**EAST AFRICAN COMMUNITY**

# THE EAST AFRICAN COMMUNITY TRADE NEGOTIATIONS FRAMEWORK

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## 1.0 INTRODUCTION

The EAC Partner States have been implementing a Customs Union since 2005, a Common Market since 2010 and a Monetary Union since 2015. The EAC is also consolidating its Customs Union through the operationalization of a Single Customs Territory that started on 1st January 2014 with the aim for free circulation of goods and reduction on the cost of doing business in the region.

The EAC has sent positive signals to the international community of its openness with its progress in the Customs Union and Common Market.

The EAC Region can further benefit from being part of multilateral, regional and bilateral trade agreements. Considerations of preference erosion arising from the multilateral trading arrangements also justify the need to seize momentum through bilateral/regional trade agreements.

The immediate trade future for the EAC Partner States rests on how they negotiate trade agreements with other Parties. In that regard, there is a need to clearly articulate the regional development interests of the EAC Partner States so that its trade and development priorities are promoted and addressed in a coordinated manner with relevant Ministries/ Institutions and International Partners, including non-state actors. Trade agreements have the potential to boost EAC's exports in areas of comparative advantage.

The EAC Instruments that guide trade negotiations include: The Treaty for the Establishment of the East African Community; Protocol for the Establishment of the EAC Customs Union; Protocol for the Establishment of the EAC Common Market; EAC Partner States Development Plans; Competition Policy; Competition Act; the Standard, Quality, Metrology and Testing Act; Industrial Policy and Strategy; and Sanitary and Phytosanitary Measures (SPS) Protocol.

The EAC Trade Negotiations Framework (TNF) will play a vital role in articulating EAC's trade and development interests and ensuring that these are addressed in trade negotiations. In this regard, the TNF will be used to guide the EAC in negotiating trade agreements with third Parties taking into account its level of development based on the prevailing macro-economic indicators, interests and priority objectives of negotiating trade agreements.

The TNF describes the areas that may be covered by negotiations with third parties and what the broad objectives in each of the areas should be.

In addition to the over-arching components of an agreement between the EAC and third Parties, the Framework has also incorporated elements of the EAC legal and institutional framework for trade negotiations.

## 2.0 STRUCTURE OF THE EAC TRADE NEGOTIATIONS FRAMEWORK

The EAC TNF is structured as follows:

(i) Preamble
(ii) Nature and scope of the agreement
(iii) Definitions
(iv) Objectives
(v) General principles
(vi) Trade in Goods
(vii) Trade in Services
(viii) Trade Related Issues
(ix) Development Cooperation
(x) Any other areas the Parties may deem necessary
(xi) General Exceptions
(xii) Institutional Provisions
(xiii) Dispute Avoidance and Settlement
(xiv) Final Provisions
(xv) Schedules and Annexes

### 2.1 PREAMBLE

The Preamble should express the intent of the Parties to the agreement and their motivations to conclude a free trade agreement. It should refer, inter alia, to:

- The commitment of the Parties to an agreement in compliance with their rights and obligations arising out of the World Trade Organization (WTO);
- The right of the Parties to take necessary measures to achieve legitimate public policy objectives, that they deem appropriate in the implementation of negotiated agreements;
- The objective that the agreement should serve as an instrument for sustainable development by promoting growth, increasing production and addressing supply-

side capacity of the EAC Partner States; fostering structural transformation of EAC Partner States economies and their diversification and competitiveness; and leading to the development of trade, the attraction of investment, technology and the creation of employment in the EAC Partner States.

### 2.2 NATURE AND SCOPE OF THE AGREEMENT

The agreement should be comprehensive and consistent with WTO rules. It should provide for the asymmetry liberalization of trade in goods and services, as well as cooperation on trade-related areas.

### 2.3 DEFINITIONS

This should contain the definitions of words and concepts used throughout the agreement.

However, where necessary, the chapters in the agreement should also contain definitions of concepts and terms relating to the specific chapter.

