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REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT | THIRD SESSION (2024)

COMMITTEE ON DELEGATED LEGISLATION

REPORT ON THE INQUIRY INTO IRREGULAR AND ILLEGAL GRANT OF TAX
EXEMPTIONS TO A COMPANY UNDER THE SPECIAL OPERATING
FRAMEWORK AGREEMENT

 THE NATIONAL ASSEMBLY PAPERS LAID	
SEPTEMBER, 2024.	
DATE: 26 SEP 2024	
DAY: Thursday	
TABLED BY:	Hon. Samuel chepkong'o MP Chairperson
CLERK-AT THE-TABLE:	A. Shituko

NATIONAL ASSEMBLY
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ABBREVIATIONS AND ACRONYMS

ACC	–	Accurate Steel Mills Ltd
AGOA	–	African Growth and Opportunity Act
EALA	–	East African Legislative Assembly
GI	–	Galvanized Iron
IDF	–	Import Declaration Fee
ISO	–	International Organization for Standardization
MDGs	-	Millenium Development Goals
RDL	–	Railway Development Levy
SMEs	–	Small and Medium-Sized Enterprises
SOFA	–	Special Operating Framework Agreement
USA	–	United States of America
VAT	–	Value Added Tax

APPENDICES

1. Special Operating Framework Agreement
2. Special Operating Framework Agreement First Amendment
3. East Africa Community Gazette – Legal Notice No. EAC/342/2021
4. East Africa Community Gazette – Legal Notice No. EAC/343/2021
5. Letter Ref. MITED/SDI/5/1 dated 25th August, 2022
6. Letter Ref. MITED/SDI/7/16 dated 14th September, 2022
7. Letter Ref. No. MITI/SDI/1/88 dated 2nd October, 2023
8. Letter Ref. No. AG/CONF/21/68 Vol. II dated 18th October, 2023
9. Ref. No. AG/CONF/21/68 Vol. II dated 17th November, 2023
10. Treasury Circular No. 9/2018 dated 18th October, 2018
11. Protocol on the establishment of the East African Custom Union signed on 30th November, 1999
12. Protocol on the establishment of the East African Community Customs Union signed on 10th December, 2004
13. Letter Ref. MITI/SDI/1/10/VOL.V/(42) dated 23rd September, 2024
14. Blue Nile Rolling Mill Limited Letter dated August 22, 2019
15. Letter Ref. No. MOI/IND/7/78 dated October 14, 2019
16. Letter Ref. No. MITI/SDI/7/18, dated October 23, 2023
17. Letter Ref. No. DFN 415/411/011 Vol. 1 (7) dated July 19, 2024
18. Letter Ref. KAM/10/27/dm/jmw/mb/jw/TA/2024 dated 20th September, 2024
19. Letters from the industry to KAM
20. Letter Ref. AA/6584/2023 dated 17th September, 2024
21. Committee on Delegated Legislation Correspondences

CHAIRPERSON'S FOREWORD

This report presents the findings of the Committee on Delegated Legislation's inquiry into the alleged irregular and illegal tax exemptions granted to Blue Nile Rolling Mills Limited under a purported Special Operating Framework Agreement. The inquiry was initiated following a request for Statement on the floor of the House on 31st July, 2024 by the Member for Kiambaa Constituency, Hon. John Njuguna Kawanjiku, MP, who raised concerns about the legality and fairness of the exemptions. Upon request, the Hon. Speaker referred the matter to the Committee on Delegated Legislation for its consideration pursuant to Standing Orders 44(2)(c) of the National Assembly Standing Orders.

This is an investigation into the circumstances surrounding the grant of exemptions, the legal basis of the exemptions, the benefits conferred on the company and the potential impact on government's revenue and local steel industry among others.

In conducting the inquiry, the Committee held a total of four (4) sittings during which, it received oral and written submissions from various stakeholders, including: The National Treasury and Economic Planning, the Ministry of Investments, Trade and Industry, Kenya Association of Manufacturers and Blue Nile Rolling Mills Limited.

Having considered submissions by stakeholders, the Committee made the following findings:

Unconstitutionality

That, the Special Operating Framework Agreement dated 18th December, 2019 contravened:

- (a) Articles 35 on Access to Information in regard to Article 7 of the Agreement which is a Confidentiality Clause;
- (b) Article 201(a) on principles of public finance *to wit*; openness, accountability including public participation;
- (c) Article 95(4)(c) of the Constitution, with regard to oversight role of the National Assembly over national revenue and its expenditure;
- (d) Article 210(2) of the Constitution on maintenance of public records of tax waiver and report of waiver to the Auditor-General; and
- (e) Article 10(2)(c) and Article 118 of the Constitution which requires good governance, integrity, transparency and accountability.

Non-conformity with relevant statutes

That, the Agreement failed to conform with the relevant statutes including –

- (a) section 13 of the Income Tax Act (*Cap 470*) laws of Kenya which allows the Cabinet Secretary to exempt any income or class of income which accrued in or derived from Kenya from taxation -
 - i by publishing a gazette notice to that effect in accordance with sub-section (2); and
 - ii by submitting the notice to be laid before the National Assembly without unreasonable delay, in accordance with sub-section (3),

which requirements, the Committee observed were not followed, since the Cabinet Secretary for the National Treasury, neither published the notice in the gazette, nor submitted it for laying in, and approval by the National Assembly.

- (b) Section 68 of Value Added Tax Act (Cap 476) laws of Kenya saved all Special Operating Framework Arrangements entered into with the Government, which were in existence at the commencement of the Act in the year 2022. In this arrangement, the Agreement was signed between 16th and 30th January, 2020 falls within the timelines of the arrangements saved under the Value Added Tax Act. Consequently, the Committee having found that the purported SOFA arrangement between Blue Nile Rolling Mill Limited and the Government was unprocedural and unlawful, the Committee is of the opinion that Blue Nile Rolling Mill Limited ought not to benefit from the said saving.
- (c) The provisions of Law of Contract Act (Cap 23) in relation to signature and affixing of common seal. To the extent that the Agreement contained three signatures appended by parties but on different dates at different places, implying that not all the parties were present at the signing, contrary to the principles of the Law of Contract. The Agreement was void to the extent that it lacked the affixing of the common seal of one of the parties.
- (d) Miscellaneous Fees and Levies Act (Cap 469C) to the extent that Article 5 of the Agreement seeks exemption from Import Declaration Fees and Railway Development Levy. However, the same has not been exempted under the Miscellaneous Fees and Levies Act.
- (e) Tax procedures Act (Cap 469B) to the extent that the Committee considered that failure by Blue Nile Rolling Mill Limited to remit the attendant taxes amounted to tax avoidance, which is defined in section 3 of the Act as “**a transaction or a scheme designed to avoid liability to pay tax under any law.**” From the submission by the National Treasury, the Committee observed that, due to the tax avoidance, the Government lost revenue in terms of unpaid taxes amounting to Kshs. 2,311,745,548 as at July 2024.
- (f) Competition Act (Cap 504) contemplates fair trade practices. Section 21(3)(f) prohibits any agreement, decision or concerted practice, which applies dissimilar conditions to equivalent transactions with other parties, thereby placing them at a competitive disadvantage, which was the case in this circumstance. The Committee observed that this Agreement was discriminative and created unfair level ground for other industry players contrary to Article 24(2) of the Constitution on non-discrimination on any grounds.
- (g) The Statutory Instruments Act (Cap 2A) laws of Kenya to the extent that:
 - i The Circular No. 9/2018 Ref. no. ZZ/TS/GP/30 dated 18th October, 2018 issuing guidelines for grant of tax exemptions, which were relied upon in granting the SOFA, is a statutory instrument within the meaning of section 2 of the Statutory Instruments Act (*hereinafter the “the Act”*). The Committee observed that, although the above-mentioned guidelines is a statutory instrument, the same was not laid before the National Assembly in line with section 11(1) of the Statutory

Instruments Act for scrutiny and approval. Consequently, the circular ceased to have effect upon the expiry of seven days from the date of issuance as provided for under Section 11(4) of the Act.

- ii The SOFA Agreement was a statutory instrument which ought to have been submitted to the National Assembly for tabling and consideration as required under the Statutory Instruments Act. Consequently, the Committee observed that the SOFA Agreement was nullity *ab initio*.

Non-compliance with the principles of a standard contract/agreement

That the Agreement did not comply with the general principles of a standard contract or agreement in respect to the signatures appended and the dates reflected therein.

The Committee further observed that,

The exemption under EAC duty remission scheme were granted despite lack of demonstration of any application for the same which is a clear indication that the exemption was unprocedurally and unlawfully granted;

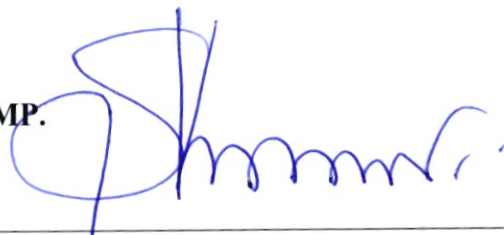
Having conducted the inquiry the Committee recommends that this House **adopts** the report on its inquiry into irregular and illegal grant of tax exemptions to a Company under the Special Operating Framework Agreement with the following recommendations, that this House resolves:

- (a) to declare that, the said Special Operating Framework Agreement was done outside the requisite legal framework, thus a nullity and hence void.
- (b) to direct all the relevant statutory bodies to take necessary legal action on parties involved in the whole process of the irregular tax exemptions under the Special Operating Framework Agreement therein.
- (c) pursuant to section 12(2) of Statutory Instruments Act, the Cabinet Secretary for the National Treasury and Economic Planning submits tax exemption guidelines for the implementation of Special Operating Framework Arrangements to the National Assembly within six months of the House adopting this report.

May I take this opportunity to thank all Members of the Committee for their contributions and input during the deliberations and writing of this report. I also thank the stakeholders for their submissions that enriched this report. The Committee further wishes to thank the offices of the Hon. Speaker and the Clerk of the National Assembly for the logistical support provided during the consideration and investigation of the issues raised in the statement.

It is now my pleasant duty and privilege, on behalf of the Committee on Delegated Legislation, to present the **report on the inquiry into irregular and illegal grant of tax exemptions to a company under the special operating framework agreement** to the House pursuant to Standing Order 199 for consideration and adoption.

HON. CHEPKONG'A KIPRONO SAMUEL, CBS, MP.
CHAIRPERSON,
COMMITTEE ON DELEGATED LEGISLATION.



1.0 PREFACE

1.1 Establishment and Mandate of the Committee

1. The Select Committee on Delegated Legislation is established under *Standing Order No. 210* of the National Assembly Standing Orders and is mandated to consider statutory instruments submitted to Parliament for consideration. The Committee is expected to consider in respect of any statutory instrument, whether it is in accord with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws.
2. The Committee is mandated to consider in respect of any statutory instrument, whether it:
 - a) is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws;
 - b) infringes on fundamental rights and freedoms of the public;
 - c) contains a matter which in the opinion of the Committee should more properly be dealt with in an Act of Parliament;
 - d) contains imposition of taxation;
 - e) directly or indirectly bars the jurisdiction of the Courts;
 - f) gives retrospective effect to any of the provisions in respect to which the Constitution or the Act does not expressly give any such power;
 - g) involves expenditure from the Consolidated Fund or other public revenues;
 - h) is defective in its drafting or for any reason the form or purport of the statutory instrument calls for any elucidation;
 - i) appears to make some unusual or unexpected use of the powers conferred by the Constitution or the Act pursuant to which it is made;
 - j) appears to have had unjustifiable delay in its publication or laying before Parliament;
 - k) makes rights, liberties or obligations unduly dependent upon non-reviewable decisions;
 - l) makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
 - m) inappropriately delegates legislative powers;
 - n) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
 - o) appears for any reason to infringe on the rule of law;
 - p) inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and
 - q) accords to any other reason that the Committee considers fit to examine.

1.2 Committee Membership

3. The Committee membership comprises –

Chairperson

Hon. Chepkong’ a Kiprono Samuel, CBS, M.P.

Ainabkoi Constituency

UDA

Vice-Chairperson

Hon. Githinji Robert Gichimu, M.P.

Gichugu Constituency

UDA

Committee Members

Hon. Mbui Robert, CBS, M.P

Kathiani Constituency

WDM-Kenya

**Hon. (Maj) (Rtd) Dekow Barrow Mohamed,
M.P**

Garrisa Township Constituency

UDA

**Hon. Julius Lekakeny Ole Sunkuli, EGH,
EBS, M.P.**

Kilgoris Constituency

KANU

Hon. Kamene Joyce, M.P

Machakos County

WDM-Kenya

**Hon. (Dr.) Onchoke, Mamwacha Charles,
M.P.**

Bonchari Constituency

UPA

Hon. (Dr.) Kimaiyo, Gideon Kipkoech, M.P.

Keiyo South Constituency

UDA

Hon. Komingoi, Kibet Kirui, M.P.

Bureti Constituency

UDA

Hon. Chebor, Paul Kibet, M.P

Rongai Constituency

UDA

Hon. Yakub Adow Kuno, M.P

Bura Constituency

UPIA

**Hon. (Maj) (Rtd) Abdullahi, Bashir Sheikh,
M.P.**

Mandera North Constituency

UDM

Hon. Mwirigi John Paul, M.P.

Igembe South Constituency

Hon. Odoyo, Jared Okello, M.P.

Nyando Constituency

UDA

Hon. Chepkorir Linet, M.P.

Bomet County

UDA

**Hon. Ruku, Geoffrey Kariuki Kiringa,
M.P.**

Mbeere North Constituency

DP

Hon. Mwale, Nicholas S. Tindi M.P.

Butere Constituency

ODM

Hon. Mugabe Innocent Maino, M.P.

Lukuyani Constituency

ODM

ODM

Hon. Munyoro Joseph Kamau, M.P

Kigumo Constituency

UDA

Hon. Lenguris Pauline, M.P.

Samburu County

UDA

Hon Mnyazi Amina Laura, MP.

Malindi Constituency

ODM

1.3 Committee Secretariat

4. The secretariat facilitating the Committee comprises –

Ms. Esther Nginyo
Clerk Assistant I (Team Leader)

Mr. Dima Dima
Principal Legal Counsel I

Mr. Brian Langwech
Clerk Assistant III

Ms. Isabella Mwembi
Clerk Assistant III

Mr. Silvanus Makau
Clerk Assistant III

Mr. Peter Barasa Wafula
Legal Counsel II

Ms. Viola Saiya
Research Officer III

Mr. Noah Chemweno
Serjeant at Arms

Mr. Valerian Pascal
Hansard Reporter III

Ms. Rahab Chepkilim
Audio Officer

2.0 STATEMENT ON THE IRREGULAR AND ILLEGAL GRANT OF TAX EXEMPTIONS TO A COMPANY UNDER THE SPECIAL OPERATING FRAMEWORK AGREEMENT

2.1 Introduction

5. On 31st July, 2024, pursuant to the provisions of Standing Order 44(2)(c), the Member for Kiambaa Constituency, Hon. John Njuguna Kwanjiku, MP, sought for a statement from the Chairperson of the Committee on Delegated Legislation. The Statement relates to claims that Blue Nile Rolling Mills Limited, a company in the Steel Production Industry, which operates under a Special Operating Framework Agreement (SOFA) was irregularly and illegally granted tax exemptions.
6. The Hon. Member submitted that in 2020, Blue Nile Rolling Mills Limited entered into a Special Operating Framework agreement with the Government, which resulted in the company receiving several tax exemptions.
7. The Hon. Member claimed that according to Article 5 of the agreement between the Government and Blue Nile Rolling Mills Limited, the company is exempt from paying up to 10% Corporate Income Tax for the initial five years, as well as Value Added Tax (VAT), Import Duty, Import Declaration Fee (IDF) and Railway Development Levy (RDL) on all imported raw materials.
8. The Hon. Member claimed that these tax exemptions had led to loss of public revenue due to unpaid taxes, provided the company with a competitive economic advantage, disrupted local markets and posed a risk to the sustainability of the local steel production industry.
9. Additionally, the Hon. Member claimed that the law provides that tax exemptions under SOFA can only be granted to companies incorporated for purposes of undertaking manufacture of human vaccines, and whose capital investment is at least ten billion shillings (Kshs. 10 billion). The Company in question neither manufactures human vaccines nor meets the required investment threshold of ten billion shillings.
10. The Hon. Member highlighted that these exemptions had allowed the company to operate with significantly lower costs compared to its competitors contrary to Competition laws, making it nearly impossible for other manufacturers in the steel production industry to compete. This has led to widespread alarm among local manufacturers, who are facing the threat of closing their businesses if these unfair competitive advantages continue unchecked.
11. The Hon. Member claimed that the government has reportedly been losing approximately Kshs. 30 billion annually in unpaid taxes due to these exemptions, noting that this comes at a time when the government is grappling with the hurdle of reduction of tax collection.
12. The Hon. Member noted that, the said tax exemptions had been granted to the Company through various Legal Notices in exercise of delegated authority.

13. Consequently, the Hon. Member sought that the Committee on Delegated Legislation inquires into the allegations and make relevant recommendations thereof.
14. In conducting the inquiry, the Committee would be guided by the following terms of reference:
- (a) the circumstances under which the tax exemptions on Income Corporate Tax, Value Added Tax, Import Duty, IDF and RDL were granted to Blue Nile Rolling Mills Limited;
 - (b) the total value of tax exemptions that have been granted to Blue Nile Rolling Mills Limited so far and the estimated value of the exemptions that will have been granted to the Company on the expiry of the Agreement;
 - (c) the contents of the Agreement between the Company and government, the period for which the Company shall enjoy the tax exemptions under the Agreement and the implication thereof in terms of loss of public funds;
 - (d) whether the requirements of the law in granting tax exemptions under SOFA to the Company were complied with and indicate the persons that were responsible for approving the tax exemptions granted to the Company; and
 - (e) the number of employees employed by the Company and the status of compliance with ensuing tax obligations by the Company;
 - (f) the number of Companies dealing with the manufacture of galvanizing wire/ steel production that are currently enjoying tax exemptions and the value of the investments of the Company;
 - (g) the status of other existing Special Operating Framework Agreements and their impact on the economy; and
 - (h) any other matter, that the Committee may deem appropriate.

2.2 Legal and Policy Context for Tax Exemptions

15. Granting of tax exemptions is guided by Article 210 of the Constitution which provides that:
- (1) *No tax or licensing fee may be imposed, waived or varied except as provided by legislation.*
 - (2) *If legislation permits the waiver of any tax or licensing fee:-*
 - a) *a public record of each waiver shall be maintained together with the reason for the waiver; and*
 - b) *each waiver, and the reason for it, shall be reported to the Auditor-General.*
16. The window for granting an exemption is provided for under Section 77 of the Public Finance Management Act (*Cap 412A*) laws of Kenya, which provides that:

The Cabinet Secretary may waive a national tax, a fee or charge imposed by the National Government and its entities in accordance with criteria prescribed in regulations provided that—

(a) the National Treasury shall maintain a public record of each waiver together with the reason for the waiver and report on each waiver in accordance with Section 82 of this Act;

(b) such a waiver or variation has been authorized by an Act of Parliament; and.....

17. Section 28A of the Income Tax Act (Cap 470) laws of Kenya, in respect of the Special Operating Framework Arrangement provides that:

A company which –

(a) is engaged in business under a special operating framework arrangement with the Government;

(b) incorporated for purposes of undertaking the manufacture of human vaccines;

(c) whose capital investment is at least ten billion shillings,

shall be subject to the rate of tax specified in the special operating framework arrangement with the Government.

18. Legal Notice No. EAC/363/2023 published in the East African Community Gazette dated 20th October, 2023 and Legal Notice No. EAC/403/2022 published in the East African Community Gazette dated 31st October, 2022 sought to approve the remission of import duty for a number of companies, under duty remission scheme. The legal notice was published pursuant to section 140 of the East African Community Customs Management Act, 2004 which provides that:

(1) The Council may grant remission of duty on goods imported for the manufacture of goods in a Partner State.

(2) The Council may prescribe regulations on the general administration of the duty remission under this section.

(3) The manufacturer and the approved quantity of the goods with respect to which remission is granted under this section shall be published by the Council in the Gazette.

19. Regulations 3 of the East African Community Customs Management (Duty Remission) Regulations, 2008 provides that:

The Council may grant remission of duty under section 140 of the Act on -

(a) goods imported for use in the manufacture of goods for export;

(b) such goods imported for use in the manufacture of approved goods for home consumption as the Council may, from time to time, by notice in the Gazette, determine.

20. Regulation 6 of the East African Community Customs Management (Duty Remission) Regulations, 2008 provides that:

(1) Remission of duty granted under these Regulations shall be valid for a period of twelve months from the date of the publication of the grant in the Gazette.

(2) The Council, may on the application by a manufacturer, grant remission on such further quantity of goods to be imported by the manufacturer under these Regulations.

(3) The Council may, on application by a manufacturer, extend the period referred to in sub regulation (1) for a further period of six months.

21. Article 2(6) of the Constitution provides that

Any treaty or convention ratified by Kenya, shall form part of the laws of Kenya.

22. Article 9 sub-article 1(f) of the Treaty for the Establishment of East African Community establishes the East African Legislative Assembly as an organ of the Community.

23. Section 140 of the East African Community Customs Management Act, 2004 mandates the Council of Ministers of the Community to grant remission of duty on goods imported for the manufacture of goods in a partner state.

24. Section 1 of East African Community Customs Management Act, 2004 provides that the Act applies to all partners states, Kenya included.

25. Section 28A of the Income Tax Act (*Cap 470*) laws of Kenya, provides for the requirement for a company to qualify for tax exemptions under SOFA, which include a company that undertakes manufacture of human vaccines and has a capital investment of at least Kshs. 10 billion.

26. The Cabinet Secretary, Ministry of Industry, Trade and Cooperatives, and the National Treasury and Planning entered into SOFA arrangement with a company registered as Blue Nile Rolling Mills Limited on 18th December, 2019 in respect to exemptions from duty under Income Tax Act, Miscellaneous Fees and Levy Act, Value Added Tax Act, Income Corporate Tax and Import Duty Remission.

27. The SOFA was not published in the gazette and was not forward to Parliament for consideration and approval as required by Articles 10, 118, 201, and 210(a) of the Constitution.

28. Section 11(1) of the Statutory Instruments Act (*Cap 2A*) laws of Kenya, requires that statutory instruments, [including those related to tax exemptions], be laid before Parliament within seven (7) sitting days, upon publication. Further, section 11(4) of the Act provides that

where a statutory instrument is not laid as required under the law, it ceases to have effect on the last day for which it was supposed to be laid.

29. The Statutory Instruments Act (*Cap 2A*) defines the statutory instrument to mean any rule, order, regulation, direction, form, tariff or costs or fees, letters patents, commission, warrant, proclamation, by-law, resolution, guideline or other statutory instrument issued, made or established in the execution of a power conferred by or under an Act of Parliament under which that statutory instrument or subsidiary legislation is expressly authorized to be issued.
30. Section 5(1) of the Statutory Instruments Act (*Cap 2A*) obligates a regulation making authority to consult before making a statutory instrument which is likely to have a direct, or a substantial indirect effect on business or restrict competition.
31. The Committee is of the opinion that, the processes and procedures involved and the attendant documents qualify to be statutory instruments within the meaning of section 2 of the Statutory Instruments Act (*Cap 2A*) which provides for statutory instrument to include ... ***“or other statutory instrument issued, made or established in the execution of a power conferred by or under an Act of Parliament under which that statutory instrument or subsidiary legislation is expressly authorized to be issued”***.

3.0 STAKEHOLDERS' ENGAGEMENT

32. In considering the Statement, the Committee held a total of four (4) sittings during which it received oral and written submissions from the following:

- (a) The National Treasury and Economic Planning;
- (b) The Ministry of Investments, Trade and Industry
- (c) The Kenya Association of Manufacturers; and
- (d) The Blue Nile Rolling Mills Limited

3.1 Submissions by the National Treasury and Economic Planning

33. The Committee invited the Principal Secretary for the National Treasury to brief it on the statement vide letters Ref: NA/DAA&GPC/CDL/2024(064) dated 6th August, 2024 and Ref. NA/DAA&GPC/CDL/2024(070) dated 14th August, 2024. The Committee held meetings with the National Treasury on 13th and 21st August, 2024. It was briefed as follows, that:

34. In 2018, the Government revised tax laws through the Finance Act, 2018, specifically affecting the Value Added Tax Act, Income Tax Act, and Miscellaneous Fees and Levies Act to include tax incentives under Special Operating Framework Agreements. The Income Tax Act, for instance, was amended to allow for a specific tax rate for companies under such agreements, deviating from the standard corporate tax rate. Outlined below are the specific laws relating to SOFA: -

(a) Income Tax Act, Cap. 470 paragraph 2(k) of the Third Schedule to the Income Tax Act states that:

in the case of a company engaged in business under a special operating framework arrangement with the Government, the tax rate shall be to the extent provided in the agreement.

(b) Paragraphs 102 and 31 of the First Schedule part 1 and 11 of the VAT Act, 2013 provides for the VAT exemption on the goods and services imported or purchased locally for use in implementation of projects under SOFA:

Part I:

102. Goods imported or purchased locally for direct and exclusive use in the implementation of projects under a special operating framework arrangement with the Government.

Part II:

31. Services imported or purchased locally for direct and exclusive use in the implementation of projects under a special operating framework arrangement with the Government.

(c) The Second Schedule to the Excise Duty Act, 2015 was amended to provide for exemption of excise duty on goods imported for the implementation of the projects under SOFA. The provision states that:

13. Goods imported or purchased locally for direct and exclusive use in the implementation of projects under special operating framework arrangements with the Government.

(d) The Second Schedule to the Miscellaneous Fees and Levies Act, 2016 was amended in Part A(xxiii) and Part B(vii) to provide for waiver of Import Declaration Fee (IDF) and Railway Development Levy (RDL) on goods imported for implementation of projects under special operating framework.

35. In response to the circumstances under which the tax exemption on Income Corporate Tax, Value Added Tax, Import Duty, Import Declaration Fee, and Railway Development Levy were granted to Blue Nile Rolling Mills Limited, the National Treasury submitted as hereunder;
36. In 2020, Blue Nile Rolling Mills entered into SOFA arrangement with the Government when the import duty on wire rods was at 0% in accordance with the East African Community Customs Management Act, 2014.
37. The National Treasury reported that Blue Nile Rolling Mills Limited, based in Thika, Kenya, is engaged in importing wire rods to produce galvanized wire for various steel products. Blue Nile Rolling Mills Ltd was incorporated on 24th December, 2007 under the Companies Act and bears registration number C.140925.
38. Following the amendments made through the Finance Act of 2018, which allowed for SOFA to provide tax incentives, the company entered into the said agreement with the Government on January 16, 2020. The agreement was signed between the Ministry of Industry, Trade and Cooperatives, The National Treasury and Planning, and Blue Nile Rolling Mills Limited (**Appendix 1**) and later an addendum to the agreement was signed on 8th March, 2022 (**Appendix 2**).
39. In the agreement, the Government committed to provide the necessary incentives to facilitate the company to manufacture galvanized wire through provision of a sunset clause for lower corporation tax of 10% for the first five years from the date of signing the agreement, which ends in December 2024.
40. The National Treasury further explained that Blue Nile Rolling Mills Limited took advantage of these amendments to support its investment and industry expansion by setting up the galvanized iron (GI) wire manufacturing project with the expected capital outlay of over \$19 million in the first phase.
41. However, subsequent increases in import duty and the introduction of new levies adversely impacted the company's financial stability and its ability to fulfill commitments under the agreement.

42. In November, 2021 the 39th meeting of the Sectoral Council on Trade, Industry, Finance and Investment, increased import duty on steel products of tariff numbers 7213.91.10 and 7213.91,90 from 0% to 25% or \$200/MT whichever is higher with effect from 1st July, 2022 through the East Africa Community Gazette – Legal Notice No. EAC/342/2021 (**Appendix 3** dated 21st November, 2021).
43. The Sectoral Council further considered and approved that the companies that use wire rods of tariff number 7213.91.10 to manufacture steel products be granted duty remission through the East Africa Community Gazette – Legal Notice No. EAC/343/2021 (**Appendix 4** dated 21st November, 2021).
44. The National Treasury submitted that companies in the EAC Partner States that use wire rods of tariff number 7213.91.10 including Blue Nile Rolling Mills Limited, requested to be gazetted under the East African Community Duty Remission. However, apart from the letter from the Office of the Cabinet Secretary, Ministry of Industrialization, Trade and Enterprise Development dated 25th August, 2022 Ref. No. MITED/SDI/5/1 (**Appendix 5**) to the Cabinet Secretary, The National Treasury and Economic Planning titled “*Remission of Duty for Wire Rods*”.
45. In addition, the State Department for Industrialization wrote to the National Treasury through a letter Ref. No. MITED/SDI/7/16 dated 14th September, 2022 (**Appendix 6**) indicating the need for remission of wire rods under the East African Community Duty Remission, this is after having received a confirmation from Devki Steel Mills Ltd to State Department for Industrialization that they were unable to supply wire rods required by Blue Nile Rolling Mills for their production under SOFA. In view of this, the State Department for Industrialization recommended that Blue Nile Rolling Mills Ltd be granted remission under the EAC Duty Remission Scheme based on lack of the quality that was necessary for their continued operation until the local production capability is confirmed. Furthermore, the Ministry of Industrialization, Trade and Enterprise Development recommended that other companies facing similar situation be treated in the same manner.
46. The Finance Act, 2023 amended Miscellaneous Fees and Levies Act, introducing the Export and Investment Promotion Levy at various rates. The levy applied to imported goods including wire rods which is used as a raw material for making galvanized wires, nails, and fencing wires. Under this development, the Cabinet Secretary, Ministry of Investment, Trade and Industry, sought legal advice from the Attorney General through the letter Ref. No. MITI/SDI/1/88 dated 2nd October, 2023 (**Appendix 7**).
47. The Attorney General through the letters Ref. No. AG/CONF/21/68 Vol. II dated 18th October, 2023 (**Appendix 8**) and Ref. No. AG/CONF/21/68 Vol. II dated 17th November, 2023 (**Appendix 9**) advised that the Government should honor the original tax incentives agreed upon and exempt the company from new taxes to uphold the SOFA’s terms. The legal advice is summarized as follows:-
- (a) Continuation of importation of raw materials used to produce GI wire under EAC Duty Remission Scheme;

(b) Exemption from new levies including the Export and Investment Promotion Levy; and

(c) Continue honoring the SOFA until it comes to an end.

48. In regards to the total value of tax exemptions that have been granted to Blue Nile Rolling Mills Limited so far and the estimated value of the exemptions that will have been granted to the Company on the expiry of the Agreement, the National Treasury submitted as hereunder;

49. The total value of tax exemptions granted to Blue Nile Rolling Mills Limited so far, and the estimated future exemptions upon the expiry of the Special Operating Framework Agreement (SOFA), for the period between 2020 and July 2024 is tabulated as hereunder;

YEAR	Value Added Tax (VAT)	Import Declaration Fee (IDF)	Railway Development Levy (RDL)	Total Tax Exempted (Kshs.)
2020	56,776,930.00	-	-	56,776,930.00
2021	155,994,525.00	13,653,335.00	3,272,538.00	182,920,398.00
2022	277,283,792.00	27,050,803.00	3,284,770.00	327,619,365.00
2023	442,767,574.00	43,653,789.00	41,581,627.00	528,002,990.00
2024	232,435,257.00	36,318,011.00	1,790,814.00	290,544,082.00
TOTAL	1,165,258,078.00	120,675,938.00	49,929,749.00	1,385,863,765.00

Source: KRA: Table 1: Actual Total value of taxes, fees and levies exempted 2020 - July 2024

YEAR	IMPORT DUTY (KSHS.)
2022	97,993,651.00
2023	505,206,015.00
2024	322,682,117.00
Total	925,881,783.00

Source: KRA: Table 2: Amount of taxes exempted under Duty Remission Scheme 2020 - July 2024

50. In regards to the contents of the Agreement between the Company and the Government, the period for which the Company shall enjoy the tax exemptions under the Agreement and the implication thereof in terms of loss of public funds, the National Treasury submitted as hereunder;

51. The total revenue foregone between 2020 and July 2024 is two billion three hundred and eleven million seven hundred and forty-five thousand five hundred and forty-eight shillings (**Kshs. 2,311,745,548.00**) and the estimation of total value of the taxes, fees and levies to be

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granted from August 2024 up to end of the SOFA in 2030 is about **Kshs. 4,815,738,914.40** depending on the company's continued operation in Kenya.

52. The SOFA, which runs from 21st January, 2020, to 2030, grants Blue Nile Rolling Mills various tax benefits. These include a reduced corporate tax rate of 10% for the first five years (expected to expire in December 2024), VAT exemptions on inputs used for the project, and exemptions from Import Declaration Fees and Railway Development Levy. The Government has committed to absorbing any adverse taxation changes for the duration of the agreement, though VAT exemptions apply only to inputs, not to other imports or sales.
53. In Regards to compliance with the law, the Ministry confirmed that the requirements for granting tax exemptions under the SOFA were met. The Cabinet Secretary for the National Treasury and Planning, along with the Cabinet Secretary for the Ministry of Industry, Trade, and Investment, were responsible for approving the exemptions and signing the agreement. Applications for any tax exemptions under SOFA were guided by Treasury Circular No. 9/2018 dated 18th October, 2018 (**Appendix 10**).
54. In regards to the number of employees employed by the Company and the status of compliance with ensuing tax obligations by the Company, the National Treasury submitted that Blue Nile Rolling Mills Limited employs 1,030 Kenyans in various levels as follows:

EMPLOYEE LEVEL	NUMBER
Senior Management	30
Middle-level Management	65
Lower Management	485
Contract Staff	450
Total	1030

Source: KRA: Table 3: Blue Nile Rolling Mills Limited employee distribution

55. In response to the number of companies dealing with manufacture of galvanizing wire/steel production that are currently enjoying tax exemptions and the value of the investments of the Company, the National Treasury submitted that when the SOFA was signed in January 2020, Blue Nile Rolling Mills was the sole producer of galvanized wire in Kenya. Since then, about four additional companies entered the market but were affected by increased import duties. Currently, three companies that is, Blue Nile Rolling Mills, Roofings Kenya Limited, and KD Wire Products Limited are under the duty remission scheme.
56. Responding to the status of other existing SOFA arrangements and their impact on the economy, the Ministry submitted that there are two other SOFAs in place with Positivo and Moderna for human vaccine manufacturing which have never commenced operations in Kenya.

57. Further, the National Treasury submitted that SOFAs have a significant economic impact. They create favorable conditions that stimulate both the expansion of existing manufacturing operations and the establishment of new ones, leading to substantial job creation. This includes not only direct employment in manufacturing but also indirect jobs in related sectors like logistics and services, thereby contributing to overall economic growth.
58. Additionally, they submitted that the agreements also boost industrial output by reducing costs and improving efficiencies, enabling manufacturers to produce more goods at competitive prices. This increase in production helps meet domestic demand and enhances the country's position in global markets, leading to improved exports and a better trade balance.
59. While responding to the issue on any other matter that the Committee may deem appropriate, the National Treasury submitted that Kenya is a signatory to the East African Community Protocol on the establishment of the East African Custom Union signed on 30th November, 1999 (**Appendix 11**). They submitted that Article 9 of the EAC Treaty States provides for the establishment of organs and institutions of the Community which include East African Legislative Assembly (EALA), Sectoral Committees among other institutions. These organs make decisions which are binding to EAC members, which Kenya is duty-bound for example, the implementation Duty Remission Scheme. Kenya ratified the Protocol on the establishment of the East African Community Customs Union signed on 10th December, 2004 (**Appendix 12**).
60. Kenya ratified the treaty on the East African Community to domesticate it on 11th July, 2011. Section 8 of the treaty provides that any Act of the Community shall from the date of publication of that Act in the gazette of the Community, have the full force of the law in member states.

