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THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT- FIFTH SESSION

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 08 JUL 2021	DAY: THURSDAY
TABLED BY: _____	CHAIR SELECT COMMITTEE ON REGIONAL INTEGRATION HON. ALI WARIO, CBS, MP
CLERK-AT	Mamah Wayku

SELECT COMMITTEE ON REGIONAL INTEGRATION

REPORT ON THE CONSIDERATION FOR APPROVAL OF THE RATIFICATION OF
THE AMENDMENT TO ARTICLE 24(2) (a) OF THE PROTOCOL ON THE
ESTABLISHMENT OF THE EAST AFRICAN COMMUNITY CUSTOMS UNION

DIRECTORATE OF AUDIT, APPROPRIATION &
OTHER SELECT COMMITTEES
CLERKS CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

JULY 2021

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CHAIRPERSON'S FOREWORD

Pursuant to Article 2(6) of the Constitution of Kenya, which provides that treaties and conventions ratified by Kenya shall form part of the law of Kenya and, the Treaty Making and Ratifications Act, No. 18 of 2012 which provides the procedure for the **making** and **ratification** of treaties, the Cabinet Secretary, Ministry of East African Community submitted to the National Assembly a memorandum on the Ratification of the Amendment to Article 24(2)(a) of the Protocol on the Establishment of the East African Community Customs Union "the Protocol"

The Amendment Protocol and the accompanying Memorandum was tabled in the House on 14th February, 2017 and committed to the Committee pursuant to Standing Order 216(5)(fa). The Committee could not conclude the consideration of the Ratification of the Protocol as it was submitted towards the tail end of the 11th Parliament and therefore included the matter as pending business in its exit report pursuant to Standing Order 200A (1).

The objective of the memorandum was to:

1. Inform the National Assembly of the approval by the Heads of State of the Partner States of the East African Community of the amendment to Article 24(2)(a) of the Protocol on the Establishment of the East African Community Customs Union ("the Protocol");
2. Inform the National Assembly that the Cabinet at its Sixth meeting held on 28th July, 2016 approved the ratification of the amendment to Article 24(2)(a) of the Protocol; and
3. Seek the approval of the National Assembly for the Republic of Kenya to ratify the amendment to Article 24(2)(a) of the Protocol.

The Protocol commenced on 1st January, 2005 upon ratification by the three founding Partner States, this was prior to the accession of the Treaty by the Republics of Rwanda and Burundi who later acceded the Treaty and, by extension, the Protocol in the year 2007.

Article 24(2) (a) of the Protocol establishes the East African Community Trade Remedies Committee [in this report referred to as "the Committee"] to among others handle matters pertaining to; Rules of Origin, anti-dumping measures, subsidies and countervailing, safeguard measures, dispute settlement and any other matter referred to the Committee by the Council of Ministers established by Article 9 of the Treaty.

The Protocol provides that the Committee shall be composed of nine (9) members, qualified and competent in matters of trade, customs and, that each Partner State shall be required to nominate three members to the Committee.

It is against this background that the Republic of Rwanda and the Republic of Burundi which acceded to the EAC Treaty after the commencement of the Treaty are unable to nominate their representatives to the Committee. Partner States who have subsequently joined the EAC are also unable to nominate Members to the Committee.

To remedy this anomaly, the 10th Ordinary meeting of the Heads of State held on 29th April, 2009 approved the amendment of Article 24(2)(a) of the Protocol to provide for the nomination of the members of the Committee by each partner state.

Article 118(1)(b) of the Constitution provides that, *“Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its committees”*. Further, Section 8(3) of the Treaty Making and Ratification Act, No. 18 of 2012 provides that, *“the relevant Parliamentary Committee shall, during its consideration of the Treaty, ensure Public Participation in the ratification process in accordance with the laid down Parliamentary Procedures”*

Pursuant to Article 118(1)(b) of the Constitution of Kenya and Section 8 of Treaty Making and Ratification Act, No. 18 of 2012, the Committee invited the public to submit representations on the Treaty on the 3rd March, 2021. The Committee however, did not receive any memoranda in respect to the Amendment of the Protocol.

The Committee is thankful to the Office of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its consideration of the Amendment to Article 24(2)(a) of the Protocol.

On behalf of the Committee, it is therefore my pleasant duty and privilege to present this report on the consideration for approval of the Ratification of the Amendment to Article 24(2)(a) of the Protocol on the Establishment of the East African Community Customs Union pursuant to Section 8(4) of the Treaty Making and Ratification Act, No. 18 of 2012 and Standing Order 199 of the National Assembly.

Signed.......... Date 07/07/2021

HON. ALI WARIO, MP CBS
CHAIRPERSON, SELECT COMMITTEE ON REGIONAL INTEGRATION

EXECUTIVE SUMMARY

This report contains the Committee deliberations on its consideration of the memorandum on the Ratification of the Amendment to Article 24(2)(a) of the Protocol on the Establishment of the East African Community Customs Union.

Pursuant to Article 118(1)(b) of the Constitution of Kenya and Section 8 of Treaty Making and Ratification Act, *No. 18 of 2012*, the Committee invited the public to submit representations on the Treaty on the 3rd March, 2021. The Committee however, did not receive any memoranda in respect to the Amendment of the Protocol.

The Treaty for the Establishment of the East African Community was signed on 30th November, 1999 and entered into force on 7th July, 2000 following its ratification by the three founding Partner States of the EAC (the Republic of Kenya, the Republic of Uganda and the United Republic of Tanzania). The Republic of Rwanda and the Republic of Burundi joined the EAC in 2007 and acceded to the Treaty for the Establishment of the East African Community and by Extension the Protocol on the Establishment of the East African Community Customs Union.

Article 24(2) (a) of the Protocol had capped the Membership of the Trade Remedies Committee to nine (9), with each Partner State required to nominate three (3) members which excluded the Republic of Rwanda and the Republic Burundi from nominating members to the Committee.

The admission of the Republic of Rwanda and the Republic of Burundi and later the Republic of South Sudan therefore, necessitated the Amendment of Article 24(2)(a) of the Protocol in order to allow the two Partner States to nominate members to Trade Remedies Committee and to allow any future member of the EAC to nominate members to the Committee.

The amendment was further necessitated by the provisions of Article 150 (6) of the Treaty for the establishment of EAC, which provides that *"Any amendment of the Treaty shall be adopted by the Summit and shall enter into force when ratified by all the Partner States"*. This is consistent with the expansion of the Community through admission of new Partner States.

The ratification of the amendment is to allow for the operationalization of the Committee, which shall provide the EAC Partner States with a platform to handle matters pertaining to Rules of Origin, anti-dumping measures, subsidies and countervailing measures and safeguard measures within the EAC Customs Union.

The Committee therefore recommends: -

THAT, Pursuant to Section 8 of the Treaty Making and Ratification Act of 2012, the House APPROVES the Ratification of the Amendment to Article 24(2)(a) of the Protocol on the Establishment of the East African Community Customs Union.

1.0 PREFACE

1.1 Establishment and mandate of the Committee

1. The Select Committee on Regional Integration is established under the National Assembly Standing Order 212 and was constituted in December, 2017 following adoption of a motion on membership of committees by the House.
2. As provided for in Standing Order 212 (2), the Committee is mandated to: -
 - (a) enhance the involvement of the National Assembly in intensification and development of the integration process in the East African Community and the greater African region;
 - (b) examine the records of all the relevant debates and resolutions of the meetings of the East African Legislative Assembly;
 - (c) examine the Bills introduced in the East African legislative Assembly and Acts of the East African Community;
 - (d) examine records of relevant debates and resolutions of Pan African Parliament, the African Caribbean and Pacific- European Union Joint Parliamentary Assembly and other regional bodies;
 - (e) inquire into and examine any other matter relating to regional integration generally requiring action by the House.

1.2 Committee Membership

3. The Committee comprises of the following Members: -

Chairperson

Hon. Ali Wario, CBS, M.P,
Bura Constituency
Jubilee Party

Vice- Chairperson

Hon. Capt. Ruweida Mohamed, M.P
Lamu County Women Representative
Jubilee Party

Hon. Ezekiel Machogu, M.P
Nyaribari Masaba Constituency
NAPK Party

Hon. Malulu Injendi, M.P
Malava Constituency
Jubilee Party

Hon. Kubai Iringo, M.P
Igembe Central Constituency
Jubilee Party

Hon. Janet Teiyaa, M.P
Kajiado County Women representative
Jubilee Party

Hon. Mathias Robi, M.P
Kuria West Constituency
Jubilee Party

Hon. Abdi Mude Ibrahim, M.P,
Lafey Constituency
Economic Freedom Party (EFP)

Hon. Erastus Nzioka, M.P.
Mbooni Constituency
ND Party

Hon. Ndindi Nyoro, M.P.
Kiharu Constituency
Jubilee Party

Hon. Geoffrey Omuse, M.P
Teso South Constituency
Orange Democratic Movement

Hon. Janet Ongera, M.P
Kisii County Women Representative
Orange Democratic Movement

Hon. Dr. Gideon Ochanda, M.P.
Bondo Constituency
Orange Democratic Movement

Hon. Kassim Sawa Tandaza, M.P.
Matuga Constituency
ANC

Hon. Nasri Sahal Ibrahim, M.P.
Nominated
FORD-K

Hon. Ali Wario Guyo, M.P.
Garsen Constituency
Wiper Democratic Movement Party

The Hon. Alfred Sambu, MP
Webuye East
ANC

Hon. Paul Kahindi Katana, MP
Kaloleni Constituency
Orange Democratic Movement

Hon. Jane Wanjiku Njiru, M.P
Embu County Women Representative
Jubilee Party

Hon. John Kiarie Waweru, M.P.
Dagoretti South Constituency
Jubilee Party

Hon. Elijah Memusi Kanchory, M.P
Kajiado Central Constituency
Orange Democratic Movement

Hon. Hilary Kiplang'at Kosgei, M.P.
Kipkelion West Constituency
Jubilee Party

Hon. James Mwangi Gakuya, M.P.
Embakasi North Constituency
Jubilee Party

1.3 Committee Secretariat

4. The Committee secretariat comprises of:

- | | | |
|----|-----------------------|------------------------------|
| 1) | Mr. Abdullahi Aden | Principal Clerk Assistant II |
| 2) | Dr. Kefa Omoti | Principal Research Officer |
| 3) | Mr. Peter Mwaura | Senior Legal Counsel |
| 4) | Ms. Ruth M. Gakuya | Clerk Assistant II |
| 5) | Ms. Catherine Mukunyi | Senior Serjeant -At- Arms |
| 6) | Mr. Boniface Mugambi | Sergeant -At - Arms |

1.4 Compliance with the procedure for amendment of the Treaty Establishing the East African Community

THE TREATY ESTABLISHING THE EAST AFRICAN COMMUNITY

The Treaty for the establishment of the East African Community was signed on 30th November, 1999 and came in force on 7th July, 2000 following its ratification by the three founding Partner States of EAC (the Republic of Kenya the Republic of Uganda and the United Republic of Tanzania). The Republic of Rwanda and the Republic of Burundi joined the EAC in 2007 and acceded to the Treaty on the Establishment of East African Community and by extension the Protocol on the Establishment of East African Community Customs Union.

