Tax Alert

East African Community – Extension of Preferential Tariff Treatment

Job Kabochi
Partner
job.kabochi@pwc.com
+254 20 285 5653

Maurice Mwaniki
Associate Director
maurice.mwaniki@pwc.com
+254 20 285 5334

Maureen Agutu
Manager
maureen.agutu@pwc.com
+254 20 285 5934

Lorna Onduu
Senior Associate
lorna.onduu@pwc.com
+254 20 285 5597

Introduction

On 15 September 2020, the East Africa Community ("EAC") published EAC Gazette Notice No. 17 of 2020 ("the Gazette"). The Gazette highlights changes effected by the Council of Ministers ("the Council") to the East African Community Customs Management Act, 2004 ("EACCMA") and the East African Community Common External Tariff ("EAC CET").

The Council vide Legal Notice No. EAC/180/2020 granted the Republics of Burundi, Rwanda, Uganda and Kenya a stay of application of the EAC CET on originating goods imported from the Common Market for Eastern and Southern Africa ("COMESA") from 1 January 2020 up to 30 June 2021. In addition, the Council granted the United Republic of Tanzania a similar stay of application with respect to originating goods imported from Southern African Development Community ("SADC") from 1 January 2020 up to 30 June 2021.

Section 112 (2) of EACCMA provides for the application of Preferential rates on goods

imported from COMESA and SADC into the EAC which expired on 31 December 2019.

We set out herein some of the key changes affecting the EAC region as a whole and individual Partner States.

Background on Preferential tariff treatment of goods in the EAC

The EAC Partner States being in a Customs Union, apply a Common External Tariff for goods originating from outside the EAC. The EAC CET has a 3-band import duty structure which is reflective of the extent of value addition on the products; namely raw materials at 0%, intermediate goods at 10% and finished products at 25%.

When the EAC was established the Partner States recognized they were members of Regional Economic Communities ("RECs") that is COMESA and SADC. Kenya, Uganda, Rwanda and Burundi are members of COMESA; and Tanzania is a member of SADC. These two RECs have binding commitments on Preferential tariff treatment of originating goods amongst Member States. In recognition of such commitments and the need not to fall afoul of the same, Article 37(1) and (3)

of the Protocol on the Establishment of the East African Customs Union obliges Partner States to adhere to existing commitments that they may have in multilateral and international organizations.

Further, section 112 (2) of EACCMA provides that Preferential tariff treatment shall be applied to goods imported under COMESA and SADC arrangements in the Partner States. In addition, Section 112 (2) of EACCMA provided that the Preferential rates would not apply after 31 December 2008.

Section 112 (2) of EACCMA has however been amended, by the East African Legislative Assembly (EALA), from time to time to extend this timeline with the last extension having expired on 31 December 2019. The extensions have been granted to allow for conclusion of negotiations and coming into force of the COMESA-EAC-SADC Tripartite Free Trade Area (TFTA).

We note that during a meeting held on 31 May 2019 the Sectorial Council on Trade, Industry, Finance and Investments (SCTIFI) considered a proposal to amend Section 112 (2) of EACCMA by removing the restriction on goods imported from COMESA and SADC.

This was in recognition that there were ongoing negotiations on the TFTA and the African Continental Free Trade Area (AfCFTA). Upon further consultations by EAC Partner States on the proposed amendment of Section 112 (2) of EACCMA it was agreed to request the EALA to grant a further extension to 31 December 2023.

On 11 September 2020 the SCTIFI held an extraordinary meeting where it noted there were challenges encountered while undertaking the amendment procedures to Section 112 (2) of EACCMA, and recommended for a mechanism that would enable the Partner States grant Preferential tariff treatment for goods originating from COMESA and SADC.

Accordingly, it was agreed that a stay of application of the EAC CET be granted to the Partner States on goods imported from COMESA and SADC subject to finalization of the amendment to Section 112 (2) of EACCMA. The stay of application was issued vide Legal Notice No. EAC/180/2020 which is applicable from 1 January 2020 to 30 June 2021.