3.2 Submissions by the Ministry of Investments, Trade and Industry

61. The Committee invited the Principal Secretary for the State Department for Industry to brief it on the statement vide letters Ref: NA/DAA&GPC/CDL/2024(082) dated 22nd August, 2024 and Ref. NA/DAA&GPC/CDL/2024(089) dated 5th September, 2024.
62. The State Department submitted a written memorandum through letter Ref. MITI/SDI/1/10/VOL.V/(42) (**Appendix 13**) dated 23rd September, 2024 in response to the issues raised in the statement.
63. In response to the circumstances under which the tax exemptions on income corporate tax, Value Added tax, Import Duty, Import Declaration Levy (IDF) and Railway Development levy (RDL) were granted to Blue Nile Rolling Mills Limited, the Ministry of Investments, Trade and Industry submitted as follows:
64. Tax exemptions and waivers are available to companies that submit applications to the Ministry for specific relief. Once an application is received, the Ministry reviews it carefully to determine if granting the waivers would benefit the country.

65. The Ministry submitted a timeline of events that resulted in the signing of the Special Operating Framework Agreement (SOFA) between the Company and the two Ministries representing the Government as hereunder; -
66. That on August 27, 2019, the Ministry of Investments, Trade and Enterprise Development (MITED) received a request for a Special Operating Framework Agreement (SOFA) from Blue Nile Rolling Mills Limited, as detailed in their letter dated August 22, 2019 (**Appendix 14**).
67. That the Ministry (MITED) engaged in discussions with the investor, a discussion which led to the creation of a draft SOFA agreement. This draft was sent to the Cabinet Secretary for the National Treasury and Planning for review and further guidance in a letter dated October 14, 2019, reference number MOI/IND/7/78 (**Appendix 15**).
68. The SOFA agreement between the Government of Kenya and Blue Nile Rolling Mills was signed on January 30, 2020, following the inclusion of the SOFA provision in the Finance Bill of 2018.
69. In March 2022, the Government, represented by the Ministry of Industry, Trade and Cooperatives and the National Treasury and Planning, signed the First Amendment Agreement (**Appendix 2**) to the Special Operating Framework Agreement with Blue Nile Rolling Mills Limited. This amendment aimed to protect the incentives established in the original SOFA, which is valid for 10 years. As a result, any changes in duties and taxes that could negatively impact the investor would be the Government's responsibility.
70. In 2022, after the Kenya Kwanza Government took office and the Principal Secretary of the State Department for Industry was appointed, due diligence was conducted on the SOFA established between the Government and Blue Nile Rolling Mills Limited. This led to a letter, reference number MITI/SDI/7/18, dated October 23, 2023 (**Appendix 16**), addressed to the Principal Secretary of the National Treasury.
71. Following this, a communication was sent to the Cabinet Secretary and the Attorney General to request their opinions on the issue. The Attorney General provided his legal opinion, confirming the legality of the SOFA in a letter dated November 17, 2023, reference number AG/CONF/21/68 vol.11 (**Appendix 9**).
72. After receiving the advice, the Cabinet Secretary, Ministry of Investments, Trade and Industry, in a letter dated November 29, 2023, reference number MITI/SDI/7/78, withdrew and nullified the SOFA cancellation letter (Ref: MITI/SDI/7/18 dated October 23, 2023), thereby allowing SOFA to remain in effect. Similarly, the National Treasury communicated this decision to the Kenya Revenue Authority for the implementation of SOFA in a letter dated January 17, 2024, reference number TRE/415/9/(10).
73. This was after determination that the issue at hand involved an ongoing contract and terminating it would result in legal liability for the Government. It was agreed that the only way to halt the SOFA would be to amend the Finance Bill, 2023.

74. Regarding the issues related to the SOFA, the Principal Secretary, the National Treasury and Economic Planning, in his letter (**Appendix 17**) dated July 19, 2024, reference number DFN 415/411/011 Vol. 1 (7), emphasized the necessity of reviewing the existing SOFA and developing a policy framework for its implementation.
75. The signing of the Special Operating Framework Agreement between the Government of Kenya and Blue Nile Rolling Mills Limited indicated that the Company would be exempt from Value Added Tax (VAT), Import Declaration Fee (IDL), Railway Development Levy (RDL), and Customs Duty on the importation of raw materials.
76. The Ministry noted the need to recognize that while the Special Operating Framework Agreement (SOFA) is a global practice for providing incentives to large investors, there is a need for the country to establish a clear policy and legal framework for its implementation.
77. The Ministry's response regarding the total value of tax exemptions that have been granted to Blue Nile Rolling Mills Limited so far and the estimated value of the exemptions that will be granted to the company on the expiry of the Agreement, indicated that Executive Order No. 2 of 2023 regarding the reorganization of Government of the Republic of Kenya assigns the responsibility for managing public finance, overseeing revenue collection as outlined in all applicable laws, and formulating overall economic policy to the National Treasury. As a result, the National Treasury is better positioned to provide the relevant figures.
78. On the question of the contents of the Agreement between the Company and Government, the period for which the company shall enjoy the tax exemptions under the agreement and the implication thereof in terms of loss of public funds, the Ministry indicated to the Committee as follows:-
79. The Special Operating Framework Agreement (SOFA) between the Ministry of Industry, Trade and Cooperatives, the National Treasury and Planning, and Blue Nile Rolling Mills Limited was countersigned by the Cabinet Secretaries from both the National Treasury and Planning and the Ministry of Industry, Trade and Cooperatives, along with the Chairman of Blue Nile Rolling Mills. This agreement outlines the incentives provided by the Government to the investor and the commitments that the investor is expected to fulfill.
80. **Article 1 on Project Description** provides for the background of the agreement, indicating that Blue Nile Rolling Mills was to invest in a new high-speed galvanizing factory in Kenya, with an estimated cost of USD 19 million and an annual capacity of 30,000 tons. This investment aimed to strengthen the Government's commitment to developing the manufacturing sector, one of the four pillars of the Big Four Agenda of Jubilee Administration.
81. Article 2 on Deliverables outlines the key deliverables of the project as specified in the agreement. The deliverables include:
- (a) *The manufacture of galvanized wire and other steel-related components and products.*
 - (b) *Ensuring knowledge transfer, fostering research innovation, and sourcing locally supplied galvanized wire.*

- (c) Utilizing the galvanized wire as an intermediate input to boost the production of auxiliary products such as chain links, galvanized British Reinforcement Concrete (BRC), barbed wire, razor wire, and staple pins.
- (d) Creating direct employment for at least 300 individuals, along with additional indirect job opportunities.
- (e) Expanding the galvanized plant's capabilities to produce galvanized wire products that meet the needs of Kenyans and East African communities.
- (f) Establish a comprehensive distribution network to facilitate sales and product stocking in response to market demands.

82. The Ministry of Investments, Trade and Industry submitted a copy of the agreement to the Committee for perusal of the contents listed therein.
83. Regarding whether the legal requirements for granting tax exemptions under the SOFA to the company were met, and who was responsible for approving these exemptions, the Ministry stated that the SOFA agreement was signed by the Cabinet Secretary, the National Treasury and Planning, the Cabinet Secretary, Ministry of Industry, Trade and Cooperatives, representing the Government, and the Chairman of Blue Nile Rolling Mills Limited. However, the authority to grant waivers and exemptions lies with the National Treasury, which is better positioned to provide detailed responses to this inquiry.
84. In addition, regarding the number of employees at the company and its compliance with tax obligations, the Ministry reported that Blue Nile Rolling Mills Limited currently employs 1,030 staff members, with 649 working in the Galvanized Iron (GI) division, representing 63% of the total workforce. As for the company's tax compliance status, the Ministry submitted that the National Treasury has a more effective mechanism to monitor compliance levels and the legal authority to provide updates on this issue.

3.3 Submissions by the Kenya Association of Manufacturers

85. The Committee invited the Chief Executive Officer, Kenya Association of Manufacturers to brief it on the statement vide letters Ref: NA/DAA&GPC/CDL/2024(083) dated 22nd August, 2024 and Ref. NA/DAA&GPC/CDL/2024(085) dated 5th September, 2024. The Kenya Association of Manufacturers (KAM) through a written response vide letter Ref. KAM/10/27/dm/jmw/mb/jw/TA/2024 dated 20th September, 2024 (**Appendix 18**), submitted to the Committee as follows, THAT: -
86. KAM was not involved in the process of granting the SOFA and thereby has no visibility of its beneficiaries and was not consulted. In addition, KAM had written to the relevant government agencies requesting them to share information regarding the SOFA in question.
87. Furthermore, KAM reported that it learned about the issues related to SOFA from complaints by its members, who highlighted the negative impact SOFA has had on the steel industry ((**Appendix 19**)). For instance, in a letter dated July 5, 2024, Accurate Steel Mills Ltd stated that despite meeting the conditions outlined in the relevant SOFA, investing over Kshs.

10,000,000,000, and employing thousands of workers, only one company had signed the SOFA. Furthermore, this agreement disregards the East African Community's decision to allow Kenya to maintain a 10% duty on billets to support local manufacturers.

88. Additionally, it was KAM's submission that they support government incentive programs aimed at attracting local and foreign investment. However, they do not endorse any initiative that disrupt the manufacturing value chain or create an uneven playing field. Through a letter dated 5th July, 2024, Jumbo Steel Mills Limited informed KAM that the tax exemptions extended to one company [**Blue Nile Rolling Mills Limited**] had created unfair competition in the steel industry.
89. KAM acknowledged that the issue was active in the court and noted that the best course of action would be to allow the judges the opportunity to render their decision.
90. KAM further noted that, any incentives provided by the government should go through an evaluation process that includes public participation. This approach would be essential to ensure transparency and accountability in the decision-making process surrounding these incentives.

3.4 Submissions by the Blue Nile Rolling Mills Limited

91. The Committee invited the Managing Director, Blue Nile Rolling Mills Limited to brief it on the statement vide its letters Ref: NA/DAA&GPC/CDL/2024(081) dated 22nd August, 2024 and Ref. NA/DAA&GPC/CDL/2024(091A) dated 5th September, 2024.
92. Blue Nile Rolling Mills Limited through their Legal representative, Ahmednasir Abdullahi Advocates, LLP through a letter Ref. AA/6584/2023 (**Appendix 20**) dated 17th September, 2024 made written submission as hereunder:
93. On the issue regarding the legal and policy framework on the SOFA, Blue Nile Rolling Mills Limited submitted that, the Government of Kenya, guided by Vision 2030, recognized manufacturing as a crucial driver of economic growth and development. This was due to its significant capacity for job and wealth creation, as well as its strong potential to help achieve the Millennium Development Goals (MDGs).
94. To implement the transformative goals of Vision 2030, Sessional Paper No. 9 of 2012 titled "*The National Industrialization Policy Framework for Kenya 2012-2030: Transforming Kenya into a Globally Competitive Regional Industrial Hub*" was developed. The main policy objective is to help the industrial sector achieve and maintain an annual growth rate of 15%, positioning Kenya as the most competitive and desirable destination for industrial investment in Africa, which would result in increased employment and wealth creation.
95. They submitted that, to put the policy framework into action, the government made amendments to the Income Tax Act in the 3rd schedule and to the Value Added Tax in Part 1 by adding section 102. These changes were enacted through the Finance Act, 2018, which served as an important piece of legislation designed to provide a legal framework for government policies.

96. Additionally, they submitted that Section 33 of the Finance Act, 2018 amended Part A of the 2nd schedule of the Excise Duty Act, 2015 by adding paragraph 13. The Finance Act, 2018 also revised Part A of the 2nd schedule of the Miscellaneous Fees and Levies Act, 2016. Essentially, the Finance Act 2018 was enacted to introduce various tax incentives aimed at stimulating economic growth and supporting the government's "Big Four" economic agenda, which focused on ensuring food security, constructing affordable housing, providing universal healthcare, and enhancing manufacturing for value addition and job creation.
97. The Act also established a tax exemption of 2% of customs value and 1.5% of customs value for the Import Declaration Fees and Railway Development Levy, respectively, for goods imported exclusively under special operating framework agreements with the government. This expanded the existing tax incentive system for infrastructure and other projects involving special government arrangements.
98. They further noted that the provisions related to the SOFA, specifically Sections 19, 33, and 51 of the Finance Act, 2018, were included in the Finance Bill, 2018. This was proposed by the National Treasury and presented to the National Assembly on June 19, 2018.
99. Additionally, the Departmental Committee on Finance and Planning of the National Assembly conducted public hearings from 1st to 3rd August, 2018, engaging stakeholders to gather their input on the Finance Bill 2018. This was acknowledged and confirmed by the court in **Kenya Bankers Association v Attorney General & another, Central Bank of Kenya (Interested Party) [2019] eKLR**.
100. They further submitted that it was a matter of public record, as noted in Kenya Bankers Association v Attorney General & another: Central Bank of Kenya (Interested Party) (supra), that on August 29, 2018, the National Assembly reviewed and approved the Finance Bill 2018. The Bill was then sent to His Excellency the President for assent, in accordance with Article 115 of the Constitution.
101. It was their submission that the Court addressed the issue of public participation concerning the Finance Act 2018 in significant cases brought before it. In the case of Kenya Bankers Association v Attorney General & another: National Assembly (Interested Party) [2020] eKLR, the Court confirmed that "*the Interested Party presented evidence showing that the Finance Bill 2018 underwent public participation.*" Consequently, the Court concluded by stating that; "*I concur with the respondents and the Interested Party that the contested provisions of the Finance Act 2018 cannot be challenged on the basis of insufficient public participation. Therefore, it is unnecessary to further discuss this issue.*"
102. They submitted that, to support its economic policy, the Government of Kenya amended Section 68 of the Value Added Tax Act, 2013, by adding a new subsection (2A) immediately after subsection (2). This new provision states that, despite the repeal of paragraph 102 of the First Schedule, the exemption for goods imported or locally purchased for direct and exclusive use in projects under a SOFA arrangement with the Government will remain in effect for existing projects for the duration of the agreement. This amendment was made through the Finance Act 2020. The transitional clause aims to ensure the continuity of the

SOFA, highlighting the Government's commitment to implementing its policy through legislative measures.

103. They further submitted that, in 2022, the Finance Act amended the Income Tax Act by adding Section 28A, which specifies that companies engaged in SOFA with the Government for manufacturing human vaccines, with a capital investment of at least ten billion shillings, will be taxed according to the terms of the agreement.
104. Additionally, Section 30 of the Finance Act, 2022 modified the First Schedule of the Value Added Tax Act, introducing provisions for tax exemptions on goods, inputs, and raw materials imported or locally purchased by such companies, subject to Cabinet Secretary's approval. This section also applies to taxable goods under similar conditions in the Second Schedule of the Miscellaneous Fees and Levies Act.
105. The constitutionality and legality of the Finance Act, 2022 were challenged in the case *Kabata & 4 others v National Assembly & 3 others*, but the Court dismissed the petitions for lack of merit.
106. In response to the query on circumstances under which tax exemptions were granted to Blue Nile Rolling Mills Limited, it was submitted that when the SOFA was introduced, Blue Nile Rolling Mills Limited was the first commercial manufacturer of galvanized wire in Kenya, aligning with the government's import substitution strategy outlined in Sessional Paper No. 9 of 2012. The Agreement specifically focused on the production of galvanized wire.
107. Additionally, Blue Nile Rolling Mills Limited submitted that as of July 2024, it had received tax exemptions totaling USD 1,762,190, equivalent to Kshs. 188,000,000 in IDF and RDL. While VAT is not entirely exempt, it is deferred, as it must be paid on sales. Moreover, the company did not utilize the corporate tax discount due to outstanding investment allowances.
108. Regarding whether the tax exemptions are exclusive to Blue Nile Rolling Mills Limited, the company stated as follows:
 - i. Over 200 manufacturing companies, including several steel companies, benefit from Import Duty exemptions through the Duty Remission Scheme.
 - ii. According to the VAT Act of 2022 (Paragraph 146) and the Miscellaneous Fees and Levies Act of 2022 (Second Schedule, Part A (xxvi) and Part B (x)), many companies in the industry have received exemptions for IDF, RDL, and Import Duty, as well as deferred VAT.
 - iii. No other company in the same sector applied for SOFA, even though the Finance Bill of 2018 allowed all eligible entities to do so.
109. The Company stated that the Agreement between the Company and the Government aimed at promoting direct investment and foster inclusive economic growth in Kenya. Key points include:

- (a) The commitment of the Ministry of Industry, Trade and Cooperatives and the Ministry of the National Treasury and Planning to support the development of the manufacturing sector and steel industry, in line with the National Industrialization Policy Framework and the Kenya Industrialization Transformation Program.
- (b) The Company's commitment to invest in a galvanizing plant in Kenya, which would also involve promoting employment and facilitating knowledge and technology transfer within related industries.
- (c) The Company, in collaboration with the Ministry of Industry, Trade and Cooperatives and the Ministry of the National Treasury and Planning, had committed to establishing a high-speed galvanizing factory in Thika Town, Kiambu County, with an estimated investment of USD 19 million. This project aimed for nearly 100% local value addition and was expected to generate foreign earnings or savings of around USD 15 million.
- (d) The deliverables of the project were outlined under Article 2 of the Agreement, focusing on the production of galvanized wire and other steel-related products. According to Article 3, the project aimed to position Kenya as a regional manufacturing hub, create direct and indirect jobs, support automation and technology transfer, and enhance research and development in the steel sector. Additionally, it would promote business development services and provide opportunities for Kenyans to design and manufacture "Made in Kenya" products.
- (e) Economically, the project was anticipated to boost Kenya's foreign exchange through import substitution and export of galvanized wire products, while also reducing the cost of locally manufactured steel-related products.
- (f) Under Article 5 of the Agreement, the Government granted the Company several incentives, including: -
 - i. Exemption from VAT on inputs for building materials, machinery, production lines, equipment, spare parts, consumables, and other supplies used solely for constructing the galvanized wire plant.
 - ii. Exemption from import duty, as per the EAC Customs Management Act 2004.
 - iii. Exemption from VAT on imported raw materials intended for the manufacturing process.
 - iv. Exemption from IDF and RDL on imported raw materials for exclusive use in manufacturing, along with a reduced corporate income tax rate of 10% for the first five years.
- (g) Finally, the Agreement specified that the investor would maintain all the incentives for a period of ten years, and any changes in duties and taxes that could negatively impact the investor would be the responsibility of the Government.

110. Concerning the requirement on hiring a minimum of 300 employees under SOFA, the Company submitted that it had complied by employing over 1,000 employees from various backgrounds, including 457 on pensionable terms.
111. They submitted that the SOFA arrangement was in accordance with the established legal framework and that the Agreement had been largely executed with significant project implementation and funding exceeding 30 million dollars from various financiers.
112. In conclusion, Blue Nile Rolling Mills Limited submitted to the Committee that, on November 17, 2023, the Attorney General provided an advisory on the legality of the SOFA, which confirmed that:
 - i. The Agreement was legally valid and binding for a duration of ten years.
 - ii. The execution of the Agreement completed the transaction, meaning that the Finance Act of 2023 could not nullify the rights established under it.
 - iii. Based on the principle of legitimate expectation, the government was required to honor the Agreement.

4.0 COMMITTEE OBSERVATIONS

113. The Committee having analyzed the submissions by stakeholders made observations on issues relating *inter alia* to: unconstitutionality, non-conformity with relevant statutes, non-compliance with the principles of a standard contract/agreement as here under:

4.1 Unconstitutionality

114. Article 7 of the purported SOFA arrangement on confidentiality is unconstitutional to the extent that it infringes on –

- (a) Article 35 of the Constitution on access to information, as the same excludes non-parties to gain access to the information contained therein.
- (b) Article 201(a) of the Constitution, which requires openness, accountability including public participation in matters relating public finance, which principles, the parties did not adhere in the execution of the Agreement.
- (c) Article 95(4)(c) of the Constitution, provides for oversight role to the National Assembly over national revenue and its expenditure. The Committee observed that failure by the relevant ministries to involve the National Assembly at any stages of the process followed in exempting the Blue Nile Rolling Mill Limited from tax remission, denied the House of the performance of its oversight role.

115. Article 210(2) of the Constitution which requires maintaining of public records of tax waiver and report of waiver to the Auditor-General with reasons, as the same was not demonstrated in the documentation provided.

116. The whole architecture of the purported agreement contravenes the provisions of Article 10(2)(c) and Article 118 of the Constitution which requires good governance, integrity, transparency and accountability.

4.2 Non-conformity with relevant statutes

117. The Agreement failed to conform with the relevant statutes including –

- a) section 13 of the Income Tax Act (*Cap 470*) laws of Kenya allows the Cabinet Secretary to exempt any income or class of income which accrued in or derived from Kenya from taxation -
 - i. by publishing a gazette notice to that effect in accordance with sub-section (2); and
 - ii. by submitting the notice to be laid before the National Assembly without unreasonable delay, in accordance with sub-section (3),

which requirements, the Committee observed were not followed, since the Cabinet Secretary for the National Treasury, neither published the notice in the gazette, nor submitted it for laying in, and approval by the National Assembly.

- b) Section 68 of Value Added Tax Act (Cap 476) laws of Kenya saved all Special Operating Framework Arrangements entered into with the Government, which were in existence at the commencement of the Act in the year 2022. In this arrangement, the Agreement was signed between 16th and 30th January, 2020 falls within the timelines of the arrangements saved under the Value Added Tax Act. Consequently, the Committee having observed that the purported SOFA arrangement between Blue Nile Rolling Mill Limited and the Government was unprocedural and unlawful, the Committee is of the opinion that Blue Nile Rolling Mill Limited ought not to benefit from the said saving.
- c) The provisions of Law of Contract Act (Cap 23) in relation to signature and affixing of common seal. To the extent that the Agreement contained three signatures appended by parties but on different dates at different places, implying that not all the parties were present at the signing, contrary to the principles of the Law of Contract.
- d) Miscellaneous Fees and Levies Act (Cap 469C) to the extent that Article 5 of the Agreement seeks exemption from Import Declaration Fees and Railway Development Levy. However, the same has not been exempted under the Miscellaneous Fees and Levies Act.
- e) Tax procedures Act (Cap 469B) to the extent that the Committee considered that failure by Blue Nile Rolling Mill Limited to remit the attendant taxes amounted to tax avoidance, which is defined in section 3 of the Act as “**a transaction or a scheme designed to avoid liability to pay tax under any law.**” From the submission by the National Treasury, the Committee observed that, due to the tax avoidance, the Government lost revenue in terms of unpaid taxes amounting to Kshs. 2,311,745,548 as at July 2024.
- f) Competition Act (Cap 504) contemplates fair trade practices. Section 21(3)(f) prohibits any agreement, decision or concerted practice, which applies dissimilar conditions to equivalent transactions with other parties, thereby placing them at a competitive disadvantage, which was the case in this circumstance. The Committee observed that this Agreement was discriminative and created unfair playground for other industry players.
- g) The Statutory Instruments Act (Cap 2A) laws of Kenya to the extent that:
- i. The Circular No. 9/2018 Ref. no. ZZ/TS/GP/30 dated 18th October, 2018 issuing guidelines for grant of tax exemptions, which were relied upon in granting the SOFA, is a statutory instrument within the meaning of section 2 of the Statutory Instruments Act (*hereinafter the “the Act”*). The Committee observed that, although the above-mentioned guidelines is a statutory instrument, the same was not laid before the National Assembly in line with section 11(1) of the Statutory Instruments Act for scrutiny and approval. Consequently, the circular ceased to take effect upon the lapse of the requisite timelines as provided for under Section 11(4) of the Act.

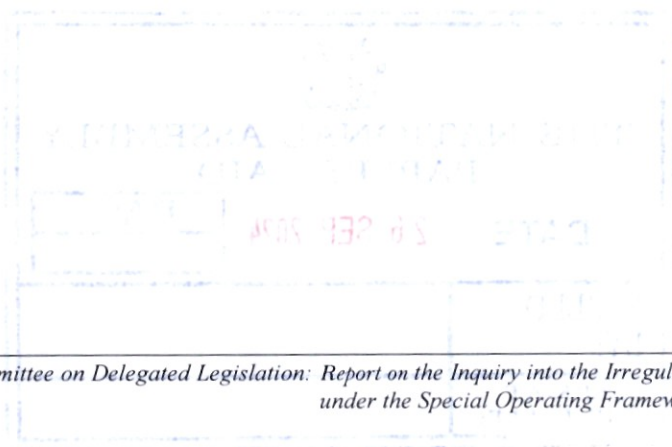
- ii. The SOFA was a statutory instrument which ought to have been submitted in the National Assembly for tabling, consideration as required under the Statutory Instruments Act. Consequently, the Committee observed that the SOFA was a nullity from the onset.

4.3 Non-compliance with the principles of a standard contract/agreement

118. The Committee noted that the Agreement did not comply with the general principles of a standard contract or agreement contemplated where the parties to the contract are between bodies corporate or a government and body corporate. The Committee observed that the Agreement contained three signatures appended by parties but on different dates at different places, implying that not all the parties were present at the signing, contrary to the principles of the Law of Contract.

4.4 General Observations

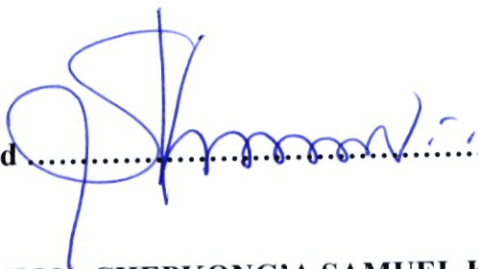
119. The Committee observed that, although Blue Nile Rolling Mills Limited continues to enjoy the exemptions under EAC duty remission scheme, there is no proof that the said company applied or requested to be exempted from duty remission under the EAC duty remission scheme.
120. Consequently, the Committee noted that failure of proof of request for exemption under EAC duty remission scheme by Blue Nile Rolling Mills Limited, is a clear indication that the exemption was unprocedurally and unlawfully granted to the Company to the disadvantage of other industry players contrary to the provisions of the Competition Act (Cap 504) on unfair trade practices.
121. The Agreement entered between the National Treasury and Planning, Ministry of Industry, Trade and Cooperatives and Blue Nile Rolling Mills Limited was dated 18th December, 2019. The said Agreement failed to recognize any change in duty and taxes. The Committee further noted that the purported amendment to the initial agreement which shielded the Company against increase in taxes and duty at the expense of the government did not exist. As such, Blue Nile Rolling Mills Limited continues to enjoy tax exemption including any increase in tax and duty subject to a non-existing amendment Agreement.



5.0 COMMITTEE RECOMMENDATIONS

122. Having conducted the inquiry to the statement by the Hon. John Njuguna Kwanjiku, MP, and having considered the submissions by the National Treasury and Economic Planning, Ministry of Investments, Trade and Industry, Kenya Association of Manufacturers and the Blue Nile Rolling Mills Limited, the Committee recommends that this House **adopts** the report on its inquiry into irregular and illegal grant of tax exemptions to a Company under the Special Operating Framework Agreement with the following recommendations, **THAT**:
123. Considering that the Special Operating Framework Agreement arrangement between the Government and Blue Nile Rolling Mill Limited was deemed unprocedural and unlawful, this House resolves to declare that, the said Special Operating Framework Agreement was done outside the requisite legal framework, thus a nullity and hence void.
124. This House resolves to direct all the relevant statutory bodies to take necessary legal action on parties involved in the whole process of the irregular tax exemptions under the Special Operating Framework Agreement therein.
125. Pursuant to Section 12(2) of Statutory Instruments Act, this House resolves that, the Cabinet Secretary for the National Treasury and Economic Planning submits tax exemption guidelines for the implementation of Special Operating Framework Arrangements to the National Assembly within six months of the House adopting this report.

Signed




Date

25/09/2024

THE HON. CHEPKONG'A SAMUEL KIPRONO, CBS, MP
(CHAIRPERSON)

COMMITTEE ON DELEGATED LEGISLATION

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 26 SEP 2024	
DAY: Thursday	
TABLED BY:	Hon. Samuel Chepkong'a, MP Chairperson
CLERK-AT THE TABLE:	A. Shitubo

MINUTES OF THE 54TH SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON TUESDAY, 24TH SEPTEMBER, 2024, IN ROOM 18, 3RD FLOOR, BUNGE TOWER AT 11.00 A.M.

PRESENT

1. The Hon Samuel Kiprono Chepkonga, CBS, M.P. Chairperson
2. The Hon. Robert Gichimu Githinji, M.P. Vice Chairperson
3. The Hon. Robert Mbui, CBS, M.P.
4. The Hon. Julius Lekakeny Ole Sunkuli, EGH, EBS M.P
5. The Hon. (Dr) Charles Mamwacha Onchoke. M.P
6. The Hon. John Paul Mwirigi, M.P.
7. The Hon. Joyce Kamene, M.P
8. The Hon. Kibet Kirui Komingoi, M.P.
9. The Hon. Geoffrey Kariuki Kiringa Ruku, M.P.
10. The Hon. Pauline Lenguris, M.P.
11. The Hon. Maj. (Rtd). Abdullahi Bashir Sheikh, M.P.
12. The Hon. Joseph Kamau Munyoro, M.P
13. The Hon. (Dr) Gideon Kipkoech Kimaiyo, M.P.
14. The Hon. Yakub Adow Kuno, M.P.
15. The Hon. Paul Chebor, M.P.

APOLOGIES

1. The Hon. Nicholas S. Tindi Mwale, M.P.
2. The Hon. Jared Okello Odoyo, M.P.
3. The Hon. Maj. (Rtd). Dekow Barrow Mohamed, M.P.
4. The Hon. Innocent Mugabe, M.P.
5. The Hon. Laura Amina Mnyazi, M.P.
6. The Hon. Linet Chepkorir M.P.

IN ATTENDANCE

SECRETARIAT

- | | | |
|------------------------|---|---------------------------|
| 1. Ms. Esther Nginyo | - | Clerk Assistant I |
| 2. Mr. Wilson Dima | - | Principal Legal Counsel I |
| 3. Mr. Brian Langwech | - | Clerk Assistant III |
| 4. Ms. Isabella Mwembi | - | Clerk Assistant III |
| 5. Mr. Silvanus Makau | - | Clerk Assistant III |
| 6. Ms. Nancy chepkemoi | - | Legal Counsel II |
| 7. Mr. Peter Barasa | - | Legal Counsel II |
| 8. Ms. Rahab Chepkilim | - | Audio Officer |
| 9. Mr. Valerian Pascal | - | Hansard Officer III |

AGENDA

1. Prayers
2. Preliminaries
3. Adoption of the Agenda
4. Confirmation of minutes
5. Matters arising
6. Briefing by the Principal Secretary, State Department for Wildlife on the Wildlife Conservation and Management (Access and Conservation) (Fees) Regulations, 2023.
7. Consideration of Tax Procedures (Electronic Tax Invoice) Regulations, 2024
8. Consideration of the Draft Report on request for a statement on irregular and illegal grant of tax exemptions to the Blue Nile Rolling Mills Limited company under the Special Operating Framework Agreement.
9. Any Other Business; and
10. Adjournment.

MIN. DAA&GPC/CDL/339/2024

PRELIMINARIES

The Chairperson called the Meeting to order at 11.14 a.m. and said a prayer. He then welcomed all to the meeting.

MIN. DAA&GPC/CDL/340/2024

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by the Hon. Joseph Kamau Munyoro, M.P and seconded by the Hon. Pauline Lenguris, M.P

MIN. DAA&GPC/CDL/341/2024

CONFIRMATION OF MINUTES

1. Minutes of the 50th Sitting held on Thursday, 19th September 2024, were confirmed as an accurate record of the proceedings having been proposed by the Hon. Robert Mbui, CBS, M.P. and seconded by the Hon. Charles Mamwacha Onchoke. M.P
2. Minutes of the 51st Sitting held on Friday, 20th September 2024 morning sitting were confirmed as an accurate record of the proceedings having been proposed by the Hon. Joseph Kamau Munyoro, M.P and seconded by the Hon. Pauline Lenguris, M.P
3. Minutes of the 52nd Sitting held on Thursday, 20th September 2024 afternoon sitting were confirmed as an accurate record of the proceedings having been proposed by the Hon. Charles Mamwacha Onchoke. M.P and seconded by the Hon. Robert Mbui, CBS, M.P
4. Minutes of the 53rd Sitting held on Saturday, 21st September 2024, were confirmed as an accurate record of the proceedings having been proposed by the Hon. Joseph Kamau Munyoro, M.P and seconded by the Hon. Pauline Lenguris, M.P

MIN. DAA&GPC/CDL/342/2024

**CONSIDERATION OF TAX
PROCEDURES
(ELECTRONIC TAX INVOICE)
REGULATIONS,2024**

The Committee considered the Tax Procedures (Electronic Tax Invoice) Regulations, 2024. The Committee noted the need for the National Treasury to make amendment Regulations under Regulation 11 to require the Commissioner General to exempt persons with businesses with a total annual turnover of less than one million.

Upon deliberation on the Corrigendum the Committee satisfied itself that the Tax Procedures (Electronic Tax Invoice) Regulations, 2024 were in accordance with the Constitution, the Statutory Instruments Act, 2013, and Section 112 of the Tax Procedures Act and were therefore **Approved** subject to the ministry correcting minor issues raised by the Committee having been proposed by the Hon. Pauline Lenguris, M.P. and seconded by the Hon. Kibet Kirui Komingoi, M.P.

MIN. DAA&GPC/CDL/343/2024

**BRIEFING BY THE PRINCIPAL
SECRETARY, STATE DEPARTMENT
FOR WILDLIFE ON THE WILDLIFE
CONSERVATION AND
MANAGEMENT (ACCESS AND
CONSERVATION) (FEES)
REGULATIONS, 2023.**

The Principal Secretary, State Department for Wildlife had been invited to brief the Committee on the Wildlife Conservation and Management (Access and Conservation) (Fees) Regulations, 2023. However, through a letter ref. SDW/1/47/2, the Principal Secretary requested the Committee to reschedule the meeting owing to a judgement that was entered by the High Court at Malindi that, the Wildlife Conservation and Management (Access and Conservation) (Fees) Regulations, 2023 were illegal and unconstitutional for want of effective public participation and consultation.

The Ministry sought for more time to enable them address the issues raised in the petition that led to the annulment of the Regulations. This Committee acceded to the request.

MIN. DAA&GPC/CDL/344/2024

**CONSIDERATION OF THE DRAFT
REPORT ON REQUEST FOR A
STATEMENT ON IRREGULAR AND
ILLEGAL GRANT OF TAX**

**EXEMPTIONS TO THE BLUE NILE
ROLLING MILLS LIMITED
COMPANY UNDER THE SPECIAL
OPERATING FRAMEWORK
AGREEMENT.**

1. The Committee considered the Draft Report on the inquiry into the irregular and illegal grant of tax exemptions to the Blue Nile Rolling Mills Limited company under the Special Operating Framework Agreement.
2. Upon deliberation, the Committee proposed there was need to change the title of the report to read "A report on the Inquiry into Irregular and Illegal Grant of Tax exemptions to a Company under the Special Operating Framework.
3. The Committee also recommended that the findings and observations from the Inquiry should be summarized and highlighted in the Executive summary of the report.
4. Consequently, the Committee **adopted** the Report with amendments having been proposed by the Hon. Julius Lekakeny Ole Sunkuli, EGH, EBS M.P and seconded by the Hon. Robert Mbui, CBS, M.P.

MIN. DAA&GPC/CDL/345/2024

ANY OTHER BUSINESS

1. The Committee was notified of an invitation by the National cancer Institute of Kenya to a consultative meeting with Committee regarding the draft Cancer Prevention and control Rules of 2024 Friday, 27th September 2024. The request was acceded to.
2. The Committee noted that the Tourism Promotion Fund had provided for the Cabinet Secretary as the Fund Chairperson and at the same time as the one overseeing the Fund, which was noted to be an irregularity. In this regard, the Committee resolved to invite Cabinet Secretary to appear and brief it on the said Regulations.
- 3.

MIN. DAA&GPC/CDL/346/2024

ADJOURNMENT

There being no other business, the meeting was adjourned at twenty Minutes past One O'clock. The next meeting will be held on Thursday, 26th September 2024.

SIGNED:


**THE HON. SAMUEL CHEPKONGA, CBS, M.P.
CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION**

DATE:


MINUTES OF THE 47TH SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON WEDNESDAY, 21ST AUGUST, 2024, IN ROOM 21, 5TH FLOOR, BUNGE TOWER AT 10.00 A.M.

