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Economics Growth and Effects of Transfer Pricing and Customs Valuation for Regional Integration in ECOWAS Region

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Abstract
The paper aims at analysing economics and effects of pricing and customs valuation for regional integration in Economic Community of West African States (ECOWAS) region to have gained a better knowledge of the ECOWAS region architecture; as an objective the paper investigates Transfer Pricing and Customs Valuation for Regional Integration in ECOWAS.The statistical insignificance of intermediate tariffs implicates that the prevailing effectively applied tariff levels is not likely to augur well for formation and strengthening of new and existing value chains in ECOWAS. The need for this regional economic community to consider reviewing tariffs downwards is exigent for both the success of value chains and regional trade integration in generalHave learnt about the purpose of the regional integration and the key challenges militating against its full actualisation; Be able to discuss the interplay of customs valuations and transfer pricing regulations and the implications for ECOWAS regional integration; and Be able to proffer possible solutions to the identified challenges and articulate potential tax planning opportunities.What we will cover: Overview of ECOWAS, Key provisions and purpose of the ECOWAS treaty regarding regional integration, Customs valuation and transfer pricing implications for ECOWAS, Challenges, and prospects and planning opportunities and Conclusion.
Keywords: *Customs Valuation, Regional Integration, ECOWAS Region and Transfer Pricing*

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I. Introduction

Transfer pricing has taken a central role in the global debate on international tax. Transfer pricing relatesto setting of prices in cross-border transactions of goods, services, and intangible property betweenrelated parties – typically members of the same Multinational Enterprise group. These prices have a direct impact on theamount of profits that the Multinational Enterprise report, and the tax they pay, in each country in which they operate.Increased globalization and tax competition among countries to attract mobile capital have providedopportunities for Multinational Enterprise often by means of transfer pricing - to greatly reduce their global tax burden byartificially shifting profits across borders to take advantage of tax rates that are lower than in the countrywhere the "real" business activity takes place. The success recorded is traceable to the relative politicalstability, cooperation of the populace to deal with the Ebola scourge, good macroeconomicreforms in the wake of declining international commodity prices. The political will of theCommunity leadership as well as the diligence of ECOWAS officials in the effective implementationof the Community Work Programme, also contributed to this success. The ECOWAS regional economic growth rate is projected to decline from 6.1 percent in 2014 to4.2 percent in 2015 attributable to a number of factors including the socio-economic impact ofEbola epidemic fall in international prices of major export products of the region such as crudeoil, gold, ironore and cotton and terrorism. Nevertheless, the regional economic growth rate of4.2 percent would outpace the projected 2015 global economic growth rate of 3.1 percent andemerging markets and developing economies' growth rate of 4.0 percent.The Economic Community of West African States (ECOWAS) is a regional group of 15 West African countries. Founded on 28 May 1975, as a trading union, it was set up to create a single but large trading bloc through economic cooperation (ECOWAS, 2015).with the signing of the Treaty of Lagos. Its mission is to promote economic integration across the region and achieve "collective self-sufficiency" for its member states by creating a single large trading bloc through an economic and trading union. It also serves as a peacekeeping force in the region. In 1976 Cape Verde joined ECOWAS, and in December 2000 Mauritania withdrew, having announced its intention to do so in December 1999. The organization operates officially in three languages - English, French, and Portuguese. The paper aims to explain the role of transfer pricing and

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customs value in the cross border business environment, and its importance for multinational enterprises, tax authorities and customs administrations. The relationship betweenvaluation for transfer pricing purposes and valuation for customs is examined by reviewingthe 1995 OECD Transfer Pricing Guidelines for Multinational Enterprises and TaxAdministrations (OECD Guidelines), Nigeria is largest economy in Africa, while Cape Verde, Guinea Bissau, Liberia and Gambia are amongst the smallest on the continent. Ten countries in ECOWAS are categorized by the United Nations as 'least developed countries' (Benin, Burkina Faso, The Gambia, Guinea, Guinea Bissau, Liberia, Mali, Niger, Senegal, Sierra Leone, Togo), with a GDP per capita ranging from \$255 to \$1060 **(2021 Table 1).** At the other end of the spectrum are Cape Verde (\$3641), Cote d'Ivoire (\$1545), Ghana (\$ 1442) and Nigeria (\$2978). During the period from 2006to 2015, ECOWAS countries performed strongly, with an average annual GDP growth rate of 4.96 with anincrease in activity involving multinational enterprises.

Table N°1: ECOWAS Population,GDP and Growth per countries

Countries	Population	Annual GDP	GDP per capita	HDI	Debt (M.$.)	Debt (%GDP)	Deficit (%GDP)
Benin	11, 801,151	14,392M.$	1,220$	0.545	5,933	41.23%	-0.54%
Burkina Faso	20, 321,378	15,991M.$	787$	0.452	6,719	42.67%	-3.46%
Cape Verde	549,935	1,982M.$	3,604$	0.665	2,477	124.98%	-1.84%
Ghana	30, 417,856	66,998M.$	2,203$	0.611	41,412	63.23%	-6.97%
Guinea	12, 771,246	12,297M.$	963$	0.477	5,075	36.79%	-0.47%
Guinea-Bissau	1, 920,922	1,339M.$	697$	0.480	964	66.95%	-3.92%
Ivory Coast	25, 716,544	58,539M.$	2,276$	0.538	24,128	41.22%	-2.29%
Liberia	4, 937,374	3,071M.$	622$	0.480	1,697	55.38%	-4.62%
Mali	19, 658,031	17,280M.$	879$	0.434	6,165	36.11%	-4.74%
Niger	23, 310,715	12,912M.$	554$	0.394	5,139	39.80%	-3.56%
Nigeria	200, 963,599	448,120M.$	2,230$	0.539	130,691	29.17%	-4.76%
Senegal	16, 296,364	23,307M.$	1,430$	0.512	15,101	64.80%	-3.87%
Sierra Leone	7, 813,215	4,122M.$	528$	0.452	2,951	71.66%	-3.09%
The Gambia	2, 347,706	1,826M.$	778$	0.496	1,406	84.61%	-6.06%
Togo	8, 082,366	5,490M.$	679$	0.515	3,868	53.57%	1.61%
TOTAL: ECOWAS	386, 908,402	687,666M.$	1,777$		253,726	36.53%	

