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REPUBLIC OF KENYA

MINISTRY OF INVESTMENTS, TRADE AND
INDUSTRY

MEMORANDUM TO THE NATIONAL ASSEMBLY
TO COMMENCE THE RATIFICATION PROCESS
OF THE KENYA – UNITED ARAB EMIRATES
COMPREHENSIVE ECONOMIC PARTNERSHIP
AGREEMENT

NATIONAL ASSEMBLY
RECEIVED
06 MAR 2025
CLERK'S OFFICE
P.O. BOX 41842, NAIROBI

THE NATIONAL ASSEMBLY
PAPERS LAID
DATE: 11 MAR 2025 DAY: Thursday
TABLED BY: Ibon Owen Baya, MP
Deputy Majority Leader.
CLERK-AT THE-TABLE: Gebude dwebet

21ST FEBRUARY 2025

1. Objectives of the Memorandum

The objective of this Memorandum is to:

- a. Apprise the National Assembly on the negotiation and signing of the Comprehensive Economic Partnership Agreement between the Governments of the Republic of Kenya and the United Arab Emirates; and,
- b. Take note that the Cabinet has granted approval for the National Assembly to initiate the process of ratification of the Kenya – UAE Comprehensive Economic Partnership Agreement before entering into force.

2. Background

- a. Kenya and the United Arab Emirates Union signed the Comprehensive Economic Partnership Agreement on 14th January 2025 in Abu Dhabi, United Arab Emirates.
- b. The full title of the Agreement is “The Comprehensive Economic Partnership Agreement between Kenya, of the one part,

and the United Arab Emirates, of the other part.

- c. The agreement covers General Provisions, Trade in goods, Rules of Origin, Customs Procedures and Trade Facilitation, Sanitary and Phytosanitary Measures, Technical Barriers to Trade, Trade Remedies, Investment, Digital Trade, Procurement, Intellectual Property Rights, Small and Medium Enterprises, Economic Cooperation, Investment, Dispute Settlement, Exceptions, Administration of the Agreement, and Final Provisions.
- d. The agreement excludes market access (tariff liberalisation) as both Parties have agreed to negotiate this chapter with all the EAC Partner States when ready.

3. Justification for the agreement

- a. The total trade between Kenya and UAE over the decade has shown a positive trajectory. In 2023, the United Arab Emirates was Kenya's

6th largest export market, absorbing 5.5% of exports and 2nd largest import source accounting for 15.7% of the imports.

b. Trade trends between the two parties indicate that two-way trade grew by 169.24 percent over nine years from Ksh. 142.5 billion in 2013 to Ksh. 383.68 billion in 2022. Kenya's exports to UAE amounted to USD 373.6 million and USD 401.5 million in 2022 and 2023 while imports from the UAE were valued at USD 3.45 billion and USD 2.95 billion during the same period.

c. Kenya's main exports to the UAE were mainly tea, the meat of sheep or goats, fruits, vegetables, and cut flowers while imports from UAE were mainly petroleum oils and oils obtained from bituminous minerals and polymers of propylene in primary forms, telephone sets, and cement clinker.

d. The UAE is a member of the Gulf Cooperation Council (GCC) countries and has strong

economic ties with its partners Saudi Arabia, Kuwait, Bahrain, and Oman; they share a common market and a customs union. Under the Greater Arab Free Trade Area Agreement (GAFTA), the UAE has free trade access to most Middle East countries to which Kenya could gain strategic access.

- e. The Kenya - UAE CEPA provides the country with a unique opportunity to enter into a reciprocal bilateral trade and development cooperation arrangements with one of the emerging global economic powerhouses.

4. Obligations in the Agreement

a. Policy and legislative considerations

The CEPA, along with all other trade agreements are anchored in the National Trade Policy and the Integrated National Exports Development and Promotion Strategy. Despite this, the Kenya – UAE CEPA requires ratification by the National Assembly in accordance with the Treaty Making and Ratification Act of 2012, revised in 2018.

b. Administrative obligations

Kenya and the UAE are required to set up a Joint Committee to steer the implementation of the CEPA. For Kenya, the chair of the council shall be the Cabinet Secretary for the time being responsible for International Trade.

c. Ministerial obligation

The CEPA is to be implemented by the Ministry of Investments, Trade and Industry and any such successor Ministry/Department.

d. Financial Implications

There will no financial losses resulting from tariff liberalisation given the agreement excludes market access, which the Parties have agreed to negotiate with all the EAC Partner State, when ready

5. Benefits of the Agreement to the Kenyan people

- a. Expanding exports for Kenyan products to the UAE and Middle East particularly meat and meat products, horticulture (including fruits, vegetables and flowers), tea, coffee among others.