PRESENT

1. The Hon Samuel Kiprono Chepkonga, CBS, M.P. Chairperson
2. The Hon. Robert Gichimu Githinji, M.P. Vice Chairperson
3. The Hon. Robert Mbui, CBS, M.P.
4. The Hon. Maj. (Rtd). Abdullahi Bashir Sheikh, M.P.
5. The Hon. John Paul Mwirigi, M.P.
6. The Hon. Jared Okello Odoyo, M.P.
7. The Hon. Kibet Kirui Komingoi, M.P.
8. The Hon. Maj. (Rtd). Dekow Barrow Mohamed, M.P.
9. The Hon. Gideon Kipkoech Kimaiyo, M.P.
10. The Hon. Geoffrey Kariuki Kiringa Ruku, M.P.
11. The Hon. Pauline Lenguris, M.P.

APOLOGIES

1. The Hon. Julius Lekakeny Ole Sunkuli, EGH, EBS M.P
2. The Hon. Nicholas S. Tindi Mwale, M.P.
3. The Hon. Joyce Kamene, M.P
4. The Hon. Yakub Adow Kuno, M.P.
5. The Hon. Paul Chebor, M.P.
6. The Hon. Joseph Kamau Munyoro, M.P
7. The Hon. Innocent Mugabe, M.P.
8. The Hon. Charles Mamwacha Onchoke. M.P
9. The Hon. Laura Amina Mnyazi, M.P.
10. The Hon. Linet Chepkorir M.P.

IN ATTENDANCE

SECRETARIAT

- | | | |
|------------------------|---|-----------------------------|
| 1. Ms. Esther Nginyo | - | Clerk Assistant I |
| 2. Mr. Brian Langwech | - | Clerk Assistant III |
| 3. Ms. Isabella Mwembi | - | Clerk Assistant III |
| 4. Mr. Silvanus Makau | - | Clerk Assistant III |
| 5. Mr. Peter Barasa | - | Legal Counsel II |
| 6. Ms. Viola Saiya | - | Research Officer III |
| 7. Ms. Rahab Chepkilim | - | Audio Officer |
| 8. Mr. Valerian Pascal | - | Hansard Officer III |
| 9. Mr. Daniel Psirmoi | - | Media Relations Officer III |
| 10. Mr. Noah Chemweno | - | Serjeant-At-Arms |

THE NATIONAL TREASURY AND ECONOMIC PLANNING

- | | | |
|-----------------------|---|--|
| 1. Mr. Musa Katherije | - | Director, M& Fiscal Affairs, National Treasury |
| 2. Mr. Joseph Ngugi | - | Director Planning, National Treasury |
| 3. Mr. Samuel Wambugu | - | Director Planning, National Treasury |

4. Ms. Judy Magu

- Principal Economist, National Treasury

AGENDA

1. Prayers
2. Preliminaries
3. Adoption of the Agenda
4. Confirmation of minutes
5. Matters arising
6. **Briefing by the Principal Secretary, the National Treasury & Economic Planning on the Statement regarding irregular and illegal grant of tax exemptions to the Blue Nile Rolling Mills Limited company under the Special Operating Framework Agreement.**
7. Any Other Business; and
8. Adjournment.

MIN. DAA&GPC/CDL/298/2024

PRELIMINARIES

The Chairperson called the Meeting to order at 10.20 a.m. and said a word of prayer. He then welcomed all to the meeting followed by a round of introduction.

MIN. DAA&GPC/CDL/299/2024

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by the Hon. Robert Gichimu Githinji, M.P and seconded by the Hon. Maj. (Rtd). Dekow Barrow Mohamed, M.P.

MIN. DAA&GPC/CDL/300/2024

CONFIRMATION OF MINUTES

Minutes of the 46th Sitting held on Thursday, 15th August 2024, were confirmed as an accurate record of the proceedings having been proposed by the Hon. Robert Gichimu Githinji, M.P and seconded by the Hon. Robert Mbui, CBS, M.P.

MIN. DAA&GPC/CDL/301/2024

BRIEFING BY THE PRINCIPAL SECRETARY, NATIONAL TREASURY AND PLANNING ON A STATEMENT REGARDING IRREGULAR AND ILLEGAL GRANT OF TAX EXEMPTIONS TO THE BLUE NILE ROLLING MILLS LIMITED COMPANY UNDER THE SPECIAL OPERATING FRAMEWORK AGREEMENT.

Dr. Chris Kiptoo, CBS, Principal Secretary, the National Treasury and Economic Planning Vide Letter ref. TNT/CONF 268/014 "L"(20) requested to be represented in the meeting by Mr. Musa Katherenje, Director Macro & Fiscal Affairs, The National Treasury.

The Committee acceded to the request and was briefed on statement regarding irregular and illegal grant of tax exemptions to the Blue Nile Rolling Mills Limited company under the Special Operating Framework Agreement (SOFA).

1. **In regards to the circumstances under which the tax exemptions on Income, Corporate Tax, Value Added Tax, Import Duty, Import Declaration Fee and Railway Development Levy were granted to Blue Nile Rolling Mills Limited, the National Treasury responded as follows;**

- I. That M/s Blue Nile Rolling Mills Limited is a company incorporated in Kenya with Company Registration No. 148925 and located in Thika Town. The Company imports wire rods to manufacture galvanized wire (GI) for making various steel products.
- II. That in 2018 through the Finance Act, 2018, tax laws were amended to provide for government to enter into SOFA. The provisions were open to all sectors of the economy and to any investor.
- III. That Blue Nile Rolling Mills Limited, given the amendments in the Tax Laws amendments in 2018 negotiated and entered into (SOFA) with the Government to support the investment and the expansion of the industry. The Agreement was signed between the Ministry of Industry, Trade and Cooperatives, The National Treasury and Planning and Blue Nile Rolling Mills Limited on 16th January, 2020 and an addendum to the agreement that was signed on 8th March 2022
- IV. In the agreement, the Government committed to provide the necessary incentives to facilitate the Company to manufacture galvanized wire. The Agreement provided a sunset for lower corporation tax for the first five years from the date of signing the Agreement which ends in December, 2024.
- V. That Blue Nile Rolling Mills set up the Galvanized Iron Wire Manufacturing project with expected Capital out lay of over \$19 million in phase 1. Before the set up of the Company, Kenya used to import the galvanized wire from China, India, South Africa and other countries.
- VI. That the increase in import duty of wire rods from 1st July, 2022 impacted the Company negatively considering wire rods are the main inputs for manufacture of galvanized wire that is used for making various steels products. The EAC Council, when it increased the import duty on wire rods, also provided duty remission for companies that use wire rods as inputs to manufacture other products. In this respect, Blue Nile Rolling Mills Limited was gazetted for importation of wire rods under the EAC Duty Remission.
- VII. That the introduction of the Export and Investment Promotion Levy at 17.5 % on wire rods, on 2nd October 2023, the Ministry of Trade and Industry wrote to the Attorney General seeking legal guidance on how to handle ongoing SOFA agreements in view of the changing tax measures in the country. This led to the legal advice from the Attorney General on 17th November, 2023. The Lawyer for the Company in a letter dated 27th November 2023 REF No. AA/6581/2023 wrote to the PS State department for Industry requesting for the feedback on the legal Advice by AG of 17th November 2023.

2. In regards to the total value of tax exemptions that have been granted to Blue Nile Rolling Mills Limited so far and estimated value of the exemptions that will have been granted to the Company on the expiry of the Agreement, the National Treasury responded as follows;

- I. That the actual total value of taxes, fees and levies including import duty that has been exempted since 2020 to July 2024 are as tabulated below:

YEAR	VAT	IDF	RDL	TOTAL TAX EXEMPTED (KSHS)
2020	56,776,930			56,776,930

2021	155,994, 525	13,653,335	3,272,538	182,920,398
2022	277, 283, 792	27,050, 803	3,284,770	327,619,365
2023	442, 767, 574	43,653,789	41,581,627	528,002,990
2024	232, 435,257	36,318,011	1,790,814	290,544,082
TOTAL	1,165,258,078	120,675,938	99,929,749	1,385,863,765

- II. That the amount of taxes exempted under the Duty Remission scheme from 2020 to July 2024 is as per the table below:

YEAR	IMPORT DUTY (KSHS)
2022	97,993,651
2023	505,206,015
2024	322,682,117
TOTAL	925,881,783

- III. That the total revenue foregone since 2020 to July 2024 is Kshs 2,311,745,548 and the estimation of the total value of the taxes, fees and levies to be granted from August 2024 up to the end of the SOFA is about Kshs 4,815,738,914.4
3. In regards to the contents of the agreement between the company and the government, the period for which the company shall enjoy the tax exemption under the agreement and the implication thereof in terms of loss of public funds, the National Treasury responded as follows;
- I. The agreement was expected to last for a period of 10 years running from 21st January, 2020 to 2030. During this time the company would enjoy: a reduced rate of corporation tax at 10% for the first 5 years (This is expected to expire in December, 2024); Exemption of VAT on goods purchased locally or imported for use in the implementation of the project.
 - II. That the VAT exemption only applied on inputs and not on other goods imported by the Company or sales of the manufactured goods.
 - III. That KRA had indicated that Blue Nile Rolling Mills Limited exports galvanized wire to the following countries: Congo, Colombia, Malawi, South Sudan and Dominican Republic.
4. As to whether the requirements of the law in granting tax exemptions under (SOFA) to company were complied with and indicate the persons that were responsible for approving the tax exemptions granted to the Company, the National Treasury responded that;
- I. The requirement of law in granting the tax exemptions under SOFA were complied with.

- II. The SOFA agreement was signed by the Cabinet Secretary for the National Treasury and Economic Planning and the Cabinet Secretary for the Ministry of Industry, Trade and Investment.
 - III. The request for any tax exemptions under the SOFA and in this case for the Blue Nile are recommended to the Cabinet Secretary National Treasury and Economic Planning for approval by the Cabinet Secretary, Ministry of Industry, Trade and Investments or the Principal Secretary, State Department for Industry. It is based on this recommendation that the Cabinet Secretary, the National Treasury and Economic Planning considers and approves.
 - IV. Applications are guided by Treasury Circular No. 9/2018 dated 18th October 2018.
- 5. As for the number of employees employed by the Company and the status of compliance with ensuing tax obligations by the Company, the National Treasury submitted that;**
- I. The company had employed about one thousand and thirty (1030) Kenyans in various levels, of which; thirty (30) employees serve at senior Management, sixty five (65) serve at Middle level Management whereas four hundred and eighty five (485) employees are under lower management.
 - II. The Company had another four hundred and fifty (450) employees on contract basis.
 - III. The Company was tax compliant in all its tax obligations.
- 6. In regards to the Number of Companies dealing with the manufacture galvanizing wire/steel production that were currently enjoying tax exemptions and the value of the investments of the Company, the National Treasury responded as follows;**
- I. That there were about four (4) other Companies that were set up later to manufacture galvanized wire and were affected by the increase in Import Duty rate on wire rods under duty remission upon recommendation by the Ministry of Investment, Trade and Industry.
 - II. That currently, the Ministry has only three companies under duty remission scheme namely; Roofings Kenya Limited, KD Wire products Limited and Blue Nile Rolling Mills Limited.
- 7. In regards to the Status of other existing Special Operating Framework Agreements and their impact on the economy, the National Treasury responded as follows;**
- I. That there were other two SOFA arrangements namely: -
 - a) Positivo that signed an agreement in 2019 but operation never kicked off, and
 - b) Moderna human vaccine manufacturing company that has also not commenced the operation in Kenya.

- II. That SOFAs are tailored agreements between Governments and manufacturing entities that provide a structured operational environment.
- III. That these agreements are designed to stimulate industrial growth by addressing specific needs of the manufacturing sector. By fostering a conducive environment for manufacturers, SOFAs play a critical role in boosting economic growth.
- IV. That on the Economic Impact, the National Treasury submitted that SOFAs had enabled job creation in the country through its favorable conditions that encourage the expansion of existing manufacturing operations and the establishment of new ones. That SOFAs have led to increased Industrial Output with reduced costs and improved efficiencies.

8. In regards to any matter that the Committee may deem appropriate, the National Treasury submitted as follows;

- I. That Kenya is a signatory of the East African Community protocol on the establishment of the East African Custom Union signed on 30th day of November 1999.
- II. That, further, article 9 of the EAC Treaty states provides for the establishment of organs and Institutions of the Community which include EALA, Sectoral Committees among others.
- III. That the institutions make decisions which are binding to EAC and based on this, Kenya implements such decisions on duty remission.
- IV. That in regard to Domestication, the Treaty of the East African Community shall from the date of publication of that Act in the Gazette of the Community have the force of law in Kenya.
- V. That the National Treasury wrote to the State Department for Industry on 19th July, 2024 to review the Special Operating Framework Agreements and provide policy direction on the ongoing Special Operating Framework Agreements.
- VI. That Kenya revenue Authority had begun the audit process of Blue Nile Rolling Mills Limited. The Authority sent out the notice of intention to conduct a post clearance audit for the period 2019 to June 2024 on 15th July 2024.
- VII. That an audit entry meeting had been held at the Blue Nile Rolling Mills Limited premises in Thika and that physical audit had been scheduled to commence on Monday 19th August 2024 and was envisioned to conclude the physical inspection of documents and have preliminary position by end of August 2024.

9. Upon deliberations, the Committee made the following observations:-

- i. The Committee observed that Special Operating Framework Agreement made between the Ministry of Industry, Trade and Investment, The National Treasury & Economic Planning and Blue Nile Rolling Mills Limited was

entered into on 18th day of December 2019 and was subsequently variously signed by the Parties on different dates on; 16th January 2020, 21st January 2020 and 30th January 2020. The Agreement was variously entered into by all parties and witnessed thereto.

- ii. The Committee also observed that the First Amendment Agreement sought to amend an agreement that was signed on 16th January 2020, an agreement which is non-existent. The amendment was also variously entered into on different dates: 8th March, 2022, 10th March, 2022 and 16th March, 2022.
- iii. The Committee also noted that the recital of the Special Operating Framework Agreement made between the Ministry of Industry, Trade and Investment, The National Treasury & Economic Planning and Blue Nile Rolling Mills Limited did not contain amendments in 2018 Finance Act which was its basis, but was rather based on the Big Four Agenda Items.
- iv. The Committee noted that the Special Operating Framework Agreement was reached to, pursuant to a Law, consequently making it a statutory instrument which was supposed to be tabled in parliament for approval in line with section 11 of the Statutory Instruments Act Cap 2A, however, this was not complied with.
- v. The Committee noted that Special Operating Framework Agreement had a confidentiality clause, yet it is a document made pursuant to law and therefore it shouldn't be exempted from other applicable laws.
- vi. The Committee further observed that the Special Operating Framework Agreement was excluding Blue Nile and Rolling Mills Company from other competing parties, a fact that is in contravention of section 5(1) of the Statutory Instruments Act Cap 2A.
- vii. The Committee observed that the National Treasury and Economic Planning was being guided by Treasury Circular No. 9/2018 dated 18th October 2018, but no prove of it being tabled and approved by Parliament as per Statutory Instruments Act was provided for it to be operational.

10. Arising from the concerns highlighted by the Members, the resolved that;

1. The whole process with which the Special Operating Framework Agreement made between the Ministry of Industry, Trade and Investment, The National Treasury & Economic Planning and Blue Nile Rolling Mills Limited was made was in violation of the provisions of Statutory instrument Act
2. Consequently, the Committee resolved to invite the Ministry of Industry, Trade and Investment, Kenya Association of Manufacturers and Blue Nile Rolling Mills Limited to appear before it to give more information on the Agreement.

MIN. DAA&GPC/CDL/302/2023

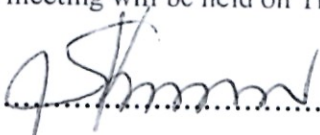
ANY OTHER BUSINESS

The Committee was informed of a meeting to consider the draft Regulations by the Capital Markets authority scheduled to be held on 22nd August 2024.

MIN. DAA&GPC/CDL/303/2024

ADJOURNMENT

There being no other business, the meeting was adjourned at Twenty Minutes to One O'clock. The next meeting will be held on Thursday, 22nd August, 2024.

SIGNED: 

THE HON. SAMUEL CHEPKONGA, CBS, M.P.
CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION

DATE:

MINUTES OF THE 49TH SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON WEDNESDAY, 18TH SEPTEMBER, 2024, IN ROOM 26, 5TH FLOOR, BUNGE TOWER AT 10.00 A.M.

PRESENT

1. **The Hon Samuel Kiprono Chepkonga, CBS, M.P. Chairperson**
2. **The Hon. Robert Gichimu Githinji, M.P. Vice Chairperson**
3. The Hon. Robert Mbui, CBS, M.P.
4. The Hon. Julius Lekakeny Ole Sunkuli, EGH, EBS M.P
5. The Hon. Joyce Kamene, M.P
6. The Hon. Charles Mamwacha Onchoke. M.P
7. The Hon. Maj. (Rtd). Dekow Barrow Mohamed, M.P.
8. The Hon. Kibet Kirui Komingoi, M.P.
9. The Hon. Geoffrey Kariuki Kiringa Ruku, M.P.
10. The Hon. Gideon Kipkoech Kimaiyo, M.P.
11. The Hon. Pauline Lenguris, M.P.
12. The Hon. Laura Amina Mnyazi, M.P.
13. The Hon. Innocent Mugabe, M.P.

APOLOGIES

1. The Hon. Nicholas S. Tindi Mwale, M.P.
2. The Hon. Maj. (Rtd). Abdullahi Bashir Sheikh, M.P.
3. The Hon. Jared Okello Odoyo, M.P.
4. The Hon. John Paul Mwirigi, M.P.
5. The Hon. Yakub Adow Kuno, M.P.
6. The Hon. Paul Chebor, M.P.
7. The Hon. Joseph Kamau Munyoro, M.P
8. The Hon. Linet Chepkorir M.P.

IN ATTENDANCE

SECRETARIAT

- | | | |
|------------------------|---|-----------------------------|
| 1. Ms. Esther Nginyo | - | Clerk Assistant I |
| 2. Mr. Brian Langwech | - | Clerk Assistant III |
| 3. Ms. Isabella Mwembi | - | Clerk Assistant III |
| 4. Mr. Silvanus Makau | - | Clerk Assistant III |
| 5. Mr. Peter Barasa | - | Legal Counsel II |
| 6. Mr. Valerian Pascal | - | Hansard Officer III |
| 7. Mr. Daniel Psirmoi | - | Media Relations Officer III |
| 8. Ms. Viola Saiya | - | Research Officer III |

AGENDA

1. Prayers
2. Preliminaries
3. Adoption of the Agenda
4. Confirmation of minutes
5. Matters arising
6. **Meeting with the following stakeholders regarding the statement on irregular and illegal grant of tax exemptions to the Blue Nile Rolling Mills Limited company under the Special Operating Framework Agreement.**

- i. The Principal Secretary, State Department for Industry.
 - ii. The Blue Nile Rolling Mills Limited, and
 - iii. The Kenya Association of Manufacturers.
7. Any Other Business; and
8. Adjournment

MIN. DAA&GPC/CDL/311/2024

PRELIMINARIES

The Chairperson called the Meeting to order at 10.25 a.m. and requested Hon. Charles Mamwacha Onchoke. M.P to say a word of prayer. He then welcomed all to the meeting followed by a round of introduction.

MIN. DAA&GPC/CDL/312/2024

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by the Hon. Julius Lekakeny Ole Sunkuli, EGH, EBS M.P and seconded by the Hon. Charles Mamwacha Onchoke. M.P

MIN. DAA&GPC/CDL/313/2024

CONFIRMATION OF MINUTES

Minutes of the 48th Sitting held on Tuesday, 17th September 2024, were confirmed as an accurate record of the proceedings having been proposed by the Hon. Joyce Kamene, M.P and seconded by the Hon. Pauline Lenguris, M.P.

MIN. DAA&GPC/CDL/314/2024

MATTERS ARISING

Arising from MIN. DAA&GPC/CDL/307/2024, it was noted that;The Committee had requested the Regulations-making authority to submit correction of the Regulations on Tax Procedures (electronic Tax Invoices) Regulations, 2024 by Thursday, 19th September, 2024 on the issues that it had raised.

MIN. DAA&GPC/CDL/315/2024

**MEETING WITH THE INVITED
STAKEHOLDERS REGARDING THE
STATEMENT ON IRREGULAR AND
ILLEGAL GRANT OF TAX
EXEMPTIONS TO THE BLUE NILE
ROLLING MILLS LIMITED COMPANY
UNDER THE SPECIAL OPERATING
FRAMEWORK AGREEMENT.**

The committee was informed that the invited stakeholders listed below could not attend and had all submitted written requests to reschedule the meeting.

- i. The Principal Secretary, State Department for Industry.
- ii. The Blue Nile Rolling Mills Limited, and
- iii. The Kenya Association of Manufacturers.

The Committee noted that the Kenya Association of Manufacturers had written requesting that the meeting be reschedule to 7th October, 2024 allow them conclude on the report for presentation on the Statement. In addition, Blue Nile Rolling Mills Ltd had written to the Committee through their lawyer, Ahmednassir Abdullahi indicating that they would not be able to appear before the Committee owing to unavoidable circumstances and forwarded their written response for consideration. Further, the Committee took note of a letter from the Ministry of Investments, Trade and Industry seeking for guidance on their appearance due to a case filed in High Court of Kenya by Mr. Apollo Mboya. The Committee resolved to proceed with the consideration of the Statement due to reporting timelines as directed by the House..

The Committee took note of the submission by the Blue Nile Rolling Mills Limited and upon deliberations, it made the following observations;

- i. The Agreement qualified as a Statutory Instrument because it was executed under an Act of Parliament within the meaning of Section 2 of the Statutory Instruments Act. Consequently, it should have been presented before Parliament in accordance with Section 11(1) of the Statutory Instrument Act. Since it was never tabled, it lapsed as stipulated by Section 11(4) of the same Act.
- ii. The Committee also noted that the further amendment to the Agreement was null and void since it was amending a non-existent agreement which it cited that it came to force on 16th January, 2020.
- iii. The Committee noted that the tax exemptions were required to be reported to the Auditor General, as provided for by Article 210 of the Constitution.
- iv. The confidential clause of the Agreement would have shielded the organization from parliamentary oversight.
- v. The committee also noted the absence of clear guidelines for entering into a SOFA agreement, as well as a lack of defined regulations to govern the agreement's operations.
- vi. The Committee also observed that the agreement was variously dated.
- vii. The Committee noted that the Agreement was null and void abinitio as it was not presented to Parliament for approval.

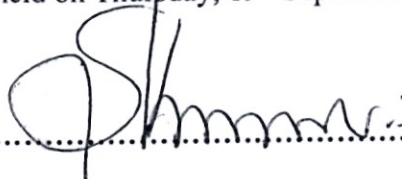
Consequently, the Committee resolved to consider and adopt its report to the House on Tuesday, 24th September, 2024.

MIN. DAA&GPC/CDL/316/2024

ADJOURNMENT

There being no other business, the meeting was adjourned at Twenty Minutes past One O'clock. The next meeting will be held on Thursday, 19th September 2024.

SIGNED:



**THE HON. SAMUEL CHEPKONGA, CBS, M.P.
CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION**

DATE: 19th September, 2024

MINUTES OF THE 45TH SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON TUESDAY, 13TH AUGUST, 2024, IN ROOM 23, 5TH FLOOR, BUNGE TOWER AT 10.00 A.M.

PRESENT

1. The Hon Samuel Kiprono Chepkonga, CBS, M.P. Chairperson
2. The Hon. Robert Gichimu Githinji, M.P. Vice Chairperson
3. The Hon. Robert Mbui, CBS, M.P.
4. The Hon. Julius Lekakeny Ole Sunkuli, EGH, EBS M.P
5. The Hon. Nicholas S. Tindi Mwale, M.P.
6. The Hon. John Paul Mwirigi, M.P.
7. The Hon. Gideon Kipkoech Kimaiyo, M.P.
8. The Hon. Kibet Kirui Komingoi, M.P.
9. The Hon. Jared Okello Odoyo, M.P.
10. The Hon. Joyce Kamene, M.P
11. The Hon. Yakub Adow Kuno, M.P.
12. The Hon. Paul Chebor, M.P.
13. The Hon. Joseph Kamau Munyoro, M.P
14. The Hon. Innocent Mugabe, M.P.

APOLOGIES

1. The Hon. Maj. (Rtd). Dekow Barrow Mohamed, M.P.
2. The Hon. Charles Mamwacha Onchoke. M.P
3. The Hon. Pauline Lenguris, M.P.
4. The Hon. Maj. (Rtd). Abdullahi Bashir Sheikh, M.P.
5. The Hon. Geoffrey Kariuki Kiringa Ruku, M.P.
6. The Hon. Laura Amina Mnyazi, M.P.
7. The Hon. Linet Chepkorir M.P.

IN ATTENDANCE

SECRETARIAT

- | | | |
|------------------------|---|-----------------------------|
| 1. Mr. Brian Langwech | - | Clerk Assistant III |
| 2. Ms. Isabella Mwembi | - | Clerk Assistant III |
| 3. Mr. Silvanus Makau | - | Clerk Assistant III |
| 4. Ms. Elsie Cherop | - | Legal Counsel II |
| 5. Mr. Peter Barasa | - | Legal Counsel II |
| 6. Ms. Rahab Chepkilim | - | Audio Officer |
| 7. Mr. Valerian Pascal | - | Hansard Officer III |
| 8. Mr. Daniel Psirmoi | - | Media Relations Officer III |

THE NATIONAL TREASURY AND ECONOMIC PLANNING

- | | | |
|------------------------|---|----------------------------------|
| 1. Mr. Musa Katherenje | - | Director, M& Fiscal Affairs, TNT |
| 2. Mr. Joseph Ngugi | - | Director Planning, TNT |
| 3. Mr. Samuel Wambugu | - | Director Planning, TNT |
| 4. Ms. Judy Magu | - | Principal Economist, TNT |

AGENDA

1. Prayers
2. Preliminaries
3. Adoption of the Agenda
4. Confirmation of minutes
5. Matters arising
6. **Briefing by the Principal Secretary, the National Treasury & Economic Planning regarding the following-**
 - i. **The statement regarding irregular and illegal grant of tax exemptions to the Blue Nile Rolling Mills Limited company under the Special Operating Framework Agreement.**
 - ii. **The Tax Procedures (Electronic Tax Invoices) Regulations, 2024, and**
 - iii. **The Income Tax (Charitable Organizations And Donations Exemptions) Rules, 2024**
7. Any Other Business; and
8. Adjournment.

MIN. DAA&GPC/CDL/292/2024

PRELIMINARIES

The Chairperson called the Meeting to order at 10.21 a.m. He then requested the Vice Chairperson to say word of prayer then welcomed all to the meeting followed by a round of introduction.

MIN. DAA&GPC/CDL/293/2024

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by the Hon Julius Leakey Ole Sunkuli, EGH, EBS M.P and seconded by the Hon. Nicholas S. Tindi Mwale, M.P.

MIN. DAA&GPC/CDL/294/2024

CONFIRMATION OF MINUTES

Minutes of the 44th Sitting held on Wednesday, 7th August 2024, were confirmed as an accurate record of the proceedings having been proposed by the Hon. Yakub Adow Kuno, M.P and seconded by the Hon. Gideon Kipkoech Kimaiyo, M.P.

MIN. DAA&GPC/CDL/295/2024

THE STATEMENT REGARDING IRREGULAR AND ILLEGAL GRANT OF TAX EXEMPTIONS TO THE BLUE NILE ROLLING MILLS LIMITED COMPANY UNDER THE SPECIAL OPERATING FRAMEWORK AGREEMENT.

Dr. Chris Kiptoo, CBS, Principal Secretary, the National Treasury and Economic Planning Vide Letter ref. TNT/CONF 268/014 "L"(11) requested to be represented in the meeting by Mr. Musa Katherenje, Director Macro & Fiscal Affairs, The National Treasury.

The Committee acceded to the request and was briefed on statement regarding irregular and illegal grant of tax exemptions to the Blue Nile Rolling Mills Limited company under the Special Operating Framework Agreement (SOFA) as follows-

1. **The circumstances under which the tax exemptions on Income, Corporate Tax, Value Added Tax, Import Duty, Import Declaration Fee and Railway Development Levy were granted to Blue Nile Rolling Mills Limited.**

- i. M/s Blue Nile Rolling Mills Limited is a company incorporated in Kenya and located in Thika Town. The Company imports wire rods to manufacture galvanized wire (GI) for making various steel products.
 - ii. In 2018 through the Finance Act, 2018, tax laws were amended to provide for government to enter into SOFA to provide various tax incentives: income tax at the rate to be agreed between the Government and the taxpayer through SOFA, exemption from VAT on imported goods VAT Exemption, Import Declaration Fee and Railway Development Fee to support the growth of the industries. The provision was meant to give the Government a chance to negotiate the deliverables from the prospective company that intends to enter into the SOFA with the Government in exchange of tax incentives.
 - iii. Blue Nile Rolling Mills Limited took the opportunity of the tax laws amendments in 2018 and entered into (SOFA) with the Government to support the investment and the expansion of the industry. The Agreement was signed between the Ministry of Industry, Trade and Cooperatives, The National Treasury and Planning and Blue Nile Rolling Mills Limited on 16th January, 2020.
 - iv. The Agreement provided various tax incentives such as VAT exemption, Railway Development Levy and Import Declaration Fee on inputs used for the manufacture of GI wire. Further the Agreement provided for lower corporation tax at 10% for the first five years from the date of signing the Agreement which would end in December, 2024.
 - v. In the Agreement, the Government committed to provide the necessary incentives to facilitate the company to manufacture galvanized wire.
 - vi. Blue Nile Rolling Mills before setting up the Galvanized Iron Wire manufacturing project with expected capital out lay of over \$19 million in phase 1, applied for tax incentive to be provided under SOFA. The company is first of its kind in manufacturing sector to be set up in Kenya, with a technology transfer from India and China. Before the company was set up, Kenya used to import from China, India, Egypt, South Africa and other countries the galvanized wire. Hence, this was a 100% import substitution project.
 - vii. The increase in import duty of wire rods from 1st July, 2022 impacted the Company negatively as these are the main inputs for manufacture of galvanized wire that is used for making various steels products. The EAC Council increased the import duty on wire rods and also provided duty remission for companies that use the goods as inputs to manufacture other products. The duty remission is a regional arrangement that applies to Partner States under the EAC Members States and enables eligible companies to be gazetted to import the wire rods under the EAC duty remission. In this respect, Blue Nile Rolling Mills Limited was gazetted for importation of wire rods under the EAC Duty Remission.
 - viii. Secondly the introduction of the Export and Investment Promotion Levy at 17.5 % of the Customs value on wire rods also impacted the Company negatively. Considering the Government had entered into SOFA with the Company it was bound to honour the Agreement as advised by the Attorney General
2. **The total value of tax exemptions that have been granted to Blue Nile Rolling Mills Limited so far and estimated value of the exemptions that will have been granted to the Company on the expiry of the Agreement,**

- i. The actual total value of taxes, fees and levies including import duty that has been exempted so far will be provided later after consultation with Kenya Revenue Authority.
 - ii. The estimation of the total value of the taxes, fees and levies to be granted from 1st July 2024 up to end of the SOFA may not be possible as it depends on the company continuation in existing in Kenya.
- 3. The contents of the agreement between the company and the government, the period for which the company shall enjoy the tax exemption under the agreement and the implication thereof in terms of loss of public funds.**
- i. The agreement was expected to last for a period of 10 years running from 21st January, 2020 to 2030. During this time the company would enjoy: a reduced rate of corporation tax at 10% for the first 5 years (This is expected to expire in December, 2024); Exemption of VAT on goods purchased locally or imported for use in the implementation of the project; Exemption from the Import Declaration Fee; and Railway Development Levy for the 10 years on goods imported for the implementation of the project. The Government has committed to bear any adverse changes in taxation in respect to the incentives under the SOFA for ten years from the commencement date of the Agreement.
 - ii. It should be noted that VAT exemption only applies on inputs and not on other goods imported by the Company or sales of the manufactured goods.
 - iii. Further, the company will not pay import duty and also Export and Investment promotion Levy. As indicated above, at the time of signing the SOFA, import duty rate of wire rods was duty free as well as there was no Export and Investment Promotion Levy. The granting of import duty remission came into effect when the import duty on wire rods was increased and offer issuance of the legal advice from the Attorney General on the implementation of the SOFA commitments by the Government.
 - iv. There was no loss anticipated to public funds as this manufacturing set up would not have been executed without these incentives as it would have been difficult to compete with the imports from China. Today as per the records, Kenya has become a net exporter of GI wire produced by the Blue Nile Rolling Mills Limited. The company exports nearly 40% of its production to COMESA countries.
- 4. Whether the requirements of the law in granting tax exemptions under (SOFA) to company were complied with and indicate the persons that were responsible for approving the tax exemptions granted to the Company.**

The requirements of the law in granting the tax exemptions under SOFA were complied with. The people that were involved in granting the tax exemptions were the Cabinet Secretary for the National Treasury and Planning and the Cabinet Secretary for the Ministry of Industry, Trade and Cooperatives. They both signed the SOFA.

5. The number of employees employed by the Company and the status of compliance with ensuing tax obligations by the Company.

The company has employed about 1000 Kenyan. The company is tax compliant. SOFA audit by KRA has been conducted and it has been found to be in compliance with the commitment therein. Kenya Revenue Authority conducts regular audits on the goods imported under duty remission. Currently Kenya Revenue Authority is conducting a post clearance Audit on goods imported under duty remission.

6. The Number of Companies dealing with the manufacture galvanizing wire/steel production that were currently enjoying tax exemptions and the value of the investments of the Company.

By January 2020, at the time of signing of SOFA, there was no producer of galvanized wire. The investment by the company was a 100% import substitution. Later there were about 4 other companies that were set up to manufacture galvanised wire and were affected by increase in import duty rate of wire rods. These companies were gazetted to import wire rods under duty remission. At the time of gazetting the importer of wire rods under duty remission in October, 2023, the number dropped and some may have relocated to neighboring Countries. Currently, we only have three companies under duty remission scheme namely: Roofings Kenya Limited; KD wire Products Limited; and Blue Nile Rolling Mills Limited.

7. The Status of other existing Special Operating Framework Agreements and their impact on the economy.

- i. There were other two SOFA arrangements namely: - Positivo and Moderna human vaccine manufacturing company. Moderna had not commenced the operation in Kenya.
- ii. SOFAs are tailored agreements between Governments and manufacturing entities that provide a structured operational environment. These agreements are designed to stimulate industrial growth by addressing specific needs of the manufacturing sector. By fostering a conducive environment for manufacturers, SOFAs play a critical role in boosting economic growth.

8. Upon deliberations, the Committee made the following observations, that-

- i. The following documents that were referred to in the response were not annexed for scrutiny-
 - a) A copy of the duly executed agreement between the Ministry and the exempted Company,
 - b) A copy of the duly executed amendment to the original agreement,
 - c) A copy of the Legal advice by the Attorney General
 - d) Evidence on the ownership or the beneficiary company including company directors and the shareholders.
 - e) The relevant Gazette Notices in respect to implementation of the agreement.
- ii. There was need to know whether EAC treaty enforcing the Agreement had been domesticated as required by law.
- iii. There was also need to understand whether the Agreement was submitted to parliament as stipulated in the Statutory Instruments Act since it has some element of Legal Instrument.
- iv. There was a disconnect in responding to Questions 2 and 5 in the statement. While the Authority admitted that it would not be possible to give the total value of taxes, fees and levies that had been exempted, the same authority alleged that the company was tax compliant.

- v. Arising from the concerns highlighted by the Members, the Committee was of the opinion that the questions raised were not responded to sufficiently. It was resolved that the matter be deferred to Wednesday, 21st August, 2024 to allow the National Treasury to adequately prepare and Provide sufficient response to the statement and be accompanied by the Principal Secretary.

MIN. DAA&GPC/CDL/296/2024

BRIEFING ON THE TAX PROCEDURES (ELECTRONIC TAX INVOICES) REGULATIONS, 2024 AND THE TAX PROCEDURES (ELECTRONIC TAX INVOICES) REGULATIONS, 2024

The Committee was notified vide letter ref KRA/51002/5(11146) that Mr. Humprey Wattanga Mulongo, Commissioner General, Kenya Revenue Authority who was to brief the Committee on behalf of the Principal Secretary on the Regulations, had requested to further delegate the task to Mr. Maurice Oray. The Committee declined the request and resolved to defer the matter to a later date when the Principal Secretary will available for the brief in person.

