

Committee on Customs Valuation

**NOTIFICATIONS UNDER ARTICLE 22 OF THE AGREEMENT ON
IMPLEMENTATION OF ARTICLE VII OF THE GENERAL
AGREEMENT ON TARIFFS AND TRADE 1994**

BURKINA FASO

Revision

Please find enclosed copies of the following statutory instruments on reference values, adopted by the West African Economic and Monetary Union (WAEMU) and Burkina Faso, respectively:

- Regulation No. 05/99/CM/UEMOA on customs valuation, together with the WAEMU's arguments in favour of the right to apply minimum values to the common list of goods;
- Order No. 02-049 of 3 June 2002, establishing reference values serving as a basis for the assessment of customs duties and taxes in Burkina Faso;
- schedule of goods subject to reference values;
- arguments by the Ministry of Trade, Promotion of Industry and Crafts on the notification procedure applicable to WAEMU member countries.

¹ This revision is circulated in order to translate the original French version into English and Spanish.

REGULATION No. 05/99/CM/UEMOA ON CUSTOMS VALUATION

THE COUNCIL OF MINISTERS OF THE WEST AFRICAN ECONOMIC AND MONETARY UNION (WAEMU)

- Having regard to* the WAEMU Treaty, more particularly Articles 4, 76 and 82;
- Having regard to* Regulation No. 02/97/CM/UEMOA of 28 November 1997 adopting the Common External Tariff of the West African Economic and Monetary Union (WAEMU);
- Concerned* to promote and expedite the establishment of the customs union between the WAEMU member States;
- Wishing to* implement the related measures concerning the Common External Tariff (CET);
- Considering* the importance that the WAEMU attaches to developing its trade, both internal and external;
- Considering* the need to guarantee both customs administrations and economic operators that equitable, uniform and neutral customs valuation rules consistent with commercial practices will apply;
- On* the proposal of the Commission;
- Having regard to* the Opinion dated 19 March 1999 of the statutory Committee of Experts

Issues the Present Regulation

TITLE ONE

Article 1

1. This Regulation:
- (a) "**customs value of imported goods**" means the value of goods determined to the purpose of levying duties and taxes under the Common External Tariff;
 - (b) "**produced**" includes grown, manufactured and mined;
 - (c) "**identical goods**" means goods which are the same in all respects, including the 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) the terms "**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 or sketches for which no adjustment has been made under paragraph (1)(b)(iv) of Article 4 because such elements were undertaken in the Union;
 - (f) goods shall not be regarded as "identical goods" or "similar goods" unless they were produced in the same country as those 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) "**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 five 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 Regulation if they fall within the criteria of paragraph 2.
4. In this Regulation, "persons" applies, where appropriate, to a legal person.

Article 2

1. How the customs value of imported goods is to be determined forms the subject of Articles 3 and 5 to 9 of this Regulation. The methods of evaluation are set out in sequential order of application. The primary method of customs evaluation is defined in Article 3 below and imported goods are to be valued in accordance with the provisions of that 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 referred to in paragraph 1 to the first such article under which the customs value can be determined. Except as provided for in Article 7, it is only when the customs value cannot be determined by applying 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 a request is made but it then proves impossible to determine the customs value by applying the provisions of Article 9, the customs value is to be determined by applying 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 and 5 to 9, it is to be determined under the provisions of Article 10.

Article 3

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 Union adjusted in accordance with the provisions of Article 4, provided:

- (a) That there are no restrictions as to the disposal or use of the goods by the buyer other than restrictions which:
 - (i) Are imposed or required by the laws and regulations of the public authorities of the Union;
 - (ii) limit the geographical area in which the goods may be resold; or
 - (iii) 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.

2. (a) In determining whether the transaction value is acceptable for the purposes of paragraph 1, 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 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 Union;
- (ii) the customs value of identical or similar goods as determined under the provisions of Article 8;
- (iii) the customs value of identical or similar goods as determined under the provisions of Article 9.

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.

- (c) 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

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 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 Union and necessary for the production of the imported goods;

- (c) Royalties and licence 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 for in this Article.

Article 5

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 Union 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. The transaction value of identical goods shall be adjusted to take account of significant differences in costs and charges, referred to in Article 4, paragraph 1(e), (f) and (g), 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

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 Union 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. The transaction value of similar goods shall be adjusted to take account of significant differences in costs and charges, referred to in Article 4, paragraph 1(e), (f) and (g), 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

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, subject to acceptance by the customs authorities concerned.

Article 8

1. (a) If the imported goods or identical or similar imported goods are sold in the Union 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 Union;
 - (iii) where appropriate, the costs and charges referred to in paragraph 1(e), (f) and (g) of Article 4; and
 - (iv) the customs duties and other national taxes payable in the Union 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 Union

in the condition as imported at the earliest date after the importation of the goods being valued but before the expiry of 90 days after such importation.

2. If neither the imported goods nor identical nor similar imported goods are sold in the Union 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 Union 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) of this article.