- b. The agreement has refined measures to facilitate trade through a common understanding of customs procedures and trade facilitation measures, and also sanitary and phytosanitary measures.
- c. Expanding opportunities for services trade, since the agreement has created a common approach to services trade rules between the two countries.
- d. Increased investment in Kenya particularly in sectors such as ICT, healthcare, agriculture and several other areas.
- e. Expanded technical cooperation and budget support.

6. Possible negative effects include:

Local industries are likely to face more competition over time from UAE zero-rated products.

7. Measures to mitigate any negative effects arising from the agreement

- a. Trade Remedies Provisions: Safeguards, Countervailing Measures and Anti-dumping -

provides for trade remedies to safeguard against unfair trade practices which leads to market distortion.

b. **Amendment Clause** - provides flexibility to the Parties to seek for amendments on any provisions when need arises.

c. **Mandatory 5 Year Review Clause** - provides for a comprehensive mandatory review of the entire agreement every 5 years.

d. **Exit clause** - provides for flexibility to the Parties to exit upon giving one year written notice.

8. Recommendations to the National Assembly

The National Assembly is therefore invited to:

- a. Take note of the Kenya – UAE CEPA as an instrument that provides the country with a unique opportunity for reciprocal bilateral trade in goods, services and development cooperation arrangements with one of the emerging global economic powerhouses; and,
- b. Initiate the process of Ratification in accordance to Section 7 of the Treaty Making and

Ratification Act No. 45 of 2012 (Act No. 18 of 2014 and Act No. 18 of 2018).

Signed:..........

Date: 4/3/2025.....

Hon. Lee Kinyanjui
Cabinet Secretary,
Ministry of Investments, Trade and Industry

COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT


BETWEEN

THE REPUBLIC OF KENYA

AND

THE UNITED ARAB EMIRATES



 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 11 MAR 2025	DAY: Tuesday
TABLED BY:	Hon. Owen Bayari MP Deputy Majority Leader
CLERK-AT THE-TABLE:	Cebude chebet.

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PREAMBLE

The Governments of the United Arab Emirates (hereinafter referred to as the "UAE") and the Republic of Kenya (hereinafter referred to as "Kenya");

hereinafter being referred to individually as a "Party" and collectively as "the Parties";

RECOGNISING the strong economic and political ties between the UAE and Kenya, and wishing to strengthen these links. The Parties further wish to pursue the establishment of a free trade area with the East African Community, thus establishing close and lasting relations;

DETERMINED to build on their respective rights and obligations under the Marrakesh Agreement Establishing the World Trade Organization;

CONSCIOUS of the dynamic and rapidly changing global environment brought about by globalisation and technological progress that presents various economic and strategic challenges and opportunities for the Parties;

DETERMINED to develop and strengthen their trade and economic relations through the liberalisation and expansion of trade in goods and services in their common interest and for their mutual benefit;

AIMING to promote transfer of technology and expand trade;

AIMING to facilitate trade by promoting efficient and transparent customs procedures that reduce costs and ensure predictability for their importers and exporters;

DETERMINED to support the growth and development of micro, small and medium-sized enterprises by enhancing their ability to participate in and benefit from the opportunities created by this Agreement;

AIMING to establish a clear, transparent, and predictable legal and commercial framework for business planning, that supports further expansion of trade and investment;

RECOGNIZING their inherent right to regulate and resolved to preserve the flexibility of the Parties to set legislative and regulatory priorities, and protect legitimate public welfare objectives, such as health, safety, environmental protection, conservation of living or non-living exhaustible natural resources, integrity and stability of the financial system, and public morals, in accordance with the rights and obligations provided in this Agreement;

HAVE AGREED, in pursuit of the above, to conclude the following Agreement:



CHAPTER 1
INITIAL PROVISIONS AND GENERAL DEFINITIONS

ARTICLE 1.1: Establishment of a Comprehensive Economic Partnership Agreement

The Parties hereby establish a Comprehensive Economic Partnership Agreement between the UAE and Kenya, in accordance with the Decision of 28 November 1979 on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (“Enabling Clause”) and Article V of General Agreement on Trade in Services (“GATS”); and agree to deepen economic cooperation between the Parties. The Parties further will use their best endeavours towards negotiating a Comprehensive Economic Partnership Agreement between the UAE and the East African Community.

