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EAST AFRICAN COMMUNITY SECRETARIAT

**DRAFT PROTOCOL
ON THE ESTABLISHMENT OF THE
EAST AFRICAN CUSTOMS UNION**

**Draft No 3
(Ref EAC/Customs Protocol/D3)**

**EAC SECRETARIAT
Arusha, Tanzania**

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REVISED DRAFT
PROTOCOL ON THE
ESTABLISHMENT OF THE EAST AFRICAN
CUSTOMS UNION

PURSUANT TO THE PROVISIONS OF ARTICLE 75 OF THE TREATY FOR THE ESTABLISHMENT OF THE EAST AFRICAN COMMUNITY, THE DETAILS FOR THE ESTABLISHMENT OF THE EAST AFRICAN CUSTOMS UNION ARE HEREBY SET FORTH:

PREAMBLE

WHEREAS the Republic of Kenya, the Republic of Uganda and the United Republic of Tanzania (hereinafter referred to as "the Partner States") signed the Treaty for the Establishment of the East African Community (hereinafter referred to as "the Treaty") on the 30th day of November, 1999;

WHEREAS:

- (a) Under the provisions of Articles 2 and 5 of the Treaty the Partner States undertake to, *inter alia*, establish among themselves a Customs Union, as a transitional stage to, and integral part of the Community;
- (b) Under the provisions of paragraph 2 of Article 75 of the Treaty the Partner States have determined that the establishment of a Customs Union shall be progressive in the course of a transitional period;

AND WHEREAS by the provisions of paragraph 7 of Article 75 of the Treaty the Partner States have agreed to conclude the Protocol on the Establishment of a Customs Union within a period of four years from the date of the signing of the Treaty;

AND WHEREAS by the provisions of paragraph 1 of Article 151 of the Treaty, the Partner States undertook to conclude such Protocols as may

be necessary in each area of co-operation which shall spell out the objectives and scope of, and institutional mechanisms for co-operation and integration;

AND WHEREAS the Partner States, while being aware that they have reached different stages of development with each Partner State having a comparative advantage on trade in some commodities, are resolved and determined to reduce existing imbalances and to foster and encourage the accelerated and sustained development of the Community;

AND WHEREAS the Partner States are desirous to deepen and strengthen trade among themselves and are resolved to abolish tariff and non-tariff barriers to create the most favourable environment for the development of the freest possible regional and international trade;

RECOGNIZING that a Customs Union would enhance economic growth and development of the customs union area as a whole;

BEING CONCIIOUS of their obligations, as Contracting Parties to the Marrakesh Agreement Establishing the World Trade Organisation (the WTO Agreement) 1994, to contribute, in the common interest, to the harmonious development of world trade;

BEING CONCIIOUS of their other individual obligations and commitments under other regional economic partnerships;

RESOLVING to act in concert for the establishment of a Customs Union;

AGREE AS FOLLOWS:

[PART A

INTERPRETATION

ARTICLE 1
Interpretation

1. In this Protocol, except where the context otherwise requires:

"Common Customs Area" means the geographical area of the Republic of Kenya, the Republic of Uganda and the United Republic of Tanzania and any other country granted membership to the Community under Article 3 of the Treaty;

"common external tariff" means an identical rate of tariff imposed on goods imported from third countries;

"Community" means the East African Community established by Article 2 of the Treaty;

"community tariff" means
(To be defined by consensus;

Uganda proposes the following definition:

"community tariff" means an interim tariff imposed on goods originating from Kenya to Uganda, and from Kenya to Tanzania");

"co-operation" includes the undertaking by the Partner States in common jointly or in concert of activities undertaken in furtherance of the objectives of the Community as provided for under the Treaty or under any contract or agreement made thereunder or in relation to the objectives of the Community;

"Council" means the Council of Ministers of the Community established by Article 9 of the Treaty;

"countervailing duty" means a specific duty levied for the purposes of offsetting a subsidy bestowed directly or indirectly upon the manufacture, production or export of that product;

(Alternative WTO definition:

"countervailing duty" means a special duty levied for the purpose of offsetting any subsidy bestowed directly or indirectly upon the manufacture, production or export of any merchandise as provided for in paragraph 3 of Article VI of the General Agreement on Tariffs and Trade, 1994");

(Uganda is in favour of the WTO definition which, in her case, would be a reference to the regulations on subsidies and countervailing measures);

"Countervailing measures" means actions taken to counteract the effect of subsidies;

"customs and excise authority" means a Government of the Partner State or a body or an institution as may be designated as such authority by a Government of a Partner State;

"customs clearing agent" means a person who is licensed in any of the Partner States to provide a service at a fee, in connection with documentation and customs clearance of import and export of consignment of goods;

(Alternative definition from the Revised Kyoto Convention on Simplification and Harmonisation of Customs procedures:

"customs clearing agent" means any third party who carries on the business of arranging for the customs clearance of goods on behalf of importers and exporters"

(Uganda is in favour of the Revised Kyoto Convention definition);

"customs duties" means import or export duties and other charges of equivalent effect levied on goods by reason of their importation or exportation on the basis of legislation in the Partner States and includes suspended duties and* fiscal duties or taxes where such duties or taxes affect the importation or exportation of goods but does not include internal duties and taxes such as sales, excise duties** turnover or consumption taxes, imposed otherwise than in respect of the importation or exportation of goods;

"customs law" means all the statutory provisions applied by the customs administration of a Partner State in the importation, exportation, transit or movement of goods whether or not they involve the collection of duties or taxes (or security thereof), on the enforcement of prohibitions, restrictions or exchange control regulations or on any other customs regime;

"Customs Management Authority" means the institution established under Article 31 of this Protocol or such other institution as the Council may establish and vest with authority in accordance with paragraph (3) of Article 75 of the Treaty for the purpose of administering the Customs Union and addressing any matters arising out of this Protocol;

*Uganda proposes the deletion of the underlined words

**Inclusion of excise duties has been proposed by Kenya

"customs offence" means any breach or attempted breach of customs law;

"customs territory" means the territory in which the customs law of a Partner State applies in full;

"Customs Union" means the East African Community Customs Union established by Article 2 of this Protocol;

"domestic market" means an East African Community market;

"duty drawback" means a refund of all or part of any excise or import duty in respect of goods confirmed to have been exported or used in a manner or for a purpose prescribed as a condition for granting duty drawback;

"equitable share" means

"export duties" means customs duties and other charges of equivalent effect levied on goods by reason of their exportation;

"export processing zone" means a part of the territory of a Partner State where any goods introduced into that Partner State are considered in so far as import duties are concerned, as being outside its customs territory and are not subject to the usual customs control;

"export promotion" means an undertaking in the facilitation of manufacturing for purposes of export;

(Uganda proposes the following alternative definition

"export promotion" means an undertaking in the facilitation of production on manufacturing for purposes of exports").

