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REPUBLIC OF BENIN

PRESIDENCE OF REPUBLIC

DECREE No 2003-371 OF 18 SEPTEMBER 2003

Establishing a visa system for the shipment
of garments and textiles to the united states
of America.

**THE PRESIDENT OF THE REPUBLIC,
HEAD OF STATE,
HEAD OF GOVERNMENT,**

- Considering the Act No 90-032 of 11 december, 1990 relating to the
Constitution of the Republic of Benin ;
- Considering the Act No 90-005 of 15 may 1990 establishing the requirements
for practice of trading activities in the republic of Benin ;
- Considering the Edict No 54/PR/MFAE/DD of 21 november, 1966 relating to
the Customs Code and the subsequent legal texts modifying it ;
- Considering the announcement on 3 april, 2001 by the Constitutional Court,
of the final results of the presidential election of 22 march, 2001 ;
- Considering the decree No 2003-209 of 12 june, 2003 specifying the
government's composition ;
- Considering the decree No 2001-443 of 05 november 2001 relating to the
organization of the senior Ministry in charge of
Governmental Action Coordination, Prospective and
Development ;
- Considering the decree No 2001-493 of 22 november, 2001 relating to the
Competence, organization and functioning of the Ministry of
foreign Affairs and African Integration ;

Considering the Decree No. 99-514 of 2 November, 1999 relating to the competence, organization and functioning of the Ministry of Finance and Economy;

Considering the Decree No. 2001-350 of September 2001 relating to the competence organization and functioning of the Ministry of Industry, Trade and Employment Promotion;

Considering the Decree No. 97-30 of 29 January, 1997 relating to the competence, organization and functioning of the Ministry of Justice, Legislation and Human Rights;

Considering the Decree No. 2001-364 of 18 September, 2001 relating to the competence, organization and functioning of the Ministry of Agriculture, Livestock and Fishing;

Considering the Decree No. 96-608 of 27 December, 1996 relating to the competence, organization and functioning of the Ministry of Civil Service, Labour and Administrative Reform.

On the joint proposal of the Senior Minister in charge of Governmental Action Coordination, Prospective and Development, the Minister of Finance and Economy and the Minister of Industry, Trade and Employment Promotion,

The Council of Minister, agreed on its session of 4 December 2002;
Orders that:

CHAPTER 1: PURPOSE AND DEFINITIONS

Article 1: The purpose of this decree is to lay down the requirements of shipment, of textile and apparel articles to the United States of America for preferential tariff treatment under the AGOA, and to establish an AGOA visa system for Benin.

Article 2: In this decree, the following terms are to be understood as follows:

- Customs Code: the Edict No. 54/PR/MFAE/DD of 21 November, 1996 relating to the Customs Code of Benin;
- AGOA: African Growth and Opportunity Act: designation of the title I of the Trade and Development Act of 2000 adopted by the United States Congress and promulgated on 18 May, 2000, as amended by Section 3108 of the Trade Act of 2002;
- CFR: U.S. Code of Federal Regulations;
- Preferential system: exemption from customs duties and quota-free access for textile and apparel articles made in Benin under the requirements stated in the provisions of the Section 112 of AGOA;
- Lesser Developed Countries: beneficiary sub-Saharan African countries with 1998 GNP/inhabitant equal to or less than U.S. \$1500 according to the International Bank for Reconstruction and Development Statistics and the countries of Botswana and Namibia;
- AGOA Visa: documentary evidence of origin indicated through the affixing of a round seal in accordance with the standard prescribed by the U.S. regulations on commercial invoice relating to exported goods;
- AGOA Certificate of Origin: a standard type certificate of origin consisting of boxes which must be filled in by the exporter of textile and apparel articles in support of his application for an AGOA visa;
- United States customs territory: the 50 States, the District of Columbia and Puerto Rico;
- Exportation: Export of products eligible for the preferential system directly from Benin to the United States;
- Exporter: Any individual or corporate body authorized to export under the AGOA system;
- "Transshipment": As defined in Section 113 of AGOA, has occurred when preferential treatment for a textile and apparel articles has been claimed under AGOA on the basis of material false information concerning the country of origin, the fabrication, the manufacturing, the processing or

the assembling of article or one of its components. False information is material if disclosure of the true information would mean or would have meant that the article is or was ineligible for preferential treatment.

