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PARLIAMENT
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**MINISTRY OF INDUSTRY, TRADE AND
COOPERATIVES**

**PARLIAMENT MEMORANDUM
ON
THE ECONOMIC PARTNERSHIP AGREEMENT
BETWEEN
EAST AFRICAN COMMUNITY PARTNER
STATES ON THE ONE HAND
AND
THE EUROPEAN UNION AND ITS MEMBER
STATES ON THE OTHER HAND**

1.0 OBJECTIVES OF THE MEMORANDUM

The objectives of this Memorandum are to:

- i. Inform both houses of Parliament on the finalisation of the Economic Partnership Agreement (EPA) negotiations
- ii. Inform both houses of approval by Cabinet in June 2016 for signing and ratification; and
- iii. Seek Parliament's ratification of the EPA in good time to allow for notification of the ratification to the EU Council before 30th September 2016, the deadline that Kenya needs to meet in order to avoid trade disruption in the EU market.

2.0 BACKGROUND

The Economic Partnership Agreement (EPA) negotiations begun in 2002 at the all-ACP Level. This phase was aimed at setting the principles and objectives of the negotiations. The substantive negotiations started in 2013 at the regional level. The negotiations were finalised in October 2014, with the initialing of the agreement to signify conclusion of the negotiations.

Trade between Kenya and the EU for over 30 years until 31st December 2007 has been conducted under a non reciprocal preferential Trade regime under Lome Conventions (1975-2000) and later under the Cotonou Agreement (2000-2007). Most of Kenya's (and other ACP countries) exports entered the EU market on duty free under this arrangement.

The main objective of the preferential trade regime was to promote industrial development in the ACP countries. However, the preferential trade regime did not achieve its overall objective,

since the share of Kenya's exports in the EU market remained very low and scarcely diversified.

The legal scrubbing of the EPA has been concluded and currently undergoing translation into the 23 EU languages and Kiswahili. The agreement is expected to be signed in June, once the translation has been finalised to pave way for the ratification process. Ratification, according to the EU roadmap, should be completed by October, 2016. The Agreement will enter into force when all the EU Member States and the EAC Partner States have deposited the instruments of ratification. However, there is a possibility to start implementing the agreement on provisional basis once it has been signed.

3.0 PROBLEM ANALYSIS AND JUSTIFICATION

The overall objective of the ACP-EU preferential trade regime, of promoting ACP countries exports to the EU faced challenges that could not be addressed by the regime. For instance the objective of promoting the industrial development in the ACP countries failed due high tariffs, tariff escalations and tariff quotas that affected some agro-processed products. The share of Kenya's exports in the EU market remained very low and scarcely diversified and most of it in primary form/raw materials. The total imports from the ACP into the EU decline from 6.7% in 1976 to 2.0% by 2007. Even where trade volume improved, the value did not follow suit.

At the same time, the regime faced additional challenges at the WTO. The non-reciprocal preferential market access extended to Kenya and other ACP countries was often challenged by other WTO member countries for being discriminatory to WTO developing countries who were not members of the ACP Group and therefore incompatible with the WTO rules. Brazil, Australia and Thailand challenged the regime, at the WTO Dispute Settlement, on the EU-Sugar Subsidy issue (ACP Countries under the Sugar Protocol); Similarly the ACP - EU Banana regime was challenged twice (Banana I and II) by the Latin

American Countries for the same reason of being a discriminatory regime.

Additionally, ACP continued to face obstacles in accessing the EU market due to the supply side constraints, and technical and health standards that were imposed unilaterally by the EU.

Consequently, the ACP and the EU agreed to address these concerns through the Economic Partnership Agreement which is compliant with WTO rules and as well as promoting South-South trading opportunities through regional integration and enhancing ACP countries' access to the global market.

The commitment by the EU and ACP to enter into EPA arrangement is enshrined in the Cotonou Partnership Agreement which was signed in June 2000. The legal basis of EPA therefore is the Cotonou Agreement, which Kenya is a signatory State.