Source :*ECOWAS statistics countryeconomy.com 2021*

ECOWAS with 386.908.402 million people accounts for 5% of the world's population but less than 1% of the GDP (\$395b vs \$72t).With population of more than half of 28 EU countries but GDP less than that of Belgium alone. With total landmass of 5,112,903 square miles ECOWAS is about the size of the entire EU and US combined.Nigeria, one of the member states, is the 12th largest producer of petroleum in the world and the 8th largest exporter, with the 10th largest proven oil reserves of over 35 billion barrels. Nigeria is one of the Next 11 countries identified by Goldman Sachs and now one of the MINT countries. It is projected that Nigeria will be the 20th largest economy by 2025, and number 12 by 2050 ahead of Canada.We can find it in **Figure 1**Other minerals and natural resources within ECOWAS include coal, iron ore, limestone, bitumen, gold, niobium, lead, zinc, arable land etc.

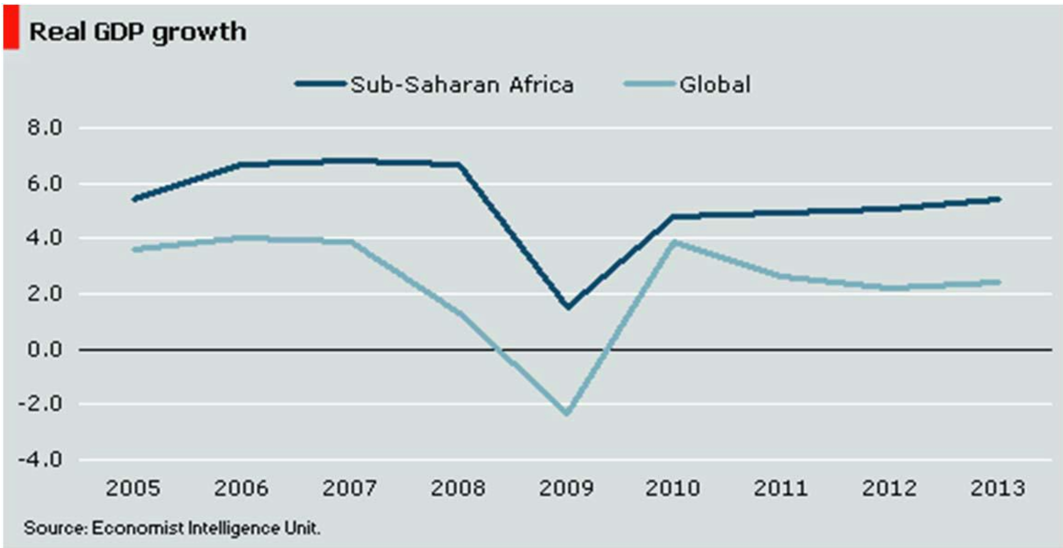
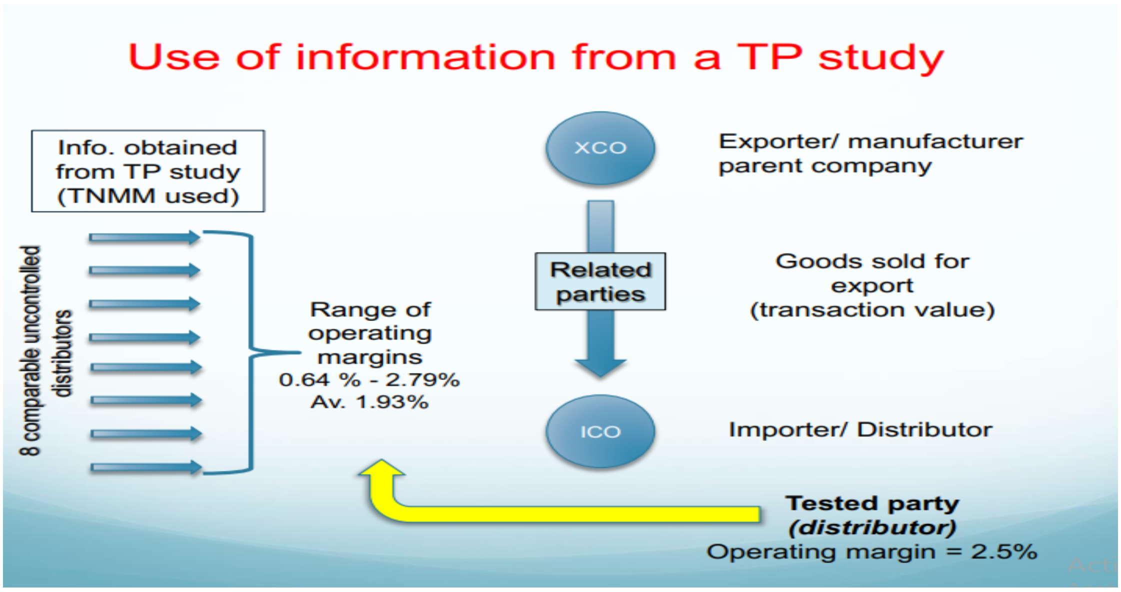


FIGURE 1:ECOWAS is part of the Africa story Form 2005 to 2013 the Real GDP

Over 1 billion population and GDP of circa USD 2 trillion .Huge natural resources (over 6000 bb of oil per minute).6 of the top 10 fastest growing economies are in Africa.3 of the 40 African Challengers (global business competitors) identified by the Boston Consulting Group are in the region – Ecobank, Dangote and UBA.From hopeless continent" to "Africa Rising" *say The Economists.*

II. Methodology

This study investigates Economics growth and Effects of Transfer Pricing and Customs Valuation for Regional Integration in ECOWAS using annual time-series data from 2010 to 2020. The data used is secondary innature; hence, ECOWAS the Statistical Bulletin is relied on as the onlysource for data collection. The estimation technique is the Ordinary Least Square (OLS)method. This study hypothesize that Transfer pricing and customs valuation has no significant and positive effect onthe ECOWAS economy in regional integration. A model is built from Edoumiekumo and Opukri (2013)with slight modification; trade openness is included while gross domestic product at market pricemeasured economic growth instead of real gross domestic product. Trade openness iscalculated as ratio of total value of imports plus total value of exports i.e. total trade to grossdomestic product. The model specifies the endogenous variable as Gross Domestic Product(GDP) as a function of imports (IMP), exports (EXP), and trade openness (OPEN), representingthe exogenous variables.