Article 9

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 Union;
- (c) the cost or value of the elements listed in paragraph 1(e), (f) and (g) of Article 4.

2. A member State may not require or compel any person not resident in the Union 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 a non-member State of the Union 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

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

2. No customs value shall be determined under the provisions of this article on the basis of:

- (a) The selling price in the Union of goods produced in the Union;
- (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 that is not a member of the Union;
- (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 values.

Article 11

Where the conversion of currency is necessary for the determination of the customs value of imported goods, the conversion rate to be used shall be the one duly published by the Central Bank of West African States (BCEAO) on the date on which the customs declaration is registered.

Article 12

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 which 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

1. In the event of a dispute concerning the determination of customs value, the importer or any other person liable to pay duties under the Common External Tariff shall have the right of appeal, without any penalty.

2. The initial appeal may be to the customs administration.

3. Notice of the decision by the administration shall be made to the appellant and the grounds shall be set down in writing. The appellant shall also be informed of any rights of further appeal.

4. If the dispute is brought before a judicial body, the rules of procedure in the courts shall be those in force in each member State.

Article 14

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

Upon written request, the importer shall have the right to an explanation in writing from the customs authorities of how the customs value of the imported goods was determined.

Article 16

1. Nothing in this Regulation shall be construed as restricting or calling into question the rights of customs administrations to satisfy themselves as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes.

2. When a declaration has been presented and where the customs administration has reason to doubt the truth or accuracy of the particulars or documents produced in support of the declaration, the customs administration may ask the importer to provide further explanation, including documents or other evidence, that the declared value represents the total amount actually paid or payable for the imported goods, adjusted in accordance with the provisions of Article 4. If, after receiving further information or in the absence of a response, the customs administration still has reasonable doubts about the truth or accuracy of the declared value, it may, bearing in mind the provisions of Article 13, be deemed that the customs value of the imported goods cannot be determined under the provisions of Article 3. Before taking a final decision, the customs administration shall communicate to the importer, in writing if requested, its grounds for doubting the truth or accuracy of the particulars or documents produced and the importer shall be given a reasonable opportunity to respond. When a final decision is made, the customs administration shall communicate to the importer in writing its decision and the grounds therefor.

Article 17

The interpretative notes in the annex to this Regulation have the same legal force as Articles 1, 3 to 6, 8 to 11 and 14 of this Regulation, and are to be read in conjunction with them.

TITLE II

Final Provisions

This Regulation, which will apply as from 1 January 2000, is to be published in the Official Bulletin of the Union and communicated wherever necessary.

Done at Ouagadougou, on 6 August 1999

SAIDOU SIDIBE
For the Council of Ministers
Chairman

ANNEX TO REGULATION No. 05/99/CM/UEMOA

6 AUGUST 1999

Interpretative Notes

Note to Article 3

Price actually paid or payable

1. The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods. The payment need not necessarily take the form of a transfer of money. Payment may be made by way of letters of credit or negotiable instruments. Payment may be made directly or indirectly. Thus the flow of dividends or other payments from the buyer to the seller that do not relate to the imported goods are not part of the customs value.
2. Activities undertaken by the buyer on the buyer's own account, other than those for which an adjustment is provided in Article 4, are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller. The costs of such activities shall not, therefore, be added to the price actually paid or payable in determining the customs value.
3. The customs value shall not include the following charges or costs, provided that they are distinguished from the price actually paid or payable for the imported goods:
 - (a) Charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation on imported goods such as industrial plant, machinery or equipment;
 - (b) the cost of transport after importation;
 - (c) duties and taxes of the Union.
4. The price actually paid or payable refers to the price of the imported goods. Thus the flow of dividends or other payments from the buyer to the seller that do not relate to the imported goods are not part of the customs value.

Paragraph 1(a)(iii)

Among restrictions which would not render a price actually paid or payable unacceptable are restrictions which do not substantially affect the value of the goods. An example of such restrictions would be the case where a seller requires a buyer of automobiles not to sell or exhibit them prior to a fixed date which represents the beginning of a model year.

Paragraph 1(b)

1. If the sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued, the transaction value shall not be acceptable for customs purposes. Some examples of this include:
 - (a) The seller establishes the price of the imported goods on condition that the buyer will also buy other goods in specified quantities;
 - (b) the price of the imported goods is dependent upon the price or prices at which the buyer of the imported goods sells other goods to the seller of the imported goods;

- (c) the price is established on the basis of a form of payment extraneous to the imported goods, such as where the imported goods are semi-finished goods which have been provided by the seller on condition that the seller will receive a specified quantity of the finished goods.

2. However, conditions or considerations relating to the production or marketing of the imported goods shall not result in rejection of the transaction value.