ARTICLE 1.2: Objectives

The objectives of this Agreement are to liberalise and facilitate trade in goods and services, stimulate investment between the Parties, promote opportunities for trade liberalisation of goods and services, and strengthen development of the digital economy, infrastructure and MSMEs, in accordance with the provisions of this Agreement.

ARTICLE 1.3: General Definitions

For the purposes of this Agreement:

Agreement means this Comprehensive Economic Partnership Agreement (“CEPA”) between the UAE and the Republic of Kenya;

Agreement on Agriculture means the Agreement on Agriculture in Annex 1A to the WTO Agreement;

Anti-Dumping Agreement means the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement;

Customs Valuation Agreement means the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement;

days means calendar days, including weekends and holidays;

GATS means the General Agreement on Trade in Services in Annex 1B to the WTO Agreement;

GATT 1994 means the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement;

GPA means the Agreement on Government Procurement in Annex 4 to the WTO Agreement;

Harmonized System or **HS** means the Harmonized Commodity Description and Coding System, including its General Rules for the Interpretation, Section Notes, Chapter Notes and Subheading Notes;

Import Licensing Agreement means the Agreement on Import Licensing Procedures in Annex 1A to the WTO Agreement;

Joint Committee means the Joint Committee established pursuant to Article 14.1 (Joint Committee);

measure means any measure, whether in form of a law, regulation, rule, procedure, decision, practice, administrative action, or any other form;

Safeguards Agreement means the Agreement on Safeguards in Annex 1A to the WTO Agreement;

SCM Agreement means the Agreement on Subsidies and Countervailing Measures in Annex 1A to the WTO Agreement;

SPS Agreement means the Agreement on the Application of Sanitary and Phytosanitary Measures in Annex 1A to the WTO Agreement;

TBT Agreement means the Agreement on Technical Barriers to Trade in Annex 1A to the WTO Agreement;

TRIPS Agreement means the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement;

WTO means the World Trade Organization; and

WTO Agreement means the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh, 15 April 1994.

ARTICLE 1.4: Geographical Scope

This Agreement shall apply:

- (a) For the UAE, its land territories, internal waters, including its Free Zones, territorial sea, including, the seabed, and subsoil thereof, and airspace over such territories and waters, as well as the contiguous zone, the continental shelf and



exclusive economic zone, over which UAE has sovereignty, sovereign rights or jurisdiction as defined in its laws, and in accordance with international law;

- (b) For the Republic of Kenya, all territory of Kenya in state boundaries, including internal territory and territorial waters and also the exclusive economic zone, maritime zones, and all installations erected thereon, as defined in its national law, in accordance with international law, over which Kenya exercises its sovereign rights with respect to exploration, exploitation, conservation and management of natural resources of the seabed, its subsoil and the superjacent waters.

ARTICLE 1.5: Relation to Other Agreements

1. The Parties affirm their existing rights and obligations with respect to each other under the WTO Agreement and other agreements to which such Parties are party.
2. In the event of any inconsistency between this Agreement and other agreements to which the Parties may be party to either jointly or otherwise, the Parties shall immediately consult with each other with a view to finding a mutually satisfactory solution.