MIN. DAA&GPC/CDL/297/2024

ADJOURNMENT

There being no other business, the meeting was adjourned at Twenty Five Minutes past twelve O'clock. The next meeting will be held on Wednesday, 21st August, 2024.

SIGNED:

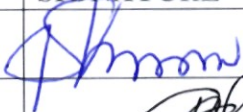
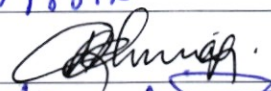
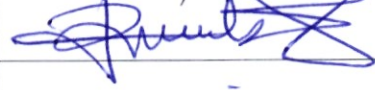


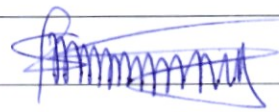






THE HON. SAMUEL CHEPKONGA, CBS, M.P.
CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION

DATE:

COMMITTEE ON DELEGATED LEGISLATION

DATE: 24/09/24 VENUE: Room 18 TIME:

ADOPTION OF THE REPORT ON REQUEST FOR A STATEMENT ON IRREGULAR AND ILLEGAL GRANT OF TAX EXEMPTIONS TO THE BLUE NILE ROLLING MILLS LIMITED COMPANY UNDER THE SPECIAL OPERATING FRAMEWORK AGREEMENT.

	NAME	SIGNATURE
1.	The Hon. Chepkonga Kiprono Samuel, CBS, M.P, Chairperson	
2.	The Hon. Githinji, Robert Gichumi, M.P. Vice-Chairperson	
3.	The Hon. Mbui, Robert, CBS, M.P.	
4.	The Hon. Sunkuli Julius Lekakeny, EGH,EBS,MP	
5.	The Hon. Maj. (Rtd) Abdullahi Bashir Sheikh, M.P.	
6.	The Hon. Mwirigi, John Paul, M.P.	
7.	The Hon. Kamene, Joyce, M.P.	
8.	The Hon. Mwale, Nicholas S. Tindi, M.P.	
9.	The Hon. Odoyo, Jared Okello, M.P.	
10.	The Hon. Komingoi, Kibet Kirui, M.P.	
11.	The Hon. Maj. (Rtd.) Dekow Barrow Mohamed, M.P.	
12.	The Hon. Munyoro, Joseph Kamau, M.P.	
13.	The Hon.(DR,) Kimaiyo, Gideon Kipkoech, M.P.	
14.	The Hon. Ruku, Geoffrey Kariuki Kiringa, M.P.	
15.	The Hon. Chepkorir, Linet, M.P.	
16.	The Hon. Chebor, Paul, M.P.	
17.	The Hon. Lenguris, Pauline, M.P.	
18.	The Hon.(DR,) Mamwacha Onchoke Charles, M.P.	
19.	The Hon. Yakub, Adow Kuno, M.P.	

20.	The Hon. Mnyazi, Amina Laura, M.P.	
21.	The Hon. Mugabe, Innocent Maino, M.P.	



SPECIAL OPERATING FRAMEWORK AGREEMENT

BETWEEN

**THE MINISTRY OF INDUSTRY, TRADE AND
COOPERATIVES;**

THE NATIONAL TREASURY AND PLANNING;

AND

BLUE NILE ROLLING MILLS LIMITED

The Special Operating Framework Agreement (hereinafter referred to as "Agreement") entered into this 18th day of December'2019 between the Ministry of Industry, Trade and Cooperatives of Kenya with its registered office located in the National Social Security House Block 'A', Western Wing 23rd Floor, P.O. Box 30418-00100, Nairobi; and The National Treasury, with its registered office located in the Treasury Building, Harambee Avenue, P.O Box 30007-00100, Nairobi (hereinafter referred to as "Ministries").

and

BLUE NILE ROLLING MILLS LTD, a limited liability company incorporated in accordance with the laws of the Republic of Kenya, and whose address for the purposes of this agreement is P.O. Box 1667-00100, Nairobi, Kenya (hereafter referred to as the "**Company**" which expression shall where the context admits include its successors and assigns).

WHEREAS:

- A. The Ministry of Industry, Trade and Cooperatives of Kenya {MoITC} (hereinafter referred to as "Ministry") is the government ministry responsible for creating an enabling environment for a globally competitive, sustainable Industrial, enterprise and Co-operative sector in Kenya through appropriate policy, legal and regulatory framework.
- B. The National Treasury and Planning (NT&P) is the government ministry responsible for the formulation, implementation, and monitoring of macro-economic policies involving expenditure and revenue and; formulating, evaluating and promoting economic and financial policies that facilitate social and economic development in conjunction with other national government entities.
- C. BLUE NILE ROLLING MILLS LTD, a company established in 2013, in steel manufacturing, trading and export. The company seeks to set up a new modern galvanizing wire production plant by leveraging on its experience in the industry that will transfer new knowledge and skills, enhance production capacity and increase competitiveness of the Kenyan steel industry.
- D. Pursuant to the delivery of the Government's implementation of the Kenya Industrialization Transformation Programme to boost the contribution of manufacturing to GDP from the current 8.5% to 15% by the year 2022 under the "Big Four" Agenda, The ministries of MoITC, NT & P, and the Company (hereinafter collectively referred to as the "Parties") have a shared objective of promoting and facilitating direct investment and inclusive economic growth in Kenya.





NOW, THEREFORE, the Parties have reached the following understanding:

Article 1
Project Description

1. As part of the National Industrialization Policy Framework and in pursuit of the Big Four Agenda, the Company has expressed its commitment to the development of the manufacturing sector and steel Industry. BLUE NILE ROLLING MILLS LTD will invest in Kenya, in a galvanizing plant, manufacturing, promoting and facilitating employment, knowledge and technology transfer in the related industry.
2. The Company is working with the Ministry of Industry, Trade and Cooperatives with a view of putting up a new high-speed galvanizing factory in Kenya, at Thika Town, Kiambu County, costing an estimated US\$ 19 million with an annual installed capacity of 30,000 tons, local value addition to almost 100% resulting to foreign exchange earnings/savings estimated at US\$ 15 million.

Article 2
Deliverables

1. Manufacture galvanized wire and other steel related components and products.
2. Ensure that there is knowledge transfer, research innovation and locally supplied galvanized wire.
3. The galvanized wire, if produced in adequate quantities will be a source of intermediate and/or inputs leading to increased production of other auxiliary products that include chain links, galvanized BRC, Electricity Pole strainers, sheets, barbed wire, electric fencing, razor wire, staple pins among others.
4. The project will support the development of the affordable housing initiative through provision of galvanized wire for manufacture of building materials and the agricultural sector through provision of farm ancillary products such as chain links and barbed wire.
5. Creation of direct employment to at least 300 employees with additional indirect jobs when fully operational.
6. Expand the galvanized plant portfolio to manufacture galvanized wire products to support the Kenyan and East Africa Community needs.
7. Establish a comprehensive distribution network to support the sales and product stocking in response to market dynamics.



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Article 3
Project Benefits

The benefits of this investment will include:

1. Positioning Kenya as a manufacturing hub in the region. It will be possible to build and develop local companies capable to design and manufacture 100% "Made in Kenya" products;
2. Creation of direct and indirect jobs;
3. Sustainability and support for Automation, Technology transfer and other industrial applications in Kenya;
4. Development of research and development in the steel manufacturing industry through utilization of a percentage of the Company revenues in development;
5. Progressive promotion of local content such as locally made packaging, galvanization, and design services;
6. Promote business development services by giving Kenyans the opportunities to design and manufacture "Made in Kenya" products;
7. Foreign exchange earnings from import substitution and export of the galvanized wire products to the region and beyond;
8. Availability and lowered cost of steel related products, locally manufactured in Kenya; and
9. Transform the steel industry to become a key Pan African player and exploit the huge opportunity that will present itself under the Continental Free Trade Area (CFTA) is fully operational.

Article 4
Areas of commitment and responsibility of parties

The Ministries to the Agreement commits to:

1. Support establishment of the galvanized wire manufacturing facility that incorporates an incubator approach and grow the steel manufacturing industry in Kenya;
2. Provide policy direction and facilitation, as well as to coordinate the activities of the state agencies in order to create an enabling environment for steel manufacturing;
3. To provide the necessary incentives to facilitate the Company to manufacture galvanized wire;



4. To ensure that the cooperation between the Parties will be consistent with the relevant laws, regulations and policies in Kenya as well as applicable internationally recognized standards of good practice, e.g. health, environment and labour standards;
5. Regularly review together with the Company the incentives provided and facilitation environment around galvanized wire manufacturing in Kenya;
6. The Government of Kenya intends to support and promote locally made galvanized wire products in line with the applicable laws relating to public procurement, local content policy and the Buy Kenya Build Kenya policy;
7. The Government of Kenya will support the increase of the import duty on finished G.I Wire to 25% from the present 10% through the EAC approval structures;
8. The National Government will liaise with the County Government of Kiambu for any support that may be necessary; and
9. Undertake any other forms of cooperation as agreed by the Parties.

The Company commits to:

1. Deploy an estimated US\$ 19 million investment in the establishment of a 32-line New Wire Galvanizing plant that will be operational within the next 6 months upon signing of the agreement;
2. Manufacture galvanized wire products locally using locally available products and gradually enhance local content to 100%;
3. Follow a phased approach to grow local production of galvanized wire products aligned with the market dynamics;
4. Graduate its investment and product portfolio in the galvanized metal sub-sector market in response to market dynamics while ensuring backward integration with the domestic economy;
5. Create direct employment for at least 300 jobs;
6. Undertake research, development and innovations in the galvanizing wire Technology;
7. Support in technology transfer and training of local micro and small enterprises to produce chain link;



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8. Support at least 50 local women entrepreneurs with chain link machines to enable them to produce the chain link rolls at their homes/ farms;
9. Ensure that the investments promoted, supported and funded are sustainable impact investments in addition to supporting development of associated down-stream benefits for the people of Kenya through investments; and
10. Any other forms of cooperation as agreed by the Parties.

Article 5 Incentives

By this Framework Agreement the following incentives are agreed upon and granted to the Company:

1. Exemption from VAT on inputs for building materials, machinery, production lines, equipment, spares, consumables, and other supplies for direct and exclusive use in the construction of the galvanized wire plant.
2. Exemption from Import duty will be in accordance with the provisions of the EAC Customs Management Act 2004;
3. Exemption from VAT on importation of raw materials to be used in the manufacturing process.
4. Exemption from IDF and RDL on importation of raw materials for direct and exclusive use in the manufacturing process; and
5. Income corporate tax to be a level of 10 % for the first 5 years;

Article 6 Dispute Resolution

1. In the event of any difference(s) or dispute (s) arising out of the interpretation or application of the provisions of this Agreement, the Parties shall immediately consult each other with the view to expeditiously resolving such differences or disputes in a spirit of mutual understanding and cooperation.
2. If an amicable settlement of the Dispute is not reached within ninety (90) days, either Party may submit the Dispute for arbitration.



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3. In any arbitration conducted pursuant to Clause 6.2 above,
 - i. The arbitrator shall be one (1) appointed by the Nairobi International Arbitration Centre;
 - ii. The place of arbitration shall be Nairobi, Kenya;
 - iii. The language to be used in the arbitral proceedings shall be English; and
 - iv. The case shall be administered by the Nairobi International Arbitration Centre.
4. The Parties undertake as a general principle to keep confidential all awards and orders in the arbitration, as well as all materials created for the purpose of the arbitration and documents produced by another party in the arbitration not otherwise in the public domain, save and to the extent that a disclosure may be required of a Party by legal duty, to protect or pursue a legal right or to enforce or challenge an award in bona fide legal proceedings before a state court or other judicial authority.
5. The arbitral award made by the arbitrators shall be final and binding upon the Parties and shall be enforceable in any court of competent jurisdiction.
6. Except as awarded by the arbitrator, each Party shall be responsible for its own costs incurred by it in connection with an arbitration hereunder.

Article 7
Confidentiality

The Parties agree to keep the contents of this Agreement as well as the information shared as part of the execution of this Agreement confidential. The Parties shall however be allowed to share the contents of this Agreement with their respective affiliates, managements, employees, advisors or consultants whose services may be needed for the realization of related project.

Article 8
Legal Status of Agreement

This Agreement represents the entire agreement between the parties relating to the subject matter hereof. This Agreement alone fully and completely



A handwritten signature in black ink, appearing to be a stylized 'J' or similar character.

expresses the agreement of the parties relating to the subject matter hereof. There are no other courses of dealing, understanding, agreements, representations or warranties, written or oral, except as set forth herein. This Agreement may not be amended or modified, except by a written agreement signed by all parties hereto.

Article 9
Compliance with Domestic Laws

The Company shall at all times during the validity of this Agreement comply in all respects with all imperative and mandatory applicable Laws of Kenya with respect to the implementation and operation of the project, including but not limited to labor laws, tax laws, environmental laws, social security laws and the like; provided, however, that compliance with such Laws of Kenya does not impact the Incentives of the Company provided for in Article 5.

Article 10
Entry into Force and Amendments

1. This Agreement will enter into force on the date of its signature and will remain valid for a period of **10 (TEN) years** unless terminated in accordance with **Article 11**.
2. This Agreement may at any time be amended by the mutual consent in writing between the Parties.
3. This agreement will remain valid, notwithstanding the contents herein, in the event of the transfer of the Company to any other entity within the agreement period.

Article 11
Termination

1. If any condition specified in this Agreement shall not have been fulfilled when and as required to be fulfilled, this Agreement may be terminated at any time by any Party representative with at least three (3) months prior notice to the other Party and such termination shall be without liability of any party to any other party except for any tax liability.



A handwritten signature in black ink, appearing to be a stylized 'G' or similar character.

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2. In the event that this Agreement ceases to be valid, the Parties may mutually agree to continue actions taken pursuant to this Agreement already commenced but not completed.
3. Without affecting any other rights or remedies to which it may be entitled, either party may give notice in writing to the other terminating this Agreement immediately if: the other party commits a material breach of any material term of this Agreement and (if that breach is remediable) fails to remedy that breach within six (6) months of that party being required in writing to do so.

Article 12
Notices

1. All written communications shall be delivered personally or sent by email or courier service to the address, email provided below:

Ministry of Industry, Trade and Cooperatives

Social Security House, Block A, 23rd Floor

P.O. Box 30418-00100, Nairobi, Kenya

Tel: 00254-020-2731531

Email: ps.moied@gmail.com

The National Treasury,

The Treasury Building, Harambee Avenue,

P.O Box 30007-00100, NAIROBI;

Tel. +254 20 2252299

Email: ps@treasury.go.ke

Blue Nile Rolling Mills Limited

Thika, Off Thika - Garissa Road

P.O. Box 1667-00100, NAIROBI

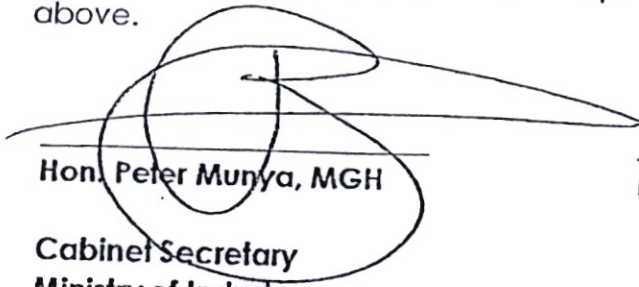
Telephone: (+254) 739996511

Email: info@bluenile-group.com



100

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed by its duly authorized representative on the date first set forth above.



Hon. Peter Munya, MGH

16/01/2020
DATE

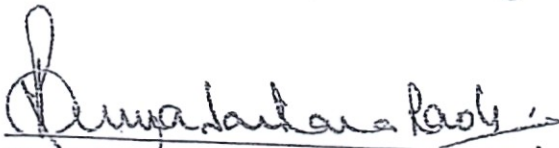
Cabinet Secretary
Ministry of Industry,
Trade and Cooperatives



Hon. (Amb.) Ukur Yaffani Kanacho

21/01/2020
DATE

Cabinet Secretary
The National Treasury and Planning



Mr. Kotni Rao

30/01/2020
DATE

Chairman
Blue Nile Rolling Mills Ltd





SPECIAL OPERATING FRAMEWORK AGREEMENT

BETWEEN

**THE MINISTRY OF INDUSTRY, TRADE AND
COOPERATIVES;**

THE NATIONAL TREASURY AND PLANNING;

AND

BLUE NILE ROLLING MILLS LIMITED

The Special Operating Framework Agreement (hereinafter referred to as "Agreement") entered into this 18th day of December'2019 between the Ministry of Industry, Trade and Cooperatives of Kenya with its registered office located in the National Social Security House Block 'A', Western Wing 23rd Floor, P.O. Box 30418-00100, Nairobi; and The National Treasury, with its registered office located in the Treasury Building, Harambee Avenue, P.O Box 30007-00100, Nairobi (hereinafter referred to as "Ministries").

and

BLUE NILE ROLLING MILLS LTD, a limited liability company incorporated in accordance with the laws of the Republic of Kenya, and whose address for the purposes of this agreement is P.O. Box 1667-00100, Nairobi, Kenya (hereafter referred to as the "**Company**" which expression shall where the context admits include its successors and assigns).

WHEREAS:

- A. The Ministry of Industry, Trade and Cooperatives of Kenya {MoITC} (hereinafter referred to as "Ministry") is the government ministry responsible for creating an enabling environment for a globally competitive, sustainable Industrial, enterprise and Co-operative sector in Kenya through appropriate policy, legal and regulatory framework.
- B. The National Treasury and Planning (NT&P) is the government ministry responsible for the formulation, implementation, and monitoring of macro-economic policies involving expenditure and revenue and; formulating, evaluating and promoting economic and financial policies that facilitate social and economic development in conjunction with other national government entities.
- C. BLUE NILE ROLLING MILLS LTD, a company established in 2013, in steel manufacturing, trading and export. The company seeks to set up a new modern galvanizing wire production plant by leveraging on its experience in the industry that will transfer new knowledge and skills, enhance production capacity and increase competitiveness of the Kenyan steel industry.
- D. Pursuant to the delivery of the Government's implementation of the Kenya Industrialization Transformation Programme to boost the contribution of manufacturing to GDP from the current 8.5% to 15% by the year 2022 under the "Big Four" Agenda, The ministries of MoITC, NT & P, and the Company (hereinafter collectively referred to as the "Parties") have a shared objective of promoting and facilitating direct investment and inclusive economic growth in Kenya.



NOW, THEREFORE, the Parties have reached the following understanding:

Article 1
Project Description

1. As part of the National Industrialization Policy Framework and in pursuit of the Big Four Agenda, the Company has expressed its commitment to the development of the manufacturing sector and steel Industry. BLUE NILE ROLLING MILLS LTD will invest in Kenya, in a galvanizing plant, manufacturing, promoting and facilitating employment, knowledge and technology transfer in the related industry.
2. The Company is working with the Ministry of Industry, Trade and Cooperatives with a view of putting up a new high-speed galvanizing factory in Kenya, at Thika Town, Kiambu County, costing an estimated US\$ 19 million with an annual installed capacity of 30,000 tons, local value addition to almost 100% resulting to foreign exchange earnings/savings estimated at US\$ 15 million.

Article 2
Deliverables

1. Manufacture galvanized wire and other steel related components and products.
2. Ensure that there is knowledge transfer, research innovation and locally supplied galvanized wire.
3. The galvanized wire, if produced in adequate quantities will be a source of intermediate and/or inputs leading to increased production of other auxiliary products that include chain links, galvanized BRC, Electricity Pole strainers, sheets, barbed wire, electric fencing, razor wire, staple pins among others.
4. The project will support the development of the affordable housing initiative through provision of galvanized wire for manufacture of building materials and the agricultural sector through provision of farm ancillary products such as chain links and barbed wire.
5. Creation of direct employment to at least 300 employees with additional indirect jobs when fully operational.
6. Expand the galvanized plant portfolio to manufacture galvanized wire products to support the Kenyan and East Africa Community needs.
7. Establish a comprehensive distribution network to support the sales and product stocking in response to market dynamics.



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Article 3
Project Benefits

The benefits of this investment will include:

1. Positioning Kenya as a manufacturing hub in the region. It will be possible to build and develop local companies capable to design and manufacture 100% "Made in Kenya" products;
2. Creation of direct and indirect jobs;
3. Sustainability and support for Automation, Technology transfer and other industrial applications in Kenya;
4. Development of research and development in the steel manufacturing industry through utilization of a percentage of the Company revenues in development;
5. Progressive promotion of local content such as locally made packaging, galvanization, and design services;
6. Promote business development services by giving Kenyans the opportunities to design and manufacture "Made in Kenya" products;
7. Foreign exchange earnings from import substitution and export of the galvanized wire products to the region and beyond;
8. Availability and lowered cost of steel related products, locally manufactured in Kenya; and
9. Transform the steel industry to become a key Pan African player and exploit the huge opportunity that will present itself under the Continental Free Trade Area (CFTA) is fully operational.

Article 4
Areas of commitment and responsibility of parties

The Ministries to the Agreement commits to:

1. Support establishment of the galvanized wire manufacturing facility that incorporates an incubator approach and grow the steel manufacturing industry in Kenya;
2. Provide policy direction and facilitation, as well as to coordinate the activities of the state agencies in order to create an enabling environment for steel manufacturing;
3. To provide the necessary incentives to facilitate the Company to manufacture galvanized wire;



A handwritten signature in black ink, appearing to be a stylized name.

4. To ensure that the cooperation between the Parties will be consistent with the relevant laws, regulations and policies in Kenya as well as applicable internationally recognized standards of good practice, e.g. health, environment and labour standards;
5. Regularly review together with the Company the incentives provided and facilitation environment around galvanized wire manufacturing in Kenya;
6. The Government of Kenya intends to support and promote locally made galvanized wire products in line with the applicable laws relating to public procurement, local content policy and the Buy Kenya Build Kenya policy;
7. The Government of Kenya will support the increase of the import duty on finished G.I Wire to 25% from the present 10% through the EAC approval structures;
8. The National Government will liaise with the County Government of Kiambu for any support that may be necessary; and
9. Undertake any other forms of cooperation as agreed by the Parties.

The Company commits to:

1. Deploy an estimated US\$ 19 million investment in the establishment of a 32-line New Wire Galvanizing plant that will be operational within the next 6 months upon signing of the agreement;
2. Manufacture galvanized wire products locally using locally available products and gradually enhance local content to 100%;
3. Follow a phased approach to grow local production of galvanized wire products aligned with the market dynamics;
4. Graduate its investment and product portfolio in the galvanized metal sub-sector market in response to market dynamics while ensuring backward integration with the domestic economy;
5. Create direct employment for at least 300 jobs;
6. Undertake research, development and innovations in the galvanizing wire Technology;
7. Support in technology transfer and training of local micro and small enterprises to produce chain link;



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8. Support at least 50 local women entrepreneurs with chain link machines to enable them to produce the chain link rolls at their homes/ farms;
9. Ensure that the investments promoted, supported and funded are sustainable impact investments in addition to supporting development of associated down-stream benefits for the people of Kenya through investments; and
10. Any other forms of cooperation as agreed by the Parties.

Article 5 Incentives

By this Framework Agreement the following incentives are agreed upon and granted to the Company:

1. Exemption from VAT on inputs for building materials, machinery, production lines, equipment, spares, consumables, and other supplies for direct and exclusive use in the construction of the galvanized wire plant.
2. Exemption from Import duty will be in accordance with the provisions of the EAC Customs Management Act 2004;
3. Exemption from VAT on importation of raw materials to be used in the manufacturing process.
4. Exemption from IDF and RDL on importation of raw materials for direct and exclusive use in the manufacturing process; and
5. Income corporate tax to be a level of 10 % for the first 5 years;

Article 6 Dispute Resolution

1. In the event of any difference(s) or dispute (s) arising out of the interpretation or application of the provisions of this Agreement, the Parties shall immediately consult each other with the view to expeditiously resolving such differences or disputes in a spirit of mutual understanding and cooperation.
2. If an amicable settlement of the Dispute is not reached within ninety (90) days, either Party may submit the Dispute for arbitration.



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3. In any arbitration conducted pursuant to Clause 6.2 above,
 - i. The arbitrator shall be one (1) appointed by the Nairobi International Arbitration Centre;
 - ii. The place of arbitration shall be Nairobi, Kenya;
 - iii. The language to be used in the arbitral proceedings shall be English; and
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4. The Parties undertake as a general principle to keep confidential all awards and orders in the arbitration, as well as all materials created for the purpose of the arbitration and documents produced by another party in the arbitration not otherwise in the public domain, save and to the extent that a disclosure may be required of a Party by legal duty, to protect or pursue a legal right or to enforce or challenge an award in bona fide legal proceedings before a state court or other judicial authority.
5. The arbitral award made by the arbitrators shall be final and binding upon the Parties and shall be enforceable in any court of competent jurisdiction.
6. Except as awarded by the arbitrator, each Party shall be responsible for its own costs incurred by it in connection with an arbitration hereunder.

Article 7 **Confidentiality**

The Parties agree to keep the contents of this Agreement as well as the information shared as part of the execution of this Agreement confidential. The Parties shall however be allowed to share the contents of this Agreement with their respective affiliates, managements, employees, advisors or consultants whose services may be needed for the realization of related project.

Article 8 **Legal Status of Agreement**

This Agreement represents the entire agreement between the parties relating to the subject matter hereof. This Agreement alone fully and completely



expresses the agreement of the parties relating to the subject matter hereof. There are no other courses of dealing, understanding, agreements, representations or warranties, written or oral, except as set forth herein. This Agreement may not be amended or modified, except by a written agreement signed by all parties hereto.

Article 9
Compliance with Domestic Laws

The Company shall at all times during the validity of this Agreement comply in all respects with all imperative and mandatory applicable Laws of Kenya with respect to the implementation and operation of the project, including but not limited to labor laws, tax laws, environmental laws, social security laws and the like; provided, however, that compliance with such Laws of Kenya does not impact the Incentives of the Company provided for in Article 5.

Article 10
Entry into Force and Amendments

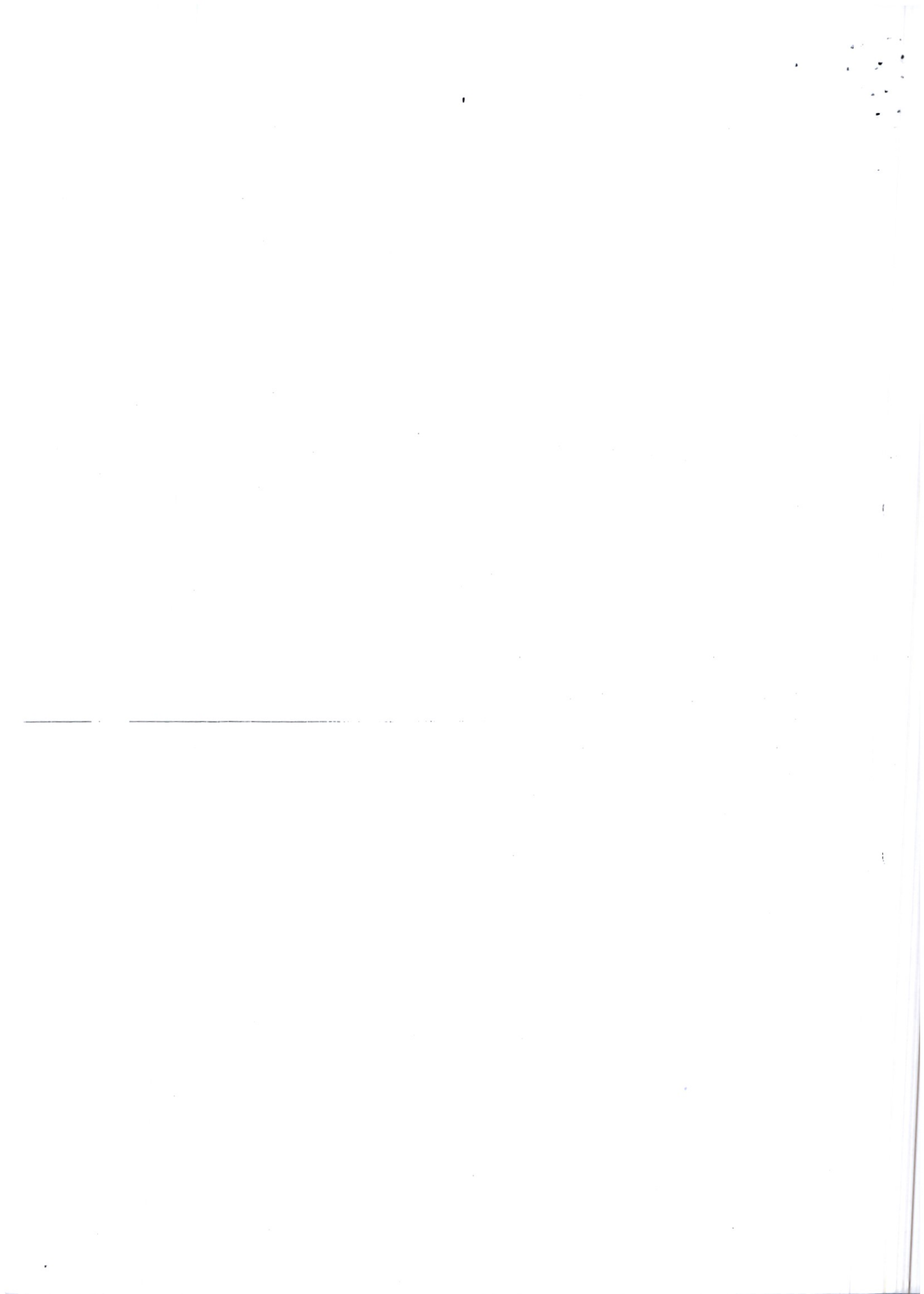
1. This Agreement will enter into force on the date of its signature and will remain valid for a period of **10 (TEN) years** unless terminated in accordance with **Article 11**.
2. This Agreement may at any time be amended by the mutual consent in writing between the Parties.
3. This agreement will remain valid, notwithstanding the contents herein, in the event of the transfer of the Company to any other entity within the agreement period.

Article 11
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1. If any condition specified in this Agreement shall not have been fulfilled when and as required to be fulfilled, this Agreement may be terminated at any time by any Party representative with at least three (3) months prior notice to the other Party and such termination shall be without liability of any party to any other party except for any tax liability.



A handwritten signature in black ink, appearing to be a stylized 'G' or similar character.



2. In the event that this Agreement ceases to be valid, the Parties may mutually agree to continue actions taken pursuant to this Agreement already commenced but not completed.
3. Without affecting any other rights or remedies to which it may be entitled, either party may give notice in writing to the other terminating this Agreement immediately if: the other party commits a material breach of any material term of this Agreement and (if that breach is remediable) fails to remedy that breach within six (6) months of that party being required in writing to do so.

Article 12
Notices

1. All written communications shall be delivered personally or sent by email or courier service to the address, email provided below:

Ministry of Industry, Trade and Cooperatives

Social Security House, Block A, 23rd Floor

P.O. Box 30418-00100, Nairobi, Kenya

Tel: 00254-020-2731531

Email: ps.moied@gmail.com

The National Treasury,

The Treasury Building, Harambee Avenue,

P.O Box 30007-00100, NAIROBI;

Tel. +254 20 2252299

Email: ps@treasury.go.ke

Blue Nile Rolling Mills Limited

Thika, Off Thika - Garissa Road

P.O. Box 1667-00100, NAIROBI

Telephone: (+254) 739996511

Email: info@bluenile-group.com




IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed by its duly authorized representative on the date first set forth above.


Hon. Peter Munya, MGH

DATE

16/01/2020

Cabinet Secretary
Ministry of Industry,
Trade and Cooperatives


Hon. (Amb.) Ukur Yaffani Kanacho

DATE

21/01/2020

Cabinet Secretary
The National Treasury and Planning

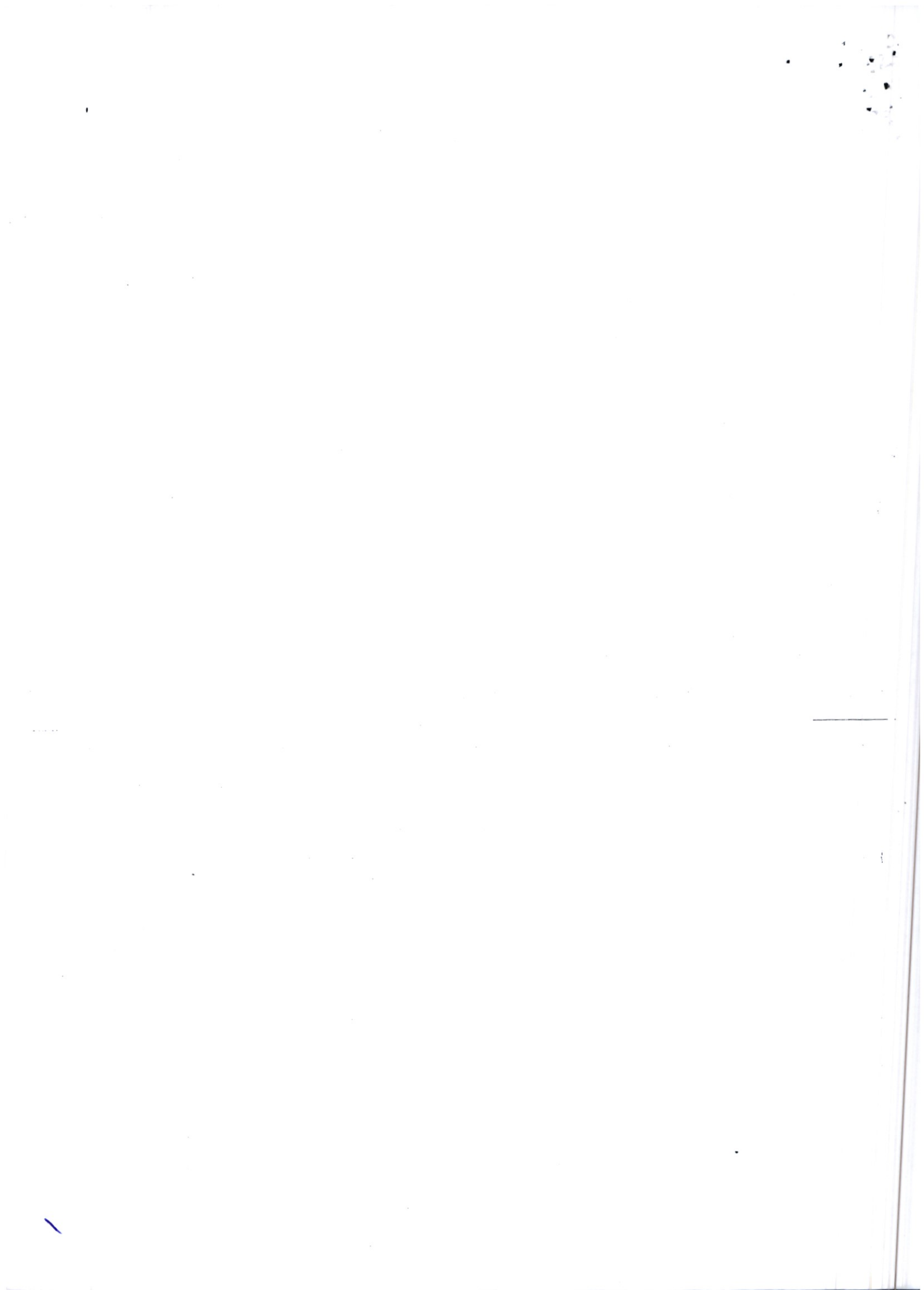

Mr. Kofni Rao

DATE

30/01/2020

Chairman
Blue Nile Rolling Mills Ltd





FIRST AMENDMENT AGREEMENT

THIS FIRST AMENDMENT AGREEMENT TO THE SPECIAL OPERATING FRAMEWORK AGREEMENT BETWEEN THE MINISTRY OF INDUSTRY, TRADE AND COOPERATIVES, THE NATIONAL TREASURY AND PLANNING AND BLUE NILE ROLLING MILLS LIMITED

(FIRST AMENDMENT AGREEMENT)

BETWEEN;

(1) THE MINISTRY OF INDUSTRY, TRADE AND COOPERATIVES, THE NATIONAL TREASURY AND PLANNING

AND

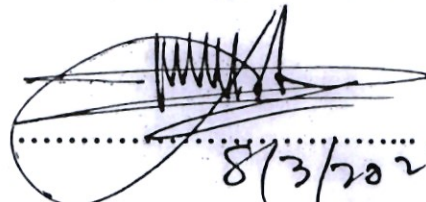
(2) BLUE NILE ROLLING MILLS LIMITED

Reference is made to the Special Operating Framework Agreement between the Government and M/s Blue Nile Rolling Mills Limited signed on 16th January, 2020.

