



UPDATE ON EAC INTERGRATION

EABC TRADE AND POLICY BRIEF AS AT 10TH February 2017

The EAC Sectoral Council on Trade, Industry, Finance and Investment (SCTIFI) held its ordinary meeting from 30th Jan to 3rd Feb. 2017 at the EAC Headquarters in Arusha, Tanzania. In the course of the meeting the issues pertain to trade, customs, industry and investment which form the bedrock of EAC integration were thoroughly discussed and agreed upon .

In brief form some of the policy related issues which were deliberated during the meeting include:

- **PROGRESS MADE IN THE IMPLEMENTATION OF THE SINGLE CUSTOMS TERRITORY (SCT)**

In considering the report of the Committee on Customs which met in November 2016, the SCTIFI was informed that Partner States had not implemented the agreed roll out of product due to financial constraints and insufficient officers to be deployed at the respective entry points of the Partner States. To address this challenge the Customs Committee considered and adopted the EAC guidelines for the deployment of staff to other Partner States. The Committee on Customs also agreed that the deployment guidelines will facilitate officers of the host Partner States to act on behalf of the other Revenue Authorities in the verification of goods to be transferred.

On the implementation of SCT processes and ICT enhancements the meeting was informed that during the period May to October 2016, the team developed, tested and deployed the ex-warehousing and transfer of duty paid goods still under Customs control (re-export) modules, developed the SCT Export process; developed a concept paper for implementation of a Centralized SCT Proof of Concept platform and bilateral meetings between URA/TRA and KRA/TRA that



resolved intra-trade, ex-warehousing and re-export issues between TRA and URA/KRA. On overall, out of 37 (thirty seven) processes targeted under SCT, only ten (10) have been implemented. Although modules are fully developed, Partner States decided to roll-out different products at different times depending on risk levels. So far, only Rwanda has put 100% of the products under SCT. Uganda, Burundi, Kenya and Tanzania committed to have a 100% roll-out by July 1st 2017 as per the directive of the Committee on Customs. Burundi is yet to complete implementation of the warehousing modules for both imports and intra-trade. OBR has so far started the piloting of warehoused goods under the COMESA RCTG bond system.

On compliance and enforcement it was reported that the relevant TWG met and developed operational instruments for the smooth implementation of the SCT. However The Republic of Kenya observed that under the SCT, goods were being declared under the warehousing regime. They further noted that goods which can be prescribed by the Commissioned not to be warehoused are not harmonised across all the Partner States. This may cause a risk in regard to diversion of such goods if not monitored. The Republic of Kenya therefore proposed that a compliance and enforcement mechanism be instituted to manage goods declared for warehousing under the SCT.

The Secretariat reported that warehousing is a legitimate regime under customs and the matter of compliance and enforcement is being handled by the Committee on Customs. The initiative to manage warehousing includes regionalisation of the electronic cargo tracking system and interconnectivity of customs systems to enable seamless exchange of information. To address this challenge the SCTIFI directed the Secretariat that a regional warehousing management mechanism be developed and implemented to mitigate the risks.

Regarding the progress report for the development of a framework for EAC Customs Bond it was reported by the EAC Secretariat, with the support of Trademark East Africa, acquired the services of a consultant to provide consultancy services for the development of a draft framework for a Regional Customs bond. The Consultant commenced the assignment in January 2016 and submitted the final report to the EAC Secretariat on 20th September 2016.

The Secretariat had submitted the report to Partner States for internalization and

comments.