4.0 CONSTITUTIONAL IMPLICATIONS

The signing and ratification of the EPA does not envisage amendments to the constitution of Kenya. However, County Governments may be expected to enact relevant laws and adopt trade regulations and measures that are in conformity with the Agreement.

5.0 EXPECTED BENEFITS OF THE AGREEMENT

The benefits Kenya stands to gain from signing and ratifying the Agreement;

1. Secure and maintained EU Market for Kenyan Goods:

- i. **Duty free, quota free market access in the EU:** The EU offered EAC duty free quota free market access for all products, including manufactured/processed products;
- ii. **Rules of Origin:** Simplified Rules of Origin have been agreed with the EU that makes it easier for Kenya to export

into the EU market a wide range of products. The negotiated flexibilities in the rules are supportive of agricultural and industrial development, laying emphasis on value addition for agricultural products. The agreed rules would achieve what the Lome and Cotonou Conventions failed to achieve, i.e. promote industrial development in the EAC region.

The flexibilities include single transformation for textiles products, cumulation with (sourcing raw materials from) other developing countries - hence promoting industrialisation in the EAC region, among others.

- iii. **Opening up of new areas for exports:** Over **1,000** tariff lines, most of which are of Kenya's export interest, which were restricted in the previous regime due to high tariffs and tariff escalation in the EU market;
- iv. **Negotiated understanding/platform** to discuss and resolve EU **standards and SPS** measures that have continued to constraint Kenya's exports to the EU;
- v. **Platform to address the** supply side constraints that hampered Kenya's ability to exploit EU market access opportunities, through the commitments to support the infrastructural and non infrastructural development program/projects in the EPA Development Matrix geared towards industrial and agricultural competitiveness. The funding of this program is foreseen under the EDF and other funding modalities that are foreseen in the EPA.
- vi. **Secure investments and jobs** in the Horticulture Sector, Fisheries, and in the chemical and other related sectors. Some investors had indicated relocating their investments to the neighbouring countries which benefits from EBAs due to their LDC status. This would translate into job loses.
- vii. Losing the EU market would mean losing foreign earnings which may trigger currency instability.

2. Other Implications to the Economy and Risk Mitigation Measures;

a) Limited Market Opening for EU Products;

The EAC market opening for the EU is at 82.6% of total EAC imports from the EU which constitutes of: -

- i) **65.4% being products that are already attracting a tariff of 0% under the Common External Tariff.** The products are mainly raw material, capital goods, medicaments and other essential goods.
- ii) **14.6% being intermediate products currently attracting CET rate of 10%.** Rationale for liberalization of these products being enhanced competitiveness of industries that import such products from the EU
- iii) **2.6% being few finished products which attract CET rate of 25%.** The rationale for offering these products for liberalization was: -
 - They are not strategic products as revealed by EAC trade flows and therefore pose minimal threat to regional industries.
 - Infant industry clause in the EPA allows EAC to pick on any of the products under this category or under intermediate goods category and protect them from liberalization for a period of 15years.

b) Exclusion of Sensitive Products Accounting for 17.4% of Total Trade with the EU

This was aimed at safeguarding agriculture, industry and Kenya's market interest in the region. Therefore, exclusion list is the means by which the Government is addressing the welfare loss and threats posed by EPAs on Agriculture and Industry. The products in the exclusion list include agricultural and industrial products;

c) Integrating Marine and Inland Fisheries in EPAs

This is expected to unlock a huge potential for Kenya marine fisheries, which if fully exploited is expected to rival current dominance of inland fisheries exports, to the benefit of Kenya's overall economic development.

