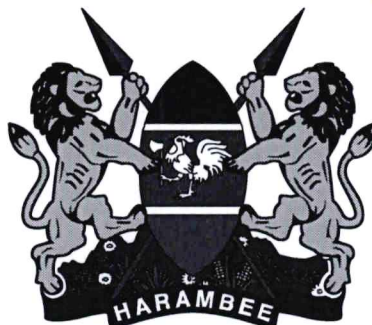




Approved
BOSSD/SNA
13/11/2025

THIRTEENTH PARLIAMENT – FOURTH SESSION – 2025

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY AND COOPERATIVES

REPORT

ON THE RATIFICATION OF THE COMPREHENSIVE ECONOMIC PARTNERSHIP
AGREEMENT (CEPA) BETWEEN THE GOVERNMENTS OF KENYA AND THE
UNITED ARAB EMIRATES (UAE)

VOLUME II

LIST OF ANNEXURES

Adoption List
Minutes
National Treasury and Economic Planning
Ministry of Foreign and Diaspora Affairs
ECO News Africa
Ministry of Investments, Trade and Industry
State Department for Trade
Office of the Attorney General & department of Justice
Micro and Small Enterprises Authority (MSEA)
Kenya Accreditation Service (KENAS)
The Council of Governors
Pharmaceutical Society of Kenya
Pharmacy and Poisons Board
Kenya Pharmaceutical Distributors
Tea Board of Kenya

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 13 NOV 2025	
DAY: Thursday	
TABLED BY:	Hon Marianne Kitany MP VC, Trade, I & Coop
CLERK-AT THE-TABLE:	P Muga



THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK

13TH PARLIAMENT - FOURTH SESSION – FIRST PART-2025

DIRECTORATE OF DEPARTMENTAL COMMITTEES
COMMITTEE ON TRADE, INDUSTRY AND COOPERATIVES
MEMBERS ATTENDANCE REGISTER

AGENDA: ADOPTION OF THE COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT
(CEPA) REPORT

DATE: 13TH NOV '25 TIME: From: 11:30 AM To: 12:30 PM VENUE: Bunge Tower Rm 16

NO.	NAME	SIGNATURE
1.	Hon. Benard Masaka Shinali, MP– Chairperson	
2.	Hon. Marianne Jebet Kitany, MP – Vice-Chairperson	
3.	Hon. Robert Githinji Gichimu, MP	
4.	Hon. (Dr) Wilberforce Ojiambo Oundo, MP	
5.	Hon. (Dr) Beatrice Kahai Adagala, MP	
6.	Hon. Joyce Kamene, MP	
7.	Hon. Anthony Tom Oluoch, MP	
8.	Hon. Joshua Mbithi Mutua Mwalyo, MP	
9.	Hon. Adhe Wario Guyo, MP	
10.	Hon. Parashina Samuel Sakimba, MP	
11.	Hon. Amos Maina Mwago, MP	
12.	Hon. Adams Korir Kipsanai, MP	
13.	Hon. Alfred Kiprono Mutai, MP	
14.	Hon. Michael Wainaina Wambugu, MP	

Forwarded by:

Signed: Date: 13/11/25

Committee Clerk: Mr. Abenayo Makokha Wasike, Principal Clerk Assistant and Head of Secretariat

Approved by:

Signed: Date: 13/11/25

For: Mr. Peter Chemweno, Director, Directorate of Departmental Committees

MINUTES OF THE 19TH SITTING OF THE FOURTH SESSION OF THE DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY AND COOPERATIVES, HELD AT THE BUNGE TOWER, COMMITTEE ROOM 15, SECOND FLOOR ON THURSDAY, 13th NOVEMBER 2025, AT 11.00 AM

PRESENT

- | | | |
|--|---|-------------------------|
| 1. Hon. Bernard Masaka Shinali, MP | - | Chairperson |
| 2. Hon. Marianne Jebet Kitany, MP | - | Vice-Chairperson |
| 3. Hon. Joshua Mbithi Mutua Mwalyo, MP | | |
| 4. Hon. Robert Githinji Gichimu, MP | | |
| 5. Hon. (Dr.) Beatrice Kahai Adagala, MP | | |
| 6. Hon. Alfred Kiprono Mutai, MP | | |
| 7. Hon. Parashina Samuel Sakimba, MP | | |
| 8. Hon. Michael Wainaina Wambugu, MP | | |

APOLOGIES

- | | |
|----|--|
| 1. | Hon. (Dr.) Wilberforce Ojiambo Oundo, MP |
| 2. | Hon. Amos Maina Mwago, MP |
| 3. | Hon. Adams Korir Kipsanai, MP |
| 4. | Hon. Joyce Kamene, MP |
| 5. | Hon. Bwire John Okano, MP |
| 6. | Hon. Anthony Tom Oluoch, MP |
| 7. | Hon. Adhe Wario Guyo, MP |

SECRETARIAT

- | | | | |
|----|---------------------|---|----------------------|
| 1. | Ms. Everlyn Orina | - | Clerk Assistant III |
| 2. | Ms. Doreen Karani | - | Senior Legal Counsel |
| 3. | Ms. Priscilla Saidi | - | Research Officer III |
| 4. | Ms. Priscilla Wangu | - | Fiscal Analyst II |
| 5. | Ms. Lynn Masai | - | Intern |

AGENDA

1. Preliminaries
2. Confirmation of Minutes
3. **Consideration and Adoption of the report on the Comprehensive Economic Partnership Agreement (CEPA) between Kenya, and the United Arab Emirates**
4. Any Other Business
5. Adjournment

MIN. NO. NA/TRADE/2025/095: PRELIMINARIES

The meeting was called to order at 11.30 am. with a word of prayer from the Chairperson and self-introductions by the Committee Members. The Chairperson thereafter briefed the Committee Members on the Sitting agenda, which was adopted by Hon. Joshua Mbithi Mutua Mwalyo, MP and seconded by Hon. Githinji Robert Gichimu, MP

MIN. NO. NA/TRADE/2025/096: CONFIRMATION OF MINUTES

The agenda was postponed to another sitting of the committee.

MIN. NO. NA/TRADE /2025/097: CONSIDERATION AND ADOPTION OF THE REPORT ON THE CEPA BETWEEN KENYA, AND THE UNITED ARAB EMIRATES

COMMITTEE OBSERVATIONS

The Committee, having considered the Comprehensive Economic Partnership Agreement between Kenya, of the one part, and the United Arab Emirates, of the other part (the CEPA), and submissions from stakeholders, makes the following observations—

- i. **THAT** the main objective of the CEPA is to enhance trade, investment, and economic cooperation between Kenya and the United Arab Emirates. It aims to create a liberalised market for trade in goods and promote each Party's trade in goods through progressive elimination of tariffs, enhanced efficiency of customs procedures, enhanced cooperation in technical barriers to trade and Sanitary and Phytosanitary measures and development of value chains;
- ii. **THAT** the agreement excludes market access (tariff liberalization) as both Parties agreed to negotiate this with all the EAC Partner States when ready under the Rendezvous Clause in Article

2.19. The rationale is that the Republic of Kenya is a member of the EAC Customs Union Protocol, which establishes a Common External Tariff to be applied on goods imported into the EAC region from other foreign countries;