The model is specified:

Key provisions and purpose of the ECOWAS treaty regarding regional integration

RECENT ECONOMIC DEVELOPMENTS IN WEST AFRICA

The global economy that witnessed economic growth rate of 3.4 percent in 2014 is expected to witness a decline of 3.1 percent in 2015 before increasing by 3.6 per cent in 2016. This global economic performance portrays a mixed result for advanced economies and emerging and lowincome countries. For the advanced economies, overall growth was 1.8 percent in 2014 and projections for 2015 and 2016 are 2.0 and 2.2 percent respectively. Within the advanced economies, there is heterogeneity of countries in terms of economic prospects and development. Some of them are commodity exporters and countries like Canada, Norway, and Australia are facing economic downturns mainly from deteriorating terms of trade effects.The value of world output is projected to decline by 4.9 percent from US $77.269 trillion in 2014 to US$73,507 in 2015 but will increase by 3.8 percent to US$76,321 in 2016 **(Table2)**. The declinein world economic performance is due to the inter-connectivity of three powerful economicforces, namely, China's structural transformation, fall in commodity prices and the normalizationof the United States monetary policy. All these factors have a particular impact on emergingmarkets and low-income economies.

Table 2: World Economic Output (annual percent change) of 2013 to 2016

World Economic Output	*Economic Output (annual percent change) of 2013 to 2016*			
	2013	2014	2015	2016
World Output	**3.3**	**3.4**	**3.1**	**3.6**
Advanced Economies	**1.1**	**1.8**	**2.0**	**2.2**
Emerging Market and Developing Economies	**5.0**	**4.6**	**4.0**	**4.5**
Sub-Saharan Africa	**5.2**	**5.0**	**3.8**	**4.3**
Consumer Prices (Inflation):				
Advanced economies	**1.4**	**1.4**	**0.3**	**1.2**
Emerging Market and Developing Economies	**5.8**	**5.1**	**5.6**	**5.1**
Sub-Saharan Africa	**6.6**	**6.4**	**6.9**	**7.3**
Value of world output (billion of US dollars at market exchange rates)	**75467**	**77269**	**73507**	**76321**

Source: IMF (2015) World Economic Outlook, October 2015

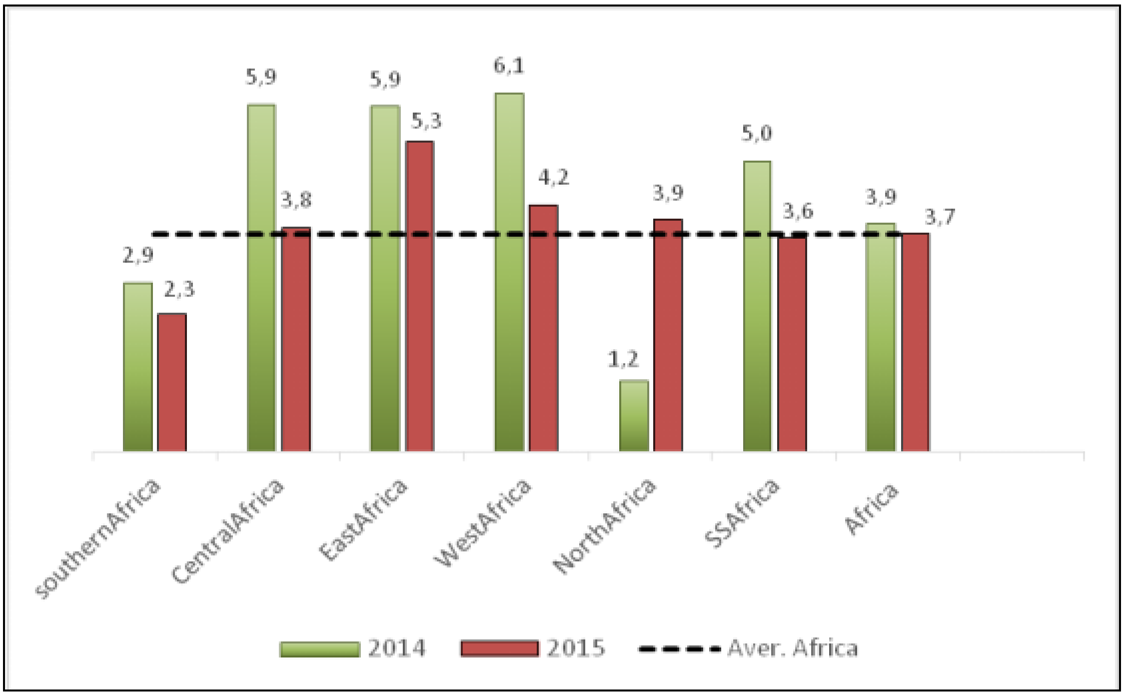
Concerning inflation, headline inflation of advanced countries declined from 1.4% in 2014 to 0.3% in 2015 despite the fact that core inflation remained stable. This decline is as a result of the decline in oil prices and lower prices for other commodities. With regard to emerging markets, lower prices of oil and other commodities (including food, which has a larger weight in the consumer price index of emerging market and developing economies) have generally contributed to reduction in inflation, except in countries suffering sizable currency depreciation, such as Russia.