5. Article 151(4) of the Treaty provides that Annexes and Protocols to the Treaty form an integral Part of the Treaty. The procedure for amending the Treaty is provided for under Article 150(6) which provides that, *any amendment to this Treaty shall be adopted by Summit and shall enter into force when ratified by all Partner States*

1.5 Compliance with the procedure for approval of a treaty under the Treaty Making and Ratification Act, 2012

6. The procedure for ratification of treaties is provided for under section 8 of the Treaty Making and Ratification Act, 2012. Section 8 of the Act provides that, *where the Cabinet approves the ratification of a treaty, the Cabinet Secretary shall submit the treaty and a memorandum on the treaty to the Speaker of the National Assembly.*
7. Further, subsection (3) provides that *the relevant parliamentary committee shall during its consideration of the treaty ensure public participation in the ratification process in accordance with laid down parliamentary procedure.*

2.0 CONSIDERATION OF THE AMENDMENT TO ARTICLE 24(2) (a) OF THE PROTOCOL ON THE ESTABLISHMENT OF THE EAST AFRICAN COMMUNITY CUSTOMS UNION

2.1 Background to the Amendment

8. The Treaty for the Establishment of the East African Community was signed on 30th November, 1999 and entered into force on 7th July, 2000 following its ratification by the original three founding Partner States of the EAC (the Republic of Kenya, the Republic of Uganda and the United Republic of Tanzania). The Republic of Rwanda and the Republic of Burundi joined the EAC having acceded to the Treaty on 18th June 2007 and becoming full members effective 1st July, 2007 while the Republic of South Sudan acceded to the Treaty on 15th April, 2016 and became a full member effective 15th August, 2016.
9. In Joining the EAC, the Republic of Rwanda and the Republic of Burundi acceded to the Treaty for the Establishment of the East African Community and by Extension the Protocol on the Establishment of the East African Community Customs Union.
10. The admission of the Republic of Rwanda and the Republic of Burundi in to the East African Community in 2007 therefore necessitated the Amendment of Article 24(2)(a) of the Protocol on the Establishment of the East African Community Customs Union in order to allow the two Partner States to nominate members to join the East African Community Trade Remedies Committee.

2.2 The East African Community Customs Union Protocol

11. The Protocol on the Establishment of the East African Community Customs Union was signed in December, 2004 by the three founding Partner States of the EAC and came into force on 1st January, 2005.
12. The Protocol was done in line with the Provisions of Article 75 of the Treaty Establishing the East African Community and is a key pillar and the first stage of the EAC integration Process. The Protocol provides for among others; Common External Tariffs, Elimination of Internal Tariffs Program, mechanisms for identifying and elimination of non-Tariff barriers, Trade Facilitation, Rules of Origin, National Treatment, Anti-Dumping measures, subsidies and countervailing measures, safeguard measures, Dispute settlement mechanism and export Promotion schemes.

2.3 The Trade Remedies Committee

13. Article 24 of the Protocol provides for the establishment of the East African Community Committee on Trade Remedies to handle any matters pertaining to: -
 - (a) rules of origin provided for under the East African Community Customs Union (Rules of Origin) Rules, specified in Annex III to this Protocol;

- (b) anti-dumping measures provided for under the East African Community Customs Union (Anti-Dumping Measures) Regulations, specified in Annex IV to this Protocol;
- (c) subsidies and countervailing measures provided for under the East African Community Customs Union (Subsidies and Countervailing Measures) Regulations, specified in Annex V to this Protocol;
- (d) safeguard measures provided for under the East African Community Customs Union (Safeguard Measures) Regulations, specified in Annex VI to this Protocol;
- (e) dispute settlement provided for under the East African Community Customs Union (Dispute Settlement Mechanism) Regulations, specified in Annex IX to this Protocol; and
- (f) any other matter referred to the Committee by the Council.

14. Article 24(2)(a) of the Customs Union Protocol provides for the Membership of the trade Remedies committee as follows: -

“The Committee shall be composed of nine members, qualified and competent in matters of trade, customs and law”.

15. Article 24(b) provides that each partner state shall nominate three members to the Committee.

2.4 Amendment of Article 24 (2)(a) of the Protocol

16. The 10th Ordinary meeting of the EAC Summit of Heads of State held on 10th April, 2009 approved the amendment of Article 24(2)(a) of the Protocol for the Establishment of the EAC Customs Union, by deleting the word “nine” appearing in Paragraph (2) (a) of that Article.

The Article as amended provides that: -

“The Committee shall be composed of members, qualified and competent in matters of trade, customs and law”.

17. The EAC Secretary General wrote to the Partner States on 10th November, 2014 communicating the decision of the Sectoral Council on Legal and Judicial Affairs from its meeting held from 27th October to 1st November, 2014 directing Partner States to expedite the ratification process and deposit the instruments of ratification by 28th February, 2015 to enable the operationalization of the Trade Remedies Committee, and transmitted the approved amended Article 24(2)(a) of the Protocol on the Establishment of the EAC Customs Union.

18. The 30th Meeting of the Council held on 28th November, 2014 directed Partner States to deposit with the EAC Secretary General instruments of Ratification of the amendment of Article 24(2)(a) of the Customs Union Protocol by 15th August, 2015.

2.5 Justification of the Amendment

19. The Protocol provides that the Trade and Remedies Committee shall be composed of nine (9) members, qualified and competent in matters of trade, customs and law. Each partner state is supposed to nominate three members to the committee.
20. Taking into account the defined total membership of the Committee, the Republics of Rwanda, Burundi and subsequently the Republic of South Sudan that later acceded to the Treaty are unable to nominate members to the Committee.
21. The amendment therefore allows all partner states to nominate members to the Trade Remedies Committee in order to operationalize it.

3.0 SUBMISSIONS FROM STAKEHOLDERS

3.1 Submissions from the Ministry of East African Community and Regional Development

22. Dr. Kevit Desai, Principal Secretary, State Department for East African Community appeared before the Committee on Tuesday 16th March, 2021 and submitted that: -
- a) The East African Community Customs Union Protocol came into force in 2005 upon ratification by the 3 original partner states before the Republic of Rwanda and Burundi became members of the East African Community. The two Partner states acceded to the Treaty and by extension the Protocol in 2007.
 - b) Article 24(2) of the Protocol establishes the EAC Trade Remedies Committee to among others; handle matters pertaining to Rules of Origin, anti-dumping measures; subsidies, countervailing and safeguard measures, dispute settlement and any other matter referred to the Committee by the Council.
 - c) The Protocol provides that the Committee shall be composed of nine (9) members, qualified and competent in matters of trade, customs, and law. Each Partner State is required to nominate three members to the Committee. The Republics of Rwanda and Burundi are unable to nominate members to the Committee because of this limitation to nine (9) members.
 - d) Consequently, the 10th Ordinary meeting of the Heads of State held on 29th April, 2009 approved amendment of Article 24 (2)(a) of the Protocol to accommodate the Republic of Rwanda and the Republic of Burundi and future membership.
 - e) The 30th Meeting of the Council held on 28th November, 2014 directed Partner States to deposit with the EAC Secretary General Instruments of Ratification of the Amendment of

Article 24(2) by 5th August, 2015. The amendment shall come into force when ratified by all Partner States.

- f) Article 24(2)(a) of the Protocol in its current form excludes the Republic of Rwanda and the Burundi and any future member from nominating members to the Trade Remedies Committee. The amendment approved by the Summit provides that: - “The Committee shall be composed of members, qualified and competent in matters of trade, customs and law”. The ratification of the amendment is therefore intended to cure the anomaly.
- g) The amendment was done in line with the provisions of the Article 150 (6) of the Treaty for the establishment of the EAC which provides that, ‘any amendment to the Treaty shall be adopted by the Summit and shall enter into force when ratified by all the Partner States’. It is also consistent with the expansion of the Community through the admission of new partner States.
- h) The amendment of the Article will not have any implications on the Constitution of Kenya.
- i) The Ministry requested the Committee to: -
 - i) Take note of the approval by EAC summit of the amendment to Article 24(2)(a) of the Customs Union Protocol.
 - ii) Take note of the approval by the Cabinet at its 6th meeting of 28th July, 2016 which approved the ratification of the amendment to Article 24(2)(a) of the Protocol; and,
 - iii) Request the National Assembly to consider and ratify the amendment to Article 24(2)(a) of the Protocol.

3.2 Submissions from the Ministry of Industrialization, Trade and Enterprise Development

23. The Cabinet Secretary, Ms. Betty C. Maina, appearing before the Committee on 6th April, 2021 informed the Committee that: -

- a) Article 24 (1) of the EAC Customs Union Protocol establishes the EAC Committee on Trade Remedies to handle matters pertaining to rules of origin, anti-dumping, subsidies and safeguard measures.
- b) Article 24(2)(a) limits the membership to nine with each Partner State nominating three members competent in matters of Trade, Customs and Law.
- c) Article 24(2)(a) and (b) provide that: -
 - a. “The Committee shall be composed of nine members, qualified and competent in matters of Trade, Customs and Law.”
 - b. “Each Partner State shall nominate three members to the Committee.”
- d) At the time the EAC Protocol on Customs Union came into force in 2005, the EAC was composed of only three Partner States (Republic of Kenya, Republic of Uganda and the United Republic of Tanzania).