"financial year" means a financial year of the Community;

"foreign country" means any country other than a Partner State;

"goods declaration" means a statement made in the form prescribed by the customs administration by which the persons concerned furnish the particulars which the customs administration requires to be declared for purposes of the application of the relevant customs procedure;

"goods in-transit" means goods being conveyed between two Partner States or between a Partner State and a foreign country and passing through another Partner State or Partner States and "transit" shall be construed accordingly;

"import" with its grammatical variations and cognate expressions means to bring or cause to be brought into the territories of the Partner States from a foreign country;

"import duties" means customs duties and other charges of equivalent effect levied on goods by reason of their importation;

"importing Partner State" means a Partner State into which goods are imported;

"inequitable share" means

"international standards" means standards that are adopted by international standards organisations and made available to the public;

"manufacturing under bond" means a facility extended to manufacturers to import plant, machinery, equipment and raw materials tax free, exclusively for use in the manufacture of goods for export under bond;

"most favoured nation treatment" means any advantage, favour, privilege or immunity granted by any Partner State to any product originating in or destined for any foreign country and shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all the other Partner States;

"non-tariff barriers" means administrative and technical requirements imposed by a state in the movement of goods;

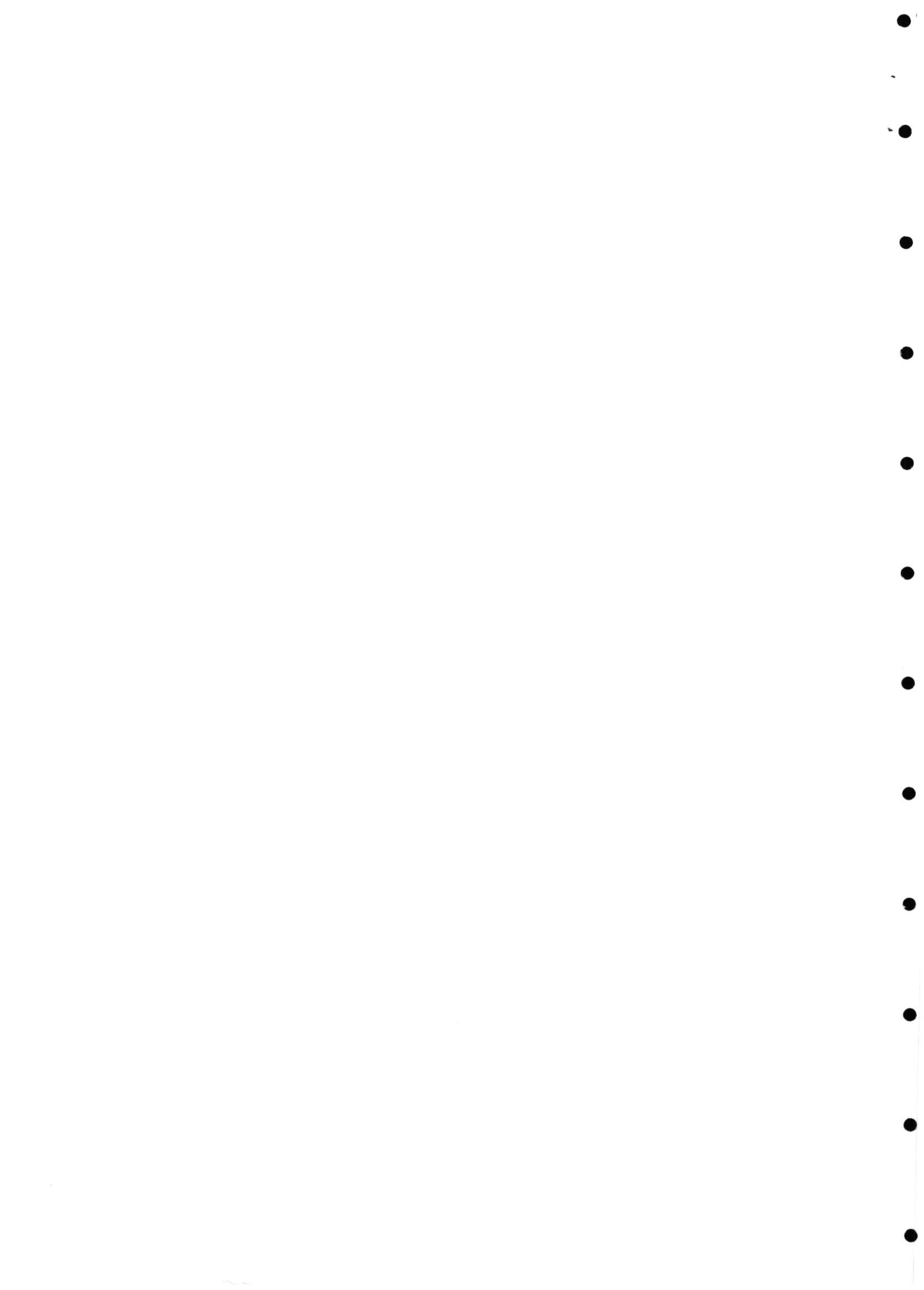
(Alternative WTO definition

"non tariff barriers:" means laws and regulations other than tariffs which impede international trade;

Kenya is in favour of the WTO definition).

Uganda proposes a merger of the two definitions

"other charges of equivalent effect" means any tax, surtax, levy or charge imposed on imports and not on like locally produced products and does not include fees and similar charges commensurate with the cost of services rendered;



"Partner States" means the Republic of Kenya, the Republic of Uganda and the United Republic of Tanzania and any other country granted membership to the Community under Article 3 of the Treaty;

"person" means a natural or legal person;

"primary production" means

"principle of asymmetry" means the principle which addresses variances in the implementation of measures in an economic integration process for purposes of achieving a common objective;

(This definition is subject to the outcome of a study commissioned in August 2002)

"Protocol" means this Protocol;

"receiving Partner State" means a Partner State into which re-exports consigned from another Partner State are imported for domestic use in that Partner State;

"re-exports" means goods which are imported and kept under bonded warehouses for re-exportation from the importing Partner State to the receiving state;

"safeguard measures" means the safeguard measures taken by any Partner State as provided under this Protocol;

(On "Safeguard measures" Uganda proposes that:

(i) the safeguard measures to be applied and the manner in which they will be applied should be elaborated; This should be attached as an annex to Article 33;

(ii) the safeguard clause should be extended to cover not only the economy, but also an industry that may suffer injury as a result of implementation of the Protocol; and

(iii) that there should be provision for protection of the infant industry in the same clause).

"Secretariat" means the Secretariat of the Community established by Article 9 of the Treaty;

"subsidy" means a financial contribution by Government or any public body within the territory of a Partner State or where there is any form of income or price support in the sense of Article XVI of General Agreement on Tariffs and Trade, 1994;

Uganda proposes that since the WTO Agreement has been domesticated, it should be an annex to this Protocol and in this definition reference should be to "the Regulations"

"tariff" means any customs duty on a particular class of imports or exports;

"third party" means any person who deals directly with the customs, for and on behalf of another, person, in connection with the importation, exportation, movement or storage of goods;

"trade facilitation" means the co-ordination and rationalisation of trade procedures and documents relating to the movement of goods from their place of origin to their destination;

"trade procedures" means activities related to the collection, presentation, processing and dissemination of data and information concerning all activities constituting international trade;

"Treaty" means the Treaty Establishing the East African Community.

2. In this Protocol, a reference to a law or protocol shall be construed as reference to the law or protocol as from time to time amended, added to or repealed.

(The High Level Task Force has required that definitions in this Article, wherever applicable, correspond with those in Article I of the Treaty; there is need for the High Level Task Force to further require that those definitions in the annexes to this Protocol which are borrowed from WTO and other agreements do also conform to this general requirement.

Definitions of the terms which are not provided for in the Treaty will be considered in the context of the work of the High Level Task Force on the Implementation of Article 75(7) of the Treaty.)

PART B

ESTABLISHMENT

ARTICLE 2
Establishment of the Customs Union

1. (a) In order to promote the achievement of the objectives of the Community as set out in Article 5 of the Treaty and in accordance with the provisions of this Protocol, the Partner States, in the field of trade liberalisation and development hereby establish a customs union as an integral part of the Community.

