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PROTOCOL A/P1/1/03 RELATING TO THE DEFINITION OF THE CONCEPT OF PRODUCTS ORIGINATING FROM MEMBER STATES OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES

THE HIGH CONTRACTING PARTIES

MINDFUL of Articles 7, 8, and 9 of the Treaty establishing the Authority of Heads of State and Government and defining its composition and functions;

MINDFUL of paragraph 3, Article 38 of the Treaty of the Economic Community of West African States relating to possible amendments to the definition of the concept of products originating from Member States;

RECOGNISING the pressing need to harmonise the integration programmes of the Economic Community of West African States with those of the West African Economic and Monetary Union, with a view to creating a single economic zone in West Africa;

DESIROUS of ensuring that the definition of the concept of products originating from Member States is in conformity with the new regulations of the World Trade Organisation, and of amending the protocol relating thereto accordingly;

HAVE AGREED AS FOLLOWS:

Article 1

Definitions

In this Protocol,

"Treaty" means the revised Treaty of the Economic Community of West African States signed in Cotonou on 24 July 1993;

"Community" means the Economic Community of West African States whose establishment is reaffirmed in Article 2 of the Treaty;

"Member State" means a Member State of the Community;

"Authority" means the Authority of Heads of State and Government of the Community, established by Article 7 of the Treaty;

"Council" means the Council of Ministers of the Community established by Article 10 of the Treaty;

"Executive Secretariat" means the Executive Secretariat established by Article 17 of the Treaty;

"Commission" means the Trade, Customs, Taxation, Statistics, Money and Payments Commission established by Article 22 of the Treaty;

"Manufacture" means any form of processing or transformation, including assembly or any other special operation;

"Material" means any ingredient, raw material, component or part used in the manufacture of goods;

"Product" means a finished product, even if the product is to be used thereafter in the manufacture of another product;

"Goods" means materials and products;

"Import Duties" means all Customs duties and taxes of equivalent effect levied on goods upon importation;

"Customs value" means the value of an article determined in conformity with the 1994 agreement relating to the implementation of Article VII of the General Agreement on Tariffs and Trade (Agreement on the WTO Customs value);

"Value of materials" means the Customs value at the time of importation of non-originating materials to be used in a process of production or, where such value is not known or cannot be determined, the earliest ascertainable price paid for them in the Member State where they are used in a process of production;

"Value-added" means the difference, expressed as a percentage, between the ex-factory price of the finished product before tax, and the CIF value of raw materials consumables and packaging of non-ECOWAS origin, used in the manufacture of the final product in the form under which it is released into circulation;

"Input" means any material, product used in the manufacturing process;

"Chapters" means the chapters used in the nomenclature of the harmonised system of designation and codification of goods, referred to in this Protocol as the "Harmonised System" or "HS";

"Sub-headings" means the sub-headings (4 figures) used in the nomenclature of the harmonised system of designation and codification of goods, referred to in this Protocol as the "Harmonised System" or "HS";

"Classified" means the classification of a product or a material under a particular sub-heading;

"Consignment" means all the products forwarded at the same time by an exporter to a consignee, or transported under the cover of a single document from an exporter to a consignee, or, in the absence of such a document, under the cover of a single invoice.

Article 2

Rules of Origin of Community Goods

1. For the purpose of the provisions of Chapter VIII of the Treaty relating to trade liberalisation, goods shall be considered as originating from Member States if:

   a) they have been wholly produced in Member States, in accordance with the provisions of Article 3 of this Protocol;

   b) they have been produced in Member States but contain raw materials which were not wholly obtained from Member States, provided that such materials have undergone operations and processes that confer Community origin, as defined in Article 4 of this Protocol.

2. Originating products consisting of materials wholly produced or sufficiently transformed in one or several Member States shall be considered as products originating from the Member State in which the last processing or transformation took place, inasmuch as the processing or transformation carried out there exceeds the processing and transformation defined in Article 5 of this Protocol.

Article 3

Goods wholly produced in Member States

1. The following products shall be regarded as wholly produced in the Member States:

   a) live animals born and raised within the Member States;

   b) mineral products extracted from the ground, sub-soil or sea bed of Member States;

   c) vegetable products harvested within the Member States;

   d) products obtained from animals living or raised in Member States;

   e) products obtained by hunting or fishing within the Member States;

   f) products obtained from the sea, rivers and lakes within the Member States by vessels belonging to the Member States;

   g) products manufactured aboard ship factories belonging to Member

States, exclusively from the products referred to in paragraph (f) of this Article;

h) used articles fit only for the recovery of raw materials, provided that such articles have been collected from users within the Member States;

i) scrap and waste resulting from manufacturing operations within Member States;

j) goods produced from the materials listed in paragraphs (b) to (i) of this Article, used alone or mixed with other materials, provided that they represent at least 60% of the total quantity of raw materials used;

k) electric energy produced in the Member States.

