

REPUBLIC OF KENYA



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TWELFTH PARLIAMENT

THE SENATE

16/10/18

PAPERS LAID	
DATE	17-10-2018
TABLED BY	Sen. Githu Wanjau
COMMITTEE	Tourism
CLERK AT THE TABLE	F. Mbugua

THE STANDING COMMITTEE ON TOURISM, TRADE AND INDUSTRIALIZATION

REPORT OF THE PETITION ON THE FIGHT AGAINST COUNTERFEIT AND CONTRABAND GOODS, PRESENTED BY SEN. JOHNSON SAKAJA, MP ON BEHALF OF MEMBERS OF NAIROBI IMPORTERS AND TRADERS ASSOCIATION

Clerks' Chambers,
The Senate,
Parliament Buildings,
NAIROBI

SEPTEMBER 2018

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LIST OF ABBREVIATIONS

ACA	-Anti-Counterfeit Authority
AFA	-Agriculture and Food Authority
BASCAP	- Business Action to Stop Counterfeit and Piracy
CAK	-Competition Authority of Kenya
CCIC	-China Certification and Inspection Company
CIF	-Cost Insurance, Freight
COC	-Certificate of Conformity
COI	-Certificate of Inspection
EAC	-East Africa Community
FOB	-Free-on-Board
GDP	-Gross Domestic Product
ISM	-International Standardization Mark
ISO	-International Standard Organization
KEBS	-Kenya Bureau of Standards
KEPHIS	-Kenya Plant Health Inspectorate Services
KPA	-Kenya Ports Authority
KRA	-Kenya Revenue Authority
NISTA	-Nairobi Importers and Traders Association
OECD	-Organization for Economic Cooperation and Development
PGA	-Partners Government Agreement
PPB	-Pharmacy and Poison Board
PVoC	-Pre-Export Verification on Conformity
SME	-Small and Medium Enterprises

EXECUTIVE SUMMARY

This report contains the Senate Standing Committee's on Tourism, Trade and Industrialization proceedings during the hearing of the Public Petition from the Nairobi Importers and Traders Association to the Senate on the fight against counterfeit and contraband goods in Kenya. The petition was presented to the Senate by the Sen. Johnson Sakaja and conveyed to the House by the Speaker of the Senate and committed to the Committee on Tourism, Trade and Industrialization.

The petitioners sought indulgence and intervention of the Senate on the following grounds:

- 1) There was evidence of infiltration and gradual takeover by foreigners, especially Chinese nationals, of the import and retail business previously occupied by local small scale importers and businesses;
- 2) The small scale importers and traders are subjected to frequent, undue and unnecessary inspections and raids by government officials, both from the national and county government, even where goods have already been inspected and certified at the points of entry, which has adversely affected traders' ability to undertake their businesses;
- 3) There was blanket destruction of imported goods at the ports of entry by government agencies even where the containers of goods had only a few items that have been found to be contraband;
- 4) The requirement by foreign agents for certificate of conformity hinders the local traders and importers and the need to have in place local certification measures, which will also reduce the cost, incurred by businesses.
- 5) There were inordinate delays with regard to clearance of goods at the ports of entry and requirement for separate Bills of Lading for each trader is affecting small scale traders;
- 6) Timeframe for implementation of new policies, regulations and requirements for compliance and inadequate public participation in the formulation and implementation of the new policies.
- 7) There are criminal cartels and enterprises frustrating small business owners

In considering the petition, the Committee invited the petitioners. The Committee also received submissions from the Kenya Revenue Authority; the Kenya Bureau of Standards; the Competition Authority of Kenya; Kenya Ports Authority and the Anti-Counterfeit Authority. The views of the petitioner and those of the agencies invited were incorporated in compiling of this report.

The Committee considered all the submissions and endeavoured to respond adequately to the prayers of the Petitioners. The observations and recommendations of the committee are contained in this report.

PREFACE

Establishment of the Committee

The Standing Committee on Tourism, Trade and Industrialization is established pursuant to standing order 212 of the Senate Standing Orders and mandated *to consider all matters relating to trade, industrialization, tourism, cooperatives, investment and divestiture policies.*

Membership of the Committee

The Committee is comprised of the following Members-

- | | |
|---|-------------------|
| 1. Sen. Kibiru Charles Reubenson | -Chairperson |
| 2. Sen. Anuar Loitiptip | -Vice Chairperson |
| 3. Sen. Mwangi Paul Githiomi | -Member |
| 4. Sen. (Dr.) Langat Christopher Andrew | -Member |
| 5. Sen. Wario Golich Juma | -Member |
| 6. Sen. Mwaruma Johnes | -Member |
| 7. Sen. (Dr.) Agnes Zani | -Member |
| 8. Sen. Masitsa Naomi Shiyonga | -Member |
| 9. Sen. Mercy Chebeni | -Member |

Mr Speaker Sir,

I am pleased to present and table the Committee's report on the petition presented by Sen. Johnson Sakaja on 11 July 2018 on behalf of Nairobi Importers and Traders Association to the Senate on the fight against counterfeit and contraband goods in Kenya. This report contains the prayers of the petitioner and the recommendations of the Committee.

The petitioners submitted their prayers, pursuant to Articles 37 and 119 of the Constitution and in line with the provisions of the Petition to Parliament (Procedure) Act and the Senate Standing Orders.

The Petition

Pursuant to the Senate Standing Orders No. 220 (1) and 224(b), the Speaker of the Senate reported to the House a petition presented through the Clerk of the Senate by Senator Johnson Sakaja, Senator for Nairobi City County. Following the tabling of the petition

and in line with the Standing Order No. 224 (1), the Speaker directed the Standing Committee on Trade, Tourism and Industrialization to investigate the matter and table the report in the House within 60 days.

The Petitioners drew the attention of the Senate to the following issues:

1. That, they fully support the government's efforts in the fight against counterfeit and contraband goods in Kenya
2. That, importers and small traders have employed millions of Kenyans and continue to be a major source of employment and a major contributor to the growth of the economy;
3. That, most of the imports comprise goods that are essential but not manufactured in Kenya;
4. That they had the following grievances which they wish to be addressed by the Senate—
 - a. **Infiltration of the import and retail business by foreigners** - the space previously occupied by small scale importers and businesses is being gradually taken over by foreigners, predominantly Chinese, who are edging out locally owned businesses and firms from the sector.
 - b. **Undue harassment by government agencies and officials** – the small scale importers and traders are subjected to frequent, undue and unnecessary inspections and raids by government officials, both from the national and county government, even where goods have already been inspected and certified at the points of entry. This has adversely affected their ability to undertake their businesses.
 - c. **Blanket destruction of imported goods at the ports of entry** – government agencies are increasingly resorting to destruction of entire containers of goods, even where only a few items have been found to be contraband. This has affected small traders who normally pool together to import goods in one container.

- d. Flexibility of the Certificate of Conformity regime** – at the moment, local traders and importers are required to produce Certificates of Conformity issued from foreign agents. We propose that this be revised to have in place local certification measures which will also reduce the cost incurred by businesses.
- e. Time taken to clear goods at the ports of entry** - majority of small scale importers and traders use bank loans to purchase and import goods, on the understanding that once these goods are sold, they will repay the loans. This is compromised when the clearance procedures at the ports of entry take too long, meaning that these traders default on their loans and are subjected to auctioning of their goods and closure of businesses.
- f. Requirement for separate Bills of Lading for each trader** – due to the small volumes that each trader imports, majority of traders are forced to share containers, in which case a single Bill of Lading is issued for all the goods in the container. The introduction of a requirement that each trader must produce a separate Bill of Lading would push small-scale importers and traders out of business.
- g. Timeframe for implementation of new policies, regulations and requirements** – on most occasions, small scale importers and traders are not consulted during development of new policies and regulations. Further, when these are published, traders are not given sufficient time to comply with the new requirements, thus incurring great losses. There should be a window period of at least one year for implementation of new policies, to enable small importers and traders comply. On the same issue, they appealed that goods, which are being held at the port as a result of implementation of these new measures, be released. They also raised the need to educate traders on the specific standards requirements for each category of goods.
- h. Criminal cartels and enterprises frustrating small business owners and interests** – Small scale importers and traders have often been the

victims of criminal cartels, including people purporting to be agents for branded items like Philips bulbs, as well as those who are strategically stationed at ports of entry and collude to buy auctioned goods at cheap prices;

In presenting the petition to the Senate, the petitioners clarified the following facts:

1. That they have made the efforts to have these matters addressed by the relevant authorities all of which have failed to give a satisfactory response; and
2. That none of these issues raised in the Petition was pending in any court of Law, Constitutional or any other legal body.

Mr. Speaker Sir,

The Petitioners prayed that the Senate addresses the issues raised by the importers and small traders in order to successfully achieve the Government's goal of creating wealth and employment opportunities without hurting small traders, who are at the verge of closure.

The Committee considered the prayers of the petitioners and convened a series of hearings involving different stakeholders including the petitioners. The Committee also invited witness to adduce evidence and reviewed documents presented. The evidence obtained from these exercises informed the determination of the prayers of the petitioners by the Committee.

Consideration of the Petition

In consideration of the Petition, the Committee invited the petitioner, the Cabinet Secretary responsible for Trade, Tourism and Industrialization, the Anti-Counterfeit Agencies, the Competition Authority, Nairobi Importers and Traders Association, the Kenya Bureau of Standards, the Kenya Revenue Authority and the Kenya Ports Authority to provide further information to help determine the prayers in the petition. The Committee further conducted a site visit to Kenya Ports Authority terminals and Customs Offices in Mombasa County. The Committee received presentation from traders and business people at the port and had the opportunity to interact with some members of the multi-agency members. The objective of the Committee was to respond to the prayers of the petitioners conclusively and make observations and recommendations on all matters relating to the petition from a well-informed position.

ACKNOWLEDGMENT

The Committee wishes to acknowledge the time and considerable effort made by all the agencies that appeared before the committee to respond to the concerns of the petitioners. I also wish to express my gratitude to the Members of the Committee for their thoughtful and considerate contributions to the matter. Further the Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to it during the inspection visit at the Port in Mombasa and in the preparation of this report.

Mr Speaker Sir,

It is now my pleasant duty, pursuant to Standing Order 227, to present a Report of the Standing Committee on Senate Standing Committee on Tourism, Trade and Industrialization on the petition on the fight against counterfeit and contraband goods in Kenya

Signed:  Date: 11/10/2018

SEN. KIBIRU CHARLES REUBENSON, MP, CHAIRPERSON
SENATE STANDING COMMITTEE ON TRADE, TOURISM AND
INDUSTRIALIZATION

CHAPTER I INTRODUCTION

1.0 The Right to Petition

The right of Kenyan citizens to petition public authorities and Parliament is conferred by the Constitution under Articles 37 and Article 119 and by the Petition to Parliament (Procedure) Act as well as the Standing Orders of Senate. The right to petition is an essential citizen participatory tool, as it provides an avenue for the Members of Parliament and citizens to interact with the issues that concern citizens, and also demonstrates that Parliament is prepared to directly intervene on the issues of concern in order to promote and protect the rights of the citizens.

1.1 Background to the Petition

Pursuant to Senate standing Order 226 (1), the petition was presented by Senator Johnson Sakaja, on behalf of Nairobi Importers and Traders Association for consideration and determination by the Committee.

1.2 Issues for Determination from the Prayers of the Petitioners

To respond to the petitioner's prayers the Committee analysed the petition to determine whether:

- I. There was evidence of infiltration and gradual takeover by foreigners, especially Chinese nationals, of the import and retail business previously occupied by local small scale importers and businesses;
- II. The small scale importers and traders are subjected to frequent, undue and unnecessary inspections and raids by government officials, both from the national and county government, even where goods have already been inspected and certified at the points of entry, which has adversely affected traders' ability to undertake their businesses;
- III. There was blanket destruction of imported goods at the ports of entry by government agencies even where the containers of goods had only a few items that have been found to be contraband;

- IV. The requirement by foreign agents for certificate of conformity hinders the local traders and importers and the need to have in place local certification measures which will also reduce the cost incurred by businesses;
- V. There were inordinate delays to clear goods at the ports of entry and how this is hindering the efficiency of transacting business by the traders;
- VI. The requirement for separate Bills of Lading for each trader is hindering the commercial ability of the small volumes traders and importers;
- VII. The timeframe for implementation of new policies, regulations and requirements for compliance is adequate, their formulation participatory and whether there are implementation matrices released in advance for guidance; and
- VIII. There are criminal cartels and enterprises frustrating small business owners and the interests of agents for branded items and those who collude to buy auctioned goods at cheaper prices;

CHAPTER 2

SUBMISSIONS TO THE COMMITTEE

This section contains the summaries of the submissions made to the Committee during the sessions and other documents submitted by various stakeholders.

