



26<sup>th</sup> May 2025

The Clerk  
The National Assembly  
Office of the Clerk  
Main Parliament Building  
Nairobi

Dear Sir,

**Submission of Memoranda  
The Finance Bill, 2025**

We write to you in response to your invitation for public participation and submission of memoranda on the aforementioned Bill. The Bills proposes a raft of measures aimed at revenue collection and also enhanced economic activity in the country. Please see below our submission on the same.

Clause	Description of the Clause	Proposal	Justification
First Schedule to the Excise Duty Act	Imported paper or paper board, labels of all kinds whether or not printed of tariff heading 4821.10.00 and 4821.90.00 but excluding those originating from East African Community Partner States that meet the East African	Amend to: 25% or KShs. 200 per kilogram, whichever is higher	The proposed increase in the specific excise duty rate from KShs. 150 to KShs. 200 per kilogram is intended to provide enhanced protection for Kenya's local paper and packaging industry, which is currently grappling with rising production costs, including energy, transport, and raw materials. At the same time, the domestic market faces intensifying competition from low-cost imported paper products, many of which are manufactured in jurisdictions with state subsidies or



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	<p>Community Rules of Origin</p> <p><b>Current rate:</b> 25% or KShs. 150 per kilogram, whichever is higher</p>		<p>economies of scale not available to Kenyan producers.</p> <p>The KShs. 150/kg rate has proven insufficient in creating a level playing field. The proposed upward revision will:</p> <ul style="list-style-type: none"><li>• Help curb the influx of underpriced imports that undercut domestic manufacturers;</li><li>• Support job preservation in a sector employing thousands directly and indirectly;</li><li>• Encourage investment and retooling in local production facilities;</li><li>• And promote value addition and import substitution, in line with the country's industrialization goals under Vision 2030 and the Bottom-Up Economic Transformation Agenda (BETA).</li></ul> <p>By adopting a higher specific duty, the government will be reinforcing its commitment to safeguarding local industry while maintaining predictability and simplicity in tax administration.</p>
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First Schedule to the Excise Duty Act	Printed paper or paperboard of tariff heading 4811.41.90 or 4811.49.00 but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin  Current rate: 25% or KShs. 200 per kilogram, whichever is higher	Add the word: <b>IMPORTED</b> at the beginning of the description	As currently phrased, the description results in taxation of both imported and locally manufactured goods, undermining the competitiveness of domestic producers who already face high input costs. Inserting the word “IMPORTED” ensures the duty applies only to non-EAC imports, preserves the protective intent of the provision, and aligns with Kenya’s regional trade obligations.
First Schedule to the Excise Duty Act	Imported cartons, boxes and cases of corrugated paper or paper board and imported folding cartons, boxes and case of non-corrugated paper or paper board and imported skillets, free-hinge lid packets of tariff heading 4819.10.00, 4819.20.10 and 4819.20.90	1) Amend rate to: 25% or <b>KShs. 200 per kilogram</b> , whichever is higher  2) Add in description: <i>but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin</i>	The proposed rate increase to <b>25% or KShs. 200 per kilogram</b> is aimed at enhancing protection for local manufacturers of paper packaging, who face stiff competition from low-cost imports and operate under high production costs. The current rate does not sufficiently deter underpricing, threatening jobs, investment, and local value addition.  Adding the phrase “ <b>but excluding those originating from East African Community Partner States that meet the East African Community Rules of Origin</b> ” ensures that the duty is not applied to EAC-origin goods, preserving Kenya’s