It is noted that the investment took into account the incentives which were in place and that the financing of the investment relied on the incentives that were granted by the Government. In view of this, and in order to retain the benefits which were intended under the incentives, there is need to shield the investor from any adverse effects of any change in duties and taxes.

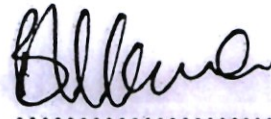
In this regard, it is agreed that the investor will retain all the incentives that were agreed in the Special Operating Framework Agreement whose validity is ten (10) years. Accordingly, any changes in duties and taxes that may affect the investor adversely will be the responsibility of the Government.

Hon. (Amb) Ukur Yatani, EGH
The Cabinet Secretary
The National Treasury and Planning
NAIROBI



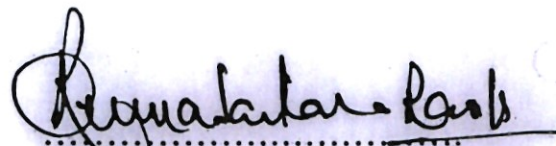
8/3/2022

Betty C. Maina, EGH
Cabinet Secretary
Ministry of Industry, Trade and Enterprise
Development
NAIROBI




10/3/2022

Mr. Kotni Rao
Chairman
Blue Nile Rolling Mills Limited
NAIROBI



16/3/22



Legal Notice No EAC/342/2021

APP 3
Appendix III

EAST AFRICAN COMMUNITY GAZETTE
THE PROTOCOL ON THE ESTABLISHMENT OF
THE EAST AFRICAN COMMUNITY CUSTOMS UNION

LEGAL NOTICE

In EXERCISE of the powers conferred upon the Council of Ministers by Articles 12 (3) and 39(c) of the Protocol on the Establishment of the East African Community Customs Union, the Council of Ministers has approved the following measures on custom duty rates on the items provided under The Harmonized Community Description and Coding System in Annex 1 to the Protocol:

N	HS CODE	DESCRIPTION	DECISION
1.	4805.11.00	Semi chemical fluting paper	Uganda to stay application of EAC CET rate of 10% and apply a duty rate of 25% up to 30th June, 2022
2.	4805.12.00	Straw fluting paper	
3.	4805.19.00	Test liner	
4.	5205.23.00	-- Measuring less than 232.56 decitex but not less than 192.31 decitex (exceeding 43 metric number but not exceeding 52 metric number)	Revoked stay of application granted to Tanzania on HS Code 5205.23.00 under item 154 of Legal Notice No EAC/118/2021

These decisions shall be deemed to come into force on the date of publication

S/N	DECISION
1.	Amend description for HS Code 2106.90.20 to -- Preparations of a kind used in manufacturing of beverages and food
2.	Amend description for HS Code 7010.10.10 to -- For pharmaceutical products, pesticides, fungicides and acaricides
3.	Amend description for HS Code 7213.91.10 to --- Of cross section measuring less than 6 mm

These decisions shall come into force on the 1st July, 2022

S/N	DECISION	HS Code	Description	UNIT	Rate
1.	Split HS Code 0902.10.00	- Green tea (not fermented) in immediate packings of a content not exceeding 3 kg			
		0902.10.10	-- purple tea	Kg	25%
		0902.10.90	--- other	Kg	25%
2.	Split HS Code 0902.20.00	- Other green tea (not fermented)			
		0902.20.10	--- purple tea	Kg	25%
		0902.20.90	--- other	Kg	25%

TABLE III					
S/N	DECISION	HS Code	Description	UOM	Rate
11.	Split HS Code 3819.00.00	Hydraulic brake fluids and other prepared liquids for hydraulic transmission, not containing or containing less than 70 % by weight of petroleum oils or oils obtained from bituminous minerals.			
		3819.00.10	--- Automatic transmission fluid (ATF) for lubricating	Kg	25%
		3819.00.90	--- Other	Kg	10%
12.	Split HS Code 3921.90.00	- Other:			
		3921.90.10	--- Unprinted	Kg	25%
		3921.90.90	--- Other	Kg	25%
13.	Split HS Code 6406.10.00	- Uppers and parts thereof, other than stiffeners			
		6406.10.10	--- of leather	Kg	10%
		6406.10.90	--- Other	Kg	10%
14.	Amend the duty rate	7213.91.00	Of cross section measuring less than 6 mm	Kg	25% or US \$ 200/MT whichever is higher
		7213.91.90	Other	Kg	25% or US \$ 200/MT whichever is higher
15.	Split HS Code 7610.90.00	- other;			
		7610.90.10	--- Towers and lattice masts	Kg	25%
		--- Other:			
		7610.90.91	--- Bridges and bridge-sections	Kg	25%
		7610.90.92	--- Roofs and roofing frameworks	Kg	25%
		7610.90.93	--- Balustrades, pillars and columns	Kg	25%
		7610.90.94	--- Aluminium plates, rods, profiles, tubes and the like, prepared for use in structures	Kg	25%
		7610.90.99	--- Other	Kg	25%
16.	Split HS Code 7323.10.00	- Iron or steel wool; pot scourers and scouring or polishing pads, gloves and the like:			
		7323.10.10	--- pot scourers and scouring or polishing pads	Kg	25%
		7323.10.90	--- Other	Kg	25%

APP. 3

APP III

TABLE IV	
S/N	SCHEDULE 1 Additional Chapter note to Chapter 94 of the EAC Common External Tariff
1.	<p>A Prefabricated Building may be imported in several consignments over a period of time if this is necessary for convenience of trade or transport.</p> <p>In order to be able to declare the different constituent parts under the same tariff heading or subheading as the assembled Prefabricated Building, the declarant must make a request in writing to the customs post not later than the first consignment and attach:</p> <ul style="list-style-type: none"> (a) a schematic structured diagram or, if necessary, several diagrams, of the Prefabricated Building showing the most important constituent parts; (b) a general inventory containing an indication of the characteristics and approximate weights of the different parts of the principal parts referred to above. <p>The application may only be accepted in fulfilment of a contract for the supply of a Prefabricated Building which can be regarded as complete for the purposes of the EAC tariff Nomenclature.</p> <p>All the constituent parts must be imported through the same entry point within the allowed time.</p> <p>However, in special cases, the competent authorities may authorize importation through several points of entry. This time limit may not be exceeded unless a reasoned and justified request for an extension is made to the competent authorities.</p> <p>Upon each partial importation, a list of the parts making up the consignment with references to the above-mentioned general inventory must be provided. The customs declaration for each consignment must contain descriptions of both the part or parts making up the consignment and the complete Prefabricated Building.</p>
The decision shall come into force on the date of publication	

HON. ADAN MOHAMED, EGH
Chairperson Council of Ministers

21st December, 2021

EAST AFRICAN COMMUNITY GAZETTE

APP 4

APPENDIX IV

7

Legal Notice No. EAC/343/2021

THE EAST AFRICAN COMMUNITY
CUSTOMS MANAGEMENT ACT 2004

EAST AFRICAN COMMUNITY CUSTOMS MANAGEMENT
(DUTY REMISSION) REGULATIONS, 2008

LEGAL NOTICE

In EXERCISE of the powers conferred upon the Council of Ministers by Section 140 of the East African Community Customs Management Act 2004, the Council of Ministers has approved a remission of duty on the following raw materials and industrial inputs for the manufacture of goods as follows:

S/N	HS CODE	ITEM DESCRIPTION	REMISSION
1.	3919.90.10	PVC Self-adhesive Jumbo Rolls	Rwanda granted a remission of duty to apply a duty rate of 0% up to 30th June, 2022
	7323.99.00	Handle for steel utensils	
2	7213.91.10	Of cross section measuring less than 8 mm	granted a remission of duty to apply a duty rate of 0% for manufacturers of wire products with effect from 1st July, 2022

HON. ADAN MOHAMED, EGH
Chairperson Council of Ministers

(15)

Appendix II
APP 5

(52)



MINISTRY OF INDUSTRIALIZATION, TRADE AND ENTERPRISE DEVELOPMENT
2026 29 AUG 2022

MINISTRY OF INDUSTRIALIZATION, TRADE AND
ENTERPRISE DEVELOPMENT
OFFICE OF THE CABINET SECRETARY

Telephone: +254-(0)20-2731531/2-44
Web: www.Industrialization.go.ke
Email: cs.miled@gmail.com
Email: cs@industrialization.go.ke

Social Security House, Block A
P.O. Box 30547 - 00100
NAIROBI, GPO
KENYA

*Ngugi
Tua
Mue
30/8
22*

25th August 2022

Ref. MITED/SDI/5/1

Hon. (Amb.) Ukur Yatani Kanacho, EGH
Cabinet Secretary
The National Treasury and Planning
Treasury Building
NAIROBI

CABINET SECRETARY
THE NATIONAL TREASURY & PLANNING
26 AUG 2022
RECEIVED
P.O. Box 30007 - 00100, NAIROBI

Dear *Wazir Yatani*

*MAA
26/8/22*

RE: REMISSION OF DUTY FOR WIRE RODS

The East African Community Legal Notice No. EAC/342/2021 dated 21st December 2021 increased the rate of duty on HS Codes 7213.91.10 and 7212.91.90 from 0% to 25%. While this is a welcome move to protect the local capacity, and enhance the Buy Kenya, Build Kenya Policy of our Government, the transition time caught many users of wire rods unprepared.

My ministry has been having consultations with various stakeholders in the wire rods sector who have been importers of these items.

In order to ascertain the actual local capacity, my Ministry has carried verification so as to come up with sustainable way forward.

During the various meetings with Stakeholders, it has been brought to our attention that some manufacturers have consignments of wire rods that have already arrived at the port and some in the high seas as lead times for ordering is several months and thus the importers had signed various contracts before the implementation of the gazette notice and have therefore requested to be facilitated with the clearance of those consignments.

Whereas the Ministry noted during verification that some local manufacturers had installed capacity to manufacture wire rods for

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SIGNED CONTRACT	YET TO BE LOADED	MT	MSD-UM102	YET TO BE LOADED	MT	SIGNED CONTRACT
SIGNED CONTRACT	54M	54M	MSD-UM102	54M	54M	SIGNED CONTRACT
SIGNED CONTRACT	54M	54M	MSD-UM102	54M	54M	SIGNED CONTRACT
SIGNED CONTRACT	81M	81M	MSD-UM105	81M	81M	SIGNED CONTRACT
SIGNED CONTRACT	81M	81M	MSD-UM106	81M	81M	SIGNED CONTRACT
ETA Mombasa 31/08	244,970 MT	244,970 MT	MSD-UM107	244,970 MT	244,970 MT	ETA Mombasa 31/08
ETA Mombasa 31/08	26,557 MT	26,557 MT	70147900	26,557 MT	26,557 MT	ETA Mombasa 31/08
ETA Mombasa 31/08	1,529,966 MT	1,529,966 MT	70147900	1,529,966 MT	1,529,966 MT	ETA Mombasa 31/08
ETA Mombasa 31/08	102,208 MT	102,208 MT	70147900	102,208 MT	102,208 MT	ETA Mombasa 31/08
CFS Mombasa	499,969 MT	499,969 MT	PCSDK02720	499,969 MT	499,969 MT	CFS Mombasa
CFS Mombasa CLEARED BUT KRA DEMAND DUTY BE PAID	49,498 MT	49,498 MT	PCSDK02720	49,498 MT	49,498 MT	CFS Mombasa CLEARED BUT KRA DEMAND DUTY BE PAID
CFS Mombasa	204,276 MT	204,276 MT	70147119	204,276 MT	204,276 MT	CFS Mombasa
CFS Mombasa	204,516 MT	204,516 MT	PSI/22-23/00281	204,516 MT	204,516 MT	CFS Mombasa
CFS Mombasa	310,213 MT	310,213 MT	PSI/22-23/00295	310,213 MT	310,213 MT	CFS Mombasa
CFS Mombasa	381,304	381,304	70147127	381,304	381,304	CFS Mombasa
CFS Mombasa	382,480 MTS	382,480 MTS	65IT2022000583	382,480 MTS	382,480 MTS	CFS Mombasa
ETA Mombasa 30/10	200 MTS	200 MTS	IG/S/2022/002	200 MTS	200 MTS	ETA Mombasa 30/10
CFS Mombasa	101,512 MT	101,512 MT	ITOM-222005126	101,512 MT	101,512 MT	CFS Mombasa
CFS Mombasa	306,187 MT	306,187 MT	PSI/22-23/00294	306,187 MT	306,187 MT	CFS Mombasa

WAL WIRE PRODUCTS LTD	721519110	PRIME HOT ROLLED STEEL WIRE RODS NON ALLOY	ZZMBAIM003206934	CHINA	TTCMI-XCZ203075	SNZ2068XGGMBS52	416.73MT	CFS Membasa
WAL WIRE PRODUCTS LTD	721519110	PRIME HOT ROLLED STEEL WIRE RODS NON ALLOY	ZZMBAIM003206934	UAE	SINDK04051	15	1198.412MT	CFS Membasa
WAL WIRE PRODUCTS LTD	721519110	PRIME HOT ROLLED STEEL WIRE RODS NON ALLOY	ZZMBAIM003206934	UAE	SINDK04032	15	648.505MT	CFS Membasa
WAL WIRE PRODUCTS LTD	721519110	PRIME HOT ROLLED STEEL WIRE RODS NON ALLOY	ZZMBAIM003206934	UAE	SINDK04033	20	592.895MT	CFS Membasa
WAL WIRE PRODUCTS LTD	721519110	NON ALLOY STEEL WIRE ROD, DR-NC ZIMBAIN001051316 AND ZIMBAIN001051316	ZZMBAIM003206934	CHINA	SSA1002020	SNZ2068XGGMBS51/52	538.220 MT	CFS Membasa

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 PRINCIPAL SECRETARY
 THE NATIONAL TREASURY
 15 SEP 2022
 P.O. Box 80007 - 00100, NAIROBI

APP 6
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 THE NATIONAL TREASURY
 REPUBLIC OF KENYA
 15 SEP 2022
 DIRECTOR GENERAL
 BUDGET & ECONOMIC AFFAIRS

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 15 SEP 2022

PS TREASURY OFFICE	
Please Necessary Action	<input checked="" type="checkbox"/>
Please See Me	<input type="checkbox"/>
Please Review and Advice	<input type="checkbox"/>
Note	
To Keep in View	<input type="checkbox"/>
Noted & Appreciated	<input type="checkbox"/>
Please Let's Discuss	<input type="checkbox"/>

MINISTRY OF INDUSTRIALIZATION, TRADE AND
 ENTERPRISE DEVELOPMENT
 State Department for Industrialization
 Office of the Principal Secretary

Telephone: 020-2731531-9
 0704097021/23, 0788484840/41
 Fax: 020-2731511
 Email: ps.moied@gmail.com
 When replying please quote:

Social Security House BLK 'A'
 Bishops Road, Capitol Hill
 P.O. Box 80418 - 00100
 NAIROBI

JDA/mra

Review st advise
 LJ
 21/9/2022

(13)
 Ngugi
 Review
 22/9/2022

MITED/SDI/7/16

14th September, 2022

Dr. Julius Muia, PhD, CBS
 Principal Secretary
 The National Treasury and Planning
 NAIROBI

JDA

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 DIRECTOR
 MACRO & FISCAL AFFAIRS
 NAT. INDUSTRY
 22 SEP 2022
 141

Dear PS,

REMISSION OF WIRE RODS UNDER THE EAST AFRICAN COMMUNITY
 DUTY REMISSION SCHEME

Reference is made to various correspondences on the above mentioned subject matter following the introduction on 25% rate of duty from 0% on wire rods under HS code: 7218.91.10 and the provision of remission under East African Community Duty Remission Scheme. The purpose of the 25% rate of duty is to protect the local industries where heavy investment has been undertaken and which need to be protected.

It is against this background that it has been decided that remission under the EAC Remission Scheme for iron rods will only be granted where the local production does not meet the quantity or quality that the specific manufacturer requires. It has also been agreed that this will be done on a case-by-case basis so as to have verified that the request for remission is genuine.

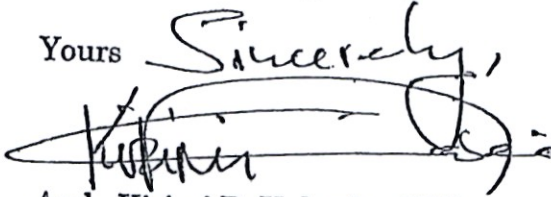
Having discussed the matter of local capacity with M/S Devki Steel Mills Ltd the main local investor and potential supplier of iron ore, Devki has confirmed that they are not able to supply iron ore required by M/S Blue Nile Rolling Mills in their production under the Special Operating Framework Agreement with the Government where both the investor

and the government has made specific commitments that can be fulfilled through continued production.

Accordingly, I wish to recommend that M/S Blue Nile Rolling Mills Ltd be granted remission under the EAC Duty Remission Scheme on the basis of lack of the quality that is necessary for their continued operation until local production capability is confirmed.

Yours

Sincerely,



Amb. Kipuri P. Kaberia, CBS
PRINCIPAL SECRETARY

Copy to: Betty C. Maina, EGH
Cabinet Secretary
Ministry of Industrialization, Trade and
Enterprise Development
NAIROBI

Hon. Amb. Ukur Yattani, EGH
Cabinet Secretary
The National Treasury
NAIROBI



P.O.

REPUBLIC OF KENYA

THE NATIONAL TREASURY AND ECONOMIC PLANNING

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19 July,2024

Dr.Juma Mukhwana, PhD,CBS

Principal Secretary

State Department for Industry

Ministry of Investments, Trade and Industry

P.O. Box30418 -00100

NATROBI

Dear PS

RE: REVIEW OF **SPECIAL OPERATING** FRAMEWORK AGREEMENTS (SOFAS) AND HEED
FOR POLICY DIRECTION ON THE EXISTING ONES

Reference is made to the above subject matter and several communications to the National Treasury on the above subject. Some of the letters include, a letter Ref No. MI/SDIEXP/VOL4/10 dated 15th March, 2024 (copy attached) proposing review of the Export and Investment Promotion Levy in order to protect local manufacturers from competition arising from imported goods that have negative impact on growth and sustainability of the local industries that produce similar goods, Further, the Ministry of Investments, Trade and Industry wrote to the National Treasury, such a letter Ref. No. MIT/SDI/EXP/VOL4/103 dated

F-E10f2

Dr.Juma Mukhwana, PhD, HSC

PRINCIPAL SECRETARY

Copy to: **Mr.Abdi Dubat**

Principal Secretary

State Department for East African Community Co-
op Bank Building

Haile Selassie Avenue

P O. Box 88461-00200

Nairobi



PRINCIPAL SECRETARY
 PRINCIPAL SECRETARY
 THE NATIONAL TREASURY
 24 OCT 2023
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 P.O. Box 30007 - 00100, NAIROBI
 MINISTRY OF INVESTMENTS, TRADE AND INDUSTRY



P.O.Box 30007-00100,NAIROBI

MINISTRY OF INVESTMENTS,TRADE,AND INDUSTRY
State Department for Industry

Office of the Principal Secretary

Telephone: +254-(0)20-2731531-9
 Security House, Block
 Bishops Road,Capital Hill

'A'0704097021/23,

Social
 0788484840/41

Web:www.industrialization.go.ke
 00100Email:ps@industrialization.go.ke

P.O. Box 30547 -
 NAIROBI, GPO

When replying, please quote

KENYA

Ref.MITI/SDI/7/18

Date: 23:d October, 2023

Dr. Chris Kiptoo, PhD, CBS
 Principai Secretary
 The National Treasury
 Nairobi

Dear Dr. Kiptoo,

DUTY REMISSION ON TARIFF NO.7213.91.10

... 2023; the East African Community gazetter the above-named
 Ltd (40,000 MT); and Blue Nile Rolling Mills Ltd (32,000MT).
 you that these items be degazetted owing to the fact that the
 items are available in large quantities in the country.

The purpose of this letter is to request to degazette this duty remission in order to support local manufacturing.

under the SOFAs for to wears from the commencement date of the Agreement; that the SOFAs created legitimate expectations and parties for the fulfillment of obligations thereunder, The parties therefore have a duty to fulfill their respective obligations under the Agreement. With the Ministry of Investments, Trade and Industry should consider rescinding the advice to the National Treasury to revoke the grant on duty remission that was being enjoyed by Bue Nile Rolling Mills limited as communicated vide memorandum a letter dated 23rd October, 2023 to the National Treasury: and in the event the decision is not rescinded, and the parties agree to a dispute under the SOFA Arbitration clause, then there is likelihood of an award being issued against the Government thus exposing the Government to liability.

In a meeting held on 17th June, 2024 at State House, It was agreed that there is need to review the existing Special Operating Framework Agreements, These Agreements are discriminatory and create unfair playground to firms not enjoying similar incentives. In addition, they incentivize non-filers since SOFA contributes to tax expenditure, which the Government is rationalizing continuously

The purpose of this letter is to request you to review the existing SOFAs and provide me with your views.

Yours

Sincerely Qulic

DK.CHRISAIPTGO,CES

P NCIPAL SECRETARY/TRE NATIONAL TREASURY

ENCL 5: Copy of letter Ref No MITL/SCVEXP/VOL 4/10 dated 15th March, 2024 Copy of letter PEL No. MUL SDLEXP/VOL 4/103 dated 21st March, 2024 Copy of letter Ref No. AG/CONF/21/68 Vol. II dated 17th November, 2023



The purpose of this letter, therefore, is to forward the Enclosed draft
Special Operating Framework Agreement for Your consideration and
further negotiation before finalization and signature by all parties.

3000

Honorable Mulyo MGH

CARINET SECRETARY

Copy to:

Dr Francis O. Owino, PhD
Principal Secretary
Gene Department for Industrialization
NAIROBI

21-March, 2024 (copy attached) submitting a revised list of products that should be subjected to the Export and Investment Promotion Levy. The letter advised that the Levy should not include goods imported by firms operating under the Special Operating Framework Agreement (SOFA).

The National Treasury further makes reference to a letter from the Office of the Attorney General and Department of Justice Ref No.AG/COMF/21/65 Vol. II dated 17th November, 2023 (copy attached), that gave advisory that the Government committed to bear any adverse changes in taxation in respect to the incentives

10

Blue Nit
Rolling Mills



@kifarustecL

DATED: 22ND August 2019

Hon. Peter G. Munya, MGH

Cabinet Secretary Ministry of
Industry, Trade and Cooperatives

Nairobi

Dearsir,
In support of the manufacturing pillar under the Big Four national agenda, we propose to support with the government support a high-speed wire galvanizing plant to be located at Dareditiga Thika Factory premises. This will be the first of its kind plant in the entire Eastern Africa with an installed capacity of 30,000 metric tons per annum. The key element of the proposed project are:

This is in further to my letter dated 31/15/2019

level of investment

The estimated Capital investment required to set up and complete the entire project is to the tune of US\$ 19 Million (approximately Ksh 119 Billion)

Transfer of technology knowhow

In view of the project's key attributes, the project will be expected to transfer and impart new skills and knowledge to the country and its employees while at the same time supporting local suppliers and their livelihoods.

In this respect we have appointed a former General Manager working with M' TATA Steel as the project coordinator and a Senior Engineer from an Indian Iron and Steel Company Ltd who have a wealth of experience to train local employees and build local capacity.

The project has also identified for appointment ten (10) young engineers from local universities to take charge of the project. Some of these young engineers are being trained on attachment to industries in India and China for on-the-job training. The training will be highly technical intensive.

level of Employment Creation



This project is expected to provide direct employment to over 251 to 300 employees and indirect employment to an additional minimum one thousand (1,000) more. The result of the skill development will be the creation of a pool of both skilled and semi-skilled workers that will be an asset to the national economy.

Socio Economic Benefits

The project has extensive plans to train local small women entrepreneurs within our operating environment to produce the chain link in their home states at their leisure.

off Ecrasa Rd opp KVM

1657-01001, Thia

+254 739

group.com1 info@buenile-croup.com

Manufacturers of

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THE NATIONAL TREASURY
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P.O. Box 30007 - 00100, NAIROBI



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

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Appendix IX

Your Ref: MITI/SDI/1/88
Our Ref: AG/CONF/21/68 Vol. II

18th October, 2023

Ms. Rebecca Miano, MBS
Cabinet Secretary
Ministry of Investment, Trade and Industry
NAIROBI

23 OCT 2023
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Ilb Inman
Review &
advise
11/10/23

REF: LEGAL ADVISORY ON SPECIAL OPERATING FRAMEWORK AGREEMENTS
(SOFA)

We refer to your letter under Ref. MITI/SDI/1/88 dated the 2nd October, 2023 requesting our legal guidance.

We acknowledge receipt of the following copies of documents:

- i. A signed Special Operating Framework Agreement (SOFA) between the Ministry of Investment, Trade and Industry, the National Treasury and Economic Planning and Blue Nile Rolling Mills dated the 30th January 2020;
- ii. First amendment to the Special Operating Framework Agreement between the Ministry of Investment, Trade and Industry, the National Treasury and Economic Planning and Blue Nile Rolling Mills dated the 16th March, 2022; and
- iii. A letter Ref. AA/6581/2023 dated the 16th June, 2023 from Ahmednasir Abdullahi Advocates LLP.

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This Office has reviewed the letter together with the documents we note as follows;

1. The State Department is currently managing a number of SOFAs signed between the Government of Kenya and several private companies to support manufacturing and lower the cost of manufacturing in the Country.
2. The Government of Kenya stopped the issuance of SOFAs in the year 2021. However, there are a number of SOFAs that the Government of Kenya had entered into that are still active.
3. Over the last Financial Year, the Government has introduced several tax measures that are contrary to the SOFAs already signed.

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P.O. Box 40112-00100, NAIROBI, KENYA. TEL: +254 20 2227461/2251355/07119445555/0732529995
E-MAIL: info.sheria@office@kenya.go.ke WEBSITE: www.attorney-general.go.ke

DEPARTMENT OF JUSTICE
CO-OPERATIVE BANK HOUSE, HAILLE SELLASIE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029/2240337
E-MAIL: legal@justice.go.ke WEBSITE: www.justice.go.ke

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DIRECTOR
LEGAL SERVICES

25 OCT 2023 51

4. From the letter, we note that the SOFA between the Ministry of Investment, Trade and Industry, the National Treasury and Economic Planning and Blue Nile Rolling Mills was signed on the 30th January 2020 to enable Blue Nile Rolling Mills Limited to invest in the manufacturing of galvanized wire, with an aim to develop the manufacturing sector and the steel industry as part of the National Industrialization Policy Framework and in pursuit of the Big 4 Agenda.

5. The letter is seeking legal guidance on how to handle ongoing SOFAs in view of changing tax measures in the country.

A. GENERAL COMMENTS

Preliminary Comments by Counsel at the Ministry

6. In line with the Paragraph 5 of the AG/Circular/NO. 1 of August 2023 dated the August 7, 2023, the Ministry is to seek the preliminary legal opinion of the State Counsel deployed to the Ministry and forward the same with a request seeking the directions and/or advisory from this Office. The same should be forwarded for our review and records.

Previous Communication on the Matter

7. It is noted from our records that a letter Ref. AA/6581/2023 dated the 13th September, 2023 from M/s Ahmednasir Acibullahi Advocates LLP to the National Treasury & Economic Planning, makes reference to letters from the Principal Secretary, State Department for Industry dated 16th August, 2023 and a letter from the National Treasury dated 21st August, 2023. The Ministry should forward the said letters for our information and records.

B. COMMENTS ON THE SOFA

8. As noted hereinabove in paragraph 4, the SOFA under reference was signed on 30th January 2020. Subsequently, a first amendment to the SOFA was signed by the parties in March, 2022 (first amendment).

9. It is noted that Article 5 of the SOFA provides as follows;

By this framework agreement the following incentives are agreed upon and granted to the Company:

1. Exemption to the VAT on inputs for building materials, machinery, production lines, equipment, spares, consumables and other supplies for direct and exclusive use in the construction of the galvanized wire plant.
2. Exemption from import duty will be in accordance with the provisions of the EAC Customs Management Act 2004.
3. Exemption from VAT on importation of raw materials to be used in the manufacturing process.
4. Exemption from IDF and RDL on importation of raw materials for direct and exclusive use in the manufacturing process
5. Income corporate tax to be a level of 10% for the first 5 years.

APP. 8

10. Article 9: Compliance with Domestic Laws provides;

The company shall at all times during the validity of this agreement comply in all respects with all imperative and mandatory applicable laws of Kenya with respect to the implementation and operation of the project, including but not limited to labour laws, tax laws, environmental laws, security laws and the like; provided, however, that compliance with such laws of Kenya does not impact the Incentives of the Company provided for in Article 5.

11. It is noted that the parties amended the SOFA through the first amendment to the SOFA dated the 16th March, 2022.

12. The first amendment to the SOFA provides that; *in view of this, and in order to retain the benefits which were intended under the incentives, there is need to shield the investor from any adverse effects of any change in duties and taxes.*

In this regard, it is agreed that the investor will retain all incentives that were agreed in the Special Operating Framework Agreement whose validity is ten (10) years. Accordingly, any changes in duties and taxes that may affect the investor adversely will be the responsibility of the Government.

13. The SOFA was signed pursuant to Section 28A of the Income Tax Act, Cap. 470 of the Laws of Kenya that provides as follows:

'A company which –

(a) is engaged in business under a special operating framework arrangement with the Government;

(b) incorporated for purposes of undertaking the manufacturer of human vaccines or other manufacturing activities including refining; and

(c) whose capital investment is at least ten billion shillings,

shall be subject to the rate of tax specified in the special operating framework arrangement with the Government.'

14. Section 23(3)(b) of the Interpretation and General Provision Act, Cap 2 of the Laws of Kenya provides as follows:

'Where a written law repeals in whole or in part another written law, then, unless a contrary intention appears the repeal shall not—


(b) affect the previous operation of a written law so repealed or anything duly done or suffered under a written law so repealed; ...'

15. From the foregoing it is our understanding that the parties entered into a legally binding agreement pursuant to Section 28A of the Income Tax Act and they are bound by the terms of the Agreement. Further, pursuant to Section 23(3) of the Interpretations and General Provisions Act, the law cannot apply retrospectively. The parties therefore have a duty to fulfill their obligations under the Agreement.

16. Be that as it may, we note that the issue of tax exemptions in Kenya under the Constitution and the Public Finance Management Act, 2012 falls under the mandate of the National Treasury and Economic Planning. Further, the National Treasury is a party to the SOFA and the implementers of the Finance Act, 2023 and the Public Finance Management Act, 2012.

17. We advise the State Department to seek the advisory of the National Treasury and Economic Planning on the exemption of the taxes being the institution mandated by law to issue exemptions on taxes and who are party to the SOFA.

Kindly be advised accordingly.


Hon. J.B.N. Muturi, EGH
ATTORNEY GENERAL


Copy to: Prof. Njuguna Ndung'u, CBS
Cabinet Secretary
The National Treasury and Economic Planning
Treasury Building
NAIROBI

Dr. Chris Kiptoo, CBS
Principal Secretary
The National Treasury
The National Treasury and Economic Planning
NAIROBI

Hon. Shadrack J. Mose
SOLICITOR GENERAL

Dr. Juma Mukhwana, PhD, HSC
Principal Secretary
State Department for Trade
Ministry of Investments, Trade and Industry
NAIROBI

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THE NATIONAL TREASURY
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APP 9

REPUBLIC OF KENYA
OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

Handwritten notes: "Review advise", "all relevant", "Appendix I", "35", "13", "16"

Our Ref: AG/CONF/21/ 68 Vol. II
Your Ref: AA/6584

17th November, 2023

Ms. Rebecca Miano, MBS
Cabinet Secretary
Ministry of Investment, Trade and Industry
NAIROBI

THE NATIONAL TREASURY
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PRINCIPAL ADMINISTRATIVE SECRETARY
P.O. Box 30007, NAIROBI

Handwritten notes: "De/BFA", "Tina", "John", "PAS", "21/11/2023"

Prof. Njuguna Ndung'u, CBS
Cabinet Secretary
The National Treasury and Economic Planning
Treasury Building
NAIROBI

Handwritten notes: "Njuguna", "Tina", "John", "PAS", "21/11/2023", "CC PA"

RE: EXEMPTION UNDER SPECIAL OPERATING FRAMEWORK ARRANGEMENT WITH THE MINISTRY OF INDUSTRY, TRADE AND COOPERATIVES; THE NATIONAL TREASURY AND ECONOMIC PLANNING

We are in receipt of a letter under Ref: No. AA/6584/2023 dated 16th June, 2023 through which the firm of Ahmednafir Abdullahi Advocates LLP representing Blue Nile Rolling Mills Limited (BNRML) implores the Government to exempt them from additional taxes, levies and duties as agreed under the Special Operating Framework Agreement (SOFA) and/or introduce a transitional clause in the Finance Act, 2023 that allows companies/ projects currently under SOFA to continue to enjoy the tax exemptions on goods imported or purchased locally for the remaining period of the agreement.

Further, on the 30th October, 2023, BNRML wrote to this Office seeking this Office's intervention following the Ministry's decision to rescind from the SOFA, which decision, BNRML found was in breach of the SOFA.

Having reviewed the letters and our records on the matter, we note as follows -

Background

1. In the year 2020, the Ministry of Industry, Trade and Cooperatives, the National Treasury and Planning and the Blue Nile Rolling Mills Limited entered into a special operating framework Agreement (SOFA) with a view of promoting and facilitating direct investment and inclusive economic growth in

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DEPARTMENT OF JUSTICE
CO-OPERATIVE BANK HOUSE, HAILLE SELASSIE AVENUE, P.O. Box 50057-00200, Nairobi-Kenya TEL: Nairobi 254029/2340337
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22 NOV 2023 HSI

Handwritten notes: "21/11/2023", "Tina", "John", "PAS"

Handwritten notes: "21 NOV 2023"

Kenya. In March, 2023, the parties entered into the First Amendment Agreement to SOFA. Through the SOFA, the Government commits to provide necessary incentives to facilitate the Company (BNRML) to manufacture galvanised wires. These incentives, as provided under Article 5 of SOFA include-

- a) Exemption from VAT on inputs for building materials, machinery, production lines, equipment, spare, consumables and other supplies for direct and exclusive use in the construction of the galvanised wire plant;
- b) Exemption from import duty will be in accordance with the provisions of the EAC Customs Management Act, 2004;
- c) Exemption from VAT on importation of raw materials to be used in the manufacturing process;
- d) Exemption from IDF and RDL on importation of raw materials for direct and exclusive use in the manufacturing process; and
- e) Income corporate tax to be a level of 10% for the first 5 years.

2. It is imperative to note that in accordance to Article 9 of the SOFA, the Company shall be bound by all the laws of Kenya provided that 'compliance with such laws of Kenya does not impact on the incentives of the Company provided for in Article 5'. The Agreement shall remain valid for a period of ten (10) years unless terminated as herein under: -

- a) For failure of fulfilment of any condition when and as required specified under the Agreement;
- b) At the event SOFA ceases to be valid, parties may continue to be mutually bound by actions previously taken but not completed; and
- c) At event of material breach of the terms of the Agreement and the offending party fails to remedy the breach after 6 months of such notice.

3. It is instructive to note that at the event of dispute arising out of the interpretation or the application of the SOFA, parties shall amicably seek to settle the differences but in the instances of such failure, the matter shall be submitted to arbitration under the Nairobi International Arbitration Centre.

Letter dated 22nd July, 2022 from the National Treasury and Planning to the Ministry of Industrialisation, Trade and Enterprise Development.