2.1 SUBMISSION BY THE PETITIONERS

The petitioners made the following submissions to the Committee as follows-

1. Small and Medium Enterprises (SMEs) are engines of growth, vital to most developing economies. Research suggests that micro businesses and SMEs account for 95% of firms in most countries in the world. They create jobs, contribute to the GDP, aid industrial development, satisfy local demand for services, innovate and support the 3% of large firms with input and services.
2. In Kenya, SMES play the biggest role in economic development and job creation. The SME and *Jua kali* sector represents 98% of the business population. They might not be involved in policy making or in the inner circle conversations of how to boost the economy but they are the largest players to Kenya's economy. In 2017, an estimated 6.5% overall GDP growth came from the SMES and *Jua kali* sector alone despite the political climate that the country was experiencing.
3. The benefits that Kenya will accrue through integration, involvement and skills development of its large SME yet informal sector is significant. Unfortunately the government is yet to realize the potential hence SMES have to push for a voice and recognition by government.
4. Kenya is at a point where businesses cannot survive the destruction and demolition of properties and intimidation of the business community. The abrupt and harsh rules being implemented will make it harder for importers and the simple trader who cannot afford to venture into manufacturing sector to end up being jobless. As SMES and the Nairobi Importers and Traders Associations members are willing to be part of the Big 4 agenda but only if the BIG 4 does not kill our businesses and includes us in the value addition chain.

In addition the Petitioners made the following recommendations-

a) Government Consideration toward the consumer Population

While the fight against counterfeit was welcome, a large part of the population of the country cannot afford the high quality products due to their income status. Therefore, even as government demands high quality products from the importers, it should also consider the cost of those products. The government must provide cheaper alternatives to its population.

b) Changes to Investor Policy

The government needs to reconsider the current foreign investment policy. Kenya is losing investors to countries like Rwanda and Ethiopia despite their stringent investment policy. The reviewed investment policy should demand that foreign entities share partnership with local investors. Every foreign company should have majority of its personnel as local staff from managerial positions to junior staff. This will encourage foreign investors to believe in investing in a country where its own people are partners and proud to invest in their home country.

c) Reduction of Market Monopoly

While SMEs cannot afford to own manufacturing companies they do have part to play in the supply chain to get to the final consumers. Policies should allow equal distribution within the supply chain so that every Kenyan can benefit from the manufacturing agenda and reduce the market monopoly. The respective players in the sector should limit their operations to their niche, for instance, manufacturers remain as manufacturers, wholesalers to sell to retailers and retailers to final consumer. This way, we create more jobs for everyone and reduce duplication of roles.

d) Increased quality of manufacturing standards of goods

The Government should put stringent control mechanisms to ensure that Kenyan products are competitive in the global market. The manufacturing companies should play by the rules and improve the quality of their products. The products from Kenya should have similar standards both for local market and the international market because Kenyans deserve to enjoy the same quality products just as rest of the world.

e) Greater emphasis on Brand Kenya and Build Kenya campaigns

The government and its diplomats need to start selling Kenya abroad so as to increase market demand for Kenyan products abroad. In addition, Kenyan citizens need to have confidence in the “made in Kenya” products and to take it upon ourselves to brand Kenyan products.

f) Creation of better infrastructure

The government should provide better infrastructure where “*Jua kali*” and SMES operate without relocation or displacing them to undesirable locations. Our recommendation would be for government to build around the already existing SME operating spaces, as they already have prime locations where their businesses are doing alright.

g) Acknowledgement of the SME population

The government and policy makers should recognize the role of SMEs in our economic development agenda. For an inclusive economic growth and development requires serious consideration for the opportunities and potential that the SMES offer as well as the challenges they are currently facing. First is to set up clear categorization criteria for the different, sectors micro and SMES population in Kenya. The formal and informal sectors of the economy should be categorized into other categories, such as Start Up, traders, Service providers and Manufacturers.

2.2 SUBMISSION BY THE ANTI-COUNTERFEIT AGENCY (ACA)

The Anti-Counterfeit Agency (ACA) was represented by Executive Director (Mr Halakhe Wako). He made the following submissions to the Committee—

1. The ACA is continuously addressing the counterfeiting menace both at the entry points and within the country. This is done through enforcement activities that target the curtailing of the supply of counterfeits; and education and awareness of the public’s addressing both the demand and supply of counterfeits.
2. The Anti-Counterfeit Agency is a state corporation established under the Anti-Counterfeit Act, 2008. The Agency is under the State Department of Trade in the Ministry of Industry, Trade and Cooperatives. The Anti-Counterfeit Agency is established under section 3 of the Anti-Counterfeit Act, 2008. Its mandate is as follows:-
 - a) Enlighten and inform the public on matters relating to counterfeiting;

- b) Combat counterfeiting, trade and other dealings in counterfeit goods in Kenya in accordance with the Anti-Counterfeit Act No. 13 of 2008 or under any other written law;
 - c) Devise and promote training programs to combat counterfeiting; and
 - d) Co-ordinate with national, regional or international organizations involved in combating counterfeiting;
3. The vision of ACA is to have a counterfeit-free Kenya, while its mission is to prohibit counterfeiting through the promotion and enforcement of intellectual property rights.
4. Counterfeiting is a global billion-dollar industry estimated to reach between US\$1.9 trillion and US\$ 2.81 trillion by 2022 rising from USD 923 billion and 1.13 trillion in 2013. BASCAP (Business Action to Stop Counterfeiting and Piracy) in the EAC (East Africa Community) and OECD (Organization for Economic Cooperation and Development) estimates that in 2008 the EAC was losing over US\$500 million in tax revenue annually due to counterfeiting.
5. In Kenya, there is no nationwide and credible data on counterfeiting. However, available information from the Kenya Publishers Association estimates that publishers in Kenya lose more than Kshs 2 billion annually through book piracy. In its study of 2012, the Kenya Association of Manufacturers estimated that businesses lose 40% of market share to counterfeiting while the government loses up to 12% of revenue. Research done by the Anti-Counterfeit Agency showed that the levels of counterfeiting in major towns in Kenya stood at 23% in 2016 and 16% in 2018. The agency has been engaging with prospective donors to support a nationwide survey on counterfeiting and other forms of illicit trade in Kenya.

Submissions in response from the Anti-Counterfeit Agency

The ACA responded to the issues raised in the petition as follows-

1. The Agency is not mandated to issue licenses or permits to foreigners to conduct business in Kenya, whether import or retail. The Director of Immigration Services and the County Government of Nairobi are institutions and agencies that issue work/residence permits and business licences/permits and are better placed to respond to the issue of foreigners doing business in Kenya. The Agency, however, treats all

suspected counterfeiters equally irrespective of nationality, race or otherwise and has in the past arrested and prosecuted foreigners including Chinese and Nigerians caught with suspected counterfeit goods;

2. The Agency is mandated by law to inspect all premises for counterfeit goods. This is always done within the confines of the applicable law. Several other government agencies are also mandated by law to inspect premises. The Agency has put in place mechanisms to ensure that its officers do not harass traders. For instance, all Agency inspectors are by law issued with Certificates of Authority for identification purposes and traders should freely request for this. The Agency also has a hotline number {2280111} that any person can use to make enquiries or report any form of harassment by Agency officers. The Agency inspectors are trained to be civil and polite during inspection operations and the Agency has a policy to deal with any form of public complaints against its officers;
3. The Agency is vested with border measures to ensure that counterfeit goods do not enter or leave the country. Counterfeit goods if detected at the entry points are seized and subjected to due process. This is done within the confines of the law. There is in place a Port/Border Destruction Committee at all points of entry to the country and especially at the Port of Mombasa that brings together all government agencies at the port to coordinate joint destruction of condemned goods. The Agency has not engaged in any 'blanket destruction of imported goods at the ports of entry' and is unaware of any such destruction;
4. The Kenya Bureau of Standards is best placed to respond to the issue of Certificate of Conformity as it is within its mandate;
5. The policy of the Government is that goods should be cleared within the shortest time possible from the port of entry and exit. This process starts with an importer through the clearing agent lodging the import declaration form {Form C17}. If an importer delays in lodging this document, the whole process is delayed. The Agency in collaboration with all other government agencies at the port have signed up the port community charter and ensure that no delay is attributable to them by being available at all times to verify and clear containers. However, those with counterfeit or

substandard goods or have mis-declared or under-declared or non-declared goods ordinarily cannot be cleared.

6. There are several reasons that may contribute to such delay: -
 - i. Failure by the importers or clearing agents to make payment of the requisite import duties and port charges on time;
 - ii. Fear of the importers or clearing agents to participate in the opening of containers for 100% verification if they have failed to declare or have under-declared. This is for fear of possible fines;
 - iii. Fear of importers or clearing agents to participate in the opening/verification of containers if they know that they have counterfeit or sub-standard goods; and
 - iv. In a nutshell the reasons that could lead to delays are usually handled on a case-by-case basis.
7. All importers are now required to declare all goods that are contained in a container in one Bill of Lading. There is no requirement that all different goods in one container should be entered in separate Bills of Lading. This is to ensure that there is no concealment of goods that leads to evasion of taxes. Full disclosure by an importer by way of declaring all the goods in a particular container in terms of quantity and description is imperative to avoid tax evasion and to ensure accountability. The bill of lading is primarily a customs document relating to imports and Kenya Revenue Authority may shed more light on this;
8. The Agency has not introduced any new policies or requirements or regulations at the points of entry. However, the Agency concurs that there should be adequate notice before implementation of any new policies, regulations and requirements. The Agency commits to always provide adequate notice in the event that it intends to introduce any new policies, regulations or requirements;
9. The Agency is unaware of the existence of any criminal cartels. However, the Anti-Counterfeit Act and the Anti-Counterfeit Regulations allow intellectual property rights owners to appoint agents to act on their behalf. The Agency works with such agents once they are appointed in the prescribed form. The Agency does not auction any seized goods but destroys them. Auctioning is done by the KRA.

2.3 SUBMISSION BY KENYA REVENUE AUTHORITY

The Kenya Revenue Authority submitted Mr Julius Musyoki Commissioner Customs as follows-

1. Kenya Revenue Authority's role is to ensure compliance of tax laws and other relevant government regulations. Any person/entity can import goods in to Kenya provided that the person/entity has obtained the necessary permits. This is due to liberalization of the market and absence of legislation to bar foreigners. On the other hand, the role of KEBS is to ensure that the imported goods conform to the local quality standards while that of KRA is to ensure that all taxes are duly paid. During the multi-agency task force crackdown on illicit goods, action was taken against foreign traders who were found with illicit goods and those who were found to be in the country illegally;
2. There's need to review the Investment Policy to increase the threshold/restriction on the type of business/investment by foreigners. KRA on its part, will continue to facilitate/support Small and Medium Enterprises/traders in accordance with the law;
3. Kenya Revenue Authority is working as a member of the Multi-agency Team tasked with the responsibility of curbing illicit trade, which includes counterfeits, fake business stickers, entry and dumping of substandard goods in Kenya through the borders. Although working as a team, each and every Government Agency operates under respective governing statutes. All actions taken by the Agencies are done within their respective mandates. The cases of searches participated by KRA are targeted on specific areas after a thorough process of intelligence collection. The findings indicate that all areas searched on the basis of intelligence have been found to have non-compliance. The petition on undue harassment brought forward by the traders is general. All cases where traders have raised issues have been dealt with;
4. The Authority has continuously supported taxpayers through our mission of 'Building Trust through Facilitation so as to Foster Compliance with Tax and Customs Legislation;

5. In the wake of the crackdown on illicit goods, KRA published a public notice in the press and indicated that henceforth, should any illicit goods be found in a consignment, then the entire consignment shall be subject to destruction. The public notice contributed to the traders not declaring their goods for fear of such consignments being destroyed. However, subsequently, there were extensive consultations between the Government and small traders under the Multi-agency. This led to a declaration of an amnesty and a clarification to the extent that only goods found to be non-compliant shall be destroyed. This implied that in cases where few items were found to be non-compliant (either as counterfeit, substandard, prohibited goods etc.) then the Multi-agency team would only destroy the items, which are found to be non-compliant and release the rest of the compliant goods to the importer;
6. Some of the recent items, which have been found to be non-compliant, include: Counterfeited East African cables, Counterfeited Phillips bulbs, Prohibited used undergarments etc. For these cases, the Multi-agency team has detained the counterfeit items for destruction whilst releasing the compliant items to the owners;
7. Pre-export Verification of Conformity (PVoC) program is a conformity assessment program applied to all imports at the respective exporting countries, to ensure their compliance with the applicable Kenyan Technical Regulations and Mandatory standards or approved specifications. PVoC Program was started on 29th September 2015 by KEBS, through publication of Legal Notice No.78 of 15th July, 2015 by the Minister for Trade and Industry. With effect from 1st November 2015, PVoC requirement was made mandatory and expanded to include all imports. (Legal Notice No.78 has since been repealed and replaced by Legal Notice no.127 of 19th June 2018). Certificate of Conformity is a requirement by KEBS, which KRA ensures that it is complied with before release of goods. KEBS have contracted six foreign inspection companies i.e. China Certification & Inspection Company (CCIC), SGS, Intertek, Bureau Veritas, Cotecna and QISJ International to undertake inspection of goods prior to shipment;
8. In the unlikely event that an importer is unable to have his/her goods inspected in countries where KEBS has no accredited inspection companies then local inspection is arranged by KEBS at destination at a cost of 20% of the CIF (Cost, Insurance & Freight). For small traders whose goods are mostly consolidation in nature, KEBS in conjunction

with KRA have developed a framework for consolidated goods that will ensure that such goods are inspected and issued with Certificate of Inspection (COI). The cost of inspection at the country of origin is much cheaper at 0.6% of Free on Board (FOB) for normal cargo and 0.75% of FOB for Consolidated Cargo compared to the 20% of CIF at destination. Further, uninspected goods must undergo 100% verification on arrival to facilitate inspection hence the clearance process is much longer compared to goods already inspected at the country of origin and issued with a Certificate of Conformity;