The meeting urged Partner States:-

- 1. To submit their comments before the meeting of stakeholders is convened to deliberate on the reports and develop the implementation roadmap.**
 - 2. The SCTIFI directed the Secretariat to convene a meeting of stakeholders to discuss the way forward for the implementation of the EAC Customs Bond.**
- REPORT OF EXPERTS ON ANALYSIS OF RULES OF ORIGIN WITH REGARD TO EDIBLE OILS OF CHAPTER 15 OF THE REVISED EAC RULES OF ORIGIN**

The Meeting noted that during the 34th Meeting of the Council of Ministers, the Secretariat was directed to undertake a comprehensive review on the CET and Rules of Origin and report to SCTIFI by September, 2017 (EAC/CM 34/Directive 60). The Council further directed the Secretariat to analyze the Rules of Origin with regard to edible oils of Chapter 15 and report to SCTIFI at its next meeting (EAC/CM 34/Decision 60). The Secretariat organized a verification and analysis mission that was conducted by a team of experts from all Partner States and the EAC Secretariat from 31st October to 06th November, 2016. The field exercise was conducted in the Republic of Uganda, the Republic of Kenya and the United Republic of Tanzania.

The experts had divergent positions with regard to reviewing the Origin criterion for Chapter 15. Burundi, Kenya and Uganda recommended that the Rules of Origin with regard to edible oils of Chapter 15 be reviewed while Tanzania and Rwanda were of the view that the status quo be maintained. Rwanda and Tanzania were of the view that the status quo be maintained with the justification that; most of investors in manufacturing have changed their attitude, they have short and long term plans of sourcing raw material (Palm, sunflower, soya beans, corn and other seeds) locally. Kenya, Uganda and Burundi were of the view that origin criterion with regard to edible oils of Chapter 15 be reviewed by introducing an alternative criterion of *“Manufacture in which the value of all non-originating materials used does not exceed 70% of the ex-works price of the product.”*. According to them the current rules of origin for chapter 15 under the 1st schedule provide for a Change in Tariff Heading (CTH) criterion. The raw

materials and the finished products of chapter 15 fall under the same heading with the finished product which makes the current origin criterion not applicable.

After thorough discussion of the experts report the SCTIFI directed the following:-

- 1. That the proposal of including refined edible oils from outside the region in the list of sensitive items and increase duty rate progressively to 40% be considered during the comprehensive review of the CET and Rules of Origin;**
 - 2. That refined edible oils manufactured from locally sourced raw materials qualify for preferential tariff treatment under (Wholly obtained) Rule 5 and thus should be accorded Community Preferential Tariff Treatment when transferred to other Partner States;**
 - 3. Urge Partner States to conduct bilateral verification where there is reasonable doubt on the origin of refined edible oils manufactured from locally sourced raw materials and imported raw materials as provided in the EAC Rules of Origin; and**
 - 4. Directed the Secretariat to undertake further analysis of Chapter 15 and come up with conclusive recommendations on the review of Rules of Origin and present it to SCTIFI by June 2017.**
- DENIAL OF COMMUNITY TARIFF TREATMENT TO EDIBLE OIL MADE FROM SIM SIM, SUNFLOWER, SOYA BEANS AND MAIZE**

During the meeting the Republic of Uganda reported that the Republic of Rwanda is not conferring community tariff treatment to refined edible oil made from sunflower, sim sim and soya beans yet these raw materials are wholly produced in Uganda. Rwanda reported that they had reports of importation of crude oil which need to be verified jointly with Uganda. A request by Rwanda had been made to Uganda to provide further clarification on those reports. The meeting agreed that a joint team of Uganda and Rwanda officials meet and verify the information and resolve the matter to enable community tariff treatment to be accorded.

The Republic of Kenya also reported that its companies producing edible oils from wholly produced raw materials such as maize and sun flower are being denied

community tariff treatment by the United Republic of Tanzania and the Republic of Rwanda.

The Meeting:-

- 1. Advised the Republic of Kenya to provide information on the matter to the Secretariat for follow up.**
 - 2. In resolving the matter the SCTIFI directed that a joint team of customs experts from the Republic of Rwanda and Uganda meet and verify the available information on imports and exports of crude sunflower oil by end of February 2017 and report to the next SCTIFI meeting; and**
 - 3. Directed the Secretariat to arrange a joint verification exercise for the Republic of Kenya, United Republic of Tanzania and the Republic of Rwanda.**
- DENIAL OF DUTY FREE MARKET ACCESS OF WHEAT FLOUR FROM TANZANIA TO KENYA**

At the beginning of January 2017, DPL Festive Ltd ordered 40 trucks of wheat flour from Said Salim Bahkresa and Co. Ltd, Tanzania. Unfortunately after all entries for 40 trucks were passed and approved by KRA officer in Namanga, an order came from KRA Head office re-directing all the trucks to be held back or pay full duty of 50%.

