

EXPORT AND IMPORT (RESTRICTIONS ON IMPORTATION OF PORTLAND CEMENT) REGULATIONS, 2016 (L.I. 2240)

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Importation of Cement (Procedure)

IN exercise of the power conferred on the Minister responsible for Trade by sections 12 and 13 (a) of the Export and Import Act, 1995 (Act 503), these Regulations are made this 28th day of June, 2016.

Preliminary Provisions

Purpose of Regulations

1. The purpose of these Regulations is to

- (a) provide for an import licensing system for the importation of Portland Cement for commercial purposes into the country; and
- (b) regulate the international trade in Portland Cement.

Application of Regulations

- 2. (1) These Regulations apply to the importation of Portland Cement for commercial purposes into the country and which is destined for consumption within the Ghanaian market.
- (2) These Regulations do not apply to imports of Portland Cement originating from a member country of the Economic Community of West African States.
- (3) These Regulations shall not derogate from the application of obligations of the Republic in respect of the World Trade Organisation Agreement on Import Licensing Procedure and article 13 of General Agreement on Tariffs and Trade, 1994 on Import Restrictions.

Portland Cement Monitoring Committee

Establishment of Portland Cement Monitoring Committee

3. (1) There is established by these Regulations, a Portland Cement Monitoring Committee.

(2) The Monitoring Committee consists of

- (a) the Chief Director of the Ministry responsible for Trade and Industry or a representative of the Chief Director not below the rank of a Director as chairperson;

(b) one person nominated by each of the following:

(i) the Customs Division of the Ghana Revenue Authority not below the rank of an Assistant Commissioner;

(ii) the Ghana Ports and Harbours Authority not below the rank of a Manager;

(iii) the Standards Authority not below the rank of a Director;

(iv) the Ministry responsible for Environment not below the rank of a Director;

(v) the Ghana Real Estate Developers Association;

(vi) the Cement Manufacturers' Association of Ghana;

(viii) the Association of Ghana Industries; and

(ix) the Ghana Union of Traders Association.

(3) The Minister shall appoint the members of the Committee other than the Chief Director of the Ministry responsible for Trade and Industry.

Functions of the Monitoring Committee

4. (1) The Monitoring Committee shall

(a) implement and enforce the provisions of these Regulations;

(b) advise the Minister on matters in relation to the import of Portland Cement and related matters;

(c) make recommendations to the Minister on the

(i) pricing of Portland Cement;

(ii) quantities of Portland Cement to be imported for commercial purposes; and

(iii) local production of Portland Cement; and

(d) report to the Minister, at least once in every three months on matters in relation to the restriction on the import of Portland Cement.

(2) Where a dispute arises as to the origin of imported Portland Cement, the Monitoring Committee shall investigate the matter and provide a report to the Minister.

Tenure of office of members of Monitoring Committee

5. (1) A member of the Monitoring Committee shall hold office for a period of not more than two years and is eligible for re-appointment, but a member shall not be appointed for more than two consecutive terms.

(2) A member of the Monitoring Committee may, by letter addressed to the Minister, resign at any time from office.

(3) A member of the Monitoring Committee who is absent from three consecutive meetings without sufficient cause ceases to be a member of the Monitoring Committee.

(4) The Minister may by letter addressed to a member of the Monitoring Committee, revoke the appointment of that member for stated reasons.

(5) Where a member of the Monitoring Committee is, for a sufficient reason, unable to act as a member, the Minister shall determine whether the inability would result in the declaration of a vacancy.

(6) Where there is a vacancy

(a) under subregulation (2), (3), (4) or regulation 7 (2),

(b) as a result of a declaration under subregulation (5), or

(c) by reason of the death of a member,

the Minister shall appoint a person to fill the vacancy from the institution in which the vacancy occurred for the unexpired term.

Meetings of the Monitoring Committee

6. (1) The Monitoring Committee shall meet at least six times in a year for the despatch of business at the times and in the places determined by the chairperson.

(2) The chairperson shall at the request in writing of not less than one-third of the membership of the Monitoring Committee, convene an extra-ordinary meeting of the Monitoring Committee at the time and in the place determined by the chairperson.

(3) The quorum at a meeting of the Monitoring Committee is five members of the Monitoring Committee.

(4) The chairperson shall preside at meetings of the Monitoring Committee and in the absence of the chairperson, the members of the Monitoring Committee present at a meeting shall elect a member present to preside.