- iii. **THAT** Kenya and the UAE are required to set up a joint committee to steer the implementation of the CEPA alongside other subcommittees to be set up. The committee shall meet within one year of the coming into force of this Agreement. Thereafter, it shall meet every two years unless the Parties agree otherwise;
- iv. **THAT** in terms of policy and legislative consideration, the Government of Kenya has anchored the CEPA, along with all other trade agreements, in the National Trade Policy and the Integrated National Exports Development and Promotion Strategy but the CEPA requires ratification by the National Assembly in accordance with the Treaty Making and Ratification Act of 2012, revised in 2018;
- v. **THAT** the UAE is a key trading partner for Kenya, ranking as the country's sixth-largest export market for tea, meat, fruits, vegetables, and flowers, among others, and second-largest import source, with key imports from the UAE being petroleum oils, oils obtained from bituminous minerals and polymers of propylene in primary forms, telephone sets, telephone sets, and cement clinker;
- vi. **THAT** over the past nine years, trade between the two nations has grown by 169.24%, reaching Ksh. 383.68 billion in 2022, of which in 2022 and 2023, Kenya's exports to UAE amounted to USD 373.6 million and USD 401.5 million while imports from the UAE were valued at USD 3.45 billion and USD 2.95 billion during the same period;
- vii. **THAT** the Agreement will benefit Kenya in that –
 - a) It will expand exports for Kenyan products given that the UAE is part of the Gulf Cooperation Council (GCC), which allows it preferential trade access to several Middle Eastern countries, and therefore, this agreement offers Kenya an opportunity to expand its trade footprint in the Middle Eastern Markets;
 - b) It provides a framework for cooperation in trade, investment;
 - c) Trade facilitation measures will improve customs procedures, making it easier for Kenyan businesses to trade with the UAE;
 - d) It is also expected to attract increased foreign investment in sectors such as ICT, healthcare, and agriculture while fostering technical cooperation and budget support from the UAE;

- viii. **THAT** the possible negative effects include, among others, the increased competition over time for local industries from UAE products;
- ix. **THAT** the following measures are proposed to mitigate any negative effects arising from the CEPA-
- (a) Trade Remedies Provisions- these provide for safeguards, Countervailing Measures and Anti-dumping and thus safeguard against unfair trade practices which lead to market distortion;
 - (b) Amendment Clause - provides flexibility to the Parties to seek for amendments on any provisions when the need arises;
 - (c) Mandatory 5-Year Review Clause - provides for a comprehensive mandatory review of the entire agreement every 5 years;
 - (d) Exit clause - provides for flexibility to the Parties to exit upon giving a one-year written notice;
- x. **THAT**, upon undertaking public participation, the Committee received numerous submissions from key stakeholders including the Ministry of Investments, Trade and Industry, Ministry of Foreign Affairs, Tea Board of Kenya, the Institute of Economic Affairs Kenya (IEA Kenya), the Kenya Revenue Authority, the Office of the Attorney General, ECONews AFRICA, the Micro and Small Enterprises Authority, Council of Governors, the Kenya Institute of Public Policy Research and Analysis, the Kenya Accreditation Service, the National Treasury and Economic Planning and the Kenya Private Sector Alliance;
- xi. **THAT** stakeholders in full support of the Agreement took special note of the provisions in the Agreement, which consider Kenya's development needs. For instance, the Ministry of Investments, Trade and Industry observed that the CEPA provides the country with a unique opportunity for reciprocal bilateral trade in goods, services and development cooperation arrangements with one of the emerging global economic powerhouses. On the same vein, the IEA-Kenya observed that the UAE is an important hub for intermediate goods and, by extension, a burgeoning manufacturing hub, a free trade agreement with the country can offer Kenyan entrepreneurs an opportunity to integrate themselves into global value and supply chains. Other supporters were the National Treasury, the Office of the Attorney General and the Kenya Revenue Authority who supported ratification of the Kenya-UAE CEPA as it aligns with Kenya's Bottom-Up Economic Transformation Agenda (BETA) by unlocking new markets for priority value chains, attracting foreign direct investment, and promoting technology transfer to support livelihoods across the country;

- xii. **THAT** the Ministry of Foreign Affairs observed the great benefits that the Agreement offers such as expanding opportunities for services trade, since the agreement has created a common approach to services trade rules between the two countries as well as expanded technical cooperation and budget support among more benefits.
- xiii. **THAT** the Tea Board of Kenya supported the CEPA as it will benefit the tea industry through expanding tea exports to the UAE and Middle East although it observed that local tea industries will, over time, face more competition from UAE zero-rated products especially since UAE is a global tea re-exporter meaning likelihood of camouflage of brand visibility for Kenyan tea;
- xiv. **THAT** KIPPRA supported the ratification of the CEPA but raised concern on some issues, including the need to amend the review clause to allow for reviews on a need basis as opposed to every five years only offering flexibility for any emerging issues. It also observed that the Ministry provides supplementary submissions on EAC coordination plan for market access, environmental and gender safeguards, sector-specific investment and export readiness strategies, Micro, Small and Medium Enterprises (MSME) support mechanisms and capacity building and also mandate regular reporting on the progress and impact of the CEPA;
- xv. **THAT** MSEA commended the inclusion of Chapter 12 in the Kenya-UAE CEPA, which comprehensively addresses the promotion and support of SMEs as a driver of economic growth. The Agreement aligns with the objectives to foster cooperation, enhance trade opportunities, and support women and youth-owned enterprises. However, to maximize benefits for Kenyan SMEs, particularly micro-enterprises, MSEA proposed the establishment of a Bilateral SME Development Fund, detail capacity building programs, securing of interim market access pending EAC negotiations, addressing microenterprises explicitly and mitigation of competition risks;
- xvi. **THAT** KEPSA made proposals concerning amendments on Article 3.34 in verification visits so as to provide for a 90-day refund of duties that may be paid in excess of the preferential duty on the grounds that introducing a definitive timeline enhances predictability within the business environment and supports more effective cash flow management. It also promotes transparency and fosters investor confidence by reducing uncertainty in trade operations. Another proposal was to include the comprehensive composition of the subcommittees contemplated under Article 4.17, Article 14.13, Article 6.11, Article 7.4.2 and Article 8.3 as it was of the view that a detailed subcommittee's composition, scope, and functions is essential for the effective implementation of the agreement. Finally, KEPSA did propose that Article 7.1 be reworded to incorporate the EAC Committee on Trade Remedies which ultimately ensures alignment with Kenya's obligations under the EAC Customs Union and reflects Kenya's dual commitment to both national and regional trade remedy frameworks, fostering consistency, legal clarity, and comprehensive application of trade

remedies. In this regard the committee observed that once ratified, the proposed amendments may be considered during the review of the Agreement;

xvii. **THAT** the Council of Governors observed that while international trade agreements are negotiated at the national level, their successful implementation requires active involvement and cooperation of county governments since trade development and regulation is a devolved function under section 7 part 2 of the Fourth Schedule to the Constitution. It, therefore, drew awareness to the need for a coordinated implementation plan and approach for execution incorporating the national and county governments and the private sector. The COG gave several proposed amendments, such as inclusion of County Governments in the Joint committee, standing committee, ad hoc subcommittees, and any working groups established in the Agreement. The committee observed that once ratified, some of the proposed amendments may be considered during the review of the Agreement;

xviii. **THAT** Econews Africa, Pharmaceutical Society of Kenya and the Kenya Pharmaceutical Distributors Association observed that the CEPA should not be ratified as it undermines access to affordable medicines in Kenya or to ratify the treaty with reservations on TRIPS+ provisions. These stakeholders observed that the intellectual property chapter of the Agreement contains TRIPS+ provisions which go substantively beyond the TRIPS (Trade Related Aspects of Intellectual property) obligations. For instance, the linkage provisions and market exclusivity for five years from the latest possible date for both the information and the fact of the marketing approval. This means that even if there is no patent on medicine, generic versions still cannot be approved by the Pharmacy and Poisons Board as safe and effective and reach Kenyan patients for five (5) years. This therefore undermines the constitutional aspiration of achieving progressive realisation of the right to the health as the provisions hamper the ability to access generic medicines, especially at a time when there is need to provide timely access to affordable medicine to Kenyans. It is observed that developing countries often oppose TRIPS+ rules because they can potentially increase the cost of medicines, limit access to knowledge and technology, and hurt innovation and small producers; and

- xix. The Committee observed that there are safeguard mechanisms provided for in the Agreement where either Kenya or the UAE seeks variation. The amendment clause provides flexibility to the parties to seek amendments on any provisions when the need arises while the mandatory five-year review clause provides for a mandatory comprehensive review of the entire agreement every five years.