2. The terms "vessels" and "factory ships" used in paragraph 1 (f) and (g) shall apply only to vessels and factory ships:

- which are registered in a Member State;
- which sail under the flag of a Member State;
- which carry a complement, inclusive of the Master thereof, of which not less than 50% are nationals of Member States.

Article 4

Operations and processes conferring origin

For the purpose of this Protocol, the following operations and processes shall be considered as sufficient to support a claim of origin from a Member State:

Where

1) goods are not wholly produced in Member States and where their production requires the exclusive use of materials which are to be classified under a different tariff sub-heading from that of the product;

The above rule shall be accompanied by a list of exemptions mentioning the cases where the change in the sub-heading is not a determining factor, or imposing additional conditions. The list shall be established in by a Regulation of the Council of Ministers.

Or

2) goods are not wholly produced in Member States and where their production requires the use of materials which have received a value-added of at least 30% of the ex-factory price of the finished goods.

Article 5

The concept of originating industrial products

Originating industrial goods shall be those referred to in articles 2 and 3 (j) of this Protocol, with the exception of hand-made articles or articles produced without the use of tools, instruments or implements directly operated by the manufacturer.

Article 6

Operations and processes not conferring origin

For the purpose of this Protocol, the following operations and processes shall be considered as insufficient to support a claim that goods originate from a Member State:

a) operations to ensure the preservation of merchandise in good condition during transportation and storage such as ventilation, spreading out, drying, freezing, placing in brine, sulphur dioxide or other aqueous solutions, removal of damaged parts and similar operations;

b) simple operations consisting of removal of dust, sifting or screening, sorting, classifying, matching, including the making up of sets of goods, washing, painting and cutting up;

c) (i) changes of packaging and breaking up or assembly of consignments;

(ii) simple bottling, placing in flasks, bags, cases, boxes, fixing on cards or boards and all other simple packing operations;

d) marking or labelling in order to distinguish products or their packages;

e) simple mixing of products, even of different types, where one or several of the components do not satisfy the Community origin criteria set out in this Protocol;

f) simple assembly of parts of a product to constitute a complete product;

g) a combination of two or more operations specified in sub-paragraphs (a) to (f) of this Article;

h) slaughter of animals;

i) salting, placing in brine, drying or smoking of meat, fish, and shellfish;

j) freezing of meat, offal, fish, shellfish, fruits, vegetables or garden plants;

k) preparation and conservation of meat, offal, blood, fish, and shellfish from products listed in Chapters 2 and 3 of the nomenclature of the harmonised system;

l) cutting and processing of leaves and foliage of all types.

Article 7

Goods produced in free zones or under special economic regimes

Goods transformed within the framework of economic or suspensive Customs regimes or certain special regimes involving the suspension or partial or total exemption from Customs duties on inputs shall in no case be considered as originating products.

Article 8

Unit of qualification

1. For the purpose of this Protocol, the unit of qualification shall be the product used as the base unit in order to determine classification under on the nomenclature of the harmonised system.

   Consequently:

   - where a group, set or assembly of products is to be classified under a single heading, such group, set or assembly shall be treated as one product;

   - where a consignment is composed of a number of identical products classified under the same heading in the harmonised system, each product in the consignment shall be considered separately;

2. Where, in application of the General Rule No. 5 of the harmonised system, packaging is considered as forming a whole with the goods, the packaging shall be considered as forming a whole with the goods when determining origin.

Article 9

Accessories, spare parts and tools

Accessories, spare parts and tools which are imported with a material, machine, appliance or vehicle, and whose price is included in that of the product or for which no separate charge is made, shall be considered as forming a whole with the material, machine, appliance or vehicle under consideration.

Article 10

Proof of origin

Proof of the Community origin of goods shall be supported by a certificate of origin stating the conditions set out in this Protocol.

However, a certificate of origin shall not be required for agricultural and livestock products as well as hand-made articles or articles produced without the use of tools, instruments or implements directly operated by the manufacturer.

The certificate of origin shall be issued by the competent authority designated for that purpose by the Member State of origin and countersigned by the Customs Department of that Member State.

