



**EAST AFRICAN COMMUNITY**

# **FRAMEWORK FOR THE ATTAINMENT OF THE EAC SINGLE CUSTOMS TERRITORY**

**November 2013**

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## **PREAMBLE**

1. The attainment of the Single Customs Territory is premised on the need to consolidate the implementation of the Customs Union in accordance with the Treaty Establishing the East African Community and the Protocol on the Establishment of the East African Customs Union.
2. The main objective of the Single Customs Territory is to lower the cost of doing business and enhance intra EAC trade by integrating Customs clearance processes and reducing internal border controls.
3. The Summit of Heads of State at their meeting held in April 2012 among others, directed the Council to develop a mechanism for operationalization of a Single Customs Territory.
4. This Framework spells out the main pillars of the Single Customs Territory. The main pillars are Free Circulation of Goods, Revenue Management and Legal and Institution Framework. Under each pillar, preconditions and principles are provided that will guide the implementation of the Single Customs Territory.
5. A roadmap outlining the implementation activities of the Single Customs Territory forms part of the Framework.
6. The implementation of the Framework will be supported by operational instruments outlining clearance processes in Customs and other agencies.
7. The Single Customs Territory will be underpinned by a robust and effective ICT Systems to facilitate seamless flow of information between the Partner States and between the agencies.

**EAC**

**28<sup>th</sup> November 2013**

**Arusha, Tanzania.**

## **1. Introduction**

### **1.1. Background**

The Treaty for the Establishment of the East African Community was signed on 30th November 1999 and entered into force on 7th July 2000. According to Article 5(2) of the Treaty, the Partner States undertook to establish a Customs Union, a Common Market, a Monetary Union and ultimately a political federation in order to enhance their economic, social, cultural and political development and integration for their mutual benefit.

The Protocol on the Establishment of the EAC Customs Union was concluded in 2004 and implementation commenced in January 2005. The implementation of the Customs Union was envisaged to be progressive for a period of five years and so far a number of milestones have been achieved towards the attainment of the goal of a fully-fledged Customs Union. In this regard, in April 2012, the Summit in principle adopted the Destination Model of clearance of goods where assessment and collection of revenue is at the first point of entry and revenues are remitted to the destination Partner States; furthermore a High Level Task Force (HLTF) was established to develop key pre-conditions for implementing the destination model. This framework covers the key preconditions.

In the first chapter of the framework, the introduction, objectives and benefits are covered. The second chapter contains pillars of a Single Customs Territory namely, free circulation of goods, revenue management and legal and institutional framework. The third chapter is the roadmap to guide the implementation of SCT.

### **1.2. Objectives of the Customs Union**

The Protocol on the Establishment of the East African Community Customs Union spells out underlying principles and policies for the implementation of the Customs Union. The objectives of the Customs Union as provided for in Article 3 of the Protocol are to:

- a) further liberalize intra-regional trade in goods on the basis of mutually beneficial trade arrangements among the Partner States;
- b) promote efficiency in production within the Community;
- c) enhance domestic, cross border and foreign investment in the Community; and
- d) promote economic development and diversification in industrialization in the Community.

To further consolidate the goals of the Customs Union there is need to attain a Single Customs Territory.

### **1.3. The Single Customs Territory**

The Single Customs Territory can be described as the stage for full attainment of the customs union which is attainable by the removal of duties and other restrictive regulations and/or minimization of internal border customs controls on goods moving between Partner States with an ultimate realization of free circulation of goods.

The Single Customs Territory shall be guided by the fundamental and operational principles of the Community under Articles 6 and 7 of the Treaty.

#### **1.3.1. Objectives of the Single Customs Territory**

The objectives of the Single Customs Territory include:

- a) Reducing the cost of doing business;
- b) Enhanced application of cross border ICT systems and quality data collection at the regional level;
- c) Enhanced capacity and improved coordination of the private and public sector agencies;
- d) Enhanced compliance to regional standards and instruments.

#### **1.3.2. Benefits of the Single Customs Territory**

A Single Customs Territory will lead to:

- a) Reduced cost of doing business by eliminating duplication of processes.
- b) Reduced administrative costs and regulatory requirements.
- c) Enhanced capacity of the private and public sector agencies.
- d) Creation of a mechanism for prevention of smuggling at a regional level.
- e) Reduced risks associated with non-compliance on the transit of goods.
- f) Enhanced application of information technology (IT) and data collection at the regional level.
- g) Realization of economies of scale and optimal use of resources in clearance of goods in the EAC.

#### **1.3.3. Preconditions for the Single Customs Territory**

The SCT will be implemented subject to fulfillment of certain conditions. The preconditions for the SCT are stipulated within each pillar to enable their specificity and relevance.