4. In the letter copied to Blue Nile Rolling Mills Limited, we note that the Cabinet Secretary, the National Treasury and Planning underscored the Government commitment to protect those operating under SOFAs to enable the companies deliver on their commitments under SOFA. Further, the National Treasury reiterated the need to grant remission under EAC Duty Remission Scheme to Companies that have signed SOFA agreements as a separate group from the general applicants for duty remission.

5. On 20th October, 2023, the Chairperson Council of Ministers caused the issuance of legal Notice No. EAC/363/2023 on 'A remission of import duty as approved for Kenya for the following manufacturers on the specified quantities of raw materials for the manufacture of wire products to apply a duty rate of

APP. 9

zero per centum (0%) for twelve months pursuant to the East African Community Customs Management Act, 2004 and the Duty Remissions Regulations, 2008.

6. On the 2nd October, 2023, the Ministry of Trade and Industry wrote to this Office seeking legal guidance on how to handle ongoing SOFA agreements in view of the changing tax measures in the Country in particular, whether to hold the SOFAs as binding and continue extending the benefits to the beneficiaries. In our response, this Office advised *inter-alia*, that;

'From the foregoing, it is our understanding that the Parties entered into a legally binding agreement pursuant to section 28A of the Income Tax Act and they are bound by the terms of the Agreement. Further, pursuant to section 23(3) of the Interpretations and General Provisions Act, the law cannot apply retrospectively. The parties therefore have a duty to fulfil their obligations under the Agreement.'

7. On the 23rd October, 2023, the Ministry of Investments, Trade and Industry wrote to the National Treasury in respect legal Notice No. EAC/363/2023 under which the EAC gazetted the duty remission for Roofing (K) Ltd (40 000 MT) and Blue Nile Rolling Mills Ltd (32, 000 MT) instructing *'that the items be degazetted owing to the fact that the items are available in large quantities in the country'*. Therefore, by the letter, the Ministry sought to have the National Treasury degazette the duty remission in order to support the local manufacturing.
8. Subsequently, on the 30th October, 2023, BNRML wrote to this Office seeking this our intervention following the Ministry's decision to rescind from the SOFA, which decision, BNRML found was in breach of the SOFA.

It is against this background that we advise as follows-

9. It is noted that the present matter stems from the letter dated the 23rd October, 2023 whereby the Ministry of Investments, Trade and Industry wrote to the National Treasury seeking the de-gazettement of Legal Notice No. EAC/363/2023 by which notice EAC gazetted the duty remission for Roofing (K) Ltd (40 000 MT) and Blue Nile Rolling Mills Ltd (32, 000 MT). BNRML, is of the opinion that if the National Treasury heeds to the request from the Ministry, the degazettement would occasion burden upon BNRML contrary to the provisions of SOFA.
10. It is noted that the SOFA shall bind the parties for a period of 10 years unless terminated in accordance with the procedure under the SOFA. Nevertheless, the Parties may amend the agreement by mutual consent and in writing. By dint of Article 11 of SOFA, we note that the Agreement may be terminated-

- 1) If any condition specified in this Agreement shall not have been fulfilled when and as required to be fulfilled, this Agreement may be terminated at any time by any party representative with at least three (3) months prior notice to the other party and such

termination shall be without liability of any party to any party except for any tax liability;

- 2) In the event that this Agreement ceases to be valid, the Parties may mutually agree to continue actions taken pursuant to this Agreement already commenced but not completed; and
- 3) Without affecting any other rights or remedies to which it may be entitled, either party may give notice in writing to the other terminating this Agreement immediately if; the other party commits material breach of any material term of this Agreement and (if that breach is remediable) fails to remedy that breach within six (6) months of that party being required in writing to do so.

Termination on Notice

11. In the present matter, we note that *save* for the letter from the Ministry of Investment, Trade and Industry to the National Treasury requesting that the legal notice be de-gazetted, we have had no sight of any notice to BNRML as required under Article 11 (1) of the SOFA. Therefore, should the National Treasury proceed to effect the de-gazetment of the Legal Notice pursuant to the request from the Ministry, this would be in contravention of Article 47 of the Constitution, 2010 that requires that, *every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair* and the Fair Administrative Action Act, 2015.
12. Should the Government have intended to rescind the SOFA Agreement, then a three-month notice ought to be issued to BNRML citing the reason for termination. The Government cannot arbitrarily terminate the agreement without following the laid down procedure failure of which attracts liability upon the Government. In such instances, BNRML may initiate judicial review proceedings against the Government further aggravating the exposure of Government to financial risks.
13. This is buttressed by the Court's position as illustrated in Republic v Betting Control and Licensing Board and another – ex parte Outdoor Advertising Association of Kenya [2019] eKLR, where the Learned Judge opined that: -

'procedural fairness contemplated under article 47 and *Fair Administrative Action Act* demand a right to be heard before a decision affecting one's right is made. Whether or not a person was given a fair hearing of his case will depend on the circumstance and the type of the decision to be made. The minimum requirement is that the person gets the chance to present his case.

Termination due to invalidity of SOFA

14. We note that in the instances where the Agreement ceases to be valid, the parties may mutually agree to continue actions taken pursuant to this Agreement which had commenced but were yet to be completed. What can invalidate the Agreement? We note that the SOFA is silent on what can

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invalidate the Agreement. However, questions of interpretation or application of any of the provisions of the SOFA shall be, in first instance, be resolved mutually prior to be subjected to Arbitration.

15. The Supreme Court of the United Kingdom in TS Flexible Systems Ltd v Molkerei Alois Müller GmbH & Co KG (UK Production) [2010] UKSC14, [45] stated that;

"The general principles are not in doubt. Whether there is a binding contract between the parties and, if so, upon what terms depends upon what they have agreed. It depends not upon their subjective state of mind, but upon a consideration of what was communicated between them by words or conduct, and whether that leads objectively to a conclusion that they intended to create legal relations and had agreed upon all the terms which they regarded or the law requires as essential for the formation of legally binding relations. Even if certain terms of economic or other significance to the parties have not been finalised, an objective appraisal of their words and conduct may lead to the conclusion that they did not intend agreement of such terms to be a precondition to a concluded and legally binding agreement."

16. Nevertheless, we opine that, even if the matter was to be presented for arbitration to determine the validity of SOFA, the outcome would be to the affirmative. In absence of a declaration to the invalidity of SOFA, we are inclined to hold the Agreement as valid and binding upon the parties.

Principle of retrospectivity

17. Be that as it may, we wish to reiterate our earlier advisory that pursuant to the Interpretation and General Provision Act, Cap. 2, the repeal of section 28A of the Income Tax Act by the Finance Act, 2023 does not affect the previous operation of written law so repealed or anything duly done or suffered under a written law so repealed. The 9th edition of Black's Law Dictionary provides that, 'a retroactive law is not unconstitutional unless-

- a) is in the nature of ex post facto law or a bill of attainder;
- b) impairs obligations of contracts;
- c) divests rights; and
- d) is constitutionally forbidden.'

18. The supreme court of Kenya in Samuel Kamau Macharia & An. vs. Kenya Commercial Bank Ltd & 2 Others, [2012] eKLR had the following to say regarding retrospectivity-

"As for non-criminal legislation, the general rule is that all statutes other than those which are merely declaratory or which relate only to matters of procedure or evidence are prima facie prospective, and retrospective effect is not to be given to them unless, by express words or necessary implication it appears that this was the intention of the legislature".

19. We note that the Finance Act, 2023 as enacted had various commencement dates namely 1st July, 2023, 1st September, 2023 and 1st January, 2024. The long title of the Act provides 'AN ACT of Parliament to amend the laws relating to various taxes and duties; and for matters incidental thereto.' Further, we note of the forward looking nature of the Finance Act, 2023 in that the Act regulates any taxation as of the date of the commencement unless where expressly stated.

20. In the case of Du Toit v Minister of Safety and Security and Another (467/07) [2008] ZASCA 125, the Supreme Court of South Africa in tackling the question of the retrospective application of statute stated that:

"[10] There is a presumption that a statute was intended to operate prospectively and not retrospectively. In Bellairs v Hodnett and another 1978 (1) SA 1109 (A) at 1148F-G the court formulated the rule as follows:

'There is a general presumption against a statute being construed as having retroactive effect and even where a statutory provision is expressly stated to be retrospective in its operation it is an accepted rule that, in the absence of contrary intention appearing from the statute, it is not treated as affecting completed transactions and matters which are the subject of pending litigation...'

The same principle is recognised by the law of England. In Sunshine Porcelain Potteries Pty Ltd v Nash [1961] AC 927 at 938 Lord Reid said:

'Generally, there is a strong presumption that a legislature does not intend to impose a new liability in respect of something that has already happened, because generally it would not be reasonable for a legislature to do that ...'

21. Arising therefrom, we opine that, by executing the SOFA, the transactions was completed i.e. the parties are now bound by the terms and obligations arising therein. Consequently, by the Finance Act, 2023, we are of the considered opinion that it would not have been the intention of the Legislature to introduce new burden and liability to already executed agreement binding the parties. Similar position has been adopted by the Courts whereby in Kenya Bankers Association v Attorney General & another; National Assembly (Interested Party) [2020] eKLR, the court found that section 32(b)(iv) of the Finance Act, 2018 created an unfair imposition of tax and thus unconstitutional in so far as it applied retrospectively up to 1st July, 2018 from the date of its publication on 27th September, 2018.

22. Besides, while we appreciate the legislative role of Parliament, where the intention of the Court is to have a retrospective statute, the intention must be clear in the statute. In the instant case, the Finance Act, 2023 has no such provision. Further, a retrospective statute would be unconstitutional in the instances where it impairs obligations of contracts and divest rights to parties. Therefore, should the intention of Parliament been to have the Finance Act retrospective, we opine the same would have been unconstitutional owing to

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the fact that such provisions would; a) divest the rights of BNRML under the SOFA, and b) would have impaired the obligations of parties under the Agreement i.e. Government's obligations to offer the incentives.

23. The Court of Appeal gave its opinion on the matter of the retrospective application of legislation in Commissioner of Income Tax v Pan African Paper Mills (E.A.) Limited [2018] eKLR where it held that:

"18. From the above authorities it is clear that there are exceptions to the general rule that a statutory provision is not retrospective. The important consideration being the intention of the legislature in enacting the statute.

We are guided by the case of Amalgamated Society of Engineers vs. Adelaide Steamship (1920) 28 CLR 129 at 161-2 where Higgins J stated as follows:

"The fundamental rule of interpretation, to which all others are subordinate, is that a statute is to be expounded according to the intent of the Parliament that made it; and that intention has to be found by an examination of the language used in the statute as a whole. The question is, what does the language mean; and when we find what the language means, in its ordinary and natural sense, it is our duty to obey that meaning, even if we consider the result to be inconvenient or impolitic or improbable."

24. Similarly, in Republic v National Assembly of the Republic of Kenya & 2 others; Director of Public Prosecutions & 3 others (Interested Parties) Ex parte IDEMIA Identity and Security France SAS [2020] eKLR Justice Mativo (as he was then) had the following to say on fairness of legislation-

"142. Applying the above jurisprudence to the facts of this case, it is my finding that a proper construction of the impugned decision, the provisions of Constitution and the enabling legislations leave me with no doubt that the impugned decision to the extent that it invokes provisions of the law which were not in force as at the time the contracts in question were signed is illegal. It offends the principle that prohibits retrospective application of the law. It offends the principle of legality. For avoidance of doubt, the contracts in question were executed prior to the provisions of the Companies Act and the PPAD Act which were invoked in making the challenged recommendations. In the so doing, the National Assembly and PAC fell into an error of the law."

25. Whereas we note that that the Finance Act, 2023 by large infringes on the incentives under the SOFA, nothing in the Act invalidates previous agreements so entered by the parties. This is buttressed by the General Interpretations Act, that require-

- 1) ...
- 2) ...
- 3) Where a written law repeals in whole or in part another written law, then, unless a contrary intention appears the repeal shall not—
 - a) Revive anything not in force or existing at the time at which the repeal takes effect; or
 - b) Affect the previous operation of a written law so repealed or anything duly done or suffered under a written law so repealed; or
 - c) Affect a right, privilege, obligation or liability acquired, accrued or incurred under a written law so repealed; or
 - d) Affect a penalty, forfeiture or punishment incurred in respect of an offence committed against a written law so repealed; or
 - e) Affect an investigation, legal proceeding or remedy in respect of a right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing written law had not been made.'

26. In the circumstances, we note that the SOFA was issued under section 28A of the Income Tax Act. With the amendment, it is our opinion that the interpretation of the Finance Act does not extinguish rights acquired under section 28A of the Income Tax Act. At least, there is nothing in the Act that denotes the intention to the contrary. In particular, the rights, privileges, obligation or liability acquired, accrued or incurred under a written law so repealed (incentives under article 5 of SOFA) are not affected by the amendment.

Legitimate Expectations Principle

27. Be that as it may, it is our opinion that the Agreement binds the parties under the Law of Contract. The preamble of the SOFA defines Blue Nile Rolling Mills Ltd as a 'company established in 2013, in steel manufacturing, trading and export.' Therefore, as registered, BNRML has expectation of maintaining a going concern by making profits under their investments. The First Amendment Agreement to SOFA entered in March 2022 provides –

'It is noted that the investment (by BNRML) took into account the incentives which were in place and that financing of the investment relied on incentives that were granted by the Government. In view of this, and in order to retain the benefits which were granted under the incentives, there is need to shield the investor from any adverse effects of any change in duties and taxes.'

In this regard, it is agreed that the investor will retain all the incentives that were agreed in the Special Operating Framework Agreement whose validity is ten (10) years. Accordingly, any changes in duties and taxes

that may affect the investor adversely will be the responsibility of the Government.

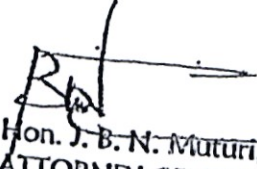
28. Noting the aforementioned, it is our opinion that the Government is estopped from withdrawing the incentives under SOFA, which was the basis of the investment and the financing of the project. The Agreement and the subsequent amendment created a legitimate expectation upon the Investor that they, and their business would be protected from the whimsical taxation regime. Accordingly, any withdrawal of such incentives would attract disputes, which, if pursued would likely expose the Government to liability.
29. According to De Smith, Woolf & Jowell, "Judicial Review of Administrative Action" 6th Edn. Sweet & Maxwell page 609:
- "A legitimate expectation arises where a person responsible for taking a decision has induced in someone a reasonable expectation that he will receive or retain a benefit of advantage. It is a basic principle of fairness that legitimate expectations ought not to be thwarted. The protection of legitimate expectations is at the root of the constitutional principle of the rule of law, which requires predictability and certainty in government's dealings with the public."*
30. The Courts have adopted the principle of legitimate expectation entrenching the same to the basic rules of rule of law. In Republic vs. Attorney General & Another Ex Parte Waswa & 2 Others [2005] 1 KLR 280, the Court held:

"The principle of a legitimate expectation to a hearing should not be confined only to past advantage or benefit but should be extended to a future promise or benefit yet to be enjoyed."

Conclusion and Way Forward

31. Without prejudice to the aforementioned, we advise as follows-
- a) The Ministry of Investments, Trade and Industry should consider rescinding the decision to degazette the duty remission as communicated in their letter dated 23rd October, 2023 to the National Treasury;
 - b) In the event the decision is not withdrawn, and the parties aggrieved raise a dispute under the SOFA Arbitration clause, there is likelihood of an award being issued against the Government thus exposing Government to liability;
 - c) That the SOFA created legitimate expectations on parties for the fulfilment of obligations thereunder. The parties therefore have a duty to fulfil their obligations under the Agreement; and
 - d) That the Government committed to bear any adverse changes in taxation in respect to the incentives under the SOFA for ten years from the commencement date of the Agreement.

We trust what we have stated herein will be of assistance to you, and that you will be guided accordingly.


Hon. J. B. N. Muturi, EGH
ATTORNEY GENERAL

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The National Treasury
The National Treasury and Economic Planning
NAIROBI

Hon. Shadrack J. Mose
Solicitor General

Dr. Juma Mukhwana, PhD, HSC
Principal Secretary
State Department for Trade
Ministry of Investments, Trade and Industry
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(5)



REPUBLIC OF KENYA
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When replying please quote

Ref. No. ZZ/TS/GP/30

Date: 18th October 2018

TREASURY CIRCULAR NO. 9/2018

TO: ALL CABINET SECRETARIES

ALL ACCOUNTING OFFICERS

GUIDELINES/Framework FOR REQUESTING, PROCESSING AND GRANTING OF TAX EXEMPTION/WAIVER/VARIATION/ REMISSION ON A NATIONAL TAX, A FEE OR A CHARGE

I. PURPOSE

1. These guidelines provide a framework to Ministries, Departments and Agencies (MDAs) for requesting, processing and granting of tax exemption/waiver/variation/remission on a national tax, a fee or charge payable on the goods, equipment including motor vehicles and for services. The guidelines are specific on the:
 - a. Requirements on the form, contents and presentation of tax exemption/waiver/variation/remission on a national tax, a fee, or charge requests to be considered for approval;
 - b. Steps to be undertaken during the review and approval of tax exemption/waiver/variation/remission on a national tax, a fee, or a charge request;
 - c. Communication of the approvals to the requesting Accounting Officer; and
 - d. Any other process to be followed.

2. For purposes of this circular, exemption means "exemption/waiver/variation/remission on a national tax, a fee, or a charge"

II. BACKGROUND AND RATIONALE

3. Granting of exemptions is guided by Article 210 of the Constitution of Kenya, 2010 which requires, among other things, that:

(1) No tax or licensing fee may be imposed, waived or varied except as provided by legislation.

(2) If legislation permits the waiver of any tax or licensing fee : (a) a public record of each waiver shall be maintained together with the reason for the waiver; and (b) each waiver, and the reason for it, shall be reported to the Auditor-General.

4. The window for granting an exemption is provided for under Section 77 of the Public Finance Management Act, 2012, which provides that the Cabinet Secretary may waive a national tax, a fee or charge imposed by the National Government and its entities in accordance with criteria prescribed in regulations provided that:

a) the National Treasury shall maintain a public record of each waiver together with the reasons for the waivers and report on each waiver in accordance with section 82 of the PFM Act;

b) each waiver or variation has been authorised by an Act of Parliament; and

c) a State Officer may not be excluded from payment of a tax, fee or charge by reason of the office of the State Officer or the nature of work of the State Officer.

5. In this respect, any request and approval of an exemption must be supported by the provisions of the Constitutions, the Public Finance Management Act, 2012 and the various specific tax laws and legislations.

6. Provisions for exemptions are outlined in various schedules of the different tax legislations. Pursuant to these provisions, the Government has continued to grant the same on different goods, equipment or services with the objective of encouraging economic activity and to enable provision of various goods and services for the benefit of the general public.

7. In order to achieve the intended objectives, it has been decided that the process of applying, processing and granting of exemptions be done in a structured manner. This will streamline the process of applications to the National Treasury received from MDAs for various projects.

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8. Additionally, and more importantly, these guidelines will enhance accountability in the processing, granting and administering of exemptions that are provided for in the tax laws. Of importance to note is that Accounting Officers requesting for such exemptions/waivers will be accountable for the requests and approvals granted.

9. All Accounting Officers are expected to obtain concurrence from the National Treasury before finalizing any contract or agreement that provide for any exemption.

10. The principle intent of these guidelines is therefore, to:

- i. enhance accountability in the processing, granting and administering of exemptions that are provided for in the tax laws
- ii. Protect and promote the public interest;
- iii. Support the constitutional principle of the rule of law.

11. In this respect, the following guidelines shall strictly be followed while applying, processing and approving any exemption going forward.

III. THE SPECIFIC GUIDELINES

A. Requesting for Exemptions from the National Treasury

12. All letters to the National Treasury requesting for an exemption shall be signed by the respective Accounting Officer (Principal Secretary) without delegation or by the respective Cabinet Secretary. In the event of delegation, the Accounting Officer shall notify the National Treasury, the person who will act on his or her behalf for the limited period when the respective Accounting Officer or the Cabinet Secretary is not available.

13. The Accounting Officers are further notified that henceforth, they are required to initial all the pages or documents supporting the requests for an exemption. Any letter requesting for the same including the supporting documents not initialed on all pages shall not be processed.

14. Any letter to the National Treasury requesting for an exemption will henceforth require a paragraph committing the Accounting Officer to state that he or she has confirmed that the items requested for, would be solely used for the specific project. The following is the proposed language:

"I have confirmed that all the items listed in this request are consistent with the approved master list. I undertake to ensure that the requested goods, equipment including motor vehicles and services are used for the intended purpose during the implementation of the project and will ensure full accountability in line with paragraph 23 of these guidelines."

15. The letter shall also contain details of the project being implemented including its objectives and if the said project is approved and factored in the budget or not. The start and end dates of the project must be indicated in the letter.

B. Amendment and Rejection of an Exemption

16. In the event that any of the requests for an exemption does not conform to all the requirements specified in these guidelines, the Principal Secretary, National Treasury shall write a letter to the respective Accounting Officer who had made the application requesting for the necessary amendments so as to conform to these guidelines.

17. The request for an exemption shall be rejected if: (i) the National Treasury has reason to believe that the request was made based on inaccurate or erroneous information; or (ii) there is no provision in the tax laws to grant the request; or (iii) does not meet the requirements for the Special Operating Framework in Section G of this circular. Such rejection will be communicated back to the requesting Accounting Officer by the Principal Secretary, National Treasury.

C. Processing of an Exemption

18. The National Treasury will review and process all the applications to ensure they comply with the respective tax laws and these guidelines. After the review, a recommendation will be forwarded for consideration to the Cabinet Secretary, National Treasury and Planning.

19. The National Treasury will communicate the decision on any request for exemption through the Principal Secretary/National Treasury to the Accounting Officer who had made the request.

D. Exemption on Goods and Equipment, including Motor Vehicles

20. When applying for an exemption in respect of goods and equipment, including motor vehicles, the following information/documents (sample table I) shall be provided:

- a. A master-list. This is a list of all the goods and equipment, including motor vehicles that are to be used in the implementation of the identified project;
- b. The master list should separate the categories of goods as follows:
 - i. The goods that will be consumed in the implementation of the project - the consumables;
 - ii. The goods that will be transferred to the Government on completion of the project;
 - iii. The goods belonging to the contractor and which will be re-exported on completion of the project.
- c. A copy of the Funding Agreement and the contract for the project implementation;

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- d. A copy of the contractor's request/application letter;
- e. The commencement and completion dates of the project;
- f. Recommendation by the Ministry on the exemption being applied for, which shall include the language in Paragraph 14.

At this point, no invoices are required. However, the quantities and the estimated costs of the goods should be provided.

Sample Table I

NO.	Master List No	Description	Quantity of Goods	Unit cost	Value
1					
2					
3					

Specific Exemptions after the Approval of the Master List

21. Upon receipt of the approved master list from the National Treasury, the Accounting Officer shall be required to apply for specific exemption on a case-by-case basis. The application for imported goods and those purchased locally should be made separately so as to make the processing of the exemption more efficient. The specific items applied for in this second case, must be contained in the master list that was initially approved by the National Treasury and Planning.

22. The application letter for the specific tax exemption must provide (Sample Table I):

- a. The quantity/amount approved in the Master list (a copy of the approved master list must be attached);
- b. The quantity/amount already imported and exempted;
- c. The quantity/amount being applied for in the current application
- d. The balance of goods initially approved

Sample Table II

NO.	Master List No	Description	Quantity/Amount of Goods Initially Approved	Quantity/Amount of Goods Purchased/Imported	Balance of the Quantities/Amount of Goods from the Approved Master list	Quantity of goods applied for	Unit cost	Value
1								
2								
3								

23. The application must be accompanied by the purchase/import documents such as invoices, packing lists, Airway bills/Bills of Lading and road consignment note among others to facilitate the processing of the tax exemption /waiver/variation /remission on a national tax, a fee or charge letter for forwarding to Kenya Revenue Authority.

Please note:

- i) the consignee of the goods including the motor vehicles should be the contractor implementing the project or the MDA's implementing the project;
- ii) the motor vehicles imported under the project should be registered in the name of the project and transferred to the Ministry or the public institutions implementing the project after the completion of the project; and
- iii) a customs security bond for imported goods must be executed to secure the revenue on the goods exempted by the Contractor. The security bond shall be cancelled only when the Commissioner of Customs and Border Control in consultation with the respective Accounting Officer, is satisfied that the imported goods have been used in the project works or taxes and other fiscal charges payable have been paid by the contractor on the remaining goods upon completion of the project.

E. Exemption from Value Added Tax (VAT) on Services

24. On the exemption from VAT on services, the following procedure shall apply:
- i. The Accounting Officer of a State Department/Ministry will make an application to the National Treasury confirming that under a particular official aid funded project, there will be contractors for the provision of services, such as consultancies;
 - ii. Upon receipt of the request, the National Treasury will process the request for exemption from VAT;
 - iii. Upon approval of the application, the National Treasury will communicate to the Commissioner of Domestic Taxes confirming that services to the project are either tax exempt or zero rated, with a copy to the Accounting Officer who had made the request. The Accounting Officer will be required to forward any request for exemption or zero rating of services to the Kenya Revenue Authority (KRA) for processing; and
 - iv. The Accounting Officer of the relevant State Department/ Ministry will provide a recommendation to the KRA for processing the tax exempt/zero rating before the service is provided based on the contract documents, quotation and invoices from the service provider. This will enable the Domestic Taxes Department at the KRA to authorize the service provider to do it on exempt/zero rated basis.

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25. It is emphasized that since contracts for services, including consultancies, are given out based on the internal capacity of the contracted firms, there shall be No granting of tax exemption for vehicles or goods purchased for use by the Consultant or sub-Contracted firms. In this respect, all Accounting Officers are therefore, required to ensure that there are no provisions for such tax exemptions in the service contracts they sign.

F. Temporary Importation

26. Application for the facilitation of temporary importation of equipment for use in a specified project, should be forwarded through the responsible ministry/agency to the Commissioner of Customs and Border Control, KRA with the relevant documents and indicating the area and period of use.

G. Exemption Under the Special Operating Framework with the Government

27. All applications for exemption under the Special Operating Framework with the Government must strictly adhere to the requirements of this circular.

28. The Accounting Officer must attach a copy of the agreement signed between the investor (s) and the Government to the application for exemption.

29. The agreement with the investor (s) must have been negotiated and agreed upon between the respective MDA and the National Treasury. For avoidance of doubt, exemptions under this framework, shall not be concluded without the involvement of the National Treasury. In this regard therefore, the Accounting Officer must provide evidence/concurrence of the National Treasury in the negotiated and agreed exemptions under the framework.

30. The recommendation by the Ministry on the exemption being applied for shall include the language in Paragraph 14 of this circular.

31. Failure to adhere to the above requirements will result in the rejection of the application.

H. Field Project Visits

32. In order to ensure further transparency and accountability on the utilization of exemptions of a national tax or a fee or a charge approved, the National Treasury will undertake random field visits to the projects being implemented under this framework. The Officers from KRA and the respective MDAs will be part of the visiting team. The purpose of these visits will be to confirm the status of the projects, use of the items in the approved master lists and verify specific information as provided when seeking exemption. All the MDAs implementing the various projects are expected to provide full information during such visits. In the event that the goods and equipment imported or purchased locally under

this framework were not utilised for the intended purpose, appropriate action shall be taken in accordance with provisions of tax laws.

I. Reporting

33. Upon commencement of any project benefitting from an exemption, the Accounting Officer is expected to file a report to the National Treasury every six months on the utilization of items (materials, equipment and services) approved in the master list. In this respect, Accounting Officers are expected to have dedicated reporting lines on all projects benefitting from the exemption window failure to which further and future requests for specific projects from the National Treasury will be declined.

IV. AUDIT OF EXEMPTIONS

34. In order to ensure adherence to these guidelines and the law while implementing projects supported through exemptions, specific internal audits of the entire process right from the request, processing, approval and utilization of the same shall be done by the National Treasury on a regular basis. All the MDAs implementing the various projects are expected to cooperate fully during the internal audits and provide the internal audit team the required information.

V. CONCLUSION

35. All Accounting Officers are required to ensure strict adherence to these guidelines and to bring the contents of this Circular to the attention of all Officers working under them, including the Heads of Parastatals and other Semi-Autonomous Government Agencies (SAGAs).



HENRY K. ROTICH, EGH
CABINET SECRETARY/NATIONAL TREASURY AND PLANNING

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State House
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Hon. Paul Kihara Kariuki
Attorney General
Office of the Attorney General and Department of Justice
NAIROBI

K.P.P.17

Mr. John K. Njiraini, CBS
Commissioner General
Kenya Revenue Authority
NAIROBI

FCPA Edward R.O. Ouko, CBS
Auditor General
Kenya National Audit Office
Anniversary Towers
NAIROBI

Ms. Jacqueline Mogeni
Acting Chief Executive Officer
Council of Governors
Delta Corner
Off Waiyaki Way
NAIROBI

*Please note: For the purpose of this
Circular all the applications for
exemptions sent to the National Treasury
should be signed by the Governor*



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EAST AFRICAN COMMUNITY SECRETARIAT

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

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

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

PREAMBLE

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

AND WHEREAS:

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

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

AND WHEREAS by the provisions of paragraph 1 of Article 151 of the Treaty, the Partner States undertook to conclude such Protocols as may be necessary in each area of co-operation, which shall spell out the objectives and scope of, and institutional mechanisms for co-operation and integration;

AND WHEREAS the Partner States, while aware that they have reached different stages of development with each Partner State having a comparative advantage on trade in some commodities, are resolved and determined to reduce

existing imbalances and to foster and encourage the accelerated and sustained development of the Community;

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

RECOGNIZING that a customs union would enhance economic growth and the development of the Community;

CONSCIOUS of their obligations, as contracting parties to the Marrakesh Agreement Establishing the World Trade Organisation, 1994 (the WTO Agreement), and to the Convention Establishing a Customs Co-operation Council, 1950 to contribute, in the common interest, to the harmonious development of world trade;

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

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

AGREE AS FOLLOWS:

PART A INTERPRETATION

ARTICLE 1 Interpretation

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

"Acts of the Community" means Acts of the Community enacted in accordance with the Treaty;

"anti-dumping measures" means measures taken by the investigating authority of the importing Partner State after conducting an investigation and determining dumping and material injury resulting from the dumping;

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

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

"community goods" means goods originating from the Community;

"community tariff" means a five year interim tariff imposed on specific goods originating from the Republic of Uganda to the Republic of Kenya, and from the Republic of Uganda to the United Republic of Tanzania under the principle of asymmetry;

"compensating product" means a product resulting from the manufacturing, processing or repair of goods for which the use of the inward processing procedure is authorised;

"competent authority" means a body or organisation designated by the Community to administer the customs law of the Community;

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

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

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

"countervailing measures" means measures taken to counteract the effect of injurious subsidies;

"Court" means the East African Court of Justice established by Article 9 of the Treaty;

"customs area" means that area licenced by a competent authority for purposes of specific customs operations;

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

"customs data bank" means a depository of customs and trade data and information;

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

"customs law of the Community" means the customs law of the Community as provided under Article 39 of this Protocol;

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

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

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

"days" means working days in any calendar month;

"dumping" in relation to goods means the situation where the export price of goods imported or intended to be imported into the Community is less than the normal value of like goods in the market of a country of origin as determined in accordance with the provisions of this Protocol, and "dumped product" has the corresponding meaning;

"duty" means any duty leviable under any customs law and includes surtax;

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

"excise duty" means a non-discriminative duty imposed by a Partner State on locally produced or similar imported goods;

"export" with its grammatical variations and cognate expressions means to take or cause goods to be taken out of the customs territory;

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

"export processing zone" means a designated area or region in which firms can import duty free as long as the imports are used as inputs into the production of exports;

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

"freeport" means a customs controlled area within a Partner State where imported duty free goods are stored for the purpose of trade;

"freeport authority" means an authority appointed by a Partner State under national legislation to establish, co-ordinate and operate freeport related facilities in a Partner State and it shall include all the staff thereof;

"freeport zone" means a designated area placed at the disposal of the freeport authority where goods introduced into the designated area are generally regarded, in so far as import duties are concerned, as being outside the customs territory;

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

"goods" includes all wares, articles, merchandise, animals, matter, baggage, stores, materials, currency and includes postal items other than personal correspondence, and where any such goods are sold under the auspices of this Protocol, the proceeds of sale;

"goods in transit" means goods being conveyed through the customs territory to a foreign country;

"import" with its grammatical variations and cognate expressions means to bring or cause goods to be brought into the customs territory;

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

"imported goods" means goods other than Community goods;

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

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

"inward processing" means the customs procedure under which certain goods can be brought into a customs territory conditionally relieved from payment of import duties and taxes, on the basis that such goods are intended for manufacturing, processing or repair and subsequent exportation;

"Legislative Assembly" means the East African Legislative Assembly established by Article 9 of the Treaty;

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

"non-tariff barriers" means laws, regulations, administrative and technical requirements other than tariffs imposed by a Partner State whose effect is to impede trade;

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

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

"person" means a natural or legal person;

"primary production" means initial or basic production of goods using raw materials or original inputs which have not undergone processing;

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

"Protocol" means this Protocol establishing the East African Community Customs Union and any annexes to the Protocol;

"publications" means printed material in hard or soft form;

"refund" means the return or repayment of duties and taxes already collected;

"re-exports" means goods which are imported and re-exported from the customs territory;

"remission" means the waiver of duty or refrainment from exacting of duty;

"safeguard measures" means protective measures taken by a Partner State to prevent serious injury to her economy as provided under this Protocol;

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

"Secretary General" means the Secretary General of the Community appointed under Article 67 of the Treaty;

"subsidy" means assistance by a government of a Partner State or a public body to the production, manufacture, or export of specific goods, taking the form of either direct payments, such as grants or loans, or of measures with equivalent effect, such as guarantees, operational or support services or facilities, and fiscal incentives;

"tariff" means any customs duty on imports or exports;

"trade data" means trade related information and statistics on trade;

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

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

"Treaty" means the Treaty for the Establishment of the East African Community.

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

PART B
ESTABLISHMENT OF
THE EAST AFRICAN COMMUNITY
CUSTOMS UNION

ARTICLE 2
Establishment of the East African Community
Customs Union

1. In order to promote the objectives of the Community provided under Article 5 of the Treaty and in accordance with the provisions of this Protocol, the Partner States hereby establish a customs union as an integral part of the Community.
2. The Customs Union established under Paragraph 1 of this Article, shall be called the East African Community Customs Union (hereinafter referred to as "the Customs Union").
3. The Customs Union shall be managed in accordance with the customs law of the Community.
4. Within the Customs Union:
 - (a) customs duties and other charges of equivalent effect imposed on imports shall be eliminated save as is provided for in this Protocol;
 - (b) non-tariff barriers to trade among the Partner States shall be removed; and
 - (c) a common external tariff in respect of all goods imported into the Partner States from foreign countries shall be established and maintained.
5. In accordance with the provisions of Article 75 of the Treaty, this Protocol, *inter alia*, provides for the following:
 - (a) the application of the principle of asymmetry;
 - (b) the elimination of internal tariffs and other charges of equivalent effect;
 - (c) the elimination of non-tariff barriers;
 - (d) establishment of a common external tariff;
 - (e) rules of origin;
 - (f) anti-dumping measures;
 - (g) subsidies and countervailing duties;

- (h) security and other restrictions to trade;
- (i) competition;
- (j) duty drawback, refund and remission of duties and taxes;
- (k) customs co-operation;
- (l) re-exportation of goods;
- (m) simplification and harmonisation of trade documentation and procedures;
- (n) exemption regimes;
- (o) harmonised commodity description and coding system; and
- (p) freeports.

ARTICLE 3

Objectives of the Customs Union

The objectives of the Customs Union shall be to:

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

ARTICLE 4

Scope of Co-operation in the Customs Union

1. The provisions of this Part of the Protocol shall apply to any activity undertaken in co-operation by the Partner States in the field of customs management and trade and shall include:

- (a) matters concerning trade liberalisation;
- (b) trade related aspects including the simplification and harmonisation of trade documentation, customs regulations and procedures with particular reference to such matters as the valuation of goods, tariff classification,

the collection of customs duties, temporary admission, warehousing, cross-border trade and export drawbacks;

- (c) trade remedies and the prevention, investigation and suppression of customs offences;
- (d) national and joint institutional arrangements;
- (e) training facilities and programmes on customs and trade;
- (f) production and exchange of customs and trade statistics and information;
and
- (g) the promotion of exports.