- e) In July, 2007 the Republic of Rwanda and the Republic of Burundi joined the EAC. Consequently, by dint of the capped membership under Article of 24(2) (a) the two acceding Partner States would not nominate their members to the EAC Committee on Trade Remedies.
- f) In order to allow Partner States acceding to the EAC nominate their members to the EAC Committee on Trade Remedies, the 10th Summit of EAC Heads of State held on 29th April, 2009 approved the amendment of Article 24 (2) (a) to read as follows;
 - a. *"The Committee shall be composed of members, qualified and competent in matters of trade, customs and law."*
- g) Article 24 (2) (b) which provides that each Partner State shall nominate three members to the Committee remained unchanged.
- a) The amendment to Article 24(2)(a) of the Customs Union Protocol can only come into force upon deposit of instruments of ratification with the Secretary General of the EAC by all Partner States as provided for by Article 150 of the Treaty for the establishment of the East African Community (EAC Treaty) read together with Article 151 of the EAC Treaty.
- b) Currently none of the EAC Partner States has ratified the amendment to the Protocol.
- c) Article 24(4) of the Customs Union Protocol provides for the functions of the Trade Remedies Committee as follows;
 - i. Initiate, through the investigating authorities of the Partner States, investigation on disputes under the regulations in Paragraph 1 of this Article.
 - ii. Make affirmative or negative determinations on investigation.
 - iii. Recommend provisional measures to prevent injury to a domestic industry where preliminary affirmative determination has been made;
 - iv. Undertake consultation with Partner States in relation and other countries on matters before it;
 - v. Report to the Council on all determinations in relation to matters submitted to it and decisions made by it;
 - vi. Provide advisory opinion to the Partner States to matters under Paragraph 1 of this Article;
 - vii. Review annually the implementation and operations of the matters in Paragraph 1 of this Article;
 - viii. Issue public notices under matters in Paragraph 1 of this Article;
 - ix. Facilitate consultations by Partner States and parties to the dispute before it to ensure timely fulfilment of all requirements by the parties to the dispute and provide advice as appropriate;
 - x. Administer and manage the dispute settlement mechanism; and
 - xi. Undertake any functions assigned to it by any regulation under the Protocol or by the Council.

- d) Implications of the delay in ratification of the amended Article 24(2)(a) of the EAC Customs Union Protocol by the EAC Partner States
 - i. The delay in ratification of the amendment and in effect lack of operationalization of this Committee means that the EAC Partner States have no avenue to handle matters pertaining to Rules of Origin, anti-dumping measures, subsidies and countervailing measures and safeguard measures within the EAC Customs Union.
 - ii. There has been a proliferation of Non-Tariff Barriers to trade (NTBs) within the EAC. Section 12(2), (3) and (4) of the EAC Elimination of Non-Tariff Barriers Act, 2017 allows the Council of Ministers to refer matters on elimination of NTBs to the EAC Committee on Trade Remedies. In the prevailing circumstances, the only mechanism for an aggrieved party within the EAC on NTBs is to institute proceedings at the East African Court of Justice which is not only costly but also time consuming for traders.
 - iii. The delay in ratification denies the business community a dedicated Committee to handle matters related to rules of origin, trade remedies and non-tariff barriers which are the key substratum of any trade and business.
- 24. Status of the ratification
 - e) The Republic of Kenya just like the other EAC Partner States has not completed the ratification process of the amended Article 24(2) (a) of the EAC Customs Union Protocol. The Ministry of East African Community and Regional Development being the lead agency on matters of East African Community initiated the ratification process pursuant to the provisions of Treaty Making and Ratifications Act of Kenya. Pursuant to the Treaty Making and Ratifications Act, ratification of such amendments must be approved by the Cabinet and the National Assembly.
 - f) In light of this, it is our recommendation that the Ministry of East African Community and Regional Development fast racks the ratification process to avert further inconveniences to the Kenyan business community.
 - g) The need for the urgent conclusion of the ratification of the amendment to Article to 24(2)(a) of the EAC Customs Union Protocol will in effect pave way for the operationalization of the critical Committee on Trade Remedies.
 - h) The Ministry of Industrialization, Trade and Enterprise Development proposed;
 - i. That the Ministry of East African Community and Regional Development urgently concludes the ratification process of the amendment to Article to 24(2) (a) of the EAC Customs Union Protocol.
 - ii. Noting that the amendment to Article 24(2) of the Customs Union Protocol can only come into force upon deposit of instruments of ratification with the Secretary General of

- the EAC by all Partner States, there need for concerted efforts by the relevant EAC organs to ensure that all Partner States ratify and deposit their instrument of ratification.
- iii. That the Select Committee on Regional Integration in liaison with the National Assembly Committee on Trade, Industry and Cooperatives and the EALA Committee on Communication, Trade and Investment assists in advocating to the EAC Partner States the need to operationalize the EAC Committee on Trade Remedies.
 - iv. With the proliferation of complaints by the Kenyan traders on increased dumping of some goods such as maize and eggs from some EAC countries that have an impact on domestic market, the need to strengthen the Kenya Trade Remedies Agency (KETRA) established under Section 3(1) of the Kenya Trade Remedies Act, 2017 cannot be gainsaid. The lack of forum for Kenyan traders to lodge complaints on trade remedies matters under the EAC Customs Union provides an opportunity for KETRA to bridge this gap.
 - v. Further Article 24(4) (a) of the EAC Customs Union mandates the EAC Committee on Trade Remedies to initiate investigations through the investigating authorities of the Partner States. Apart from Kenya none of the other Partner States has established an investigating body. Section 5 of the Kenya Trade Remedies Act mandates KETRA to investigations allegations of dumping and subsidization of imported products in Kenya. Moreover, any disputes related to trade remedies (anti-dumping, subsidies and safeguard measures) cannot be instituted before an investigation by a competent investigating body is completed. It is thus critical that KETRA is fully supported to ensure that it undertakes this mandate to alleviate injury to our domestic market.

4.0 COMMITTEE OBSERVATIONS

25. The Committee having considered the proposed Amendment to Article 24(2)(a) of the Protocol on the Establishment of the East African Community Customs Union Protocol observed as follows, **THAT: -**

1. Article 24(2)(a) of the Customs Union Protocol capped the Membership of the Trade Remedies Committee to nine (9) which excluded the Republics of Rwanda and Burundi and any future member of the EAC from nominating members to the Trade Remedies Committee.
2. The amendment was done in line with the provisions of the Article 150 (6) of the Treaty for the establishment of EAC, which provides that "Any amendment of the Treaty shall be adopted by the Summit and shall enter into force when ratified by all the Partner States". It is also consistent with the expansion of the Community through admission of new Partner States.
3. The amendment is necessary as it expands the membership of the Trade Remedies Committee following the admission of the Republics of Rwanda and Burundi in July, 2007 and further accommodates more representation in case more countries join the EAC. The Republic of South Sudan was admitted to the EAC on 15 April 2016 and became a full member effective 15th August, 2016.
4. The 30th Meeting of the Council held on 28th November 2014 directed Partner States to deposit with the EAC Secretary General instruments of Ratification of the amendment of Article 24(2) (a) by 15th August, 2015. The amendment shall come into force once ratified by all partner States. So far, Partner States are yet to ratify the amendment.
5. The ratification of the amendment will allow for the operationalization of the Trade Remedies Committee that shall provide the EAC Partner States with a platform to handle matters pertaining to Rules of Origin, anti-dumping measures, subsidies and countervailing measures and safeguard measures within the EAC Customs Union.
6. The Council of EAC Ministers should urge Partner States to fast track the approval of the Ratification of the Amendment to the Protocol.
7. In the meantime, the Committee notes that with the proliferation of complaints by the Kenyan traders on increased dumping of some goods such as maize and eggs from some EAC countries, Kenya has established The Kenya Trade Remedies Agency (KETRA under Section 3(1) of the Kenya Trade Remedies Act, 2017 which provides a mechanism for Kenyan traders to lodge complaints on trade remedies matters. There is therefore need for the government to strengthen this Agency.

5.0 COMMITTEE RECOMMENDATION

26. Having considered the ratification of the amended article 24(2)(a) of the Protocol on the establishment of the East African Community Customs Union to provide for the establishment of the Trade Remedies Committee, the Committee recommends that:-

Pursuant to Section 8 of the Treaty Making and Ratification Act of 2012, the House APPROVES the Ratification of the amended article 24(2)(a) of the Protocol on the establishment of the East African Community Customs Union.

Signed.......... Date.....07/07/2021.....

HON. ALI WARIO, M.P, CBS

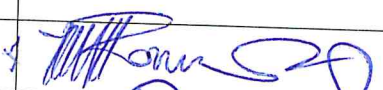
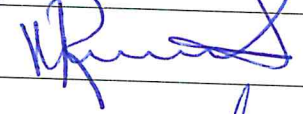
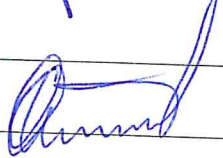
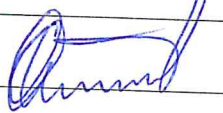
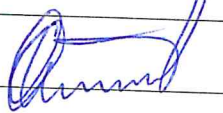
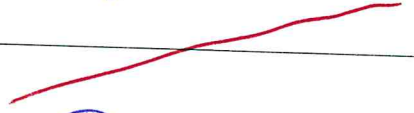

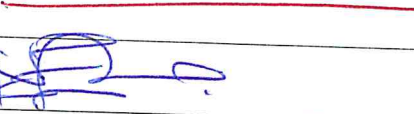



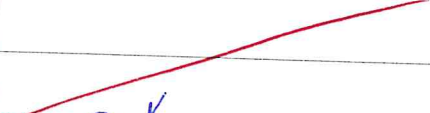
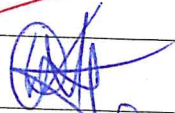

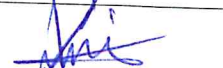
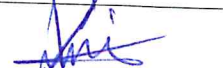
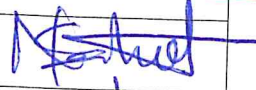
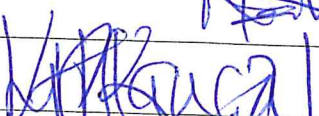
CHAIRPERSON, SELECT COMMITTEE ON REGIONAL INTEGRATION

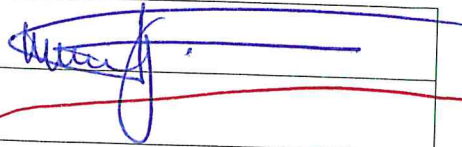
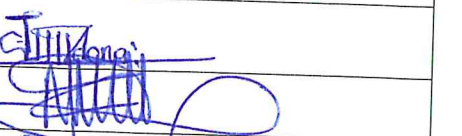
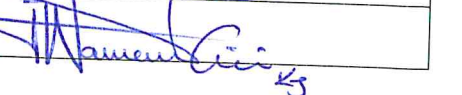


