

COMESA BUSINESS COUNCIL STATEMENT

A PRIVATE SECTOR POSITION ON CUSTOMS DUTIES LEVIED BY KENYA ON COMESA ORIGIN PRODUCTS.



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The Common Market for Eastern and Southern Africa (COMESA) established a Free Trade Area (FTA) on 31st October 2000, granting preferential tariffs to products of COMESA origin. Kenya is a member of the COMESA FTA and key driver of trade within the region.

On the 8th of September 2020, the COMESA business community awoke to a situation where non preferential customs duties were applied on COMESA origin goods by the Kenyan customs authorities. CBC has received complaints from businesses in several COMESA countries highlighting that their products are stuck at the various ports of entry in Kenya. Further concerns are on cancellation of pre-existing orders due to the measures imposed.

This has also affected non- COMESA countries who have enjoyed the preferential treatment given by the EAC, within the framework of the COMESA, EAC, SADC Tripartite Free Trade Area (TFTA) in anticipation of the implementation of the agreement. The said decision expired on the 30th December 2019.

The CBC recognizes and appreciates the efforts and progress made by COMESA Secretariat, the Kenyan Authorities and private sector associations, to resolve the above.

We have been informed that an EAC policy meeting held on the 13th September 2020, agreed on a stay of application of the EAC Common External Tariff (CET) on goods from COMESA and SADC from January 2020 up to June 2021, subject to finalization of the said provision. The decision is to be gazetted to enable implementation. Meanwhile, Kenya will continue to trade with COMESA and SADC members in accordance with pre-existing trade arrangements.

However, to date the stay of application has not yet been gazetted, therefore the duties are still applied. Companies have been informed that goods recorded in the system since the 8th of September are still required to pay customs duties as the preferential treatment will be applied only after the issuance of the gazette.

Kenya is a key trading partner within COMESA and a strong driver of intra-regional trade. Several COMESA businesses and investors have made decisions such as development of manufacturing and distribution hubs within the country and region, based on Kenya's membership in the COMESA FTA. This restrictive measure will likely have an adverse effect on goods in transit, imported from COMESA into Kenya, and goods destined to the rest of the region and internationally.

In view of the above, the CBC continues to engage with COMESA and our partners in Kenya, to address the above business impediment which has already significantly impacted operations and raised unprecedented costs to industries in the region. The COMESA secretariat has informed the business community of continuous engagement and collaboration with the government of Kenya to swiftly resolve the above matter.

Recognizing the efforts to date, the CBC therefore recommend the following actions;

Issue 1. Consideration of the COMESA Rules.

The COMESA FTA has been operational since 2000. The COMESA FTA is not contingent on the TFTA that was launched in 2015.

Recommendation 1: Notwithstanding the arrangements under the EAC or TFTA, Member States must uphold the arrangements under the COMESA FTA. Furthermore, the private sector requests member states to ensure alignment within the treaties of the EAC and COMESA countries, and to fully recognize the pre-existing arrangements.

Issue 2. Gazetting the Stay of application.

Recommendation 2: CBC notes the extension of the stay of application agreed upon by the government of Kenya and the EAC and encourages speedier gazetting of the said.

Issue 3. Notification and Reprieve to businesses.

The high cost to business in the short term has been grave with the cancellation of orders and accumulating demurrage among other issues, cognizant that the measure was applied instantly. The measure has resulted into increased costs to business, due to lack of prior notification. Furthermore, businesses are concerned that the gazette may only be effective after its issuance and not from the day that the restrictive measure was applied, namely the 8th September 2020.

Recommendation 3: Member States are urged to consult on and implement a grace period of at least one month to ensure business readiness and adjustment, prior to instituting trade measures, especially those with grave impact on business operations and cross border trade.

Recommendation 4: Kenyan authorities are urged to consider implementing the gazetted stay of application from the 8th of September 2020, instead of on the date of issuance of the said gazette. In this regard, the preferential duties based on the COMESA FTA, should still be applicable during the mentioned period.

This will respond to the concerns raised by businesses on the application of the restrictive measure during the lapsed period to the date of issuance of the gazette.

About the COMESA Business Council

The COMESA Business Council (CBC) is a business member organization bringing together a diverse group of businesses and associations in the region from 34 sectors in 21 countries of COMESA. CBC is the recognized regional apex body of the private sector in the region. CBC as the key advocacy driver for business, provides a link between the private sector and organs of the Common market. We seek to improve the competitiveness and deepen the participation of the private sector in regional and global trade, through advocacy, business facilitation and enterprise development. This includes prioritizing and taking specific advocacy strategies to address key business impediments and measures that affect our industries and have a direct bearing on the participation of our businesses in trading in the COMESA region.

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