(b) The customs union hereby established shall be called the East African Community Customs Union.
- 2 Within the customs union, customs duties and other charges of equivalent effect imposed on imports shall be eliminated save as is provided in this Protocol. Non-tariff barriers to trade among the Partner States shall also be removed. Furthermore, a common external tariff in respect of all goods imported into the Partner States from foreign countries shall be established and maintained.
3. The Customs Union shall inter-alia include the following elements:
 - (a) The application of the principle of asymmetry;
 - (b) The elimination of internal tariffs and other charges of equivalent effect;
 - (c) The elimination of non-tariff barriers;
 - (d) Establishment of a common external tariff;
 - (e) Rules of Origin;
 - (f) Dumping;
 - (g) Subsidies and countervailing duties;
 - (h) Security and other restrictions to trade;
 - (i) Competition;
 - (j) Duty drawback, refund and remission of duties and taxes;
 - (k) Customs co-operation;
 - (l) Re-exportation of goods;
 - (m) Simplification and harmonisation of trade documentation and procedures;
 - (n) Exemption regimes; and
 - (o) Harmonised Commodity Description and Coding System.

ARTICLE 3

Objectives and scope of customs co-operation*

1. The provisions of this Part shall apply to any activity being undertaken in co-operation among the Partner States in the field of customs management and the organisation of customs and shall include in particular:

- (a) matters concerning the application of Community tariff** treatment for their exports and imports;
- (b) the simplification and harmonisation of trade documentation, customs regulations and procedures with particular reference to such matters as the valuation of goods, tariff classification, the collection of customs duties, temporary admission, warehousing, re-exports, frontier trade and export drawback;
- (c) the prevention, investigation and suppression of customs offences;
- (d) national and joint institutional arrangements; and
- (e) training facilities and programmes for customs officials.

2. For purposes of sub-paragraph 1(a) above, the Partner States agree to co-operate to:

- (a) adopt uniform, comprehensive and systematic tariff classification of goods with a common and specific basis of description and interpretation in accordance with internationally accepted standards;
- (b) adopt a standard system of valuation of goods based on principles of equity, uniformity and simplicity of application in accordance with internationally accepted standards and guidelines;
- (c) agree on common terms and conditions governing temporary importation procedures including the list or range of goods to be covered and the nature of manufacturing or processing to be authorised;

* The final text on Objectives and Scope of co-operation will be determined after the conclusion of the Study on the Legal, Institutional and Administrative Structure of the Customs Union.

** The term "Community tariff" should be inferred to terms used in the Treaty or otherwise be defined by consensus.

- (d) implement the customs requirements for the re-exportation of goods;
- (e) implement the customs requirements for the transit of goods as shall be prescribed;
- (f) harmonise and simplify customs formalities and documentation;
- (g) harmonise the customs requirements for the control of warehoused goods; and
- (h) adopt common procedures for the establishment and operation of export processing zones, free ports, customs supervised factories and duty drawbacks.

(The Partner States agree that:

- (a) the drafting of Article 3 should await the conclusion of the Study on the Legal, Institutional and Administrative Structure of the Customs Union;***
- (b) the final draft of this provision should be transferred to stand alone as Part C of the draft Protocol.)***

ARTICLE 4

Communication of customs information

The Partner States shall exchange information on matters relating to customs and more particularly to the following:

- (a) changes in customs legislation, procedures, duties and commodities subject to import restrictions and prohibitions; and
- (b) the prevention, investigation and suppression of customs offences.

(The Partner States will work out modalities on the exchange of data and information on the BOFFIN and ASYCUDA computer systems)

(The Partner States agree that:

- (a) *the drafting of Article 4 should await the conclusion of the Study on the Legal, Institutional and Administrative Structure of the Customs Union;*
- (b) *the final draft of this provision should be transferred to Part C of the draft Protocol.*

PART C*
CUSTOMS ADMINISTRATION

ARTICLE 5
Trade facilitation

The Partner States agree to initiate trade facilitation programmes aimed at:

- (a) reducing the number of documentation and the volume of paper work required in respect of trade among the Partner States;
- (b) adopting common standards of trade procedures within the Community where international requirements do not suit the conditions prevailing among the Partner States;
- (c) ensuring adequate co-ordination between trade and transport facilitation within the Community;
- (d) keeping under review the procedures adopted in international trade and transport with a view to simplifying and adopting them for use by the Partner States;
- (e) collecting and disseminating information on trade facilitation and documentation;
- (f) promoting the development and adoption of common solutions to problems in trade facilitation among the Partner States; and

* The Partner States agree that the current Part C should be worked out after the conclusion of the Study on the Legal, Institutional and Administrative Structure of the Customs Union.

- (g) initiating or promoting the establishment of joint programmes for the training of personnel engaged in trade facilitation among the Partner States.**

ARTICLE 6

Trade documentation and procedures

The Partner States agree to simplify and harmonise their trade documentation and procedures in accordance with the provisions of this Part so as to facilitate trade in goods and services within the Community by:

- (a) reducing to an agreed minimum the number of trade documentation and copies thereof;
- (b) reducing to an agreed minimum the number of national bodies required to handle documentation referred to in paragraph (a) of this Article; and
- (c) harmonising the nature of the information to be contained in documentation referred to in paragraph (a) of this Article.

ARTICLE 7

Standardization of trade documentation and information

1. The Partner States agree, to design and standardize their trade documentation and the information required to be contained in such documentation in accordance with internationally acceptable standards, practices and guidelines, and taking into account their possible use in computer and other automatic data processing systems.
2. For the purpose of the simplification, harmonisation and standardization of customs regulations, documentation and procedures, and their computerisation, a customs data bank shall be established at the Secretariat.
3. For the purpose of implementing the provisions of this Article, the Partner States shall establish community trade facilitation mechanisms within the Partner States.

* It is proposed that pending the conclusion of the Study on the Legal, Institutional and Administrative Structure of the Customs Union paragraphs (c), (d) and (g) be deleted. It is also proposed that Articles 5 and 6 be merged into one provision

(The establishment of trade facilitation mechanisms will await the conclusion of the Study on the Legal, Institutional and Administrative Structure and Customs.)

ARTICLE 8

Simplification and harmonisation of trade documentation

1. The Partner States shall apply the provisions of Articles 5, 6 and 7 of this Protocol in order to simplify and harmonise their customs regulations, procedures and documentation to ensure the effective application of the provisions of this Part and to reduce the costs of and facilitate the speedy movement of goods and services across their borders.

2. For the purposes of this Article, the Partner States agree to adopt the harmonised customs documentation specified in Annex I to this Protocol.

(Pending work which awaits the determination of the future administrative structure of the Customs Union is on the following matters:

- ***Financial procedures;***
- ***Reporting and returns;***
- ***Review of the EAC Single Bill of Entry together with the Instructions Manual;***
- ***Review of other Customs forms such as F-series and P-series;***
- ***Review of registers;***
- ***Procedures for customs preventive services***
- ***Cross-border transfer of duty paid goods; and***
- ***All other Customs procedures dependent on the nature of the Customs establishment.***

Completion of this Part C also awaits the completion of the Study on the Legal, Institutional and Administrative Structure of the Customs Union).

3. The Council shall, from time to time, examine the harmonised customs documentation referred to in paragraph 2 of this Article and make such amendments as may be deemed necessary.*

* Articles 5, 6, 7 and 8 be merged after updating of Article 8.

(Articles 5, 6, 7 and 8 could be merged after updating of Article 8. Uganda has reservations on this proposal).