KENYA NATIONAL ASSEMBLY
TWELFTH PARLIAMENT - (FIFTH SESSION)
SELECT COMMITTEE ON REGIONAL INTEGRATION

ADOPTION LIST

**REPORT ON THE CONSIDERATION FOR APPROVAL OF THE RATIFICATION OF
THE AMENDMENT TO ARTICLE 24(2) OF THE PROTOCOL ON THE
ESTABLISHMENT OF THE EAST AFRICAN COMMUNITY CUSTOMS UNION.**

Date : 18/06/2021

	NAME	SIGNATURE
1.	Hon. Ali Wario, CBS, M.P –Chairperson	
2.	Hon. (Capt.) Ruweida Mohamed, M.P. – Vice Chairperson	
3.	Hon. Ezekiel Machogu Ombaki, MP	
4.	Hon. Cyprian Kubai Iringo, M.P	
5.	Hon. Moses Malulu Injendi, M.P.	
6.	Hon. Janet Marania Teyiaa, M.P.	
7.	Hon. Mathias Nyamabe Robi, M.P.	
8.	Hon. Abdi Mude Ibrahim, M.P.	
9.	Hon. Erastus Kivasu Nzioka, M.P.	
10.	Hon. Samson Ndindi Nyoro, M.P.	
11.	Hon. Geoffrey Omuse, M.P.	
12.	Hon. Janet Ong'era, CBS, M.P.	
13.	Hon. Memusi Ole Kanchory, M.P.	
14.	Hon. Gideon Ochanda, M.P.	
15.	Hon. Ali Wario Guyo, M.P.	
16.	Hon. Kassim Sawa Tandaza, M.P.	
17.	Hon. Nasri Sahal Ibrahim, M.P.	
18.	Hon. Hilary Kosgei, M.P.	

19.	Hon. James Mwangi Gakuya, M.P.	
20.	Hon. Alfred Sambu, M.P.	
21.	Hon. Paul Kahindi Katana, M.P.	
22.	Hon. Jane Wanjuki Njiru, M.P.	
23.	Hon. John Kiarie Waweru, M.P.	

MINUTES OF THE 10TH SITTING OF THE SELECT COMMITTEE ON REGIONAL INTEGRATION HELD ON FRIDAY 18TH JUNE, 2021 IN THE PIER CONFERENCE ROOM, HOTEL ENGLISH POINT MARINA, MOMBASA AT 9.00 AM

PRESENT

1. The Hon. Ali Wario, CBS, M.P. - **Chairperson**
2. The Hon. Capt. Ruweida Mohamed, M.P – Vice Chairperson
3. The Hon. Kubai Iringo, M.P
4. The Hon. Mathias Nyamabe Robi, M.P.
5. The Hon. Erastus Kivasu Nzioka, M.P.
6. The Hon. Gideon Ochanda, M.P.
7. The Hon. Nasri Sahal Ibrahim, MP
8. The Hon. Paul Kahindi Katana, M.P.
9. The Hon. Ali Wario Guyo, M.P.
10. The Hon. Jane Wanjuki Njiru, M.P.
11. The Hon. James Mwangi Gakuya, M.P.
12. The Hon. Elijah Memusi Kanchory, M.P.
13. The Hon. Hilary Kosgei, M.P.
14. The Hon. Ndindi Nyoro, M.P.
15. The Hon. John Kiarie Waweru, M.P

ABSENT WITH APOLOGIES

1. The Hon. Ezekiel Machogu Ombaki, MP
2. The Hon. Moses Malulu Injendi, M.P.
3. The Hon. Sen. Janet Ongera, CBS, MP
4. The Hon. Abdi Mude Ibrahim, MP
5. The Hon. Geoffrey Omuse, M.P.
6. The Hon. Kassim Sawa Tandaza, M.P.
7. The Hon. Janet Teyiaa, M.P.

ABSENT WITHOUT APOLOGIES

1. The Hon. Alfred Sambu, M.P.

NATIONAL ASSEMBLY SECRETARIAT

1. Mrs. Florence A. Abonyo - Director, Audit, Appropriations and Other Select Committees
2. Mr. Aden Abdullahi - Principal Clerk Assistant II
3. Dr. Kefa Omoti - Principal Research Officer II
4. Mr. Peter Mwaura - Senior Legal Counsel
5. Ms. Ruth M. Gakuya - Clerk Assistant II
6. Mr. Job Owaga - Audio Recording Officer
7. Ms. Mary Mariru - Intern

MIN. NO. NA/RIC/2021/32 PRELIMINARIES

The Chairperson called the meeting to order at twenty five minutes past nine O'clock and prayers were said.

MIN.NO.NA/RIC/2021/33 CONSIDERATION AND ADOPTION OF THE COMMITTEE REPORT ON ITS CONSIDERATION FOR APPROVAL THE RATIFICATION OF THE AMENDMENT TO ARTICLE 24(2) (a) OF THE PROTOCOL ON THE ESTABLISHMENT OF THE EAST AFRICAN COMMUNITY CUSTOMS UNION

The Committee considered the report and observed that:-

1. Article 24(2)(a) of the Customs Union Protocol capped the Membership of the Trade Remedies Committee to nine (9) which excluded the Republic of Rwanda and the Republic of Burundi and any future member of the EAC from nominating members to the Trade Remedies Committee.
2. The amendment is in line with the provisions of the Article 150 (6) of the Treaty for the establishment of EAC which provides that "Any amendment of the Treaty shall be adopted by the Summit and shall enter into force when ratified by all the Partner States". It is also consistent with the expansion of the Community through admission of new Partner States.
3. The amendment is necessary as it expands the membership of the Trade Remedies Committee following the admission of the Republics of Rwanda and Burundi in July, 2007 and further accommodates more representation in case more countries join the EAC. The Republic of South Sudan was admitted to the EAC on 15th April, 2016 and became a full member effective 15th August 2016.
4. The 30th Meeting of the Council held on 28th November, 2014 directed Partner States to deposit with the EAC Secretary General instruments of Ratification of the amendment of Article 24(2) (a) by 15th August, 2015. The amendment shall come into force once ratified by all partner States. So far, Partner States are yet to ratify the amendment.
5. The ratification of the amendment will allow for the operationalization of the Trade Remedies Committee that shall provide the EAC Partner States with a platform to handle matters pertaining to Rules of Origin, anti-dumping measures, subsidies and countervailing measures and safeguard measures within the EAC Customs Union.
6. The Council of EAC Ministers should urge Partner States to fast track the approval of the Ratification of the Amendment to the Protocol.
7. In the meantime, the Committee notes that with the proliferation of complaints by the Kenyan traders on increased dumping of some goods such as maize and eggs from some EAC countries, Kenya has established the Kenya Trade Remedies Agency (KETRA) under Section

3(1) of the Kenya Trade Remedies Act, 2017 which provides a mechanism for Kenyan traders to lodge complaints on trade remedies matters. There is therefore need for the government to strengthen this Agency.

The Committee recommended, that:-

Pursuant to Section 8 of the Treaty Making and Ratification Act of 2012, the House approves the Ratification of the amended article 24(2)(a) of the Protocol on the establishment of the East African Community Customs Union.

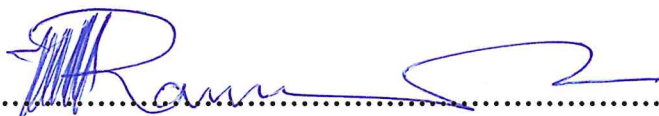
The report was unanimously adopted having been proposed and seconded by the Hon. John Kiarie Waweru, M.P and the Hon. Kubai Iringo, M.P respectively.

MIN. NO. NA/RIC/ 2021/34

ADJOURNMENT

There being no other business, the meeting adjourned at thirty-one minutes past twelve O'clock.

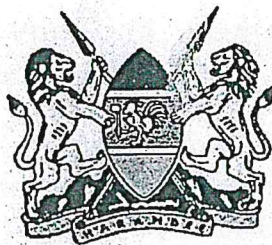
SIGNED.....



(Chairperson)

DATE.....

29/06/2021



**MEMORANDUM TO THE SPEAKER OF THE NATIONAL ASSEMBLY
ON THE RATIFICATION OF THE AMENDMENT TO ARTICLE 24 (2)
OF THE PROTOCOL ON THE ESTABLISHMENT OF THE EAST
AFRICAN COMMUNITY CUSTOMS UNION**

(Submitted by the Cabinet Secretary for Foreign Affairs)

1.0 OBJECTIVE OF THE MEMORANDUM

The objective of the memorandum is to:

1. Inform the National Assembly of the approval by the Heads of State of the Partner States of the East African Community of the amendment to Article 24(2) of the Protocol on the Establishment of the East African Community Customs Union ("the Protocol").
2. Inform the National Assembly that the Cabinet at its Sixth meeting held on 28th July, 2016 approved the ratification of the amendment to Article 24 (2) of the Protocol
3. Seek the approval of the National Assembly for the Republic of Kenya to ratify the amendment to Article 24 (2) of the Protocol.

2.0 BACKGROUND OF THE SUBJECT MATTER

The Protocol on the establishment of the East Africa Community Customs Union came into force on 1st January, 2005 upon ratification by the three original Partner States before the Republic of Rwanda and Burundi became members of the East African Community. The two Partner States acceded to the Treaty and by extension to the Protocol in 2007.

Article 24(2) of the Protocol establishes the EAC Trade Remedies Committee to among others handle matters pertaining to Rules of Origin, anti-dumping measures, subsidies and countervailing, safeguard

measures, dispute settlement and any other matter referred to the Committee by the Council.

The Protocol provides that the Committee shall be composed of nine (9) members, qualified and competent in matters of trade, customs and law. Each Partner State is required to nominate three members to the Committee. However and taking into account the defined numbers, the Republics of Rwanda and Burundi that later acceded to the EAC Treaty are unable to nominate members to the Committee.

It is in this regard that the 10th Ordinary meeting of the Heads of State held on 29th April, 2009 approved the amendment of Article 24(2) of the Protocol to accommodate the prevailing number of Partner States.