Paragraph 2

1. Paragraphs 2(a) and 2(b) provide different means of establishing the acceptability of a transaction value.

2. Paragraph 2(a) provides that where the buyer and the seller are related the circumstances surrounding the sale shall be examined and the transaction value shall be accepted as the customs value provided that the relationship did not influence the price. It is not intended that there should be an examination of the circumstances in all cases where the buyer and the seller are related. Such examination will only be required where there are doubts about the acceptability of the price. Where the customs authorities have no doubts about the acceptability of the price, it should be accepted without requesting further information from the importer. For example, the customs authorities may have previously examined the relationship, or they may already have detailed information concerning the buyer and the seller and may already be satisfied from such examination or information that the relationship did not influence the price.

3. Where the customs authorities are unable to accept the transaction value without further inquiry, they should give the importer an opportunity to supply such further detailed information as may be necessary to enable them to examine the circumstances surrounding the sale. In this context, the customs authorities should be prepared to examine relevant aspects of the transaction, including the way in which the buyer and seller organize their commercial relations and the way in which the price in question was arrived at, in order to determine whether the relationship influenced the price. Where it can be shown that the buyer and seller, although related under the provisions of Article 1, buy from and sell to each other as if they were not related, this would demonstrate that the price had not been influenced by the relationship. As an example of this, if the price had been settled in a manner consistent with the normal pricing practices of the industry in question or with the way the seller settles prices for sales to buyers who are not related to the seller, this would demonstrate that the price had not been influenced by the relationship. As a further example, where it is shown that the price is adequate to ensure recovery of all costs plus a profit which is representative of the firm's overall profit realized over a representative period of time (e.g. on an annual basis) in sales of goods of the same class or kind, this would demonstrate that the price had not been influenced.

4. Paragraph 2(b) provides an opportunity for the importer to demonstrate that the transaction value closely approximates to a "test" value previously accepted by the customs authorities and is therefore acceptable under the provisions of Article 3. Where a test under paragraph 2(b) is met, it is not necessary to examine the question of influence under paragraph 2(a). If the customs authorities have already sufficient information to be satisfied, without further detailed enquiries, that one of the tests provided in paragraph 2(b) has been met, there is no reason for them to require the importer to demonstrate that the test can be met. In paragraph 2(b) the term "unrelated buyers" means buyers who are not related to the seller in any particular case.

Paragraph 2(b)

A number of factors must be taken into consideration in determining whether one value "closely approximates" to another value. These factors include the nature of the imported goods, the nature of the industry itself, the season in which the goods are imported, and, whether the difference

in values is commercially significant. Since these factors may vary from case to case, it would be impossible to apply a uniform standard such as a fixed percentage, in each case. For example, a small difference in value in a case involving one type of goods could be unacceptable while a large difference in a case involving another type of goods might be acceptable in determining whether the transaction value closely approximates to the "test" values set forth in paragraph 2(b) of Article 3.

Note to Article 4

Paragraph 1(a)(i)

The term "buying commissions" means fees paid by an importer to the importer's agent for the service of representing the importer abroad in the purchase of the goods being valued.

Paragraph 1(b)(ii)

1. There are two factors involved in the apportionment of the elements specified in paragraph 1(b)(ii) of Article 4 to the imported goods – the value of the element itself and the way in which that value is to be apportioned to the imported goods. The apportionment of these elements should be made in a reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles.

2. Concerning the value of the element, if the importer acquires the element from a seller not related to the importer at a given cost, the value of the element is that cost. If the element was produced by the importer or by a person related to the importer, its value would be the cost of producing it. If the element had been previously used by the importer, regardless of whether it had been acquired or produced by such importer, the original cost of acquisition or production would have to be adjusted downwards to reflect its use in order to arrive at the value of the element.

3. Once a value has been determined for the element, it is necessary to apportion that value to the imported goods. Various possibilities exist. For example, the value might be apportioned to the first shipment if the importer wishes to pay duty on the entire value at one time. As another example, the importer may request that the value be apportioned over the number of units produced up to the time of the first shipment. As a further example, the importer may request that the value be apportioned over the entire anticipated production where contracts or firm commitments exist for that production. The method of apportionment used will depend upon the documentation provided by the importer.

4. As an illustration of the above, an importer provides the producer with a mould to be used in the production of the imported goods and contracts with the producer to buy 10,000 units. By the time of arrival of the first shipment of 1,000 units, the producer has already produced 4,000 units. The importer may request the customs administration to apportion the value of the mould over 1,000 units, 4,000 units or 10,000 units.

Paragraph 1(b)(iv)

1. Additions for the elements specified in paragraph 1(b)(iv) of Article 4 should be based on objective and quantifiable data. In order to minimize the burden for both the importer and the customs administration in determining the values to be added, data readily available in the buyer's commercial record system should be used insofar as possible.

2. For those elements supplied by the buyer which were purchased or leased by the buyer, the addition would be the cost of the purchase or the lease. No addition shall be made for those elements available in the public domain, other than the cost of obtaining copies of them.

3. The ease with which it may be possible to calculate the values to be added will depend on a particular firm's structure and management practice, as well as its accounting methods.