ARTICLE 9

Commodity description and coding system

1. The Partner States agree to harmonise their customs and statistical nomenclature and standardise their foreign trade statistics to ensure comparability and reliability of the relevant information.
2. The Partner States hereby adopt the harmonised common commodity description and coding system specified in Annex II to this Protocol.

(Pending work is on the formulation of explanatory notes in respect of which the High Level Task will be studying the WCO and the EU explanatory notes; Completion also depends on agreement of the Common External Tariff).

3. The Council shall, from time to time, examine the commodity description and coding system referred to in paragraph 2 of this Article and make such amendments as may be deemed necessary.

ARTICLE 10

Prevention, investigation and suppression of customs offences

1. The Partner States agree to co-operate in the prevention, investigation and suppression of customs offences.*
2. For the purposes of paragraph 1 of this Article, the Partner States agree to:
 - (a) exchange lists of goods and publications the importation of which is prohibited in their respective territories;
 - (b) prohibit the exportation of goods and publications referred to in sub-paragraph (a) of this paragraph to each other's territories;
 - (c) exchange among themselves lists of goods known to be the subject of illicit traffic between their territories and maintain special surveillance over the movement of such goods;

* Kenya proposes an enumeration of Customs Offences.

- (d) consult each other on the establishment of common border posts and take such steps as may be deemed appropriate to ensure that goods exported or imported through common frontiers pass through the competent and recognised customs offices and along approved routes;
- (e) exchange among themselves lists of customs offices along common frontiers, details of the powers of such offices, their working hours and any changes in these particulars for the effective operation of the provisions of sub-paragraph (d) of this paragraph;
- (f) endeavour to correlate the powers and harmonise the working hours of their corresponding customs offices referred to in sub-paragraph (e) of this paragraph; and
- (g) maintain special surveillance over:
 - (i) the entry into, sojourn in, and exit from their territories of particular persons reasonably suspected by a partner State of being involved in activities that are contrary to the customs law of any of the Partner States;
 - (ii) the movement of particular goods suspected by any Partner State to be the subject of illicit traffic towards the importing Partner States;
 - (iii) particular places where stocks of goods have been built up giving reason for suspicion that they may be used for illicit importation into any Partner States; and
- (iii) particular vehicles, ships, aircraft or other means of transport suspected of being used to commit customs offences in any Partner State.

3. The Partner States shall exchange:

- (a) as a matter of course and without delay, any information regarding:
 - (i) operations which it is suspected will give rise to customs offences in any Partner State;
 - (ii) persons, vehicles, ships, aircraft and other means of transport reasonably suspected of being engaged in

- activities that may be in violation of the customs laws of any Partner State;
- (iii) new techniques of committing customs offences; and
 - (iv) goods known to be the subject of illicit traffic.
- (b) on the request from a Partner State and as promptly as possible, any available information:-
- (i) contained in customs documentation relating to such exchanges of goods between countries as are suspected of being in violation of the customs law of the requesting Partner State;
 - (ii) enabling false declarations to be detected, in particular with respect to dutiable value; and
 - (iii) concerning certificates of origin, invoices or other documentation, known to be, or suspected of being false; and
- (c) on the request and if appropriate in the form of official documentation from a Partner State, information concerning the following matters:
- (i) the authenticity of any official documents produced in support of goods declaration made to the customs authorities of the requesting Partner States;
 - (ii) whether goods which were granted preferential treatment on departure from the requesting Partner States, because they were declared as intended for home use in another Partner State, have been duly cleared for home use in that Partner State;
 - (iii) whether goods imported into the requesting Partner States have been lawfully exported from another Partner State;
 - (iv) whether goods exported from the requesting Partner States have been lawfully imported into the importing Partner State, and in accordance with the importer's declaration; and

- (v) special documentation which may be issued by the customs authorities of the exporting Partner State for surrender to the customs authorities of the importing Partner States in order that they may certify that the goods were lawfully exported.

4. Each Partner State shall, whenever expressly requested by another Partner State:

- (a) make enquiries, record statements and obtain evidence concerning a customs offence under investigation in the requesting Partner State and transmit the results of the enquiry as well as any documentation or other evidence to the requesting Partner State; and
- (b) notify the competent authorities of the requesting Partner State actions and decisions taken by the competent authorities of the Partner State where the customs offence took place in accordance with the law in force in that Partner State.

PART D TRADE RELATED ASPECTS

ARTICLE 11 Rules of Origin

1. (a) For the purposes of this Protocol, goods shall be accepted as eligible for Community tariff treatment* if they originate in the Partner States.

* The phrase "community tariff treatment" should be defined to reflect the element of preferential treatment.

(b) The Partner States shall for this purpose adopt the Rules of Origin provided for in Annex III to this Protocol.

2. The definition of goods originating in the Partner States shall be as provided for in the Rules of Origin.

3. The Council shall, from time to time, examine the rules referred to in paragraph 2 of this Article and make such amendments as may be deemed necessary.

ARTICLE 12

Security and other restrictions to trade

1. A Partner State may, after having given notice to the Secretary General of its intention to do so, introduce or continue or execute restrictions or prohibitions affecting:

- (a) the application of security laws and regulations;
- (b) the control of arms, ammunition and other war equipment and military items;
- (c) the protection of human life, the environment, public health and of public morality;
- (d) the transfer of gold, silver and precious and semi-precious stones; and
- (e) the protection of national heritage.

2. A Partner State shall not so exercise the right to introduce or continue to execute the restrictions or prohibitions conferred by this Article so as to stultify the free movement of goods envisaged under this part of the Protocol.

3. Security and other restrictions imposed in accordance with paragraph 1 of this Article shall not extend for more than is necessary to achieve their purposes and other risks intended to be eliminated.

(The text of this Article will be finalised upon final agreement on the elimination of internal tariffs and upon completion by the High Level Task Force of all outstanding work on the harmonisation of exemption regimes)

(Articles 12 and 30 should be reconsidered in line with Article 75(5) of the Treaty to cater for the exemptions e.g. how the exemption is to be exercised and its extent).

ARTICLE 13
Anti-dumping measures

1. The Partner States recognise that dumping by which products of one country are introduced into the commerce of another country at less than the normal value of the products, is prohibited if it causes or threatens material injury to an established industry in a Partner State or materially retards the establishment of a domestic industry in any of the Partner States.

2. In this Article, a product is considered as being introduced into the commerce of a Partner State at less than its normal value, if the price of the product exported from the exporting country to a Partner State:

(a) is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country; or

(a) in the absence of such domestic price, is less than either:

(i) the highest comparable price for the like product for export to any foreign country in the ordinary course of trade; or

(ii) the cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit

Provided that due allowance shall be made in each case for differences in conditions and terms of sale, for differences in taxation and for other differences affecting price comparability

3. In order to off-set or prevent dumping, a Partner State may levy on any dumped product, an anti-dumping duty not greater in amount than the margin of dumping, in respect of such a product. In this Article, the margin of dumping is the price difference determined in accordance with the provisions of paragraph 2 of this Article.

4. (a) No Partner State shall levy any anti-dumping duty on the importation of a product from another Partner States, unless it is determined that the effect of the dumping is such as to cause or threaten material injury to an established domestic industry, or is such as to retard materially the establishment of a domestic industry.
- (b) Where there is evidence of dumping of a product by a foreign country into a Partner State that causes or threatens material injury to an industry in another Partner State, the affected Partner State may request the importing Partner State in whose territory the product is being dumped or exported to impose anti-dumping duties on such product from the foreign country:

Provided that if the Partner State to which the request does not act within thirty days of notification of the request, the requesting Partner State may report to the appropriate customs union authority which shall take the necessary action.