The 30th meeting of the Council held on 28th November 2014 directed Partner States to deposit with the EAC Secretary General Instruments of Ratification of the amendment of Article 24 (2) by 15th August, 2015. The amendment shall come into force when ratified by all Partner States.

3.0 ANALYSIS OF THE PROBLEM

Article 24(2) of the Protocol in its current form excludes the Republics of Rwanda and Burundi from nominating members to Trade Remedies Committee. The amendment approved by the Summit provides as follows; *"The Committee shall be composed of members, qualified and competent in matters of trade, customs and law"*. The ratification of the amendment is therefore intended to cure the anomaly.

The amendment was done in line with the provisions of the Article 150 (6) of the Treaty for the establishment of EAC which provides that *"Any amendment of the Treaty shall be adopted by the Summit and shall enter into force when ratified by all the Partner States"*. It is also consistent with the expansion of the Community through admission of new Partner States.

The operationalization of the Trade Remedies Committee will: enable the Republics of Burundi and Rwanda to be members of the Trade Remedies Committee; ensure adherence to application of the EAC rules of origin; guide subsidies and countervailing measures; regulate safeguard measures; and provide dispute settlement mechanisms. The amendment of the Article will not have any implications on the Constitution of Kenya.

4.0 OPTIONS OF THE WAY FORWARD

Article 150, (6) of the Treaty for the Establishment of the East African Community provides that *"Any amendment of the Treaty shall be adopted by the Summit and shall enter into force when ratified by all the Partner States"*. Article 151 of the Treaty further states that the Annexes and the Protocol to the Treaty shall form an integral part of the Treaty.

Since the Summit adopted the amendment to the Protocol and the amendment is consistent with the above Treaty provisions, it is recommended that Kenya ratifies the amendment for it to enter into force thus paving way for The Republics of Burundi and Rwanda to nominate members to the Trade Remedies Committee.

5.0 FINANCIAL IMPLICATIONS

Kenya will be required to contribute towards funding the activities of the Trade Remedies Committee as part of the overall contribution to the operations of the EAC.

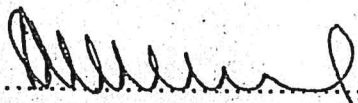
6.0 RECOMMENDATIONS TO THE NATIONAL ASSEMBLY

The National Assembly is requested to:

- a) Take note of the contents of this Memorandum; and
- b) Approve ratification of the amendment to Article 24 (2) of the Protocol by the Republic of Kenya.

Signed

Date


.....
AMB. (DR.) AMINA C. MOHAMED, CBS, CAV
CABINET SECRETARY FOR FOREIGN AFFAIRS

20-1-17

EAST AFRICAN COMMUNITY

EAC Close
P.O. Box 1096
ARUSHA, TANZANIA



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Fax: +255-27-2162102/2162191
E-mail: eac@eachq.org
Web: <http://www.eac.int>

THE SECRETARY GENERAL

Our Ref: SGN/4/9
Date: 10th November 2014

Mr. John Oloshuro Konchellah,
Principal Secretary Responsible for East African Affairs,
Ministry of East African Affairs, Commerce and Tourism,
P. O. Box 8846-00200,
Nairobi, KENYA.
Fax No. 005 20 2229650/2252028/253244
E-mail: ps@meac.go.ke

Ms. Joyce Mapunja,
Permanent Secretary,
Ministry of East African Co-operation,
P.O. Box 9280,
Dar es Salaam, TANZANIA.
Fax No. 022 2120488/2127488/2126651
E-mail: ps@meac.go.tz / akisumo2001@yahoo.com

Amb. Jean Rigi,
Permanent Secretary,
Ministry to the Office of the President Responsible for EAC Affairs,
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Bujumbura, BURUNDI.
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E-mail: jean.rigi@yahoo.fr

Mr. Innocent Safari,
Permanent Secretary,
Ministry of East African Community Affairs,
P.O. Box 179,
Kigali, RWANDA.
Fax No. +250 252 577 653
E-mail: ps@mineac.gov.rw

Mrs. Edith N. Mwanje,
Permanent Secretary,
Ministry of East African Community Affairs,
P.O. Box 3138,
Kampala, UGANDA.
E-mail: meaca@meaca.co.ug / ensajia@yahoo.com

East African Community (EAC) Headquarters, Afrika Mashariki Rd. / EAC Close, Arusha, Tanzania

Dear Permanent Secretary,

RE: RATIFICATION OF THE AMENDMENT OF ARTICLE 24 (2) OF THE PROTOCOL ON
THE ESTABLISHMENT OF THE EAST AFRICAN COMMUNITY CUSTOMS UNION

At its 10th Ordinary Meeting held on 29th April 2009, the EAC Summit of Heads of State approved the amendment of Article 24 (2) of the Protocol on the Establishment of the East African Community Customs Union. At its Meeting held from 27th October to 1st November 2014, the Sectoral Council on Legal and Judicial Affairs, while considering the operationalization of the EAC Trade Remedies Committee, noted that the Partner States were yet to ratify the amendment of Article 24 (2) of the Protocol.

The Sectoral Council therefore observed the need for the Partner States to expedite the ratification process and to deposit the instruments of ratification by 28th February, 2015 to enable the operationalization of the Trade Remedies Committee.

The purpose of this letter is therefore to submit to Partner States the approved amendment of the Article 24 (2) of the Protocol on the Establishment of the East African Community Customs Union. The text of amendment is attached.

Please accept, Principal / Permanent Secretary, the assurances of my highest consideration.



Charles Njoroge
Deputy Secretary General
(Political Federation)
For: SECRETARY GENERAL

Encl: AMENDMENT OF ARTICLE 24 (2) OF THE PROTOCOL ESTABLISHING THE EAST
AFRICAN COMMUNITY CUSTOMS UNION

RATIFICATION OF THE AMENDMENT OF ARTICLE 24 (2) (a) OF THE
PROTOCOL ESTABLISHING THE EAC CUSTOMS UNION

The 10th Summit of Heads of State held at Ngurdoto Mountain Lodge on 29th April 2009 approved the amendment of Article 24 (2) of the Protocol Establishing The EAC Customs Union by deleting the word "nine" appearing in Paragraph (2) (a) of that Article.

The amended provision reads:

"The Committee shall be composed of members, qualified and competent in matters of trade, customs and law."



EAST AFRICAN COMMUNITY SECRETARIAT

**PROTOCOL
ON THE ESTABLISHMENT OF THE EAST AFRICAN
CUSTOMS UNION**

"Community" means the East African Community established by Article 2 of the Treaty;

"community goods" means goods originating from the Community;

"community tariff" means a five year interim tariff imposed on specific goods originating from the Republic of Uganda to the Republic of Kenya, and from the Republic of Uganda to the United Republic of Tanzania under the principle of asymmetry;

"compensating product" means a product resulting from the manufacturing, processing or repair of goods for which the use of the inward processing procedure is authorised;

"competent authority" means a body or organisation designated by the Community to administer the customs law of the Community;

"co-operation" includes any undertaking by the Partner States, jointly or in concert, of activities undertaken in furtherance of the objectives of the Community, as provided for under the Treaty or under any contract or agreement made under the Treaty or in relation to the objectives of the Community;

"Council" means the Council of Ministers of the Community established by Article 9 of the Treaty;

"countervailing duty" means a specific duty levied for the purpose of offsetting any subsidy bestowed directly or indirectly upon the manufacture, production or export of a product;

"countervailing measures" means measures taken to counteract the effect of injurious subsidies;

"Court" means the East African Court of Justice established by Article 9 of the Treaty;

"customs area" means that area licenced by a competent authority for purposes of specific customs operations;

"customs and excise authority" means a body or an institution designated as such by a Government of a Partner State;

"customs data bank" means a depository of customs and trade data and information;

"customs duties" means import or export duties and other charges of equivalent effect levied on goods by reason of their importation or exportation, respectively, on the basis of legislation in the Partner States and includes fiscal duties or taxes where such duties or taxes affect the importation or exportation of goods but does not include internal duties and taxes such as sales, turnover or consumption taxes, imposed otherwise than in respect of the importation or exportation of goods;

"customs law of the Community" means the customs law of the Community as provided under Article 39 of this Protocol;

"customs offence" means any breach or attempted breach of customs law;

"customs territory" means the geographical area of the Republic of Uganda, the Republic of Kenya and the United Republic of Tanzania and any other country granted membership of the Community under Article 3 of the Treaty;

"Customs Union" means the East African Community Customs Union established by Article 2 of this Protocol;

"days" means working days in any calendar month;

"dumping" in relation to goods means the situation where the export price of goods imported or intended to be imported into the Community is less than the normal value of like goods in the market of a country of origin as determined in accordance with the provisions of this Protocol, and "dumped product" has the corresponding meaning;

"duty" means any duty leviable under any customs law and includes surtax;

"duty drawback" means a refund of all or part of any excise or import duty paid in respect of goods confirmed to have been exported or used in a manner or for a purpose prescribed as a condition for granting duty drawback;

"excise duty" means a non-discriminative duty imposed by a Partner State on locally produced or similar imported goods;

"export" with its grammatical variations and cognate expressions means to take or cause goods to be taken out of the customs territory;

"export duties" means customs duties and other charges of equivalent effect levied on goods by reason of their exportation;

"export processing zone" means a designated area or region in which firms can import duty free as long as the imports are used as inputs into the production of exports;

"export promotion" means an undertaking in the facilitation of production or manufacturing for purposes of export;

"freeport" means a customs controlled area within a Partner State where imported duty free goods are stored for the purpose of trade;

"freeport authority" means an authority appointed by a Partner State under national legislation to establish, co-ordinate and operate freeport related facilities in a Partner State and it shall include all the staff thereof;

"freeport zone" means a designated area placed at the disposal of the freeport authority where goods introduced into the designated area are generally regarded, in so far as import duties are concerned, as being outside the customs territory;

"foreign country" means a country other than a Partner State;

"goods" includes all wares, articles, merchandise, animals, matter, baggage, stores, materials, currency and includes postal items other than personal correspondence, and where any such goods are sold under the auspices of this Protocol, the proceeds of sale;

"goods in transit" means goods being conveyed through the customs territory to a foreign country;

"import" with its grammatical variations and cognate expressions means to bring or cause goods to be brought into the customs territory;

"import duties" means customs duties and other charges of equivalent effect levied on goods by reason of their importation;

"imported goods" means goods other than Community goods;