ARTICLE 1.6: Regional and Local Government

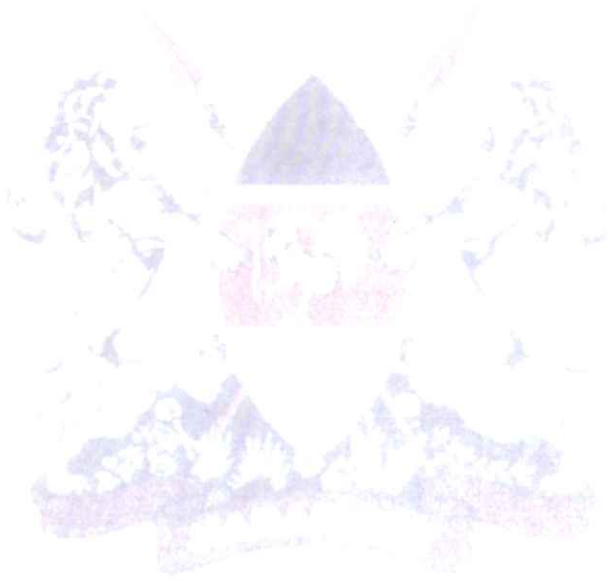
1. Each Party shall take such reasonable measures as may be available to it to ensure observance of the provisions of this Agreement by the regional and local governments and authorities and by non-governmental bodies in the exercise of governmental powers delegated by central, regional and local governments and authorities within its territories.
2. This provision is to be interpreted and applied in accordance with the principles set out in paragraph 12 of Article XXIV of the GATT 1994 and paragraph 3 of Article I of the GATS.

ARTICLE 1.7: Transparency

1. Each Party shall publish or otherwise make publicly available their laws, regulations, as well as their respective international agreements which may affect the operation of this Agreement.
2. Without prejudice to Article 1.8, each Party shall respond within a reasonable period of time to specific questions and provide, upon request, information to each other on matters referred to in paragraph 1.

ARTICLE 1.8: Confidential Information

1. Each Party shall, in accordance with its laws and regulations, maintain the confidentiality of information designated as confidential by the other Party.
2. Nothing in this Agreement shall require a Party to disclose confidential information, the disclosure of which would impede law enforcement of the Party, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of any economic operator.



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CHAPTER 2 TRADE IN GOODS

ARTICLE 2.1: Definitions

For the purposes of this Chapter:

Customs Administration means the authority that, according to the legislation of each Party, is responsible for the administration and enforcement of customs laws and regulations of the Party. In the case of the UAE, it shall be the Federal Authority for Identity, Citizenship, Customs & Port Security and each of the individual Emirates Customs Authorities. In the case of Kenya, it shall be the Customs and Border Control Department; and

customs duty refers to any duty or charge of any kind imposed in connection with the importation of a product, including any form of surtax or surcharge in connection with such importation, but does not include any:

- (a) charge equivalent to an internal tax imposed in conformity with Article III of the GATT 1994;
- (b) anti-dumping or countervailing or safeguard duty that is applied consistently with the provisions of Article VI of the GATT 1994, the Anti-Dumping Agreement, the SCM Agreement, or Safeguards Agreement; or
- (c) fee or other charge in connection with importation commensurate with the cost of services rendered and which does not represent a direct or indirect protection for domestic goods or a taxation of imports for fiscal purposes.

ARTICLE 2.2: Objectives

1. The principal objective of this Chapter is to create a liberalised market for trade in goods in accordance with Article 1.2 (Objectives).
2. The specific objective of this Chapter is to promote each Party's trade in goods through:
 - (a) progressive elimination of tariffs;
 - (b) elimination of non-tariff barriers;
 - (c) enhanced efficiency of customs procedures, trade facilitation and transit;

- (d) enhanced cooperation in the areas of technical barriers to trade and sanitary and phytosanitary measures;
- (e) development and promotion of value chains;
- (f) enhanced socio-economic development, diversification and industrialization in the Parties'; and
- (g) promotion of regional integration.

ARTICLE 2.3: Scope and Coverage

Except as otherwise provided in this Agreement, this Chapter shall apply to trade in goods between the Parties.

ARTICLE 2.4: National Treatment

Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of the GATT 1994, including its interpretative notes. To this end, Article III of the GATT 1994 and its interpretative notes are incorporated into and form part of this Agreement, *mutatis mutandis*.

ARTICLE 2.5: Classification of Goods and Transposition of Schedules

1. The classification of goods in trade between the Parties shall be that set out in the respective tariff nomenclature of each Party in conformity with the Harmonized System ("HS") and its legal notes and amendments.
2. Each Party shall ensure that the transposition of its Schedule of Tariff Commitments does not afford less favourable treatment to an originating good of the other Party. If the process of transposition results in a disagreement on the applicable tariff, then this matter shall be referred to the Joint Committee.
3. A Party may introduce new tariff splits, provided that the preferential conditions applied in the new tariff splits are not less preferential than those applied originally.