FINDINGS

Upon analysis of the submissions and documents tabled, the Committee finds that the Comprehensive Economic Partnership Agreement between the Republic of Kenya, of the one part, and the United Arab Emirates, of the other part has a real risk of financial, legal and reputational damage for the country. Firstly, Kenya has not implemented TRIPS+ measures in its current laws, therefore, agreeing to them would require amendments to legislation. Secondly, even though Article 13.6 refers to the Doha Declaration on Public Health, it does not override these protections or offer clear and tangible interventions for Kenya to ignore them during a health emergency. Third, Kenya would be committing to stricter intellectual property protection than that required by WTO law, binding it in an international treaty. In view of the foregoing, the TRIPS plus provisions might consequently hurt public access to affordable medicine undermining Article 43(1)(a) of the Constitution which guarantees the right to the highest attainable standard of healthcare

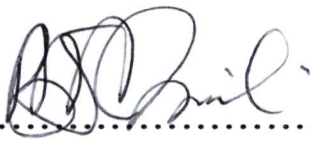
COMMITTEE RECOMMENDATION

The Committee recommends:

THAT, according to Section 8 of the Treaty Making and Ratification Act, the House **APPROVES the Ratification** of the Comprehensive Economic Partnership Agreement between the Republic of Kenya, of the one part, and the United Arab Emirates, of the other part **WITH RESERVATIONS on Article 13:33 on the Protection of Undisclosed Test or other Data for Pharmaceutical Products** pursuant to Section 8(4) of the Treaty Making and Ratification Act, Cap. 4D and Standing Order 170A(4)(c)(ii) of the National Assembly Standing Orders.

Justification

The Comprehensive Economic Partnership Agreement between the Republic of Kenya, of the one part, and the United Arab Emirates, of the other part, is expected to drive growth and expansion of exports and thus enhance investment and economic cooperation between Kenya and the United Arab Emirates.

SIGNED:..........DATE: 13/11/2025.....

HON. BENARD MASAKA SHINALI, MP

CHAIRPERSON, DEPARTMENTAL COMMITTEE ON TRADE,
INDUSTRY AND COOPERATIVES



THE NATIONAL TREASURY AND ECONOMIC PLANNING

MEMORANDUM TO THE NATIONAL ASSEMBLY ON
THE COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT
BETWEEN
KENYA AND THE UNITED ARAB EMIRATES

(Submitted by the Principal Secretary, The National Treasury)

April, 2025

1.0 Objectives of the Memorandum

The objective of this Memorandum is to submit our views to the National Assembly on the Comprehensive Economic Partnership Agreement between Kenya and the European Union (Kenya –UAE CEPA).

2.0 Background

- 2.1 Kenya and United Arab Emirates (UAE) in July, 2022 expressed intention to negotiate a Comprehensive Economic Partnership Agreement, a long-term trading framework to deepen trade, economic cooperation, investment and trade in services between the two parties.
- 2.2 The full title of the Agreement is “The Comprehensive Economic Partnership Agreement between the Republic of Kenya, of the one part, and the United Arab Emirates, of the other part”
- 2.3 The consultations reviewed the state of Kenya - UAE trade and economic cooperation and undertook to explore the possibility of deepening the cooperation within the limitations imposed on both countries by their respective memberships to Regional Trade blocs i.e. East African Community (EAC) and Gulf Cooperation Council (GCC) Countries.
- 2.4 The Kenya - UAE CEPA is anchored on Article 5(e) of the Agreement of Joint Economic and Technical Cooperation of 1st March 2022, and provides the country with a unique opportunity to enter into a reciprocal bilateral trade and development negotiations with one of the global economic powerhouses. The United Arab Emirates is Kenya’s 6th largest export market and 3rd overall trading partner.

3.0 Objectives of the Agreement

- 3.1 The main objective of the Agreement is to eliminate trade barriers, simplify customs procedures, promote industrialisation, and strengthen regional value chains.
- 3.2 Kenya could gain strategic access to most Middle East countries as the UAE is a member of the Gulf Cooperation Council (GCC) countries and has strong economic ties with its partners Saudi Arabia, Kuwait, Bahrain and Oman and they share a common market and custom union.
- 3.3 The Agreement encourages industrialization and the development of regional value chains, which could lead to job creation and economic growth.
- 3.4 The Agreement is expected to attract more foreign investment from the UAE, potentially boosting sectors like energy, water, agriculture, health, ports, airports, logistics, human resource development, and ICT.

4.0 Trade Relations between Kenya and UAE

- 4.1 Trade trends between the two parties indicate that two-way trade grew by 169.24 percent over nine years from Ksh. 142.5 billion in 2013 to Ksh. 383.68 billion in 2022. Kenya's exports to UAE amounted to USD 373.6 million and USD 401.5 million in 2022 and 2023 respectively, while imports from the UAE were valued at USD 3.45 billion and USD 2.95 billion during the same period.
- 4.2 Kenya's main exports to the UAE were mainly tea, the meat of sheep or goats, fruits, vegetables, and cut flowers while imports from UAE were mainly petroleum oils and oils obtained from bituminous minerals and polymers of propylene in primary forms, telephone sets, and cement clinker. Currently, Kenya trades with UAE on the WTO Most Favored Nation (MFN) basis.

5.0 Justification for the CEPA

- 5.1 The total trade between Kenya and UAE over the decade has shown a positive trajectory. However, the balance of trade was in favour of the UAE by USD 3.08 billion and USD 2.73 billion in 2022 and 2023 respectively.
- 5.2 The UAE applies the Gulf Cooperation Council (GCC) Common External Tariff rate of between 0% and 5% on Kenyan goods, with limited exceptions on tobacco and alcoholic beverages. On the other hand, Kenya applies the EAC CET tariff of between 0% and 35% on goods from the UAE. This will subsist until the UAE negotiates tariff schedules with all the EAC Partner States collectively.

6.0 Benefits of the Agreement to the Kenyan people

- 6.1 Expanding exports for Kenyan products to the UAE and Middle East particularly meat and meat products, horticulture (including fruits, vegetables and flowers), tea, coffee and other products. The Agreement has refined measures to facilitate trade through a common understanding of customs procedures and trade facilitation measures, and also sanitary and phytosanitary measures.
- 6.2 Expanding opportunities for services trade, since the Agreement has created a common approach to services trade rules between the two countries.
- 6.3 Increased investment in Kenya particularly in sectors such as ICT, healthcare, agriculture and several other areas.
- 6.4 Expanding technical cooperation and budget support.

7.0 Observations by the National Treasury

7.1 Trade in Goods

In Chapter 2 on Trade in Goods, the main objectives of CEPA is to promote each Party's trade through:

- (i) Progressive elimination of tariffs;
- (ii) Elimination of non-tariff barriers;
- (iii) Enhanced efficiency of customs procedures, trade facilitation and transit;
- (iv) Enhanced cooperation in the areas of technical barriers to trade and sanitary and phyto-sanitary measures;
- (v) Development and promotion of value chains;
- (vi) Enhanced socio-economic development, diversification and industrialization in the Parties; and
- (vii) Promotion of regional integration.

It is noted that progressive elimination of tariffs is the first objective under the trade in goods chapter. However, the Parties excluded negotiations on market access (tariff liberalization) from the Agreement and deferred it to be negotiated at a later stage between the UAE and the East African Community Partner States as provided under **Article 2.19: Rendez-vous Clause** which states that the Parties agree to enter into negotiations on market access for goods to eliminate or reduce customs duties on originating goods of the Parties within the institutional structures of the EAC.

This was aimed at ensuring that the Kenya-UAE CEPA was in conformity with the EAC Customs Union Protocol.