The Republic of Kenya informed the meeting that she was not aware of the submission by URT. Kenya requested that URT submit the information.

In order to workd towards resolving the matter:-

- 1. URT provided the documents to the Republic of Kenya during the meeting.**
- 2. The Secretariat reported that it was aware of the matter and further reported that this was an operational matter which can be resolved at that level since wheat flour qualifies to be accorded community tariff treatment.**
- 3. Kenya undertook to resolve the matter.**
- 4. The SCTIFI took note of the above that Kenya had agreed to resolve the matter as soon as possible.**

- **PROGRESS REPORT ON THE COMPREHENSIVE REVIEW OF THE EAC CET AND EAC RULES OF ORIGIN**

The Meeting noted that the 34th Meeting of the Council of Ministers directed the Secretariat to undertake a comprehensive review of EAC CET and Rules of Origin and report to SCTIFI by September, 2017 (EAC/CM 34/Directive 60). In implementing this directive, the Secretariat organized a Regional Task Force Preparatory meeting from 12th to 16th December, 2016 in Kampala, Uganda. The meeting discussed and deliberated on a numbers of item including Methodology, Scope of Work and Road Map for undertaking the comprehensive review of CET and EAC Rules of Origin and Criteria for Review of the EAC Common External Tariff.

After deliberating the report the SCTIFI directed the following :-

- 1. The Secretariat to hold a meeting of Tariff Experts to transpose the EAC CET 2012 to 2017 HS Version in February, 2017;**
 - 2. The Secretariat to convene a Video Conference(VC) to finalise the draft data collection instruments;**
 - 3. That the comprehensive review of EAC Rules of Origin should await the finalisation of the comprehensive CET Review; and**
 - 4. The Secretariat to find within the entire budget of the Secretariat areas in which a re-allocation can be done to raise USD 230,750 needed for completion of the exercise.**
- **CONSIDERATION OF THE DRAFT REGULATIONS ON MOTOR VEHICLE ASSEMBLERS**

The Meeting noted that, SCTIFI at its meeting held in May 2016 in Arusha, directed the Secretariat to convene a consultative stakeholders meeting for all the Partner States to consider the draft Regulations by September, 2016.

The Secretariat convened a consultative stakeholders meeting from 24th to 27th October 2016 in Dar es salaam to consider the comments submitted by the United Republic of Tanzania. The United Republic of Tanzania informed the meeting that the draft Regulations would be finalised if a comprehensive study on the inclusions and exclusions from the CKD kits for motor vehicles and body building materials for trailers was undertaken to inform the areas to be included in the draft Regulations.

During the deliberations, 18 out of 37 comments by the United Republic of Tanzania were agreed by Partner States to be incorporated in the regulations while others remained outstanding pending finalization of the comprehensive study on the inclusion and exclusion of parts for Motor vehicle and body building materials for trailers.

The SCTIFI directed:-

- 1. The Secretariat to undertake a comprehensive regional study to ascertain the production and available capacities on the list of items for inclusion and exclusion from the CKD kits for vehicles assembly and body building materials for trailers as per the directive of the SCTIFI of June 2013;**
- 2. Allow Partner States to continue using their Regulations on motor vehicle assembly until the finalization of the EAC Motor Vehicle Regulations.**

- UPDATE ON SOLAR SPARE PARTS AND ACCESSORIES**

The meeting was informed by the Secretariat that following the amendment of the fifth schedule on general exemptions paragraph 26 by removing the words spare parts and accessories, there have been complaints on the amendment. The meeting took note and agreed that the Secretariat should advise the EABC to submit a comprehensive list of equipment, accessories and spare parts associated with solar for analysis. The lists will inform the analysis of solar equipment during the pre-budget consultation meetings of Ministers of Finance. The EABC informed the Meeting that it had already submitted the comprehensive list to the Secretariat.