9. Enforcement of the CoC Program has assisted KRA in obtaining quality transaction documents provided by suppliers/exporters during pre-shipment inspection and has positively contributed to revenue growth by weeding out falsified documents previously used by unscrupulous merchants;
10. The time taken to release goods at the port of entry is dependent on several factors, which include; compliance with various requirements by respective Partner Government Agencies (PGAs). KRA participates in the joint verification of any cargo. However, KRA is normally in the last line of defense and is normally the last agency to release any goods, after all the concerned parties are satisfied. Some of the PGAs include: Kenya Bureaus of Standards, Kenya Plant Health Inspectorate Services, Public Health, Anti-counterfeit Authority, Fisheries Department, Forestry Department, Anti-Narcotics among others. The time taken by KRA to process import/export documents and clearance of goods is specified in KRA's Service Delivery Charter and KRA has endeavoured to conform to the timelines. KRA will continue to adhere to the Port Charter timelines and the KRA Service Delivery Charter to ensure efficient service delivery;
11. KRA in consultation with KEBS and other stakeholders has developed a cargo consolidator's framework to regulate cargo consolidation management. This will ensure that each taxpayer/importer is responsible for security of the cargo and domestic taxes issues. Hence, any cargo, which is found to be non-compliant, counterfeit or substandard, will not lead to delays and/or inconveniencing of other taxpayers. The consolidators will be required get the master Bill of Ladings from the shipper (in the consolidator's name) and subsequently lodge a house Bill of Lading, showing each importer's goods. In the absence of the House Bill, then it means that the owner of the consignment is one. In the

event of detection of contraband goods, then the entire consignment may be liable for destruction. The House Bill therefore guarantees security of the trader's/importer's goods because it provides identity of owner of the goods in a consignment and assist in ensuring that taxes are correctly computed and paid for by importers. These requirements are yet to be implemented. However, sensitization has been done and all the cargo consolidators are aware of them;

12. Fiscal policies are implemented by KRA upon reading of the budget and subsequent publication of the Finance Bill, which happens annually. The budget making process includes public participation where all stakeholders, including KRA, are asked to give their views. As per procedure, the Finance Bill gives timelines by which any fiscal changes are supposed to be implemented. All and sundry are duly informed of such fiscal changes through a gazette notice;
13. KRA ensures that taxpayers are sensitized on any budget changes immediately after presentation/reading of the budget. Customs policies, regulations and requirements are based on laws enacted under the East African Community Customs Management Act, (EACCMA), which provides for the effective date of implementation. Failure to comply with such dates would make Kenya default in its regional obligation. These requirements apply across all EAC states and not Kenya alone. Due to prevalent challenges of undervaluation of imported goods, KRA has come up with benchmark values in order to address the issue of levelling the playing field of all importers of similar commodities. These values are revised periodically, in line with East Africa Customs Management Act & Regulations; and
14. Importers of goods are supposed to declare their goods within 21 days from the date of arrival. After 21 days, KRA 'lots' and subsequently gazettes and advertises for auction. The gazetted goods are published in the Kenya Gazette for all and sundry to know. For transparency, the auction is held in public at an appointed date at the Customs Warehouse. Bidders are allowed to bid for goods after viewing. All taxpayers are treated equally and are supposed to compete fairly at the floor of the auction. Additionally, they are expected to comply with the terms and conditions of the auction. Where investigation reveals malpractices in the auction process, action is taken including dismissal and

prosecution. KRA is in the process of automating the auction process, which will eliminate any perceived cartels.

2.4 SUBMISSION BY KENYA BUREAU OF STANDARDS (KEBS)

The Kenya Bureau of Standard represented by Dr Moses Ikiara Ag. Managing Director submitted as follows-

1. The Kenya Bureau of Standards (KEBS) is a statutory organization of the Government of Kenya established by the Standards Act, mandated to among other functions to -
 - a) to promote standardization in industry and commerce;
 - b) to make arrangements or provide facilities for the examination and testing of commodities and any material or substance from or with which and the manner in which they may be manufactured, produced, processed or treated;
 - c) to control, in accordance with the provisions of this Act, the use of standardization marks and distinctive marks;
 - d) to provide for co-operation with the Government or the representatives of any industry or with any local authority or other public body or any other person, with a view to securing the adoption and practical application of standards;
 - e) to provide the testing at the request of the Minister, and on behalf of the Government, of locally manufactured and imported commodities with a view to determining whether such commodities comply with the provisions of this Act or any other law dealing with standards of quality or description.
2. Kenya Bureau of Standards has categorized illicit products into –
 - a) Counterfeit products which are products infringing on other people’s intellectual property rights and proprietary rights. These products may or may not be sub-standard. KEBS collaborates with the Anti-Counterfeit Agency (ACA) in combating counterfeit products.
 - b) Smuggled products are those products coming into the country through unmanned borders.
 - c) Under-valued / un-declared products are products imported through legal channels but are concealed through under declaration or mis-declaration for purposes of tax evasion and regulatory intervention.
 - d) Sub-standard products are those products which do not meet Kenya Standards and or approved specifications.

3. KEBS measures and controls puts in place is to ensure that goods offered for sale in the local market outlets are compliant with the requirements of relevant Kenya Standards and/or approved specifications. This is done through controls and measures undertaken at the manufacturing level through product certification schemes and import inspection through Pre-export verification of conformity (PVOC) program and destination inspection. The two quality assurance activities are supported by market surveillance activities and testing infrastructure which is spread across the country. All KEBS processes are certified to ISO 9001; 2015 whereas the testing laboratories are accredited to ISO/IEC 17025:2005 - General requirements for competence in Testing and calibration laboratories by SANAS of South Africa.
4. Some of the measures to give assurance of the quality of the products being offered for sale in the market include-(measures do not support trade in contraband or illicit products)

a) Monitoring of Locally Manufactured Products

KEBS implements product certification schemes guided by ISO 17065: 2012 - Conformity assessment — Requirements for bodies certifying products, processes and services. These product certification schemes are provided for under the Standards Act. Currently KEBS runs two certification schemes namely, Standardization Mark (SM) and the Diamond Mark (DM). KEBS undertakes the following activities, which form the key requirements for product certification:

- i. Initial Inspection of the production system for conformity to statutory requirements as well as relevant manufacturing codes of practice;
- ii. Sampling and product testing for compliance with relevant Kenya standards or approved specifications;
- iii. Develop and sign with the manufacturer scheme of quality supervision and control for production processes intended to ensure consistency in product quality throughout the certification cycle. This document provides a framework for quality monitoring over the certification validity period;
- iv. KEBS undertakes surveillance inspection of factories and sampling for testing after certification to ensure the factory adheres to the scheme of quality supervision and control during the validity period of the permit.
- v. Complying products are issued with a Standardization Mark (SM), and Diamond mark of Quality (DM); and

- vi. Currently, there are over 10,000 certified products under SM scheme. Of these, over 8,000 products belong to large and medium size firms while more than 2,000 are manufactured by small and micro enterprises. Diamond Mark certified firms are 421. Certified products have access to other EAC markets without further pre-verification in the same way Kenya accepts certified products by National Standards Bodies of EAC Partner States. These products are subjected to market surveillance and feedback channelled to the certifying National Standards Body.

b) Quality Inspection of Imports

Quality of imported products is controlled through:

- i. The Pre-Export Verification of Conformity to Standards (PVoC) programme
- ii. Destination inspection at the ports of entry.

c) PVoC Program

This is a program under which imported products are inspected at the countries of exportation and if complying with the relevant Kenya Standards or other approved specifications; are issued with certificates of conformity (CoC). Goods accompanied with CoCs are subjected to surveillance inspection and sampling at the port of entry on risk assessment basis.

d) Destination Inspection

In the event some imports arrive at the entry points without CoC, the products are detained while samples are taken for testing for compliance with the relevant standards. In order to enhance the fight against contraband products, KEBS is working with other Government agencies through a multi-agency framework at the entry points targeting the following consignments:

- 1) 100% inspection of consolidated cargo;
- 2) 100% inspection of products arriving without a COC;
- 3) 100% inspection of used clothes and shoes; and
- 4) 100% inspection of imports through Eldoret Airport.

e) Certification of Imported products

All imported products are required to have Import Standardization Mark (ISM) before they are put on the shelf for sale. ISM is a secure mark with a track and trace solution, which enables verification of authentic marks through special bar code readers and

mobile application. This is to enable consumers as well as KEBS market surveillance to identify certified products in the market.

5. KEBS has established market surveillance as a full-fledged directorate. This is intended to give it more emphasis in allocation of resources required to enhance capacity to undertake market surveillance, which supports product certification as well as import inspection activities. Some of the activities undertaken to mitigate substandard products include-
 - a) Conducting scheduled market surveillance to confirm the quality of locally manufactured and imported products as well as to confirm presence and authenticity of KEBS marks;
 - b) Conducting targeted market surveillance based on receipt of complaints and intelligence information;
 - c) Confirming conditions of products including marking and labeling and taking appropriate action where products are found to be in poor state or marking and labelling is found wanting;
 - d) Confirming whether imported products have genuine Certificates of Conformity.
 - e) During surveillance activities KEBS officers conduct awareness to businesses/stakeholders. This assists in promoting a quality culture in the general population;
 - f) KEBS also organizes awareness workshops on sectors noted to have perennial problems/complaints;
 - g) Seizure and destruction of substandard products.
 - h) Order for withdrawal/recall of substandard products as well as issuing public notices on substandard products;
6. In enforcing these standards, companies found not to meet requirements for certification are not issued with Standardization Mark permits and as such are denied access to market. Those who fail to meet the standards during surveillance have their products seized and production stopped through suspension of Standardization mark permits;
7. KEBS works with multi-stakeholder under the auspices of Kenya Association of Manufacturers. In areas where industries have formed associations, KEBS is using such associations to manage quality issues within the sector. Such collaborations entail the industry committing to comply with good manufacturing practices and providing KEBS with intelligence with regard to violations of the law (especially

firms dumping substandard products into the market). In its turn, KEBS provides technical advice to help industry achieve compliance and enforces the standards through seizure and destruction of reported cases of non - compliance. These collaborations have helped to create a measure of self-regulation by industry and is achieving a lot especially in the steel sub sector and Plastic Pipes sub sector;

8. KEBS recognizes that one way of combating sub-standard goods in the market is empowering consumers to differentiate product with valid permits on the shelf. To achieve this for locally manufactured goods, all manufacturers are now required to indicate the Quality Mark permit number on their product labels below the Quality Mark. KEBS has also invested in a Standardization Marks verification system capable of giving real time responses on the validity of quality marks through a Short Message Service. Consumers can check the valid quality marks by sending the permit number indicated on the products to 20023 in this format: “SM#xxxxxxx” for locally manufactured goods. Validity of Import standardization Mark for imported products can be verified by either sending a SMS message “ISM#xxxxxxx” to 20023 or scanning the ISM using the free KEBS ISM application downloaded from Apps store or Google play. This facility has proved to be a critical tool in the war against substandard goods as it has enabled the agency to deploy enforcement resources more efficiently by targeting products without valid marks as notified by consumers. As a result, KEBS is investing more to increase consumer awareness through traditional and utilization of social media platforms to educate the public on the use of the SMS system for verifying Quality Marks;
9. KEBS has established key partnerships with other regulators in order to make their efforts more fruitful. Some of these partnerships are in form of MOU’s. Among the partnerships include the Kenya Revenue Authority (KRA), Anti Counterfeit Agency (ACA), Kenya Plant Health Inspectorate Service (KEPHIS), Agriculture and Food Authority (AFA) –Sugar Directorate, Pharmacy and Poisons Board (PPB), Competition Authority of Kenya etc. KEBS has partnered with KRA in ensuring that only custom entries for goods with a COC issued by KEBS through the PVOC agents are passed by KRA. Goods without a CoC require a joint verification before the entry is passed. This has reduced the number of shipments that entered the country bypassing KEBS clearance at the ports of entry; and
10. In addition to its presence in 14 locations distributed all over the country and completed with the normal market surveillance and inspection, KEBS has also been

actively engaged in the multi-agency operations against illicit trade led by the Deputy Head of Public Service throughout the country. The role of KEBS in the multi-agency teams is to check and confirm compliance of the products to the relevant Kenya Standards. Part of the goods seized during these multi-agency activities include- Electric cables, stone coated roofing sheets, used clothing, tyres, cooking oils and sugar among many others.

2.5 SUBMISSION BY THE COMPETITION AUTHORITY OF KENYA

The Authority represented by the General Manager, Mr Wangombe Kariuki submitted as follows

The Authority is mandated to *interalia* -

- a) Regulation of market structure which encompasses approving or disapproving merger applications after analysing its likely effects on competition.
- b) The Authority also has a mandate of protecting consumers from unfair and misleading market conduct;
- c) regulation of market conduct including on price fixing; territorial allocation and also Abuse of Dominance (foreclosure through exclusive agreements, predatory pricing, among others);
- d) consumer protection (misleading advertisements; misrepresentation; unconscionable conduct), and;
- e) Advising the government and other government agencies in regard to competition and consumer protection matters.

Submissions in Response by the Competition Authority

The Competition Authority responded to the petition and submitted their response to the issues raised by the petitioners by mainly highlighting the effects of **contraband**, **counterfeit** and **parallel imports** from perspective of its competition and consumer protection mandate.