We wish to note that in 2023, the EAC Sectoral Council on Trade, Industry, Finance and Investment adopted a policy to guide negotiations of free trade agreements with third parties. This was informed by the many requests to negotiate trade agreements that individual Partner States as well as the Community itself was receiving from third parties. Further in May 2024, the SCTIFI prioritized third party countries to engage in trade agreements as follows: United Kingdom, United Arab Emirates, Singapore and Pakistan. So far, the EAC has exchanged preliminary communication with these countries but formal negotiations are yet to commence.

It is expected that tariff liberalization matters will be negotiated once the negotiations between the EAC and the UAE formally begin.

7.2 Kenya- UAE Bilateral Investment Agreement

Chapter 8 of the CEPA notes the existence of and reaffirm the **Agreement Between the Government of the Republic of Kenya and the Government of the United Arab Emirates on Promotion and Protection of Investments (BIT)**, signed at Abu Dhabi on 23rd November 2014. It is noteworthy that the Parties agreed to revise the existing Kenya UAE BIT with a view to making it more comprehensive in coverage.

In our view, this is a positive move as we have already embarked on the process of doing away with old generation BITs and reviewing the existing ones in order to ensure that they respond to the country's social economic needs as well as to conform to the changing global environment on international investment agreements.

So far Kenya has terminated BITs with the Netherlands and Italy. The former has already indicated willingness to renegotiate. In addition, we are currently in the process of preparing a request to the Cabinet seeking approval to terminate BITs between the Republic of Kenya and; the Federal Republic of Germany; the Republic of France; the Swiss Confederation and the United Kingdom. Termination of old and renegotiation of new BITs is a trending practice amongst developing countries as a way of eliminating old generation BITs whose main focus was to promote and protect the interests of foreign investors while suppressing the host country's socio-economic needs.

7.3 Relation to Other Agreements

Article 1.5 on Relations to other Agreements states that the parties affirm their existing rights and obligations with respect to each other under the WTO Agreement and other agreements to which such Party are such to. Further, in any event of any inconsistency between this Agreement and other agreements to which the Parties may be party to, either jointly or otherwise, the Parties shall immediately consult with each other with a view to finding a mutually satisfactory solution. This provision will ensure that CEPA does not conflict with existing commitments in other agreements.

8.0 Measures to mitigate any negative effects arising from the Agreement

- 8.1 Trade Remedies Provisions: Safeguards, Countervailing Measures and Anti-dumping - provides for trade remedies to safeguard against unfair trade practices which leads to market distortion.
- 8.2 An amendment clause provides flexibility to the Parties to seek for amendments on any provisions when need arises.
- 8.3 The mandatory 5-Year Review Clause - provides for a comprehensive mandatory review of the entire agreement every 5 years.
- 8.4 Exit clause - provides for flexibility to the Parties to exit upon giving one year written notice.

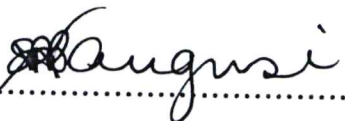
9.0 Financial Implications

- 9.1 There will be no financial losses resulting from tariff liberalization given the Agreement excludes market access, which Parties have agreed to negotiate with all EAC Partner States.
- 9.2 The Ministry of Investments, Trade and Industry is responsible for the CEPA and is required to provide the resources for the implementation of the Agreement within their Annual Budgets.

10.0 Conclusion

10.1 The National Treasury supports the Kenya UAE CEPA as it aligns with Kenya's Bottom-Up Economic Transformation Agenda (BETA) by unlocking new markets for priority value chains, attracting foreign direct investment, and promoting technology transfer to support livelihoods across the country.

10.2 The Kenya-UAE CEPA is aligned to the Kenya's commitment to EAC and will not adversely affect the smooth running of trade in the region as tariff liberalization will be negotiated by all EAC Partner States.

Signed:

Date: 4th April, 2025

SAMSON P. WANGUSI, OGW
PRINCIPAL ADMINISTRATIVE SECRETARY
FOR: PRINCIPAL SECRETARY/THE NATIONAL TREASURY



MINISTRY OF FOREIGN AND DIASPORA AFFAIRS

BRIEF ON THE COMPREHENSIVE ECONOMIC PARTNERSHIP
AGREEMENT(CEPA)

1.0 INTRODUCTION

Kenya and United Arab Emirates (UAE) in July 2022 expressed intention to negotiate a Comprehensive Economic Partnership Agreement, a long term trading framework to deepen trade, economic cooperation, investment and trade in services between the two parties.

The consultations reviewed the state of Kenya - UAE trade and economic cooperation and undertook to explore the possibility of deepening the cooperation within the limitations imposed on both countries by their respective memberships to Regional Trade blocs i.e. East African Community (EAC) and Gulf Cooperation Council (GCC) Countries,

The Kenya - UAE CEPA is anchored on Article 5(e) of the Agreement of Joint Economic and Technical Cooperation of 1st March 2022, and provides the country with a unique opportunity

to enter into a reciprocal bilateral trade and development negotiations with one of the global economic powerhouses. The United Arab Emirates is Kenya's 6th largest export market and 3rd overall trading partner.

His Excellency President William Ruto and His Highness Sheikh Mohamed bin Zayed Al Nahyan, President of the United Arab Emirates, presided over the signing of the Kenya-United Arab Emirates Comprehensive Economic Partnership Agreement (CEPA), on the sidelines of the Abu Dhabi Sustainability Week Summit on 14th January 2025, marking a historic milestone in the economic relations between the two nations.

The CEPA is the first agreement of its kind signed by the UAE with a mainland African country, representing a transformative step in enhancing trade, investment, and economic cooperation. The agreement strengthens Kenya's position as a gateway to East and Central Africa and reaffirms the UAE's role as a global logistics and financial hub connecting the Middle East, Asia, and beyond.

2.0 WHY HAVE KENYA AND THE UAE NEGOTIATED AN AGREEMENT?

Kenya and the UAE are major partners, with significant trade in goods. The two countries are major hubs. Kenya is the gateway to East and Central Africa, while UAE is a major global hub and a gateway for the Middle East and Asia. Kenya and UAE are also rapidly diversifying their economies, placing increasing emphasis on trade in value-added

products, growing trade in services, innovation in technology, e-commerce and digital trade and leadership in sustainability.

3.0 ECONOMIC, TRADE AND INVESTMENT AFFAIRS

The total trade between Kenya and UAE over the decade has shown a positive trajectory. In 2023, the United Arab Emirates was Kenya's 6th largest export market, absorbing 5.5% of exports and 2nd largest import source accounting for 15.7% of the imports.

Trade trends between the two parties indicate that two-way trade grew by 169.24 percent over nine years from Ksh. 142.5 billion in 2013 to Ksh. 383.68 billion in 2022. Kenya's exports to UAE amounted to USD 373.6 million and USD 401.5 million in 2022 and 2023 while imports from the UAE were valued at USD 3.45 billion and USD 2.95 billion during the same period.

Kenya's main exports to the UAE were mainly tea, the meat of sheep or goats, fruits, vegetables, and cut flowers while imports from UAE were mainly petroleum oils and oils obtained from bituminous minerals and polymers of propylene in primary forms, telephone sets, and cement clinker,

The UAE is a member of the Gulf Cooperation Council (GCC) countries and has strong economic ties with its partners Saudi Arabia, Kuwait, Bahrain, and Oman; they share a common market and a customs union. Under the Greater Arab Free Trade Area Agreement (GAF TA), the UAE has free trade access to most Middle East countries to which Kenya could gain strategic access.

The Kenya - UAE CEPA provides the country with a unique opportunity to enter into a reciprocal bilateral trade and

development cooperation arrangements with one of the emerging global economic powerhouses.