- Permanent Office: the relevant Office specifically in charge of issuance of the AGOA visa;
- Producer: the person, factory or workshop which manufactured the product;
- Product: textile and apparel articles included in one of the preferential groups specified in the Annex II of this Decree;
- Authorized Official: US customs official, or Benin Customs Authority and the civil servant or his substitute duly appointed for issuing and signing the AGOA Visas;
- Value: the value of the products, components or other elements, determined in accordance with the rules defined by the Regulation No. 005/CM/UEMOA of 6 August, 1999;
- Internal market value: customs value increased by duties and taxes due on importation;
- Harmonized System (H.S.): the Designation and Codification System applied to goods;
- HTSUS: The Harmonized Tariff Schedule of the United States of America;
- NAFTA: North American Free Trade Agreement.

CHAPTER 2: ORGANIZATION AND FUNCTIONNING

Article 3: To benefit from the AGOA preferential system, importers of textile and apparel articles assembled or manufactured in Benin must demonstrate, upon entry into the US customs territory, evidence of:

- That they belong to one of the preferential groups numbered from 1 to 9 as specified in the Section 112 of AGOA, as detailed in Annex 1 of this decree;

- the affixing on the front of the original commercial invoice of the AGOA Visa duly filled in and signed by the authorized authority;

- the direct shipment of concerned products from Benin to the US Customs territory.

Article 4: No exporter or producer may claim the benefit of the AGOA preferential system if he has not been previously authorized.

Article 5: Authorization is granted by the Minister in charge of Trade, further to a favourable recommendation from the Approval Committee consisting of the representatives of the Ministers in charge of:

- Economy and Finance;
- Agriculture;
- Labour
- Craft Works;
- Industry.

The Approval Committee also includes representatives of relevant associations.

The Committee may consult any person whose input it considers useful to considering the issues at hand.

The practical modalities of organization and functioning of the Approval Committee shall be determined by a joint order of the Ministers in charge of Economy, Finance and Trade. It shall be chaired by the Minister in charge of Trade.

Article 6: A Permanent Office shall be set up within the Ministry in charge of Trade. The Permanent Office is especially responsible for:

- Considering the applications for AGOA Visa;
- Issuing the AGOA visa;

- Monitoring registered companies.
- The organization competence and operation of the Permanent Office shall be defined by an Interministerial Order of the Ministers in charge of Trade, Economy and Finance.

Article 7: It shall be established at the Customs Office an AGOA Customs Counter in accordance with provisions provided for in the application order of this decree.

Article 8 : To obtain the AGOA Visa for textile and apparel articles exported to the United States, the exporter or producer is required to produce a Certificate of Origin called : "AGOA Certificate of Origin" filled out in accordance with the requirements stated in the inter-ministerial order by Ministers of Trade, Economy and Finance.

Article 9 : Any application for an AGOA Visa to export apparel or textile articles should be addressed to the « Permanent Office », with:

- a- the original commercial invoice and three copies;
- b- four copies of the AGOA certificate of origin, filled out in accordance with the standards specified in Annex II.

Article 10: When a visa application is approved, an AGOA visa will be issued through the affixing of a circular seal, with blue ink, on the front of the original commercial invoice. This visa may not be stamped on the invoice duplicates. In any case, the processing of the visa application shall not exceed 72 working hours.

Article 11: Sample copies of the signature visa stamp, signatures and names of the authorized officials must be communicated to the Government of the United States of America no later than within 30 days following the date of coming into force of this decree.

Article 12: Any change to visa form, stamp, or in the names and signatures of the authorized officials must be approved by and notified to the US government thirty (30) days before its coming into force.