A process has been initiated to explore ways for development and utilization of the marine resources through various options including negotiating Fish Partnership Agreement (FPA) with the EU, and developing own capacity (own fishing fleets), among other options. The process of negotiating Fisheries Agreement with the EU is underway since the request to negotiate was approved by the Cabinet in February this year.

d) Trade Remedies provisions - Safeguard, Countervailing Measures

Safeguards, antidumping, and countervailing measures as contained in the agreement provides additional protection to the agriculture and industrial sectors from unforeseen influx of imports and subsidized imports from the EU. These measures are over and above the other protective provisions, namely, exclusion from liberalisation of agricultural products and products of strategic importance to the EAC economies; provisions to curb subsidized agricultural products from entering EAC on duty free basis.

e) Amendment Clause

The negotiated amendment clause provides flexibility to the Parties to seek for amendments on any provisions, including tariff liberalisation schedules, when need arises. The standstill provisions allow amendment of tariff liberalisation schedule under certain circumstances, such as to accommodate and foster the regional integration process.

f) Review Clause -5yr Review

The agreement provides for a comprehensive mandatory review of the entire agreement after every 5 years. The clause provides additional flexibility to the parties to amend any provisions which may pose challenges in the course of implementation of the agreement, or in response to the changing circumstances.

g) Exit Clause

The agreement provides for flexibility to the Parties to quit the agreement if they are not satisfied in the course of the implementation. A one year notice is required in case of termination of the agreement.

6.0 EAC SUMMIT AND COUNCIL DECISIONS ON NEGOTIATIONS AND SIGNING OF EPA

- a) The EAC EPA negotiations were guided by the Summit directives of 2002 which were reiterated in June and August 2007. The EAC Partner States in compliance with this directive started negotiating with the EU in October 2007 after leaving East and Southern Africa EPA Negotiating configuration (in the case of Burundi, Kenya, Rwanda and Uganda) and SADC - EPA Configuration (in the case of Tanzania).
- b) The EAC Partner States engaged the EU in the EPA negotiations as a bloc for over 9 years that culminated in the initialing of the EPA Text in October, 2014 signifying the conclusion of the negotiations.
- c) The EAC working jointly with the EU undertook the legal scrubbing and translation of EPA text into EU languages and Kiswahili, a process that was finalized by early 2016.
- d) When the above process was completed, SCTIFI of 26th February 2016 instructed the Secretariat to liaise with the EU

to organize the signing of EPA by June, 2016 in view of the impending deadline of 1st October, 2016. The EAC Council of Ministers of 29th February 2016 upheld the decision of SCTIFI.

- e) This directive was further supported by the SCTIFI held on 27th May, 2016 which agreed that EAC-EU-EPA be signed in the first week of August 2016 during the Meeting of the Council of Ministers, and during the Sectoral Council of Ministers responsible for EAC on 30th June, 2016.
- f) During Extra- Ordinary SCTIFI meeting (via Video Conference) attended by all Partner States except Tanzania, four Partner States confirmed their availability to sign the EPA but Tanzania indicated that she was not yet ready to sign until the prevailing circumstances allows.
- g) Kenya and Rwanda, on the basis of the above decisions, have proceeded to sign in view of the fast approaching deadline of 1st October, 2016 pending the signing by the other EAC Partner States.
- h) Uganda has indicated intent to sign the EPA during the Summit on 8th September 2016.
- i) The Summit is expected to give guidance on the EPA with a view to accommodating countries that have given indication to sign at a later date.
- j) In the meantime, Kenya has been given by the EU up to 30th September 2016 to ratify the EPA and notify the EU Council in order to avoid losing the duty free quota free market access.

6.0 FINANCIAL IMPLICATIONS

Financial resources are required to finalise the activities leading to the signing, ratification and implementation of the agreement.

The main activity is the sensitization of the key stakeholders, in particular; Members of the National Assembly and the Senate; Principal Secretaries; Chief Executive Officers (CEOs) of various public and private organisations; Non State Actors (Private Sector & Civil Society); and Targeted/specific sectors such as Fisheries sectors, among others.