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	Current rate: 25%		commitments under the EAC Customs Union Protocol and preventing trade disputes. This distinction safeguards regional integration while reinforcing domestic industrial growth.
First Schedule of the Excise Duty Act	<p>A Direct Air Capture (DAC) machine is a technology that removes carbon dioxide directly from the atmosphere to help mitigate climate change by capturing and storing CO<sub>2</sub>.</p> <p>Imposition of excise duty on fully built or semi-built Direct Air Capture (DAC) machines of HS Code 8421.39.10 with the description of Industrial filtering or purifying machinery and apparatus for gases</p>	Introduce a 25% excise duty on the importation of fully built and semi-built DAC machines, with exemptions for locally assembled or manufactured units.	Kenya is currently the only African country that manufactures DAC machines, representing a substantial advancement in environmental sustainability and technological innovation. A Kenyan-based company engaged in the manufacture of these machines has employed over 60 Kenyan engineers in their development, thereby promoting local manufacture and enhancing technical capacity within the green technology sector. The localization of DAC machine production not only reduces dependency on imports but also contributes to national economic development through job creation in manufacturing, research, and engineering. In light of this, the imposition of a 25% excise duty on imported DAC machines is justified as a policy measure that supports domestic manufacturing, incentivizes local innovation, and accelerates the country's transition to a green economy. Such a fiscal measure aligns with Kenya's broader climate change mitigation strategies and reinforces its



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			<p>leadership in carbon capture technologies on the African continent and beyond.</p> <p><b><u>Comments</u></b></p> <p>Requires KRA to implement strict monitoring processes to track the importation of semi-built or fully assembled DAC machines; risk of non-compliance if oversight is weak.</p> <p><b><u>Implementation Considerations</u></b></p> <p>Amend Excise Duty regulations to define importation criteria for DAC machines; set up monitoring systems to track semi-built and fully assembled imports; train customs officers to enforce regulations and to ensure that the proposed excise duty under HS Code 8421.39.10 specifically targets the DAC machines only, as other types of machinery are also classified under the same code. Clear classification and enforcement guidelines must be established to ensure that unrelated machinery imports are not inadvertently subjected to the excise duty.</p>
Clause 36   Section A (o) 164 of Part of the First Schedule to	Packaging materials for tea and coffee are currently subject to the standard VAT rate of 16%. The Bill	Include packaging materials for tea and coffee under the Second Schedule of the VAT Act to ensure that	Reclassifying packaging materials for tea and coffee from the standard VAT rate of 16% to exempt would defeat the purpose of making them affordable for exporters and processors. Exempt status would render input VAT non-



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the Value Added Tax Act	proposes to reclassify these supplies from 16% to exempt, upon recommendation by the Cabinet Secretary responsible for matters relating to agriculture,.	packaging materials for tea and coffee are zero-rated (0%), upon recommendation by the Cabinet Secretary responsible for matters relating to agriculture.	<p>recoverable, significantly increasing production costs. This would erode cash flows, shrink profit margins, and weaken Kenya's competitiveness in global markets.</p> <p>To truly support value addition, foreign exchange earnings, and job creation across the agricultural and manufacturing value chains, these materials should be zero-rated under the Second Schedule of the VAT Act. Zero-rating ensures full input VAT recovery. In particular, the tea sector, being a major contributor to Kenya's GDP and export revenues, stands to be adversely affected by a shift to exemption, potentially reversing the gains made in the sector.</p> <p><b><u>Comments</u></b></p> <p>Requires policy coordination between the National Treasury and the Ministry of Agriculture to preserve export competitiveness.</p> <p><b><u>Implementation Consideration</u></b></p> <p>Implementation in law may be achieved by amending the VAT Act to include packaging materials for tea and coffee under the Second Schedule.</p>
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Clause 57:	Amends Section 9B of the Miscellaneous Fees and Levies Act by deleting references to “excess tax refunds” and to Section 47 of the Tax Procedures Act.	Support the amendment as proposed.	This is a cleanup to align the provision with the correct statutory framework. Section 47 of the Tax Procedures Act deals only with overpaid tax and does not relate to penalty or interest administration, making its reference in Section 9B unnecessary.
Clause 58:	Narrows the exemption scope under Part A and B of the Second Schedule by replacing the blanket exemption for all goods under Chapter 88 with a limited exemption for goods under HS Codes 8802.30.00 and 8802.40.00 only.	Oppose the amendment and retain the existing exemptions for <b>all aircraft and aircraft parts</b> , including aircraft engines.	The aviation industry relies on cost-effective importation of parts and equipment. Narrowing the exemption will significantly raise operational costs, especially for general aviation and maintenance, thereby hurting regional connectivity, air safety, and investment in the aviation sector.
Clause 59:	Reduces the Export and Investment Promotion Levy on select steel products from 17.5% to 10%.	Support the amendment as proposed.	The reduced rate eases the cost burden on local manufacturers who rely on imported billets and wire rods as raw materials. It promotes competitiveness, supports key sectors such as construction and manufacturing, and complements Kenya’s affordable housing and infrastructure goals. Making this reduction permanent