The CEPA goes beyond trade in goods by addressing services, technological innovation, digital trade, and sustainability. It opens new opportunities for Kenyan service providers in sectors such as education, transport, communications, construction, and engineering to access the UAE market,

The partnership aligns with Kenya's Bottom-Up Economic Transformation Agenda (BETA) by unlocking new markets for priority value chains, attracting foreign direct investment, and promoting technology transfer to support livelihoods across the country. The CEPA also reflects a shared commitment to sustainability and green economic growth. Both countries have agreed to promote clean technologies and environmentally responsible practices to ensure that economic progress is achieved sustainably.

4.0 Scope and Coverage of the Agreement

The agreement covers General Provisions, Trade in goods, Rules of Origin, Customs Administration and Trade Facilitation, Sanitary and Phytosanitary Measures, Technical Barriers to Trade, Trade Remedies, Investment, Digital Trade, Procurement, Intellectual Property Rights, Small and Medium Enterprises, Economic Cooperation, Investmenty Dispute Settlement, Exceptions, Administration of the Agreement, and Final Provisions.

5.0 Obligations in the Kenya — UAE CEPA

a. Policy and legislative considerations

The CEPA, along with all other trade agreements are anchored in the

National Trade Policy and the Integrated National Exports

Development and Promotion Strategy. Despite this, the Kenya — UAE CEPA requires ratification by the National Assembly in accordance with the Treaty Making and Ratification Act of 2012, revised in 2018. b. Administrative obligations

Kenya and the UAE are required to set up a Joint Committee to steer the implementation of the CEPA. For Kenya, the chair of the council shall be the Cabinet Secretary for the time being responsible for International Trade.

c. Financial Implications

There will be no financial losses resulting from tariff liberalization given the agreement excludes market access, which the parties have agreed to negotiate with all the EAC partner states when ready.

d. Ministerial obligation

The CEPA is to be implemented by the Ministry of Investments, Trade and Industry and any such successor Ministry/Department.

6.0 Benefits of the Agreement to the Kenyan people

- a. Expanding exports for Kenyan products to the UAE and Middle East particularly meat and meat products, horticulture (including fruits, vegetables and flowers), tea, coffee and other products. The agreement has refined measures to facilitate trade through a common understanding of customs procedures and trade facilitation measures, and also sanitary and phytosanitary measures;
- b. Expanding opportunities for services trade, since the agreement has created a common approach to services trade rules between the two countries;
- c. Increased investment in Kenya particularly in sectors such as ICT, healthcare, agriculture and several other areas; and

d. Expanded technical cooperation and budget support.

7.0 Possible negative effects include:

- a. The Parties have agreed to negotiate market access (tariff liberalization) with all the EAC Partner States when ready. Removal of import duties from products once undertaken under this agreement may eventually lead to loss of government revenue over the agreed liberalization period; and,
- b. Local industries are likely to face more competition over time from UAE zero rated products.

8.0 Measures to mitigate any negative effects arising from the Agreement

- a. Trade Remedies Provisions: Safeguards, Countervailing Measures and Anti-dumping - provides for trade remedies to safeguard against unfair trade practices which leads to market distortion;
- b. Amendment Clause - provides flexibility to the Parties to seek for amendments on any provisions when need arises;
- c. Mandatory 5-Year Review Clause provides for a comprehensive mandatory review of the entire agreement every 5 years; and
- d. Exit clause provides for flexibility to the Parties to exit upon giving one year written notice.

Economic Affairs and Commercial Diplomacy Directorate

STATE DEPARTMENT FOR FOREIGN AFFAIRS

MARCH 2025



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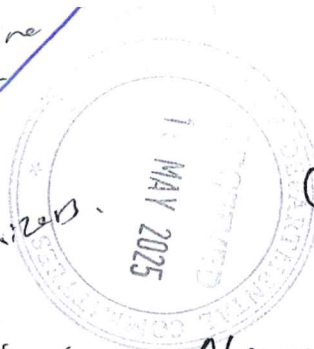
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Mr. Arale / Ms Caroline Musyoka

Please deal.
Confirm dates
with organizers.

15TH MAY 2025

16/05/25



DDDC
&
15/5/25

Abenayo Waike, Hb
Benjamin Magar, HOD

To bring to the attention
of the Depr. Comm. on Trade.

Due 16/05/25

MR. SAMUEL NJORGE, CBS
CLERK OF THE NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS
P.O. BOX 41842- 00100
NAIROBI

Dear Sir,

**RESCHEDULING OF STRATEGIC MEETING OF THE NATIONAL ASSEMBLY
COMMITTEES FOR TRADE AND HEALTH, AND THE CAUCUS ON BUSINESS
AND THE ECONOMY ON THE COMPREHENSIVE ECONOMIC PARTNERSHIP
AGREEMENT BETWEEN KENYA AND THE UNITED ARAB EMIRATES**

Our earlier letter on 2nd May refers.

We have been duly informed that the legislators may not be available on the dates of 29th and 30th of May because of a major shift in the Parliamentary calendar that requires that they attend to pending Bills that have been introduced to Parliament and require their urgent attention.

The purpose of this letter is to propose new dates for the meeting. We propose to have the meeting from **5th to 6th June, 2025, in Naivasha** at the **Lake Naivasha Resort**. Check-in time will be **Thursday, 5th May**, and check-out will be **Saturday, 7th May, 2025**.

2 May or June??

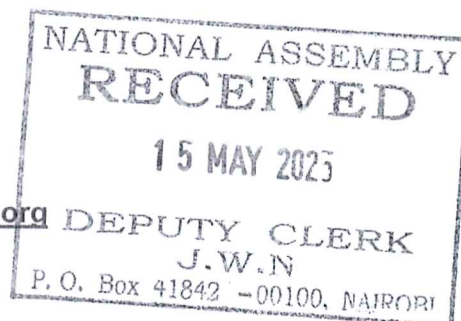
The purpose of this letter remains the same: to invite 10 Members each from the Trade and Health Committees and the Caucus on Business and the Economy (30 in Total) for a meeting to discuss the trade agreement and its impact on key national interest issues that should be of concern. We have attached our analysis of the agreement.

The Contact person for this meeting is **Mr. Edgar Odari**, the Executive Director, Econews Africa, whose contact is **+254 722 502 055** and e.odari@econews-africa.org

Yours Faithfully,

**EDGAR JALANG'O ODARI
EXECUTIVE DIRECTOR
ECONEWS AFRICA**

Email: e.odari@econews-africa.org





**SUBMISSIONS TO THE KENYAN NATIONAL ASSEMBLY RELATING TO THE
PROPOSED RATIFICATION OF THE KENYA/UNITED ARAB EMIRATES
COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT**

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Submission to the Kenyan National Assembly on Some of the implications for Kenya of the Kenya-UAE CEPA

Thank you for the opportunity to submit a memorandum on the Kenya-United Arab Emirates (UAE) Comprehensive Economic Partnership Agreement (CEPA)¹ before the Kenyan National Assembly decides whether to ratify it.

Background on Impact of the CEPA to the Health Sector

Kenya already struggles with a heavy disease burden. The country already has problems accessing affordable medicines. By way of summary:

- **HIV/AIDS:** According to 2023 data^a, over 1.4 million people live with HIV in Kenya. The country has about 18,000 annual HIV/AIDS related deaths (18,473 in 2022) and has about 1.2 million people on antiretroviral therapy accounting for about 86% of people living with HIV.
- **TUBERCULOSIS:** According to 2022 data^b, Tuberculosis (TB) in Kenya is estimated at about 133,000 for all forms of TB cases annually. In 2022, the country reported 90,841 TB cases accounting for about 68% case detection. Drug-resistant TB cases are about 1,200 annually. The TB-HIV co-infection rate stands at 20% with that percentage of TB patients also being HIV-positive. The TB deaths in 2022 were about 12,000.
- **CANCER:** According to the Kenya National Cancer Registry^c, the country has an estimated 42,000 new cancer cases every year. Annual deaths are 27,000. The leading cancers: include women: Breast (16%), Cervical (13%), Esophageal (7%) Men: Prostate (13%), Oesophageal (12%), Colorectal (6%). The five-year prevalence (people living with cancer) is about 100,000+.