4. For example, it is possible that a firm which imports a variety of products from several countries maintains the records of its design centre outside the Union in such a way as to show accurately the costs attributable to a given product. In such cases, a direct adjustment may be appropriately made under the provisions of Article 4.

5. In another case, a firm may carry the cost of the design centre outside the Union as a general overhead expense without allocation to specific products. In this instance, an appropriate adjustment could be made under the provisions of Article 4 with respect to the imported goods by apportioning total design centre costs over total production benefiting from the design centre and adding such apportioned cost on a unit basis to imports.

6. Variations in the above circumstances will, of course, require different factors to be considered in determining the proper method of allocation.

7. In cases where the production of the element in question involves a number of countries and over a period of time, the adjustment should be limited to the value actually added to that element outside the Union.

Paragraph 1(c)

1. The royalties and licence fees referred to in paragraph 1(c) of Article 4 may include, among other things, payments in respect to patents, trademarks and copyrights. However, the charges for the rights to reproduce the imported goods in the Union shall not be added to the price actually paid or payable for the goods imported in determining the customs value.

2. Payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid or payable for the imported goods if such payments are not a condition of the sale for export to the Union of the imported goods.

Paragraph 1(e) and 1(f)

The conditions for applying paragraphs 1(e) and 1(f) of Article 4 of this Regulation shall be determined by the Commission, through an implementation regulation, after consultation with the Statutory Committee of Experts.

Paragraph 3

Where objective and quantifiable data do not exist with regard to the additions required to be made under the provisions of Article 4, the transaction value cannot be determined under the provisions of Article 3. As an illustration of this, a royalty is paid on the basis of the price in a sale in the Union of a litre of a particular product that was imported by the kilogramme and made up into a solution after importation. If the royalty is based partially on the imported goods and partially on other factors which have nothing to do with the imported goods (such as when the imported goods are mixed with domestic ingredients and are no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the buyer and the seller), it would be inappropriate to attempt to make an addition for the royalty. However, if the amount of this royalty is based only on the imported goods and can be readily quantified, an addition to the price actually paid or payable can be made.

Note to Article 5

1. In applying Article 5, the customs authorities shall, wherever possible, use a sale of identical goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of identical goods that takes place under any one of the following three conditions may be used:

- (a) A sale at the same commercial level but in different quantities;
- (b) a sale at a different commercial level but in substantially the same quantities;
- (c) a sale at a different commercial level and in different quantities.

2. Where a sale under any one of these three conditions is found, adjustments will then be made, as the case may be, for:

- (a) Quantity factors only;
- (b) commercial factors only; or
- (c) both commercial level and quantity factors.

3. The expression "and/or" allows the flexibility to use the sales and to make the necessary adjustments in any one of the three conditions described above.

4. For the purposes of Article 5, the transaction value of identical imported goods means a customs value, adjusted as provided for in paragraphs 1(b) and 2, which has already been accepted under Article 3.

5. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, may be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustments, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only identical imported goods for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a customs value under the provisions of Article 5 is not appropriate.

Note to Article 6

1. In applying Article 6, the customs authorities shall, wherever possible, use a sale of similar goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of similar goods that takes place under any one of the following three conditions may be used:

- (a) A sale at the same commercial level but in different quantities;
- (b) a sale at a different commercial level but in substantially the same quantities; or
- (c) a sale at a different commercial level and in different quantities.

2. Where a sale is found under any one of these three conditions, adjustments will then be made, as the case may be, for:

- (a) Quantity factors only;
- (b) commercial level factors only; or
- (c) both commercial level and quantity factors.

3. The expression "and/or" allows the flexibility to use the sales and make the necessary adjustments in any one of the three conditions described above.

4. For the purpose of Article 6, the transaction value of similar imported goods means a customs value, adjusted as provided for in paragraphs 1(b) and 2, which has already been accepted under Article 3.

5. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, may be only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only similar imported goods for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a customs value under the provisions of Article 6 is not appropriate.

Note to Article 8

1. The term "unit price at which ... goods are sold in the greatest aggregate quantity" means the price at which the greatest number of units is sold in sales to persons who are not related to the persons from whom they buy such goods at the first commercial level after importation at which such sales take place.

2. As an example of this, goods are sold from a price list which grants favourable unit prices for purchases made in larger quantities.

| Sale quantity | Unit price | Number of sales | Total quantity sold at each price |
|---------------|------------|--|-----------------------------------|
| 1 - 10 units | 100 | 10 sales of 5 units 50 sales of 3 units | 65 |
| 11 - 25 units | 95 | 5 sales of 11 units | 55 |
| over 25 units | 90 | 1 sale of 30 units 1 sale of 50 units | 80 |

The greatest number of units sold at a price is 80; therefore, the unit price in the greatest aggregate quantity is 90.