Growth of the African Economy

The growth outlook for African economies confirms the contraction of overall activity in 2015. Thelatest growth forecasts provided in the course of the second half of the year rely on much morepessimistic scenarios than the ones initially adopted. As such, from recent forecasts for Africancountries, a decline in the growth rate of Africa's real GDP is expected in 2015, dropping to 3.7%against 3.9% in 2014, the lowest in six years. The unfavourable conditions in the international environment, namely, the depression in the rawmaterials market, and the less conducive financial conditions, are sources of the slowdown inAfrica's growth. In fact, the persistent drop in commodity prices, especially crude oil, hasworsened since the second half of 2014, adversely affecting the continent's growth outlook. However, significant disparities can be seen between the countries. The difference between crudeoil exporters and importers is a fundamental reason for the differences in growth. Many oilimporting countries, mostly low income countries, continue to record growth rates exceeding 5 %.This increase is driven by domestic demand, in itself supported by the continued rise ininfrastructure investment and household consumption, which benefits from the decline in theprice of oil. On the other hand, the major oil-exporting countries are the most severely affected by thecollapsing price of oil which has reached on average its lowest level in eight years. In September2015, the average price of a barrel of oil dropped by approximately 44%, compared to the annualaverage of 2014. Over the years, the price of oil has fallen by more than 50 %. The budgetary
situation of these countries should therefore remain tight throughout the year 2015, with consequent reduction in capital expenditure, the first target for budgetary savings, as well as worsening public deficits.Moreover, the continent's economic outlook indicates an expected decline in the pace of activityin all the major African regions3, with the exception of North Africa (see figure 2). Even if thegravity of the decline differs across regions, the factors responsible for the latter are almost thesame. They have to do with the sharp

and continuing fall in prices of raw materials.**Southern Africa** represents on average nearly a quarter (25 %) of the continent's GDP, but wouldrecord a decline in its growth rate, from 2.9% in 2014 to 2.3% in 2015. This decline is primarilylinked to the slowdown of economic activity in South Africa, the region's leading economy, with a growth rate that would fall to 1.4% in 2015 against 1.5% in 2014. The expected decrease in the growth rate of Angola (3.5% in 2015 against 4.8% in 2014), Africa's second largest oil producer,adds to the decline in regional growth. Finally, the growth forecasts indicate a growth decline in allthe countries, with the exception of Namibia and the Lesotho.

Figure 2 : Real GDP Growth of African Regions



Source: IMF – WEO data October 2015

Central Africa, which represents a little more than 5% of Africa's GDP, is one of the regions heavily affected by the fall in commodity prices since nearly all are oil exporting countries. There is an expected decline of more than two percentage points in its growth rate, from 5.9% in 2014 to 3.8% in 2015. In addition, the security situation in the north of Cameroon and in Chad represents an additional risk. The acts of violence perpetrated by Boko Haram cause widespread suffering and weigh on economic activity, straining the budgets and lowering investment prospects. Representing nearly 12% of the output of the continent,

East Africa has, in recent years, become one of the most successful regions of Africa. Driven by the economies of Ethiopia and Kenya, and to a lesser extent Tanzania and Uganda, the region would, in 2015, record the highest growth rate in Africa, being 5.3% against 5.9% in 2014. The region's growth results from the rapid expansion in financial services, transportation and communication as well as infrastructure investments, particularly in the rail sector.

North Africa, is the only African region set to record a clear acceleration of its growth rate. The growth rate will rise to 3.9% in 2015, from 1.2% in 2014. Responsible for over 28% of the continent's GDP, North Africa would contribute significantly to sustaining Africa's growth. Prospects for accelerated growth in North Africa are tied to the return to socio-political stability in Egypt and Tunisia.

West Africa is the leading African region in terms of production, contributing to nearly 30% of the continent's GDP. The region should experience a marked slowdown in growth rate, from 6.1% in 2014 to 4.2% in 2015. Besides the adverse conditions of the raw materials market, the downturn in the pace of economic activity would be due to the increasing political instability and terrorism in some countries of the region such as Mali and Nigeria, as well as the effects of the Ebola epidemic, preventing exponential growth. In the final analysis, despite continuing growth in Africa over the years, a number of external and internal risks continue to pose uncertainties on the economic performance of the continent. The most recurrent of the risks has to do with: the instability of prices of raw materials, the worsening deficits resulting in debt accumulation and political instability. These risks jeopardize thesignificant improvement to the macroeconomic and business environment, responsible for bringing about the sustained growth of the past few years.Therefore, the diversification of the economies and exploitation of the huge tax potential of theregion serve as alternatives that could help countries to continue to finance development andinfrastructure needs while limiting the increase in public debt.