Article 13: The Customs Administration of Benin shall not authorize the exportation to the USA of textile and apparel articles under the AGOA preferential system without seeing the related original commercial invoice, duly visaed by the authorized official of the Permanent Office, and the AGOA Certificate of Origin appertaining to it

CHAPTER 3: PREVENTION AND SANCTIONS

Article 14: Any person who produces, manufactures, or exports apparel or textile articles for preferential tariff treatment under AGOA must:

1) At all times keep, for a period of five (5) years after the manufacturing or exportation, complete records of:

- the purchase of, cost of, value of, and payment for, the good that is exported from its territory;
- the purchase of, cost of, value of, and payment for, all materials, including indirect materials, used in the production of the good that is exported from its territory;
- the production of the good in the form in which the good is exported from its territory, including the materials used;
- the place of production;
- the identification of the type and number of machines used in the production;
- the number of employees participating in the production;
- the contract or agreement existing between the producer and the exporter, and to the various information relating to the exportation of the said products.

2) Inform the Ministry in charge of Industry and Craft Works, the Ministry in charge of Trade as well as the Permanent Office about the actual launching of his production or about any termination of activities.

Article 15: All communicated business confidential documents or information are strictly confidential and secret. Confidential business information collected pursuant to these regulations may only be disclosed to authorized officials acting within the framework of the AGOA provisions and current regulations, including U.S. customs officials.

Article 16: By virtue of the right to communication which is conferred upon them, the specially designated Beninese customs official may make a written request for information, or submit a questionnaire to an exporter or producer, or have access to the premises of any producing or exporting company:

- 1) in order to thoroughly investigate allegations transshipment;
- 2) in order to verify the accuracy of claims for preferential tariff treatment under the AGOA;
- 3) in order to ensure that the provisions of these regulations are being complied with.

The customs officials, duly authorized in accordance with the provisions of the paragraph 1, may be accompanied by representatives of the United States Bureau of Customs and Border Protection duly authorized for this purpose.

In this capacity, the latter enjoy, during their stay in Benin, the same rights and are provided the same assistance as their counterparts from Benin.

Article 17: The exporters or manufacturers are required to grant access to their facilities or accounting documents and records to the US Bureau of Customs and Border Protection representatives on mission in Benin.

For the purposes of those visits, the US Bureau of Customs and Border Protection shall address to the relevant authorities of Benin a notification consisting of:

- name and identification of premises to be visited,
- identity of authorized persons who will carry out the visit,
- date and duration of mission.

Except in the case of a textile verification team visit, the United States Bureau of Customs and Border Protection shall notify the exporter or producer whose premises are to be visited of its intention to conduct the visit.

The manufacturer and exporter, whose premises are to be visited, must designate a person of his own choice who will assist the investigators during their visit.

Article 18: The possible evaluation of cost elements and components will be carried out in accordance with the accounting principles applicable in Benin, and in compliance with the provisions of the Regulation No. 005/CM/UEMOA of 6 August, 1999.

Article 19: The results of the visit shall be communicated to the Director-General of Customs who will communicate them, in his turn, to the concerned exporter or manufacturer as well as to the Permanent Office.

Article 20: In order to prevent, conduct investigations of and repress illegal transshipment attempts and offences, the Director-General of Customs must communicate, every month and no later than 30 days after the end of the month, to the Permanent Office and to the US relevant authorities the following information for each exportation to the United States:

- the manufacturer's name ;
- the visa number ;
- the date of issuance ;
- the number of preference group ;
- the value of the goods ;
- the quantity and measure unit ;
- the U.S. consignee, if he is known ;
- U.S. Harmonized Tariff Schedule number to the six (06) digit level;
- Additional data if known and available, to include port of lading, port of destination, gross weight, and mode of transportation.