### 2.4 OBJECTIVES

The objectives of the agreement should include:

(a) increasing trade and investment between the EAC Partner States and third parties and generating new economic opportunities for the creation of jobs and growth through increased market access;
(b) supporting the EAC's effort to create an environment which is conducive for trade, investment and private sector development, to enable the business community to produce goods and services that can be exported competitively;
(c) promoting, strengthening and supporting EAC Partner States' trade aspirations;
(d) promoting the gradual integration of the EAC Partner States into the global economy, in conformity with their development priorities;
(e) strengthening, where applicable, the existing relations between the Parties on the basis of solidarity and mutual interest. To this end, consistent with their WTO rights and obligations, the agreement should enhance commercial and economic relations, support a new trading dynamic between the Parties by means of the progressive, asymmetrical liberalisation of trade between them and reinforce, broaden and deepen cooperation in all areas relevant to trade; and

(f) facilitating, where applicable, increased inflows of Aid for Trade for the purpose of implementing trade policies and assisting EAC to fully exploit the opportunities offered by trade agreements.

## 2.5 GENERAL PRINCIPLES

The principles of the agreement should include:

(a) strengthening integration in the EAC Region;
(b) ensuring asymmetry or reciprocity on a case-by-case basis in the liberalisation of trade and in the application of trade-related measures and trade defence instruments;
(c) maintaining regional preferences within Africa and other countries and regions without an obligation to extend them to the Third Party; and
(d) contributing to enhance the production, supply and trading capacities of EAC Partner States.
(e) Maintaining the EAC Common External Tariff (CET) and preferences of the Partner States under the Common Market Protocol.

## 2.6 TRADE IN GOODS

Negotiations on trade in goods should include:

### 2.6.1 Elimination of customs duties

Negotiations on goods with third parties should aim at eliminating duties and charges of equivalent effect on bilateral trade, with the shared objective of achieving a substantial elimination of tariffs upon entry into force and a phasing out of all with the exception of sensitive tariffs within an agreed time frame. In the course of negotiations, consideration will be made for the treatment of the most sensitive products. The EAC offer to third Parties on elimination of duties should be based on the EAC Common External Tariff.

Asymmetry in favour of the EAC should be an objective in tariff liberalization.

#### 2.6.2 Elimination of Non-Tariff Barriers

Negotiations on goods with third parties should aim at eliminating all existing Non-Tariff Barriers to trade with the third party as well recognising the existing reporting, monitoring and elimination mechanisms on Non-Tariff Barriers established by either party.

#### 2.6.3 Rules of Origin

The Rules of Origin between the EAC and third parties should aim at promoting industrialization and value addition within the EAC and should be able to reconcilethe approaches to rules of origin in a manner that facilitates trade between the Parties and that takes into account the EAC rules of origin and the interests of the EAC producers. The agreement should be flexible and should facilitate cumulation with at least countries that have concluded Free Trade Agreements (FTAs) with both the EAC Partner States and the third party.

#### 2.6.4 Most Favoured Nation Treatment

The agreement should contain a Most Favoured Nation Treatment clause which means that better treatment offered by a third party to other countries outside the agreement with the EAC would be extended to the EAC Partner States.

Flexibility should be incorporated to allow the EAC Partner States to maintain regional preferences within Africa and other countries and regions without an obligation to extend them to the third party.

#### 2.6.5 National Treatment

The agreement should contain a National Treatment clause which means that products exported from the EAC to third parties would be accorded treatment no less favourable than that accorded to like domestic products, after the EAC exported products have passed customs, and that this treatment covers all measures affecting the sale and conditions for sale of such products in accordance with the WTO Agreement, Part II Article III on National Treatment.

#### 2.6.6 Anti-dumping and countervailing measures

The agreement should include a clause on anti-dumping and countervailing measures, acknowledging that any of the Parties may take appropriate measures against dumping and/or subsidies.

#### 2.6.7 Safeguards

To maximise liberalisation commitments, the agreement should contain a bilateral safeguard clause by which EAC may take safeguard measures where a rise in imports of a product from the other Party is causing or threatening to cause serious injury to its domestic industry.

The Agreement should establish a regular dialogue on trade defence matters.