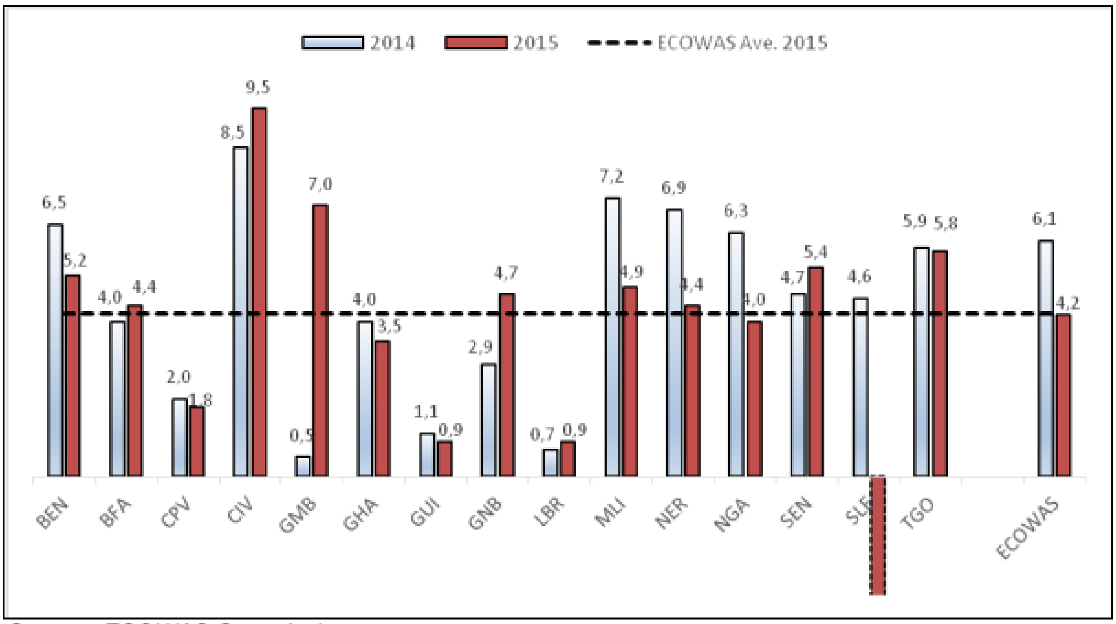
West African Economies

The population of ECOWAS is estimated at approximately 327 million inhabitants, of which nearly half resides in Nigeria. The average population density of 64.1 inhabitants/km² masks great disparities: countries with low density are mainly the landlocked countries of the Sahel (Niger and Mali, less than 13 inhabitants/km²), while densely populated areas are found in the coastal countries (179.5 ; 126.1 ; 101.3 ; inhabitants/km² in Nigeria, Cape Verde and Togo, respectively). The population of ECOWAS is predominantly young and growing exponentially with an average annual rate of 2.7 %. The population growth rate varies between 1.46% in Cape Verde and 3.2% in Nigeria. Consequently, the percentage of young people below 15 years is very high, and represents nearly half the population. The economies of the Community are characterized by a predominant tertiary sector (43.5% of GDP on average). The primary sector (agriculture, fisheries) is also significant and contributes a third of the GDP. In addition, agriculture employs about 65% of the active population. On the other hand, the secondary sector's share in the GDP is low (20 %). This breakdown of each sector's contribution to the GDP reflects the challenges facing most countries of the region in the development of an industrial capacity capable of driving sustainable growth.

Economic growth

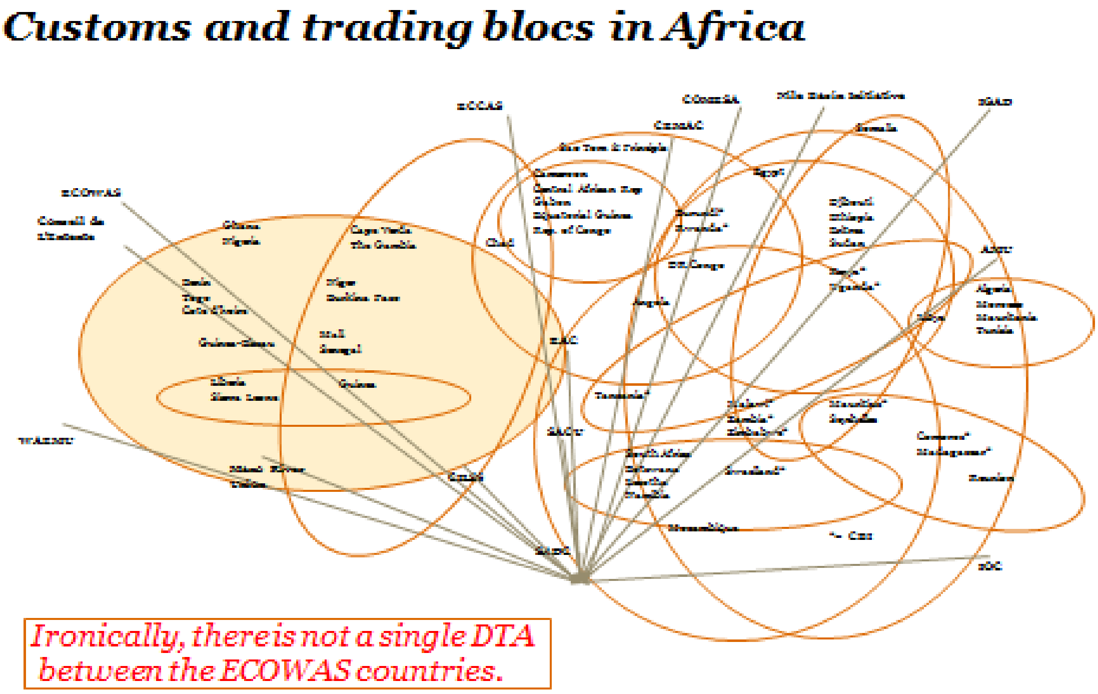
West Africa's actual growth would stand at 4.2% in 2015, against 6.1% in 2014, a break from the average 5% of the last decade. This unprecedented decline in the region's growth in recent times mainly results from the persistent drop in the prices of raw materials, particularly oil. The sharp and unexpected drop in the price of oil, which has lost more than half its value in less than a year, displayed the fragile foundations of West Africa's growth, heavily dependent on exports of raw materials. Most of the countries reveal a slowdown in the pace of economic activity (Figure 3). However, the overall regional reality masks some differences between countries in terms of economic performance. Only five countries - Cote d'Ivoire (9.5%), Gambia (7%), Senegal (5.4%), Guinea Bissau (4.7%), and Burkina Faso (4.4%) - will record an acceleration in economic growth in 2015, against 8.5%, 0.5%, 4.7%, 2.9% and 4.0 % respectively in 2014. In addition, though a slight decline compared to 2014, Togo (5.8 %), Benin (5.2 %), and to a lesser extent Mali (4.9 %) and Niger (4.4 %), will record a relatively strong growth in 2015. Increased investments, particularly in infrastructure, curbing of the adverse effect of the Ebola outbreak, better management of political crises (Guinea Bissau, Mali and Burkina Faso), together with the reduced cost of imported petroleum products , enable a positive outlook for these countries.

Figure 3 : Real GDP growth of ECOWAS Member States



Source : ECOWAS Commission

On the other hand, the major oil-exporting countries such as Nigeria, and to a lesser extent Ghana, will be worst hit by the adverse effects of the on-going price crash. Nigeria's growth is expected to drop by more than 2 percentage points to 4% in 2015, compared to 6.3% in 2014. In Ghana, economic activity is expected to decline further from 4% in 2014 to 3.5% in 2015. Sierra Leone would bear the impact of the Ebola outbreak in 2014, leading to a sharp contraction of economic activity. The country's GDP would drop to -21.5% in 2015 against 4.6% in 2014. This decline is due to an almost zero-contribution of the mining sector, particularly iron ore, in 2014 and the first half of 2015. Guinea and Liberia, also affected by the Ebola epidemic, would have difficulty recovering from the severe health crises that affected their social and production systems. Their growth rates will remain low in 2015 at 0.9% each, compared to 1.1 % and 0.7% respectively in 2014.



