactured in free zone and those manufactured in the context of suspense or other end-use procedures, leading to the partial or total suspension or exemption from import duties on the goods cannot in any case be eligible for the status of community originating products and advantages thereof.

ARTICLE 10: PRINCIPLE OF TERRITORIALITY

1. The principle of territoriality requires that the production process of the originating product must take place without interruption in the Community and that the conditions set out in Articles 4, 5 and 6 above with regard to the grant of origin must be fulfilled without interruption in the Community customs territory.

2. When originating products that are exported from the community to another third country are returned, they should be regarded as being non-originating, unless satisfactorily proven to customs authorities:

- a. That the returned products are the same as those that were exported and
- b. That they have not been subjected to any operations beyond what is required when they were in that country or when being exported in order to ensure they remain in good condition.

ARTICLE 11: DIRECT TRANSPORT RULE

Preferential treatment is only granted to goods which are transported directly from one Member State to another.

However, products constituting one single consignment may be transported through other territories with, should the occasion arise, transshipment or temporary warehousing in such territories, provided that they remain under the surveillance of the customs authorities in the country of transit or storage and that they do not undergo other operations than the unloading or the reloading or any other operation intended to ensure their conservation in the state.

ARTICLE 12: UNIT OF QUALIFICATION

1. The unit to be considered in the implementation of this Supplementary Act is the product that was chosen as base unit to determine the classification based on the nomenclature of the ECOWAS Tariff and Statistical Nomenclature (TSN)

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It follows that:

- a. When a product which consist of a group or assembly of items is classified based on the ECOWAS TSN under a single heading, the whole forms the unit to be taken into consideration ;
 - b. When a shipment is made up of a certain number of identical products which are classified under the same subheading of the ECOWAS TSN, the provisions of this Supplementary Act apply to each of these products taken individually.
2. When, by the application of the general rule n°5 of the harmonized system, the packaging are classified with the products they contain, they should be regarded as a single item with the product for the purpose of determining the origin.

ARTICLE 13: INDIRECT MATERIALS

To ascertain whether a product is originating, it is not necessary to ascertain the origin of indirect materials used in the manufacturing, trials or inspection which are not physically incorporated into it, or materials used in the maintenance of buildings or functioning of equipment linked with the manufacturing of a product including.

- a. Energy and combustibles ;
- b. Installations and Equipment ;
- c. Machines and Tools ;
- d. Gloves, glasses, boots, clothes, equipment and security supplies;
- e. Lubricants, greases, composition materials and other materials used in the manufacturing or to make equipment and buildings work;
- f. Spare parts and materials used in maintaining equipment and buildings;
- g. Goods that are not included and are not meant to be included in the composition of final product.

ARTICLE 14: ACCESSORIES, SPARE PARTS AND TOOLS

Accessories, spare parts and tools that are supplied with a material, a machine, a device or a vehicle that form part of the normal equipment and are included in the price or are not charged separately, are considered to form a whole with the material, the machine, the device or the vehicle in question.

ARTICLE 15: SETS

Sets, under the General Rule n° 3 of the Harmonized System, are considered as originating, provided that all the items involved in their composition are originating.

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TITLE III: CERTIFICATION OF COMMUNITY ORIGIN

ARTICLE 16: PROOF OF COMMUNITY ORIGIN

1. The proof of community origin is established through :
 - a. A certificate of community origin issued by an appropriate authority of the exporting Member State,
 - b. The invoice declaration of community origin

The issuance conditions and procedures of the certificate of community origin as well as conditions relating to the issuance of invoice declaration of community origin are defined by Regulation of the Council of Ministers.

2. The proof of community origin is compulsory for fishing products mentioned under article 4, paragraph 1 (h) to (i) above.

ARTICLE 17: VALIDITY OF THE PROOF OF ORIGIN

A proof of community origin is valid up to twelve (12) months starting from the date it is issued in the exporting State and should be submitted to customs authorities of the importing State within the same period.