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			provides certainty and encourages long-term investment.
<b>Clause 8</b>  Section 15 of the Income Tax Act	The Bill proposes to cap the carry-forward period for tax losses at five years, thereby repealing the current provision that allows for an indefinite carry-forward period.	Our proposal is to retain the indefinite carry-forward period for tax losses	Retaining the indefinite carry-forward period for tax losses is essential for sound business planning and financial reporting. From an accounting perspective, limiting the carry-forward to five years forces premature write-offs of deferred tax assets, distorting a company's true financial position. Indefinite carry-forward aligns with the economic reality that some investments, especially capital-intensive ones, take longer to yield profits. It ensures fairness in taxation by allowing businesses to fully recover losses incurred during downturns, thereby promoting stability, reinvestment, and sustainable growth.
<b>Clause 27</b>  Second Schedule of the Income Tax Act	Removing the 100% investment allowance previously granted to companies undertaking substantial investments outside Nairobi, Mombasa municipalities, and Special Economic Zones	Retain the 100% investment allowances.	The removal of the 100% investment allowance for companies investing outside Nairobi, Mombasa, and Special Economic Zones risks undermining investor confidence and contradicts Kenya's constitutional and policy commitments to equitable regional development. Stable and predictable fiscal incentives are essential for attracting long-term investment, promoting industrial growth in underserved counties, and ensuring Kenya remains competitive in the



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			region. Retaining such allowances supports job creation, reduces regional disparities, and reinforces the government's obligation to create an enabling and inclusive investment environment.
<b>Clause 36.</b>  First Schedule to the Value Added Tax Act	The Bill proposes to delete the VAT exemption for taxable goods used directly and exclusively in the construction and equipping of specialized hospitals with a minimum bed capacity of fifty, previously granted upon approval by the Cabinet Secretary for Health, and to revoke the transitional provision allowing existing approvals to remain in force until full supply.	We propose that the current VAT exemption for taxable goods used directly and exclusively in the construction and equipping of specialized hospitals with a minimum bed capacity of fifty be retained in its present form, including the transitional provision for existing approvals.	The VAT exemption was introduced to incentivize investment in the health sector by reducing the cost of constructing and equipping specialized hospitals, thereby making quality healthcare more accessible and affordable. Removing this exemption would increase project costs, discourage private sector participation, and undermine ongoing efforts to strengthen the country's healthcare infrastructure. Retaining the exemption aligns with the constitutional right to the highest attainable standard of health and supports the government's commitment to Universal Health Coverage through increased private investment in modern, well-equipped medical facilities.

### Other Sectoral Proposals ;



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## **ALUMINIUM INDUSTRY PROTECTION MEASURES**

### **Background**

Kenya's aluminium extrusion industry, once the leading supplier in East Africa, is now on the verge of collapse due to a combination of factors including unfair import competition, high manufacturing costs, and weak regulatory enforcement. Currently, the industry is operating at less than 50% of its installed capacity (1,000T/month), while local markets are flooded with cheap, under-invoiced aluminium products from Uganda, China, and other countries. This has severely undermined competitiveness and threatens the long-term sustainability of domestic manufacturers.