The SCTIFI noted that:-

- 1. The Secretariat will analyze the comprehensive lists of equipment, accessories and spare parts associated with solar submitted by EABC for consideration in the next pre-budget consultations.**

- UPDATE ON TRADE IN SERVICES**

In line with reviewing the Partner States' Schedules of Commitments on Trade in Services as provided for in the EAC Common Market Protocol, it was reported that

the Experts considered and revised the draft Guidelines for reviewing the Partner States' Schedules of Commitments on trade in services. However, the Experts did not agree on the proposed modalities on approach for scheduling the Partner States' commitments on trade in services. The Republic of Burundi, Republic of Kenya, Republic of Rwanda and Republic of Uganda were of the view that the hybrid approach with benchmarks should be used while the United Republic of Tanzania was of the view that the positive list approach should continue being used. The United Republic of Tanzania further observed that the technical committee had no mandate to extend to other five (5) service sectors. Under the proposed hybrid approach, Partner States would continue scheduling commitments for the already scheduled seven (7) sectors using the positive list approach and would adopt a negative list approach for the remaining five (5) sectors.

On Draft Regulations on Free Movement of Services and Services Suppliers the Meeting was informed that the Experts considered and revised the draft Regulations on Free Movement of Services and Service Suppliers. The Experts agreed to broaden the scope of the Regulations in order to focus on services and services suppliers rather than narrowing the focus on services suppliers.

However during the Experts meeting the Partner States had divergent positions on whether to include ***Intra-Corporate Transferees***, and ***Trainees*** in the categories of services suppliers. The Republic of Burundi, Republic of Rwanda, Republic of Kenya and Republic of Uganda were of the view that the categories should explicitly include intra-corporate transferees and trainees given that their free movement is not provided for under the Common Market Protocol (CMP). The United Republic of Tanzania was of the view that ***Intra-Corporate Transferees*** and the ***“Graduate trainees”*** should not be included as categories of service suppliers. Tanzania is of the view that ***Intra-Corporate Transferees*** according to the definition of the service supplier are workers and ***“Graduate” Trainees*** are neither workers nor services suppliers.

In addition, the Partner states had divergent positions on whether to include National Treatment regulation. The Republic of Burundi, The Republic of Rwanda and the Republic of Uganda and the United Republic of Tanzania were of the view that we maintain the Common Market Protocol provision on National Treatment.

The Republic of Kenya was of the view that national treatment with a list of limitations should be explicitly included in the regulations.

During the Meeting, the Republic of Kenya noted that listing all National Treatment limitations would be an onerous task and that the National Treatment provision in the Common Market Protocol effectively defines the spectrum of a national treatment violation. In this regard, the meeting agreed that the National Treatment provision in the Common Market suffices and therefore there is no need to include National Treatment in the Regulations

The SCTIFI after thorough discussions directed the Secretariat to:-

- 1. Submit the finalised concept paper on the approach for scheduling the Partner States' commitments on trade in services by 7th February 2017;**
- 2. Urged Partner States to consider introducing Horizontal Commitments to cater for Inter corporate transferees and graduate trainees during the process of developing their respective schedules of commitments;**
- 3. Directed Secretariat to submit to Partner States the finalised terms of reference for development of a mechanism for the removal of trade in services restrictions by March 2017;**
- 4. Directed the Partner States to further revise their respective schedules of commitments; and**
- 5. Directed the Partner States to submit their revised Schedules of Commitments to the Secretariat by 31st March 2017.**

- REPORT OF THE EAC EXPERTS ON THE EAC-EU EPA**

The Meeting was informed that on 19th to 22nd December 2016, an EAC Experts meeting was convened to explore the way forward on implementing the Summit directives on the EAC-EU EPA negotiations. On the concerns about the EPA, Partner States reported as follows:-

- 1. Republic of Kenya and Republic of Rwanda had no concern in relation to the signing of the EPA.**
- 2. The Republic of Uganda had no concern with EAC EU EPA but has an interest for the Partner States to move to sign the Agreement as a bloc;**

and exploring available options in the event that some EAC Partner States sign the EPA and others do not.