Article 21: In accordance with the provisions of the Articles 30 and 361 of the Customs Code Any person who:

- Submits, in connection with an application for a visa, a document or information that is false, incorrect, incomplete, or misleading in any material way or which is not a genuine document;

- Claims preferential treatment for a textile or apparel article on the basis of material false information concerning the country of origin, or the manufacturing, processing or assembly of the articles concerned or any of its components;
- Alters or falsifies a visa, AGOA certificate of origin or any other document or appropriate register;
- Fails or neglects to maintain appropriate documents and records in accordance with Article 12 of these regulations;
- Refuses U.S. Customs Officers access to their premises, books and registers;
- Otherwise contravenes or fails to comply with these regulations,

is guilty of illegal exportation of an apparel or textile article under AGOA preferential system.

Article 22: In addition to other penalties including imprisonment provided for in the Customs Code and the Penal Code of the Republic of Benin, the persons found guilty with regard to the breaches of law stated in the previous article, are liable, as the case may be, for fine equal to three times the external market value of the goods in question, without prejudice to the payment of duty and taxes required, in accordance with the provisions of the Articles 350 and 351 of the Customs Code.

CHAPTER 4: MISCELLANEOUS AND FINAL PROVISIONS

Article 23: The Minister of State in charge of Planning, Prospective and Development, the Minister of Finance and Economy, the Minister of Agriculture, Livestock and Fishing, the Minister of Civil Service, Labour and Administrative Reform, the Minister of Industry, Trade and Employment Promotion, are assigned, each one according to his duties, to enforce this decree which shall be published in the Official Gazette of the Republic of Benin.

Done in Cotonou, on 18 september 2003

By the President of the Republic,
Head of State, Head of Government,



Mathieu KEREKOU.-

The Minister of state in charge Planning
Prospective and Development,



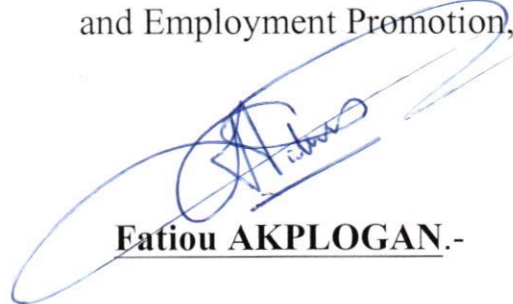
Bruno AMOUSSOU.-

The Minister of Finances
And Economy,



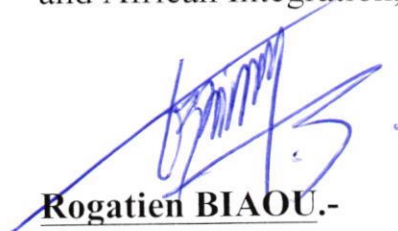
Grégoire LAOUIROU.-

The Minister of Industry Trade
and Employment Promotion,



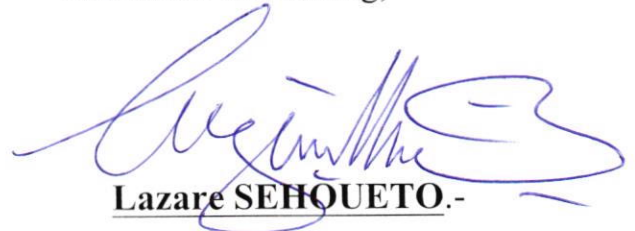
Eatiou AKPLOGAN.-

The Minister of Foreign Affairs
and African Integration,




Rogatien BIAOU.-

the Minister of Agriculture
Livestock an Fishing,



Lazare SEHOQUETO.-

the Minister of Civil Service,
Labour and Administrative Reform,


Boubacar AROUNA.-

Ampliations : PR 6 AN 4 CS 2 CC 2 CES 2 HAAC 2 MECCAG-PD 4 MFE 2
MICPE 2 MFPTRA 2 MAEP2 MAEIA 2 AUTRES MINISTÈRES 15 SGG 4
DGB-DCF-DGTCP-DGID-DGDDI 5 BN-DAN-DLC 3-GCONB-DCCT-
INSAE 3 BCP-CSM-IGAA 3- UAC-ENAM-FASJEP-UNIPAR-FDSP 2 - JO 1.