Their representative made his submissions under as follows:

Contraband goods and competition

1. Contraband goods are defined as prohibited and restricted under the Second & Third Schedule of the EAC Customs Management Act, 2004. These include all goods the importation of which is for the time being prohibited under the Act, or by any other law. This means that contraband goods are illegal *ab initio* and therefore their importation or

export is illegal, either in defiance of a total ban or without payment of a required duty in order to gain additional margins.

2. Since import of contraband goods are not documented and hence they evade and or avoid payment of tax, they create unequal economic conditions between legal and illegal businesses and as a consequent distort conditions for fair competition. Contraband goods are not necessarily counterfeits or imitations but distort competition by gaining unfair benefits through tax evasion making their competitors unable to effectively compete in the marketplace. The tax avoidance of these goods deprives the government revenue for supporting its budget and hence it may be motivated to increase tax on the other legitimate goods further exacerbating the competitiveness of the legit business.

Counterfeit Goods

3. Although the anti-Counterfeit mandate rests with the Anti-Counterfeit Agency and is provided under the ant-counterfeit Act of 2008, we wish to highlight that counterfeiting is defined as engaging in the manufacture, production, packaging, re-packaging, labeling or making, whether in Kenya or elsewhere, of any goods whereby those protected goods are imitated in such manner and to such a degree that those other goods are identical or substantially similar copies of the protected goods, without the authority of the owner of any intellectual property right subsisting in Kenya or elsewhere in respect of protected goods.
4. Counterfeit goods tend to be products of inferior quality that are sold under another company's trademark. Trademarks protect a company's reputation and allow consumers to distinguish between products in the marketplace.
5. However, counterfeit goods are different from "knock off" goods, which involve similar looking products but do not have labels that would violate another company's trademark. Counterfeit goods can include:
 - a) Clothing, apparel, and accessories (shoes, sunglasses, handbags, wallets or jewelry)
 - b) Pharmaceuticals
 - c) Electronics (including cell phones and computers)
 - d) Toys
 - e) Baby food/formula
 - f) Motor vehicle parts

- g) Cigarettes
- h) Alcoholic drinks (beers and spirits)
- i) Tyres

6. As highlighted, the range of counterfeited products is extremely broad and the trends indicate that counterfeiters are no longer confining their activities to just luxury goods but are increasingly exploiting consumable goods.
7. This constitutes a serious threat to public health and safety since these counterfeit products are not subject to safety checks. It is notable that Article 46 of the Constitution of Kenya, 2010, provides that consumers have the right to goods and services of reasonable quality, among others.
8. Counterfeit products are often produced with the intent to take advantage of the superior value of the imitated product. Therefore, suppliers of counterfeit goods falsely represent the products to be manufactured by a reputable and known manufacturer and this misleads the consumers to believe that they are purchasing genuine products.
9. Further, the consumers are duped to believe that counterfeit products are cheaper than the genuine ones. Therefore, consumers are misled into believing that they are saving from the purchase whereas they are actually buying goods that are of inferior quality.
10. In summary, the quality of the counterfeits cannot be ascertained and consumers are misled to believe that they are consuming goods of right quality, standard, value or grade. It is therefore noted that Counterfeit goods pose significant dangers that are not just limited to corporate profits but include dampening motivation to innovate hence more likely to suppress industrial growth in the long-run. Also, they pose a significant health risk to the lives of Kenyans. For example, a consumer taking prescription medications that were purchased from a pharmacy, yet the medicine are counterfeit, may put consumer's health at risk. This violates consumer rights as enshrined in Article 46 of the Constitution on the right to health and safety.
11. A case example of counterfeit drugs is that of a teenager in New York who, after undergoing a liver transplant, was taking prescription medications that were purchased from a reputable pharmacy. After a series of extremely painful spasms in his legs, it was

discovered that the medications he bought were counterfeit and were putting his health at risk. This case inspired anti-counterfeiting legislation in US Congress.

Parallel imports

12. On the other hand, parallel trade is a non-counterfeit product imported from another country (country of origin) without the permission of the intellectual property owner. In other words, products end up in a country other than the one which was originally intended by the intellectual owner or manufacturer.
13. These imports are not necessarily contrabands or counterfeits. The position of the Competition Authority was that parallel imports are done through legal channels (subjected to the same taxation and regulatory regimes) they may deepen competition among distributors or retailers of the products marketed under the same trademark (i.e. intra-brand competition).
14. Parallel import is regarded as the most efficient instrument to ensure effective competition between `grey` market goods and those imported through official channels, as a result forcing the importers to improve their market performance and increase overall market effectiveness. This further provides an extra supply channel which results in price reductions, as well as offer consumers with additional range of choices.
15. Parallel trade also tends to adjust the level of prices on the basis of competitive markets, excluding possibilities of price discrimination between different markets, as excessively high or low prices would result in loss of customers and market share, which can be taken over by parallel traders.
16. Notably, parallel trade mainly occurs because of price differentials between the same products sold in different markets. Price differentials can arise because of price regulations, product regulations, distribution costs or manufacturers pricing policy. However, price differentials that incentivize parallel imports/trade are always occasioned by manufacturer's pricing policy.
17. Parallel trade may also provide an important degree of arbitrage between the price levels in different countries. This helps to ensure that prevailing price levels between different

national markets cannot vary to a wide margin that represents the parallel trader's transaction costs.

18. In order to extinguish competition posed by Parallel trade, IP owners usually enter into exclusive agreements with their distributors. This is aimed at ensuring that it is only their appointed distributors who can market their specific products.
19. Under the Competition Act, exclusive distributorship agreements are prohibited unless exempted by the Competition Authority. This is based on the fact that agreements imposing territorial restrictions or other limitations on freedom of trade and limiting possibilities of parallel trade in the market indisputably affect competition and trade, as well as limiting consumer choices.
20. However, exemption can be granted on the basis that the public benefits accruing from the arrangement outweigh the resultant lessening of competition and also it can be granted on the premises that it has the object of ensuring economic stability of a specific industry.
21. In its analysis and therefore justification, the Authority observed that parallel importation done within the legal framework was likely to bring about more benefits to the public such as promoting inter-brand competition and lowering consumer prices, and moreover recognizing that parallel imports are not fake or counterfeit products.
22. The Competition Authority also noted that there exist established Government agencies including KRA; Anti-Counterfeit Agency; KEBS and other law enforcement agencies to manage the counterfeits and contrabands.
23. Actualization of the Big 4 Agenda will not only, for example, ensure that the goods offered for sale in the CBD and beyond Moi Avenue in Nairobi are locally manufactured but will also support job creation in the whole supply chain, from inputs to the final products to end-markets (or consumers), of these manufacturing industries hence ensuring formalization of the current informal sector.

24. Given the regulatory limitations and the presence of counterfeit products in the country, no single agency can fully combat the vice of counterfeiting. This therefore calls for continuous collaboration between Government agencies in their efforts to eliminate this conduct. It is therefore imperative to create a formidable committee consisting of all the government agencies that are mandated to deal with any aspect of counterfeit and contraband goods.

The Authority made the following recommendation-

25. Trade in contraband and counterfeit goods is illegal. These goods have negative effects on our economy's revenue streams; the industrial base and also pose health risk to our citizenry.

26. They also cause unfair competition to the formalized trade, which respects tax laws and other regulatory requirements. Although it may seem to support a large number of our employable population, its negative effects outweigh any pyrrhic benefits it may have since it dampens motivation to invest in Research and Development and hence reduced innovation.

27. The aforesaid threatens growth and sustainability of our economy especially in the manufacturing sector and consequently diminishing any long-term development plans for the country.

28. Based on the above, and coupled with the fact that it is a Constitutional Right for every citizen to access safe healthy goods and of right quality, it is important for the Government to ensure that counterfeits and contraband goods are not traded in Kenya.

29. Aware of the cross-cutting nature of the regulatory regime in managing imports and trade in the country, it is important for the relevant Government agencies to continually collaborate. This is not only in enforcement issues but also in educating and creating awareness among consumers in regard to the negative effects of the counterfeits to not only individuals' health, but also the long term growth of our economy; for the benefits of our future generations.

30. However, it is pertinent that the above initiatives are complimented by fast-tracking the actualization of the Big 4 Agenda in order to cushion against the job losses under the informal sector, which is infiltrated by counterfeits, and also lessening demand of counterfeit medication; with the provision of affordable health care.

31. It is important also that the relevant agencies should develop efficient mechanisms/capacity of identifying and isolating specific items, which may not meet the statutory standards of allowable imports. This will ensure that genuine imports, including the parallel imports, are not barred to the detriment of the competition benefits they provide

2.6 SUBMISSIONS BY KENYA PORTS AUTHORITY (KPA)

Kenya Ports Authority represented by Chief Manager at Mr. Kiprono Bullut submitted as follows-

- I. The mandate of the KPA is to facilitate trade and goods cargo and works in close collaboration with other agencies to achieve this mandate. Such agencies include: KRA, KEBS, Kenya Railways and Security agencies

The Process of Clearing Cargo upon Arrival in the Docking Area:

- II. The health officer ensures that the crews are in a good condition to start the verification exercise. The ship lowers its yellow flag to indicate good health. The immigration officers then checks and verifies the immigration status of the crew and subject them to the entry requirements. Once the preliminary checks and verifications are done, then the KPA officers board the vessel to undertake stevedoring operations. Depending on the nature of the cargo, other agencies such as KEPHIS may be called upon to do certifications.
- III. The next stage is the clearance process of cargo and requisite documentation to show that the cargo is on board and that the duty is paid to KRA. There are other government agencies who have specific mandates related to the cargo. During the verification process by the different agencies, some good may be restricted depending on issues that might emerge during the process. At this stage it is possible that certain cargo may be denied entry to the country by reshipping it back or by way of destruction. The cause for holding the cargo is to ensure that the duties have been paid. During the intervention process, the cargo can be stopped to ensure that the Kenya standard has been held. In all other cases

the cargo once processed is duly released to the owners without undue delay and hindrances.

- IV. There are various forms of destroying cargo- during the verification process, some cargo may be destroyed due to overstaying at the port or the goods therein are not compliant for release such as vehicles that are over 8 years age, perishable goods, and expired foodstuffs. KPA plays a facilitative role during the destruction of these goods, which is carried out by a multi-agency team. Goods are not destroyed due to short delays. Destruction is mainly informed by lack of the required standard and certifications. The type of cargo in the vessel is guided by the manifest. Intermittent sampling might be conducted or at times the opening of the whole container for verification
- V. In situations where the origin of goods is suspect or ownership is unverifiable then the goods are held for a period of time before a decision is reached by the authority.
- VI. Some political influence at times affects the process; this may affect the delivery of the Authority on the key performance indicators (KPI). Complete release of cargo can take as short as two days or up to 15 days.
- VII. Harassment and arrests were a part of the challenges faced by the organization and that, KPA often stood in the middle between importers and the government agencies. There can be misinformation and sometimes KPA finds itself in the midst of competing business interest.
- VIII. The KPA has integrated the ISO standard and international benchmark standards as well as performance contracting with the national government. There exist an online tracking system and portal that is linked to the KRA and Kentrade systems.
- IX. The multi-agency team is now actively involved in the processing of the cargos and decision related to the processing and release of cargo. A meeting of the multi-agency team is undertaken every Friday and chaired by the KPA.
- X. The Kenya ports Authority is facing a serious shortage of dockworkers. This has adversely contributed to the speed at which cargo is cleared and released.

CHAPTER 3

COMMITTEE'S OBSERVATIONS

After reviews of submission by various stakeholders, the committee made the following observations-

1. The agencies involved in regulation and facilitation of businesses do not issue business permits, licences or work permits. It is the preserve of the Directorate of Immigration Services and the respective County Governments to issue relevant permits or licenses respectively to foreigners to conduct business in Kenya, whether importation or retail;
2. The Investment Policy does not provide for any threshold/restriction on the type of business/investment by foreigners. Government agencies are expected to facilitate all business in accordance with the existing laws and policies;
3. The government agencies by law treat all business owners equally irrespective of nationality, race or otherwise of the owner of the goods and have in the past arrested and prosecuted offenders including foreigners. There was no evidence adduced to suggest a systematic and discriminative policy targeting the small traders;
4. All relevant government agencies are mandated by law to inspect all premises for counterfeit goods as part of their enforcement mandates. Further, Agencies have put in place some level of safeguards to ensure that inspections are carried out within the confines of the law and the enabling regulations. Such measures include a hotline, name tags for officers, identification certificates, training and complaint raising charters/policies;
5. Initially, the government pursued a policy of blanket destruction of consignments that had any illicit goods. This policy was pronounced publicly through a public notice in the press, but after extensive consultation between the Government and small traders under the multi-agency team, an amnesty was declared and a clarification to the extent that only goods found to be non-compliant shall be destroyed was reached. This implied that in cases where few items were found to be non-compliant (either as counterfeit, substandard, prohibited goods etc.) then the Multi-agency team would only destroy within the existing laws and regulations the items which are found to be non-compliant and which do not meet the required standards and release the rest of the compliant goods to the importer;
6. There are measures to ensure that counterfeit goods do not enter or leave the country. Counterfeit goods if detected at the entry points are seized and subjected to due process.

This is done within the confines of the law. There is in place a port/border destruction committee at all points of entry and especially at the Port of Mombasa that brings together all government agencies at the port to coordinate joint destruction of condemned goods. The Multi-Agency has not engaged in any 'blanket destruction of imported goods at the ports of entry' and is unaware of any such destruction.

