EAST AFRICAN COMMUNITY

EXTRA-ORDINARY MEETING OF THE SECTORAL COUNCIL ON TRADE, INDUSTRY, FINANCE AND INVESTMENT

10th September 2014
Arusha, Tanzania

SESSION OF PERMANENT/PRINCIPAL SECRETARIES

REPORT OF THE MEETING

REF: EAC/SR/.../2014)

EAC SECRETARIAT
Arusha, Tanzania
September 2014
REPORT OF THE MEETING

1.1 INTRODUCTION

The Secretariat convened an emergency Extra-ordinary Meeting of the Sectoral Council on Trade, Industry, Finance and Investment (SCTIFI) to consider the way forward on the EAC-EU EPA negotiations in view of the issues that remain outstanding and the deadline of the EU Market Access Regulation 1528/2007 on 1st October 2014.

The meeting was attended by Permanent/Principal Secretaries and Senior Officials from Partner States with the exception of the Republic of Burundi and the United Republic of Tanzania, who informed the Secretariat that they were unable to attend due to their Ministers' unavailability and the short notice for convening the meeting. In line with the EAC Rules of Procedure, the meeting proceeded on a consultative basis, and the outcome will be submitted to the Republic of Burundi and the United Republic of Tanzania for their comments.

Also in attendance were officials from the EAC Secretariat and the East African Business Council. The list of participants is hereto attached as Annex 1.

1.2 CONSTITUTION OF THE BUREAU

Mr. John Oloishuro Konchellah, Principal Secretary responsible for East African Affairs, Ministry of East African Affairs, Commerce and Tourism, Republic of Kenya chaired the meeting.
1.3 ADOPTION OF THE AGENDA

The Agenda was adopted and is hereto attached as Annex II.

1.4 OPENING REMARKS BY THE EAC DIRECTOR GENERAL OF CUSTOMS AND TRADE

The Director General of Customs and Trade (DG CT) welcomed the Permanent/Principal Secretaries to the meeting and to Arusha. He highlighted the importance of the urgent nature and importance of the meeting in view of the remaining outstanding issues in the EAC-EU EPA negotiations and the deadline of 1st October 2014 of the EU Market Access Regulation 1528/2007. The DG CT expressed his appreciation that three Partner States were able to attend the emergency meeting and pointed out that the outcome of the meeting will be submitted to the Republic of Burundi and the United Republic of Tanzania for their comments. He further pointed out that a Council meeting had been scheduled on 15th – 20th September 2014 in Arusha which would consider, among others, the report of this meeting. Therefore the views of the Republic of Burundi and the United Republic of Tanzania would be taken on board during the Council meeting.

The DG CT informed the meeting that they were expected to strategize on the way forward on the outstanding issues and conclusion of the EAC-EU EPA negotiations. He wished the meeting fruitful deliberations.

2.0 STATEMENT BY THE REPUBLIC OF KENYA ON THE EAC-EU EPA NEGOTIATIONS

The Republic of Kenya highlighted the importance of the meeting that provided the opportunity to assess progress made in the negotiations, review the outstanding issues and agree on a way forward with regard to concluding the EPA negotiations. The meeting was informed that the President of the Republic of Kenya had been holding consultations with the Heads of States from the other Partner States on the EPA negotiations. The last consultation was held between the President of the Republic of Kenya, H.E. Uhuru Kenyatta and the President of the United Republic of Tanzania, H.E. Jakaya Kikwete on 2nd September 2014 where both agreed on the text language that formed the basis of the Senior Officials deliberations on 9th September 2014.

The Republic of Kenya pointed out that once the SCTIFI reviewed the outstanding issues and agreed on the way forward, the outcome of this meeting to be shared with the EU with a view to concluding the negotiations as soon as possible. The Chairperson of the Ministers responsible for Trade to carry out consultations with the EU using the agreed language with a view to concluding the EPA negotiations before 1st October 2014.
The Permanent/Principal Secretaries took note and welcomed the statement by the Republic of Kenya.

**Recommendation:**

The Permanent/Principal Secretaries recommend to the Sectoral Council on Trade, Industry, Finance and Investment to:

(a) take note of the Statement from the Republic of Kenya; and
(b) urge the Ministers responsible for Trade to lobby the EU using the agreed language on the outstanding issues arising from this Extra-Ordinary Session of Permanent/Principal Secretaries with a view to expediting conclusion of the negotiations before 1st October 2014.