3. On the side of the Republic of Burundi her main concern was the decision of EU to unilaterally suspend direct partnership with the Government of Burundi.
4. The United Republic of Tanzania had several concerns which include:-
 - Effects of EPA on EAC industrial development;
 - Effects of the EU subsidies and domestic support to their farmers on EAC farmers accessing EU market;
 - Bridging the gap of revenue losses resulting from substantial trade liberalization;
 - Effect of BREXIT while UK is one of the major trading partners of EAC countries;

Other Concerns raised, worth consideration by EAC Partner States

5. What is the rationale of Burundi signing EPA while the EU has imposed embargo on her exports? How will EAC Partner States avoid such scenarios of EU to unilaterally put embargos on trade under the EPA while Article 136 of the EPA still refers to the same agreement which EU has used to put embargo to Burundi;
6. How will the EAC Partner States operationalize Article 13 (2) on movement of goods while there is no free circulation of goods in the region and no refund mechanism for customs duty paid to another Partner State;
7. What is the effect of Most Favoured Nation clause under EPA to the future EAC engagement with third parties;
8. How will the bilateral and multilateral safeguards assist the EAC countries in protection of any economic injury to domestic industries while the EPA has already put limitation before the injury is even known?
9. How can individual EAC Partner States denounce the EPA if it feels that her interests are infringed;
10. What lessons can the EAC Partner States learn from the review made by CARIFORUM on the implementation of EPA;

11. How does EPA strengthen regional integration in ACP States while EU is segregating ACP states on the ground of those who will sign and those who will not sign EPA in cumulation under Article 4 of the Rules of Origin;
12. How can EAC Partner States can have the same privileges as provided under Article 5 of the Rules of Origin on cumulation in EU?
13. What is the legal implication of having an agreement which binds third Parties who are not privy to the agreement as it is under article 147 of the EPA which introduces a *Joint Declaration* which binds the EAC with unknown third parties? How will EAC Partner States hold the EU Party liable as one Party in case of failure to implement any of the EPA provisions while Article 132 (1) of the EPA does not define the EU as one Party when it comes to the *definition of parties and fulfilling of their obligations*?
14. How will the EAC Partner States bridge the gap in their balance of trade with EU while continuing trading with raw materials, taking into account that EPA has limited EAC policy space in instituting duties and taxes on exports?
15. Explore how to proceed in the event that some EAC Partner States sign the EPA and some do not sign.

After discussions the SCTIFI directed:-

- The Secretariat to finalise the study on the issues raised above and convene a dedicated session of experts to consider the study report;
- The Secretariat to convene an extra-ordinary SCTIFI on the sidelines of the 35th Council to consider the report of the dedicated session in (b) and make recommendations to the 35th Council on the way forward on the EAC-EU EPA matter.

16. PROGRESS REPORT ON MODALITIES FOR PROMOTION OF TEXTILES AND LEATHER INDUSTRIES IN THE EAC REGION

The meeting was informed that that the 16th Summit of Heads of States held on 20th February 2015 had directed the Council of Ministers to study the modalities for the promotion of textiles and leather industries in the region as well as mechanisms for stopping the importation of used clothes, shoes and other leather products from outside the region and report to the 17th Summit. Further the

Summit had been briefed at its 17th session on the progress made with regard to its directive on the need to promote vertically integrated industries in leather and textiles sectors, whereby the Summit directed Partner States to procure, competitively, their textile and footwear requirements from within the region where quality and supply capacities are available with a view to phasing out used textiles and footwear within 3 years.

Following the Summit directive, the EAC Secretariat commissioned comprehensive studies on the Cotton, Textiles and Apparels value chain and on Leather and Footwear value chain through financial support by Trade Mark East Africa (TMEA). The objectives of the studies were to assess the status of cotton, textiles and apparel sectors and leather and footwear sectors in the EAC, analyze existing challenges and opportunities, and propose an Action Plan outlining the policies and modalities to promote the sectors. The study reports had been presented in various experts group meetings aimed at soliciting comments and inputs towards improvement of the reports. A similar study focusing on capacities available in the region and investment opportunities profiling is ongoing.