7. Certificate of Conformity is a requirement by Kenya Bureau of Standards (KEBS) which Kenya Revenue Authority (KRA) ensures that it is complied with before release of goods to the market. KEBS have contracted six foreign inspection companies i.e. China Certification & Inspection Company (CCIC), SGS, Intertek, Bureau Veritas, Cotecna and QISJ International to undertake inspection of goods prior to shipment. All imports are subjected to Pre-export Verification of Conformity (PVoC) program, which is a conformity assessment program, applied to all imports at the respective exporting countries, to ensure their compliance with the applicable Kenyan Technical Regulations and Mandatory standards or approved specifications. With effect from 1st November 2015 PVoC requirement was made mandatory and expanded to include all imports. (Legal Notice No.78 has since been repealed and replaced by Legal Notice no.127 of 19th June 2018);
8. Local inspection is arranged where an importer is unable to have his/her goods inspected in countries where KEBS has no accredited inspection companies. The inspection at the destination would be at a cost of 20% of the CIF (Cost, Insurance & Freight);
9. For small traders whose goods are mostly consolidation in nature, KEBS in conjunction with KRA have developed a framework for consolidated goods that will ensure that such goods are inspected and issued with Certificate of Inspection (COI). The cost of inspection at the country of origin is much cheaper at 0.6% of Free on Board (FOB) for normal cargo and 0.75% of FOB for Consolidated Cargo compared to the 20% of CIF at destination. Further, uninspected goods must undergo 100% verification on arrival to facilitate inspection hence the clearance process is much longer compared to goods already inspected at the country of origin and issued with a Certificate of Conformity;
10. The policy of the Government is that goods should be cleared within the shortest time possible from the port. This process starts with an importer through the clearing agent lodging the import declaration form. If an importer delays in lodging this document, the whole process is delayed. The Multi-Agency team in collaboration with all other relevant government agencies at the port have signed up the port charter timelines and ensure that delays are minimized. However, delays may occur in the following circumstances-

- a) Where goods are declared to be counterfeit or sub-standard
- b) Where goods are non-declared, mis-declared or under-declared
- c) Where there are non-compliance issues to the required standards
- d) Where there are documentation gaps related to the goods
- e) Not meeting any of the requirements of the any of the partner government agencies such as KRA, Kenya Bureaus of Standards, Kenya Plant Health Inspectorate Services, Public Health, Anti-counterfeit Authority, Fisheries Department, Forestry Department, Anti-Narcotics among others.

11. KRA in consultation with KEBS and other stakeholders has developed cargo consolidator's framework to regulate cargo consolidation management. This will ensure that each taxpayer/importer is responsible for security of the cargo and domestic taxes issues. Hence, any cargo, which is found to be non-compliant, counterfeit or substandard, will not lead to delays and/or inconveniencing of other taxpayers. The consolidators will be required to get the master Bill of Ladings from the shipper (in the consolidator's name) and subsequently lodge a house Bill of Lading, showing each importer's goods. In the absence of the House Bill, then it means that the owner of the consignment is one. In the event of detection of contraband goods then the entire consignment may be liable for destruction. The House Bill therefore guarantees security of the trader's/importer's goods because it provides identity of owner of the goods in a consignment and assist in ensuring that taxes are correctly computed and paid for by importers. These requirements are yet to be implemented;

12. While public participation and stakeholder consultation is a mandatory Constitutional requirement in all spheres of governmental decisions, it was evident to the committee that there were inadequacies on the part of the members of the multi-agency entities to inform and or publicize their roles and responsibilities, promulgation of new regulations, notices, changes in policies and the general conduct of their Constitutional and statutory mandates in relation to the sector;

13. Importers of goods are supposed to declare their goods within 21 days from the date of arrival. After 21 days, KRA lots and subsequently gazettes and advertises for auction. The gazetted goods are published in the Kenya Gazette. The auction is held in public at an appointed date at the Customs Warehouse. Bidders are allowed to bid for goods after viewing. KRA is in the process of automating the auction process, which will eliminate

- any perceived cartels. In relation to the agents for known brand names that are target for counterfeits, the Authorities may allow their agents to help detect any counterfeits;
14. During the site visit to the port the committee noted that there was a shortage of dock workers at the facility which has hampered the smooth operation of the port causing unnecessary and uncalled for delays to the business people. The Committee further noticed blame games amongst the multi-agency team members pointing at unhealthy working relationships. This can likely jeopardize port operations and security;
 15. All importers are now required to declare all goods that are contained in a container in one Bill of Lading. There is no requirement that all different goods in one container should be entered in separate Bills of Lading. This is to ensure that there is no concealment of goods that leads to evasion of taxes. Full disclosure by an importer by way of declaring all the goods in a particular container in terms of quantity and description is imperative to avoid tax evasion and to ensure accountability;
 16. The Multi-Agency on Illicit Trade on has not introduced any new policies or requirements or regulations at the points of entry. However, the Agency concurs that there should be adequate notice before implementation of any new policies, regulations and requirements. The Agency commits to always provide adequate notice in the event that it intends to introduce any new policies, regulations or requirements; and
 17. The Multi-Agency on Illicit Trade is unaware of the existence of any criminal cartels. However, the Anti-Counterfeit Act and the Anti-Counterfeit Regulations allow intellectual property rights owners to appoint agents to act on their behalf. The Agency works with such agents once they are appointed in the prescribed form;

CHAPTER 4

COMMITTEE'S RECOMMENDATIONS

1. The Director for Immigration should issue work permits and other identification documents only when all conditions are fulfilled by the applicants while in their home countries, and only get Visa/Permits after vetting. The applicants should be assessed on case-by-case basis and there should be no preferential treatment to any category of foreign citizenship;
2. The Nairobi City County Government should vet all business permits and licenses to ensure that they have been procedurally and legally acquired. No business should be allowed to operate in the county without a valid business license and or permits;
3. The relevant government agencies should treat all business owners equally irrespective of their status, nationality or race. Where there is evidence of a breach of the law relating to the sector the agencies should apply the applicable laws and regulations fairly and judicially. Further investigations should be carried out to ensure that small traders are not unreasonably hindered from conducting their businesses;
4. The investment policy should be reviewed to provide for a threshold and or restriction on the type of business and investment that foreigners can engage. This will eliminate unnecessary and unhealthy competition between established foreign firms and local small-scale traders;
5. The relevant government agencies should publicize the policy relating to destruction of goods to the extent that only goods found to be non-compliant shall be destroyed but not all the goods in a certain container;
6. The certificate of conformity is a standardization certificate required by the Kenya Bureau of Standard that applies to all imports at the respective exporting countries, to ensure their compliance with the applicable Kenyan Technical Regulations and Mandatory standards or approved specifications. This regime of ensuring all goods entering our borders are fit for purpose should be strictly complied with and religiously enforced by the relevant agencies. It is also paramount that local capacities are enhanced to ensure the cost related to assessment, verification and certification for conformity are competitive and affordable to small scale traders;

7. The Kenya Bureau of Standards should sensitize traders on the need and the use of the certificate of conformity. The contracted companies should also have strict time lines and service charter so that they do not hinder trade;
8. The multi- agency committee should ensure that delays at the port are kept at the bare minimum. Where the delays are caused by the inability of any agency to perform its duty, the charges occasioned by delays should be borne by the agency. The agencies should cohesively work together for the interest of the country and facilitation of trade. In addition, the different agencies should publicize their roles and responsibility and ensure that new rules, regulation and changes to policies are circulated to reach the widest audience of stakeholders and general public;
9. The relevant agencies should ensure that public participation, as a mandatory constitutional requirement should inform their decision-making processes in all spheres of government policy process. The relevant agencies should also make deliberate efforts to publicize these policies, regulations, notices, changes in policies and the general conduct of their Constitutional and statutory mandates in relation the sector to widest members of the public as possible within the next 12 months;
10. The cargo consolidation framework developed together with stakeholders should be circulated to all small-scale traders. The KRA should clarify the new directive related to Bill of Lading and the role the traders will play to smoothen the process;
11. The multi- agency team at the port should improve their efficiency and communicate better. The heads of the respective agencies that contribute members to the committee should ensure accountability from their members;
12. The relevant government agencies should ensure that the auction of goods at the port is carried out within the laid out procedures. The Kenya Revenue authority should publicize and inform the members the new policy of automating the process. The agencies should identify and eliminate any perceived or real cartels within the system;
13. There should be a public portal for the process of clearing goods at the port. Traders should be able to monitor the progress of the clearing process; and
14. Strengthen the capacity of the Anti-Counterfeit Agency on their finances and human resource to enhance the war against counterfeit and illicit trade.

ANNEX 1: ADOPTION LIST

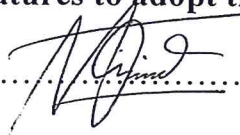
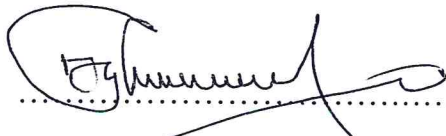
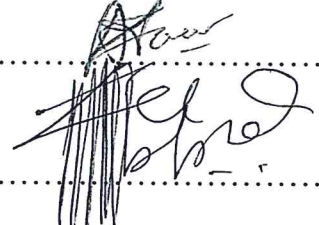

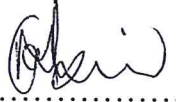
**ADOPTION OF THE REPORT OF THE SENATE STANDING COMMITTEE ON
TOURISM TRADE AND INDUSTRIALIZATION ON THE PETITION ON THE FIGHT
AGAINST COUNTERFEIT AND CONTRABAND GOODS IN KENYA**

**We, the undersigned Members of the Tourism Trade and Industrialization Committee of the
Senate, do hereby append our signatures to adopt the Report-**

Sen. Kiburu Charles, MP	Chairperson	.....
Sen. Anuar Loititip, MP	Vice-Chairperson	.....
Sen. Mwangi Githiomi, MP	Member	.....
Sen. Andrew Langat, MP	Member	.....
Sen. Wario Golich, MP	Member	.....
Sen. (Dr.) Agnes Zani., MP	Member	.....
Sen. Mwaruma Johnes, MP	Member	.....
Sen. Masitsa Naomi, MP	Member	.....
Sen. Mercy Chebeni, MP	Member	.....

ADOPTION OF THE REPORT OF THE SENATE STANDING COMMITTEE ON TOURISM TRADE AND INDUSTRIALIZATION ON A PETITION RELATED TO THE FIGHT AGAINST COUNTERFEIT AND CONTRABAND GOODS BY SEN. JOHNSON SAKAJA, MP, ON BEHALF OF THE MEMBERS OF NAIROBI IMPORTERS AND TRADERS ASSOCIATION

We, the undersigned Members of the Tourism Trade and Industrialization Committee of the Senate, do hereby append our signatures to adopt the Report-

Sen. Kiburu Charles, MP	Chairperson	.....
Sen. Anuar Loititip, MP	Vice-Chairperson	.....
Sen. Mwangi Githiomi, MP	Member	.....
Sen. Andrew Langat, MP	Member	.....
Sen. Wario Golich, MP	Member	.....
Sen. (Dr.) Agnes Zani., MP	Member	.....
Sen. Mwaruma Johnes, MP	Member	.....
Sen. Masitsa Naomi, MP	Member	.....
Sen. Mercy Chebeni, MP	Member	.....

MINUTES OF THE 29TH MEETING OF THE STANDING COMMITTEE
ON TOURISM, TRADE & INDUSTRIALIZATION HELD ON
SATURDAY, 25TH AUGUST, 2018 IN SOUTHERN PALMS BEACH
RESORT, SOUTH COAST, MOMBASA FROM 9.00 A.M.

MEMBERS PRESENT

- | | |
|-----------------------------------|---------------|
| 1. Sen. Kiburu Charles Reubenson | - Chairperson |
| 2. Sen. Mercy Chebeni | - Member |
| 3. Sen. (Dr.) Agnes Zani | - Member |
| 4. Sen. Wario Golich Juma | - Member |
| 5. Sen. Langat Christopher Andrew | - Member |
| 6. Sen. Mwaruma Johnes | - Member |
| 7. Sen. Masitsa Naomi Shiyonga | - Member |

MEMBERS ABSENT

- | | |
|------------------------------|--------------------|
| 1. Sen. Anuar Loititip | - Vice-Chairperson |
| 2. Sen. Mwangi Paul Githiomi | - Member |

SENATE SECRETARIAT

- | | |
|--------------------------|--------------------|
| 1. Mr. Ibrahim Ali Leruk | - Clerk Assistant |
| 2. Hassan Odhowa | - Researcher |
| 3. Mr. Malcom Ngugi | - Legal Counsel |
| 4. Ms. Farida Ngasura | - Audial Recorder |
| 5. Ms. Sarah Rukwaro | - Sergeant At Arms |
| 6. Mr. Mariko Roche | - Support Staff |

PRAYERS

The meeting was called to order at 9.00 a.m. by the Chairperson followed by a word of prayer.