## **2. Pillars of Single Customs Territory**

For purposes of this framework the EAC Single Customs Territory will be premised on the following pillars:

- a) Free circulation of goods;
- b) Revenue management systems; and
- c) Regional legal and institutional framework.

## **2.1 Free circulation of Goods**

Free circulation refers to the principle whereby goods originating from one Partner State to another and goods imported from outside the Customs Union once entered and released for home consumption are free to circulate within the Community.

The scope of free circulation of goods in this framework covers treatment of imported goods in the EAC, intra-EAC transfer of goods, export of goods from Partner States to markets outside the EAC, Port and Border Operations and trade facilitation.

### **2.1.1 Imports into the EAC**

The Common External Tariff (CET) applies to all goods imported into the EAC. Imported goods may be declared for direct home use, warehousing, temporary importation or transit through a Partner State:

#### **a) Goods for Direct home use**

Currently when goods destined to another Partner State arrive at the first point of entry they are declared as transit goods up to the internal borders where they are again declared for inland clearance in the destination country. This creates multiplicity in declaration of goods and bond requirements across the same customs union. Treating goods as transit contradicts the principle of the customs union where goods are supposed to be accorded free circulation within the territory.

The following principles shall apply under free circulation:

- i) Goods imported into the Customs Union, shall be entered only once at the country of destination and released at the first port of entry to the destination Partner State
- ii) Duty paid goods shall not change destination into another Partner State except where permission is granted by both the destination Partner State and the State where the goods are being entered for home use.
- iii) Where goods are allowed to change destination in (ii) above, the owner shall pay taxes due to the Partner State where the goods are to be consumed and claim refund from the Partner State where taxes were initially paid.
- iv) Duty paid goods released to the destination Partner State for home use shall be subjected to customs control through the cargo tracking system.

## **b) Warehousing**

Under the current regime, where goods for warehousing in a Partner State arrive in a Partner State other than the Partner State of destination, they are entered as transit up to the Partner State of destination through a multiple process at each internal border where bonds and customs documents are processed again. The goods are finally declared for warehousing upon arrival in the Partner State of destination.

The following principles shall apply under free circulation:

- i) A single regional bond system shall apply to enable movement of goods within the territory;
- ii) Goods shall be entered once for warehousing prior to or upon arrival at the first point of entry;
- iii) Goods may be warehoused in a Partner State other than the Partner State of destination; and
- iv) Goods may be removed from a bonded warehouse in one Partner State to a bonded warehouse in another Partner State under bond.

## **c) Transit**

Under the current transit regime, goods destined to other Partner States or non EAC States are entered for transit at each point of entry through a transiting state until they arrive at the last point of exit. This requires execution of multiple bonds at the various entry points.

The following principles shall apply under free circulation:

- i) Transit regime shall only apply to goods originating from foreign country and destined to a foreign country through the Partner States or a Partner State.
- ii) Goods in transit shall be entered only once at the first point of entry.
- iii) A single regional bond system shall apply on transit goods.
- iv) Transit goods shall be managed under a regional transit system
- v) Goods in transit may be entered for home use upon approval and payment of relevant duties in the Partner State where they shall be entered.

## **d) Temporary Importation**

Temporary importation refers to goods imported into a Partner State, conditionally relieved totally or partially from payment of duties. Such goods must be imported for a specific purpose and are supposed to be re-exported within a specified period and without having undergone any change except normal depreciation due to the use made of them. Currently, each Partner State is an independent customs territory and

temporary importation is handled as per Section 117 of the East African Community Customs Management Act, 2004 and EAC Customs Regulations 134 -138.

The following principle shall apply under free circulation:

Temporary imported goods shall be covered under a regional bond or other types of security as provided in the Customs law.

### **2.1.2 Intra-EAC transfer of goods**

Intra-EAC transfer of goods refers to transfer of duty paid goods and goods originating from the Partner States.

#### **a) Transfer of duty paid goods**

Goods which are imported and taxes paid in one Partner State are subject to customs duties when they are transferred to another Partner State. This results into double taxation.

The following principles shall apply under free circulation:

- (i) Goods which are transferred, in the same state as when they were first imported, from one Partner State to another shall be liable to customs duties where applicable.
- (ii) A special customs regime shall be developed for the management of duty paid goods transferred from one Partner State to another.
- (iii) A refund mechanism for duties on goods transferred from one Partner State to another Partner State shall be established.

#### **b) Ex-warehousing between Partner States**

Currently, goods ex-warehoused for transfer to another Partner State are entered for re-export at the Partner State where they are warehoused. Thereafter, the goods are entered for transit in subsequent States and are covered by a separate bond in each transit Partner State. They are eventually entered for home use or warehousing in the destination Partner State.