"importing Partner State" means a Partner State into which goods are imported;

"international standards" means standards that are adopted by international standardising or standards organisations made available to the public;

"inward processing" means the customs procedure under which certain goods can be brought into a customs territory conditionally relieved from payment of import duties and taxes, on the basis that such goods are intended for manufacturing, processing or repair and subsequent exportation;

"Legislative Assembly" means the East African Legislative Assembly established by Article 9 of the Treaty;

"manufacturing under bond" means a facility extended to manufacturers to import plant, machinery, equipment and raw materials tax free, exclusively for use in the manufacture of goods for export;

"non-tariff barriers" means laws, regulations, administrative and technical requirements other than tariffs imposed by a Partner State whose effect is to impede trade;

"other charges of equivalent effect" means any tax, surtax, levy or charge imposed on imports and not on like locally produced products and does not include fees and similar charges commensurate with the cost of services rendered;

"Partner States" means the Republic of Uganda, the Republic of Kenya and the United Republic of Tanzania and any other country granted membership to the Community under Article 3 of the Treaty;

"person" means a natural or legal person;

"primary production" means initial or basic production of goods using raw materials or original inputs which have not undergone processing;

"principle of asymmetry" means the principle which addresses variances in the implementation of measures in an economic integration process for purposes of achieving a common objective;

"Protocol" means this Protocol establishing the East African Community Customs Union and any annexes to the Protocol;

"publications" means printed material in hard or soft form;

"refund" means the return or repayment of duties and taxes already collected;

"re-exports" means goods which are imported and re-exported from the customs territory;

"remission" means the waiver of duty or refrainment from exacting of duty;

"safeguard measures" means protective measures taken by a Partner State to prevent serious injury to her economy as provided under this Protocol;

"Secretariat" means the Secretariat of the Community established by Article 9 of the Treaty;

"Secretary General" means the Secretary General of the Community appointed under Article 67 of the Treaty;

"subsidy" means assistance by a government of a Partner State or a public body to the production, manufacture, or export of specific goods, taking the form of either direct payments, such as grants or loans, or of measures with equivalent effect, such as guarantees, operational or support services or facilities, and fiscal incentives;

"tariff" means any customs duty on imports or exports;

"trade data" means trade related information and statistics on trade;

"trade facilitation" means the co-ordination and rationalisation of trade procedures and documents relating to the movement of goods from their place of origin to their destination;

"trade procedures" means activities related to the collection, presentation, processing and dissemination of data and information concerning all activities constituting trade;

"Treaty" means the Treaty for the Establishment of the East African Community.

2. In this Protocol, a reference to a law or protocol shall be construed as reference to the law or protocol as from time to time amended.

PART B
ESTABLISHMENT OF
THE EAST AFRICAN COMMUNITY
CUSTOMS UNION

ARTICLE 2
Establishment of the East African Community
Customs Union

1. In order to promote the objectives of the Community provided under Article 5 of the Treaty and in accordance with the provisions of this Protocol, the Partner States hereby establish a customs union as an integral part of the Community.
2. The Customs Union established under Paragraph 1 of this Article, shall be called the East African Community Customs Union (hereinafter referred to as "the Customs Union").
3. The Customs Union shall be managed in accordance with the customs law of the Community.
4. Within the Customs Union:
 - (a) customs duties and other charges of equivalent effect imposed on imports shall be eliminated save as is provided for in this Protocol;
 - (b) non-tariff barriers to trade among the Partner States shall be removed; and
 - (c) a common external tariff in respect of all goods imported into the Partner States from foreign countries shall be established and maintained.
5. In accordance with the provisions of Article 75 of the Treaty, this Protocol, *inter alia*, provides for the following:
 - (a) the application of the principle of asymmetry;
 - (b) the elimination of internal tariffs and other charges of equivalent effect;
 - (c) the elimination of non-tariff barriers;
 - (d) establishment of a common external tariff;
 - (e) rules of origin;
 - (f) anti-dumping measures;
 - (g) subsidies and countervailing duties;

- (h) security and other restrictions to trade;
- (i) competition;
- (j) duty drawback, refund and remission of duties and taxes;
- (k) customs co-operation;
- (l) re-exportation of goods;
- (m) simplification and harmonisation of trade documentation and procedures;
- (n) exemption regimes;
- (o) harmonised commodity description and coding system; and
- (p) freeports.

ARTICLE 3 Objectives of the Customs Union

The objectives of the Customs Union shall be to:

- (a) further liberalise intra-regional trade in goods on the basis of mutually beneficial trade arrangements among the Partner States;
- (b) promote efficiency in production within the Community;
- (c) enhance domestic, cross border and foreign investment in the Community; and
- (d) promote economic development and diversification in industrialisation in the Community.

ARTICLE 4 Scope of Co-operation in the Customs Union

1. The provisions of this Part of the Protocol shall apply to any activity undertaken in co-operation by the Partner States in the field of customs management and trade and shall include:

- (a) matters concerning trade liberalisation;
- (b) trade related aspects including the simplification and harmonisation of trade documentation, customs regulations and procedures with particular reference to such matters as the valuation of goods, tariff classification,

the collection of customs duties, temporary admission, warehousing, cross-border trade and export drawbacks;

- (c) trade remedies and the prevention, investigation and suppression of customs offences;
- (d) national and joint institutional arrangements;
- (e) training facilities and programmes on customs and trade;
- (f) production and exchange of customs and trade statistics and information; and
- (g) the promotion of exports.

2. For purposes of sub-paragraph 1(a) of this Article, the Partner States shall co-operate in:

- (a) adopting uniform, comprehensive and systematic tariff classification of goods with a specific description and interpretation in accordance with internationally accepted standards;
- (b) adopting a standard system of valuation of goods based on principles of equity, uniformity and simplicity of application in accordance with internationally accepted standards and guidelines;
- (c) establishing common terms and conditions governing temporary importation procedures including the list or range of goods to be covered and the nature of manufacturing or processing to be authorised;
- (d) implementing the customs requirements for re-exportation of goods;
- (e) implementing the customs requirements for the transit of goods;
- (f) harmonising and simplifying customs and trade formalities and documentation and dissemination of information;
- (g) harmonising the customs requirements for the control of warehoused goods; and
- (h) adopting common procedures for the establishment and operation of export promotion schemes and freeports.

PART C
CUSTOMS ADMINISTRATION

ARTICLE 5
Communication of Customs and Trade Information

The Partner States shall exchange information on matters relating to customs and trade and in particular:

- (a) the prevention, investigation and suppression of customs offences; and
- (b) the operation of a harmonised information system to facilitate the sharing of customs and trade information.

ARTICLE 6
Trade Facilitation

The Partner States shall initiate trade facilitation by:

- (a) reducing the number and volume of documentation required in respect of trade among the Partner States;
- (b) adopting common standards of trade documentation and procedures within the Community where international requirements do not suit the conditions prevailing among the Partner States;
- (c) ensuring adequate co-ordination and facilitation of trade and transport activities within the Community;
- (d) regularly reviewing the procedures adopted in international trade and transport facilitation with a view to simplifying and adopting them for use by the Partner States;
- (e) collecting and disseminating information on trade and trade documentation;
- (f) promoting the development and adoption of common solutions to problems in trade facilitation among the Partner States; and
- (g) establishing joint training programmes on trade.

ARTICLE 7
Simplification, Standardisation and Harmonisation of
Trade Information and Documentation

1. The Partner States agree to simplify their trade documentation and procedures in order to facilitate trade in goods within the Community.
2. Subject to the provisions of Article 6 of this Protocol, the Partner States agree to design and standardise their trade information and documentation in accordance with internationally accepted standards, taking into account the use of electronic data processing systems in order to ensure the efficient and effective application of the provisions of this Protocol.
3. For purposes of this Article:
 - (a) a customs data bank shall be established at the Secretariat; and
 - (b) the Partner States hereby agree to adopt the Harmonised Customs Documentation to be specified in the customs law of the Community.

ARTICLE 8
Commodity Description and Coding System

1. The Partner States agree to harmonise their customs nomenclature and standardise their foreign trade statistics to ensure comparability and reliability of the relevant information.
2. The Partner States hereby adopt the Harmonised Commodity Description and Coding System specified in Annex I to this Protocol.

ARTICLE 9
Prevention, Investigation and
Suppression of Customs Offences

1. The Partner States agree to co-operate in the prevention, investigation and suppression of customs offences within their territories.

2. For purposes of paragraph 1 of this Article, the Partner States shall:

- (a) afford each other mutual assistance with a view to preventing, repressing and investigating customs offences;
- (b) exchange information on goods and publications known to be the subject of illicit traffic and maintain special surveillance over the movement of such goods and publications; and
- (c) consult each other on the establishment of common border posts and take steps as may be deemed appropriate to ensure that goods exported or imported through common frontiers pass through the competent and recognised customs offices and along approved routes.

3. The implementation of this Part of the Protocol shall be in accordance with the provisions of the customs law of the Community.

PART D
TRADE LIBERALISATION

ARTICLE 10
Internal Tariff

1. Save as is provided in Article 11 of this Protocol, the Partner States shall, upon the coming into force of this Protocol, eliminate all internal tariffs and other charges of equivalent effect on trade among them, in accordance with the provisions of Article 14 of this Protocol.
2. The Council may, at any time, decide that any tariff rate shall be reduced more rapidly or eliminated earlier than is provided for in accordance with paragraph 1 of this Article.

ARTICLE 11
**Transitional Provisions on the Elimination
of Internal Tariffs**

1. The establishment of the Customs Union shall be progressive in the course of a transitional period of five years from the coming into force of this Protocol.
2. The Partner States agree that upon the coming into force of this Protocol and for the purpose of the transition into a Customs Union:
 - (a) goods to and from the Republic of Uganda and the United Republic of Tanzania shall be duty free; and
 - (b) goods from the Republic of Uganda and the United Republic of Tanzania into the Republic of Kenya shall be duty free.
3. Goods from the Republic of Kenya into the Republic of Uganda and the United Republic of Tanzania shall be categorised as follows:
 - (a) Category A goods, which shall be eligible for immediate duty free treatment; and

- (b) Category B goods, which shall be eligible for gradual tariff reduction.