Note: AMU: Arab Maghreb Union; CBI: Cross Border Initiative; CEMAC: Economic and Monetary Community of Central Africa; CILSS: Permanent Interstate Committee on Drought Control in the Sahel; COMESA: Common Market for Eastern and Southern Africa; EAC: East African Cooperation; ECOWAS: Economic Community of Western African States; IGAD: Inter-Governmental Authority on Development; IOC: Indian Ocean Commission; SACU: Southern African Customs Union; SADC: Southern African Development Community; WAEMU: West African Economic and Monetary Union.

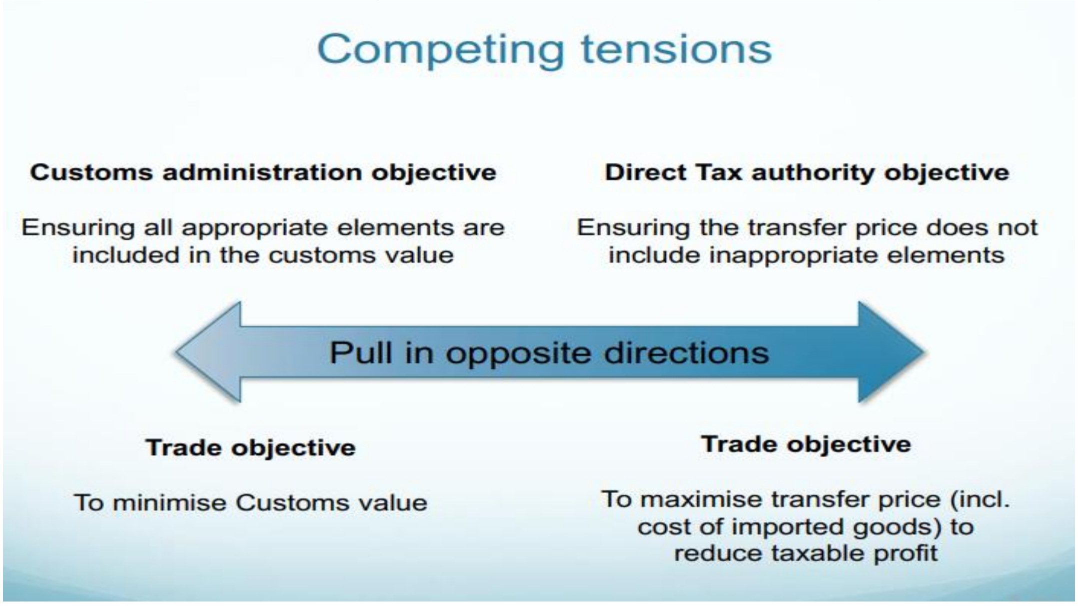
The ECOWAS Treaty: The objectives of ECOWAS can be found in 3 Object. They include:To promote co-operation and integration in economic, social and cultural activities;Establish an economic and monetary union through the total integration of the national economies of member states;Raise the living standards of its peoples;Maintain and enhance economic stability;Foster relations among member states;Contribute to the progress and development of the AfricanContinent.
Action steps: To achieve these objectives, the ECOWAS is expected to:
➢ Harmonize and co-ordinate national policies of member States,
➢ Promote of the establishment of joint production enterprises,
➢ Establish of a common market through:
▪ Abolition of custom duties;
▪ Adoption of a common external tariff; and
▪ Removal of obstacles to the free movement of persons, goods, service and capital, right of residence and establishment.

Trade Liberalisation Scheme: The Scheme is designed to achieve 2 major objectives:
➢ Elimination of all form of customs duties with respect to goods moving within the ECOWAS area; andIntroduction of a common external tariff (CET) on goods coming from outside the ECOWAS area.In order to ensure that only goods originating from within the ECOWAS region are entitled to the treaty rights, Rules of

Origin were put in place through Protocol A/P1/1/03.Protocol A/P1/1/03 defines originating goods as goods which:

- Are wholly produced in any of the Member States (Article 2 & 3),
- Are produced outside ECOWAS area but the production of such goods results in the exclusive use of material which are classified under a different tariff sub-head from that of the product (Article 4), andAre produced outside the ECOWAS area but with the use of materials which have received a value added of at least 30% of the ex-factory price of the finished good (Article 4).

Customs valuation and transfer pricing implications for ECOWASTransfer pricingwhat does it mean?



What is transfer pricing: Transfer pricing" generally refers to how related parties price goods and services, assets, intellectual properties, loans, guarantees and other commercial transactions between them.According to the WTO, global trade amounted to US$ 22.4 trillion in 2011 with growth of 4% in 2012.So why does it matter? :The prices paid for goods or services delivered or received have a direct impact on the profits of the seller and buyer and by implication, on tax.Where it is cross border, the taxman becomes even more concerned because effectively any mispricing would mean a shift of tax base from one jurisdiction to another or worse still, to a tax haven.It is important that the scope of transactions within transfer pricing rules is defined clearly. If the rules are unclear, businesses will be left with some uncertainty concerning their tax obligations. If they are or too wide, businesses will be faced with unnecessary compliance costs, and taxadministrations with higher enforcement costs. There are a number of approaches that can be taken towards this as can be seen by the variety of approaches used by ECOWAS countries. There are a number of issues that are useful to consider:

- *Countries typically use either (or both) a 'de jure' or 'de facto' approach in defining the scope of transfer pricing rules. The former refers to an approach that defines 'control' according to legal criteria such as level of shareholding or voting rights. 'De facto' approaches use a criterion based on whether one party can in practice, by whatever means, manage, control or influence the affairs of another. As can be seen from the examples in both variations are used by ECOWAS countries (Ghana uses both).*
- *There is no international standard on the level of control (for example, the proportion ofshareholding) needed to establish control. A level of '50% or more' should be considered as the minimum, but many countries choose a lower level. It is important, however, that where a de jure approach is adopted, country rules specify the level of shareholding (or rights or voting power) needed to establish control. Without this,taxpayers will be left with some uncertainty over whether the rules apply. It is of concern that many ECOWAS country rules define the scope of the rules in terms of 'managing' without indication of the how this is defined or level of management required.*

- *In any definition of control using a de jure approach, it is useful to specify 'direct or indirect' control, to ensure that indirect shareholdings are taken into account.Some countries (including Guinea) deem a control relationship where a transaction is with a low tax jurisdiction, whether or not any further control criteria are fulfilled. This approach takes into account potential difficulties encountered in obtaining the information needed to establish whether there is a control relationship.*

➢ *It is useful, also, to employ transfer pricing rules for the attribution on profit to a permanent establishment (as Ghana and Nigeria do).*

➢ *In our review we noted that some country rules appear to include parent companies and subsidiaries within scope, but not sister companies. This should be clarified and corrected if necessary.*

➢ *It is important to ensure that the transfer pricing control rules take into account family and other 'connected party' issues. One way in which countries address this is to specify that the rights or powers attributed to a person includes the rights or powers of any family member or partners. As an example, this would cove :*

a)transactions between a company owned by an individual and a relative of that individual,or
b) transactions between a company owned by an individual and another company owned by a relative of that individual.