5 The Partner States shall co-operate in the detection and investigation of dumping and in the imposition of agreed measures to curb such practice.

6 The Secretariat shall notify the World Trade Organisation on the anti-dumping actions taken by the Partner States.

7. The implementation of this part of the Protocol shall be in accordance with the regulations specified in Annex IV to this Protocol.

(Elaboration of an EAC Dispute Settlement Mechanism, to handle issues of the Customs Union, such as those relating to anti-dumping and Subsidies and Countervailing Measures, under a specific provision, awaits:

- (a) ***the drafting of the final regulations for the proposed East African Community Dispute Settlement body;***
- (b) ***the completion of the study on the Legal, Institutional and Administrative Structure of the Customs Union.***

There is need to relate these provisions to national legislation on anti-dumping practises.

Uganda is agreeable to these comments but observes that they also apply to Articles 14, 15 and 16. She also proposes that the Partner States consider whether one Partner State should have capacity to impose countervailing measures on another Partner State).

The Partner States note the need for cognisance in this provision of Community Aid.

ARTICLE 14
Subsidies

1. If any Partner State grants or maintains any subsidy, including any form of income or price support which operates directly or indirectly to distort competition by favouring certain undertakings or the production of certain goods in the Partner State, it shall notify the Partner States in writing of the subsidisation, the extent and nature of the subsidisation, of the estimated effect of the subsidisation, the quantity of the affected product or products imported into Partner States and of the circumstances making the subsidisation necessary.

2. In any case when it is determined that serious prejudice to the interests of another Partner State is caused or threatened by any such subsidisation, the Partner State granting the subsidy shall, upon request, discuss with the other Partner States or State concerned, the possibility of limiting the subsidisation.

3. Except as otherwise provided, any subsidy granted by a foreign country or through state resources in any form whatsoever, which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, shall, in so far as it affects trade between the Partner States and the foreign country, be incompatible with this Protocol and shall be prohibited.

4. Except as otherwise provided, where a Partner State grants directly or indirectly any form of subsidy in the production of primary products which operate to increase the export of any primary product from the territory of that Partner State, such subsidy shall not be applied in a manner which results in that Partner State having more than an equitable share of world and/or the Community trade in that product, account being taken of the shares of the Partner States in such trade in the product during a previous representative period; and any special factors which may have affected or may be affecting such trade in the product.

5. The Partner States shall review the provisions of this Article from time to time with a view to examining its effectiveness in light of actual experience, in promoting the objectives of this protocol and avoiding subsidisation seriously prejudicial to the trade or interests of Partner States.

ARTICLE 15 Countervailing measures

1. The Community may, for the purposes of off-setting the effects of subsidies and subject to regulations made under this Protocol, levy a countervailing duty on any product of any foreign country imported into Partner States. The countervailing duty shall be equal to the amount of the estimated subsidy determined to have been granted directly or indirectly, on the manufacture, production or export of such product in the country of origin or exportation.

2. No Partner State shall levy a countervailing duty on any goods coming from another Partner State unless it determines that the effect of the subsidisation is such as to cause or threaten material injury to an established domestic industry or is such as to materially retard the establishment of a domestic industry.

3. No product of any Partner State introduced into another Partner State shall be subject to countervailing duty by reason of the exemption of such product from duties or taxes borne by the like product when destined for consumption in the country of origin on exportation, or by reason of the refund of such duties or taxes.

4. The Partner States may waive the requirements of paragraphs 2 and 3 of this Article so as to permit another Partner State to levy countervailing duty on products introduced from another Partner State for the purpose of off-setting subsidisation which causes or threatens to cause material injury to an industry in the Partner State introducing the products concerned to another Partner State.

5. In exceptional circumstances, however, where delay might cause damage which would be difficult to repair, a Partner State may levy a countervailing duty for the purposes referred to in paragraph 4 of this Article without the prior approval of the Partner States:

Provided that such action shall be reported immediately to the Partner States and that the countervailing duty shall be withdrawn promptly if the Partner States disapprove.

6. The implementation of Articles 14 and 15 of this Protocol shall be in accordance with the regulations specified in Annex V to this Protocol.

ARTICLE 16
Co-operation in the investigation of
dumping and subsidies

1. The Partner States shall co-operate in the detection and investigation of dumping and subsidy practices and in the imposition of agreed measures to curb such practises.

2. Where there is evidence of dumping or export of subsidized goods by a foreign country into a Partner State that threatens or distorts competition within the Community, the affected Partner States may request the Partner State in whose territory goods are being dumped or exported to impose countervailing duties on such goods from the foreign country:

Provided that if the Partner State to whom the request is made does not act within thirty days of notification of the request, the requesting Partner State shall report to the appropriate customs union authority which shall take the necessary action.

(Uganda proposes that the procedure for "request" needs to be elaborated to make it easy for the affected Partner State to impose anti-dumping duties).

ARTICLE 17
Competition

1. The Partner States agree that any practice which adversely affects the objective of free and liberalised trade shall be prohibited. To this end, the Partner States agree to prohibit any agreement between undertakings or concerted practice which has as its objective or effect the prevention, restriction or distortion of competition within the Community.

2. The Council may declare the provision of paragraph 1 of this Article inapplicable in the case of:

- (a) any agreement or category thereof between undertakings;
- (b) any decision by association of undertakings; or

(c) any concerted practice or category thereof;

which improves production or distribution of goods or promotes technical or economic progress and which has the effect of enabling consumers to have a fair share of the benefits:

Provided that the agreement, decision or practice does not impose on the undertaking restrictions inconsistent with the attainment of the objectives of this Protocol or has the effect of eliminating competition.

3. The implementation of this Article shall be in accordance with the (EAC legislation on Competition Policy and Law.)

(At its Meeting held on April 28th - May 3rd, the Sectoral Council on Legal and Judicial Affairs noted a report that the EAC Trade, Industry and Investment Committee, at its Meeting held on February 27th - March 1st, 2003, considered the Consultant's Final Study Report on the EAC Competition Policy and Law. It further noted that the Trade, Industry and Investment Committee recommended that:

a) A Sub-Committee be formed to finalise the EAC Competition Policy (Part A of the Report) for subsequent consideration and adoption by the Council of Ministers;

b) Part B of the Consultant's Report which is a draft Bill on Competition be vetted by the Sectoral Council on Legal and Judicial Affairs before being forwarded to the Council of Ministers for consideration and adoption and submission to the East African Legislative Assembly for enactment into law.

The Sectoral Council was of the view that it is not able to consider the draft Competition Law when the proposed Competition Policy, being the foundation for this proposed law, is yet to be studied by the Partner States for subsequent consideration and adoption by the Council of Ministers

The Sectoral Council decided that the draft Competition Law will be considered after the Council of Ministers has finalised the EAC Competition Policy).

(Kenya proposes an alternative wording for paragraph 3 as follows:

"The Partner States shall for the purposes of application of paragraph 1 of this Article adopt a competition policy provided for in Annex";

(Tanzania and Kenya propose that the use of the terms "normal value" and "prohibited" in Articles 13 - 17 should be cross checked with current WTO provisions and with alternative terms like "normal price" and "condemned" to determine the most relevant nomenclature under EAC conditions);

(Uganda proposes that:

(a) there should be a correlation between the Study on Competition Policy and Law and the Study on the Legal, Administrative and Institutional Structure of the Customs Union especially in regard to the implementation of Articles 13 - 17;

(b) Articles 13 - 17 be reflected as a separate Part on "Trade Remedies".