**3.0 OUTCOME OF THE JOINT EAC-EU EPA SENIOR OFFICIALS MEETING ON 23RD JULY 2014**

The meeting was informed that a Joint EAC–EU Senior Officials meeting was held on 23rd July 2014 in Kigali, Rwanda to discuss the outstanding issues in the EPA negotiations. The negotiations focused on Export Taxes and Export Subsidies, however, no agreement was reached by both Parties.

The meeting was further informed that following the joint meeting, the EAC Permanent/Principal Secretaries met to review the discussions and agreed on a package on Export Taxes and Domestic Policy Measures which was submitted to the EU by the EAC Secretary General in his letter dated 24th July 2014. The Secretariat had also proposed to the EU the convening of a joint EAC-EU Ministerial meeting during the week of 15th September 2014 in the EAC region to finalize the negotiations.

**Recommendation:**

The Permanent/Principal Secretaries recommend to the Sectoral Council on Trade, Industry, Finance and Investment to take note of the above progress.

**4.0 LETTER FROM THE EU COMMISSIONER FOR TRADE DATED 21ST AUGUST 2014**

The meeting was informed that the EU Commissioner for Trade, Karel De Gucht, responded to the EAC Secretary General’s letter on 21st August 2014, herein attached as Annex III.

In view of the issues raised in the EU’s letter, the meeting reviewed the outstanding issues in the negotiations as in the table below. The meeting took into consideration the texts negotiated in other EPA configurations.
<table>
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<tr>
<th>OUTSTANDING ISSUE</th>
<th>EU POSITION</th>
<th>REVIEWED EAC POSITION</th>
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| 1. Duties and Taxes on Exports | 1. The Parties shall not institute any new duties or taxes in connection with the exportation of goods to the other Party that are in excess of those imposed on like products destined for internal sale.  
2. Notwithstanding paragraph 1, the EAC Party can impose a duty or tax in connection with the exportation of goods, with the authorization of the EPA Council, under the following circumstances: (a) to foster the development of domestic industry; or (b) to maintain currency value stability, when the increase in the world price of an export commodity creates the risk of a currency value surge.  
3. Notwithstanding paragraphs 1 and 2, in exceptional circumstances where an EAC Partner State has special needs with regard to revenue, food security, or environmental protection, and where the EPA Council is not scheduled to meet within one month, the EAC Party may impose a temporary duty or a tax in connection with the exportation of goods after notifying the EU Party.  
The Parties shall ensure that any application of this provision does not result in an incompatibility of this Agreement with Article XXIV of GATT 1994.  
Such taxes should be enforced on a limited number of products for a limited period of time, and reviewed by the EPA Council after 24 months. | 1. The Parties shall not institute any new duties or taxes in connection with the exportation of goods to the other Party that are in excess of those imposed on like products destined for internal sale.  
2. Notwithstanding paragraph 1, the EAC Party can impose a temporary duty or tax in connection with the exportation of goods, under the following circumstances, after notifying the EU Party:  
   (a) to foster the development of domestic industry;  
   (b) to maintain currency value stability, when the increase in the world price of an export commodity creates the risk of a currency value surge; or  
   (c) with regard to revenue, food security, or environmental protection.  
3. Such taxes should be enforced on a limited number of products for a limited period of time, and shall be reviewed by the EPA Council after 48 months. |
<p>| 2. Domestic Policy Measures | Both Parties agree on the Article as follows (as had been discussed during the Joint EAC-EU Senior Officials negotiations on 23rd July 2014): | |</p>
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<tr>
<th>OUTSTANDING ISSUE</th>
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<td></td>
<td>1. Each Party shall ensure transparency in the area of agricultural support related to trade in agricultural products. To this end, the EU Party shall report periodically within the Agriculture Dialogue to the EAC Party on the legal basis, form and amount of such support. Such information is deemed to have been provided if it is made available by the Parties or on their behalf on a publicly accessible website.</td>
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<td>2. The EU Party shall exclude EAC countries as destinations for all agricultural products benefiting from all forms of export support to agriculture with effect from the entry into force of this Agreement, which shall be reviewed by the EPA Council after 48 months.</td>
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<td>3. Furthermore, the Parties shall discuss in the EPA Council any concerns about potential trade impact of their respective domestic policy measures in agriculture, with a view to addressing the concerns accordingly.</td>
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<td>3. Relations with the Cotonou Agreement (paragraph 2)</td>
<td>2. Nothing in this Agreement shall be construed so as to prevent the adoption by the EU Party or EAC Partner States of any appropriate measures consistent with this Agreement and pursuant to the Cotonou Agreement.</td>
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<td>2. Nothing in this Agreement shall be construed so as to prevent the adoption by the EU Party or EAC Partner States of any appropriate measures*, consistent with this Agreement and pursuant to the Cotonou Agreement. This provision shall be in force until 2020.</td>
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<td>Include footnote *excluding any trade related measures</td>
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<td>4. Good Governance in the Tax Area</td>
<td>Former EU Proposal: With a view to strengthening and developing economic activities while taking into account the need to develop an appropriate regulatory framework, the Parties recognize and commit themselves to implement the principles of good governance in the tax area. To that effect, in accordance with their respective competences, the Parties will improve international cooperation in the</td>
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<td>The Parties recognise the importance of cooperation on the principles of good governance in the area of taxation through the relevant authorities.</td>
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<td>The meeting is of the view that the above text is not committal and therefore will have no negative implication to the region.</td>
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<td>5. Consequences from Customs Union Agreements concluded with the EU</td>
<td>Tax area, facilitate the collection of legitimate tax revenues, and develop measures for the effective implementation of the above mentioned principles. New EU Proposal: The Parties recognise the importance of cooperation on the principles of good governance in the area of taxation through the relevant authorities.</td>
<td>Proposes to address this issue under the Article xx on Accession in the Final Provisions of the Agreement with the proposed text below as a new paragraph 3. This language was also agreed in the SADC-EU EPA. A third state or organisation, having competence for the matters covered by this Agreement, may request to accede to this Agreement. If the EPA Council agrees to consider such a request, the Parties and the state or organisation requesting to accede shall conduct negotiations on the terms of accession. The Protocol of Accession shall be approved by the EPA Council and submitted for ratification, acceptance or approval in accordance with the Parties' respective constitutional or internal legal requirements.</td>
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Proposes to include a joint declaration as follows: "The EU recalls the obligations of those states that have established a Customs Union with the EU to align their trade regime to the one of the EU, and for certain of them, to conclude preferential agreements with countries having preferential agreements with the EU.