The main objective of the sensitization activities is to, inter alia; sensitise stakeholders on the benefits and opportunities for the country in the agreement and the role each group is expected to play during the ratification process and implementation of the EPA;

The Business community needs to know the specific opportunities available for the various sectors as a result of signing the agreement;

The challenges faced by the exporters to the European Union Market need to be identified, and possible interventions to ameliorate the challenges proposed;

The Ministry has already commenced sensitizations in the Counties. Further EPA sensitization activities are expected to be rolled out and intensified in all the Counties.

7.0 WAY FORWARD

Given the fast approaching deadline of 1st October 2016, the Parliament needs to ratify the EPA by 20th September 2016 in order to allow for the notification of the ratification to the EU Council by 30th September 2016. This is the only option that Kenya has in order to save over KES125bn EU export market, which has potential to be lost overnight if the ratification is not notified to the EU by 30th September 2016.

Other negative ramifications to the economy that need to be avoided is threat of about 4million people working directly or indirectly with companies or ventures that are exporting to the

EU, losing their livelihoods. Further, investments worth over KES2bn in floriculture, horticulture, agro-processed products, fisheries, among others is also at stake, come 1st October 2016.

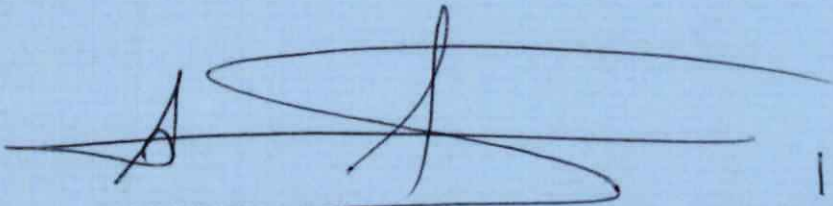
8.0 RECOMMENDATIONS TO PARLIAMENT

The Parliament is requested to:

- a) Take note of the content of this Memorandum;
- b) Take note of the Cabinet approval for signing and ratification; and,
- c) Ratify the Economic Partnership Agreement in good time to meet the deadline of 1st of October, 2016.

Signed

Date



13-09-2016

.....
Hon. Adan Mohamed, EGH

Cabinet Secretary

MINISTRY OF INDUSTRY, TRADE AND COOPERATIVES



NATIONAL ASSEMBLY
RECEIVED

6 SEP 2016

SECRETARY'S OFFICE
P. O. Box 41842, NAIROBI.

MINISTRY OF INDUSTRY, TRADE AND COOPERATIVES
STATE DEPARTMENT FOR TRADE
OFFICE OF THE PRINCIPAL SECRETARY

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P.O. Box 30430
00100 NAIROBI GPO
KENYA

REF: MOITC/A1/11/01 VOL.1A

Date: 7th September, 2016

Mr. Justin Bundi, CBS
The Clerk
The National Assembly
Parliament Building
NAIROBI

Mr. Jeremiah M. Nyegenye
The Clerk
The Senate
P.O. Box 41842-00100
NAIROBI

Mrs. L. Wanjiri
Please clear
as discussed.
There may be a
special sitting on
20th to discuss
planned. S
8/19/16.

Dear Colleagues

RE: SIGNING AND RATIFICATION OF THE ECONOMIC PARTNERSHIP AGREEMENT (EPA)

As you are aware, Kenya has been negotiating the EPA with the EU along with other EAC Partner States, since October 2007. This pursuant to the EAC Summit directive of 2002 and 2007 for EAC to negotiate the EPA as a bloc. The negotiation of the EAC-EU EPA was finalized on 14th October, when the EAC Partner States and the EU initialed the text to signify conclusion of the EPA negotiations. Subsequently, the EPA text underwent legal scrubbing and translation into EU languages and Kiswahili paving the way for signing and ratification.

The text has been signed by all EU Partner States and is ready for EAC Partner States to sign as well. Decision for EAC Partner States to sign the

EPA by June 2016 was made during the EAC Council and EAC Heads of State meeting in February and March 2016.