3. As another example of this, two sales occur. In the first sale, 500 units are sold at a price of 95 currency units each. In the second sale, 400 units are sold at a price of 90 currency units each. In this example, the greatest number of units sold at a particular price is 500; therefore, the unit price in the greatest aggregate quantity is 95.

4. A third example would be the following situation where various quantities are sold at various prices.

(a) Sales

| Sale quantity | Unit price |
|---------------|------------|
| 40 units | 100 |
| 30 units | 90 |
| 15 units | 100 |
| 50 units | 95 |
| 25 units | 105 |
| 35 units | 90 |
| 5 units | 100 |

(b) Totals

| Total quantity sold | Unit price |
|---------------------|------------|
| 65 | 90 |
| 50 | 95 |
| 60 | 100 |
| 25 | 105 |

In this example the greatest number of units sold at a particular price is 65; therefore, the unit price in the greatest aggregate quantity is 90.

5. Any sale in the Union, as described in paragraph 1 above, to a person who supplies directly or indirectly free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods any of the elements specified in paragraph 1(b) of Article 4 should not be taken into account in establishing the unit price for the purposes of Article 8.

6. It should be noted that "profit and general expenses", referred to in paragraph 1 of Article 8, should be taken as a whole. The figure for the purposes of this deduction should be determined on the basis of information supplied by or on behalf of the importer unless the importer's figures are inconsistent with those obtained in sales in the Union of imported goods of the same class or kind.

Where the importer's figures are inconsistent with such figures, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the importer.

7. The "general expenses" include the direct and indirect costs of marketing the goods in question.

8. Local taxes payable by reason of the sale of the goods for which a deduction is not made under the provisions of paragraph 1(a)(iv) of Article 8 shall be deducted under the provisions of paragraph 1(a)(i) of Article 8.

9. In determining either the commissions or the usual profits and general expenses under the provisions of paragraph 1 of Article 8, the question whether certain goods are "of the same class or kind" as other goods must be determined on a case-by-case basis by reference to the circumstances involved. Sales in the Union of the narrowest group or range of imported goods of the same class or kind, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of Article 8, goods of the same class or kind includes goods imported from the same country as the goods being valued as well as goods imported from other countries.

10. For the purposes of paragraph 1(b) of Article 8, the "earliest date" shall be the date by which sales of the imported goods or of identical or similar imported goods are made in sufficient quantity to establish the unit price.

11. Where the method in paragraph 2 of Article 8 is used, deductions made for the value added by further processing shall be based on objective and quantifiable data relating to the cost of such work. Accepted industry formulas, recipes, methods of construction and other industry practices would form the basis of the calculations.

12. It is recognized that the method of valuation provided for in paragraph 2 of Article 8 would normally not be applicable when, as a result of the further processing, the imported goods lose their identity. However, there can be instances where, although the identity of the imported goods is lost, the value added by the processing can be determined accurately without reasonable difficulty.

On the other hand there can also be instances where the imported goods maintain their identity but form such a minor element in the goods sold in the Union that the use of this valuation method would be unjustified. In view of the above, each situation of this type must be considered on a case-by-case basis.

Note to Article 9

1. As a general rule, customs value is determined under this Regulation on the basis of information readily available in the Union. In order to determine a computed value, however, it may be necessary to examine the costs of producing the goods being valued and other information which has to be obtained from outside the Union. Furthermore, in most cases the producer of the goods will be outside the jurisdiction of the authorities of the member States. The use of the computed value method will generally be limited to those cases where the buyer and seller are related, and the producer is prepared to supply to the authorities of the Union the necessary costings and to provide facilities for any subsequent verification which may be necessary.

2. The "cost or value" referred to in paragraph 1(a) of Article 9 is to be determined on the basis of information relating to the production of the goods being valued supplied by or on behalf of the producer. It is to be based upon the commercial accounts of the producer, provided that such accounts are consistent with the generally accepted accounting principles applied by the country where the goods are produced.

3. The "cost or value" shall include the cost of elements specified in paragraphs 1(a)(ii) and (iii) of Article 4. It shall also include the value, apportioned as appropriate under the provisions of the relevant note to Article 4 of any element specified in paragraph 1(b) of Article 4 which has been supplied directly or indirectly by the buyer for use in connection with the production of the imported goods. The value of the elements specified in paragraph 1(b)(iv) of Article 4 which are undertaken in

the Union shall be included only to the extent that such elements are charged to the producer. It is to be understood that no cost or value of the elements referred to in this paragraph shall be counted twice in determining the computed value.

4. The "amount for profit and general expenses" referred to in paragraph 1(b) of Article 9 is to be determined on the basis of information supplied by or on behalf of the producer unless the producer's figures are inconsistent with those 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 Union.

5. It should be noted in this context that the "amount for profit and general expenses" has to be taken as a whole. It follows that if, in any particular case, the producer's profit figure is low and the producer's general expenses are high, the producer's profit and general expenses taken together may nevertheless be consistent with that usually reflected in sales of goods of the same class or kind. Such a situation might occur for example, if a product were being launched in the Union and the producer accepted a nil or low profit to offset high general expenses associated with the launch.