MINUTE.SEN/DCS/SCTTI/2018/120: ADOPTION OF AGENDA

The agenda of the meeting was adopted after, it was proposed by Sen. (Dr.) Langat and seconded by Sen. Wario as follows;

The Minutes of 16th was proposed by Sen. Wario Golicha and seconded by Sen. Johnnes Mwaruma;

The Minutes of 17th was proposed by Sen. Agnes Zani and seconded by Sen. Johnnes Mwaruma;

The Minutes of 18th was proposed by Sen. Christopher Langat and seconded by Sen. Agnes Zani;

The Minutes of 19th was proposed by Sen. Johnnes Mwaruma and seconded by Sen. Charles Kibiru;

The Minutes of 20th was proposed by Sen. Naomi Shiyonga and seconded by Sen. Mercy Chebeni;

The Minutes of 21st was proposed by Sen. Christopher Langat and seconded by Sen. Naomi Shiyoga;

The Minutes of 22nd was proposed by Sen. Johnnes Mwaruma and seconded by Sen. Christopher Langat;

The Minutes of 8th was proposed by Sen. Johnnes Mwaruma and seconded by Sen. Christopher Langat;

The Minutes of 8th was proposed by Sen. Johnnes Mwaruma and seconded by Sen. Christopher Langat;

The Minutes of 8th was proposed by Sen. Johnnes Mwaruma and seconded by Sen. Christopher Langat;

The Minutes of 8th was proposed by Sen. Johnnes Mwaruma and seconded by Sen. Christopher Langat;

The Minutes of 8th was proposed by Sen. Johnnes Mwaruma and seconded by Sen. Christopher Langat;

The Minutes of 8th was proposed by Sen. Johnnes Mwaruma and seconded by Sen. Christopher Langat;

MINUTES OF THE 28TH MEETING OF THE STANDING COMMITTEE
ON TOURISM, TRADE & INDUSTRIALIZATION HELD ON FRIDAY,
24TH AUGUST, 2018 IN FINANCE CENTRE, KENYA PORT AUTHORITY,
MOMBASA FROM 11.00 A.M.

MEMBERS PRESENT

1. Sen. Kiburu Charles Reubenson - Chairperson
2. Sen. Anuar Loititip - Vice-Chairperson
3. Sen. Mercy Chebeni - Member
4. Sen. (Dr.) Agnes Zani - Member
5. Sen. Wario Golich Juma - Member
6. Sen. Langat Christopher Andrew - Member

MEMBERS ABSENT

1. Sen. Mwangi Paul Githiomi - Member
2. Sen. Mwaruma Johnes - Member
3. Sen. Masitsa Naomi Shiyonga - Member

IN ATTENDANCE

1. Mr. Kiprono Bullut - Chief Manager KRA Customs
2. Mr. Edward Opiyo - Head of Container Operation KPA
3. Ms. Paul Bor - Head of Conventional Cargo KPA
4. Mr. Charles Odo - Commination Officer Protocol KPA

SENATE SECRETARIAT

1. Mr. Ibrahim Ali Leruk - Clerk Assistant
2. Hassan Odhwa - Researcher
3. Mr. Malcom Ngugi - Legal Counsel
4. Ms. Farida Ngasura - Audial Recorder
5. Ms. Sarah Rukwaro - Sergeant At Arms
6. Mr. Mariko Roche - Support Staff

PRAYERS

thereafter the next officers inline are from Immigration to check on entry requirements. The KPA then goes on board to undertake stevedoring operations. If the cargo is agricultural produce, KEPHIS have to issue a certificate to certify that the cargo is free of weapons and will draw samples of what has been offloaded.

- ❖ The next stage is the clearance process of Cargo and requisite documentation to show that the cargo is on board and that the duty is paid at KRA. There are other government interveners who have cut out information from the ship manifest KRA have a system that is linked to servers to ensure that the cargo is tracked. The cause for holding the cargo is to ensure that the duties have been paid. During the intervention process, the cargo can be stopped to ensure that the Kenya standard has been held. KEBS, ACA, KRA will check to ensure that their requirements are fulfilled. After this, the cargo is released to the owners, can be held or can be destroyed
- ❖ There are various forms of destroying cargo- during the verification process, some cargo may be destroyed due to overstaying at the port, if left for more than 8 years, and they get crushed and auctioned. Foodstuff can be kept and then destroyed. NEMA also participates in the destruction of overstayed cargo. Unfit cargo can be taken to specialized areas for destruction for either burning or destroying.
- ❖ The KPA has no say in destruction of a ship's cargo and the law is merely to facilitate the action of destruction. The extent of KPA's role in destruction of cargo was questioned.
- ❖ The KPA lead stated that the KPA doesn't check the cargo reports and that the KRA does not have any say on the verification process
- ❖ The KPA Head explained that in the past, the KRA was the main agency in the port and suggestion that the KPA need to be the main agency was a tricky one, as they did not have the technical capacity.
- ❖ The KPA head explained that there were cargo storage which importers were warned about and that from 4 days' time, the cargo storage agency came in to effect and that the cargo that was destroyed was not done so as to create delays but on the basis of the lack of standard satisfaction

- ❖ *The KRA representative stated that he could explain the issue of the taxes on of 217 containers and that 142 of these had been cleared. He stated that with time, the balance would be cleared. The Commissioner of Customs had also waived the warehouse rent and the Kenya Shipping Commission and the owners of the private container stations had their demurrage charges waived.*
- ❖ *KPA explained that in ISO certification, the KPA received it in 2008. It was based on customer care and documentation, efficiency and customer feedback*

Observations and Recommendations

- 1) The Committee observed the required enhanced coordination of the multi-agency in clearance of cargo and need for one-stop shop for the Multi-Agency to operate and strengthening coordination of multi-agencies operations at the entry points;*
- 2) The Committee noted the need for sophisticated operation systems and technology to fight corruption at the port; and*
- 3) KPA to ensure that the cargo is handled in a proper manner and Kenyan small-scale traders are saved from the anguish delays and bureaucracies by the agencies concerned.*

MINUTE.SEN/DCS/SCTTI/2018/119: ANY OTHER BUSINESS AND ADJOURNMENT

The following issues were raised by Members-

- 1) The Committee noted that, the Kenya Ports Authority is not a member of the Inter-Agency Anti-illicit Trade Executive Forum and Technical Working group, the Committee recommended amendment to the gazette notice;
- 2) The Committee was informed on the challenges of the KPA and multi-agency especially in the areas of human resource capacity and recommended increase in personnel to speed up clearance of cargo; and
- 3) The Committee was also informed on the new development and progress made in the frontiers of Special Economic Zones, Lamu Port and Standard Gauge Railway as being outstanding.

MINUTES OF THE 26TH MEETING OF THE STANDING COMMITTEE
ON TOURISM, TRADE & INDUSTRIALIZATION HELD ON MONDAY,
20TH AUGUST, 2018 IN COMMITTEE ROOM TEN, MAIN PARLIAMENT
BUILDING, NEW WING FROM 9.30 A.M.

MEMBERS PRESENT

1. Sen. Kibiru Charles Reubenson - Chairperson
2. Sen. Mercy Chebeni - Member
3. Sen. Masitsa Naomi Shiyonga - Member

MEMBERS ABSENT

1. Sen. Anuar Loititip - Vice-Chairperson
2. Sen. (Dr.) Agnes Zani - Member
3. Sen. Wario Golich Juma - Member
4. Sen. Mwangi Paul Githiomi - Member
5. Sen. Langat Christopher Andrew - Member
6. Sen. Mwaruma Johnes - Member

IN ATTENDANCE

1. Mr. Wangombe Kariuki - General Manager CA
2. Dr. Adan Wario - Competition Authority
3. Mr. Mugambu Mutegi - Competition Authority
4. Mr. Gideon Mokaya - Competition Authority
5. Mr. Boniface Makonga - Competition Authority
6. Mr. Boniface Kamiti - Competition Authority

SENATE SECRETARIAT

1. Mr. Ibrahim Ali Leruk - Clerk Assistant
2. Mr. Malcom Ngugi - Legal Counsel

PRAYERS

The meeting was called to order at 12.00 p.m. by the Chairperson followed by a word of prayer.

Contraband good and competition

3. *Contraband goods are defined and prohibited and restricted under the Second & Third Schedule of the EAC Customs Management Act, 2004. These include all goods the importation of which is for the time being prohibited under the Act, or by any other law¹.*
4. *That, contraband goods are illegal ab initio and therefore their importation or export is illegal, either in defiance of a total ban or without payment of a required duty in order to gain additional margins.*
5. *That contraband goods are not documented and hence they evade and or avoid payment of tax, they create unequal economic conditions between legal and illegal businesses and as a consequent distort conditions for fair competition.*
6. *That, Contraband goods are not necessarily counterfeits or imitations but distort competition by gaining unfair benefits through tax evasion making their competitors unable to effectively compete in the marketplace.*
7. *The tax avoidance of these goods deprives the government revenue for supporting its budget and hence it may be motivated to increase tax on the other legitimate goods further exacerbating the competitiveness of the legit business.*

Counterfeit Goods

8. *Counterfeit goods tend to be products of inferior quality that are sold under another company's trademark. Trademarks protect a company's reputation and allow consumers to distinguish between products in the marketplace.*
 9. *However, counterfeit goods are different from "knock off" goods, which involve similar looking products but do not have labels that would violate another company's trademark. Counterfeit goods can include:*
 10. *As highlighted, the range of counterfeited products is extremely broad and the trends indicate that counterfeiters are no longer confining their activities to just luxury goods but are increasingly exploiting consumable goods, Which constitutes a serious threat to public health and safety since these counterfeit products are not subject to safety checks. It is notable that Article 46 of the Constitution of Kenya, 2010, provides that consumers have the right to goods and services of reasonable quality, among others.*
 11. *Under the Competition Act, exclusive distributorship agreements are prohibited unless exempted by the Competition Authority. This is based on the fact that agreements imposing territorial restrictions or other limitations on freedom of trade and limiting possibilities of parallel trade in the market indisputably affect competition and trade, as well as limiting consumer choices.*
-

also in educating and creating awareness among consumers in regard to the negative effects of the counterfeits to not only individuals' health, but also the long-term growth of our economy; for the benefits of our future generations.

- vi. However, it is pertinent that the above initiatives are complimented by fast-tracking the actualization of the Big 4 Agenda in order to cushion against the job losses under this informal sector, which is infiltrated by counterfeits, and also lessening demand of counterfeit medication; with the provision of affordable health care.
- vii. It is important also that the relevant agencies should develop efficient mechanisms/capacity of identifying and isolating specific items which may not meet the statutory standards of allowable imports. This will ensure that genuine imports, including the parallel imports, are not barred to the detriment of the competition benefits they provide.

RECOMMENDATIONS

- 1) There Committee recommends enacting and enforcing strict laws to stop trading on contraband goods;
- 2) The Committee noted that, there was need for agencies concern to roll out awareness program to educate consumers on contraband and counterfeit goods by the Competition Authority;
- 3) The Committee observed that, in case where the herbal advert was allowed, there was gross misrepresentation of facts. The Committee therefore noted with concern the supplier questionable characters on the herbal products descriptions and recommended punitive measures to be undertaken;
- 4) There was need for traceability to any person who makes adverts of wrong representation of facts; and
- 5) The Government needs to encourage and support local manufacturing and not making our economy imports dependent.

MINUTE.SEN/DCS/SCTTI/2018/107: ADJOURNMENT

There being no other business, the meeting was adjourned at 1.35 p.m.

SIGNATURE.....

(CHAIRPERSON: SEN. KIBIRU CHARLES REUBENSON)

DATE.....*25th / August / 2018*.....

**MINUTES OF THE 27TH MEETING OF THE STANDING COMMITTEE
ON TOURISM, TRADE & INDUSTRIALIZATION HELD ON MONDAY,
20TH AUGUST, 2018 IN COMMITTEE ROOM TEN, MAIN PARLIAMENT
BUILDING, NEW WING FROM 11.10 A.M.**

MEMBERS PRESENT

1. Sen. Kibiru Charles Reubenson - Chairperson
2. Sen. Mercy Chebeni - Member
3. Sen. Masitsa Naomi Shiyonga - Member

MEMBERS ABSENT

1. Sen. Anuar Loititip - Vice-Chairperson
2. Sen. (Dr.) Agnes Zani - Member
3. Sen. Wario Golich Juma - Member
4. Sen. Mwangi Paul Githiomi - Member
5. Sen. Langat Christopher Andrew - Member
6. Sen. Mwaruma Johnes - Member

IN ATTENDANCE

1. Dr. Moses Ikiara - Ag. Managing Director Kebs
2. Mr. Geoffrey Muiira - Kenya Bureau of Standards
3. Mr. Raymond Michuki - Kenya Bureau of Standards
4. Mr. Bernard Nguyo - Kenya Bureau of Standards

SENATE SECRETARIAT

1. Mr. Ibrahim Ali Leruk - Clerk Assistant
2. Mr. Malcom Ngugi - Legal Counsel

PRAYERS

The meeting was called to order at 12.00 p.m. by the Chairperson followed by a word of prayer.

MINUTE.SEN/DCS/SCTTI/2018/112: ADOPTION OF AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. Naomi Shinyoga and seconded by Sen. Mercy Chebeni as follows;

1. Adoption of the Agenda;
2. Confirmation of Minutes
3. Meeting with Ag. Managing Director - Kenya Bureau of Standards

The Ag. Director informed the Committee on the four categories of illicit products as indicated below:

- i. Counterfeit products – these are products infringing on other people's intellectual property rights and proprietary rights. These products may or may not be sub-standard. KEBS collaborates with the Anti Counterfeit Agency (ACA) in combating counterfeit products.
- ii. Smuggled products – these are products coming into the country through unmanned borders.
- iii. Under-valued / un-declared products – these are products imported through legal channels but are concealed through under declaration or mis-declaration for purposes of tax evasion and regulatory intervention.
- iv. Sub-standard products – these are products which do not meet Kenya Standards and or approved specifications.