As the regional process of signing and ratifying the EPA is ongoing, Kenya has been put on Notice by the EU that unless the country signs and ratifies the EPA by 30th September 2016, it would lose its Duty Free Quota Free EU market access preference. These market preferences were extended to Kenya in December 2014 on the understanding that Kenya will have signed and ratified the initialed EAC-EU EPA by 1st of October, 2016.

The EU Commission in July 2016 submitted the attached proposal to the EU Parliament to withdraw Kenya's market preferences in the EU because the country had not signed the EPA and was unlikely to have signed and ratified the EPA by 30th September 2016. This proposal was subject of deliberation by the EU Parliament International Committee on 31st August 2016 (*see attached agenda*).

On learning about this development, while still upholding the EAC regional EPA signing process, Kenya went ahead and requested for an opportunity to sign the EPA immediately. This opportunity was granted and Kenya signed the EPA, alongside Rwanda on 1st September 2016. The signing was preceded by a spirited presentation of Kenya's precarious circumstance by Cabinet Secretary for Industry, Trade and Cooperatives, Mr. Adan Mohamed to the EU Parliament on 31st August 2016 (*see attached press release*).

~~Kenya, therefore needs to ratify the EPA and notify the EU of the ratification before 30th September 2016, in order for the country not to lose the Duty Free Quota Free market access by 1st October 2016. It is estimated that over 70% of Kenya's exports, estimated at over KES90bn stand to lose if Kenya is removed from current preferential market access to EU. This will lead to unemployment of about 4 million people who are currently deriving their livelihood from industries that export to the EU or provide services to firm's that export to the EU. The country also stands to lose investments estimated at over KES200bn in floriculture, horticulture, fisheries, and agro-processing sectors. All these can be~~

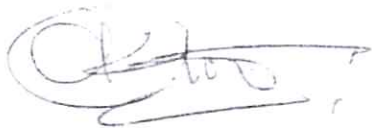
avoided if Kenya will have ratified the EPA and notified the EU Council by 30th September 2016.

The purpose of this letter, therefore, is to forward the following for debate, approval and the necessary parliamentary process towards ratification:

- (i) Memorandum on the EPA prepared by the State Department of Trade and approved by the Cabinet Secretary for Industry, Trade and Cooperatives in line with Part III of Treaty Making and Ratification Act No. 45 of 2012;
- (ii) EAC-EU-EPA final English text. The Kiswahili translated version is also available for perusal if required; and,
- (iii) Evidence of Cabinet approval. The Cabinet during its last meeting held on 15th June, 2016, considered and approved the signing and ratification of the EAC-EU (EPA).

In order to notify the EU of Kenya's ratification by 30th September, it will be opportune if the Parliament will have ratified the agreement before this date. Plans to sensitize the relevant Parliamentary Committees are underway and we will communicate to you in the next few days.

Yours



Dr. Chris Kiptoo
PRINCIPAL SECRETARY

Copy to:

Dr. Joseph K. Kinyua, EGH
Chief of Staff and Head of Public Service
State House
NAIROBI

Hon. Justin Muturi, CBS
The Speaker
The National Assembly
Parliament Building
NAIROBI

Hon. Senator Ekwee Ethuro
The Speaker
The Senate
Parliament Building
NAIROBI

Hon. Adan Mohamed, EGH
Cabinet Secretary
Ministry of Industry, Trade and Cooperatives
NAIROBI

Hon. Githu Muigai, EGH, FCI Arb
Attorney General
State Law Office and Department of Justice
Sheria House
NAIROBI

Mr. Henry K. Rotich, EGH
Cabinet Secretary
The National Treasury
NAIROBI

Amb. Amina C. Mohamed, EGH, CAV
Cabinet Secretary
Ministry of Foreign Affairs
NAIROBI

Mrs. Phyllis J. Kandie, EGH

Cabinet Secretary

Ministry of East African Community (EAC)