The treatment for these diseases is not cheap. In the case of cancer, for example, the cost of Generic Chemotherapy Drugs* (e.g., Doxorubicin, Cyclophosphamide, Paclitaxel) is estimated at KES 5,000 – 30,000 per dose* (depending on the drug and dosage). In the case of Branded/Targeted Therapy Drugs such as Herceptin /Trastuzumab, Keytruda/Pembrolizumab, the cost is estimated at between KES 100,000 – 500,000 per dose (some can exceed KES 1 million for immunotherapy). For hormonal therapy* (e.g., Tamoxifen, Letrozole): the cost is between KES 500 – 10,000 per month. Cancer patients also need pain management and supportive drugs (e.g., Morphine, Anti-nausea meds) whose cost is estimated at between KES 200 – 10,000 per month (depending on brand and dosage). These are heavy costs at a time when the economy is not doing well.

The Kenyan government has been subsidizing some of these drugs. This is being done at a time of a far-reaching fiscal consolidation program by the International Monetary Fund (IMF). This must also be viewed within the context of cancellation of the United States Presidential Emergency Plan for AIDS Relief (PEPFAR) under the USAID framework.^d Getting funding

^a See Kenya HIV Estimates Report 2023, NASCOP

^b WHO Global TB Report 2023

^c Kenya National Cancer Registry, Globocan 2022

^d See generally Impact of USAID freeze on access to affordable medicines in Kenya. E.g. https://www.unaids.org/en/resources/presscentre/featurestories/2025/march/20250313_Kenya_fs and https://www.unaids.org/en/resources/presscentre/featurestories/2025/april/20250401_Kenya_fs. In Kenya approximately 41,000 doctors, nurses, technical and management staff and community workers were supported by the US government. Kenya and Rwanda are among the list of countries that have reported that domestic resources are being mobilized to maintain priority HIV programmes previously funded by the US.

to undertake a subsidy program in the health sector requires that Kenya does not get into trade deals that will make access to medicines a problem when the country is already facing debt sustainability challenges.

Kenya and the UAE are both Members of the World Trade Organization (WTO)² and so the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)³ already applies to them.

However since the USA has blocked the appointment of Appellate Body (AB) members,⁴ there are none left, so the AB is no longer functioning.⁵ ('The US stance of blocking the appointments at the Appellate Body has now reached the six-year mark and there is little likelihood that it will be restored at all, said people familiar with the development.'⁶). This means that if Kenya does not comply with TRIPS (e.g. it does not grant patents (20 year monopolies) on relevant vaccines or medicines during a pandemic) and it is sued at the WTO and loses, it can appeal ('into the void') and since the appeal cannot be heard, the decision cannot become final and Kenya cannot be penalised at the WTO for failing to comply with TRIPS.⁷ Therefore since the intellectual property (IP) chapter of this CEPA is enforceable (see below), even incorporating any TRIPS provisions into it is effectively TRIPS+ (i.e. stronger than TRIPS currently) since TRIPS is currently unenforceable at the WTO.

The intellectual property (IP) chapter of the CEPA has a number of TRIPS+ provisions in it that go substantively beyond the TRIPS obligations (even when they were enforceable) which have a range of implications including on the ability to access affordable generic medicines as soon as possible in Kenya. This submission will touch on some of the main TRIPS+ provisions affecting timely access to affordable medicines.

Data Exclusivity and Linkage

We were shocked to see that this Kenya-UAE CEPA has:

- A hard obligation for market exclusivity for five years from the latest possible date for both the information in the dossier and the fact of the marketing approval.⁸ This means that even if there is no patent on a medicine (e.g. because it is insulin which is vital for diabetics but is not a new invention (it is 100 years old and is extracted from pigs and cattle⁹) so is not eligible for patents) generic versions still cannot be approved by the medicine regulator as safe and effective and so reach Kenyan patients for 5 years.
- A hard linkage obligation¹⁰ that prevents compulsory licences from being effective and requires the Kenyan government to be the patent police when even the USA's Food and Drug Administration does not have the capacity to do so (and the EU refuses to implement linkage).

Kenya currently does not have such data exclusivity or linkage, so this would be a significant change.

Medicines in Kenya are already unaffordable, and generic medicines are much cheaper than the innovator price:

As the Kenyan Ministry of Health noted in a 2004 report:

- A recent survey found that only about 30% of the population have access to essential medicines and the price of medicines is one of the barriers to access.
- 'the majority of Kenyans lack access to medicines as defined by World Health Organization, and that high price was a possible barrier hindering access to medicines. Other studies on the health sector have highlighted the high out-of-pocket health expenditures by households, and the high percentage of expenditures spent on medicines. Clearly, for an individual Kenyan, price often determines whether he or she receives a full treatment, an incomplete course, or no medicine at all. At the national level, price can determine whether or not the Government of Kenya can offer treatment to the population for a particular disease.'¹¹
- the public sector mostly uses generic medicines and 'many public health outlets offer medicines for free, specifically for the under-5-year-olds, pregnant mothers and treatments for malaria and PMCT of HIV.'

- the lowest paid Kenyan government worker would need:
 - 9-10 days' wages to purchase one month's dose of the recommended treatment for hypertension at the innovator price.
 - 13-27.5 days' wages to buy one month's treatment for peptic ulcers at the innovator price.
- Increased use of generics could increase access to health services by low-income patients and even in the public sector the prices are still unaffordable for patients.
- The innovator brand of antimalarials can be 36 times more expensive than the generic version. And the innovator version of furosemide is 50 times more expensive than the generic version.¹²
- 'Some essential medicines (including generic products) are unaffordable to the lowest-wage Kenya government workers and by extension more than half of the population, particularly if they had to purchase them from private retail pharmacies or mission facilities. Even though patient prices were found to be lower in the public sector, affordability was still a problem for some of the medicines, especially for chronic conditions and where more than one member of a family requires treatment.'

The UAE may be able to afford to comply with these TRIPS+ provisions on medicines since its GNI per capita is US\$49,020 (23 times larger than Kenya's),¹³ but Kenya cannot for the reasons outlined above.

During the Trans-Pacific Partnership (TPP) negotiations with the USA, even developed countries such as Australia¹⁴ and New Zealand opposed the TRIPS+ provisions on it since it did not suit them as net importers of intellectual property who needed to keep medicines affordable for their citizens. Even the original TPP did not have hard linkage (it only had soft linkage). Consequently, when the US refused to ratify the TPP, the remaining countries (including Australia and New Zealand) suspended most of the TRIPS+ provisions on medicines (including the market exclusivity provision on medicines which is similar to the one in the Kenya-UAE CEPA) in the renamed CPTPP.¹⁵

We note that the India-UAE Comprehensive Economic Partnership Agreement (CEPA)¹⁶ which was signed in 2022¹⁷ does not have the TRIPS+ provisions on medicines above (exclusivity and linkage) even though India's GNI per capita is higher than Kenya's.¹⁸

Grace Period:

The CEPA requires a grace period of at least 12 months which means that if the inventor/patent applicant etc disclosed the invention in the 12 months for filing the patent application, they are still eligible for a patent (when normally they would not be). See Appendix below for some implications of this grace period.

Overall:

We are puzzled as to why this CEPA has TRIPS+ provisions on medicines since neither Kenya nor the UAE are the homes of big pharmaceutical companies who have long sought these provisions in order to expand and extend their monopoly profits.¹⁹

In practice when countries implement these TRIPS+ provisions, they implement them with respect to applicants from the whole world. E.g. pharmaceutical companies from the US, EU, Switzerland, UK etc would also benefit from the exclusivity and linkage provisions above. This means they can free ride and Kenya loses potentially important bargaining chips in its upcoming built-in rendez-vous clause negotiations with the EU on intellectual property²⁰ and with the USA to remove the tariffs it announced on Kenya on 2 April 2025), see above. Kenya is not even getting any goods market access to the UAE in this CEPA in return for agreeing to these TRIPS+ provisions and the goods chapter is where developing countries such as Kenya can usually benefit from an FTA (e.g. in the removal or reduction of the UAE's tariffs on Kenyan products).