(5) Matters before the Monitoring Committee shall be decided by simple majority of the members present and voting and in the event of an equality of votes the person presiding shall have a casting vote.

(6) The Monitoring Committee may co-opt a person to attend a meeting of the Monitoring Committee but that person shall not vote on a matter for decision at the meeting.

(7) The Monitoring Committee shall regulate the manner and procedure of its meetings.

Disclosure of interest

7. (1) A member of the Monitoring Committee who has an interest in a matter for consideration shall

(a) disclose the nature of the interest and the disclosure shall form part of the record of the consideration of the matter; and

(b) not be present at, or participate in the deliberations of the Monitoring Committee in respect of the matter.

(2) A member ceases to be a member of the Monitoring Committee if that member has an interest in a matter before the Monitoring Committee and

- (a) fails to disclose that interest; or
- (b) participates in the deliberations of the matter.

Allowances

8. (1) A member of the Monitoring Committee shall be paid an allowance for attending meetings.

(2) The Minister, in consultation with the Minister responsible for Finance, shall determine the allowance to be paid under subregulation (1) to members of the Monitoring Committee.

Co-ordination by the Monitoring Committee

9. The chairperson of the Monitoring Committee may constitute a sub-committee consisting of members of the Monitoring Committee to co-ordinate with competent authorities and any relevant stakeholders to ensure the implementation of these Regulations.

General Provisions on Licences

Requirement for licence

10. (1) A person shall not

- (a) import Portland Cement,
- (b) cause Portland Cement to be imported, or
- (c) facilitate the import of Portland Cement

for commercial purposes into the country, without a licence issued by the Minister.

(2) A person who contravenes subregulation (1), commits an offence and is liable on summary conviction to a fine of not more than five hundred penalty units or to a term of imprisonment of not more than two years or to both and the goods in respect of which the offence was committed may be seized and forfeited to the Republic.

Application for licence

11. (1) A person who intends to import Portland Cement into the country shall apply in writing for a licence to the Minister.

(2) The application shall be as set out in Form A of the First Schedule. (3) The application shall be accompanied with the documentation required by the Minister as specified in the Second Schedule.

(4) The applicant shall submit the application with the required fee determined in accordance with the Fees and Charges (Miscellaneous Provisions) Act, 2009 (Act 793).

(5) The Minister shall within thirty days of receipt of the application, make a decision whether or not to grant the licence and inform the applicant of the decision.

(6) Where the Minister refuses to grant the licence, the Minister shall state the reason for the refusal.

(7) A licence granted by the Minister is subject to the terms and conditions specified in the licence.

Renewal of licence

12. (1) A licence issued under these Regulations is for a period of twelve months and is subject to renewal at the end of the period.

(2) A person who wishes to renew the licence issued, shall submit an application for renewal to the Minister not later than one month before the licence expires.

(3) The procedure for the renewal of the licence is the same as that for the grant of the original licence and is subject to the payment of the renewal fee determined in accordance with the Fees and Charges (Miscellaneous Provisions) Act, 2009 (Act 793).

(4) A person who fails to renew the licence issued or whose application for renewal is rejected by the Minister, shall cease to import Portland Cement into the country.

Non-transferability of licence

13. (1) A person granted a licence under these Regulations shall not transfer that licence to another person.

(2) A person who transfers or attempts to transfer a licence in contravention of subregulation (1), commits an offence and is liable on summary conviction to a fine of not less than two hundred and fifty penalty units and not more than five hundred penalty units or to a term of imprisonment of not less than one year and not more than two years or to both.

Suspension or cancellation of licence

14. (1) The Minister may suspend or cancel a licence where the Minister is satisfied that the licensee

- (a) is not complying with or has not complied with any of the terms or conditions of the licence;
- (b) has contravened any of the provisions of these Regulations or any other relevant enactment; or
- (c) no longer meets the requirements for which the licence has been granted.

(2) The Minister shall not suspend or cancel a licence under subregulation (1), unless the Minister has

- (a) given the licensee at least seven days' written notice of the decision to suspend or cancel the licence and specified in the notice the nature of the defect, omission or breach; and
- (b) requested the licensee to remedy the defect, omission or breach within fourteen days from the date of the written notice.

(3) Where the licensee fails to take the necessary action to remedy the defect, omission or breach, the Minister shall suspend or cancel the

licence.

(4) The suspension or cancellation of a licence is effective from the day that the applicant receives the decision of the Minister in writing to suspend or cancel the licence.