#### 2.6.8 Trade Facilitation

Negotiations on Trade Facilitation should aim at enhancing cooperation between the parties to improve, simplify and standardize customs procedures; increase transparency and information exchange on customs legislation and procedures; facilitate movement of goods; protect and facilitate legitimate trade; and cooperate on mutual administrative assistance and application of modern customs techniques.

#### 2.6.9 Sanitary and phytosanitary measures (SPS)

The provisions should build upon the WTO SPS Agreement; set out areas for cooperation on SPS matters; aim to achieve transparency as regards SPS measures applicable to trade; mutual recognition and provide for a bilateral forum for improved dialogue and cooperation on SPS issues.

#### 2.6.10 Technical Barriers to Trade

The provisions should be built on the WTO Agreement on Technical Barriers to Trade (TBT) with a view to facilitating access to each other's markets, and establish a mechanism for improved dialogue and cooperation for addressing bilateral TBT issues. The aim should be to promote greater transparency in regulatory approaches, requirements and related standards-development processes, also with a view to adopting relevant international standards, as well as, inter alia, to reduce redundant and burdensome testing and certification requirements, promote confidence in the respective conformity assessment bodies.

Paragraph on standards, conformity assessment, and technical regulations

## 2.7 TRADE IN SERVICES

The aim should be to liberalize trade in services between the EAC Partner States and third parties in line with Article V of GATS, covering substantially all sectors and all modes of supply, while achieving new market access in areas of export interest to the EAC by addressing market access barriers and recognising the sensitive nature of certain sectors.

The liberalization of services sectors and sub-sectors by the EAC Partner States towards third Parties should not go beyond the commitments made between themselves under the EAC Common Market Protocol.

The Parties should agree to grant treatment no less favourable for the establishment in their territory of companies, subsidiaries or branches of the other Party than that accorded to their own companies, subsidiaries or branches, taking due account of the sensitive nature of certain specific sectors.

A framework for facilitating mutual recognition of professional associations and professional and academic qualifications should be negotiated as part of the Agreement.

The agreement should not preclude the enforcement of exceptions on the supply of services justifiable under the relevant WTO rules (Articles XIV and XIVbis GATS). The EAC Partner States should ensure that nothing in the agreement should preventthem from applying their national laws, regulations and requirements regarding entry and stay, provided that, in doing so, they do not nullify or impair the benefits accruing from the agreement. The EAC Partner States' laws, regulations and requirements regarding work and labour conditions should continue to apply.

Services supplied in the exercise of governmental authority as defined by Article I.3 of GATS shall be excluded from these negotiations.

## 2.8 TRADE-RELATED ISSUES

The agreement should provide for cooperation in the field of trade related issues to promote transparency, creativity and innovation, technological advancement, social and

cultural development, institutional capacity building and competitiveness in both the domestic and third party markets and any other areas the Parties may deem necessary.

## 2.9 DEVELOPMENT COOPERATION

The agreement should include where applicable, commitments on economic and development cooperation in the relevant areas through which to advance the EAC region's development by addressing a number of the supply-side constraints which have been negatively affecting the competitiveness of the Partner States and preventing them from taking advantage of available preferential market access.

Development support should be based on the projects and programmers as prioritized in the EAC Regional Development Strategy and Partner States' development plans and strategies.

There should also be a commitment for the Parties to jointly and individually mobilize resources to support the implementation of the agreement.

## 2.10 ANY OTHER AREAS THE PARTIES MAY DEEM NECESSARY

Following analysis by the EAC Partner States and in accordance with the EAC Treaty, the agreement may include provisions regarding other areas related to the trade and economic development such as Trade Finance, Transport and logistics, agro business development and private sector development where, in the course of negotiations, mutual interest has been expressed in doing so.

## 2.11 GENERAL EXCEPTIONS

The agreement should include a general exception clause based on Articles XX (on general exceptions) and XXI (on security exceptions) of the GATT; and GATS Articles XIV and XIVbis.

The agreement should also include safeguards on the balance of payments and that parties may take prudential measures as they see necessary.

The agreement should not apply to taxation measures.

## 2.12 INSTITUTIONAL PROVISIONS

The agreement should set up an institutional structure to complement the existing EAC organs in ensuring an effective follow-up of the commitments under the Agreement.