Presently, Kenya's industry operates at below 50% of its 1,000T/month production capacity due to several persistent challenges:

- Escalating energy and manufacturing costs;
- Illegal export of raw materials (notably scrap aluminium) to neighbouring countries;
- Influx of sub-standard, under-invoiced aluminium imports, mainly from Uganda and China;
- HS code manipulation to attract lower or no duty;
- The recent imposition of a 20% excise duty on key raw materials without complementary protective measures.

### **Proposal**

We respectfully propose the introduction of an excise duty structure applicable to imported aluminium profiles, fabricated doors, and windows under the following HS Codes:

**HS Codes:** 7604.10, 7604.21, 7604.29, 7608.10, 7608.20, 7610.10

**Proposed Rate:** USD 2,500 per tonne or 25% Excise Duty, whichever is higher. This will be to protect local manufacturers in the sector.

### **Justification**



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### 1. **Leveling the Competitive Playing Field**

Kenya's domestic aluminium manufacturers face unfair competition from imported products, largely from Uganda and China, that enter the market at artificially low prices. Many of these imports are either under-invoiced or misclassified, allowing them to bypass full tax obligations. The proposed excise duty ensures that all imported aluminium contributes fairly to the tax base, discouraging misdeclaration and shielding local players from predatory pricing.

### 2. **Promoting Local Manufacturing Capacity**

Despite having a combined monthly capacity of 1,000 tons, local manufacturers operate at under 50% capacity, while Kenya continues to import over 1,200 tons monthly of aluminium products. Imposing excise duty on imports directly encourages buyers to source locally, allowing domestic plants to scale up and generate more jobs and investment.

### 3. **Preserving Industry and Employment**

The sector supports over 5,000 families, both directly and through its extended value chain, including powder coating, anodizing, glazing, fabrication, and installation. Without intervention, the industry risks total collapse, with devastating socio-economic implications.

### 4. **Alignment with National Industrialization Goals**

Aluminium is not just a building material, it is a critical input in Kenya's real estate, automotive, solar energy, and infrastructure development. It is widely used in roofing, window and door frames, structural systems, and finishing components, making it indispensable to construction and green energy sectors.



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Notably, aluminium products form a core part of the government's Affordable Housing Programme, which aims to deliver over 250,000 housing units annually under the national development blueprint. Ensuring the competitiveness of local aluminium manufacturers is therefore not only essential for industrial growth, but also for the successful delivery of affordable housing. Supporting this sector is a direct investment in the Vision 2030 objectives of value addition, manufacturing-led growth, job creation, and increased access to dignified shelter for all Kenyans.

## **EXCISE DUTY ON IMPORTED GLASS BOTTLES**

### **Background**

Kenya's glass bottle manufacturing industry has witnessed significant investment in recent years, especially in support of the local beverage and pharmaceutical sectors. With rising demand for glass packaging driven by consumer health consciousness, sustainability goals, and industrial growth, the industry has built strong linkages with agriculture (juice), health, and FMCG players.

However, the sector now faces mounting pressure from the unregulated importation of cheap, ready-to-use glass bottles, which are increasingly preferred by bottlers due to their low cost, resulting in a growing dependency on foreign packaging and threatening the viability of local manufacturing.

### **Proposal**

We propose the introduction of a specific excise duty of USD 350 per metric tonne on imported glass bottles. This will to be supplement the current existing duty rate of 35%. The applicable duty rate shall be whichever is higher.

### **Justification**



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### 1. **Strengthening Local Value Chains**

The majority of glass bottles used in Kenya can be produced locally, using both virgin and recycled inputs. However, the influx of low-cost imported bottles is displacing demand for local production, fracturing supply chains, and discouraging bottlers from sourcing domestically. A targeted excise duty would restore incentives to buy local and strengthen supplier-manufacturer linkages.

### 2. **Safeguarding Industrial Investment and Technological Upgrading**

Local manufacturers have invested heavily in automated furnaces, energy-efficient kilns, and cullet (recycled glass) processing lines. These investments require predictable demand to remain sustainable. Without protective measures, producers risk scaling down or halting operations, stalling Kenya's industrial modernization efforts.