2. For purposes of sub-paragraph 1(a) of this Article, the Partner States shall co-operate in:

- (a) adopting uniform, comprehensive and systematic tariff classification of goods with a specific description and interpretation in accordance with internationally accepted standards;
- (b) adopting a standard system of valuation of goods based on principles of equity, uniformity and simplicity of application in accordance with internationally accepted standards and guidelines;
- (c) establishing common terms and conditions governing temporary importation procedures including the list or range of goods to be covered and the nature of manufacturing or processing to be authorised;
- (d) implementing the customs requirements for re-exportation of goods;
- (e) implementing the customs requirements for the transit of goods;
- (f) harmonising and simplifying customs and trade formalities and documentation and dissemination of information;
- (g) harmonising the customs requirements for the control of warehoused goods; and
- (h) adopting common procedures for the establishment and operation of export promotion schemes and freeports.

PART C
CUSTOMS ADMINISTRATION

ARTICLE 5
Communication of Customs and Trade Information

The Partner States shall exchange information on matters relating to customs and trade and in particular:

- (a) the prevention, investigation and suppression of customs offences; and
- (b) the operation of a harmonised information system to facilitate the sharing of customs and trade information.

ARTICLE 6
Trade Facilitation

The Partner States shall initiate trade facilitation by:

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

ARTICLE 7
Simplification, Standardisation and Harmonisation of
Trade Information and Documentation

1. The Partner States agree to simplify their trade documentation and procedures in order to facilitate trade in goods within the Community.
2. Subject to the provisions of Article 6 of this Protocol, the Partner States agree to design and standardise their trade information and documentation in accordance with internationally accepted standards, taking into account the use of electronic data processing systems in order to ensure the efficient and effective application of the provisions of this Protocol.
3. For purposes of this Article:
 - (a) a customs data bank shall be established at the Secretariat; and
 - (b) the Partner States hereby agree to adopt the Harmonised Customs Documentation to be specified in the customs law of the Community.

ARTICLE 8
Commodity Description and Coding System

1. The Partner States agree to harmonise their customs nomenclature and standardise their foreign trade statistics to ensure comparability and reliability of the relevant information.
2. The Partner States hereby adopt the Harmonised Commodity Description and Coding System specified in Annex I to this Protocol.

ARTICLE 9
Prevention, Investigation and
Suppression of Customs Offences

1. The Partner States agree to co-operate in the prevention, investigation and suppression of customs offences within their territories.

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

- (a) afford each other mutual assistance with a view to preventing, repressing and investigating customs offences;
- (b) exchange information on goods and publications known to be the subject of illicit traffic and maintain special surveillance over the movement of such goods and publications; and
- (c) consult each other on the establishment of common border posts and take steps as may be deemed appropriate to ensure that goods exported or imported through common frontiers pass through the competent and recognised customs offices and along approved routes.

3. The implementation of this Part of the Protocol shall be in accordance with the provisions of the customs law of the Community.

PART D
TRADE LIBERALISATION

ARTICLE 10
Internal Tariff

1. Save as is provided in Article 11 of this Protocol, the Partner States shall, upon the coming into force of this Protocol, eliminate all internal tariffs and other charges of equivalent effect on trade among them, in accordance with the provisions of Article 14 of this Protocol.
2. The Council may, at any time, decide that any tariff rate shall be reduced more rapidly or eliminated earlier than is provided for in accordance with paragraph 1 of this Article.

ARTICLE 11
**Transitional Provisions on the Elimination
of Internal Tariffs**

1. The establishment of the Customs Union shall be progressive in the course of a transitional period of five years from the coming into force of this Protocol.
2. The Partner States agree that upon the coming into force of this Protocol and for the purpose of the transition into a Customs Union:
 - (a) goods to and from the Republic of Uganda and the United Republic of Tanzania shall be duty free; and
 - (b) goods from the Republic of Uganda and the United Republic of Tanzania into the Republic of Kenya shall be duty free.
3. Goods from the Republic of Kenya into the Republic of Uganda and the United Republic of Tanzania shall be categorised as follows:
 - (a) Category A goods, which shall be eligible for immediate duty free treatment; and

- (b) Category B goods, which shall be eligible for gradual tariff reduction.

4. Category B goods from the Republic of Kenya into the Republic of Uganda shall have a phase out tariff reduction period of five years for all products as follows:

- (a) 10 per centum during the first year;
- (b) 8 per centum during the second year;
- (c) 6 per centum during the third year;
- (d) 4 per centum during the fourth year;
- (e) 2 per centum during the fifth year; and
- (f) 0 per centum thereafter,

as specified in Annex II to this Protocol.

5. Category B goods from the Republic of Kenya into the United Republic of Tanzania shall have a phase out tariff reduction period as specified in Annex II to this Protocol.

6. Internal tariffs specified under the provisions of this Article shall not exceed the Common External Tariff with regard to any of the specified products.

ARTICLE 12

Common External Tariff

1. The Partner States hereby establish a three band common external tariff with a minimum rate of 0 per centum, a middle rate of 10 per centum and a maximum rate of 25 per centum in respect of all products imported into the Community.

2. The Partner States hereby undertake to review the maximum rate of the common external tariff after a period of five years from the coming into force of the Customs Union.

3. The Council may review the common external tariff structure and approve measures designed to remedy any adverse effects which any of the Partner States may experience by reason of the implementation of this part of the Protocol or, in exceptional circumstances, to safeguard Community interests.

4. For purposes of this Article, the Partner States shall use the Harmonised Customs Commodity Description and Coding System referred to in Article 8 of this Protocol.

ARTICLE 13 **Non-tariff Barriers**

1. Except as may be provided for or permitted by this Protocol, each of the Partner States agrees to remove, with immediate effect, all the existing non-tariff barriers to the importation into their respective territories of goods originating in the other Partner States and, thereafter, not to impose any new non-tariff barriers.

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

PART E
TRADE RELATED ASPECTS

ARTICLE 14
Rules of Origin

1. For purposes of this Protocol, goods shall be accepted as eligible for Community tariff treatment if they originate in the Partner States.
2. Goods shall be considered to originate in the Partner States if they meet the criteria set out in the Rules of Origin adopted under this Article.
3. The Partner States hereby adopt the East African Community Rules of Origin specified in Annex III to this Protocol.

ARTICLE 15
National Treatment

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

ARTICLE 16
Anti-dumping Measures

1. The Partner States recognise that dumping is prohibited if it causes or threatens material injury to an established industry in any of the Partner States,

materially retards the establishment of a domestic industry therein or frustrates the benefits expected from the removal or absence of duties and quantitative restrictions of trade between the Partner States.

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

3. The implementation of this Part of the Protocol shall be in accordance with the East African Community Customs Union (Anti Dumping Measures) Regulations, specified in Annex IV to this Protocol.

4. For purposes of this Article, the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products, except that:

(a) when producers are related to the exporters or importers or are themselves importers of the allegedly dumped product, the term "domestic industry" may be interpreted as referring to the rest of the producers;

(b) in exceptional circumstances, the territory of the Partner States may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry where:

(i) the producers within that market sell all or most of their production of the product in question in that market; and

(ii) the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the territory.

(c) In the circumstances referred to in sub-paragraph (b) of this Article, industry is not injured, except where there is concentration of dumped imports into such an isolated market and provided the dumped imports are causing injury to the producers of all or most of the production within such market.

ARTICLE 17

Subsidies

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

ARTICLE 18

Countervailing Measures

1. (a) The Community may, for the purposes of offsetting the effects of subsidies and subject to regulations made under this Article, levy a countervailing duty on any product of any foreign country imported into the Customs Union.
 - (b) The countervailing duty shall be equal to the amount of the estimated subsidy determined to have been granted directly or indirectly, on the manufacture, production or export of that product in the country of origin or exportation.
2. The implementation of Articles 17 and 18 of this Protocol shall be in accordance with the East African Community Customs Union (Subsidies and Countervailing Measures) Regulations, specified in Annex V to this Protocol.

ARTICLE 19

Safeguard Measures

1. The Partner States agree to apply safeguard measures to situations where there is a sudden surge of a product imported into a Partner State, under conditions which cause or threaten to cause serious injury to domestic producers in the territory of like or directly competing products within the territory.
2. (a) During a transitional period of five years, after the coming into force of the Protocol, where a Partner State demonstrates that its economy will suffer serious injury as a result of the imposition of the common external tariff

on industrial inputs and raw materials, the Partner State concerned shall, inform the Council and the other Partner States through the Secretary General on the measures it proposes to take.

(b) The Council shall examine the merits of the case and the proposed measures and take appropriate decisions.

3. The implementation of this Article shall be in accordance with the East African Community Customs Union (Safeguard Measures) Regulations, specified in Annex VI to this Protocol.

ARTICLE 20

Co-operation in the Investigation of Dumping, Subsidies and Application of Safeguard Measures

1. The Partner States shall co-operate in the detection and investigation of dumping, subsidies and sudden surge in imports and in the imposition of agreed measures to curb such practices.

2. Where there is evidence of any sudden surge in imports, or dumping, or export of subsidised goods by a foreign country into any of the Partner States that threatens or distorts competition within the Community, the affected Partner State may request the Partner State in whose territory there is a sudden surge in imports, or goods are dumped or subsidised, to impose anti-dumping duties or countervailing duties or safeguard measures on such goods.

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

ARTICLE 21

Competition

1 The Partner States shall prohibit any practice that adversely affects free trade including any agreement, undertaking or concerted practice which has as its objective or effect the prevention, restriction or distortion of competition within the Community.

2. The provision of paragraph 1 of this Article shall not apply in the case of:

- (a) any agreement or category of agreements between undertakings;
- (b) any decision by association of undertakings; or
- (c) any concerted practice or category of concerted practises,

which improves production or distribution of goods, promotes technical or economic development or which has the effect of promoting consumer welfare and does not impose restrictions inconsistent with the attainment of the objectives of the Customs Union or has the effect of eliminating competition.

3. The implementation of this Article shall be in accordance with the East African Community competition policy and law.

ARTICLE 22

Restrictions and Prohibitions to Trade

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

- (a) the application of security laws and regulations;
- (b) the control of arms, ammunition and other military equipment or items;
- (c) the protection of human life, the environment and natural resources, public safety, public health or public morality; and
- (d) the protection of animals and plants.

2. A Partner State shall not exercise the right to introduce or continue to execute the restrictions or prohibitions conferred by this Article in order to restrict the free movement of goods within the Community.

3. Notwithstanding the provisions of Article 10(1) of this Protocol, the Partner States agree to specify in the customs law of the Community goods to be restricted and prohibited from trade.

ARTICLE 23
Re-exportation of Goods

1. The Partner States shall ensure that re-exports shall be exempt from payment of import or export duties in accordance with the customs law of the Community.
2. Paragraph (1) of this Article shall not preclude the levying of normal administrative and service charges applicable to the import or export of similar goods in accordance with the national laws and regulations of the Partner States.

ARTICLE 24
East African Community Committee on Trade Remedies

1. For purposes of this Protocol, there is hereby established an East African Community Committee on Trade Remedies (hereinafter referred to as "the Committee") to handle any matters pertaining to:
 - (a) rules of origin provided for under the East African Community Customs Union (Rules of Origin) Rules, specified in Annex III to this Protocol;
 - (b) anti-dumping measures provided for under the East African Community Customs Union (Anti-Dumping Measures) Regulations, specified in Annex IV to this Protocol;
 - (c) subsidies and countervailing measures provided for under the East African Community Customs Union (Subsidies and Countervailing Measures) Regulations, specified in Annex V to this Protocol;
 - (d) safeguard measures provided for under the East African Community Customs Union (Safeguard Measures) Regulations, specified in Annex VI to this Protocol;
 - (e) dispute settlement provided for under the East African Community Customs Union (Dispute Settlement Mechanism) Regulations, specified in Annex IX to this Protocol; and
 - (f) any other matter referred to the Committee by the Council.
2. (a) The Committee shall be composed of nine members, qualified

and competent in matters of trade, customs and law.

- (b) Each Partner State shall nominate three members to the Committee.

3. Each Partner State shall notify the Committee, of the investigating authority within its territory designated to initiate and conduct investigations on behalf of the Committee.

4. The functions of the Committee shall be to:

- (a) initiate, through the investigating authorities of the Partner States, investigation on disputes under the Regulations in paragraph 1 of this Article;
- (b) make affirmative or negative determinations on investigation arising from sub-paragraph (a) of this paragraph;
- (c) recommend provisional measures to prevent injury to a domestic industry where preliminary affirmative determination has been made under any matter in paragraph 1 of this Article;
- (d) undertake consultations with Partner States and other countries on matters before it;
- (e) report to the Council on all determinations in relations to matters that are submitted to it and decisions made by it;
- (f) provide advisory opinions to the Partner States in relation to matters under paragraph 1 of this Article;
- (g) review annually the implementation and operation of the matters in paragraph 1 of this Article;
- (h) issue public notices under the matters in paragraph 1 of this Article;
- (i) facilitate consultations by Partner States and parties to the dispute before it, to ensure timely fulfilment of all requirements by parties to the dispute and provide advice as may be appropriate;
- (j) administer and manage the dispute settlement mechanism; and
- (k) undertake any function that may be assigned to it by any regulation under this Protocol or by the Council.

5. Except as otherwise provided under the East African Community Customs Union (Dispute Settlement Mechanism) Regulations, or under any other regulation under this Protocol, the decisions of the Committee with respect to the settlement of disputes shall be final.

6. The Committee shall determine its own procedure.

PART F
EXPORT PROMOTION SCHEMES

ARTICLE 25
Principles of Export Promotion Schemes

1. The Partner States agree to support export promotion schemes in the Community for the purposes of accelerating development, promoting and facilitating export oriented investments, producing export competitive goods, developing an enabling environment for export promotion schemes and attracting foreign direct investment.
2. (a) The Partner States agree that goods benefiting from export promotion schemes shall primarily be for export.

(b) In the event that such goods are sold in the customs territory such goods shall attract full duties, levies and other charges provided in the Common External Tariff.
3. The sale of goods in the customs territory shall be subject to authorisation by a competent authority and such sale shall be limited to 20 per centum of the annual production of a company.

ARTICLE 26
Duty Drawback Schemes

1. The Partner States agree that, upon exportation to a foreign country, drawback of import duties may be allowed in such amounts and on such conditions as may be prescribed by the competent authority.
2. Duty drawback shall be paid:
 - (a) upon submission of an application to the competent authority within such a period from the date of exportation or performance of the conditions on which drawback may be allowed as the competent authority may prescribe; and
 - (b) on goods or any material used in the manufacture or processing of such goods may be granted in accordance with and subject to such

limitations and conditions as may be prescribed by the competent authority.

3. The implementation of this Article shall be in accordance with the duty drawback schemes specified in the customs law of the Community.

ARTICLE 27

Duty and Value Added Tax Remission Schemes

1. The Partner States agree to support export promotion by facilitating duty and value added tax remission schemes.
2. For purposes of this Article the Partner States may establish duty and value added tax remission schemes.
3. The implementation of this Article shall be in accordance with the duty and value added tax remission schemes specified in the customs law of the Community.

ARTICLE 28

Manufacturing ~~under~~ Bond Schemes

1. The Partner States agree to support export promotion by facilitating manufacturing under bond schemes within their respective territories.
2. The procedure for manufacturing under bond shall allow imported goods to be used in a customs territory for processing or manufacture.
3. Duty and taxes shall be payable on compensating products at the rate of import duty appropriate to them.
4. The implementation of this Article shall be in accordance with the manufacturing under bond schemes specified in the customs law of the Community.

ARTICLE 29

Export Processing Zones

1. The Partner States agree to support the establishment of export processing zones.

2. Entry into an export processing zone shall allow total relief from payment of duty on imported goods used directly in the production of goods for export by a person authorised to carry out that activity in the zone.

3. The implementation of the provisions of this Article shall be in accordance with the East African Community Customs Union (Export Processing Zones) Regulations, specified in Annex VII to this Protocol and the customs law of the Community.

ARTICLE 30
Other Export Promotion Schemes

The Council may, from time to time, approve the establishment of such other export promotion schemes, as may be deemed necessary.

PART G
SPECIAL ECONOMIC ZONES

ARTICLE 31
Freeports

1. The Partner States may provide for the establishment of freeports for the purpose of facilitating and promoting international trade and accelerating development within the Customs Union.
2. The functions of the freeports shall include the following:
 - (a) promotion and facilitation of trade in goods imported into freeports;
 - (b) provision of facilities relating to freeports including storage, warehouses and simplified customs procedures; and
 - (c) provision for the establishment of international trade supply chain centres, where persons from within and outside the Community access and harness market opportunities and enhance competitiveness in import and export trade within the global setting.
3. Goods entering into a freeport shall be granted total relief from payment of duty and any other import levies except where the goods are removed from the freeport for home use.
4. For purposes of this Article, the Partner States may establish an authority to manage the freeports.
5. The implementation of this Article shall be in accordance with the East African Community Customs Union (Freeport Operations) Regulations, specified in Annex VIII to this Protocol.

ARTICLE 32
Other Arrangements

1. The Council may, from time to time, approve the establishment of other special economic arrangements for purposes of the development of the economies of the Partner States.

2. Freeport zones may be established at seaports, riverports, airports and places with similar geographic or economic advantage.

PART H
EXEMPTION REGIMES

Article 33
Exemption Regimes

1. The Partner States agree to harmonise their exemption regimes in respect of goods that are excluded from payment of import duties.
2. The Partner States hereby agree to adopt a harmonised list on exemption regimes which shall be specified in the customs law of the Community.

PART I
GENERAL PROVISIONS

ARTICLE 34
Administration of the Customs Union

The administration of the Customs Union, including legal, administrative and institutional matters, shall be governed by the customs law of the Community.

ARTICLE 35
**Measures to Address Imbalances arising from
the Establishment of the Customs Union**

For purposes of this Protocol, the Council shall approve measures to address imbalances that may arise from the establishment of the Customs Union.

ARTICLE 36
Safeguard Clause

1. In the event of serious injury or threat of serious injury occurring to the economy of a Partner State following the application of the provisions of this Protocol, the Partner State concerned shall, after informing the Council through the Secretary General and the other Partner States, take necessary safeguard measures.
2. The Council shall examine the method and effect of the application of existing safeguard measures and take appropriate decisions.

ARTICLE 37
**Trade Arrangements with Countries and Organisations
Outside the Customs Union**

1. The Partner States shall honour their commitments in respect of other multilateral and international organisations to which they belong.

2. The Community shall co-ordinate its trade relations with foreign countries so as to facilitate the implementation of a common policy in the field of external trade.

3. (a) Upon the signing of this Protocol and before its coming into force, and taking into account, *inter alia*, the provisions of paragraphs 1 and 2 of this Article, the Partner States shall identify the issues arising out of their current relationships with other integration blocs and multilateral and international organisations of which they are members in order to establish convergence on those matters for the purposes of the Customs Union.

(b) For purposes of this paragraph, the Partner States shall, upon the signing of this Protocol formulate a mechanism to guide the relationships between the Customs Union and other integration blocs, multilateral and international organisations.

4. (a) A Partner State may separately conclude or amend a trade agreement with a foreign country provided that the terms of such an agreement or amendments are not in conflict with the provisions of this Protocol.

(b) Where a Partner State intends to conclude or amend an agreement, as specified in paragraph 4(a) of this Article, with a foreign country the Partner State shall send its proposed agreement or amendment by registered mail to the Secretary General, who shall communicate the proposed agreement by registered mail to the other Partner States within a period of thirty days, for their consideration.

(c) Where a Partner State notifies the other Partner States of its intention under paragraph 4(b) of this Article, the other Partner States shall make comments and proposals as they may deem appropriate, within ninety days from the receipt of the Secretary General's notification, before the conclusion or amendment of the agreement.

(d) Following the receipt of the comments and proposals as specified in paragraph 4(c) of this Article, the Secretary General shall convene a meeting of the Council within a period of sixty days to consider the comments and proposals.

(e) Where the Partner States do not submit comments and proposals within the period specified under paragraph 4(c) of this Article, the concerned Partner State may conclude or amend the said agreement.

ARTICLE 38
Inter-linkages with Other Areas of Co-operation

1. The application of this Protocol shall take cognisance of the provisions of the Treaty on other areas of co-operation including co-operation in:
 - (a) environment and natural resources management;
 - (b) standardisation, quality assurance, metrology and testing;
 - (c) sanitary and phyto-sanitary measures;
 - (d) intellectual property rights; and
 - (e) standards and technical regulations on trade.

2. The Partner States shall conclude protocols on the areas of co-operation specified in paragraph 1 of this Article, which shall spell out the objectives, scope of co-operation and institutional mechanisms for co-operation.

ARTICLE 39
Customs Law of the Community

1. The customs law of the Community shall consist of:
 - (a) relevant provisions of the Treaty;
 - (b) this Protocol and its annexes;
 - (c) regulations and directives made by the Council;
 - (d) applicable decisions made by the Court;
 - (e) Acts of the Community enacted by the Legislative Assembly; and
 - (f) relevant principles of international law.

2. The customs law of the Community shall apply uniformly in the Customs Union except as otherwise provided for in this Protocol.

3. The Partner States shall conclude such annexes to this Protocol as shall be deemed necessary.

ARTICLE 40
Annexes to the Protocol

Without prejudice to the provisions of Articles 39(3) and 43 of this Protocol, the Partner States agree to conclude, before the Protocol comes into force, the annexes specified in this Protocol and such annexes shall form an integral part of this Protocol.

ARTICLE 41
Dispute Settlement

1. Each Partner State affirms her adherence to the principles for the administration and management of disputes and shall in particular:
 - (a) accord due consideration to the other Partner States' presentation or complaints;
 - (b) accord adequate opportunity for consultation on representations made by other Partner States; and
 - (c) implement in good faith any decisions made pursuant to the Community's dispute settlement mechanisms.
2. The implementation of this Article shall be in accordance with the East African Community Customs Union (Dispute Settlement Mechanism) Regulations specified in Annex IX to this Protocol.

ARTICLE 42
Amendment of the Protocol

1. This Protocol may be amended by the Partner States in accordance with the provisions of Article 150 of the Treaty.
2. Subject to the provisions of paragraph 1 of this Article, the Council may:
 - (1) with the approval of the Summit, review the annexes to this Protocol and make such modifications as it deems necessary;

- (2) submit to the Partner States proposals for the amendment of the provisions of this Protocol.

ARTICLE 43
Entry into Force

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

ARTICLE 44
Depository and Registration

1. This Protocol and all instruments of ratification shall be deposited with the Secretary General who shall transmit certified true copies of the Protocol and instruments of ratification to all the Partner States.
2. The Secretary General shall register this Protocol with the African Union, the United Nations, the World Trade Organisation, the World Customs Organisation and such other organisations as the Council may determine.

DONE at Arusha, Tanzania, on the 2nd day of March in the year Two Thousand and Four.

IN FAITH WHEREOF the undersigned have appended their signatures hereto:

**FOR THE REPUBLIC
OF UGANDA**

**FOR THE REPUBLIC
OF KENYA**

**FOR THE UNITED REPUBLIC
OF TANZANIA**

.....
**YOWERI KAGUTA MUSEVENI
PRESIDENT**

.....
**MWAI KIBAKI
PRESIDENT**

.....
**BENJAMIN WILLIAM MKAPA
PRESIDENT**

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APP. 21



INSTRUMENT OF RATIFICATION

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





INSTRUMENT OF RATIFICATION

PROTOCOL ON THE ESTABLISHMENT OF THE EAST AFRICAN COMMUNITY CUSTOMS UNION

WHEREAS the Protocol on the Establishment of the East African Community Customs Union was adopted and signed by the Heads of State of the Republic of Kenya, the Republic of Uganda and the United Republic of Tanzania on the 2nd day of March, 2004 in Arusha;

WHEREAS the Protocol shall enter into force upon ratification and deposit of instruments of ratification with the Secretary-General by all Partner States;

NOW THEREFORE, I Hon. Amb. Chirau Ali Mwakwere MP, Minister for Foreign Affairs of the Republic of Kenya, declare that the Government of the Republic of Kenya, having considered the above mentioned Protocol, ratifies the same and undertakes to faithfully perform and carry out the stipulations therein contained.

APP-21

IN WITNESS WHEREOF, this Instrument of Ratification is hereby given under my name and the official seal of the Ministry of Foreign Affairs of the Republic of Kenya.

DONE at NAIROBI this 10th day of December, Two Thousand and Four.



HON. AMB. CHIRAU ALI MWAKWERE, MP
MINISTER FOR FOREIGN AFFAIRS OF
THE REPUBLIC OF KENYA

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MINISTRY OF INVESTMENTS, TRADE, AND INDUSTRY
State Department for Industry
Office of the Principal Secretary

Telephone: +254-(0)020 - 2731520-44
Web: www.industrialization.go.ke
Email: ps@industrialization.go.ke
ps.moied@gmail.com

Social Security House, Block 'A'
Bishops Road, Capital Hill
P.O. Box 30547 - 00100
NAIROBI, GPO
KENYA

When replying, please quote

Ref: MITI/SDI/1/10/VOL.V/(42)

Date: 23rd September, 2024

Mr. Samuel Njoroge
Clerk
National Assembly
Parliament Buildings
NAIROBI.

D/AAGPC
Please deal.
[Signature]
24/09/24

Dear Mr. Njoroge,

RE: REQUEST FOR A STATEMENT ON THE IRREGULAR AND ILLEGAL
GRANT OF TAX EXEMPTION TO BLUE NILE ROLLING MILLS
LIMITED UNDER THE SPECIAL OPERATING FRAMEWORK
AGREEMENT

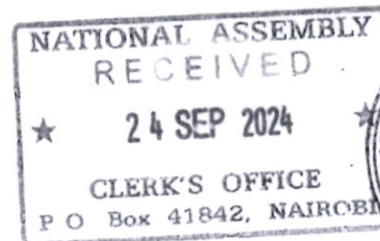
Reference is made to your letter Ref: NA/DAA&GPC/CDL/2024/(097) of 19th September, 2024 this being a response to my letter Ref MITI/SDI/1/10/VOL.V/(40) dated 10th September, 2024 addressed to you and copied to the Cabinet Secretary, Ministry of Investment Trade and Industry, seeking guidance on the above captioned subject.

Your advisory on the Sub-judice rule is well noted, Going forward, we feel more enlightened and empowered to deal with the matter if and when they arise. Having said so, enclosed herewith is a submission on the subject at hand for your information and further necessary action.

We remain available to respond to any additional question that might arise and to offer any clarification that might be needed on the matter.

Yours sincerely,

Juma Mukhwana, PhD, CBS
Principal Secretary



13



**Blue Nile
Rolling Mills Ltd**

Facebook Instagram Twitter @kifarusteel



DATED : 22ND August 2019

Hon. Peter G. Munya, MGH
Cabinet Secretary
Ministry of Industry, Trade and Cooperatives
Nairobi

Dear Sir,

SUB: NEW INVESTMENT IN WIRE GALVANIZING PLANT (32 LINE) IN SUPPORT OF MANUFACTURING PILLAR UNDER THE BIG 4 AGENDA INTENDED TO BE ACHIEVED UNDER THE SPECIAL OPERATING FRAMEWORK AGREEMENT (SOFA)

This is in further to my letter dated 31/05/2019.

In support of the manufacturing pillar under the Big Four national agenda, we propose to setup with the government support a high speed wire galvanizing plant to be located at our existing Thika Factory premises. This will be the first of its kind plant in the entire Eastern Africa region with an installed capacity of 30,000 metric tons per annum. The key salient points of the proposed project are:

Level of Investment

The anticipated Capital investment required to set up and complete the entire project is to the tune of US\$ 19 Million (approximately Ksh 1.9 Billion)

Transfer of technology knowhow

In view of the projects key attributes, the project will be expected to transfer and impart new skills and knowledge to the country and its employees while at the same time supporting the local community and their livelihoods.

In this respect we have appointed a former General Manager working with M/s TATA Steel as our project coordinator and a Senior Engineer from an Indian Iron and Steel Company Ltd who have a wealth of experience to train our local engineers and build resident capacity.

The project had also identified for appointment ten (10) young engineers drawn from our local universities to take training on this project. Some of these young engineers will be seconded on attachment to institutions India and China for on job training. The training will be highly technical intensive.

Levels of Employment Creation

This project is expected to provide direct employment to over 250 to 300 employees and indirect employment to an additional minimum one thousand (1,000) more. The resultant outcome of the skills development will be the creation of a pool of both skilled and semi-skilled workers that will be an asset country and to the regional economy.

Socio Economic Benefits

The project has extensive plans to train local small women entrepreneurs within our operating environment to produce the chain link in their home steads at their leisure.

Factory: Thika off Garissa Rd opp KVM

P.O. Box 1667-01000, Thika

Tel: +254 737 812174 | +254 739 996511

Email: sales@bluenile-group.com | info@bluenile-group.com

Manufacturers of



C T E E I

time and supply them at their local markets. The necessary working tools and equipment shall be provided by the company on loan basis so as to develop the local Cottage industry at the county and district levels. This model has been introduced in India and China where it has been a great success to help alleviate poverty and improve the household income. The introduction and support of this model will be our commitment to the local community.

Regional Demand and our Installed capacity

The EAC regional market demand for Galvanized Wire has been estimated at around 100,000 Metric Tons per annum which is mostly imported into Kenya from India, China and the Middle East countries. However, our installed capacity stands at 30,000 Metric Tons.

Witness Kenya is wholly dependent on the importation of Galvanized wire to meet its local demand, stiff competition from China, India and other countries makes it difficult for any serious investor in Kenya to set up a plant and operate the same in a sustainable manner. The attendant reason for this rational decision by any investor is based on the fact that, most of global producers within this segment enjoy huge government aid and are also low-cost production centres which renders them more competitive than our regional producers.

Value addition and Local Content Component

The manufacturing process will entail significant value addition comprising of almost 100%, in the value addition process. The process of wire galvanizing is similar to that of sheet galvanizing that is used to make Roofing Sheets (Mabati).

Foreign Exchange Saving

Once the project is operational, the country expects to achieve significant foreign exchange savings of over US\$ 15 Million per annum as a result of reduction in importation of Galvanized wire. The project also expects to export 30% of its annual production to COMESA countries thus earning huge Foreign Exchange to the country. Our primary vision is to position ourselves to become a Pan African player and exploit the huge opportunity that will present itself once the Continental Free Trade Area (CFTA) is operational.

Significance of the project under the Big Four Agenda (Manufacturing)

Blue Nile Rolling Mills Ltd has positioned itself as a front runner in its unwavering support to the Big Four Agenda and seeks to partner with the Government of Kenya through the Ministry of Industry, Trade and Cooperative by playing our part in investing in the Galvanized Wire manufacturing process. Through this partnership, we look forward to Government support through the provision of specific incentives to help us achieve our common objective.

Uses of Galvanized Wire

Galvanized wire is mainly used in the manufacturing of Chainlink, Barbed Wire, Gabion Box and Galvanized BRC, Armor cable, Electricity pole strainer, Sheets for low cost housing, Bed springs, Floricultural mesh, Electric fencing, Razor wire, Staple pins, Cloth



MINISTRY OF INDUSTRY, TRADE AND CO-OPERATIVES
OFFICE OF THE CABINET SECRETARY

Telephone: +254 (0)20 2711111/2/3/4
 Web: www.moi.go.ke
 Email: info@mof.go.ke
 Email: info@distribution.go.ke

Social Security House, Block A
 P.O. Box 30547-00100
 NAIROBI, KENYA

Ref. No. MOI/IND/7/78

14th October, 2019

Date:

Hon. (Amb.) Dkur Yafani Kanacho
 Ag. Cabinet Secretary
 The National Treasury & Planning
 P.O. Box 30007
 NAIROBI

Dear CS,

RE: INVESTMENT IN A 32 LINE-NEW WIRE GALVANIZING PLANT IN SUPPORT OF MANUFACTURING PILLAR UNDER THE BIG 4 AGENDA UNDER THE SPECIAL OPERATING FRAMEWORK AGREEMENT (SOFA)

The Ministry has received a request from M/s Blue Nile Rolling Mills Ltd requesting for Government support so as to invest in a 32 Line New Wire Galvanizing Plant under the Special Operating Framework Agreement (SOFA).


The investment by M/s Blue Nile Rolling Mills Ltd under this project is US\$ 19 Million and will consist of a High speed wire galvanizing plant of its kind in the region and will be established at their Thika premises. This investment is expected to create between 250 - 300 additional jobs. We also expect the Project to contribute significantly to the Big Four Agenda under both the Manufacturing and Affordable Housing Pillars.

In this regard, you may wish to note that, this Ministry has been in discussion with the investor with a view to exploring various incentives that maybe provided by Government to the investor for your consideration.

The purpose of this letter, therefore, is to forward the enclosed draft Special Operating Framework Agreement for your consideration and further negotiation before finalization and signing by all parties.

Yours

Sincerely


Hon. Peter Munya, MGH
CABINET SECRETARY

Enc (1)

Copy for:

Dr. Francis O. Owino, PhD
Principal Secretary
State Department for Industrialization
NAIROBI

Mr. Kotni Rao
Chairman
Blue Nile Rolling Mills Ltd
Thika off Garissa Road Opp KVM
THIKA

PRINCIPAL SECRETARY
THE NATIONAL TREASURY

24 OCT 2023

RECEIVED

P.O. Box 30007 - 00100, NAIROBI



MINISTRY OF INVESTMENTS, TRADE, AND INDUSTRY
State Department for Industry

Office of the Principal Secretary

Telephone: +254-(0)20-2731531-9
0704097021/23, 0788484840/41
Web: www.industrialization.go.ke
Email: ps@industrialization.go.ke

Social Security House, Block 'A'
Bishops Road, Capital Hill
P.O. Box 30547 - 00100
NAIROBI, GPO
KENYA

When replying, please quote

Ref. MITI/SDI/7/18

Date: 23rd October, 2023

Dr. Chris Kiptoo, PhD, CBS
Principal Secretary
The National Treasury
Nairobi

Dear Dr. Kiptoo,

DUTY REMISSION ON TARIFF NO. 7213.91.10

In the legal notice No. EAC/363/2023; the East African Community gazettered the above-named duty remission for Roofings (K) Ltd (40,000 MT); and Blue Nile Rolling Mills Ltd (32,000MT).

I have been directed to instruct you that these items be degazetted owing to the fact that the items are available in large quantities in the country.

The purpose of this letter is to request to degazette this duty remission in order to support local manufacturing.

Dr. Juma Mukhwana, PhD, HSC
PRINCIPAL SECRETARY

Copy to: **Mr. Abdi Dubat**
Principal Secretary
State Department for East African Community
Co-op Bank Building
Haile Selassie Avenue
P.O. Box 88461 - 00200
Nairobi



A11/22
EACC
(7)

REPUBLIC OF KENYA
THE NATIONAL TREASURY AND ECONOMIC PLANNING

Telegraphic Address: 22921
FINANCE – NAIROBI
Fax No. 315779
Telephone: 2252299

THE NATIONAL TREASURY
P.O. Box 30007 - 00100
NAIROBI, KENYA

Ref. No: DFN 415/411/011 VOL.I (7)

19th July, 2024

Dr. Juma Mukhwana, PhD, CBS
Principal Secretary
State Department for Industry
Ministry of Investments, Trade and Industry
P.O. Box 30418 – 00100
NAIROBI

Dear *PS*

RE: REVIEW OF SPECIAL OPERATING FRAMEWORK AGREEMENTS (SOFAs) AND NEED FOR POLICY DIRECTION ON THE EXISTING ONES

Reference is made to the above subject matter and several communications to the National Treasury on the above subject. Some of the letters include, a letter Ref No. MITI/SDI/EXP/VOL.4/10 dated 15th March, 2024 (copy attached) proposing review of the Export and Investment Promotion Levy in order to protect local manufacturers from completion arising from imported goods that have negative impact on growth and sustainability of the local industries that produce similar goods. Further, the Ministry of Investments, Trade and Industry wrote to the National Treasury through a letter Ref. No. MITI/SDI/EXP/VOL.4/103 dated 21st March, 2024 (copy attached) submitting a revised list of products that should be subjected to the Export and Investment Promotion Levy. The letter advised that the Levy should not include goods imported by firms operating under the Special Operating Framework Agreement (SOFA).