Our Perspective

A strict reading of Section 112 (2) of EACCMA can be interpreted to imply that by not extending the period for application of COMESA and SADC Preferential treatment there is no legal basis to grant Preferential rates on originating goods from COMESA and SADC.

Despite this provision in EACCMA, it is important to note that, Article 37 of the Protocol for the establishment of the East African Customs Union recognizes mutual Preferential tariff arrangements. Article 37 obliges Partner States to honor their commitments in respect of other multilateral and international organizations to which they belong.

Further, COMESA and SADC Member States are obligated by the respective treaties to adhere to the provisions of the agreements, including honoring Preferential treatment under the said treaties. By not honoring Preferential treatment arrangements Partner States would jeopardize trade as other Member States may reciprocate by denying goods from EAC Partner States Preferential rates when being imported into COMESA and SADC Member States.

The stay of application of the EAC CET on goods originating from COMESA and SADC is a welcome relief as it will facilitate trade as envisaged under the agreements. It will also avert trade disputes amongst EAC-COMESA-SADC states.

It is important to note that the stay of application of the EAC CET rate on originating goods imported from COMESA and SADC has been backdated to be effective from 1 January 2020. This is to ensure the period provided under Section 112 (2) of EACCMA is fully covered, following its expiry on 31 December 2019.

It is expected that during the intervening period the EALA will consider the proposal by the SCTIFI to amend Section 112 (2) of EACCMA in order to align with Article 37 of the Protocol for the establishment of the East African Customs Union.

This will ensure in future there is no lacuna and interpretation differences which could disrupt trade between the EAC-COMESA-SADC states.

Duty remission approvals to Kenyan manufacturers

In exercise of the powers conferred under Section 140 of EACCMA, the Council has approved remission of duty on the following raw materials and industrial inputs for a period of one year:

No.	Item description	Applicable duty rates under remission
1.	Duplex board, cover board, folding box board of HS code 4810.92.00, wood free paper of HS code 4802.55.00, Newsprint paper of HS code 4801.00.90, Manilla board of HS code 4802.58.00, uncoated wood free paper of HS code 4802.57.00, art paper of HS code 4810.13.00	0%
2.	Sugar for industrial use of HS code 1701.99.10	10%
3.	Liquid glucose of HS code 1702.30.00	0%
4.	Splints of HS code 4421.99.10, Skillets of HS code 4819.20.10, sack kraft paper of HS code 4804.21.00, wrappers (sheet form) of HS code 4823.90.10, scrap glue of HS code 3503.00.00, wrappers (reel form) of HS code 4811.90.00	0%
5.	Various input of raw materials for manufacture of goods for export of HS codes 4804.11.00, 4805.19.00, 4805.24.00, 4805.91.00, 4805.92.00, 1108.12.00, 4819.10.00, 4804.21.00, 4810.19.00, 4808.40.00, 3923.90.90, 3923.21.00, 3923.10.00, 4804.31.00, 4804.51.00, 4805.19.00, 2914.40.00, 4810.13.00, 3926.90.97, 4811.59.90, 2106.90.20, 7010.90.00	0%
6.	Various inputs for the manufacture of footwear for export of HS codes 3919.90.90, 5112.90.00, 5806.39.00, 5407.10.00, 5407.44.00, 5903.90.00, 3926.90.90, 8308.90.00, 6406.90.00	0%
7.	Polyester satin and polyester chiffon of HS code 5407.42.00	0%
8.	Various inputs for manufacture of filters of HS codes 7209.90.00, 7212.20.00, 7210.30.00, 7314.50.00, 3926.90.90, 4016.93.00, 7320.90.00, 7217.90.00, 3909.50.00	0%
9.	Raw materials for manufacture of leaf springs of HS code 7228.30.00	0%
10.	Various inputs used in the manufacture of baby diapers and sanitary pads of HS codes 5603.11.00, 3920.10.90, 4803.00.00, 5903.90.00, 3506.91.00, 5402.44.00, 3906.90.00, 6305.33.00, 4703.21.00, 3919.10.00	0%
11.	Groats & meal of wheat of HS code 1103.11.00	0%
12.	Various inputs for manufacture of pesticides and acaricides of HS codes 2710.12.20, 2707.50.00, 3402.13.00, 3402.11.00, 3402.19.00, 2519.90.00, 2811.19.00, 2306.90.00, 1404.90.00, 4823.90.90, 4823.20.00	0%