ARTICLE 18: KEEPING PROOFS OF ORIGIN AND SUPPORTING DOCUMENTS

The shipper asking for a certificate of community origin, the approved exporter establishing an invoice declaration, the supplier establishing a certificate of origin, the appropriate authorities issuing the Certificate of origin and the customs authorities of the exporting Member State, must all keep for at least a period of five (05) years copies issued of their proofs of origin and any other trade document to which the proof of origin is attached.

ARTICLE 19: EXEMPTION FROM THE PROOF OF COMMUNITY ORIGIN

1. The following are eligible as originating products, with no need to tender a proof of origin:
 - a. Agricultural and livestock products as well as items made by hand, with or without tools, instruments or devices directly operated by the manufacturer.
 - b. Products that are sent in small shipments from private individual to private individual or are contained in the travelers personal luggage, so far they are not imported for commercial purpose, provided that they are declared as conforming to this Supplementary Act and there is no doubt regarding the sincerity of such declaration. In the event of postal shipment, this declaration can be made on customs declaration or on a form attached to this document.

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2. Imports which are occasional and consist solely of products for the personal use of the recipients or travelers or their families shall not be considered as imports by way of trade if it is evident from the nature and quantity of the products that no commercial purpose is in view. However, the total value of these products cannot exceed an amount imposed by the national regulation of each Member State.

ARTICLE 20: DISCREPENCIES AND FORMAL ERRORS

- 1- Minor discrepancies between the information written on the proof of origin and the information on the documents issued by customs authorities in order to fulfill the import formalities of the products, do not nullify *ipso facto* the validity of the proof of origin, if it can be ascertained that the document matches the product presented.
- 2- Formal errors such as typographical errors, on a proof of origin should not lead to the refusal of the document if these errors do not present elements that may raise doubt about the accuracy of the declarations on the said document.

TITLE IV: COOPERATION BETWEEN CUSTOMS ADMINISTRATIONS

ARTICLE 21: NOTIFICATION OF CUSTOMS ADMINISTRATIONS

- 1- To ensure a correct and uniform implementation of this Supplementary Act, Member States through their respective administrations and services, will help and assist each other mutually to verify the authenticity of proofs of origin and the accuracy of information provided on the said documents.
- 2- Through the ECOWAS Commission, Customs administrations of Member States shall mutually exchange the lists of approved exporters, addresses of appropriate authorities that issue certificates of origin as well as specimen of stamps used by appropriate authorities and customs administrations on the certificates of community origin.

ARTICLE 22: VERIFICATION OF PROOF OF COMMUNITY ORIGIN

- 1- The post-clearance verification of proofs of community origin is conducted through survey or at any moment the customs of the importing State have reasonable doubt concerning the authenticity of these documents, the originating status of the related products or conformity with other provisions of this Supplementary Act.
- 2- For the purpose of implementing the provisions under paragraph 1 above, customs authorities of the importing Member State will send the proofs of community origin back to customs authorities of the exporting Member State while mentioning as the case may be, reasons behind such an inquiry. In support of their post-clearance verification, they should provide all documents and information gathered which make them think the information on the proof of community origin is incorrect.

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- 3- The verification is conducted by customs authorities of the exporting Member State. In this regard, they are authorized to request for all proofs and conduct all account verification of the exporter or any other necessary verification.
- 4- Customs authorities of the exporting Member State shall communicate within fifteen (15) days after receiving the request for verification, the results of the proof of origin verification. These results should clearly indicate whether the documents are genuine and whether the related products can be regarded as products originating from the exporting Member State and fulfill the other provisions of this Supplementary Act.