➢ *We noted that the definition of control employed by at least one ECOWAS country used criteria that could potentially bring within scope transactions between independent parties, which can realistically be considered to be conducted at arm's length. Such rules may create unnecessary compliance and enforcement costs, and may also create issues with treaty partners.*

III. Discussion and Results Customs Valuation and Transfer Pricing (How governments protect their tax bases).

Transfer pricing adjustments

Type	Who makes?	What?	Why?	Voluntary?	Effect on...
Compensating or..'Year-end' or.. 'True -up'	Taxpayer – before tax return	Actual pricing	Compliance	Yes	Actual prices Taxable profit
Primary or .. 'Audit'	Tax Administration- after tax return	Notional pricing	Enforcement	No	Taxable profit and (possible) penalties
Compliance	Taxpayer – in tax return	Notional pricing	Compliance	Yes	Taxable profit
Secondary	Taxpayer or tax admin – after a compliance or secondary adj.	Actual pricing or loan accounts or dividends	Take notional adjustment towards actual adjustments	Yes or no	Actual prices (possibly)
Corresponding	Tax administration	Taxable profit	Avoid double taxation	Yes- taxpayer requests, but not automatic	Taxable profit Notional prices

Key Differences

Customs Valuation	Transfer Pricing
• Goods only	• Goods, services & property
• Transaction based	• Based on aggregates/annual
• Confirmed at point of customs clearance	• Confirmed retrospectively (some years after event)

Customs valuation and transfer pricing

Countries	Guidance in Tax Law	TP Regulations	Methods	Document Requirement	Thin Cap Rules	Safe Harbours	APA Program
Algeria	Yes	No	No	Yes	No	No	No
Angola	Yes	Yes	Yes	Yes	No	No	No
Cameroon	Yes	No	Yes	Yes	No	No	Yes
Cote d'Ivoire	Yes	No	No	Yes	No	No	No
Rep. Congo	Yes	Yes	No	No	No	No	No
Ghana	Yes	Yes	Yes	Yes	Yes	Yes	No
Kenya	Yes	Yes	Yes	Yes	Yes	Yes	No
Liberia	Yes	No	No	No	No	No	Yes
Malawi	Yes	Yes	Yes	Yes	No	No	No
Mozambique	Yes	No	No	No	Yes	No	No
Namibia	Yes	Yes	Yes	No	Yes	No	No
Nigeria	Yes	Yes	Yes	Yes	No	Yes?	Yes
Sierra Leone	Yes	No	No	No	Yes	Yes	No
South Africa	Yes	Yes	Yes	No	Yes	Yes	No
Tanzania	Yes	No	No	No	Yes	No	Yes
Tunisia	Yes	No	No	No	No	No	No
Uganda	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Zambia	Yes	Yes	Yes	Yes	No	No	No
Zimbabwe	No	No	No	No	Yes	No	No

Customs Valuation Methods seek to establish the true value of goods for the purpose of determining the customs duty to be paid thereon. Examples of methods are transaction value, value of identical goods, value of similar goods, etc.

Transfer Pricing Methods are applied to determine whether related parties have transacted at arm's length. Examples of methods include comparable uncontrolled price, cost plus, resale price (traditional methods), profit split and transactional net margin methods (transactional profit methods).

Since the idea of the ECOWAS Treaty is for regional integration and the creation of a common market, should TP rules be applied in the case of intercompany transactions involving companies resident in Member States when customs duties are not applicable?

Customs duties are not applicable to goods emanating from the ECOWAS area. However, they are applicable to third countries. In the absence of a CET, an MNC resident in a third country may seek to reduce the value of imported goods for the purpose of paying reduced customs duties. Once the goods are within the ECOWAS area, the MNC can again manipulate the prices so as to shift profits to jurisdictions with minimum rate of tax.There is a need for cooperation between customs agencies and Revenue authorities amongst the Member States.Revenue authorities and Customs could be aggressive but should also be logical and look at the big picture in carrying out their functions.Emphasis should be on collecting the right amount of tax timely rather than maximum tax at all cost no matter how long it takes.

The paper provides a summary and analysis of Economic Community of West African States (ECOWAS) approaches to transfer pricing is intended to:

- Survey ECOWAS countries' current approach to transfer pricing regulation and implementation.
- Share experience and good practice in adopting effective measures in protecting the corporate tax base while maintaining an attractive investment climate.
- Recommend ways in which transfer pricing regimes in ECOWAS countries can be strengthened.
- Share, and invite comment on, a number of tools that have been developed to support ECOWAS countries adopt and implement effective transfer pricing rules.