ARTICLE 2.6: Import and Export Restrictions

Except as otherwise provided in this Agreement, neither Party may adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, except in accordance with Article XI of GATT 1994 and its interpretative notes, and to this end Article XI of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 2.7: Export Duties

1. The Parties may regulate export duties on goods originating from their territories.
2. Any export duties imposed on, or in connection with, the exportation of goods, applied pursuant to this Article shall be applied to goods exported to all destinations on a non-discriminatory basis.
3. A Party that introduces export duties on, or in connection with, the exportation of goods in accordance with paragraph 2, shall notify the Joint Committee within 90 days of the introduction of said export duties.

ARTICLE 2.8: Import Licensing

1. Neither Party may adopt or maintain a measure that is inconsistent with the Import Licensing Agreement¹, which is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.
2. Before applying any new or modified import licensing procedure, a Party shall publish it in such a manner as to enable Governments and traders to become acquainted with it, including through publication on an official Government internet site. Upon request of the other Party, the Party shall exchange information concerning its implementation in a reasonable period.

¹ For the purposes of paragraph 1 and for greater certainty, in determining whether a measure is inconsistent with the Import Licensing Agreement, the Parties shall apply the definition of "import licensing" contained in that Agreement.

ARTICLE 2.9: Customs Valuation

The Parties shall determine the customs value of goods traded between them in accordance with the provisions of Article VII of the GATT 1994 and the Customs Valuation Agreement, *mutatis mutandis*.

ARTICLE 2.10: Export Subsidies

1. Neither Party shall adopt or maintain any export subsidy on any good destined for the territory of the other Party in accordance with the SCM Agreement and the Agreement on Agriculture.
2. The Parties reaffirm their commitments made in the WTO Ministerial Conference Decision on Export Competition adopted in Nairobi on 19 December 2015, including the elimination of scheduled export subsidy entitlements for agricultural goods.

ARTICLE 2.11: Restrictions to Safeguard the Balance-of-Payments

1. The Parties shall endeavour to avoid the imposition of restrictive measures for balance-of-payments purposes.
2. Any such measures taken for trade in goods shall be in accordance with Article XII of the GATT 1994 and the Understanding on the Balance-of-Payments Provisions of the GATT 1994, the provisions of which are incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 2.12: Administrative Fees and Formalities

1. Each Party shall ensure, in accordance with Article VIII:1 of GATT 1994 and its interpretive notes and Article 6 of the WTO Agreement on Trade Facilitation, that all fees and charges of whatever character (other than import and export duties, charges equivalent to an internal tax or other internal charges applied consistently with Article III:2 of GATT 1994, and measures applied in accordance with the provisions of Articles VI or XIX of the GATT 1994, the Anti-Dumping Agreement, the SCM Agreement, the Safeguards Agreement, or Article 22 of the DSU) imposed on, or in connection with, importation or exportation of goods are limited in amount to the approximate cost of services rendered, and shall not represent an indirect protection to domestic goods or a taxation of imports or exports for fiscal purposes.



2. Each Party shall promptly publish details and shall make such information available on the internet regarding the fees and charges it imposes in connection with importation or exportation.

ARTICLE 2.13: Non-Tariff Measures

1. Unless otherwise provided, neither Party shall adopt or maintain any non-tariff measure on the importation of any good of the other Party or on the exportation of any good destined for the territory of the other Party, except in accordance with its WTO rights and obligations or this Agreement.
2. Each Party shall ensure that its laws, regulations, procedures and administrative rulings relating to non-tariff measures are not prepared, adopted or applied with a view to, or with the effect of, resulting in non-tariff barriers, consequently creating unnecessary obstacles in trade with the other Party.
3. If a Party considers that a non-tariff measure of the other Party is an unnecessary obstacle to trade, that Party may nominate such a non-tariff measure for review by the Subcommittee on Trade in Goods by notifying the other Party at least 30 days before the date of the next scheduled meeting of the Subcommittee on Trade in Goods. A nomination of a non-tariff measure for review shall include the reasons for its nomination, a description of how the measure adversely affects trade between the Parties, and if possible, suggested solutions. The Subcommittee on Trade in Goods shall immediately review the measure with a view to securing a mutually agreed solution to the matter. Review by the Subcommittee on Trade in Goods is without prejudice to the Parties' rights under Chapter 16 (Dispute Settlement).