### 3. **Supporting National Waste Management Goals**

Unlike local bottles which are manufactured with recycling in mind, many imported bottles are non-standard in design or color and are excluded from recycling streams. This increases landfill waste and undermines the progress of Kenya's Extended Producer Responsibility (EPR) framework. Encouraging local bottle usage aligns with waste reduction and recycling commitments under the Sustainable Waste Management Act and environmental regulations.

### 4. **Reducing Supply Chain Fragility**

Over-reliance on imported bottles exposes Kenya's supply chains to global shocks, such as shipping delays, container shortages, or geopolitical disruptions. Building local capacity and demand for glass bottles enhances resilience and reduces vulnerabilities in domestic production cycles.



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## 5. Maintaining Quality and Safety Standards

Locally manufactured bottles are subject to KEBS quality certification and food safety regulations, ensuring they are safe for contact with consumables. Imported bottles, however, often enter with minimal scrutiny, posing potential health risks. Supporting local production also ensures consistent compliance with national safety benchmarks.

### **EXCISE DUTY ON LIGHTERS**

#### **Background**

Kenya's retail markets are flooded with low-cost, plastic-bodied lighters, mostly imported and sold without basic product information or compliance labeling. These lighters, are often used once and discarded, posing serious fire, health, and environmental risks. Despite being hazardous and non-recyclable, they currently escape regulatory scrutiny, unlike other similarly sensitive products such as cigarettes, batteries, or single-use plastics.

#### **Proposal**

We propose the introduction of an **excise duty rate of 35% or a specific duty rate to be determined by the National Treasury** across the following categories:

- **9613.10.00** – Non-refillable lighters

This excise duty should apply uniformly to both locally sold and imported products, regardless of their packaging or point of sale, with rates to be prescribed by the National Treasury.

#### **Justification**

##### **1. Environmental Pollution and Microplastics**



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Disposable plastic-bodied lighters are a silent but significant contributor to Kenya's growing plastic pollution crisis. Constructed from low-grade, non-recyclable plastics, these products are designed for single use and are almost never recovered through formal waste management systems. Once discarded, often on roadsides, in landfills, or flushed into drainage systems, they begin a slow and toxic decay process under exposure to sunlight, wind, and rain.

This process breaks the plastic components into microplastics, fragments smaller than 5mm that infiltrate every level of the ecosystem. These particles seep into soil, reducing its fertility and disrupting microbial activity essential for plant health. They are washed into rivers and lakes, where aquatic species mistakenly ingest them, leading to internal blockages, reproductive harm, and in some cases, death. As water flows downstream, the pollution travels with it, ultimately reaching marine environments where it can persist for hundreds of years.

Once in the oceans, microplastics are absorbed into the marine food web. Studies have found them in everything from zooplankton and shellfish to large fish and marine mammals, compromising not only biodiversity but also human food safety. Even more alarming, research now confirms the presence of microplastic fibers in municipal drinking water, human lungs, placentas, and bloodstreams, pointing to a potential public health crisis with long-term implications.

Kenya, like many nations, has made commendable progress in banning plastic bags and pushing for Extended Producer Responsibility (EPR). However, the unchecked use and disposal of plastic-bodied disposable lighters represents a dangerous loophole, one that undermines national commitments under the Sustainable Waste Management Act, the Basel Convention, and the United Nations Framework on Plastic Pollution. Failure to regulate these items not only erodes domestic environmental gains but also risks Kenya being viewed as a weak link in the global plastics governance chain.



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The introduction of an excise duty on plastic-bodied lighters would send a strong policy signal, recognizing their environmental cost, discouraging indiscriminate use, and aligning Kenya with international best practices. It would also establish a framework for further control measures, including import restriction, mandatory labeling, and quality standards. Ultimately, regulating lighters is not just about taxation—it's about preserving the integrity of Kenya's ecosystems, protecting public health, and positioning the country as a leader in sustainable waste management.