Lost, stolen or destroyed licence

15. (1) In the event of a loss, theft or destruction of an original licence granted under these Regulations or a copy of the licence, the licensee shall, within fourteen days of the loss, theft or destruction, apply to the Minister for a replacement of the licence on the basis of the document in the possession of the licensee.

(2) An application for a replacement licence shall be accompanied by a police report.

(3) The Minister shall, within fourteen days of the receipt of the request from the licensee, issue the licensee with a replacement licence.

(4) A replacement licence shall contain the licence number and the information and entries appearing on the original licence it replaces.

(5) A replacement licence shall bear the endorsement "Replacement Licence" .

(6) If a replacement licence is lost, stolen or destroyed no further replacement licence shall be issued.

(7) In the event that a lost or stolen licence is retrieved, the finder of the retrieved licence shall return the licence to the Minister.

Appeals Committee

Establishment of Appeals Committee

16. The Minister shall establish on an ad-hoc basis, an Appeals Committee to consider an appeal against a decision of the Minister in respect of a licence.

Composition of Appeals Committee

17. (1) The members of the Appeals Committee shall be appointed by the Minister and shall consist of

(a) the chairperson of the Tariff Advisory Board as chairperson;

(b) one representative of the Customs Division of the Ghana Revenue Authority not below the rank of an Assistant Commissioner; and

(c) one representative of the Attorney-General's Department of the Ministry of Justice not below the rank of a Principal State Attorney.

(2) A member of the Monitoring Committee shall not be appointed as a member of the Appeals Committee.

Tenure of Appeals Committee

18. An Appeals Committee shall cease to operate and its membership shall terminate on the determination of a matter referred to it for determination.

Right of appeal to Appeals Committee

19. (1) A person who is aggrieved by a decision of the Minister may appeal, within thirty days of the decision, to the Appeals Committee.

(2) The Minister shall, within fourteen days after the receipt of the appeal, set up an Appeals Committee to determine the appeal.

(3) The Appeals Committee shall determine an appeal within four- teen days after the submission of the appeal and may

(a) affirm the decision of the Minister;

(b) vary the decision of the Minister; or

(c) revoke the decision of the Minister.

(4) The Appeals Committee shall, within the fourteen days stated in subregulation (3), submit a report of its decision in writing to the Minister and inform the appellant of its decision.

(5) A person who is aggrieved by a decision of the Appeals Committee may, within thirty days of the decision, appeal against the decision to the High Court.

Rules of procedure of Appeals Committee

20. The Appeals Committee shall determine the rules of procedure for the Committee.

Application

21. Regulations 7 and 8 on disclosure of interest and allowances apply to the Appeals Committee.

Miscellaneous Provisions

Inspection

22. (1) An officer authorised by the Minister or the Ghana Revenue Authority shall carry out inspection to ensure compliance with these Regulations.

(2) Inspection is subject to procedures in respect of the single window platform and where necessary there shall be physical inspection for national security concerns.

Other offences in relation to importation of Portland Cement

23. (1) A person who conspires with another person to import Portland Cement by labelling the material in the consignment as non-cement, commits an offence and is liable on summary conviction of a fine of not less than two hundred and fifty penalty units and not more than five hundred penalty units or to a term of imprisonment of not less than one year and not more than

two years or to both and may have the goods in respect of which the offence was committed, seized and forfeited to the Republic.

(2) A person who imports Portland Cement from another country and re-bags the Portland Cement in a different country to import into the country to evade taxes or in order to enjoy a Regional Scheme commits

an offence and is liable on summary conviction of a fine of not less than two hundred and fifty penalty units and not more than five hundred penalty units or to a term of imprisonment of not less than one year and

not more than two years or to both and may have the goods in respect of which the offence was committed, seized and forfeited to the Republic.

(3) A person who

(a) obstructs, hinders or interferes with an officer authorised by the Minister or an officer of the Ghana Revenue Authority in the performance of the duties of the officer under these Regulations;

(b) refuses to give an officer authorised by the Minister or an officer of the Ghana Revenue Authority access to a consignment of that person that is about to be imported;

(c) fails or refuses to provide to an officer authorised by the Minister or an officer of the Ghana Revenue Authority information, with respect to the importation of Portland Cement that is within the knowledge or possession of that person; or

(d) fails or refuses to provide to an officer authorised by the

Minister or an officer of the Ghana Revenue Authority

information, with respect to the importation of Portland

Cement that is reasonably expected to be within the knowl-

edge or possession of that person

commits an offence and is liable on summary conviction to a fine of not

less than two hundred and fifty penalty units and not more than five hundred

penalty units or to a term of imprisonment of not less than one year and

not more than two years or to both and may have the goods in respect of

which the offence was committed, seized and forfeited to the Republic.

