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

Dr SEYNI Mamoudou1, Dr ABASS Seyni Hima2
1(Department of Economics and Management /Faculty of Law, Economics and Management FADEG, University of Tahoua Niger. 2(London School of Modern Studies, 102 – 116 Windmill Road, Croydon, Surrey CR0 2XQ. United Kingdom)

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 general. Have 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

I. Introduction
Transfer pricing has taken a central role in the global debate on international tax. Transfer pricing relates to setting of prices in cross-border transactions of goods, services, and intangible property between unrelated parties – typically members of the same Multinational Enterprise group. These prices have a direct impact on the amount 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 provided opportunities for Multinational Enterprise often by means of transfer pricing - to greatly reduce their global tax burden by artificially shifting profits across borders to take advantage of tax rates that are lower than in the country where the “real” business activity takes place. The success recorded is traceable to the relative political stability, cooperation of the populace to deal with the Ebola scourge, good macroeconomic reforms in the wake of declining international commodity prices. The political will of the Community leadership as well as the diligence of ECOWAS officials in the effective implementation of 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 to 4.2 percent in 2015 attributable to a number of factors including the socio-economic impact of Ebola epidemic fall in international prices of major export products of the region such as crude oil, gold, iron ore and cotton and terrorism. Nevertheless, the regional economic growth rate of 4.2 percent would outpace the projected 2015 global economic growth rate of 3.1 percent and emerging 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
customs value in the cross border business environment, and its importance for multinational enterprises, tax authorities and customs administrations. The relationship between valuation for transfer pricing purposes and valuation for customs is examined by reviewing the 1995 OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (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 2006 to 2015, ECOWAS countries performed strongly, with an average annual GDP growth rate of 4.96 with an increase in activity involving multinational enterprises.

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

<table>
<thead>
<tr>
<th>Countries</th>
<th>Population</th>
<th>Annual GDP</th>
<th>GDP per capita</th>
<th>HDI</th>
<th>Debt (M.$)</th>
<th>Debt (%GDP)</th>
<th>Deficit (%GDP)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benin</td>
<td>11,801,151</td>
<td>14,392M.$</td>
<td>1,220$</td>
<td>0.545</td>
<td>5,933</td>
<td>41.23%</td>
<td>-0.54%</td>
</tr>
<tr>
<td>Burkina Faso</td>
<td>20,321,378</td>
<td>15,991M.$</td>
<td>787$</td>
<td>0.452</td>
<td>6,719</td>
<td>42.67%</td>
<td>-3.46%</td>
</tr>
<tr>
<td>Cape Verde</td>
<td>549,935</td>
<td>1,982M.$</td>
<td>3,604$</td>
<td>0.665</td>
<td>2,477</td>
<td>124.98%</td>
<td>-1.84%</td>
</tr>
<tr>
<td>Ghana</td>
<td>30,417,856</td>
<td>66,998M.$</td>
<td>2,203$</td>
<td>0.611</td>
<td>41,422</td>
<td>63.23%</td>
<td>-6.97%</td>
</tr>
<tr>
<td>Guinea</td>
<td>12,771,246</td>
<td>12,297M.$</td>
<td>963$</td>
<td>0.477</td>
<td>5,075</td>
<td>36.79%</td>
<td>-0.47%</td>
</tr>
<tr>
<td>Guinea-Bissau</td>
<td>1,920,922</td>
<td>1,339M.$</td>
<td>697$</td>
<td>0.480</td>
<td>964</td>
<td>66.95%</td>
<td>-3.92%</td>
</tr>
<tr>
<td>Ivory Coast</td>
<td>25,716,544</td>
<td>58,539M.$</td>
<td>2,276$</td>
<td>0.538</td>
<td>24,128</td>
<td>41.22%</td>
<td>-2.29%</td>
</tr>
<tr>
<td>Liberia</td>
<td>4,937,374</td>
<td>3,071M.$</td>
<td>622$</td>
<td>0.480</td>
<td>1,697</td>
<td>55.38%</td>
<td>-4.62%</td>
</tr>
<tr>
<td>Mali</td>
<td>19,658,031</td>
<td>17,280M.$</td>
<td>879$</td>
<td>0.434</td>
<td>6,165</td>
<td>36.11%</td>
<td>-4.74%</td>
</tr>
<tr>
<td>Nigeria</td>
<td>23,310,715</td>
<td>12,912M.$</td>
<td>554$</td>
<td>0.394</td>
<td>5,139</td>
<td>39.80%</td>
<td>-3.56%</td>
</tr>
<tr>
<td>Senegal</td>
<td>200,963,599</td>
<td>448,120M.$</td>
<td>2,230$</td>
<td>0.539</td>
<td>130,691</td>
<td>29.17%</td>
<td>-4.76%</td>
</tr>
<tr>
<td>Sierra Leone</td>
<td>16,296,364</td>
<td>23,307M.$</td>
<td>1,430$</td>
<td>0.512</td>
<td>15,101</td>
<td>64.80%</td>
<td>-3.87%</td>
</tr>
<tr>
<td>The Gambia</td>
<td>2,347,706</td>
<td>1,826M.$</td>
<td>778$</td>
<td>0.496</td>
<td>1,406</td>
<td>84.61%</td>
<td>-6.06%</td>
</tr>
<tr>
<td>Togo</td>
<td>8,082,366</td>
<td>5,490M.$</td>
<td>679$</td>
<td>0.515</td>
<td>3,868</td>
<td>53.57%</td>
<td>-1.61%</td>
</tr>
</tbody>
</table>