Even when countries are getting new goods market access from an FTA (which is not in this CEPA), the costs of these TRIPS+ provisions on medicines still far outweighs the gains from the goods chapter in terms of the other country in the FTA lowering their import tariffs:

- Research at the Australia Institute in Canberra has estimated that if provisions in the Australia-US FTA succeed in delaying by 24 months market entry of generic versions of just the top five Pharmaceutical Benefits Scheme (the 'PBS' is the Australian Government medicine reimbursement scheme) expenditure medicines due to come off patent, this could increase the cost

of the PBS by \$1.5 billion over 2006-2009. The budgetary cost could easily swamp the \$53 million a year in economic gains from the agreement estimated by modelling work commissioned by a Senate Committee investigating the FTA.²¹

- After noting that patented medicines can be ten times the price of generic medicines and that the USA pushes for stronger intellectual property protection in its FTAs, economist Dr Dean Baker made it clear that the costs of agreeing to stronger intellectual property protection is greater than the possible gains from any lower tariffs in the FTA: 'There is no plausible set of tariffs and quotas that could be imposed by the United States on merchandise trade that would impose any remotely comparable burden on its trading partners. In short, U.S. trading partners stand to lose much more from accepting conditions on intellectual property as part of trade agreements than they do from increased protectionist barriers on merchandise trade.'²²

The CEPA does not even have any goods market access, so the UAE will not be lowering its tariffs on any Kenyan products to offset the costs of these TRIPS+ provisions on medicines. Therefore, it is unclear how the benefits of this CEPA can outweigh the costs significant and deadly costs of these TRIPS+ provisions on medicines for Kenyan patients.

Exceptions Chapter

Although the CEPA has some exceptions, they are insufficient e.g.:

- The health and environment exception does not apply to the intellectual property chapter and it has been copied from the WTO where it is so difficult to use that governments only succeeded twice in 48 attempts.²³
- The privacy exception has been copied from the WTO where it is self-cancelling so does not override problematic provisions in the CEPA
- The security exception is limited to the listed circumstances, so does not include cybersecurity in times of peace etc and it has been found at the WTO to not be self-judging.²⁴ There are many FTAs with better security exceptions,²⁵ however these examples have not been followed by this CEPA.
- Other CEPA exceptions are often self-cancelling (they cannot be used to override problematic provisions) or irrelevant.

SOME COMMENTS ON THE IMPLICATIONS OF SOME OF THE INTELLECTUAL PROPERTY CHAPTER PROVISIONS ON TIMELY ACCESS TO AFFORDABLE MEDICINES

The exceptions in the CEPA do not apply to the IP chapter (e.g. the difficult-to-use health exception in Article 15.1), are irrelevant (e.g. security exception in Article 15.2 and taxation exception in Article 15.3) or insufficient (e.g. the purported exceptions in the IP chapter which are self-cancelling etc). The CEPA IP chapter is enforceable because the CEPA dispute settlement chapter applies to the IP chapter²⁵ and if Kenya does not comply with the IP chapter and is sued by the UAE and loses, the UAE can suspend equivalent benefits until Kenya complies with this IP chapter.²⁶ Kenya current does not have such data exclusivity or linkage, so this would be a significant change. Article 21(2) of the Constitution requires the State to implement laws and policies to achieve progressive realisation of the right to health. This right will be greatly undermined by these CEPA provisions as can be seen above. The UAE may be able to afford to comply with these TRIPS+ provisions on medicines since its GNI per capita

²³ E.g. USFTAs since 2000 have considerably broadened the WTO's security exception to:

- remove the objective list of situations, just anything a Party considers necessary for its own essential security interests. And
- have a footnote in some recent USFTAs (Colombia, South Korea, Panama and Peru) as well which says the tribunal must find the security exception applies if a Party raises it. (E.g. 'For greater certainty, if a Party invokes Article 21.2 in an arbitral proceeding initiated under Chapter Ten (Investment) or Chapter Twenty (Dispute Settlement), the tribunal or panel hearing the matter shall find that the exception applies.')

is US\$49,020 (23 times larger than Kenya's),²⁷ but Kenya cannot for the reasons outlined above.

During the Trans-Pacific Partnership (TPP) negotiations with the USA, even developed countries such as Australia²⁸ and New Zealand opposed the TRIPS+ provisions on it since it did not suit them as net importers of intellectual property who needed to keep medicines affordable for their citizens. Even the original TPP did not have hard linkage (it only had soft linkage). Consequently, when the US refused to ratify the TPP, the remaining countries (including Australia and New Zealand) suspended most of the TRIPS+ provisions on medicines (including the market exclusivity provision on medicines which is similar to the one in the Kenya-UAE CEPA) in the renamed CPTPP.²⁹

We are puzzled as to why this CEPA has TRIPS+ provisions on medicines since neither Kenya nor the UAE are the homes of big pharmaceutical companies who have long sought these provisions in order to expand and extend their monopoly profits.³⁰ This means these provisions benefit the US, EU, UK, Swiss etc big pharmaceutical multinationals, at the expense of Kenyans who need affordable medicines (see above).

In practice when countries implement these TRIPS+ provisions, they implement them with respect to applicants from the whole world. E.g. pharmaceutical companies from the US, EU, Switzerland, UK etc would also benefit from the exclusivity and linkage provisions above. This means they can free ride and Kenya loses a potentially important bargaining chip in its upcoming built-in rendezvous clause negotiations with the EU on intellectual property³¹ and with the USA to remove its imminent reported additional tariffs. (The US government under President Trump is planning to introduce a reciprocal tariff later today (2 April 2025) which takes into account 'nontariff barriers' which is defined to include lack of intellectual property protection³² which will reportedly apply to all countries in the world, including Kenya³³ in order to get concessions in return for removing these new US tariffs (that violate WTO rules)). Kenya is not even getting any goods market access to the UAE in this CEPA in return for agreeing to these TRIPS+ provisions and the goods chapter is where developing countries such as Kenya can usually benefit from an FTA (e.g. in the removal or reduction of the UAE's tariffs on Kenyan products).

We note that the India-UAE Comprehensive Economic Partnership Agreement (CEPA)³⁴ which was signed in 2022³⁵ does not have the TRIPS+ provisions on medicines above (exclusivity and linkage) even though India's GNI per capita is higher than Kenya's.³⁶

DATA/MARKET EXCLUSIVITY IMPACT ON MEDICINE PRICES - SOME EXAMPLES FROM AROUND THE WORLD

Data or market exclusivity is another monopoly which is often demanded by developed countries such as the USA and EU in their FTAs (even if there is no patent on the medicine). Colombia has had data exclusivity since 2002³⁷ and a 2012 study found that these data exclusivity requirements cost Colombia an additional US\$396million in additional expenses for its public health system from 2003-2022.³⁸

Another real life example of the impact of data/market exclusivity is when an old medicine to treat gout (colchicine) was given three years of market exclusivity in the USA as a new indication for this medicine and the company which received it sued to remove existing versions of colchicine from the market and then raised the price by more than 50 times adding \$50million per year to the cost of providing this medicine in the USA.³⁹ It was also given 7 years of market exclusivity for colchicine to treat a rare disease (familial Mediterranean fever), even though this was already a known use of the medicine.⁴⁰

The USA provides an additional 6 months of market exclusivity for medicine manufacturers which do paediatric studies and a calculation of the impact of the additional 6 months of monopoly prices compared to the generic versions if they had been allowed found that: for just three medicine classes it cost the US Medicaid population US\$430million so the study concluded 'these results suggest that the costs to Medicaid and thus taxpayers are substantial.'⁴¹