Interpretation

24. In these Regulations, unless the content otherwise requires,

"Appeals Committee" means the Appeals Committee estab-

lished under regulation 16;

"competent authorities" include

- (a) the Ministry of Trade and Industry;
- (b) the Ministry of Finance;
- (c) the Ghana Revenue Authority;
- (d) the National Security Council Secretariat;
- (e) the Standards Authority;
- (f) the Environmental Protection Agency;
- (g) the Ghana Police Service;
- (h) the Bureau of National Investigation;
- (i) the Ghana Ports and Harbours Authority; and
- (;) any other person with the mandate to ensure the effective administration and implementation of these Regulations;

"Monitoring Committee" means the Portland Cement Monitoring Committee established under regulation 3;

"Portland Cement" means a hydraulic binder in the nature of a finely ground inorganic material which when mixed with water forms a paste which sets and hardens by means of hydration reactions and processes and which after hardening retains its strength and stability even under water;

"Regional Scheme" means the Protocols that relate to the Economic Community of West African States Trade Liberalisation Scheme;

"single window platform" means an Information Communication Technology platform that enables traders to submit documentation and data requirements for importation, exportation or transit of goods through a single entry point to the participating authorities or agencies; and

"Tariff Advisory Board" means the body established under the

auspices of the Ministry of Trade and Industry to advise the Minister on trade-related issues.

L

FIRST SCHEDULE

(regulation 11 (2))

FORMA

APPLICATION FORM

REGISTRATION TO IMPORT CEMENT INTO GHANA

- 1.0 Identity of Enterprise
- (a) Business Name: .
 - (b) Tax Identification Number (TIN): .
 - (c) Headquarters Address: .
 - (d) P.O. Box: .
 - (e) Telephone No.:
 - (f) Fax No.: .
 - (g) Email address: .
 - (h) Website: .

2.0 Advance Notification of Plan to Import for the Year

- (a) Quantity to be imported (in metric tonnes):
- (b) Estimated values to be imported:
- (c) Name of country of manufacturer:
- (d) Name of country of importation:
- (e) Grade of Portland Cement to be imported (32.5, 42.5 or other): .

3.0 Ownership and Location of Business

- (a) Names and nationalities of owners: .
-
- (b) Shareholding percentages of owners:
- (c) Exact location of business:

(d) Number of employees: : .
(e) Contact person: :
Name: Signature: :

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Export and Import (Restrictions on Importation of Portland Cement)

Regulations, 2016

SECOND SCHEDULE

(regulation 11 (3))

IMPORTATION OF CEMENT (PROCEDURE)

1.0 Application to be accompanied with the under listed particulars

- (a) Business Registration documents from the Registrar-General's Department;
- (b) GIPC/GFZB Registration (for companies with offshore equity participation);
- (c) Environmental Impact Assessment Certificate or Environmental Permit;
- (d) Department of Factories Inspectorate Certificate;
- (e) SSNIT Clearance Certificate;
- (f) Tax Clearance Certificate; and
- (g) Sample laboratory test result from the Standards Authority and the Environmental Protection Agency (for checks on heavy metals and other contaminants).

2.0 Submission of Pro-forma invoices indicating:

- (a) quantity to be imported;
- (b) values of the product;
- (c) name of importing country;
- (d) name and particulars of consignees; and
- (e) quality standard of Portland Cement: 32.5,42.5 or other.

3.0 Pre-Shipment Documentation of containers and vessel line from exporting country

4.0 Evidence of plans to undertake Portland Cement production in Ghana

(a) Feasibility Study;

(b) Business Plan;

(c) land acquisition documentation; and

(d) state of factory construction.

5.0 Submission of complete Reporting Form on the Importation of Portland Cement after arrival of goods

6.0 Payments of fees per consignment

7.0 Permission to import is granted approval by the Ministry of Trade and Industry

Licence is issued to cover a period of one year after satisfying conditions under items 1, 2, 3 and 4.

RON. HANNA S. TETTER

Minister responsible for Trade and Industry

Date of Gazette notification: 29th June, 2016.

Entry into force: 1st August, 2016.