## **2. Exclusion from Existing Plastic Controls**

Despite their nature as single-use plastic items, lighters are not currently captured under Kenya's single-use plastic bans or waste control frameworks. Their widespread use and indiscriminate disposal make them functionally equivalent to banned items like plastic cutlery or straws. Excise duty introduces a first layer of control, aligning lighters with Kenya's broader plastic waste mitigation efforts.

## **3. Non-Conformance with Quality and Safety Standards**

Most imported lighters fail to meet international quality benchmarks such as ASTM standards. They lack flame control, child safety features, and are prone to fuel leakage, flaring, and spontaneous ignition. These risks remain unaddressed in Kenya's current market due to the absence of technical standards or labeling requirements.

## **4. Alignment with National Environmental and Health Policy**

Kenya has made strides in waste management reform through the Sustainable Waste Management



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Act, Vision 2030, and environmental conservation commitments under the Paris Agreement. Introducing excise duty on lighters strengthens this policy posture and signals regulatory seriousness toward waste-heavy consumer products.

## **LEGAL AND TRADE RISKS ARISING FROM KENYA'S UNILATERAL SUSPENSION OF REGIONAL TREATY OBLIGATIONS (STEEL PRODUCTS)**

### **Background**

In 2024, through Section 2 of the Tax Procedures (Amendment) Act amending Section 6A of the Tax Procedures Act, Kenya enacted legislation that purports to suspend the country's regional and multilateral treaty obligations in relation to specific steel products, including billets (HS Code 7207.11.00) and wire rods (HS Codes 7213.91.00 and 7213.91.90). This legislative provision creates a two-year exemption (or longer, subject to ministerial discretion) from obligations under the East African Community (EAC) Treaty, the African Continental Free Trade Area (AfCFTA), and other international instruments with respect to import duties on these products.

While the intention may have been to protect Kenya's domestic steel industry from the liberalization commitments made under AfCFTA, the phrasing of the law has had far wider and more damaging legal consequences. As currently worded, the provision effectively places Kenya outside the scope of all applicable treaty regimes, including the EAC Treaty, the COMESA Treaty, and the World Customs Organization (WCO) multilateral agreements such as the WTO's Customs Valuation Agreement and the Harmonized System Convention. The implications of this are far reaching.

### **Policy Concerns and Justification**



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## 1. Legal and Operational Uncertainty at the Border

In purporting to suspend Kenya's treaty obligations on steel products in question, Section 2 of the Tax Procedures (Amendment) Act, 2024 and Section 6 (A) (4) of the Tax Procedures Act have inadvertently created a regulatory vacuum, leaving the affected products outside the scope of any legally binding customs framework. The provision states that Kenya shall not be bound by international or regional obligations "relating to the imposition of duty" on billets and wire rods. This seemingly narrow exemption, however, disengages Kenya from all instruments that give legal force to import duties on those products, including:

- The EAC Common External Tariff (CET), which provides the applicable rate schedules for Partner States;
- The EAC Gazette Notices, which are the instruments that officially communicate temporary changes or stays (e.g. the 10% rate currently applicable on billets);
- The EAC Customs Management Act (EACCMA), which gives effect to the CET and governs its implementation in Kenyan law.

Since the CET and the gazette notices derive their legitimacy and binding effect from the EAC Treaty and Customs Union Protocol, Kenya's rejection of the treaty, *in relation to the affected products*, renders those instruments inapplicable. This means that even the 10% rate that was imposed via EAC Gazette Notice No. EA 49/2023 cannot lawfully apply, because it exists solely within the framework of EAC law.

As a result, there is currently no valid domestic, regional, or multilateral law that legally authorizes the Kenya Revenue Authority to levy any import duty on steel billets (HS Code 7207.11.00) and wire rods (HS Codes 7213.91.00 and 7213.91.90). The very tariff lines Kenya sought to shield are



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now effectively in a legal limbo, exposing them to *duty-free entry by default*, even from non-AfCFTA states.