At the same time provisions have to be implementable in a way that avoids excessive compliance or enforcement costs and their design needs to take into account capacity and resource constraints and of tax administrations in ECOWAS countries

Objective of transfer pricing rules:

- Ensuring prices (and thus taxable profits) are what they would have been had the parties been independent of each other Countries introduce tax rules that:

- Require multinational enterprises to use arm's length pricing for their internal transactions and require them to demonstrate this by documenting their transfer pricing policies.
- Give tax administrations the authority to increase the tax measure of profit where multinational enterprises use nonarm's length prices Transfer pricing methods used to test transfer prices;
- Ideally applied transactionally;
- But in practice transactions often need to be aggregated greater reliability given available, sufficiently comparable, independent data periodic adjustments may be required;
- May be actual adjustments to price paid/payable;
- In some countries notional (i.e. for tax only)adjustments may be permitted

4. Challenges, Prospects and Planning Opportunities

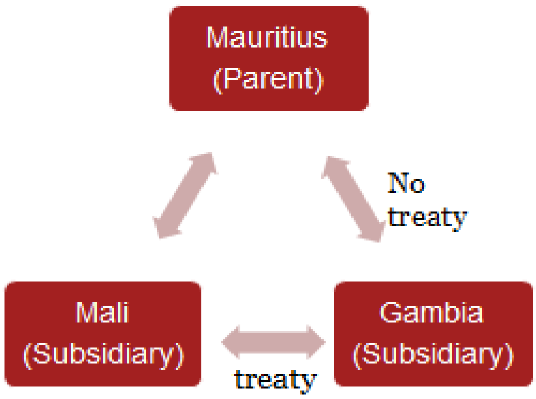
Treaty rights accrue only to Member States and citizens of Member States. However, third countries may seek to benefit from Treaty benefits.Unauthorised access to the Treaty may be perpetrated through:

- Smuggling
- Under invoicing
- Manipulation of rules of origin

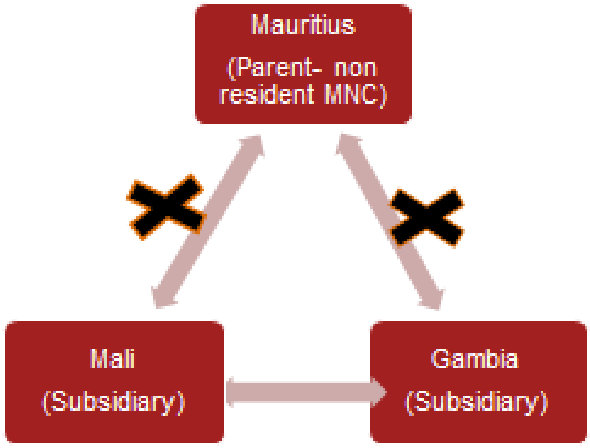
On the other hand, the benefits of the Treaty may be accessed through tax planning eg. Treaty Shopping

Under-invoicing: This problem pre-dates the ECOWAS Treaty, however, continues to operate in the present dispensation of the Treaty.An MNC in a third country can understate the true value of imported goods for the purpose of paying reduced customs duties.This problem can be resolved if the Common External Tariff (CET) protocol is fully implemented and complemented with ETLS regarding rule of origin.In the interim, the primary customs valuation method – Transaction Value should be complemented with TP methodology. This is because the latter takes into consideration comparable which produce a more objective arm's length result.Alternatively, TP methodologies can be substituted for the current Customs Valuation Methods.

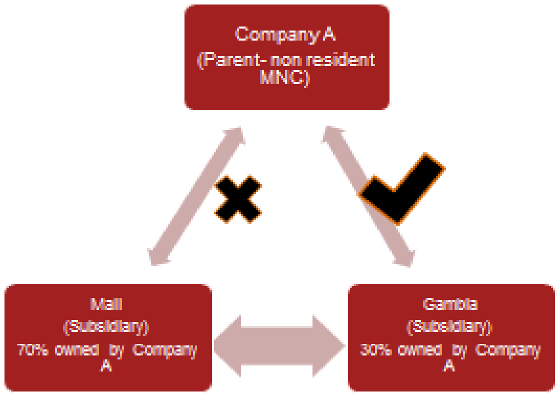
Treaty Shopping: This is common with Tax Treaties and there are many variations.It is the practice of 'borrowing' a tax treaty by incorporating an entity in a country having a favourable tax treaty with the country of source.It is a specie of tax avoidance – it erodes the tax base of the Member State in questionit is an abuse of the reciprocity of treaties.It is a disincentive to entering into treaties.



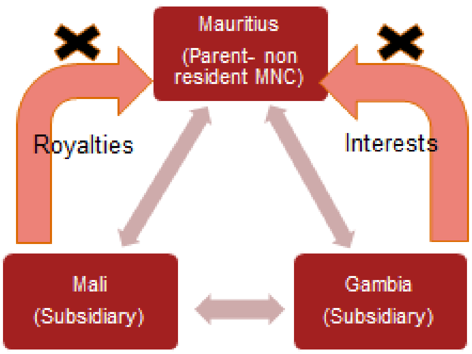
Solution to treaty shopping:The Beneficial approach excludes the extension of treaty benefits to persons who are not beneficial owners. Member States are encouraged to implement rules which would deny extension of the treaty benefits to MNCs who are not beneficial owners residing within the ECOWAS region. A definition of the term 'beneficial ownership' may be necessary for the purpose of interpreting and enforcing the treaty. The definitions must also be uniform so as to prevent a situation where a non-resident can take advantage of any inconsistency.



The "Look through" approach focuses on direct and indirect ownership of an entity and it is to the effect that an MNC shall not be entitled to treaty benefits if it is directly or indirectly controlled by persons who are not resident in any of the ECOWAS States. For effectiveness of any law based on the look through approach, Member States must agree on the definition of 'control' for the purpose of consistency, interpretation and enforcement.



Finally, the **"Channel approach",** which is also known as the base erosion, prevents extension of treaty benefits to persons/MNCs where there is the risk of erosion of a Member State's tax base through outbound payments of interests, royalties etc (passive income). This usually applies to controlling shareholders or associated persons.



IV. Conclusion

With about 327 million people and GDP of about US$ 400 billion, ECOWAS accounts for 4.5% of the world's population but only 0.5% of the world's GDP .This is however changing with about 6% annual growth rate in GDP of the region.Despite the enormous challenges, there is great opportunity for growth and development within the ECOWAS region.Potential returns on investment are extremely attractive and more than commensurate for the level of business risk.There is a large untapped market so Member States must cease the moment.Emphasis should be on collecting the right amount of tax timely rather than maximum tax at all cost no matter how long it takes. It is a recipe for disaster to have an a la carte of archaic and draconian tax laws garnished with arbitrary tax incentives. WAUTI can develop a model double tax treaty among Member States or multilateral treaty for the avoidance of double taxation to complement the ECOWAS Treaty and support the implementation of TP rules across the region.

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