ARTICLE 18

National treatment

1. The Partner States shall refrain from:
 - (a) enacting legislation or applying administrative measures which directly or indirectly discriminate against the same or like products of other Partner States;
 - (b) imposing on each other's products any internal taxation of such a nature as to afford indirect protection to other products.
2. No Partner State shall impose, directly or indirectly, on the products of other Partner States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products.
3. Where products are exported to the territory of any Partner State, any repayment of internal taxation shall not exceed the internal taxation imposed on them whether directly or indirectly.

4. The Council shall formulate a mechanism on the harmonisation of the Partner States' legislation concerning excise duties and other forms of indirect taxation applicable to trade between the Partner States.

ARTICLE 19
Most Favoured Nation Treatment

1. The Partner States shall accord to one another the most favoured nation treatment.
2. Nothing in this Protocol shall prevent Partner State from maintaining or entering into new preferential agreements with foreign countries provided such agreements do not impede or frustrate the objectives of this Protocol and that any advantage, concession, privilege and favour granted to a foreign country under such agreements are extended to the Partner States on a reciprocal basis.
3. Nothing in this Protocol shall prevent two or more Partner States from entering into new preferential agreements among themselves which aim at achieving the objectives of the Customs Union, provided that any preferential treatment accorded under such agreements is extended to the other Partner States on a reciprocal and non-discriminatory basis.
4. Copies of agreements concluded pursuant to paragraph 2 of this Article shall be transmitted to the Secretary General by the Partner States parties to them.

PART E*

EXPORT PROMOTION SCHEMES

ARTICLE 20
Duty drawback

1. The Partner States agree to support export promotion schemes by facilitating payment of duty drawback on the of goods produced for

* Finalisation of this Part is pending adaptation of relevant Municipal legislation into an EAC context.

export from the Customs Union and in respect of whose manufacturing inputs tax has been paid.

2. The implementation of this Article shall be in accordance with the regulations specified in Annex VI to this Protocol.

(This provision will be completed upon the incorporation of features of Tanzania's Duty Drawback Scheme which relate to:

- ***The application for Duty Drawback to be lodged with a copy of VAT returns of the respective months;***
- ***A one year time limit from the date of importation of inputs to the date of exportation of finished products).***

ARTICLE 21

Duty/Value Added Tax remission schemes

1. The Partner State agree to promote export promotion schemes by facilitating duty/ value added tax remission schemes.

2. For purposes of this Articles the Partner States undertake to establish duty/ value added tax remission schemes.

3. The implementation of this Article shall be in accordance with the regulations specified in Annex VII to this Protocol.

ARTICLE 22

Refund and remission of duties and taxes

1 The Partner States agree to promote export promotion schemes by facilitating the refund and remission of duties and taxes in respect of goods which are re-exported from their respective territories.

2. The implementation of this Article shall be in accordance with the regulations specified in Annex VIII to this Protocol.

ARTICLE 23
Manufacturing under Bond

1. The Partner States agree to support export promotion schemes by facilitating manufacturing under bond facilities within their respective territories.
2. The implementation of this Article shall be in accordance with the regulations specified in Annex IX to this Protocol.

(The understanding is that Export Promotion schemes shall be primarily for export. However, if for one reason or another goods have to be sold in the domestic market, one shall first have to obtain permission from the appropriate authority of the EAC and full duties and levies shall be paid.

On future schemes, consensus has been reached that the above schemes should not lock out the possibility of launching other future schemes to support industrial production and export promotion. However, the introduction of any new export promotion scheme, shall first be approved by the relevant organs of the Community.

Finalisation of the provisions on these schemes awaits the consideration of the draft regulations; the draft regulations are appended herewith as Annexes VI - IX)

ARTICLE 24
Export Processing Zones

1. The Partner States agree to provide for the establishment of export processing zones for the purposes of accelerating development within the Customs Union, promoting and facilitating export oriented investments, promoting the production of export competitive goods and the development of enabling environment for such export processing zones.
2. For the purposes stated in paragraph I of this Article the Partner States shall establish an Export Processing Zones Authority whose principal objectives shall be:-
 - a) the development of all aspects of the export processing zones

with particular emphasis on the provision of advice on the removal of impediments to, and creation of incentives for, export oriented production in areas designated as export processing zones; and

b) the regulation and administration of approved activities within the export processing zones, through an implementation system in which the export processing zone enterprises are self regulatory to the maximum extent.

3. The implementation of the provisions of this Article shall be in accordance with the regulations specified in Annex X to this Protocol.

ARTICLE 25 Re-exportation of goods

1. The Partner States agree that re-exports bound for a receiving Partner State shall be exempted from the payment of import or export duties in the importing Partner States

Provided that this paragraph shall not preclude the levying of normal administrative and service charges applicable to the import or export of similar goods in accordance with their customs laws and regulations.

2. The Partner States undertake to ensure that:

(a) re-exports imported into any Partner State shall be subjected to the same import duties as are applicable to similar goods imported directly into that Partner State from third countries; and

(b) there shall be no discrimination in the treatment of re-exports traded among the Partner States.

3. Notwithstanding the provisions of paragraph 2 of this Article, the Partner States agree to ensure that re-exported goods which qualify as originating in a Partner State under the provisions of this Protocol shall be treated as if they were directly imported by the receiving Partner State from the Partner State where they originate. Such goods shall be accorded appropriate Community tariff treatment.

Provided that the re-exporter thereof produces documentary evidence certified by the authorities designated for that purpose, to the effect that the goods

originated in the Partner State from which they were originally imported.

4. The Partner States agree to facilitate the re-export of goods within the Community in accordance with the provisions on Transit Trade and Transit Facilities contained in Annex XI hereto.

(This provision is reflective of the Community's intent as expressed in Articles 75(4), 75(5), 75(6) and 140(7) of the Treaty).

PART F
TRADE LIBERALIZATION

ARTICLE 26
Community tariff treatment

1. The Partner States agree to co-operate in the implementation of the provisions of this Protocol concerning the elimination of tariffs on goods eligible for Community tariff treatment and more particularly those relating to:

- (a) the evolution of uniform national customs legislation and procedures;
- (b) the reduction and eventual elimination of import duties and non-tariff barriers on trade among themselves;
- (c) the establishment of a common external tariff; and
- (d) any other aspect of customs law and practice concerning Co-operation tariff treatment.

2. For purposes of paragraph 1 of this Article, the Partner States undertake to:

- (a) adopt uniform, comprehensive and systematic tariff classification of goods with a common and specific basis of description and interpretation in accordance with internationally accepted standards;
- (b) adopt a standard system of valuation of goods based on principles of equity, uniformity and simplicity of application in accordance with internationally accepted standards and guidelines;

- (c) agree on common terms and conditions governing temporary admission procedures including the list or range of goods to be covered and the nature of manufacturing or processing to be authorised;
- (d) implement the customs requirements for the re-exportation of goods provided for in this Protocol;

(Kenya proposes that the provisions under Articles 24, 25, 26, 27 28 and 29 should await the outcome of the current negotiations by the Partner States).

- (e) implement the customs requirements for the transit of goods as prescribed in this Protocol;
- (f) harmonise and simplify customs formalities and documentation in accordance with the provisions of this Treaty;
- (g) harmonise the customs requirements for the control of warehoused goods; and
- (h) adopt common procedures for the establishment and operation of export processing zones, free ports, customs supervised factories and export drawbacks.

3. The Partner States undertake to harmonise their customs and statistical nomenclature and standardise their foreign trade statistics to endure comparability and reliability of the relevant information.