This undermines the original intent of the legislation, which was to support local manufacturers by creating price parity through import duties. In practice, however, the disapplication of all legal instruments has removed the only tools that could be used to levy those duties, leaving the local steel industry more vulnerable, not less.

Moreover, by excluding itself from the EAC Treaty and its associated legal instruments in relation to steel billets and wire rods, Kenya now lacks a lawful customs mechanism to process, regulate, or control the importation of these products. The East African Community Customs Management Act (EACCMA) is the legal framework that governs every stage of cross-border goods movement within the region, from arrival at port to clearance, audit, post-clearance inspection, and release. The moment Kenya declares that the EAC Treaty does not apply to certain products, the entire body of law built on that treaty collapses in respect of those goods.

As a result, Kenya currently lacks a valid legal basis to undertake the following functions with respect to steel billets and wire rods:

- Regulate importation, berthing, and discharge at port: Under Sections 34–39 of EACCMA, customs officers oversee the entry of ships, declaration of cargo manifests, and mooring permissions. If the governing legal framework no longer applies, port authorities and KRA officers have no statutory authority to regulate the arrival and offloading of the subject goods.
- Control and record entry of goods into customs territory: Section 34(1) mandates declaration of imported goods to customs authorities. Without a recognized regional framework, the obligation to declare the goods, and the authority to demand such declaration, become unenforceable.



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- Subject goods to customs control and warehousing: Sections 12–16 of the Act place imported goods under customs control from the moment of arrival until lawful clearance. For goods excluded from the EAC regime, there is no binding provision that empowers KRA to restrict movement, access, or warehousing of the goods pending clearance.
- Verify and examine the goods: Sections 42–43 empower customs to verify goods against invoices and packing lists, including physical inspection and sample taking. Without a treaty-based mandate, such verification becomes procedurally defective and potentially challengeable in law.
- Apply customs valuation: Kenya is a signatory to the WTO Agreement on Customs Valuation, implemented regionally through EACCMA under Sections 122–127 and the fourth schedule. By discarding the EAC and WCO frameworks for the affected products, Kenya no longer has a compliant statutory mechanism for applying customs value to steel imports, exposing the process to arbitrariness or legal challenge.
- Process and issue tax assessments, demand notices, and declarations: The Single Administrative Document (SAD), used uniformly across the EAC, derives its legitimacy from EACCMA and the CET. Without these instruments, KRA lacks the authority to raise assessments or issue formal demand notices for duty owed on the affected HS Codes. This breaks the audit trail and compromises tax recovery.
- Enforce classification rulings and appeals: Under Section 247, importers may apply for a ruling on classification or valuation, and customs has authority to issue and enforce such rulings. Without application of the CET or the HS Code structure via EAC law, there is no basis upon which to classify or adjudicate the correct treatment of steel imports.



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- Conduct customs audits and post-clearance controls: Sections 235–240 permit retrospective reviews of customs declarations. However, without a defined set of obligations or a legal framework for these products, audits relating to their importation will lack jurisdictional foundation and legal effect.

In essence, Kenya's withdrawal has not only disrupted tariff application, but dismantled the full regulatory infrastructure governing how imported goods are processed, controlled, verified, valued, taxed, and released. This is no longer merely a matter of non-compliance—it is a fundamental breakdown of administrative authority, opening the door to legal uncertainty, revenue loss, and potential abuse at the border.

## 2. Exposure to Retaliatory Measures

By breaching its AfCFTA tariff concessions, specifically on steel billets and wire rods, which Kenya agreed to liberalize at a 0% rate until 2030, Kenya exposes itself to reciprocal trade measures from fellow State Parties. Under AfCFTA's principle of reciprocity, member states are entitled to deny benefits to non-compliant partners. This means that countries such as South Africa, Egypt, Uganda, and Tanzania, all of which currently honor the agreed tariff schedules, may impose countermeasures against Kenyan exports.