**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.
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 in nature; hence, ECOWAS the Statistical Bulletin is relied on as the only source 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 on the 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 price measured economic growth instead of real gross domestic product. Trade openness is calculated as the ratio of total value of imports plus total value of exports divided by total domestic product. The model specifies the endogenous variable as Gross Domestic Product (GDP) as a function of imports (IMP), exports (EXP), and trade openness (OPEN), representing the exogenous variables.

![Real GDP growth](image)

**FIGURE 1:** ECOWAS is part of the Africa story. From 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.

Key provisions and purpose of the ECOWAS treaty regarding regional integration

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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 low-income 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 (Table 2). The decline in world economic performance is due to the inter-connectivity of three powerful economic forces, namely, China’s structural transformation, fall in commodity prices and the normalization of the United States monetary policy. All these factors have a particular impact on emerging markets and low-income economies.

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

<table>
<thead>
<tr>
<th>World Economic Output</th>
<th>Economic Output (annual percent change) of 2013 to 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2013</td>
</tr>
<tr>
<td>World Output</td>
<td></td>
</tr>
<tr>
<td>Advanced Economies</td>
<td>3.3</td>
</tr>
<tr>
<td>Emerging Market and Developing Economies</td>
<td>1.1</td>
</tr>
<tr>
<td>Sub-Saharan Africa</td>
<td>5.0</td>
</tr>
<tr>
<td></td>
<td>5.2</td>
</tr>
<tr>
<td>Consumer Prices (Inflation):</td>
<td></td>
</tr>
<tr>
<td>Advanced Economies</td>
<td>1.4</td>
</tr>
<tr>
<td>Emerging Market and Developing Economies</td>
<td>5.8</td>
</tr>
<tr>
<td>Sub-Saharan Africa</td>
<td>6.6</td>
</tr>
<tr>
<td>Value of world output (billion of US dollars at market exchange rates)</td>
<td>75467</td>
</tr>
</tbody>
</table>


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. The latest growth forecasts provided in the course of the second half of the year rely on much more pessimistic scenarios than the ones initially adopted. As such, from recent forecasts for African countries, 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 raw materials market, and the less conducive financial conditions, are sources of the slowdown in Africa’s growth. In fact, the persistent drop in commodity prices, especially crude oil, has worsened 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 crude oil exporters and importers is a fundamental reason for the differences in growth. Many oil-importing 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 in infrastructure investment and household consumption, which benefits from the decline in the price of oil. On the other hand, the major oil-exporting countries are the most severely affected by the collapsing price of oil which has reached on average its lowest level in eight years. In September 2015, the average price of a barrel of oil dropped by approximately 44%, compared to the annual average 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 activity in all the major African regions, with the exception of North Africa (see figure 2). Even if the gravity of the decline differs across regions, the factors responsible for the latter are almost the same. 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 would record a decline in its growth rate, from 2.9% in 2014 to 2.3% in 2015. This decline is primarily linked 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 all the countries, with the exception of Namibia and the Lesotho.

**Figure 2**: Real GDP Growth of African Regions

![Real GDP Growth of African Regions](image)

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 the significant 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 the region serve as alternatives that could help countries to continue to finance development and infrastructure 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](image-url)
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.

**Customs and trading blocs in Africa**

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 cooperation 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 African Continent.

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; and
- Introduction 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), and
- Are 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 pricing what 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 too wide, businesses will be faced with unnecessary compliance costs, and tax administrations 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 of shareholding) 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 cover:

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).
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 e.g. 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 undervalue 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 supplemented 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 question; it 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 à 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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[8]. Trading bloc through economic cooperation (ECOWAS, 2015).
[9]. Data on research and development is very scanty for ECOWAS, so this variable is not included in the subsequent empirical analyses
[10]. The focus of this current study is to investigate the impacts of tariffs on bilateral exports of goods being broadly grouped by the (production) stage in the value chain, within ECOWAS.
[11]. We use effectively applied tariffs (AHS weighted average) all through in the absence of data on bilateral effective rate (ERP) of protection for ECOWAS. See chapter two of UNCTAD’s document on “quantifying trade policy” for more information about the requirements for calculating ERP.
[12]. The estimates for Trade Cost are intentionally unreported in all regressions involving intermediate products or raw products or consumer products’ exports as the dependent variable. It is only included in the regression involving all goods as the dependent variable.
[14]. Trade cost data from UNESCAP is categorised based on agriculture, manufacturing and total products.
[15]. Trade cost for all goods (agriculture and manufacturing) is applicable to intermediate, raw and consumer products but rather use trade cost for total products in the regression involving all products as the dependent variable.
[17]. See the IMF Regional Economic Outlook of October 2015.