The Ag. Managing Director further explain the measure and control the Agency has put in place in his explanation he stated the mandate to ensure that goods offered for sale in the local market outlets are compliant with the requirements of relevant Kenya Standards and/or approved specifications. This is done through controls and measures undertaken at the manufacturing level through product certification schemes and import inspection through Pre-export verification of conformity (PVOC) program and destination inspection. The two quality assurance activities are supported by market surveillance activities and testing infrastructure which is spread across the country. All KEBS processes are certified to ISO 9001; 2015 whereas our testing laboratories are accredited to ISO/IEC 17025:2005 - General requirements for competence in Testing and calibration laboratories by SANAS of South Africa.

The measure put in place to give assurance of the quality of the products being offered for sale in the market are as follows:

- i. Monitoring of Locally Manufactured Products;
- ii. Quality Inspection of Imports; and
- iii. Market Surveillance.

He also stated the initiatives undertaken by KEBS to enhance effective measures to combat substandard products-

- i. Strict Enforcement Of Certification Criteria - Companies found not to meet requirements for certification are not issued with Standardization Mark permits and as such are denied access to market. Those who fail to meet the standards during surveillance have their products seized and production stopped through suspension of Standardization mark permits.
- ii. Engagement With Industry Sectors Organized Under The Auspices Of Kenya Association Of Manufacturers - In areas where industries have formed associations, KEBS is using such associations to manage quality issues within the sector. Such collaborations entail the industry committing to

3) The Committee was informed on the two Legal Notices - No.78 and revised Notice No. 177, on provision of standard inspection of imports. The Committee learnt that the two legal notices had legislative gaps providing window of manipulation by the cartels on issues of compliance and verification of conformity

Recommendations:

- 1) *Enhanced multi-agency surveillance along the porous/insecure borders.*
- 2) *Intelligence sharing and close collaboration with security agencies on illicit trade.*
- 3) *Strengthen coordination of multi- agency operations at the entry points.*

MINUTE.SEN/DCS/SCTTI/2018/115: ADJOURNMENT

There being no other business, the meeting was adjourned at 1.35 p.m.

SIGNATURE.....

(CHAIRPERSON: SEN. KIBIRU CHARLES REUBENSON)

DATE.....*25th / August / 2018*

**MINUTES OF THE 25TH MEETING OF THE STANDING COMMITTEE
ON TOURISM, TRADE & INDUSTRIALIZATION HELD ON TUESDAY,
14TH AUGUST, 2018 IN COMMITTEE ROOM TEN, MAIN PARLIAMENT
BUILDING, NEW WING FROM 12.00 P.M.**

MEMBERS PRESENT

1. Sen. Kiburu Charles Reubenson - Chairperson
2. Sen. (Dr.) Agnes Zani - Member
3. Sen. Wario Golich Juma - Member
4. Sen. Mercy Chebeni - Member
5. Sen. Mwangi Paul Githiomi - Member
6. Sen. Masitsa Naomi Shiyonga - Member

MEMBERS ABSENT

1. Sen. Anuar Loititip - Vice-Chairperson
2. Sen. Langat Christopher Andrew - Member
3. Sen. Mwaruma Johnes - Member

IN ATTENDANCE

1. Mr. Julius Musyoki - Commissioner Customs
2. Major Kariuki - Ag. Deputy Commissioner
3. Ms. Beatrice Muinda - Kenya Revenue Authority
4. Ms. Hannah Gakuo - Kenya Revenue Authority
5. Ms. Sharon Kirai - Kenya Revenue Authority
6. Ms. Sheila Aduvagah - Kenya Revenue Authority

SENATE SECRETARIAT

1. Mr. Ibrahim Ali Leruk - Clerk Assistant
2. Mr. Malcom Ngugi - Legal Counsel

PRAYERS

The meeting was called to order at 12.00 p.m. by the Chairperson followed by a word of prayer.

programme for the small traders and going forward these engagements are going to be continuous to provide the taxpayers with the right information to enable them comply.

- iii. *Some of the Acts administered by Customs in carrying out the above roles both on behalf of KRA and on behalf of partner government agencies include but not limited to the following: East African Community Customs Management Act 2004, Excise Duty Act, 2015, VAT Act, 2013, Miscellaneous Levies and Fees Act, 2016, Standards Act, Anti-counterfeit Act, National Environment Management Authority Act, Narcotic Drugs and Psychotropic Substances Act and Acts, Legal Notices and Gazette Notices of Partner Government Agencies pertaining to regulation of importation and exportation of specified goods.*
- iv. *In enforcing restrictions, prohibitions, contrabands, counterfeits and the fight against illicit goods, KRA has embraced the multi-agency approach in verification of cargo to ensure that only conforming goods are allowed into the country. The multi-agency team comprise of Kenya Revenue Authority, Kenya Bureaus of Standards, Anti-Counterfeit Agency, Port Health, Kenya Airport Authority (Where applicable), Kenya Ports Authority (Where Applicable), Immigration (Where Applicable), National Intelligence Service, Directorate of Criminal Investigation, National Police Service, Kenya Plant Health Inspectorate Services, Energy Regulatory Commission among others.*
- v. *Currently, the following category of goods is subjected to 100% Multi-agency verification in order to weed out any illicit goods: Goods Imported without Certificate of Conformity, Consolidated goods, Used/Second Hand Clothes, All excisable products from KOREA and Gross Misdeclarations profiled by the scanner*
- vi. *Some of the regional and international agreements enforced by Customs Department in carrying out it's role in trade facilitation and enforcement of restrictions and prohibitions include: Revised Kyoto Convention, CITES (Convention on International Trade in Endangered Species), World Customs Organization, World Trade Organization, EAC Common External Tariff, EAC Protocol, EAC Treaty and COMESA Agreements.*

In the wake of the crackdown on illicit goods, KRA published a public notice in the press and indicated that henceforth should any illicit goods be found in a consignment, then the entire consignment shall be subject to destruction. The public notice contributed to the traders not declaring their goods for fear of such consignments being destroyed.

However, subsequently there were extensive consultations between the Government and small traders under the Multi-agency. This led to a declaration of an amnesty and a clarification to the extent that only goods found to be non-compliant shall be destroyed.

This implied that in cases where few items were found to be non-compliant (either as counterfeit, substandard, prohibited goods etc) then the Multi-agency team would only destroy the items, which are found to be non-compliant and release the rest of the compliant goods to the importer.

Some of the recent items, which have been found to be non-compliant, include: Counterfeited East African cables, Counterfeited Phillips bulbs, Prohibited used undergarments etc. For these cases, the Multi-agency team has detained the counterfeit items for destruction whilst releasing the compliant items to the owners.

PVoC Program was started on 29th September 2015 by KEBS, through publication of Legal Notice No.78 of 15th July, 2015 by the Minister for Trade and Industry. With effect from 1st November 2015 PVoC requirement was made mandatory and expanded to include all imports. (Legal Notice No.78 has since been repealed and replaced by Legal Notice no.127 of 19th June 2018).

Certificate of Conformity is a requirement by KEBS, which KRA ensures that it is complied with before release of goods. KEBS have contracted six foreign inspection companies i.e. China Certification & Inspection Company (CCIC), SGS, Intertek, Bureau Veritas, Cotecna and QISJ International to undertake inspection of goods prior to shipment.

For small traders whose goods are mostly consolidation in nature, KEBS in conjunction with KRA have developed a framework for consolidated goods that will ensure that such goods are inspected and issued with Certificate of Inspection (COI) The cost of inspection at the country of origin is much cheaper at 0.6% of Free on Board (FOB) for normal cargo and 0.75% of FOB for Consolidated Cargo compared

In the absence of the House Bill, then it means that the owner of the consignment is one. In the event of detection of contraband goods then the entire consignment may be liable for destruction.

The House Bill therefore guarantees security of the trader's/importer's goods because it provides identity of owner of the goods in a consignment and assist in ensuring that taxes are correctly computed and paid for by importers.

These requirements are yet to be implemented. However, sensitization has been done and all the cargo consolidators are aware of them.

f) Timeframe for Implementation of New Policies, Regulations and Requirements

Fiscal policies are implemented by KRA upon reading of the budget and subsequent publication of the Finance Bill, which happens annually. The budget making process includes public participation where all stakeholders, including KRA, are asked to give their views.

As per procedure, the Finance Bill gives timelines by which any fiscal changes are supposed to be implemented. All and sundry are duly informed of such fiscal changes through a gazette notice. KRA ensures that taxpayers are sensitized on any budget changes immediately after presentation/reading of the budget.

Customs policies, regulations and requirements are based on laws enacted under the East African Community Customs Management Act, (EACCMA), which provides for the effective date of implementation. Failure to comply with such dates would make Kenya default in its regional obligation. These requirements apply across all EAC states and not Kenya alone.

g) Criminal Cartels and Enterprises frustrating Small Business Owners and Interests

In executing its mandate, KRA is cognizant of the role played by stakeholders including the small traders/importers. KRA will continue to engage and work with the small traders/imports in addressing issues affecting the sector to facilitate their compliance and contribution to tax revenue.

MINUTES OF THE 24TH MEETING OF THE STANDING COMMITTEE
ON TOURISM, TRADE & INDUSTRIALIZATION HELD ON TUESDAY,
9TH AUGUST, 2018 IN COMMITTEE ROOM TEN, MAIN PARLIAMENT
BUILDING, NEW WING FROM 12.00 P.M.

MEMBERS PRESENT

1. Sen. Kibiru Charles Reubenson - Chairperson
2. Sen. Langat Christopher Andrew - Member
3. Sen. Mwaruma Johnes - Member
4. Sen. Wario Golich Juma - Member
5. Sen. Mercy Chebeni - Member
6. Sen. Mwangi Paul Githiomi - Member
7. Sen. Masitsa Naomi Shiyonga - Member

MEMBERS ABSENT

1. Sen. Anuar Loititip - Vice-Chairperson
2. Sen. (Dr.) Agnes Zani - Member

IN ATTENDANCE

1. Dr. Chris Kiptoo - Principal Secretary
2. Mr. Halakhe Waqo - Anti-Counterfeit Agency
3. Ms. Lindsay Kipkemoi - Anti-Counterfeit Agency
4. Ms. Agnes Karingu - Anti-Counterfeit Agency
5. Mr. Samuel Chemisto - State Department of Trade
6. Mr. Meshack Koima - State Department of Trade

SENATE SECRETARIAT

1. Mr. Ibrahim Ali Leruk - Clerk Assistant
2. Ms. Caroline Cheruiyot - Legal Counsel
3. Ms. Winnie Kulei - Researcher

PRAYERS

The meeting was called to order at 12.00 p.m. by the Chairperson followed by a word of prayer.

4. He made the following responses in relation to the prayers of the petitioner:

A. *Infiltration of the import and retail business by foreigners- the space previously occupied by small scale importers and businesses is being gradually taken over by foreigners, predominantly Chinese, who are edging out locally owned businesses and firms from the sector;*

Response

- i. The Agency is not mandated to issue licenses or permits to foreigners to conduct business in Kenya, whether import or retail.
- ii. The Director of Immigration Services and the County Government of Nairobi that issue work/residence permits and business licences/permits are better placed to respond to the issue of foreigners doing business in Kenya.
- iii. The Agency, however, treats all suspected counterfeiters equally irrespective of nationality, race or otherwise and has in the past arrested and prosecuted foreigners including Chinese and Nigerians caught with suspected counterfeit goods.

B. *Undue harassment by government agencies and officials – the small scale importers and traders are subjected to frequent, undue and unnecessary inspections and raids by government officials, both from the national and county government, even where goods have already been inspected and certified at the points of entry. This has adversely affected our ability to undertake our businesses;*

Response

- i. The Law mandates the Agency to inspect all premises for counterfeit goods. This is always done within the confines of the applicable law. Several laws also provide other government agencies to inspect premises suspected of illegal trade.
- ii. The Agency has put in place mechanisms to ensure that its officers do not harass traders. For instance, all Agency inspectors are by law issued with Certificates of Authority for identification purposes and traders should freely request for this.
- iii. The Agency also has a hotline number {2280111} that any person can use to make enquiries or report any form of harassment by Agency officers.
- iv. The Agency inspectors are trained to be civil and polite during inspection operations and the Agency has a policy to deal with any form of public complaints against its officers.

C. *Blanket destruction of imported goods at the ports of entry – government agencies are increasingly resorting to destruction of entire containers of goods, even where only a few items have been found to be contraband. This has affected small traders who normally pool together to import goods in one container;*

Response

- i. The Agency is vested with border measures to ensure that counterfeit goods do not enter or leave the country. Counterfeit goods if detected at the entry points are seized and subjected to due process. This is done within the confines of the law.
- ii. There is in place a port/border destruction committee at all points of entry and especially at the Port of Mombasa that brings

several reasons that could lead to delay and it is usually handled on a case by case basis.

- F. *Requirement for separate Bills of Lading for each trader* – due to the small volumes that each trader imports, majority of traders are forced to share containers, in which case a single Bill of Lading is issued for all the goods in the container. The introduction of a requirement that each trader must produce a separate Bill of Lading would push small scale importers and traders out of business;

Response

- i. All importers are now required to declare all goods that are contained in a container in one Bill of Lading. There is no requirement that all different goods in one container should be entered in separate Bills of Lading.
- ii. This is to ensure that there is no concealment of goods that leads to evasion of taxes. Full disclosure by an importer by way of declaring all the goods in a particular container in terms of quantity and description is imperative to avoid tax evasion and to ensure accountability.
- iii. The bill of lading is primarily a customs document relating to imports and Kenya Revenue Authority may shed more light on this.