The following principles shall apply under free circulation:

- (i) Goods shall be entered in the destination Partner State for ex-warehousing for home use and be released for transfer to that Partner State from the Partner State where the goods are warehoused.
- (ii) Goods may be removed from a bonded warehouse in one Partner State to a bonded warehouse in another Partner State through a direct bond to bond transfer.



- (iii) where goods have been declared and duty paid as in (i) above such goods can be entered for home use in another Partner State other than the destination Partner State on approval by both Partner States.
- (iv) Where goods are allowed for home use in (iii) above, the owner shall pay taxes due to the Partner State where the goods have been consumed and claim refund from the Partner State where taxes were initially paid.

**c) Treatment of goods in Special Economic Zones, Export Processing Zones, Free Ports**

Goods may be imported into an Export Processing Zone (EPZ), Economic Zone or a Free port in any of the Partner States. Currently, goods imported to the Special Economic Zones (SEZs) and EPZs are treated as foreign territories within the EAC.

The following principles shall apply under free circulation:

- (i) Goods destined into SEZs or EPZs shall be entered in the country of destination prior or upon arrival at the first point of entry.
- (ii) Transfer of goods from first point of entry to SEZ or EPZ in a Partner State shall be covered under single regional customs bond guarantee framework.
- (iii) Imports of goods from an EPZ or SEZ in the SCT to a Partner State in the SCT shall be treated in accordance with Articles 25, 29, 30, 31 and 32 of the Protocol on the Establishment of the East African Community Customs Union.

**d) Temporary transfer**

- (i) Duty paid goods which are transferred from one Partner State to another for temporary use shall move under the following conditions;
  - a) Bond guarantee where there is high revenue risk.
  - b) Any other form of security where the risk is low
  - c) Free subject to some conditions in case of motor vehicles as provided in the Customs Regulations.
- (ii) In case of motor vehicles a regional temporary importation IT interconnectivity shall apply.

**e) Transfer of locally produced goods**

Goods produced in the region are not subjected to import duty when transferred to another Partner State if they meet the rules of origin. Such goods, however, are subject to domestic taxes (VAT, Excise and other levies) levied on international trade upon arrival at the internal borders. The process of clearing and payment for such goods hinders free circulation of goods.

Currently, when locally produced goods are transferred from one Partner State to another they are declared for export in the country of origin and then entered for transit until they reach the Partner State of destination. The goods are then entered for home use and domestic taxes paid. Goods which do not meet EAC rules of origin criteria are subject to import duties. The process of clearing locally produced goods at the internal borders, although there are no import duties, is the same as that of goods imported from outside EAC.

The following principles shall apply under free circulation:

- (i) Locally produced goods for transfer from one Partner State to another shall be entered only once in the destination Partner State and the information shall be transferred to the originating Partner State.
- (ii) Locally produced goods for transfer from one Partner State to another shall be monitored through a regional information system.
- (iii) It shall be an offence to divert goods for transfer in a country other than the country of destination.
- (iv) Locally produced goods may be entered for warehousing in destination Partner State.

**f) Movement of Exempted Goods and country specific remissions or stay of application of CET**

The Protocol on the Establishment of the East African Community Customs Union and the East African Community Customs Management Act, 2004 provides for exemption of goods and mandates Council to grant specific remission on imported goods. Goods granted country specific remissions and exemptions can pose a risk to revenue of other Partner States if they are diverted. Council decided that such goods if transferred between Partner States shall attract duty at CET rates.

The following principle shall apply:

The goods under this facility will be cleared under the warehousing regime upon arrival at the first point of entry and will move to the destination Partner State under a bond.

**2.1.3 Export of goods from Partner States to markets outside the EAC**

Exports refer to goods originating from the Partner States to markets outside the Single Customs Territory. Currently, the exporters prepare export entries and goods are dispatched under seal depending on the level of risk of the consignment.

The following principle shall apply under free circulation:

Exports from Partner States shall be covered by either a single regional bond guarantee and/or monitored by the Electronic Cargo Tracking System (ECTS) depending on the level of risk

#### **2.1.4 Port and Border Operations**

There are a number of agencies operating at the ports and borders with different mandates in the clearance of cargo. These include Customs, port / airport authorities, bureau of standards, public health, police, food and drug authorities, military, immigration, pest control bodies, radiation authorities, clearing agencies, shipping agencies, banks, transport, shipping and handling companies.

The following principles shall apply under free circulation:

- (i) Where the facilities have been established, One Stop Border Post (OSBP) model shall apply in accordance with the East African Community One Stop Border Posts Act, 2013.
- (ii) Multi agency Coordinated Border Management (CBM) model shall apply at the ports through a Single Window System. A mechanism for mutual recognition in respect of certificates and other administrative instruments issued by related agencies in Partner States shall be implemented;
- (iii) Partner States may have representation of their government and licensed agencies at the ports of entry or exit.