ARTICLE 23 : DISPUTE RESOLUTION

1. When dispute arises in the course of the verification mentioned under article 24 of this Supplementary Act, which cannot be settled among customs authorities of the importing Member State requesting for verification and the customs authorities of the exporting Member State who issued the contested proof of origin, one of the parties in the dispute can refer to the ECOWAS Commission through an official letter, registered mail or email.
2. The ECOWAS Commission shall determine the legitimacy of the contestation and take appropriate steps to deal with it and take immediate decision within ninety (90) days from the date of receipt of the complaint by the ECOWAS Commission, as soon as possible.
3. In the event of dissatisfaction with the ECOWAS Commission's Decision, the Member State can refer to the Community Court of Justice for final resolution.
4. However, the dispute of community origin will not pose an obstacle to benefiting from the advantages arising from the community origin, under reserve the constitution by the importer, a guarantee of the taxes inforce in the importing Member State.

ARTICLE 24: PENALTIES

The Member States shall impose penalties in accordance with article 56 of the ECOWAS customs code and with their national regulations on any person in the community that issues or get a document with incorrect data with the aim of introducing a product into the Community preferential tariff regime.

ARTICLE 25: AMENDMENT AND REVIEW

1. Any Member state, the Council of Ministers and the ECOWAS Commission can submit proposals for the amendment or revision of this Supplementary Act,
2. The proposals which do not emanate from the ECOWAS Commission must be submitted to the Commission. The Commission will inform Member States within thirty (30) days after receipt of the proposals. The Authority of Heads of States and Governments will consider the proposed amendments and revisions within three (3) months given to the Member States.

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- 3- The amendments or revisions are adopted by the Authority of the Heads of States and Government conforming to the provisions of Article 9 of the ECOWAS Revised Treaty. It enters into force at the signature and publication in the official journal of the community.

TITRE IV: FINAL PROVISIONS

ARTICLE 26: TRANSITIONAL PROVISIONS

1. Products approved under the Protocol A/P1/1/03 relating to the definition of the concept of originating products of ECOWAS before the entry into force of this Supplementary Act will continue to benefit from the preferential tariff treatment even after the entry into force of this Act.

ARTICLE 27: ENTRY INTO FORCE AND PUBLICATION

This Supplementary Act A/SP.7/12/18 will enter into force at the signature by the Chairman of the Authority of Heads of State and Government of ECOWAS. This Supplementary Act A/SP.7/12/18 will be published by the ECOWAS Commission in the official journal of the Community within thirty (30) days of the date of the signature of the Chairman of the Authority. It will equally be published by each Member State in its official journal within thirty (30) days after the Commission has issued a notification.

IN WITNESS THEREOF, WE HEADS OF STATE AND GOVERNMENT OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS), SIGNED THIS SUPPLEMENTARY ACT.

DONE AT ABUJA, THISDAY OF DECEMBER 2018

IN THREE (3) ORIGINAL COPIES IN FRENCH, ENGLISH AND PORTUGUESE LANGUAGES, ALL THREE (3) TEXTS BEING EQUALLY AUTHENTIC.

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H.E. PATRICK ATHANASE TALON
President of the Republic of Benin

H.E. ROCH MARC CHRISTIAN KABORE
President of Burkina Faso

H.E. JORGE CARLOS DE ALMEIDA FONSECA
Prime Minister of Cape Verde

H.E. ALASSANE OUATTARA
President of the Republic Côte d'Ivoire

H.E. ADAAMA BARROW
President of the Republic of The Gambia

H.E. NANA ADDO DANKWA AKUFO-ADDU
President of the Republic of Ghana

H.E. ALPHA CONDE
President of the Republic of Guinea

H.E. JOSE MARIO VAZ
President of the Republic of Guinea Bissau

H.E. GEORGE MANNEH WEAH
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H.E. IBRAHIM BOUBACAR KEITA
President of the Republic of Mali

H.E. ISSOUFOU MAHAMADOU
President of the Republic of Niger

H.E. MUHAMMADU BUHARI
President, Commander-in Chief of the Armed
Forces of the Federal Republic of Nigeria

H.E. MACKY SALL
President of the Republic of Senegal

H.E. JULIUS MAADA BIO
President of the Republic of Sierra Leone

H.E. Faure Essozimna GNASSINGBE
President of the Togolese Republic