4. Category B goods from the Republic of Kenya into the Republic of Uganda shall have a phase out tariff reduction period of five years for all products as follows:

- (a) 10 per centum during the first year;
- (b) 8 per centum during the second year;
- (c) 6 per centum during the third year;
- (d) 4 per centum during the fourth year;
- (e) 2 per centum during the fifth year; and
- (f) 0 per centum thereafter,

as specified in Annex II to this Protocol.

5. Category B goods from the Republic of Kenya into the United Republic of Tanzania shall have a phase out tariff reduction period as specified in Annex II to this Protocol.

6. Internal tariffs specified under the provisions of this Article shall not exceed the Common External Tariff with regard to any of the specified products.

ARTICLE 12 Common External Tariff

1. The Partner States hereby establish a three band common external tariff with a minimum rate of 0 per centum, a middle rate of 10 per centum and a maximum rate of 25 per centum in respect of all products imported into the Community.

2. The Partner States hereby undertake to review the maximum rate of the common external tariff after a period of five years from the coming into force of the Customs Union.

3. The Council may review the common external tariff structure and approve measures designed to remedy any adverse effects which any of the Partner States may experience by reason of the implementation of this part of the Protocol or, in exceptional circumstances, to safeguard Community interests.

4. For purposes of this Article, the Partner States shall use the Harmonised Customs Commodity Description and Coding System referred to in Article 8 of this Protocol.

ARTICLE 13

Non-tariff Barriers

1. Except as may be provided for or permitted by this Protocol, each of the Partner States agrees to remove, with immediate effect, all the existing non-tariff barriers to the importation into their respective territories of goods originating in the other Partner States and, thereafter, not to impose any new non-tariff barriers.

2. The Partner States shall formulate a mechanism for identifying and monitoring the removal of non-tariff barriers.

PART E
TRADE RELATED ASPECTS

ARTICLE 14
Rules of Origin

1. For purposes of this Protocol, goods shall be accepted as eligible for Community tariff treatment if they originate in the Partner States.
2. Goods shall be considered to originate in the Partner States if they meet the criteria set out in the Rules of Origin adopted under this Article.
3. The Partner States hereby adopt the East African Community Rules of Origin specified in Annex III to this Protocol.

ARTICLE 15
National Treatment

1. The Partner States shall not:
 - (a) enact legislation or apply administrative measures which directly or indirectly discriminate against the same or like products of other Partner States; or
 - (b) impose on each other's products any internal taxation of such a nature as to afford indirect protection to other products.
2. No Partner State shall impose, directly or indirectly, on the products of other Partner States any internal taxation of any kind in excess of that imposed, directly or indirectly, on similar domestic products.
3. Where products are exported to the territory of any Partner State, any repayment of internal taxation shall not exceed the internal taxation imposed on them, whether directly or indirectly.

ARTICLE 16
Anti-dumping Measures

1. The Partner States recognise that dumping is prohibited if it causes or threatens material injury to an established industry in any of the Partner States,

materially retards the establishment of a domestic industry therein or frustrates the benefits expected from the removal or absence of duties and quantitative restrictions of trade between the Partner States.

2. The Secretariat shall notify the World Trade Organisation on the anti-dumping measures taken by the Partner States.

3. The implementation of this Part of the Protocol shall be in accordance with the East African Community Customs Union (Anti Dumping Measures) Regulations, specified in Annex IV to this Protocol.

4. For purposes of this Article, the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products, except that:

(a) when producers are related to the exporters or importers or are themselves importers of the allegedly dumped product, the term "domestic industry" may be interpreted as referring to the rest of the producers;

(b) in exceptional circumstances, the territory of the Partner States may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry where:

(i) the producers within that market sell all or most of their production of the product in question in that market; and

(ii) the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the territory.

(c) In the circumstances referred to in sub-paragraph (b) of this Article, industry is not injured, except where there is concentration of dumped imports into such an isolated market and provided the dumped imports are causing injury to the producers of all or most of the production within such market.

ARTICLE 17

Subsidies

1. If a Partner State grants or maintains any subsidy, including any form of income or price support which operates directly or indirectly to distort competition by favouring certain undertakings or the production of certain goods in the Partner State, it shall notify the other Partner States in writing.

2. The notification in paragraph 1 of this Article shall contain the extent and nature of the subsidisation, the estimated effect of the subsidisation, the quantity of the affected product or products exported to the Partner States and the circumstances making the subsidisation necessary.

ARTICLE 18

Countervailing Measures

1. (a) The Community may, for the purposes of offsetting the effects of subsidies and subject to regulations made under this Article, levy a countervailing duty on any product of any foreign country imported into the Customs Union.

(b) The countervailing duty shall be equal to the amount of the estimated subsidy determined to have been granted directly or indirectly, on the manufacture, production or export of that product in the country of origin or exportation.

2. The implementation of Articles 17 and 18 of this Protocol shall be in accordance with the East African Community Customs Union (Subsidies and Countervailing Measures) Regulations, specified in Annex V to this Protocol.

ARTICLE 19

Safeguard Measures

1. The Partner States agree to apply safeguard measures to situations where there is a sudden surge of a product imported into a Partner State, under conditions which cause or threaten to cause serious injury to domestic producers in the territory of like or directly competing products within the territory.

2. (a) During a transitional period of five years, after the coming into force of the Protocol, where a Partner State demonstrates that its economy will suffer serious injury as a result of the imposition of the common external tariff

on industrial inputs and raw materials, the Partner State concerned shall, inform the Council and the other Partner States through the Secretary General on the measures it proposes to take.

(b) The Council shall examine the merits of the case and the proposed measures and take appropriate decisions.

3. The implementation of this Article shall be in accordance with the East African Community Customs Union (Safeguard Measures) Regulations, specified in Annex VI to this Protocol.

ARTICLE 20

Co-operation in the Investigation of Dumping, Subsidies and Application of Safeguard Measures

1. The Partner States shall co-operate in the detection and investigation of dumping, subsidies and sudden surge in imports and in the imposition of agreed measures to curb such practices.

2. Where there is evidence of any sudden surge in imports, or dumping, or export of subsidised goods by a foreign country into any of the Partner States that threatens or distorts competition within the Community, the affected Partner State may request the Partner State in whose territory there is a sudden surge in imports, or goods are dumped or subsidised, to impose anti-dumping duties or countervailing duties or safeguard measures on such goods.

3. If the Partner State to which the request is made does not act within thirty days of notification of the request, the requesting Partner State shall report to the appropriate customs union authority which shall take the necessary action.

ARTICLE 21

Competition

1 The Partner States shall prohibit any practice that adversely affects free trade including any agreement, undertaking or concerted practice which has as its objective or effect the prevention, restriction or distortion of competition within the Community.

2. The provision of paragraph 1 of this Article shall not apply in the case of:

- (a) any agreement or category of agreements between undertakings;
- (b) any decision by association of undertakings; or
- (c) any concerted practice or category of concerted practises,

which improves production or distribution of goods, promotes technical or economic development or which has the effect of promoting consumer welfare and does not impose restrictions inconsistent with the attainment of the objectives of the Customs Union or has the effect of eliminating competition.

3. The implementation of this Article shall be in accordance with the East African Community competition policy and law.

ARTICLE 22

Restrictions and Prohibitions to Trade

1. A Partner State may, after giving notice to the Secretary General of her intention to do so, introduce or continue to execute restrictions or prohibitions affecting:

- (a) the application of security laws and regulations;
- (b) the control of arms, ammunition and other military equipment or items;
- (c) the protection of human life, the environment and natural resources, public safety, public health or public morality; and
- (d) the protection of animals and plants.

2. A Partner State shall not exercise the right to introduce or continue to execute the restrictions or prohibitions conferred by this Article in order to restrict the free movement of goods within the Community.

3. Notwithstanding the provisions of Article 10(1) of this Protocol, the Partner States agree to specify in the customs law of the Community goods to be restricted and prohibited from trade.

ARTICLE 23

Re-exportation of Goods

1. The Partner States shall ensure that re-exports shall be exempt from payment of import or export duties in accordance with the customs law of the Community.
2. Paragraph (1) of this Article shall not preclude the levying of normal administrative and service charges applicable to the import or export of similar goods in accordance with the national laws and regulations of the Partner States.

ARTICLE 24

East African Community Committee on Trade Remedies

1. For purposes of this Protocol, there is hereby established an East African Community Committee on Trade Remedies (hereinafter referred to as "the Committee") to handle any matters pertaining to:
 - (a) rules of origin provided for under the East African Community Customs Union (Rules of Origin) Rules, specified in Annex III to this Protocol;
 - (b) anti-dumping measures provided for under the East African Community Customs Union (Anti-Dumping Measures) Regulations, specified in Annex IV to this Protocol;
 - (c) subsidies and countervailing measures provided for under the East African Community Customs Union (Subsidies and Countervailing Measures) Regulations, specified in Annex V to this Protocol;
 - (d) safeguard measures provided for under the East African Community Customs Union (Safeguard Measures) Regulations, specified in Annex VI to this Protocol;
 - (e) dispute settlement provided for under the East African Community Customs Union (Dispute Settlement Mechanism) Regulations, specified in Annex IX to this Protocol; and
 - (f) any other matter referred to the Committee by the Council.
2. (a) The Committee shall be composed of nine members, qualified

and competent in matters of trade, customs and law.

- (b) Each Partner State shall nominate three members to the Committee.

3. Each Partner State shall notify the Committee, of the investigating authority within its territory designated to initiate and conduct investigations on behalf of the Committee.

4. The functions of the Committee shall be to:

- (a) initiate, through the investigating authorities of the Partner States, investigation on disputes under the Regulations in paragraph 1 of this Article;
- (b) make affirmative or negative determinations on investigation arising from sub-paragraph (a) of this paragraph;
- (c) recommend provisional measures to prevent injury to a domestic industry where preliminary affirmative determination has been made under any matter in paragraph 1 of this Article;
- (d) undertake consultations with Partner States and other countries on matters before it;
- (e) report to the Council on all determinations in relations to matters that are submitted to it and decisions made by it;
- (f) provide advisory opinions to the Partner States in relation to matters under paragraph 1 of this Article;
- (g) review annually the implementation and operation of the matters in paragraph 1 of this Article;
- (h) issue public notices under the matters in paragraph 1 of this Article;
- (i) facilitate consultations by Partner States and parties to the dispute before it, to ensure timely fulfilment of all requirements by parties to the dispute and provide advice as may be appropriate;
- (j) administer and manage the dispute settlement mechanism; and
- (k) undertake any function that may be assigned to it by any regulation under this Protocol or by the Council.