#### **2.1.5 Preconditions for the operationalization of free circulation of goods**

a) ICT requirements:

- (i) Compatible and interfaced Customs systems.
- (ii) All major customs stations must have functioning ICT systems.

b) Regional Cargo tracking systems.

c) Implementation of the Regional Customs Transit Guarantee Scheme (RCTGS) to enable the operationalization of a regional bond.

#### **2.2 Revenue management**

Partner States have agreed to adopt a destination principle where assessment and collection of revenue is at the first point of entry and revenues are remitted to the destination Partner States subject to the fulfillment of key pre-conditions. This principle is premised on advancement in the use of electronic technology for the assessment, payment and transfer of funds which does not necessitate physical carrying of cash and payment at the first point of entry.

The operationalization of the destination principle takes into account:

- a) Efficiency in clearance of goods
- b) Confirmation and notification of payments
- c) Tracking of goods after release from the first point of entry and
- d) Reconciliation of customs transactions among Partner States.

The following principles shall apply under revenue management:

- a) Taxes will be paid in the destination Partner State;
- b) Declaration process will be initiated in the destination Partner State;
- c) Goods will be released upon confirmation that taxes have been paid or appropriate customs procedures have been fulfilled and destination Partner State will notify the first point of entry Partner State online;
- d) Effective information and communication systems.

### **Pre-conditions for Revenue Management**

- a) ICT requirements:
  - i. Compatible and interfaced Customs systems
  - ii. All major customs stations must have functioning ICT system
- b) Implementation of the Regional Customs Transit Guarantee Scheme (RCTGS) to enable the operationalization of a regional bond.

## **2.3 Legal and institutional framework**

The implementation of the SCT will necessitate the review of some aspects of the current legal and institutional framework of the Customs Union.

### **2.3.1 Legal Framework**

The legal framework 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 Court.

At the regional level the Directorate of Customs is responsible for initiating the customs and related trade policy while at the national level Customs Administrations are responsible for revenue collection and accountability, enforcement of the EACCMA and human resources. At the national level, customs is administered under the revenue authorities through national legislations.

### **2.3.2 Institutional Framework**

The current institutional framework of the Customs Union is made up of regional policy organs and national institutions. With regard to Customs, the Council is responsible for policy decisions, the Directorate of Customs coordinates the policy

development and the Customs authorities in the Partner States are responsible for the day to day customs operations.

### 2.3.3 Institutional Structure for the Single Customs Territory

The current structure and establishment for management of the Customs Union at the EAC Secretariat consists of the Directorate of Customs and Trade which is facing shortage of human resources capacity. To effectively support the implementation of SCT, it is imperative to review both the current legal and institutional framework of the Directorates of Customs and Trade.

### 3. Road map for operationalization

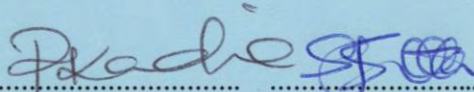
A Roadmap for the implementation of the SCT is as below:

S/ N	ISSUES	TIMELINES	RESPONSIBILITY
1.	Consideration of the draft SCT Framework by SCTIFI	November 2013	HLTF
2.	Adoption of Draft SCT Framework by Council	November 2013	SCTIFI
3.	Presentation of the SCT Framework to Summit	30 <sup>th</sup> November 2013	Council
4.	Commencement of implementation of the Framework	January 2014	Partner States / Secretariat
5.	Development of Customs Business Flows	Jan- March 2014	Secretariat
6.	Development of Enforcement and Compliance procedures	Jan- March 2014	Secretariat
7.	Develop solutions for interconnecting customs systems and Cargo tracking system	Jan- March 2014	Secretariat
8.	Develop a regional Bond management system.	Jan- March 2014	Secretariat
9.	Review of the capacity of the Directorate of Customs	Jan- March 2014	Secretariat
10.	Review existing laws to cater for ICT, Regional bond and working relationships	Jan- March 2014	Secretariat
11.	Develop Capacity Building and Change Management Interventions	Jan-March 2014	Secretariat
12.	Considerations of the TWGs reports by SCTIFI	April 2014	Secretariat
13.	Considerations of the proposal CMA amendment by SCTIFI and Legal and Judicial Affairs Sectoral Councils	April 2014	SCTIFI; Legal and Judicial Sectoral Council
14.	Submission of the proposed EAC CMA amendments to EALA	May 2014	Council, EALA
15.	Full operationalization of the SCT	June 30 <sup>th</sup> 2014	Partner States / Council

**DONE at Kampala, Uganda on the 28<sup>th</sup> day of November in the year Two Thousand and Thirteen.**

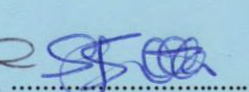
**The undersigned have appended their signatures hereto:**

For the Republic of  
Kenya



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