ARTICLE 27 Internal tariff

1. The Partner States shall reduce and ultimately eliminate by the year in accordance with a schedule approved by the Council all internal tariff rates and other charges of equivalent effect imposed on or in connection with the importation of goods which are eligible for Community tariff treatment.

2. Notwithstanding the provisions of paragraph 1 of this Article, where, by virtue of obligations under an existing contract or treaty entered into by a Partner State, such a Partner State is unable to comply with the provisions of this Article, the Partner State shall, upon the entry into force of this Protocol, notify the Council of this fact. The Partner State shall, however, not renew or extend such contract or treaty on its expiry.

3. Within the period specified in paragraph 1 of this Article, the Partner States shall not impose any new duties and taxes or increase existing ones in respect of products traded within the Community and shall transmit to the Secretariat all information on any tariffs for study by the relevant institutions of the Community.

4. The Summit may at any time, on the recommendation of the Council, decide that any tariff rate shall be reduced more rapidly or eliminated earlier than is provided for in accordance with paragraph 1 of this Article.

5. The Partner States agree to establish and maintain a common excise tariff in respect of excisable goods manufactured, processed or produced in the Partner States.

6. The Council shall determine when and the manner in which the common excise tariff referred to in paragraph 5 of this Article shall be established and maintained.

(Offers made by the Partner States have been exchanged for purposes of national consultations.)

ARTICLE 28

Transitional provisions on the elimination of internal tariffs

1. The Partner States agree that for the purpose of administration of this Protocol and transition into a Customs Union, upon entry into force of this Protocol.

(a) Trade between the Republic of Uganda and the United Republic of Tanzania shall be duty free;

(b) Imports from the Republic of Uganda and the United Republic of Tanzania into the Republic of Kenya shall be duty free;

(c) Imports from the Republic of Kenya into the Republic of Uganda and the United Republic of Tanzania shall be categorised in the following manner:

- (i) Category A - Immediate liberalisation;
- (ii) Category B - Gradual liberalisation; and
- (iii) Category C - Permanent exclusion.

2. The details of categorisation of imports mentioned under subparagraph 1(c) of this Article shall be mutually agreed upon by the Partner States and shall form an integral part of this Protocol.

(The programme of internal tariff elimination, the structure, interim rates, interim period and other details and modalities are being worked out by the High Level Task Force.

The Partner States agree that when the Customs Union comes into force suspended duties and other taxes of equivalent effect will not be applied on each other's goods.

Depending on the report of the Task Force the following draft provision may be considered:

"INTERCHANGE OF DOMESTIC PRODUCTS

Except as elsewhere provided herein, a Partner State shall not apply quantitative restrictions or impose any duties on goods produced or manufactured in the common customs area on importation of such goods from the area of any other Partner State"

That report should also further guide on the provisions for the levels and application and legislation of excise and sales duties).

ARTICLE 29 Common external tariff

1. The Partner States agree to the establishment of a common external tariff in respect of all products imported into the Partner States from foreign countries within a period of years from the entry into force of this Protocol and in accordance with a schedule to be adopted by the Council

2. The Partner States shall establish a three band tariff structure of the common external tariff whereby the minimum rate shall be 0%, the middle tariff rate shall be 10% or such other rate as shall in the opinion of the Council promotes investments and industrialisation in the Community and the maximum rate shall be 20%.

(Technical work in respect of the 10% middle rate, on the identification of sensitive products requiring special protection,

the time frame on categorisation of import products in the three band rates is continuing).

(Kenya has proposed to re-adjust the maximum Common External Tariff rate from 20% to 25%. At their Fourth Summit held on November 30th, 2002, the Partner States' Heads of State undertook to guide national consultations on this matter. For follow up purposes on Extraordinary Meeting of the Summit is scheduled for June 16th, 2003).

3. The Council may review the rates of the common external tariff or approve measures designed to remedy and adverse effects on Partner State may experience by reason of the implementation of this Part of the Protocol or in exceptional circumstances to safeguard regional interest.

4. For the purposes of this Article the Partner States agree to adopt the commodity description contained in Annex XII to this Protocol.

(The detailed structure, bonds, timeframe and other modalities for implementation of the common external tariff are being worked out by the High Level Task Force.

However, Import products have been classified and categorized on the following criteria:

(i) Primary raw materials, essential drugs, medical equipment, plant and machinery, agricultural inputs and other special goods which were already exempted - 0%;

(ii) Intermediate goods/inputs - 10%;

(iii) Finished goods - 20%.

- There is consensus to agree on, and incorporate a procedure in this draft protocol for identifying sensitive products requiring special protection on the basis of regional interest and special circumstances, when implementation of the protocol comes into force;

- Outstanding work relates to the timeframe and the detailed modalities for implementation of the CET and a list of sensitive products during implementation of the CET;

- Consultations are continuing and all outstanding work will be considered at the next meeting of the High Level Task Force.

Depending on the report of the Task Force the following draft provisions may be considered:

(The Partner States agree that the preparation of the final texts of Articles 26, 27, 28 and 29 awaits the Partner States' agreement on all the relevant issues including offers).

ARTICLE 30
Non-tariff barriers

1. Except as may be provided for or permitted by this Protocol, each of the Partner States agree to remove with immediate effect all the existing non-tariff barriers to the importation into its respective territory of goods originating in the other Partner States and thereafter to refrain from imposing any further non-tariff barriers.

2. The Partner States shall formulate a mechanism for identifying and monitoring non-tariff barriers.*

PART G
GENERAL PROVISIONS

ARTICLE 31
Administration of the Customs Union

1. (a) The Partner States shall establish a Customs Management Authority for the purpose managing the Customs Union and discussing any matter arising out of this Protocol.

(b) The powers and authority of the Customs Management Authority shall be determined by the Council.

(c) The Customs Management Authority shall meet once a year. A Partner State may, however, at any time request a meeting of the Customs Management Authority for the purpose of discussing a matter connected with this Protocol and the Customs Management Authority shall meet as soon as possible thereafter.

* The Secretariat shall provide a draft on the mechanism for monitoring non-tariff barriers.

2. Where a matter has been referred to the Customs Management Authority for discussion, the Customs Management Authority shall use its best endeavours to find a mutually agreeable solution to the particular problem or difficulty and the representatives shall report to their respective Governments for consideration of any remedial measures.

3. Any difficulty or problem arising out of this Protocol which does not directly affect the interests of all the Partner States may, with the concurrence of the Partner States, form the subject of direct consultation between the parties affected with a view to seeking an amicable solution thereof.

4. The Partner States agree that subject to the organisation of the administrative organ provided in paragraph 1 of this Article:

(a) goods (including goods for warehousing) destined for a Partner State ("Partner State of destination") and imported through any place of entry in any other Partner State ("Partner State of entry") shall be entered for customs, excise or sales duty purposes through the Partner State of entry customs and for that purpose the laws relating to customs, excise and sales duty of the Partner State of entry will apply to such goods as if such goods were destined for that Partner State:

Provided that if the laws relating to customs, excise and sales duty of the Partner State of destination, should, in relation to such goods, differ in respect of any restriction, prohibition, tariff or rebate under this Protocol, the relative law of the Partner State of destination of such goods shall in that respect be deemed to be the law relating to customs, excise or sales duty, as the case may be, of the Partner State of entry in relation to such goods;

(b) goods destined for a Partner State and imported directly into the Partner State in question, shall subject to the provisions of sub-paragraph (a), be entered for customs, excise or sales duty purposes in that Partner State;

(c) goods for warehousing in any customs and excise storage warehouse established in the area of a Partner State shall be cleared for warehousing at places of entry in any Partner State for removal to such warehouse without further entry, but any clearance ex warehouse of such goods and collection of any

customs, excise or sales duty thereon shall be the responsibility of the Partner State in whose area the warehouse is situated;

(d) the administration of any customs and excise manufacturing warehouse (including the collection of any customs, excise or sales duty on any goods manufactured in such warehouse) in a Partner State shall be the responsibility of the Partner State in whose area the warehouse is situated.