Where the producer can demonstrate a low profit on sales of the imported goods because of particular commercial circumstances, the producer's actual profit figures should be taken into account provided that the producer has valid commercial reasons to justify them and the producer's pricing policy reflects usual pricing policies in the branch of industry concerned. Such a situation might occur, for example, where producers have been forced to lower prices temporarily because of an unforeseeable drop in demand, or where they sell goods to complement a range of goods being produced in the Union and accept a low profit to maintain competitiveness. Where the producer's own figures for profit and general expenses are not consistent with those 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 Union, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the producer of the goods.

6. Where information other than that supplied by or on behalf of the producer is used for the purposes of determining a computed value, the authorities of the Union shall inform the importer, if the latter so requests, of the source of such information, the data used and the calculations based upon such data, subject to the provisions of Article 12.

7. The "general expenses" referred to in paragraph 1(b) of Article 9 cover the direct and indirect costs of producing and selling the goods for export which are not included under paragraph 1(a) of Article 9.

8. Whether certain goods are "of the same class or kind" as other goods must be determined on a case-by-case basis by reference to the circumstances involved. In determining the usual profits and general expenses under the provisions of Article 9, sales for export to the Union of the narrowest group a range of goods, which includes the goods being valued, for which the necessary can be provided, should be examined. For the purposes of Article 9, "goods of the same class or kind" must be from the same country as the goods being valued.

Note to Article 10

1. Customs values determined under the provisions of Article 10 should, to the greatest extent possible, be based on previously determined customs values.

2. The methods of valuation to be employed under Article 10 should be those laid down in Articles 3 and 5 to 9 inclusive, but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of Article 10.

3. Some examples of reasonable flexibility are as follows:
- (a) **Identical goods** – the requirement that the identical goods should be exported at or about the same time as the goods being valued could be flexibly interpreted; identical imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of identical imported goods already determined under the provisions of Articles 8 and 9 could be used.
 - (b) **Similar goods** - the requirement that the similar goods should be exported at or about the same time as the goods being valued could be flexibly interpreted; similar imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of similar imported goods already determined under the provisions of Articles 8 and 9 could be used.
 - (c) **Deductive method** – the requirement that the goods shall have been sold in the "condition as imported", in paragraph 1(a) of Article 8, could be flexibly interpreted; the "90 days" requirement could be administered flexibly.

Note to Article 11

For the purposes of Article 11, "time of importation" may include the time of entry for customs purposes.

Note to Article 13

1. Article 13 provides the importer with the right to appeal against a valuation determination made by the customs administration for the goods being valued. Appeal may first be to a higher level in the customs administration, but the importer shall have the right in the final instance to appeal to the judiciary.
2. **"Without penalty"** means that the importer shall not be subject to a fine or threat of a fine merely because the importer chose to exercise the right of appeal. Payment of normal court costs and lawyers' fees shall not be considered to be a fine.
3. However, nothing in Article 13 shall prevent a member State from requiring full payment of assessed customs duties prior to an appeal.

**ORDER No. 02-049 ESTABLISHING REFERENCE VALUES SERVING AS A BASIS FOR
THE ASSESSMENT OF CUSTOMS DUTIES AND TAXES**

The Minister of Trade, Business and Crafts Promotion,
The Minister of the Economy and Finance

- Having regard to* The Constitution;
- Having regard to* Decree No. 2000-526/PRES of 6 November 2000, appointing the Prime Minister;
- Having regard to* Decree No. 2000-527/PRES/PM of 12 November 2000 establishing the composition of the Government of Burkina Faso;
- Having regard to* Decree No. 97-468/PRES/PMR of 31 October 1997, appointing the members of the Government;
- Having regard to* Law No. 14/ADP of 4 May 1994 authorizing and ratifying the WAEMU Treaty;
- Having regard to* Regulation No. 02/97/CM/UEMOA of 28 November 1997, adopting the WAEMU Common External Tariff.

ORDER

- Article 1. The reference values serving as a basis for the assessment of customs duties and taxes are established as follows:
- Article 2. The reference value is applicable to products enumerated in Article 1 above and not originating in the West African Economic and Monetary Union (WAEMU). It may be revised every six months.
- Article 3. This Order rescinds any earlier incompatible provisions, more particularly those of Order No. 01-037/MCPEA/MEF of 28 May 2001.
- Article 4. The Director-General of Customs and the Director-General of Industrial Development shall be responsible for applying this Order, which shall take effect as from the date of signature and shall be published in the Official Journal of Burkina Faso.