ARTICLE 2.14: State Trading Enterprises

Nothing in this Agreement shall be construed to prevent a Party from maintaining or establishing a state trading enterprise in accordance with Article XVII of the GATT 1994 and the Understanding on the Interpretation of Article XVII of the GATT 1994, *mutatis mutandis*.

ARTICLE 2.15: Temporary Admission of Goods

1. Each Party shall, in accordance with its respective domestic law, grant temporary admission free of customs duties for the following goods imported from the other Party, regardless of their origin:

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- (a) professional and scientific equipment, including their spare parts, and including equipment for the press or television, software, and broadcasting and cinematographic equipment, that are necessary for carrying out the business activity, trade, or profession of a person who qualifies for temporary entry pursuant to the laws of the importing Party;
 - (b) goods intended for display, demonstration or use at theatres, exhibitions, fairs, or other similar events;
 - (c) commercial samples and advertising films and recordings;
 - (d) goods admitted for sports purposes;
 - (e) containers and pallets that are used for the transportation of equipment or used for refilling; and
 - (f) goods entered for completion of processing.
2. Each Party shall, on request of the importer and for reasons deemed valid by its Customs Authority, extend the time limit for temporary admission beyond the period initially fixed.
3. Neither Party may condition the temporary admission of a good referred to in paragraph 1, other than to require that the good:
 - (a) not be sold or leased while in its territory;
 - (b) be accompanied by a security in an amount no greater than the custom duties and any other tax imposed on imports that would otherwise be owed on entry or final importation, releasable on exportation of the good;
 - (c) be capable of identification when exported;
 - (d) be exported in accordance with the time period granted for temporary admission in accordance with its domestic law related to the purpose of the temporary admission;
 - (e) not be admitted in a quantity greater than is reasonable for its intended use; or
 - (f) be otherwise admissible into the importing Party's territory under its law.
4. If any condition that a Party imposes under paragraph 3 has not been fulfilled, that Party may apply the customs duty and any other charge that

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would normally be owed on the importation of the good and any other charges or penalties provided for under its law.

5. Each Party through its Customs Authority shall adopt and maintain procedures providing for the expeditious release of goods admitted under this Article. To the extent possible, such procedures shall provide that when such a good accompanies a national or resident of the other Party who is seeking temporary entry, the good shall be released simultaneously with the entry of that national or resident.
6. Each Party shall permit a good temporarily admitted under this Article to be exported through a customs port other than that through which it was admitted in accordance with its customs procedures.
7. Each Party shall provide that the importer of a good admitted under this Article shall not be liable for failure to export the good on presentation of satisfactory proof to the importing Party that the good has been destroyed within the original period fixed for temporary admission or any lawful extension. A Party may condition relief of liability under this paragraph by requiring the importer to receive prior approval from the Customs Authority of the importing Party before the good can be so destroyed.

ARTICLE 2.16: Goods Re-Entered After Repair or Alteration

1. Neither Party shall apply a customs duty to a good, regardless of its origin, that re-enters its territory in accordance with its laws and procedures after that good has been temporarily exported from its territory to the territory of the other Party for repair or alteration, regardless of whether such repair or alteration could be performed in the territory from which the good was exported, except that a customs duty or other taxes may be applied to the addition resulting from the repair or alteration that was performed in the territory of the other Party.
2. Neither Party shall apply a customs duty to a good, regardless of its origin, imported temporarily from the territory of the other Party for repair or alteration.
3. For purposes of this Article, "repair" or "alteration" does not include an operation or process that:
 - (a) destroys a good's essential characteristics or creates a new or commercially different good;
 - (b) transforms an unfinished good into a finished good; or

- (c) results in a change of the classification at a six-digit level of the Harmonized System (HS).