In this context, the Parties note that the EAC Partner States will start negotiations with those states which: (a) have established a Customs Union with the EU, and (b) whose products do not benefit from the tariff concessions under this Agreement, with a view to concluding a bilateral agreement establishing a free trade area in accordance with Article XXIV of the GATT. The EAC Partner States will start negotiations as soon as possible with a view to having the above-mentioned agreement entering into force as quickly as possible after the entry into force of this Agreement."
Recommendation:

The Permanent/Principal Secretaries recommend to the Sectoral Council on Trade, Industry, Finance and Investment to adopt the reviewed EAC positions as the basis for engagement with the EU.

5.0 CONSIDERATION OF THE REPORT OF THE EAC EXPERTS MEETING ON THE CONSOLIDATED EPA TEXT HELD ON 20TH – 22ND AUGUST 2014 IN ARUSHA

The meeting was informed that an EAC EPA Experts meeting was held on 20th – 22nd August 2014 in Arusha to clean the EPA Consolidated Text as had been recommended by the EAC Permanent/Principal Secretaries during their meeting on 22nd July 2014.

The EAC EPA Experts cleaned the EAC-EU Consolidated EPA Text and the Protocol on Rules of Origin (RoO) as well as the Annexes. The Experts undertook the following:

   a. Article 13 (standstill clause) – The Experts observed that there is need to include reference to Article 50 on multilateral safeguards as these articles addressed similar issues.
   b. Article 16 (2) – the experts agreed that the spirit of this Article was to ensure non-automatic extension of MFN to the EU. The Experts agreed to consult the Counsel to the Community on whether the current wording of Article 16 (2) reflects the principle of non-automatic extension of MFN to EU.
   c. Numbered all the articles and aligned them by including appropriate reference Articles.
   d. All areas that had reference to EC were changed to ‘EU’.
   e. Added the omission on the EAC Exclusion list. In the EAC Market Access offer, the products listed in Annex II D would not be subjected to liberalization commitments.
   f. Article 1 of the Protocol 1 - accepted EAC definition of “Other ACP States”.
   g. Article 4 on Cumulation in EAC Partner States – deleted the phrase “which are entitled to duty free quota free treatment upon importation in the EU” in order to ensure that cumulation is not limited to ACP EPA States only as directed by the Permanent/Principal Secretaries during their meeting of 22nd July 2014.
   h. Annex II of Protocol 1 – incorporated the product specific rules that were agreed upon during the joint EAC-EU Senior Officials meeting on 27th March 2014.