Ouagadougou, 3 June 2002

Bédouma Alain Yoda
Officier de l'Ordre national
Minister of Trade, Business and Crafts Promotion

Jean-Baptiste M.P. COMPAORE
Chevalier de l'Ordre national
Minister of the Economy and Finance, and Delegate Minister for Finance and the Budget to the Prime Minister

**PROPOSED SCHEDULE OF PRODUCTS TO BE SUBJECT
TO REFERENCE VALUES**

| Nomenclature | Description |
|---------------------|--|
| 11-01-00-00-00 | Wheat or meslin flour |
| 15-07-90-00-00 | Other soya-bean oil |
| 15-08-90-10-00 | Ground-nut oil, refined, put up for retail sale |
| 15-08-90-90-00 | Other ground-nut oil |
| 15-11-90-10-00 | Palm oil put up for retail sale in immediate packings of a net content of 5 litres or less |

| Nomenclature | Description |
|---------------------|--|
| 15-11-90-90-00 | Other palm oil |
| 15-12-19-00-00 | Other sunflower-seed, safflower or cotton-seed oil, fractions, not chemically modified |
| 15-12-29-00-00 | Other cotton-seed oil and fractions, not chemically modified |
| 15-13-19-00-00 | Coconut oil and fractions, not chemically modified |
| 15-13-29-00-00 | Other palm kernel or babassu oil, fractions, not chemically modified |
| 15-14-90-00-00 | Other rape, colza or mustard oil and fractions thereof, not chemically modified |
| 15-15-29-00-00 | Other maize (corn) oil and its fractions |

| Nomenclature | Description |
|---------------------|---|
| 17-01-91-10-00 | Sugar, in powder, granulated or crystallized (white granulated sugar) |
| 17-01-91-90-00 | Other (white lump sugar) |
| 17-01-99-10-00 | Sugar in powder, granulated or crystallized (white granulated sugar) |
| 17-01-99-90-00 | Other (white lump sugar) |
| 24-02-20-00-00 | Cigarettes containing tobacco |

| Nomenclature | Description |
|---------------------|---|
| 34-01-19-20-00 | Surface-active products and preparations |
| 34-02-20-00-00 | Preparations put up for retail sale |
| 35-06-91-00-00 | Adhesives based on rubber or plastics materials (including artificial resins), solution |
| 36-05-00-00-00 | Matches |

| Nomenclature | Description |
|---------------------|---|
| 40-11-40-00-00 | New pneumatic tyres, of rubber, of a kind used on motorcycles |
| 40-11-40-00-00 | New pneumatic tyres, of rubber, of a kind used on mopeds |
| 40-11-50-00-00 | New pneumatic tyres, of rubber, of a kind used on bicycles |
| 40-13-20-00-00 | Inner tubes, of rubber, of a kind used on bicycles |
| 40-13-90-00-00 | Inner tubes, of rubber, of a kind used on mopeds |
| 40-13-90-00-00 | Inner tubes, of rubber, of a kind used on motorcycles |

| Nomenclature | Description |
|---------------------|--|
| 85-06-10-11-00 | Primary cells R 20 |
| 85-06-10-19-00 | Primary cells R 06 |
| 87-11-20-90-00 | Mopeds, 70cc and 80cc, open frame, with 2.25 x 17 front and 2.50 x 17 rear tyres |
| 87-11-90-90-00 | Motorcycles, 50cc, with 17 or 18 inch tyres |
| 87-12-00-00-00 | Mens bicycles, height of frame 570mm, with 650 ½ balloon tyres |
| 87-12-00-00-00 | Ladies bicycles, open frame, 560mm high, with 650 ½ balloon tyres |

**NOTIFICATION BY BURKINA FASO CONCERNING THE AGREEMENT ON
IMPLEMENTATION OF ARTICLE VII OF THE GENERAL AGREEMENT
ON TARIFFS AND TRADE 1994**

Pursuant to Article 22.2 of the Agreement, the Government of Burkina Faso hereby informs the Customs Valuation Committee of a change in its regulations relevant to the Agreement.

The change has been made following the adoption by the West African Economic and Monetary Union (WAEMU) of Regulation No. 05/99/CM/UEMOA of 6 August 1999, on customs valuation.

Further to the Regulation, Burkina Faso has established reference values serving as a basis for the assessment of customs duties and taxes and has adopted a schedule of products eligible for the reference value.

The Government of Burkina Faso also notifies the Customs Valuation Committee of the following statutory texts:

- Regulation No. 05/99/CM/UEMOA of 6 August 1999, on customs valuation;
- Order No. 02-049/MCPEA/MEF establishing reference values serving as a basis for the assessment of customs duties and taxes;
- schedule of products subject to reference values.

Permanent Mission of Senegal to the
United Nations at Geneva

For the attention of: Mr Abdoulaye DIOP
Minister of the Economy and Finance
c/o Mr Cheikh Tidiane GADIO
Minister of Foreign Affairs of the African Union
and for Senegalese Abroad
Dakar

Sir,

I should like to draw your attention to the following information on the implementation by Senegal of the WTO Agreement on Customs Valuation.