Labour and Social Protection

NAIROBI

Mr. Willy Bett

Cabinet Secretary

Ministry of Agriculture, Livestock & Fisheries

NAIROBI

Amb. Monica Juma, DPhil, CBS

Principal Secretary

Ministry of Foreign Affairs

NAIROBI

Ms Betty C. Maina, CBS

Principal Secretary

State Department for East African Community

NAIROBI

Mr. Njee Muturi, CBS

Solicitor General

State Law Office and Department of Justice

Sheria House

NAIROBI

Dr. Richard Lesiyampe, CBS

Principal Secretary

State Department for Agriculture

Ministry of Agriculture, Livestock & Fisheries

NAIROBI

Mr. Andrew Tuimur

Principal Secretary

State Department of Livestock

Ministry of Agriculture, Livestock & Fisheries

NAIROBI

Prof. Micheni Ntiba, CBS

Principal Secretary

State Department for Fisheries and the Blue Economy

Ministry of Agriculture, Livestock & Fisheries

NAIROBI

Encl



MINISTRY OF INDUSTRY, TRADE AND COOPERATIVES

PARLIAMENT MEMORANDUM

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opportunities through regional integration and enhancing ACP countries' access to the global market.

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The flexibilities include single transformation for textiles products, cumulation with (sourcing raw materials from) other developing countries- hence promoting industrialisation in the EAC region, among others.

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- j) In the meantime, Kenya has been given by the EU up to 30th September 2016 to ratify the EPA and notify the EU Council in order to avoid losing the duty free quota free market access.

6.0 FINANCIAL IMPLICATIONS

Financial resources are required to finalise the activities leading to the signing, ratification and implementation of the agreement. The main activity is the sensitization of the key stakeholders, in particular; Members of the National Assembly and the Senate; Principal Secretaries; Chief Executive Officers (CEOs) of various public and private organisations; Non State Actors (Private Sector & Civil Society); and Targeted/specific sectors such as Fisheries sectors, among others.

The main objective of the sensitization activities is to, inter alia; sensitise stakeholders on the benefits and opportunities for the country in the agreement and the role each group is expected to play during the ratification process and implementation of the EPA;

The Business community needs to know the specific opportunities available for the various sectors as a result of signing the agreement;

The challenges faced by the exporters to the European Union Market need to be identified, and possible interventions to ameliorate the challenges proposed;

The Ministry has already commenced sensitizations in the Counties. Further EPA sensitization activities are expected to be rolled out and intensified in all the Counties.

7.0 WAY FORWARD

Given the fast approaching deadline of 1st October 2016, the Parliament needs to ratify the EPA by 20th September 2016 in order to allow for the notification of the ratification to the EU Council by 30th September 2016. This is the only option that Kenya has in order to save over KES125bn EU export market, which has potential to be lost overnight if the ratification is not notified to the EU by 30th September 2016.

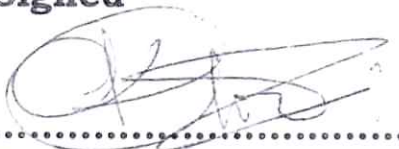
Other negative ramifications to the economy that need to be avoided is threat of about 4million people working directly or indirectly with companies or ventures that are exporting to the EU, losing their livelihoods. Further, investments worth over KES2bn in floriculture, horticulture, agro-processed products, fisheries, among others is also at stake, come 1st October 2016.

8.0 RECOMMENDATIONS TO PARLIAMENT

The Parliament is requested to:

- a) Take note of the content of this Memorandum;
- b) Take note of the Cabinet approval for signing and ratification; and,
- c) Ratify the Economic Partnership Agreement in good time to meet the deadline of 1st of October, 2016.

Signed



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Dr. Chris Kiptoo

For: Cabinet Secretary

MINISTRY OF INDUSTRY, TRADE AND COOPERATIVES

Date