The SCTIFI directed the Secretariat to:-

- 1. Convene a joint meeting of the Committees on trade, industry, fiscal and customs to discuss the proposed measures with fiscal implications by end of April 2017; and**
- 2. Urged Partner States with additional inputs on the proposed short term measures on Cotton Textile and Apparels (CTA) and Leather sectors to submit to the Secretariat by end of February 2017.**
- 3. STUDY ON THE MODALITIES FOR THE PROMOTION OF AUTOMOTIVE INDUSTRY IN THE REGION**

The meeting considered the progress study report on the automotive industry which is expected to be finalized in April 2017. As part of the study a team comprising experts from Partner States and EAC Secretariat embarked on consultative missions to EAC Partner States, to compile baseline information on the status of automotive industry, and to Vietnam and Japan for a benchmarking exercise. The missions took place from 20th September to 7th October 2016. Following the missions a progress report outlining the status of automotive

industry in the region was prepared and discussed at an expert's group meeting held on 24th to 26th October 2016, in Nairobi, Kenya. The Consultant, BDO Advisory engaged to undertake the study is currently finalizing the study and was able to make a presentation of preliminary finding of the study during the Committee meeting.

Some of the observations and issues arising from field mission in Japan and EAC region and which are key for the development of automotive industry include:-

- 1. Policy coherence and stable and predictable policies;**
- 2. Economies of scale in production;**
- 3. High GDP per capita (over USD 2,000);**
- 4. Capacity of local firms to engage in the production of automotive products;**
- 5. Increased local content in products manufactured and limited importation;**
- 6. Producing a national "Own" brand;**
- 7. Attractive foreign direct investment policies targeting original equipment manufacturer (OEM) and**
- 8. Conducive environment for private sector development among other measures.**

- **The SCTIFI directed the Secretariat to convene a joint meeting of the Committees on trade, industry, fiscal and customs to discuss the proposed measures with fiscal implications by end of April 2017.**

4. PROGRESS REPORT ON THE IMPLEMENTATION OF THE EAC REGIONAL PHARMACEUTICAL MANUFACTURING PLAN OF ACTION (EACRPMPOA)

The meeting was informed that the EAC Secretariat and the Partner States developed the EAC Regional Pharmaceutical Manufacturing Plan of Action (EAC-RPMPOA, 2012-2016) to serve as a road map to guide the community towards evolving in to an efficient and effective regional pharmaceutical manufacturing industry. The implementation of the plan has been on-going and has contributed to the positive development of the sector. The implementation period for the current plan ends this year, 2016 and there is need to review achievements, gains,

and challenges encountered and develop a new plan that will serve as a blue print for the sector in the coming decade.

Further the meeting noted that the SCTIFI of 27th May 2016 took note of the progress and noted the need for the review and preparation of a new plan and directed Partner States National Coordination Committees to prepare National Action Plans to feed into the new EACRPMPOA. The region embarked on the preparation of the EACRPMPOA (2017-2027). The first draft of the report is expected in mid-February 2017 followed by an expert's meeting in the last week of the month and national workshops in the month of March 2017 and April 2017. It is expected that the new plan of action will be completed by end of May 2017.

After thorough discussion on the matter the SCTIFI directed:-

- 1. The Secretariat to conduct a survey on capacities of existing pharmaceutical manufacturing industries in the region and develop essential list of medicines that can be procured locally to guide the preferential procurements and reservation scheme;**
- 2. The Secretariat to develop a regional policy/regulatory framework on 'Regional incentive package for the promotion of pharmaceutical industries taking into account the concept note on incentive package and policy coherence; and**
- 3. The Secretariat to develop a programme to strengthen capacity of the agencies involved in controlling and monitoring Counterfeit Drugs to Local Production in the Region.**

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