Further to my letter No. 308 of 18 September 2001 in which I reported on the notification to the WTO of our texts implementing the Customs Valuation Agreement, it is important to enter a reservation on minimum values without delay in order to be able to use them in our customs mechanism.

On behalf of the member States of the WAEMU, Côte d'Ivoire recently reported to the WTO Secretariat in this regard, on the basis of the attached arguments and schedule of products.

In its reply, a copy of which is also attached, the Secretariat said that such a step was not valid. Hence it is for every WAEMU member State to formulate its own reservation.

The Secretariat's response is in reality the same as the one that we have always expressed on this issue. The WAEMU's role should be to ensure a harmonious approach among its members, in this case regarding the establishment of a schedule of eligible products and their minimum values, so as to make sure that they are respected when reservations are formulated in the WTO.

In view of the circumstances, I would suggest that you again take appropriate measures to communicate Senegal's reservation to the WTO as soon as possible.

Accept, Sir, the assurances of my highest consideration.

Ibou NDIAYE
Chargé d'Affaires *ad interim*

Copy:

Mrs Aïcha AGNE POUYE
Minister of SMEs and Trade

Attached:

WAEMU document setting out "Arguments for the eligibility of the common schedule of products for minimum values" and the "Common schedule of WAEMU reference values".
Letter from the WTO Secretariat to the Ambassador of Côte d'Ivoire at Geneva

WEST AFRICAN ECONOMIC AND MONETARY UNION
The Commission

ARGUMENTS FOR THE ELIGIBILITY OF THE COMMON SCHEDULE
OF PRODUCTS FOR MINIMUM VALUES

One of the WAEMU's objectives is to form among member States a common market based on free movement of persons, goods, services, capital and the right of establishment, as well as a Common External Tariff and a common trade policy.

In achieving this objective, the WAEMU has already engaged progressively in:

- Eliminating between member States customs duties and quantitative restrictions, with a prohibition on introducing further customs duties or further quantitative restrictions;
- establishing a Common External Tariff (CET) marked by a major cut in the number of duties and taxes and by global intra-Community tariff reductions. The Common External Tariff consists of three permanent duties and taxes, namely:
 - Customs duty at four rates: 0 per cent, 5 per cent, 10 per cent and 20 per cent;
 - a statistical fee: one per cent;
 - a Community solidarity levy: one per cent.

WAEMU's tariff peak is 22 per cent, (as against 100 per cent for some member States before the introduction of the Common External Tariff). This peak is far lower than the bound tariff duty rates (in the WTO) of the various member States.

This tariff has been prepared in conformity with Article 77 of the WAEMU Treaty, which stipulates "that pursuant to the provisions of Article XXIV(5) of the General Agreement on Tariffs and Trade, the Union shall ensure that the overall incidence of customs duties and other trade payments *vis-à-vis* third countries is not more restrictive than that of the provisions in force prior to the formation of the Union".

Since 1 January 2000, the WAEMU has been applying the CET to more than 70 per cent of its trade. Regulation No. 05/99/CM/UEMOA of 6/6/99, on customs valuation, was adopted in 1999. With this instrument, most WAEMU trade will be settled by means of the transaction value, in keeping with the WTO Agreement on Customs Valuation.

The WAEMU is thus resolute in opening up to foreign trade. This readiness is reflected in Article 83 of the Treaty, which specifies that "in achieving objectives, the Union shall respect the principles of the General Agreement on Tariffs and Trade (GATT) in regard to a preferential trade regime".

In its intention to implement the principal trade policy instruments, the WAEMU has drawn up a draft on rules of origin, based on WTO criteria, for determining the origin of goods. After seven years of reform, the customs union is now in a period of consolidation.

It is essential to bear in mind that seven of the eight member States are least-developed countries and to ensure harmonious development of intra-regional trade by fostering the development of production capacities within the Union and protecting the Union's production against dumping, subsidies and price manipulation policies pursued by third countries.

The production system is in fact faced with difficulties of a competitiveness (a small market, lack of infrastructure, high production factor costs) compounded by external threats (unfair trade practices).

Accordingly, some products in the Union are particularly under threat from unfair trade practices entailing reduced competitiveness and real risk of the disappearance of whole areas of the production system. Temporary support and supervision are therefore indispensable in order for them to strengthen their competitive position. This period will be used to enable the authorities to prepare sufficiently to use the WTO instruments.

The WAEMU consists essentially of LDCs that also faces enormous social problems. Their situation will be tragically undermined by if the industrial fabric is destroyed. That is why the eight WAEMU countries are seeking the use of minimum values, pursuant to the annex to the WTO Agreement on Customs Valuation, for a period of three years. This three-year period would seem reasonable in order to complete the Community's restructuring measures through sectoral policies and also to set up other WTO mechanisms, more particularly the anti-dumping code. This arrangement consists of a small schedule of products with a range of values aligned on world prices and capable of being reviewed periodically in order to avoid situations of overprotection. The values used are in keeping with world prices, so as to respect the requirements of world competitiveness.