(This provision is required by Article 75(3) of the Treaty. Its proposal on establishing a Customs Management Authority is a holding one in nature. Even the name is hypothetical. The establishment and form of such a body will be decided after the completion of the Study on the Legal, Administrative and Institutional Structure of the Customs Union.

Articles 31 and 34 will have to be revised in the context of the proposed administrative structure for the Customs Union. It may thereafter be necessary to transfer these provisions to Part B of the draft Protocol.

There is also need to consider among the issues falling under Customs Administration in this Protocol, a mechanism for the management and operation of the Rules of Origin adopted under Article 11 of this Protocol.)

ARTICLE 32

Measures to address imbalances arising from the application of the provisions on the establishment of the Customs Union

Uganda and Tanzania propose as follows:

The Partner States agree on inclusion of measures to address imbalances that may arise from the application of the provisions of this Protocol.)*

ARTICLE 33

* Finalisation of this will await the conclusion of this Study on Imbalances. Kenya has expressed her reservations on the proposed provision in view of the need to establish the proper timing for its applicability.

Safeguard Measures

1. In the event of serious injury occurring in the economy of a Partner State following the application of the provisions of this Protocol, the Partner States concerned shall, after informing the Council through the Secretary General and the other Partner States, take necessary safeguard measures.
2. The implementation of this Article shall be in accordance with the regulations specified in Annex XIII to this Protocol.*

(It is proposed that this provision be discussed with a view to elaborating the safeguard measures to be applied and the manner in which they will be applied).

ARTICLE 34

Trade Agreements with countries outside the Customs Union

1. The Partner States hereby declare their readiness to contribute to the development of international trade and the lowering of barriers to trade by entering into agreements designed on a basis of reciprocity and mutual advantage to reduce customs duties below the general level of which they could avail themselves as a result of the establishment of the customs union between them.
2. The Partner States shall co-ordinate their trade relations with foreign countries so as to systematically bring about the conditions needed for implementing a common policy in the field of external trade.
3. A Partner State shall not, without the prior concurrence of the other Partner States and subject to such conditions as may be agreed upon by all the Partner States, enter separately into or amend a trade agreement with a foreign country in terms of which concessions on the duties in force in the common customs area are granted to that foreign country;
4. A Partner State may enter separately into or amend a trade agreement, other than a trade agreement mentioned in paragraph (1) of this Article, with a foreign country, provided the terms of such an agreement or amendment do not conflict in any way with the provisions of this Protocol. Such Partner State shall, promptly notify the other

* *Secretariat will, using precedents from WTO and other regional blocs, prepare the regulations.

Partner States and shall make available to them such information regarding the proposed agreement as will enable them to make such reports and recommendations as they may deem appropriate.

5. (a) A Partner State, having an agreement with a foreign country which provides for the importation into its area from such country of goods at lower rates of duty than those applicable to like goods in the common customs area, shall collect the duties payable on importation into its area.

(b) Unless all the Partner States have otherwise agreed in respect of any such agreement, where such goods are to be removed from the area of such Partner State to the area of any other Partner State the duties applicable in the common customs area shall become due and payable and the Partner State from whose area such goods are to be removed shall, prior to such removal, collect the differences between the lower duties paid and the duties applicable. If proof of payment of the differences in duty cannot be furnished in the area to which the goods are subsequently removed, the goods shall be liable to forfeiture.

(c) Any duties and differences in duties thus collected shall be paid into the a fund to be established by the Partner States. Any payments due by that Partner State under such agreement with a country outside the common customs area, shall be paid on its behalf from the fund.

(This is a proposed provision worth addressing in view of the Partner States' WTO commitments and the imminent establishment of a regional trading arrangement within the purview of:

- ***Article XXIV of the General Agreement on Tariffs and Trade, 1994;***
- ***The Enabling Clause under Article V of GATS; and***
- ***The 1979 GATT decision allowing preferential trade in goods among developing countries).***

(The final text of this provision awaits the completion of the Study on the Legal, Institutional and Administrative Structure of the Customs Union and input by this Meeting's Committee of Experts.)

ARTICLE 35

Inter-linkages with other areas of co-operation

The application of this Protocol shall take cognisance of the provisions of the Treaty on other areas of co-operation including co-operation in environment and natural resources management and co-operation in standardisation, quality assurance, metrology and testing.

(The application of this Protocol shall take cognisance of the provisions of the Treaty on other areas of co-operation including the concluded Protocols and others to be concluded in future.

(The final text of Article 34 and 35 will await consideration by the High Task Force, of the recommendations of the Sub-Committee established for this purpose - as decided by the Permanent Secretaries at their Meeting held on April 10th - 11th, 2003).

ARTICLE 36 Approximation of laws

The Council shall issue directives, regulations or recommendations for the approximation of such provisions laid down by law, regulation or administrative action in the Partner States as directly affect the implementation of the provisions of this Protocol.

ARTICLE 37 Dispute Settlement

1. Each Partner State shall accord consideration to, and shall afford adequate opportunity for consultation regarding such representations as may be made by another Partner State, with respect to any matter affecting the operation of this Protocol.
2. The Partner States may, at the request of a Partner State, consult with any Partner State or States in respect of any matter for which it has not been possible to find a satisfactory solution through consultation under paragraph 1 of this Article.
3. If any Partner State should consider that any Partner State fails to carry out its obligations or specific commitments under this Protocol, it may with a view to reaching a mutually satisfactory resolution of the matter have recourse to dispute settlement.
- 4.. If the Customs Management Authority deems the circumstances serious enough to justify resort to dispute settlement, it may authorise a

Partner State or Partner State to suspend the application to any other Partner States or Partner States of obligations and specific commitments in accordance with the regulations governing dispute settlement.

5. The implementation of this Article shall be in accordance with the regulations specified in Annex XIV to this Protocol.

6. If, as a result of any unforeseen development, any product is being introduced into the area of a Partner State from the area of another Partner State in such increased quantities and under such conditions as to cause or threaten serious injury to producers or manufacturers of like or directly competitive products in the area into which such goods are so introduced, the latter Partner State shall have the right to require the other Partner State to consult at the earliest possible opportunity and to co-operate with it in finding as soon as possible a mutually acceptable solution.

(Finalisation of this provision awaits the outcome of the Sub-Committee establishment by the Permanent Secretaries at their Meeting held on April 10th - 11th, 2003).

ARTICLE 38 Amendment of the Protocol

This Protocol may be amended at any time by the Partner States in accordance with the provisions of Article 150 of the Treaty.

ARTICLE 39 Entry into force

This Protocol shall enter into force upon ratification and deposit of instruments of ratification with the Secretary General by all the Partner States.

ARTICLE 40 Depositary and Registration

1. This Protocol and all instruments of ratification shall be deposited with the Secretary General who shall transmit certified true copies thereof to all the Partner States.

2. The Secretary General shall register this Protocol with the African Union, the United Nations, and such other organisations as the Council may determine.

DONE at Arusha, Tanzania, on the 30th day of November, 2003

IN WITNESS WHEREOF the undersigned have appended their signatures hereto:

FOR THE REPUBLIC
OF KENYA

FOR THE REPUBLIC
OF UGANDA

FOR THE UNITED REPUBLIC
OF TANZANIA

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