The National Treasury further makes reference to a letter from the Office of the Attorney General and Department of Justice Ref No. AG/CONF/21/68 Vol. II dated 17th November, 2023 (copy attached), that gave advisory that the Government committed to bear any adverse changes in taxation in respect to the incentives

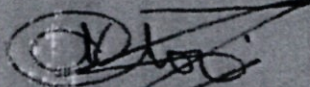
under the SOFA for 10 years from the commencement date of the Agreement; that the SOFA created legitimate expectations on parties for the fulfilment of obligations thereunder. The parties therefore have a duty to fulfil their respective obligations under the Agreement; that the Ministry of Investments, Trade and Industry should consider rescinding the advise to the national Treasury to revoke the gazette on duty remission that was being enjoyed by Blue Nile Rolling Mills Limited as communicated vide through a letter dated 23rd October, 2023 to the National Treasury; and in the event the decision is not rescinded, and the parties aggrieved raise a dispute under the SOFA Arbitration clause, then there is likelihood of an award being issued against the Government thus exposing the Government to Liability.

In a meeting held on 17th June, 2024 at State House, it was agreed that there is need to review the existing Special Operating Framework Agreements. These Agreements are discriminative and create unfair playground to firms not enjoying similar incentives. In addition, the tax incentives provided under SOFA contributes to tax expenditure, which the Government is rationalizing continuously.

The purpose of this letter is to request you to review the existing SOFAs and provide policy direction.

Yours

Sincerely



DR. CHRIS KIPTOO, CBS

PRINCIPAL SECRETARY/THE NATIONAL TREASURY

ENCLS: Copy of letter Ref No. MITI/SDI/EXP/VOL.4/10 dated 15th March, 2024
Copy of letter Ref. No. MITI/SDI/EXP/VOL.4/103 dated 21st March, 2024
Copy of letter Ref No. AG/CONF/21/68 Vol. II dated 17th November, 2023



Our Ref: KAM/I 0/27/dm/jmw/mb/jw/TA/2024

20th September 2024

Mr. Samuel Njoroge

The Clerk, National Assembly

Parliament of Kenya, Parliament Buildings

P.O Box 41842 - 00100

NAIROBI

Dear Mr. Njoroge,

RE: REQUEST FOR A STATEMENT ON THE IRREGULAR AND ILLEGAL GRANT OF EXEMPTIONS TO BLUE NILE ROLLING MILLS LIMITED COMPANY UNDER THE SPECIAL OPERATING FRAMEWORK AGREEMENT

Kenya Association of Manufacturers (KAM) presents her compliments on behalf of its members.

Reference is made to your letter reference **REF: NA/DAA&GPC/CDL/2024/ (096)** dated 19th September 2024. The purpose of the letter was to request a statement on the irregular and illegal grant of exemptions to Blue Nile Rolling Mills Limited Company under the Special Operating Framework Agreement.

In view of the above request, KAM wishes to make the following submissions:

- i) KAM was not involved in the process of granting the SOFA and thereby has no visibility of its beneficiaries and was never consulted. KAM has written to the Government agencies to share more information on the same.**
- ii) KAM was made aware of the matter through complaints from its members. 8 letters were received citing the distortion the scheme has caused to the steel industry (see attached letters).**
- iii) KAM welcomes incentive schemes by the Government to attract both local and foreign investment, however, any schemes which are causing disruption in the manufacturing value chain and creating an unlevel playing field are not supported by KAM.**
- iv) KAM is aware that the matter is before the courts and the ideal approach is to give a chance for the judges to give their verdict.**
- v) KAM is of the view that any incentives issued by the government should undergo a rigorous process including public participation to give transparency and accountability.**

Any advance feedback on this matter can be sent through ceo@kam.co.ke or call +254 20 2324817/8.

We look forward to your consideration.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Tobias Alando', written over a circular stamp or mark.

Tobias Alando
Ag. CHIEF EXECUTIVE

08th JULY 2024.

Minister For Investments, Trade and Industry,
Ministry of Investments, Trade and Industry.
Social Security House, Block A, 23rd Floor.
P.O. Box 30418-00100, Nairobi, Kenya.
Nairobi , Kenya.

Honorable Minister,

**RE: REQUEST FOR TAX EXEMPTION FOR M/S ABYSSINIA IRON & STEEL LTD
FOR RAW MATERIALS AND PRODUCTION INPUTS UNDER SPECIAL
OPERATING FRAMEWORK AGREEMENT.**

Abyssinia Iron and Steel Ltd, extends greetings and well wishes to your honorable office.

We kindly submit to the Ministry, our request for Special Operating Framework status given the recent investments and enhancement of our Steel Manufacturing production facilities in Kenya.

Our company wishes to update you on the investments we have done so far in Kenya as follows

PLANT	TOTAL ASSET VALUE IN KSH
ATHI RIVER	3,179,619,686.39
AWASI	3,660,694,214.99
ELDORET	1,237,188,573.38
KISUMU	1,645,263,864.53
MARIAKANI	5,896,337,549.76
KITENGELA	1,398,233,214.00

In light of our investments and a plea to develop further on the Kenyan horizon, we request for your support and cooperation for granting Tax exemptions on Raw materials, Spare Parts, and all allied inputs / materials' Import duty, VAT, IDF levy, Railway Development levy and Export Promotion levies.

A detailed write up on some of the additional recently commissioned investments at our production facilities in Mariakani and Kisumu is attached here in for your kind perusal.

We have requested for this exemption considering the impact of this investment is expected to have in the country. The investments done are technologically advanced and will provide a gateway for skill developments for Kenyans and support GDP growth via increased exports.

The investments done for enhancing our steel production facilities is further set to pave way for industrial and socio-economic growth of the nation and is also set to create direct and indirect job opportunities for hundreds of Kenyans.

Such SPECIAL OPERATING FRAMEWORK, has been granted to other Steel Products Manufacturers in Kenya in the very recent past, and it is our humble request the same to be considered for Abyssinia Iron and Steel Ltd in order for our significant Investment to be at a similar competitive level with the other Steel Products Manufacturers who are enjoying this SPECIAL OPERATING FRAMEWORK and facilitate further growth opportunities.

We assure the Ministry that we shall abide and comply with all stated and stipulated requirements for SPECIAL OPERATING FRAMEWORK.

By virtue of this letter, M/s Abyssinia Iron & Steel Ltd, humbly thank you for your consideration in advance and hope to hear back positively from you soon.

Yours Faithfully

ABYSSINIA IRON & STEEL LTD
P.O. Box 1408-00606
Director HEAD OFFICE, NAIROBI
Abyssinia Iron & Steel Ltd.

CC.
CEG - KENYA ASSOCIATION OF MANUFACTURERS (KAM).

Kenya Operations:

1. Ladle Refining Furnace at Mariakani:

The ladle refining furnace (LRF) process has recently become popular among steel manufacturers for the production of clean steel. Large-scale infrastructure projects, ports, bridges, dams, as well as high-rise buildings all of these projects, need the use of high-grade TMT bars and LRF is the ideal process for producing high-quality construction-grade TMT bars.

Ladle Refining Furnaces (LRF) is used once the basic steel has been produced in an oxygen furnace, arc furnace, or induction furnace. The steel is then transferred to the ladle for further refining, viz chemistry adjustment, inclusion and impurities removal and homogenization of temperature. The treatment of liquid steel is carried out in the ladle. As additional heat is required for this operation, the heat source is provided through arcing with help of three graphite electrodes. LRF improves the quality of steel by refining and heating and is called secondary metallurgy. The LRF can also be used as a hold station for molten metal for the casting process.

Advantages of the LRF:

1. Homogenization of chemical composition and temperature of molten steel.
2. Deoxidization or removal of oxygen inclusions
3. Heating of the liquid steel to a temperature suitable for continuous casting
4. Reduction of hydrogen and nitrogen
5. Reduction of Sulphur concentration
7. Reduction of unwanted non-metallic elements
8. Improvement in toughness, ductility, and transverse properties of steel
9. Optimize specific consumption of ferro-alloys
10. Increases productivity as the melting furnace gets emptied quicker

Investment Costs on the LRF:

Unit	Approx Cost of Investment in USD
Total Investment for the LRF at Mariakani Plant	\$ 2,500,000/=

2. Wire drawing lines for Value Added Products at Mariakani:

With augmentation of the wire rod mill, the window for downstream processes and value chain products opens up. The wire products facility will house a fleet of wire drawing lines, nail headers and other value chain products. Wire rods after subjecting to cold drawing process will produce wires for various applications.

Wire drawing is a cold metal working process which draws the wire rods through a series of dies to reduce the cross section of the wires. It uses fluxes and lubricants to avoid die damage and avoid generating high temperatures that may interfere with the chemistry of wire rods. The area reduction in small wires is

generally between 15–45% depending upon the subsequent processes and product application. As the wire is pulled through the die, its volume remains the same, so as the diameter decreases, the length increases.

AGI has developed high carbon drawn wires to cater the needs of special products for mattress industry which presently is importing wires from overseas. Equally to fulfil the requirements on binding wire for the extensive construction sector, AGI invested in high-speed draw line from Tier 1 supplier from Europe for production of highest quality product.

Investment Costs on the Wire Drawing Facility:

Cost Head	Approx Cost of Investment in USD
Total Investment for the Wire section	\$ 1,500,000/=

3. Upgrade of Wire Annealing and Galvanized Wire Production Line at Mariakani Plant:

Hot dip galvanized iron wire is produced by drawing, heating, and then drawing a wire rod, and finally coating the surface with zinc through a hot-dip process. Production process comprises of uncoiling the wire on a wire payoff, passing it through the inline annealing furnace for degreasing and softening of the wire, surface treatment of wire by passing through an acid concentration chamber for pickling of surface, rinsing station to remove acid from surface, coating it with special flux before entering the zinc pot, passing the surface treated wire through the a drying chamber for preheating the surface, passing the wire through a pool of liquid zinc in the ceramic lined zinc pot, inclined pad wiping to squeeze out excess zinc from the wire surface and giving it an uniform coat, passing through a wax chamber to provide glaze and rust prevention and recoiling the wire at the take-up with pattern laying of the wire for bundling and packing.

AGI has been producing high quality annealed and galvanized wires which has met customer satisfaction and the demand for this product has been increasing month on month. AGI is uniquely positioned in the EAC market owing to the technology adopted from the top most technology provider from Europe. Foreseeing, this additional demand, AGI upgraded its present line from 16 wires to 22 wires that will give 33% higher production capacity.

Investment Costs on the Upgrade of the Wire Annealing & Galvanized Wire Production Facility:

Cost Head	Approx Cost of Investment in USD
Total Investment for the Upgrade for Wire Annealing & Galvanized Line	\$ 800,000/=

4. BRC & Welding Mesh Line at Kisumu:

The demand for AGI make BRC and welding mesh has increased owing to the superior quality of products manufactured by AGI with the manufacturing facilities and steel production processes. To uplift the production and cater to these rising demands, AGI invested in another combined line to manufacture a Fabric Mesh and welding mesh line. The technology is similar to existing AGI lines for high quality production of these products.

The mesh is manufactured by advancing an array of longitudinal wires through a welding machine having a row of electrodes and welding transverse wires to the array by means of resistance welding. To avoid embrittlement of the material of the wires in the region of the weld due to rapid temperature changes, special care is taken. The longitudinal wires are advanced intermittently past stationary welding electrodes. 6 to 20 wires depending on the type of mesh are fed horizontally, parallel to one another over rollers to the machine. Distance between these wires is as per design. From the machine, a cross wire over tapping the parallel wires is fed and all the joints are electrically welded. The rollers move the parallel wires further and another cross wire comes in at specified distance. The process goes on, to give a wire mesh of desired specification. The welded wire mesh is pulled out for making rolls.

Investment Costs on the BRC & Welding Mesh Manufacturing Facility:

Cost Head	Approx Cost of Investment in USD
Total Investment for the BRC & Welding Mech line at Kisumu	\$ 900,000/=

ACC

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MANUFACTURERS OF:-

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C.R.C.A SHEETS, NAILS, WELD MESH, B.R.C, BINDING WIRE, BARBED WIRE,
CHAIN LINK, BOLTS & NUTS, RIVETS AND OTHER FASTENERS.

Ricky Road (Off Enterprise Rd.)
P.O. Box 74332 - 00200 Nairobi - Kenya
Tel: (254) 0798 363 644, 0710 610 313,
0733 610 313, 0203535208
Email: avraj@accurate.co.ke, info@accurate.co.ke,
accurate@bhachuind.co.ke

05th July 2024

The Chief Executive Officer,
Kenya Association of Manufacturers,
KAM House, 15 Mwanzi Road,
Nairobi.

Attention: Mr. Anthony Mwangi

Dear Sir,

Re: Importation of Billets (HS Code 7207.11) Without Payment of Any Taxes

It has been brought to our attention by a supplier of raw materials to our factory that a company within Kenya has imported billets under the HS Code listed above, without payment of any taxes as summarized below. We have requested proof, given that we are very clear with the policies in place within the country, however we have seen a redacted import declaration form that does not disclose the importing company, but clearly states an entry of 2,862.03 Metric Tons of MS Billets, from South Africa.

The entry goes further to state that the applicable value for duties should have been imposed on around 210,000,000 Kenya Shillings worth of goods but has clearly been exempted with 0% rated factor in all duty elements.

- *EAC Duty (Stay of Application): * 10.00%
- *Export & Investment Promotion Levy: * 17.50%
- *Import Declaration Levy: * 2.50%
- *Railway Development Levy: * 1.50%
- *VAT: * 16.00%
-

Total: 47.50%

Upon further inquiry with the supplier, they notified us that the supplier in question has been registered under a Special Operating Framework Agreement (SOFA) within the country. On closer inspection of said framework, we understand a clear level of investment within the country has to have been above a figure of 10 Billion Kenya Shillings.

The Bhachu Group of Companies, comprising Bhachu Industries Limited and Accurate Steel Mills Limited has invested will in excess of Kshs 10 Billion within the country and employs thousands of individuals.

It is alarming to us that one importer can proceed with blatant favoritism, circumventing a set process that is in place in not only Kenya, but the East African Community which agreed to Kenya's stay of application for a 10% duty on billets to protect local manufacturers. Despite this, the same product is being imported into Kenya without any taxes.

Please note, with seriousness and severity, that a move like this for a single manufacturer will not only destabilize the market, but cause manufacturers to shutdown their business. In our case, a group which has stood within Kenya for more than 3 generations for 50 years will be forced to close down.

Therefore, we request you to independently verify the Customs Entry, investigate the importer, and take the necessary action to recover the unpaid taxes and stop such imports completely.

Thank you for your continued support.

Regards,



Avraj Bhachu,
Managing Director,
Accurate Steel Mills Limited.

ACCURATE STEEL MILLS LTD.
P. O. Box 74332 - 00200,
NAIROBI.

DIRECTORS: DAVINDER S. BHACHU, AMARJIT S. BHACHU, PEVER S. BHACHU, AVRAJ S. BHACHU



JUMBO STEEL MILLS LIMITED

NDOVU MATTRESS

NDOVU MOULDERS

STEEL DIVISION

HARDWARE DIVISION

5th July 2024

KENYA ASSOCIATION OF MANUFACTURERS
KAM, 5TH FLOOR
MWANZI ROAD, OPPOSITE WESTGATE MALL
P O BOX 30225-00100
NAIROBI

ATTENTION: CHIEF EXECUTIVE OFFICER- MR ANTHONY MWANGI

Dear Sir/Madam

**RE: SPECIAL OPERATING FRAMEWORK AGREEMENT IN THE STEEL SECTOR
ALLEGEDLY PROVIDED TO BLUE NILE ROLLING MILLS LIMITED**

I wish to bring to your attention that Blue Nile Rolling Mills Limited has been benefiting from a program known as the Special Operating framework agreement. This program is eligible for companies who have signed government to government agreements, Manufacturers of Vaccines and companies with investments of KES 10 Billion.

I would like further clarifications on how this exemption was issued and its legality in totality as this has created unfair competition in the sector as the framework provides for several benefits against Levy, Duties and Taxes. The Government of Kenya has lost Billions of shillings in taxes due to this framework being granted.

Sincerely,

Harsh Patel

Director

Jumbo Steel Mills Limited

JUMBO STEEL MILLS LIMITED
P. C. BOX 99029 - 80107
RABAI - KILIFI COUNTY

+254 777 777 770

info@jumbosteel.co.ke

P.O.Box: 2053 - 40100
Kisumu, Kenya



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Head office: P. O. Box 81292, Mombasa, Tel: 041 2495852 Email: murtaza@tarmalsteel.com
Mobile: 0737 502965 / 0729 516172 / 0733 331786 Website: www.tarmalsteel.com

9th July 2024

Ref: KAM/SFA/001

The CEO,
Kenya Association of Manufacturers,
KAM House, 15 Mwanzi Road,
Nairobi.

To: Mr. Anthony Mwangi,

Dear Sir,

RE: SPECIAL TREATMENT PROVIDED FOR IMPORTATION OF STEEL RAW MATERIALS.

It has recently come to our attention that allegedly Blue Nile Rolling Mills Ltd is importing steel raw material i.e. Wire rods and Billets without having to pay the required duties, levies and other import taxes. This unfair advantage is significantly affecting our company and will leave us in a dire situation and eventually out of business.

We urgently request you to investigate this matter and take the necessary steps forward to safeguard our industry.

Thank you in advance.

Murtaza Tarmal



DIRECTORS: NOORALI .N, MUKARRAM .N & MURTAZA .N 6894

RKL/KAM/09/07/2024

09th July 2024

The Chief Executive Officer,
Kenya Association of Manufacturers,
Nairobi, Kenya.

Dear **Mr. Anthony G Mwangi,**

RE: Serious and Urgent concern on import of steel wire rods in Kenya without paying applicable duties (Import Duty, VAT, Import Levy, RDL, IDF).

We as RKL (Roofings Kenya Limited) are manufacturers of Galvanized wires of various grades and sizes based in Mombasa, Kenya. Steel wire rods is our basic raw material which constitutes almost 75-80% of cost for producing Galvanized wires. Currently we are procuring steel wire rods from a local manufacturer in Kenya and as well importing from outside after paying all applicable duties and taxes.

We have learnt from various sources and it's evident from prices being offered in the market by the competition that few manufacturers of galvanized wires in Kenya are importing steel wire rods without paying any duties as per the Kenyan customs laws.

Few such customs declarations/entries are available which clearly shows that few such companies (manufacturers of galvanized wires) have imported steel wire rods without paying Import duty (25%); Export and Investment promotion (17.5%); VAT (16%); Railway Development Levy (1.5%); Import Declaration Fee (2.5%). Only Merchant Shipping Superintendent Levy (\$0.5/ton) is being paid. Total violation is about 62.5% on the CFR value of steel wire rods.

In this unusual situation, we as RKL are not able to manufacture and sell our products in the market. Gap between our production cost and prices being offered by the competition is extremely large. We are completely out of the market because of the unfair practices and/or special status provided to some other companies for importation of steel wire rods.

We have over 150 employees working for RKL. In case these practices continue, **we will not be able to continue production and will be forced to terminate the employment of our employees for none of their faults.**



ROOFINGS

Strength of a nation

KENYA

We want your immediate attention to take up this matter with the authorities concerned. This special provision given to a few companies should be immediately withdrawn and companies should pay duties and taxes for the material already imported under cover of the special provision. This is the only way to maintain fair business practices in Kenyan market.

Thank you for your time and consideration.

Yours Sincerely,

Sunil Anand
CEO – Roofings Kenya Limited
Mombasa, Kenya.

cc:

The Chairman – Metal Sector (KAM)

The Chairman – Wire Sub Sector (KAM)

Nail & Steel Products Limited



10th July, 2024

Chief Executive Officer,
Kenya Association of Manufacturers,
15 Mwanzi Road,
Nairobi

Dear Sir,

Re: Special Operating Framework Agreement (SOFA)

We have been made to understand that SOFA has been granted to one manufacturer in the Wire Industry. The benefits attained under this framework to the manufacturer has made us very uncompetitive in the Kenyan and Export Market. We have been supporting the local producer of Wire Rod from the time the plant was incepted and since the duty and levies were imposed.

The local producer of Wire Rod charges USD 800 per tonne delivered to our warehouse in Nairobi whereas under the SOFA scheme, the wire rod price ex-nairobi would be USD 600. This creates a disparity of USD 200 per tonne. The manufacturer under the SOFA scheme is also doing down-stream production, hence we are uncompetitive.

If this scenario continues, we will be unable to compete in the market and will have no option but to lay off approximately 250 workers in our wire division and shut down our manufacturing facility.

This matter is extremely serious and would request your undivided attention to address this issue immediately.

Thank you

Yours sincerely,

Neelkamal Shah

Managing Director

Kampala Road off Enterprise Road,
Industrial Area
P.O Box 17690 – 00500,
Nairobi, Kenya.

Tel: +254 20 6531172/557588/550194-5/8068190-1
Fax: +254 20 557589, 0773002843, 0773002845

E-Mail: info@nsp ltd.com

Directors:

Mr. R.N.Shah (Kenyan)

Mr. N.R. Shah(Kenyan)

Mr. H.N. Shah(British)



DEVKI STEEL MILLS LTD.

HO. OFF THIKA ROAD, RUIRU TOWN. P. O. BOX 33319 - 00600, NAIROBI, KENYA
Tel: +254 756 020 000 / +254 709 110 000, E-mail: info@devkisteel.com
Website: www.devkigroupke.com

4th July 2024

Ref: DSML/KAM/481/472024

**KENYA ASSOCIATION OF MANUFACTURERS
KAM HOUSE, 5TH FLOOR
MWANZI ROAD, OPPOSITE WESTGATE MALL
P O BOX 30225-00100
Nairobi**

Kind Attn: Jane Karuku - The Chairperson
Mr. Anthony Mwangi - Chief Executive Officer
Mr. Bobby Johnson - Metal Sector Chairman

Dear Madam/Sirs

RE: (SOFA) SPECIAL OPERATING FRAMEWORK AGREEMENT PROVIDED TO BLUE NILE ROLLING MILLS LIMITED

We refer to the above mater whereby the above company has been provided a **Special Operating Framework Agreement** illegally.

As per Kenyan Law SOFA is provided only to special manufacturers of Human Vaccines or Government to Government Agreements and Investments which are over **KShs.10.0Billion**.

According to our information, the above company does not pay any taxes

- a. No VAT
- b. No IDF
- c. No RDL
- d. No Duty
- e. No Investment promotion levy) on imports of raw materials (wire rods, billets).

Further as per our information the income tax rate for this particular company is reduced from normal **35% to 10%**. The Government is losing over **KShs.30.0Billion in taxes**, which at this time the Government is badly looking for taxes to support it's expenditure.

Our Group has invested over **USD1.0Billion, equivalent to KShs.133.0Billion** in this sector. It is unfair for us and other similar industries in Kenya who have invested heavily, employing thousands of Kenyans, when one person is provided SOFA.

KAM is still unaware of this illegally provided framework which is ongoing since the past five years (from 2020).

We urgently request KAM to take immediate and appropriate action on the above company to save all the industries from this unfair and unethical practice; and also save the Government of Kenya which is losing over KShs.30Billion in taxes from one company as they have obtained SOFA illegally.

Thanking you.

FOR: DEVKI STEEL MILLS LIMITED



KAUSHIK PANDIT
MANAGING DIRECTOR



Leilah K. Koya



DIAMOND MARK
OF QUALITY

PIN NO: P051170664U

VAT NO: 0149791U
05th July, 2024



TONONOKA

ROLLING MILLS LTD



The Chief Executive Officer,
Kenya Association of Manufacturers,
KAM House, 15 Mwanzi Road,
NAIROBI.

Attention: Mr. Anthony Mwangi

Dear Sir,

RE: IMPORTATION OF BILLETS (HS CODE 7207.11) WITHOUT PAYMENT OF ANY TAXES

We wish to draw your attention to the enclosed Customs Entry dated 21/06/2024. The entry is for 2,862.03 Tons MS Billets (HS Code 7207.11) from South Africa. It is quite surprising to note that the item which is subject to the below taxes has not incurred any Taxes except MSS Levy:

EAC Duty (Stay of Application)	10.00%
Export & Investment Promotion Levy	17.50%
Import Declaration Levy	2.50%
Railway Development Levy	1.50%
VAT	<u>16.00%</u>
Total	<u>47.50%</u>

In other words, the product for which the manufacturers have been negotiating on a framework to support local manufacturing is being imported completely Free of Taxes.

Further, the East African community has agreed to Kenyan stay of application for 10% Duty on Billets to protect the local manufacturers whilst the same is being imported by Kenya without any taxes.

Even our group has made significant investments (8 – 10 billion Kshs.) and employ several thousand people. Such a blatant favoritism towards one importer will render our industry completely incompetent and manufacturers like us shall shut down.

Therefore, we request you to kindly verify the Customs Entry independently, investigate the Importer and finally take the necessary action to recover the un-paid Taxes and stop such imports completely.

Thank you for your continued support.

Yours faithfully,
TONONOKA ROLLING MILLS LTD.

CHIEF EXECUTIVE
Dharmesh Savla

Cc The Chairman – Metal & Allied Sector



Email: trm@tononokasteels.com Web: www.tononoka.com
"At the Core of every Construction"

KAM

DIRECTORS: NAVIN SAVLA. SARTH SAVLA. RISHI SAVLA. DHARMESH SAVLA



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www.parliament.go.ke/the-national-assembly

When replying, please quote

REF: NA/DAA&GPC/CDL/2024/ (082)

22nd August, 2024

Dr. Juma Mukhwana, PhD.,CBS
Principal Secretary
State Department for Industry
Ministry of Investments, Trade and Industry
Social Security House, Block "A"
NAIROBI

Dear *Sir*,

RE: REQUEST FOR A STATEMENT ON THE IRREGULAR AND ILLEGAL GRANT OF TAX EXEMPTIONS TO A COMPANY UNDER THE SPECIAL OPERATING FRAMEWORK AGREEMENT.

The Committee on Delegated Legislation is established under Standing Order No. 210 of the National Assembly's Standing Order. It is mandated to consider statutory instruments in accordance with the provisions of the Constitution, the Statutory Instruments Act Cap 2A and the Act pursuant to which it is made or other relevant written laws.

On 31st July, 2024, the Hon. John Kwanjiku, MP, (Kiambaa Constituency) requested for a statement regarding irregular and illegal grant of tax exemptions to the Blue Nile Rolling Mills Limited under the Special Operating Framework Agreement (copy attached). The statement was subsequently referred to the Committee on Delegated Legislation for consideration.

At its meeting held on 21st August, 2024, the Committee noted that, the Ministry of Industry, Trade and Cooperatives then, was a party to the Special Operating Framework Agreement granting tax exemptions to M/s Blue Nile Rolling Mills Limited. It therefore resolved to invite you to provide written response on the Statement particularly, on the chronology of events leading to the signing of the Agreement, and to clarify any other issue that may arise during consideration of your submission.

This is therefore to invite you to a meeting with the Committee on **Tuesday, 27th August, 2024** in **Room 21, 5th Floor, Bunge Tower at 10.00 a.m.** to brief it on the Statement.

You are requested to avail twenty (20) hard copies of the response and any other relevant document to the Committee during the said meeting.

The officer facilitating this meeting is **Ms. Esther Nginyo** who may be contacted on **Tel. No. 0722262228** or email address: esther.nginyo@parliament.go.ke .

Yours

Sincerely,


Serah M. Kioko, MBS
For: Clerk of the National Assembly

Copy to:

Hon. Salim Mvurya Mgala, EGH
Cabinet Secretary
Ministry of Investments, Trade and Industry
Social Security House, Block "A"
NAIROBI



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When replying, please quote

REF: NA/DAA&GPC/CDL/2024/ (083)

22nd August, 2024

Mr. Tobias Alando
Chief Executive Officer
Kenya Association of Manufacturers House, 5th Floor,
15th Mwanzi Road, Opposite West Gate Mall

Westlands
NAIROBI

Dear *Sir*

RE: REQUEST FOR A STATEMENT ON THE IRREGULAR AND ILLEGAL GRANT OF TAX EXEMPTIONS TO YOUR COMPANY UNDER THE SPECIAL OPERATING FRAMEWORK AGREEMENT.

The Committee on Delegated Legislation is established under Standing Order No. 210 of the National Assembly's Standing Order. It is mandated to consider statutory instruments in accordance with the provisions of the Constitution, the Statutory Instruments Act Cap 2A and the Act pursuant to which it is made or other relevant written laws.

On 31st July, 2024, the Hon. John Kwanjiku, MP, (Kiambaa Constituency) requested for a statement regarding irregular and illegal grant of tax exemptions to the Blue Nile Rolling Mills Limited company under the Special Operating Framework Agreement (copy attached). The statement was subsequently referred to the Committee on Delegated Legislation for consideration.

At its meeting held on 21st August, 2024, the Committee considered the Statement and resolved to invite the Kenya Association of Manufacturers as the umbrella body for the manufacturers, to provide a written response on the Statement, and clarify any issue that may arise during consideration of your submission.

This is therefore to invite you to a meeting with the Committee on **Tuesday, 27th August, 2024** in **Room 21, 5th Floor, Bunge Tower at 10.00 a.m.** to brief it on the Statement.

You are requested to avail twenty (20) hard copies of the response and any other relevant document to the Committee during the said meeting.

The officer facilitating this meeting is **Ms. Esther Nginyo** who may be contacted on **Tel. No. 0722262228** or email address: esther.nginyo@parliament.go.ke .

Yours *Sincerely,*



Sarah M. Kioko, MBS
For: Clerk of the National Assembly



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Nairobi, Kenya
Main Parliament Buildings

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www.parliament.go.ke/the-national-assembly

When replying, please quote

REF: NA/DAA&GPC/CDL/2024/ (081)

22nd August, 2024

The Managing Director
Blue Nile Rolling Mills Limited
Thika, Off Thika- Garissa Road
P.O Box 1667-00100
NAIROBI

Dear *Sir*

RE: REQUEST FOR A STATEMENT ON THE IRREGULAR AND ILLEGAL GRANT OF TAX EXEMPTIONS TO YOUR COMPANY UNDER THE SPECIAL OPERATING FRAMEWORK AGREEMENT.

The Committee on Delegated Legislation is established under Standing Order No. 210 of the National Assembly's Standing Order. It is mandated to consider statutory instruments in accordance with the provisions of the Constitution, the Statutory Instruments Act Cap 2A and the Act pursuant to which it is made or other relevant written laws.

On 31st July, 2024, the Hon. John Kwanjiku, MP, (Kiambaa Constituency) requested for a statement regarding irregular and illegal grant of tax exemptions to the Blue Nile Rolling Mills Limited company under the Special Operating Framework Agreement. The statement was subsequently referred to the Committee on Delegated Legislation for consideration.

At its meeting held on 21st August, 2024, the Committee considered the Statement and resolved to invite the Management of Blue Nile Rolling Mills Limited to provide a written response on the Statement, and clarify any issue that may arise during consideration of your submission.

This is therefore to invite you to a meeting with the Committee on **Tuesday, 27th August, 2024** in **Room 21, 5th Floor, Bunge Tower at 10.00 a.m.** to brief it on the Statement.

You are requested to avail twenty (20) hard copies of the response and any other relevant document to the Committee during the said meeting.

The officer facilitating this meeting is **Ms. Esther Nginyo** who may be contacted on **Tel. No. 0722262228** or email address: esther.nginyo@parliament.go.ke .

Yours *Sincerely,*



Serah M. Kioko, MBS

For: Clerk of the National Assembly



**THE NATIONAL ASSEMBLY
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Nairobi, Kenya
Main Parliament Buildings

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When replying, please quote

REF: NA/DAA&GPC/CDL/2024/ (070)

14th August, 2024

Dr. Chris K. Kiptoo, PhD., CBS
Principal Secretary
The National Treasury
The National Treasury and Economic Planning
Treasury Building, Harambee Avenue
NAIROBI

Dear *Sir*

RE: REQUEST FOR A RESPONSE ON A STATEMENT REGARDING IRREGULAR AND ILLEGAL GRANT OF TAX EXEMPTIONS TO A COMPANY UNDER THE SPECIAL OPERATING FRAMEWORK AGREEMENT

Reference is made to your letter Ref. TNT/CONF 268/014 'L'(11) dated 8th August, 2024 nominating Mr. Musa Kathanje, the Director, Macro and Fiscal Affairs in the National Treasury, to represent you during the Committee on Delegated Legislation meeting of Thursday 13th August, 2024 on the above subject matter.

During the meeting, the Committee noted that the information submitted by the National Treasury was insufficient to address all matters raised in the Statement. Specifically, the Committee noted that the following critical documents were missing in your submissions-

1. Legal notice relied on to support the exemptions;
2. A copy of the agreement between the Ministry and the exempted Company;
3. A copy of the amendment to the original agreement which was reference in the submission;
4. A copy of Legal advice from the office of the Attorney General
5. Evidence on ownership of the beneficiary company, including company directors and their shareholding; and
6. Any other relevant document relied on by the National Treasury in executing the matter.

Subsequently, the Committee resolved to invite you to a meeting on **Wednesday, 21st August, 2024** in **Committee Room 21, 5th Floor, Bunge Tower at 10.00 a.m.** to present the additional documents and clarify on any issue that may arise during consideration of your submissions.

This is therefore to request you to submit the documents and to invite you to attend the meeting.

You are requested to submit twenty (20) hard copies of the response to the office of the Clerk of the National Assembly on or before **19th August, 2024 at 5:00 p.m.**

The officer facilitating this meeting is **Ms. Esther Nginyo** who may be contacted on **Tel. No. 0722262228** or email address: esther.nginyo@parliament.go.ke .

Yours *Sincerely*



Sarah M. Kioko, MBS

For: Clerk of the National Assembly

Copy to:

Hon. John Mbadi Ng'ongo, EGH
Cabinet Secretary
The National Treasury & Economic Planning
Treasury Building, Harambee Avenue
NAIROBI



**THE NATIONAL ASSEMBLY
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6th August, 2024

Dr. Chris K. Kiptoo, PhD., CBS
Principal Secretary
The National Treasury
Treasury Building, Harambee Avenue
NAIROBI

Dear *Sir*

RE: REQUEST FOR A STATEMENT ON THE IRREGULAR AND ILLEGAL GRANT OF TAX EXEMPTIONS TO A COMPANY UNDER THE SPECIAL OPERATING FRAMEWORK AGREEMENT.

The Committee on Delegated Legislation is established under Standing Order No. 210 of the National Assembly's Standing Order. It is mandated to consider statutory instruments in accordance with the provisions of the Constitution, the Statutory Instruments Act, 2013 and the Act pursuant to which it is made or other relevant written laws.

On 31st July, 2024, the Hon. John Kwanjiku, MP, (Kiambaa Constituency) requested for a statement regarding irregular and illegal grant of tax exemptions to the Blue Nile Rolling Mills Limited company under the Special Operating Framework Agreement. The statement was subsequently referred to the Committee on Delegated Legislation for consideration.

At its meeting held on 1st August, 2024, the Committee considered the Statement and resolved that you appear before it to provide written response on the Statement, and clarify any issue that may arise during consideration of your submission.

This is therefore to invite you to a meeting with the Committee on **Tuesday, 13th August, 2024** in **Room 21, 5th Floor, Bunge Tower at 10.00 a.m.** to brief it on the Statement.

You are requested to submit twenty (20) hard copies of the response to the office of the Clerk of the National Assembly on or before **9th August, 2024 at 5:00 pm**, a soft copy of which may be

emailed to cna@parliament.go.ke and copied to the email address of the liaison officer mentioned below.

The officer facilitating this meeting is Ms. Esther Nginyo who may be contacted on Tel. No. 0722262228 or email address: esther.nginyo@parliament.go.ke .

Yours *sincerely,*



Sarah M. Kioko, MBS

For: Clerk of the National Assembly

Copy to:

Hon. Wycliffe Musalia Mudavadi, EGH
Prime Cabinet Secretary and Cabinet Secretary,
Ministry of Foreign & Diaspora Affairs,
Kenya Railways, Off Haile Selassie Avenue
NAIROBI.