## 2.13 DISPUTE SETTLEMENT

The agreement should include appropriate mechanisms to prevent and resolve disputes in an expeditious manner, such as through establishment of committees on trade and customs, consultation, mediation or arbitration, avoiding duplication with the WTO dispute settlement mechanism where appropriate.

## 2.14 FINAL PROVISIONS

The provisions should include:

### 2.14.1 Amendments and periodic reviews

This provision should include a description on how the agreement will be amended and mandate periodic general reviews of the agreement to ensure full implementation of the terms of the agreement and to ensure the terms continue to provide the maximum

possible economic benefit to the parties in light of changing economic circumstances and trade and investment flows.

#### 2.14.2 Entry into force, duration and termination

This provision should state the conditions and procedures for entry into force, duration of the agreement, and notice to be given to the other parties in case of withdrawal.

#### 2.14.3 Accession of third parties

The agreement should be open to the possibility for accession of third parties on negotiated terms and conditions to be agreed during the negotiations.

#### 2.14.4 Authentic languages

The Agreement should include a language clause.

### 2.15 SCHEDULES, ANNEXES AND APPENDICES

These schedules, annexes and appendices contain the details of the obligations the parties have taken on, which include but not limited to: the Parties tariff elimination offers; Protocol on Rules of Origin and product specific rules; schedules on specific commitments on Trade in Services.

## 3.0 STRATEGIC DIRECTIONS FOR EAC TRADE NEGOTIATIONS WITH THIRD PARTIES

In negotiating trade agreements, EAC Partner States should develop and present negotiation proposals aimed at eliminating key barriers to trade in those areas, in particular on goods and services. With regards to trade in goods, offensive interests should be coupled with assistance to overcome barriers to trade related to customs and SPS/TBT issues, and to secure a framework of Rules of Origin (ROO) which is adequate to its processing capabilities and pursue tariff liberalization while protecting sensitive sectors, infant industries and SMEs.

Protection should be considered for manufacturing products which are obtained from primary products and that are starting to penetrate international markets – and support to infant industries and SMEs.

The EAC Partner States should prioritize Services negotiations since a significant percentage of EAC comparative advantages lie in the services sector.

The careful drafting of implementation strategies will also be crucial to implement obligations arising from negotiated Agreements in order to benefit from them.

## 4.0 EAC LEGAL AND INSTITUTIONAL FRAMEWORK FOR TRADE NEGOTIATIONS AND IMPLEMENTATION

### 4.1 Legal Framework

The EAC legalframework consists of the Treaty, the Protocol, and the EAC laws enacted by the East African Legislative Assembly (EALA), regulations and directives of the Council, relevant principles of the international law and applicable decisions made by the East African Court of Justice.

At the regional level the Directorate of Customs and Trade is responsible for initiating trade policy while at the national level Coordinating Ministries are responsible for implementation.

Negotiations between the EAC and third parties should be based on common negotiating positions developed at the regional level. The EAC positions in the negotiations will be presented by the representative of the EAC Summit Chair.

Agreements entered into between the EAC and third parties are ratified for implementation by individual EAC Partner States. The process is coordinated by the EAC Secretariat.

### 4.2 Institutional Framework

The current institutional framework of the EAC is made up of EAC policy organs and national institutions. With regard to Trade, the Sectoral Council on Trade, Industry, Finance and Investment is responsible for policy decisions, the Directorate of Customs and Trade coordinates the policy development and the EAC Coordinating Ministries and line ministries in the Partner States are responsible for coordination and implementation.

The Agreement entered into between the EAC and Third Parties will be negotiated, monitored and implemented through the current EAC institutional structure and where circumstances demand, a specialised institutional structure will be set up to ensure an effective follow up of the commitments under an Agreement, as well as to promote the progressive achievement of compatibility of regulatory regimes, as appropriate.

The respective coordination committees will regularly report to the Sectoral Council on Trade, Industry, Finance and Investment (SCTIFI) on the progress made in negotiations and implementation of Agreements. The SCTIFI, accordingly, may make recommendations to the Council on possible additional negotiating directives on any issue, or implementation.