Additionally, the following approved Kenyan manufacturers have been granted remission of duty of 0% up to 30 June 2021:

- Manufacturers dealing in the importation of raw materials and various inputs for the manufacture of essential medical products and supplies such as face and surgical masks; and
- Manufacturers dealing in importation of specified quantities of inputs used in manufacture of energy saving stoves.

Changes affecting the other EAC Partner States

Approved stay of application

- **Uganda:** The Council has approved the Republic of Uganda's stay of application of EAC CET rate of 25% to apply a duty rate of 0% on Lithium Ion of HS code 8507.60.00 up to 30 September 2020.

Approved remission of duty

- **Rwanda:** The Council has granted Rwanda a remission of duty, hence apply a duty rate of 0% on raw materials and industrial inputs of HS code 1511.9040 used in the manufacture of soap. This remission of duty is up to 30 June 2021.
- **Rwanda:** The Council granted Rwanda a remission of duty, hence apply a duty rate of 0% on industrial inputs of various HS codes used in the manufacture of granite tiles and slabs. This remission of duty is up to 30 June 2021.
- **Uganda:** The Council has granted Uganda a remission of duty, hence apply a duty rate of 0% on inputs of HS code 8518.22.00 used to assemble speakers. The remission of duty is up to 30 June 2021.

Revocation of stay of application

- **Uganda:** The Council has revoked the stay of application granted to the Republic of Uganda on HS code 3919.10.00 & HS Code 3919.90.10 under item No. 10 which pertained to importation of self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes of plastics and the whole of Item No. 86 which pertained to importation of toothpaste and other mouth wash preparations in EAC Gazette Vol. AT 1 No 10 of 30th June, 2020 under Legal Notice EAC/69/2020.
- **Uganda:** The Council has revoked the stay of application granted to the Republic of Uganda to import specified items in the EAC Gazette Vol. AT 1 No. 10: Item Nos. 96, 106, and vide Legal Notice No. EAC/70/2020 of 30 June 2020. The revocation pertains to importation of items such as bread spreads, mixes and doughs for preparations of bakers' wares and specified sensitive items for the Republic of Uganda.

Deferred implementation introduced in earlier Gazette Notices

The following amendments have been made to defer the implementation of duty remission introduced by the Gazette Notice No. 10 of 2020 to 1 October 2020:

- Importation of wire of iron or non-alloy steel by both Kenya and Uganda. Kenya was to apply a stay of application of the EAC CET rate of 10% and apply a duty rate of 25% for one year while Uganda was to apply a stay of application of the EAC CET rate and apply a duty rate of 35% or USD 350/MT whichever is higher for one year.

The text under the table to Legal Notice No. EAC/117/2020 introduced by the Gazette Notice No. 11 of 2020 which provided that approved manufacturers in Tanzania dealing with the importation of RBD palm for the manufacture of soap, has been deleted and replaced with:

"The sale of the above finished products shall be subject to the following condition:

In the event that such goods are sold in the Republics of Kenya, Uganda and Burundi, such goods shall attract duties, levies and other charges provided in the EAC Common External Tariff."

Conclusion

This alert only highlights the key trends and changes introduced by the Gazette Notice.

Please feel free to contact your usual PwC contact or any of our Customs experts listed herein should you wish to discuss this further.