5. Except as otherwise provided under the East African Community Customs Union (Dispute Settlement Mechanism) Regulations, or under any other regulation under this Protocol, the decisions of the Committee with respect to the settlement of disputes shall be final.

6. The Committee shall determine its own procedure.

PART F
EXPORT PROMOTION SCHEMES

ARTICLE 25
Principles of Export Promotion Schemes

1. The Partner States agree to support export promotion schemes in the Community for the purposes of accelerating development, promoting and facilitating export oriented investments, producing export competitive goods, developing an enabling environment for export promotion schemes and attracting foreign direct investment.
2. (a) The Partner States agree that goods benefiting from export promotion schemes shall primarily be for export.

(b) In the event that such goods are sold in the customs territory such goods shall attract full duties, levies and other charges provided in the Common External Tariff.
3. The sale of goods in the customs territory shall be subject to authorisation by a competent authority and such sale shall be limited to 20 per centum of the annual production of a company.

ARTICLE 26
Duty Drawback Schemes

1. The Partner States agree that, upon exportation to a foreign country, drawback of import duties may be allowed in such amounts and on such conditions as may be prescribed by the competent authority.
2. Duty drawback shall be paid:
 - (a) upon submission of an application to the competent authority within such a period from the date of exportation or performance of the conditions on which drawback may be allowed as the competent authority may prescribe; and
 - (b) on goods or any material used in the manufacture or processing of such goods may be granted in accordance with and subject to such

limitations and conditions as may be prescribed by the competent authority.

3. The implementation of this Article shall be in accordance with the duty drawback schemes specified in the customs law of the Community.

ARTICLE 27

Duty and Value Added Tax Remission Schemes

1. The Partner States agree to support export promotion by facilitating duty and value added tax remission schemes.
2. For purposes of this Article the Partner States may establish duty and value added tax remission schemes.
3. The implementation of this Article shall be in accordance with the duty and value added tax remission schemes specified in the customs law of the Community.

ARTICLE 28

Manufacturing under Bond Schemes

1. The Partner States agree to support export promotion by facilitating manufacturing under bond schemes within their respective territories.
2. The procedure for manufacturing under bond shall allow imported goods to be used in a customs territory for processing or manufacture.
3. Duty and taxes shall be payable on compensating products at the rate of import duty appropriate to them.
4. The implementation of this Article shall be in accordance with the manufacturing under bond schemes specified in the customs law of the Community.

ARTICLE 29

Export Processing Zones

1. The Partner States agree to support the establishment of export processing zones.

2. Entry into an export processing zone shall allow total relief from payment of duty on imported goods used directly in the production of goods for export by a person authorised to carry out that activity in the zone.

3. The implementation of the provisions of this Article shall be in accordance with the East African Community Customs Union (Export Processing Zones) Regulations, specified in Annex VII to this Protocol and the customs law of the Community.

ARTICLE 30

Other Export Promotion Schemes

The Council may, from time to time, approve the establishment of such other export promotion schemes, as may be deemed necessary.

PART G
SPECIAL ECONOMIC ZONES

ARTICLE 31
Freeports

1. The Partner States may provide for the establishment of freeports for the purpose of facilitating and promoting international trade and accelerating development within the Customs Union.
2. The functions of the freeports shall include the following:
 - (a) promotion and facilitation of trade in goods imported into freeports;
 - (b) provision of facilities relating to freeports including storage, warehouses and simplified customs procedures; and
 - (c) provision for the establishment of international trade supply chain centres, where persons from within and outside the Community access and harness market opportunities and enhance competitiveness in import and export trade within the global setting.
3. Goods entering into a freeport shall be granted total relief from payment of duty and any other import levies except where the goods are removed from the freeport for home use.
4. For purposes of this Article, the Partner States may establish an authority to manage the freeports.
5. The implementation of this Article shall be in accordance with the East African Community Customs Union (Freeport Operations) Regulations, specified in Annex VIII to this Protocol.

ARTICLE 32
Other Arrangements

1. The Council may, from time to time, approve the establishment of other special economic arrangements for purposes of the development of the economies of the Partner States.
2. Freeport zones may be established at seaports, riverports, airports and places with similar geographic or economic advantage.

PART H EXEMPTION REGIMES

Article 33 Exemption Regimes

1. The Partner States agree to harmonise their exemption regimes in respect of goods that are excluded from payment of import duties.
2. The Partner States hereby agree to adopt a harmonised list on exemption regimes which shall be specified in the customs law of the Community.

PART I
GENERAL PROVISIONS

ARTICLE 34
Administration of the Customs Union

The administration of the Customs Union, including legal, administrative and institutional matters, shall be governed by the customs law of the Community.

ARTICLE 35
**Measures to Address Imbalances arising from
the Establishment of the Customs Union**

For purposes of this Protocol, the Council shall approve measures to address imbalances that may arise from the establishment of the Customs Union.

ARTICLE 36
Safeguard Clause

1. In the event of serious injury or threat of serious injury occurring to the economy of a Partner State following the application of the provisions of this Protocol, the Partner State concerned shall, after informing the Council through the Secretary General and the other Partner States, take necessary safeguard measures.
2. The Council shall examine the method and effect of the application of existing safeguard measures and take appropriate decisions.

ARTICLE 37
**Trade Arrangements with Countries and Organisations
Outside the Customs Union**

1. The Partner States shall honour their commitments in respect of other multilateral and international organisations to which they belong.

2. The Community shall co-ordinate its trade relations with foreign countries so as to facilitate the implementation of a common policy in the field of external trade.

3. (a) Upon the signing of this Protocol and before its coming into force, and taking into account, *inter alia*, the provisions of paragraphs 1 and 2 of this Article, the Partner States shall identify the issues arising out of their current relationships with other integration blocs and multilateral and international organisations of which they are members in order to establish convergence on those matters for the purposes of the Customs Union.

(b) For purposes of this paragraph, the Partner States shall, upon the signing of this Protocol formulate a mechanism to guide the relationships between the Customs Union and other integration blocs, multilateral and international organisations.

4. (a) A Partner State may separately conclude or amend a trade agreement with a foreign country provided that the terms of such an agreement or amendments are not in conflict with the provisions of this Protocol.

(b) Where a Partner State intends to conclude or amend an agreement, as specified in paragraph 4(a) of this Article, with a foreign country the Partner State shall send its proposed agreement or amendment by registered mail to the Secretary General, who shall communicate the proposed agreement by registered mail to the other Partner States within a period of thirty days, for their consideration.

(c) Where a Partner State notifies the other Partner States of its intention under paragraph 4(b) of this Article, the other Partner States shall make comments and proposals as they may deem appropriate, within ninety days from the receipt of the Secretary General's notification, before the conclusion or amendment of the agreement.

(d) Following the receipt of the comments and proposals as specified in paragraph 4(c) of this Article, the Secretary General shall convene a meeting of the Council within a period of sixty days to consider the comments and proposals.

(e) Where the Partner States do not submit comments and proposals within the period specified under paragraph 4(c) of this Article, the concerned Partner State may conclude or amend the said agreement.

ARTICLE 38
Inter-linkages with Other Areas of Co-operation

1. The application of this Protocol shall take cognisance of the provisions of the Treaty on other areas of co-operation including co-operation in:

- (a) environment and natural resources management;
- (b) standardisation, quality assurance, metrology and testing;
- (c) sanitary and phyto-sanitary measures;
- (d) intellectual property rights; and
- (e) standards and technical regulations on trade.

2. The Partner States shall conclude protocols on the areas of co-operation specified in paragraph 1 of this Article, which shall spell out the objectives, scope of co-operation and institutional mechanisms for co-operation.

ARTICLE 39
Customs Law of the Community

1. The customs law of the Community shall consist of:

- (a) relevant provisions of the Treaty;
- (b) this Protocol and its annexes;
- (c) regulations and directives made by the Council;
- (d) applicable decisions made by the Court;
- (e) Acts of the Community enacted by the Legislative Assembly; and
- (f) relevant principles of international law.

2. The customs law of the Community shall apply uniformly in the Customs Union except as otherwise provided for in this Protocol.

3. The Partner States shall conclude such annexes to this Protocol as shall be deemed necessary.

ARTICLE 40

Annexes to the Protocol

Without prejudice to the provisions of Articles 39(3) and 43 of this Protocol, the Partner States agree to conclude, before the Protocol comes into force, the annexes specified in this Protocol and such annexes shall form an integral part of this Protocol.

ARTICLE 41

Dispute Settlement

1. Each Partner State affirms her adherence to the principles for the administration and management of disputes and shall in particular:
 - (a) accord due consideration to the other Partner States' presentation or complaints;
 - (b) accord adequate opportunity for consultation on representations made by other Partner States; and
 - (c) implement in good faith any decisions made pursuant to the Community's dispute settlement mechanisms.
2. The implementation of this Article shall be in accordance with the East African Community Customs Union (Dispute Settlement Mechanism) Regulations specified in Annex IX to this Protocol.

ARTICLE 42

Amendment of the Protocol

1. This Protocol may be amended by the Partner States in accordance with the provisions of Article 150 of the Treaty.
2. Subject to the provisions of paragraph 1 of this Article, the Council may:
 - (1) with the approval of the Summit, review the annexes to this Protocol and make such modifications as it deems necessary;

- (2) submit to the Partner States proposals for the amendment of the provisions of this Protocol.

ARTICLE 43

Entry into Force

This Protocol shall enter into force upon ratification and deposit of instruments of ratification with the Secretary General by all the Partner States.

ARTICLE 44

Depository and Registration

1. This Protocol and all instruments of ratification shall be deposited with the Secretary General who shall transmit certified true copies of the Protocol and instruments of ratification to all the Partner States.
2. The Secretary General shall register this Protocol with the African Union, the United Nations, the World Trade Organisation, the World Customs Organisation and such other organisations as the Council may determine.

DONE at Arusha, Tanzania, on the 2nd day of March in the year Two Thousand and Four.

IN FAITH WHEREOF the undersigned have appended their signatures hereto:

FOR THE REPUBLIC
OF UGANDA

FOR THE REPUBLIC
OF KENYA

FOR THE UNITED REPUBLIC
OF TANZANIA

.....
YOWERI KAGUTA MUSEVENI
PRESIDENT

.....
MWAI KIBAKI
PRESIDENT

.....
BENJAMIN WILLIAM MKAPA
PRESIDENT