- G. *Timeframe for implementation of new policies, regulations and requirements* – on most occasions, small scale importers and traders are not consulted during development of new policies and regulations. Further, when these are published, traders are not given sufficient time to comply with the new requirements, thus incurring great losses. There should be a window period of at least one year for implementation of new policies, to enable small importers and traders comply. On the same issue, we appeal that goods which are being held at the post as a result of implementation of these new measures be released. There is also need to educate traders on the specific standards requirements for each category of goods;

Response

- i. The Agency has not introduced any new policies or requirements or regulations at the points of entry. However, the Agency concurs that there should be adequate notice before implementation of any new policies, regulations and requirements.
- ii. The Agency commits to always provide adequate notice in the event that it intends to introduce any new policies, regulations or requirements.

- H. *Criminal cartels and enterprises frustrating small business owners and interests* – Small scale importers and traders have often been the victims of criminal cartels, including people purporting to be agents for branded items like Philips bulbs, as well as those who are strategically stationed at ports of entry and collude to buy auctioned goods at cheap prices;

Response

The Agency is unaware of the existence of any criminal cartels. However, the Anti-Counterfeit Act and the Anti-Counterfeit Regulations allow

**MINUTES OF THE 23RD MEETING OF THE STANDING COMMITTEE
ON TOURISM, TRADE & INDUSTRIALIZATION HELD ON TUESDAY,
7TH AUGUST, 2018 IN COMMITTEE ROOM TEN, MAIN PARLIAMENT
BUILDING, NEW WING FROM 12.00 P.M.**

MEMBERS PRESENT

1. Sen. Kibiru Charles Reubenson - Chairperson
2. Sen. Wario Golich Juma - Member
3. Sen. Mercy Chebeni - Member
4. Sen. Mwangi Paul Githiomi - Member
5. Sen. Langat Christopher Andrew - Member
6. Sen. Mwaruma Johnes - Member
7. Sen. Masitsa Naomi Shiyonga - Member

MEMBERS ABSENT

1. Sen. Anuar Loititip - Vice-Chairperson
2. Sen. (Dr.) Agnes Zani - Member

IN ATTENDANCE

1. Ms. Flora Mutahi - Chairlady ACA
2. Mr. Halake Wako - Executive Director ACA
3. Mr. Johnstone Adera - Deputy Director ACA

SENATE SECRETARIAT

1. Mr. Ibrahim Ali Leruk - Clerk Assistant
2. Ms. Caroline Cheruiyot - Legal Counsel
3. Ms. Winnie Kulei - Researcher
4. Ms. Njeri Manga - Media Relation Officer

PRAYERS

The meeting was called to order at 12.20 p.m. by the Chairperson followed by a word of prayer.

4. He made the following responses in relation to the prayers of the petitioner:

A. **Infiltration of the import and retail business by foreigners-** the space previously occupied by small scale importers and businesses is being gradually taken over by foreigners, predominantly Chinese, who are edging out locally owned businesses and firms from the sector;

Response

- i. The Agency is not mandated to issue licenses or permits to foreigners to conduct business in Kenya, whether import or retail.
- ii. The Director of Immigration Services and the County Government of Nairobi that issue work/residence permits and business licences/permits are better placed to respond to the issue of foreigners doing business in Kenya.
- iii. The Agency, however, treats all suspected counterfeiters equally irrespective of nationality, race or otherwise and has in the past arrested and prosecuted foreigners including Chinese and Nigerians caught with suspected counterfeit goods.

B. **Undue harassment by government agencies and officials** – the small scale importers and traders are subjected to frequent, undue and unnecessary inspections and raids by government officials, both from the national and county government, even where goods have already been inspected and certified at the points of entry. This has adversely affected our ability to undertake our businesses;

Response

- i. The Law mandates the Agency to inspect all premises for counterfeit goods. This is always done within the confines of the applicable law. Several laws also provide other government agencies to inspect premises suspected of illegal trade.
- ii. The Agency has put in place mechanisms to ensure that its officers do not harass traders. For instance, all Agency inspectors are by law issued with Certificates of Authority for identification purposes and traders should freely request for this.
- iii. The Agency also has a hotline number {2280111} that any person can use to make enquiries or report any form of harassment by Agency officers.
- iv. The Agency inspectors are trained to be civil and polite during inspection operations and the Agency has a policy to deal with any form of public complaints against its officers.

C. **Blanket destruction of imported goods at the ports of entry** – government agencies are increasingly resorting to destruction of entire containers of goods, even where only a few items have been found to be contraband. This has affected small traders who normally pool together to import goods in one container;

Response

- i. The Agency is vested with border measures to ensure that counterfeit goods do not enter or leave the country. Counterfeit goods if detected at the entry points are seized and subjected to due process. This is done within the confines of the law.
- ii. There is in place a port/border destruction committee at all points of entry and especially at the Port of Mombasa that brings

several reasons that could lead to delay and it is usually handled on a case by case basis.

- F. *Requirement for separate Bills of Lading for each trader* – due to the small volumes that each trader imports, majority of traders are forced to share containers, in which case a single Bill of Lading is issued for all the goods in the container. The introduction of a requirement that each trader must produce a separate Bill of Lading would push small scale importers and traders out of business;

Response

- i. All importers are now required to declare all goods that are contained in a container in one Bill of Lading. There is no requirement that all different goods in one container should be entered in separate Bills of Lading.
- ii. This is to ensure that there is no concealment of goods that leads to evasion of taxes. Full disclosure by an importer by way of declaring all the goods in a particular container in terms of quantity and description is imperative to avoid tax evasion and to ensure accountability.
- iii. The bill of lading is primarily a customs document relating to imports and Kenya Revenue Authority may shed more light on this.

- G. *Timeframe for implementation of new policies, regulations and requirements* – on most occasions, small scale importers and traders are not consulted during development of new policies and regulations. Further, when these are published, traders are not given sufficient time to comply with the new requirements, thus incurring great losses. There should be a window period of at least one year for implementation of new policies, to enable small importers and traders comply. On the same issue, we appeal that goods which are being held at the post as a result of implementation of these new measures be released. There is also need to educate traders on the specific standards requirements for each category of goods;

Response

- i. The Agency has not introduced any new policies or requirements or regulations at the points of entry. However, the Agency concurs that there should be adequate notice before implementation of any new policies, regulations and requirements.
- ii. The Agency commits to always provide adequate notice in the event that it intends to introduce any new policies, regulations or requirements.

- H. *Criminal cartels and enterprises frustrating small business owners and interests* – Small scale importers and traders have often been the victims of criminal cartels, including people purporting to be agents for branded items like Philips bulbs, as well as those who are strategically stationed at ports of entry and collude to buy auctioned goods at cheap prices;

Response

The Agency is unaware of the existence of any criminal cartels. However, the Anti-Counterfeit Act and the Anti-Counterfeit Regulations allow

MINUTES OF THE 22ND MEETING OF THE STANDING COMMITTEE
ON TOURISM, TRADE & INDUSTRIALIZATION HELD ON TUESDAY,
1ST AUGUST, 2018 IN COMMITTEE ROOM TEN, MAIN PARLIAMENT
BUILDING, NEW WING FROM 12.00 P.M.

MEMBERS PRESENT

1. Sen. Kibiru Charles Reubenson - Chairperson
2. Sen. Wario Golich Juma - Member
3. Sen. Masitsa Naomi Shiyonga - Member
4. Sen. Mercy Chebeni - Member
5. Sen. Mwaruma Johnes - Member

MEMBERS ABSENT

1. Sen. Anuar Loititip - Vice-Chairperson
2. Sen. Langat Christopher Andrew - Member
3. Sen. Mwangi Paul Githiomi - Member
4. Sen. (Dr.) Agnes Zani - Member

IN ATTENDANCE

Sen. Johnstone Sakaja - Sponsor of the Petition

IN ATTENDANCE

1. Mr. Ben Mutahi - Chair Nairobi Importer and Traders Ass.
2. Mr. Peter Muturi - Member Nairobi Importer and Traders Ass.
3. Ms. Anne Nyokabi -Member Nairobi Importer and Traders Ass.
4. Ms. Nyokabi Gacharia -Member Nairobi Importer and Traders Ass.
5. Mr. Francis Macharia -Member Nairobi Importer and Traders Ass.
6. Ms. Anneleah Mwangi -Member Nairobi Importer and Traders Ass.
7. Ms. Anne Nyokabi -Member Nairobi Importer and Traders Ass.
8. Mr. Duncan Ndegwa -Member Nairobi Importer and Traders Ass.
9. Mr. Richard Gitata -Member Nairobi Importer and Traders Ass.
10. Ms. Anne Wendo -Member Nairobi Importer and Traders Ass.
11. Mr. Charles Makara -Member Nairobi Importer and Traders Ass.
12. Ms. Miriam Mukure -Member Nairobi Importer and Traders Ass.
13. Ms. Hannah Wangui -Member Nairobi Importer and Traders Ass.
14. Ms. Eunice Mueni -Member Nairobi Importer and Traders Ass.

2. *That, importers and small traders have employed millions of Kenyans and continue to be a major source of employment and a major contributor to the growth of the economy;*
3. *That, most of the imports comprise goods that are essential but not manufactured in Kenya;*
4. *That, we have the following grievances which we wish to have addressed by the Senate:*
 - a) *Infiltration of the import and retail business by foreigners - the space previously occupied by small scale importers and businesses is being gradually taken over by foreigners, predominantly Chinese, who are edging out locally owned businesses and firms from the sector;*
 - b) *Undue harassment by government agencies and officials - the small scale importers and traders are subjected to frequent, undue and unnecessary inspections and raids by government officials, both from the national and county government, even where goods have already been inspected and certified at the points of entry. This has adversely affected our ability to undertake our businesses;*
 - c) *Blanket destruction of imported goods at the ports of entry - government agencies are increasingly resorting to destruction of entire containers of goods, even where only a few items have been found to be contraband. This has affected small traders who normally pool together to import goods in one container.*
 - d) *Flexibility of the Certificate of Conformity regime - at the moment, local traders and importers are required to produce Certificates of Conformity issued from foreign agents. We propose that this be revised to have in place local certification measures which will also reduce the cost incurred by businesses.*
 - e) *Time taken to clear goods at the ports of entry - majority of small scale importers and traders use bank loans to purchase and import goods, on the understanding that once these goods are sold they will repay the loans. This is compromised when the clearance procedures at the ports of entry take too long, meaning that these traders default on their loans and are subjected to auctioning of their goods and closure of businesses.*

that micro businesses and SMES account for 95% of firms in most countries in the world. They create jobs, contribute to the GDP, aid industrial development, satisfy local demand for services, innovate and support the 3% of large firms with input and services. In Kenya SMES play the biggest role in economic development and job creation? The SME and Jua kali sector represents 98% of the business population;

- ii. That, the benefits that Kenya will accrue through integration, involvement and skills development of its large SME is significant. Unfortunately the government is yet to realize the potential hence SMES have to push for a voice and recognition by government;
- iii. That, small businesses in Kenya hardly survive. This is due to the destruction and demolition of properties, in addition to rampant intimidation by the security officers;
- iv. That, the abrupt and harsh rules being implemented will make it harder for importers and the simple trader who cannot afford to venture into manufacturing sector to end up being jobless; and
- v. That, the wish to be part of the team to implement the Big 4 agenda but only if the BIG 4 does not kill their existing businesses but allows them to be in the value addition chain.

OBSERVATIONS

The following recommendations were proposed:

- i. Consumer Population - The counterfeit battle is of great significant in Kenya but needs to consider the greater population of our country, which cannot afford the high quality products due to their income status. If the government demands high quality products from the importers then they should also consider the cost of those products;
- ii. Investor Policy - As per the research undertaken, the country is losing investors to countries like Rwanda and Ethiopia despite its tough investment policy. Every foreign company should have majority of its staff as local staff from managerial positions to junior staff. Seen as Kenya has a large group of unemployed educated skilled minds;
- iii. Market Monopoly - SMEs cannot afford to own manufacturing companies but they play a critical role in the supply chain as goods get the final

to avail all documentations to the committee secretariat, to back their prayers;

- 2) The Committee was informed that, process of clearance at the port has been delayed and hampered by the operation of the multi-agency at the port, the committee recommended the need to call upon all the multi-agency units on illicit trade;
- 3) The Associations recommended for a considerations of an alternative products cheaper and of the same standard as the counterfeit;
- 4) The Associations also recommended that, the government through the senate reconsider the current foreign investment policy;
- 5) The Committee advised on the need for a new investment policy, that demands foreign share partnership with local investors;
- 6) The Government to build around the already existing SME operating spaces and allocating them with other prime locations where their businesses are doing good.

MINUTE.SEN/DCS/SCTTI/2018/091: ADOPTION OF PROGRAM OF ACTIVITES AND ADJOURNMENT

The Committee adopted the program of activities for the month of August 2018 to dispose issues of the petition.

There being no other business, the meeting was adjourned at 1.35 p.m.

SIGNATURE.....

(CHAIRPERSON: SEN. KIBIRU CHARLES REUBENSON)

DATE.....*25th / August / 2018*.....