The consequences of such actions are economically significant. As at 2022, Kenya's intra-African merchandise trade totaled USD 5.3 billion, representing 19% of its total trade. Of this, exports amounted to USD 3 billion, accounting for 41% of Kenya's total exports. The majority of these exports are heavily reliant on preferential market access under AfCFTA and include:

- Tea – one of Kenya's top exports, particularly to Egypt and Sudan;
- Flat-rolled iron or non-alloy steel – key exports to Uganda and Rwanda;



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- Palm oil and medicaments – exported extensively to Uganda and South Sudan;
- Cement, edible oils, and plastic packaging materials – dominant in regional construction and manufacturing supply chains.

If these products are subjected to reciprocal tariffs by Kenya's trading partners, it would result in:

- Loss of price competitiveness for Kenyan exporters in African markets;
- Reduced market share to rivals such as South Africa, Egypt, and Nigeria;
- Contractual disruptions for long-term export arrangements;
- And ultimately, reduced foreign exchange earnings from key regional clients.

Kenya's top four African trading partners, Uganda, Tanzania, Egypt, and South Africa, account for over 62% of Kenya's intra-African trade, and more than 50% of its intra-African exports. These are precisely the countries that stand to react most directly if Kenya undermines AfCFTA's tariff discipline

Moreover, retaliatory measures could impact strategic value chains. For example:

- South Africa is a key supplier of fertilizer, machinery, and coal to Kenya, critical for agriculture and energy.
- Uganda and Tanzania are vital conduits for regional transport, warehousing, and logistics, including via the Northern Corridor.
- Egypt plays a pivotal role in supplying chemicals, pharmaceuticals, and equipment to Kenyan industries.

Any trade disruption with these partners could have a cascading impact on Kenya's domestic manufacturing, agriculture, and infrastructure development goals, especially as the country seeks to realize targets under the Bottom-Up Economic Transformation Agenda (BETA) and Vision 2030.



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### **3. Fragmentation of the EAC Bloc**

Kenya's deviation from a jointly submitted regional tariff offer undermines the collective credibility of the EAC under the AfCFTA. Other Partner States, despite remaining compliant, could be viewed as co-breaching or unreliable. This could affect the bloc's negotiating power in future trade rounds, and invite scrutiny or procedural sanction from AfCFTA institutions.

### **4. Violation of Treaty Supremacy and Pacta Sunt Servanda**

Kenya's action runs afoul of the principle that treaties must be honoured in good faith. As reaffirmed in Kenyan jurisprudence, a State may not invoke its own domestic law as justification for failing to perform international obligations. By subordinating Community and multilateral law to national legislation, Kenya has violated both the EAC's legal hierarchy and the AfCFTA's supremacy clause (Article 19).

### **5. Jeopardizing Industrial Supply Chains and Construction Projects**

Contrary to the intent of protecting local steelmakers, available trade data confirms that Kenya is a net importer of billets and wire rods. Imposing import duties on these essential raw materials while lacking sufficient domestic capacity only worsens input costs for downstream manufacturers and delays major construction projects, especially in affordable housing, transport, and infrastructure.

### **6. Breach of Procedural and Institutional Obligations**

Kenya's legislative amendment bypassed the Council of Ministers and the EAC Secretariat, violating Article 75(4) of the Treaty and AfCFTA Article 15, which require any tariff changes or waivers to be



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submitted for regional or continental approval. No waiver process was followed, no exceptional circumstances documented, and no notification was issued, placing the action outside the legal bounds of all frameworks involved.

## Proposal

In light of the far-reaching legal, economic, and regional implications outlined above, we respectfully recommend that Section 2 of the Tax Procedures (Amendment) Act, 2024, and Section 6A (4) of the Tax Procedures Act be repealed in their entirety.

Should you have any queries or require further clarification on the above, please do not hesitate to contact us.

Yours Faithfully

FOR: Hanan ElKathiri,  
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