The EPA Experts made the following recommendations to the the Permanent/Principal Secretaries to:

   a) take note of the progress made in the cleaning the EAC-EU Consolidated EPA Text, the Protocol on Rules of Origin and the Annexes;
   b) direct the Secretariat to share with the EU, the cleaned Consolidated EPA Text;
c) direct the Counsel to the Community to advise the Partner States on whether the current wording of Article 16 (2) reflects the principle of non-automatic extension of MFN to EU; and

d) direct the Secretariat to liaise with the EU to convene a joint EAC-EU technical meeting prior to the joint Ministerial meeting to jointly clean up the consolidated EAC-EU EPA text.

Recommendations:

The Permanent/Principal Secretaries recommend to the Sectoral Council on Trade, Industry, Finance and Investment to:

a) take note of the progress made in the cleaning the EAC-EU Consolidated EPA Text, the Protocol on Rules of Origin and the Annexes;

b) direct the Secretariat to share with the EU, the cleaned Consolidated EPA Text; and

c) direct the Secretariat to liaise with the EU to convene a joint EAC-EU technical meeting prior to the joint Senior Officials meeting to jointly clean up the consolidated EAC-EU EPA text.

6.0 OTHER PENDING ISSUES – EAC EPA DEVELOPMENT MATRIX

The meeting was informed that the EAC EPA Development Matrix as well as the Benchmarks, Indicators and Targets need to be updated as these will be annexed to the EPA. During the Meeting held on 20th – 22nd August 2014, the EAC EPA Experts recommended to the Permanent/Principal Secretaries to direct the Secretariat to convene the Experts Meeting on the EPA Development Matrix before the joint EAC-EU Ministerial Meeting.

Recommendation:

The Permanent/Principal Secretaries recommend to the Sectoral Council on Trade, Industry, Finance and Investment to:

(a) direct the Partner States to update the EAC EPA Development Matrix; and
(b) direct the Secretariat to convene a meeting prior to the next joint EAC-EU Senior Officials Meeting during the week of 22nd September 2014 to consolidate and rationalize the EAC EPA Development Matrix.

7.0 WAY FORWARD

The Permanent/Principal Secretaries proposed the following way forward:

(a) the Ministers responsible for Trade to lobby the EU using the agreed language on the outstanding issues arising from this Extra-Ordinary Session of
Permanent/Principal Secretaries with a view to expediting conclusion of the negotiations before 1st October 2014;

(b) a meeting of EAC Experts held prior to the joint EAC-EU Senior Officials during the week of 22nd September 2014 to update the EAC EPA Development Matrix;

(c) a joint EAC-EU Technical Officials meeting be held prior to the joint EAC-EU Senior Officials during the week of 22nd September 2014 to jointly clean the consolidated EPA Text;

(d) the Secretariat to liaise with the EU with a view to convening a Joint EAC-EU Senior Officials Meeting during the week of 22nd September 2014 to finalize the outstanding issues. The EAC-EU Senior Officials be mandated to initial the consolidated EPA text to signify conclusion of the negotiations;

(e) Upon initialing, EU to prepare a legal instrument for purposes of avoiding disruption to preferential market access;

(f) The Parties to agree on the timeframe for legal scrubbing with a view to have a clean text for signature; and

(g) A joint EAC-EU Ministerial meeting to be organized for signature.

Recommendation:

The Permanent/Principal Secretaries recommend to the Sectoral Council on Trade, Industry, Finance and Investment to adopt the above way forward.
Signed this 10th day of September 2014 by the respective Heads of Delegation as below:

Dr. (Eng) Karanja Kibicho, CBS
Ministry of Foreign Affairs &
International Trade
The Republic of Kenya
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The United Republic of Tanzania
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The Republic of Burundi
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Mr. Emmanuel Hategeka
Ministry of Trade and Industry
The Republic of Rwanda
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Mr. Cyprian Batala
Ministry of Trade, Industry and Cooperatives
The Republic of Uganda
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