Article 11

Identification of originating industrial products

Originating industrial products shall, where it is technically possible, carry an identification mark on them or on their packaging.

Article 12

Cooperation in administrative procedure

In order to ensure the proper and uniform implementation of this Protocol, Member States shall, through the intermediary of their respective administrations and services, give mutual aid and assistance in the authentication of certificates of origin.

Article 13

Settlement of disputes

1 In the event that the origin of a product is contested, the Member Statecontesting the Community origin of the product shall, on its own initiative or that of any other party concerned, bring the issue to the attention of the competent authority in the issuing country.

2 The exporting Member State shall, within a period of forty-five (45) working days, furnish all necessary information on the conditions under which the contested certificate was issued.

3 Products whose origin is in dispute shall not be denied the advantages granted to originating products, provided that the importer deposits an amount as guarantee for

the duties and taxes payable in the importing Member State.

Article 14

Disputes which remain unresolved by the Member States concerned within the time-limit prescribed in Article 13 above, shall be brought before the Commission by any of the parties concerned through the intermediary of the Executive Secretariat.

Article 15

The Commission shall determine the merits and demerits of the case at its next session, and transmit the dossier of the case to the Council of Ministers which shall take a decision thereon and inform the parties concerned accordingly.

Article 16

Amendment and Revision

1 Any Member State may submit proposals for the amendment or revision of this Protocol.

2 Any such proposals shall be submitted to the Executive Secretariat which shall send notice thereof to the Member States not later than thirty (30) days after their receipt. Amendments or revisions shall not be considered by the Authority unless Member States have received one month's notice thereof.

3 Amendments or revisions shall be adopted by the Authority.

Article 17

Entry into force

1. This Protocol shall enter into force provisionally upon signature by the Heads of State and Government. Accordingly, signatory Member States and the Executive Secretariat hereby undertake to commence implementation of all provisions of the Protocol upon signature.

2. This Protocol shall enter fully into force upon ratification by at least nine (9) signatory States, and in accordance with the constitutional procedures of each Member State.

3. This Protocol and all instruments of ratification shall be deposited with the Executive Secretariat which shall transmit certified true copies thereof to all Member States and notify them of the dates of deposit of instruments of ratification by the Member States and shall register this Protocol with the Organisation of African Unity (OAU),

the United Nations Organisation (UNO), and such other organisations as the Council may determine.

Article 18

This Protocol repeals and replaces all existing provisions which are incompatible with above provisions.

IN FAITH WHEREOF WE, THE HEADS OF STATE AND GOVERNMENT OF THE MEMBER STATES OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS) HAVE

SIGNED THIS PROTOCOL IN SINGLE ORIGINAL IN THE ENGLISH, FRENCH AND PORTUGUESE LANGUAGES, ALL TEXTS BEING EQUALLY AUTHENTIC

DONE AT DAKAR, THIS 31ST DAY OF JANUARY 2003

Signed
His Excellency Mathieu KEREKOU
President of the Republic of Benin

signed
His Excellency Blaise COMPAORE
President of Faso
Chairman of the Council of Ministers

Signed
H.E. Madam Fatima VEIGA
Minister of Foreign Affairs, Co-operation and Communities, for and on behalf of the President of the Republic of Cape Verde

signed
His Excellency Laurent GBAGBO
President of the Republic of Cote d'Ivoire

Signed
His Excellency Dr. Alhaji Yahya A.J.J. JAMMEH
President of the Republic of The Gambia

signed
His Excellency John Agyekum KUFUOR
President of the Republic of Ghana

Signed
Hon. Lamine SIDIME
Prime Minister, representing the President of the Republic of Guinea

signed
H.E. Koumba Yala Kobde NHANCA
President of the Republic of Guinea-Bissau

Signed
H.E. Moses Z. BLAH
Vice-President of the Republic of Liberia
For and on behalf of the President of the Republic of Liberia

signed
His Excellency Amadou Toumani TOURE
President of the Republic of Mali

signed
His Excellency Mamadou TANDJA
President of the Republic of Niger

Signed
His Excellency Maitre Abdoulaye WADE
President of the Republic of Senegal

Signed
His Excellency Gnassingbe EYADEMA
President of the Togolese Republic

signed
His Excellency Chief Olusegun OBASANJO
President, Commander-in-Chief
of the Armed Forces of the Federal Republic of Nigeria

signed
His Excellency Alhaji Dr. Ahmad Tejan KABBAH
President of the Republic of Sierra leone