ARTICLE 2.17: Duty-Free Entry of Commercial Samples of Negligible Value and Printed Advertising Materials

Each Party, in accordance with its respective domestic legislation, shall grant duty-free entry to commercial samples of negligible value, and to printed advertising materials, imported from the territory of the other Party, regardless of their origin, but may require that:

- (a) such samples be imported solely for the solicitation of orders for goods or services provided from the territory of the other Party or a non-party; or
- (b) such advertising materials be imported in packets, that each contain no more than one copy of each such material, and that neither the materials nor the packets form part of a larger consignment.

ARTICLE 2.18: Subcommittee on Trade in Goods

1. The Parties hereby establish a Subcommittee on Trade in Goods under the Joint Committee comprising representatives of each Party.
2. The Subcommittee shall meet once a year or as often as the Parties consider necessary to consider any matter arising under this Chapter.
3. The functions of the Subcommittee shall include, *inter alia*:
 - (a) monitoring the implementation and administration of this Chapter;
 - (b) promoting trade in goods between the Parties, including through consultations on accelerating and broadening the scope of preferential treatment or tariff elimination under this Agreement and other issues as appropriate;
 - (c) addressing barriers to trade in goods between the Parties, including those related to non-tariff measures, including import and export restrictions, which may restrict trade in goods between the Parties and, if appropriate, referring such matters to the Joint Committee for its consideration;
 - (d) providing advice and recommendations to the Joint Committee on cooperation needs regarding trade in goods matters;



- (e) consulting on and endeavouring to resolve any differences that may arise among the Parties on matters related to the classification of goods under the HS;
- (f) reviewing data on trade in goods in relation the implementation of this Chapter;
- (g) assessing matters that relate to trade in goods and undertaking any additional work that the Joint Committee may assign to it; and
- (h) reviewing and monitoring any other matter related to the implementation of this Chapter.

ARTICLE 2.19: Rendez-vous Clause

- 1 The Parties agree to enter, into negotiations on market access for goods, to eliminate or reduce customs duties on originating goods of the Parties within the institutional structures of the East African Community.
2. On the basis of entering into negotiations as set out in paragraph 1, the Parties agree to review this Chapter with the view to introduce new articles on tariff reduction or elimination, acceleration or improvement of Schedule of Tariff Commitments or any related matter that may arise from the outcomes of the negotiations on market access for goods, as indicated in paragraph 1.
3. The results of negotiations pursuant to paragraphs 1 and 2 shall come into force in accordance with Article 17.3 (Amendments) of this Agreement.



CHAPTER 3 RULES OF ORIGIN

ARTICLE 3.1: Definitions

For the purposes of this Chapter:

aquaculture refers to the farming of aquatic organisms including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants, from seedstock such as eggs, fry, fingerlings and larvae, by intervention in the rearing or growth processes to enhance production, such as, *inter alia*, regular stocking, feeding, protection from predators;

competent authority refers to

- (a) in the case of the UAE, the Ministry of Economy or any other agency notified from time to time; and
- (b) in the case of Kenya, the Customs and Border Control Department or any other agency notified from time to time.

consignment means products which are either sent simultaneously from one exporter to one consignee or covered by a single transport document covering their shipment from the exporter to the consignee or, in the absence of such a document, by a single invoice;

customs authority refers to:

- (a) in the case of the UAE, the Federal Authority for Identity, Citizenship, Customs and Port Security;
- (b) in the case of Kenya, the Customs and Border Control Department.

Ex-Works price is the price paid for the good ex-works to the manufacturer in the Party in whose undertaking the last working or processing is carried out, provided the price includes the value of all the materials used, minus any internal taxes which are, or may be, repaid when the good obtained is exported;

generally accepted accounting principles refers to the recognised consensus or substantial authoritative support in the territory of a Party, with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information and the preparation of financial statements. These standards may encompass broad guidelines of general application as well as detailed standards, practices and procedures;

good refers to any article of trade including materials and products;

manufacture refers to any kind of working or processing, including assembly or specific operations;

material refers to any ingredient, raw material, compound or part, etc., used in the production of a good;

non-originating materials or non-originating goods refers to any materials or goods whose country of origin is a country other than the Parties (imported non-originating), any materials or goods whose origin cannot be determined (undetermined origin) or a materials or goods that does not qualify as originating under this Chapter;

originating goods or originating material refers to goods or materials that qualify as originating under this Chapter;

product refers to that which is obtained by growing, raising, mining, harvesting, fishing, aquaculture, trapping, hunting, extracting or manufacturing, even if it is intended for later use in another manufacturing operation;

production refers to growing, raising, mining, harvesting, fishing, aquaculture, trapping, hunting, manufacturing, processing, assembling a good; and

value of non-originating materials is the customs value as determined in accordance with the WTO Agreement on Customs Valuation inclusive of the cost of insurance and freight up to the port of importation of the non-originating materials at the time of importation or the earliest ascertained price paid or payable in the Party where the production takes place for all non-originating materials, parts or produce that are acquired by the producer in the production of the good. When the producer of a good acquires non-originating materials within that Party the value of such materials shall not include freight, insurance, packing costs and any other costs incurred in transporting the material from the supplier's warehouse to the producer's location.

SECTION A: Origin Determination

ARTICLE 3.2: Originating Goods

For the purpose of implementing this Agreement, goods shall be considered as originating in territory of a Party, if:

- (a) goods are wholly obtained there according to Article 3.3;
- (b) goods are not wholly obtained or produced entirely there, provided that the good has undergone sufficient working or processing according to Article 3.4; or



- (c) goods produced entirely there exclusively from originating materials.

and the goods satisfied all other applicable requirements of this Chapter.

ARTICLE 3.3: Wholly Obtained Goods

For the purposes of Article 3.2. (a), the following goods shall be deemed to be wholly obtained in the territory of a Party:

- (a) plant and plant products grown, collected and harvested there;
- (b) live animals born and raised there;
- (c) products obtained from live animals there;
- (d) products from slaughtered animals born and raised there;
- (e) mineral product and natural resources extracted or taken from that Party's soil, subsoil, waters, seabed or beneath the seabed;
- (f) product obtained from hunting, trapping, collecting, capturing, fishing or aquaculture conducted there;
- (g) product of sea fishing and other marine products taken from outside the territorial waters of the Parties by a vessel and/or produced or obtained by a factory ship registered, recorded, listed or licensed with a Party and flying its flag;
- (h) product, other than products of sea fishing and other marine products, taken or extracted from the seabed, ocean floor or the subsoil of the continental shelf or the exclusive economic zone of either of the Parties, by a Party or a person of a Party provided that the Party or Person of a Party has the right to exploit such seabed, ocean floor, or subsoil in accordance to international law;
- (i) raw materials recovered from used goods collected there;
- (j) waste or scrap resulting from utilization, consumption or manufacturing operations conducted there, fit only for recovery of raw materials;
- (k) product produced or obtained there exclusively from product referred to in subparagraphs (a) through (j), or from their derivatives, at any stage of production.

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ARTICLE 3.4: Sufficient Working or Processing

For the purposes of Article 3.2. (b), a good shall be deemed to have undergone sufficient working or processing transformation if the good satisfies the applicable rule set out in the Product Specific Rules (PSRs) in Annex 3A (Product Specific Rules).¹

ARTICLE 3.5: Intermediate Goods

If a good which has acquired originating status in a Party in accordance with Article 3.4 is used in the manufacture of another product, the conditions applicable to the product in which it is incorporated do not apply to it, and no account shall be taken of the non-originating materials which may have been used in its manufacture.

ARTICLE 3.6: Cumulation

1. For the purposes of determining whether a good qualifies as an originating good of a Party, an originating good of the other Party which is used as a material in the production of the good in the former Party may be considered to be an originating material of the former Party.
2. The Joint Committee may agree to review this Article with a view to providing for other forms of cumulation for the purpose of qualifying goods as originating goods under this agreement.

ARTICLE 3.7: Tolerance

Notwithstanding Article 3.4, a good will be considered to have undergone a change in tariff classification if:

- (a) the value of all non-originating materials that are used in the production of the good and that do not undergo the applicable change in tariff classification does not exceed 15% of the Ex-Works price of the good;

¹ The rules in the PSR are based on the following criteria: (a) a Change in Tariff (Classification) (CTC); or (b) Maximum percentage of the value of non-originating materials (NOM); or (c) Special Operations (SO); or (d) any combination of the above.