It was recently estimated that eight years of data exclusivity alone in Canada would have added \$600 million to prescription medicine costs alone in the last five years.⁴²

Another study found that data exclusivity would have prolonged monopolies in Canada by two years which would increase the cost by an additional C\$1,645million/year (13% of the total cost of patented medicines).⁴³ An increase of two years of data exclusivity for biologics alone (e.g. vaccines etc) could cost up to \$305.8million in additional spending in Canada.⁴⁴ Canada's Parliamentary Budget Office found that the two-year data exclusivity extension for biologics in the Canada-United States-Mexico Agreement (CUSMA/USMCA) could increase spending by at least \$169million in 2029 and increasing annually thereafter.⁴⁵

In Peru, 10 years of data exclusivity is calculated to lead to an increase of more than US\$300million in 2025 expenditure.⁴⁶ A study found that market exclusivity for five years in Thailand would increase costs by between US\$146.3 million and US\$696.4 million per year⁴⁷ and would increase medicine outlays by 9-45% in Thailand.⁴⁸ Using WHO methodology, 5 years of data exclusivity was predicted to cost Thailand US\$3.7billion over 15 years.⁴⁹

The five years of data exclusivity applied in Mexico in 2012 due to its USFTA has resulted in US\$320million in lost cost savings to 2020 (US\$80million in 2018 alone).⁵⁰

In Guatemala medicines with data exclusivity can cost 166%-846% more than the generic versions.⁵¹

When Jordan's medicines were at monopoly prices due to its data exclusivity they were up to 800% more expensive than in Egypt where there was generic competition because there was no data exclusivity or other TRIPS-plus rules.⁵² For 81 medicines where there is no generic competitor because of data exclusivity in Jordan, spending was increased due to these TRIPS-plus monopolies by \$6.3million-\$22million from 2002-2006 (assuming generics are 30-80% of originator prices).⁵³ Data exclusivity also applies to biologics in some countries and even though biosimilars face higher regulatory hurdles and other barriers (e.g. often they cannot be substituted for the original biologic by pharmacists, only by doctors) once the exclusivity expires and biosimilars (generic biologics) can enter the market:⁵⁴

- Savings of around US\$1.5billion were likely in the early years of biosimilar competition to 2014 for the countries studied and this is likely to increase as biologics continue to increase as a proportion of pharmaceutical spending and more generic companies learn how to make biosimilars.
- Average market prices fall by about 3.5 percentage points per year after biosimilar entry (or 2.4 percentage points with each biosimilar entrant) but this was up to 7.8% annual price declines for some biologics

PATENT LINKAGE IMPACT – SOME EXAMPLES

Linkage prevents compulsory licences from being effective and requires the Kenyan government to be the patent police. It is so difficult to do that a US Congressional Report found that even the US Government's Food and Drug Administration does not have the capacity to do it because it 'does not have adequate expertise or resources to review the applicability of patents, and it has been unable to prevent abuses of the system by patentholders that have led to delays in the availability of generic drugs'.⁵⁵

The United Nations (UN) Special Rapporteur on the Right to Health (UNSRH) notes that the European Union does not implement linkage and linkage in the US has been abused by patent holders according to a US government study and the Canadian government recognises that linkage has been used to evergreen patents'.⁵⁶ Evergreening means allowing patents on new uses of old medicines, new formulations and dosages etc. It is a TRIPS-plus provision that facilitates the extending of drugs monopoly by additional patents on existing medicines which delays the entry of cheaper generic versions.

For example, linkage means that the government becomes the enforcer of even weak patents (instead of the patent holder having to sue companies it thinks are violating the patents). Patents are often weak (found to be invalid when challenged by generic companies), e.g. in the USA in 73% of the cases where a decision was made on the substance, the patent was found to be invalid.⁵⁷ However the increase in litigation costs is a heavy burden especially for small to medium sized companies, impacting their ability to bring generics into the market.⁵⁸

Linkage has delayed the entry of generics⁵⁹ and prolonged nominal patent terms⁶⁰.

In Canada, linkage has also created a significant backlog in the Canadian Federal Court system. In 2008, there was a team of approximately 30 Federal Court judges devoting some or all of their time to about 350 separate drug patent cases and 'The Supreme Court of Canada has, on multiple occasions, held that the automatic stay issued to patentees under the NOC Regulations is an 'extraordinary' remedy, not available to patentees in any industry outside of the pharmaceutical industry.'⁶¹

A Malaysian study found that in the worst-case scenario linkage could cause medicine spending in 2026 to increase by RM334million.⁶²

THE RIGHT TO HEALTH UNDER THE KENYAN CONSTITUTION

The 2010 Constitution has put in place fail-safe mechanism to protect against the abrogation of rights enshrined in the Bill of Rights. Article 21 of the Kenyan Constitution places a fundamental duty on the State and all its organs to ensure that the rights and fundamental freedoms enshrined in the Bill of Rights are upheld. This duty encompasses observing, respecting, protecting, promoting, and fulfilling the rights and freedoms. Specifically, Article 21 includes the right to health within the scope of rights and freedoms that the State must uphold. The right to health, as recognized in the Kenyan Constitution, includes the right to the highest attainable standard of health, which encompasses access to healthcare services, including reproductive health care. The interpretation of this standard is laid out the General Comment No. 14 of the Convention on Economic, Social and Cultural Rights on the Right to Health specifically requiring access to medicines meet the threshold of "accessibility, availability, affordability and quality"

CONCLUSION

We therefore urge you not to ratify this CEPA in its current form because of the serious and unnecessary ways it will undermine access to affordable medicines in Kenya. An alternative is to use the revised Parliamentary Standing Orders on the ratification of treaties under 170A (4) (c) and (5) and approve the treaty with reservations on TRIPS Plus provisions. We look forward to the opportunity to discuss our concerns with you in more detail.

GENERAL CONTEXT

WTO rules are not currently enforceable at the WTO

The USA has been blocking⁶³ the appointment of members to the Appellate Body (AB) at the World Trade Organization (WTO), so it no longer functions,⁶⁴ so if Kenya does not comply with the services

or intellectual property rules at the WTO and is sued and loses, it can appeal 'into the void' and since the appeal cannot be heard, no legal retaliation (of higher tariffs on Kenyan exports) is permitted under WTO rules. The USA was not expected⁶⁵ to allow the AB to come back to life before the new Trump tariffs (see below) and it presumably cannot allow it to resume work now since it would lose the many likely challenges to these tariffs.

Kenya has fortunately not joined the optional multi-party interim appeal arbitration arrangement (MPIA) to enable disputes to become final while the AB is not working (and neither has the USA).⁶⁶ This means that if the CEPA includes any WTO rules, these are now newly enforceable commitments under the CEPA where the UAE can now sue Kenya via the CEPA's dispute settlement (see below) for failing to comply with WTO rules and legally retaliate (e.g. by suspending any benefits under the CEPA).

Trump's 2 April 2025 tariffs have changed the global context

The world has changed since this CEPA was signed on 14 January 2025⁶⁷. On 2 April 2025, US President Trump announced new tariffs ('Trump tariffs') on nearly the whole world, including 10% tariffs on Kenya.⁶⁸ These Trump tariffs are illegal under World Trade Organization (WTO) rules. As Canada⁶⁹ and China⁷⁰ have already argued in their WTO cases challenging the tariffs that the Trump Administration imposed earlier this year, these tariffs violate the USA's bound tariff rates at the WTO (i.e. they go above the maximum tariff the USA is allowed to impose under WTO rules) and they violate the WTO's most-favoured nation (MFN) requirement (which requires the US to impose the same tariffs (e.g. on coffee) from all 165⁷¹ other WTO Members). However because the WTO Appellate Body is no longer working (see above) this means that suing the USA at the WTO is not currently an effective way to get these Trump tariffs removed

This means that Kenya may need to make concessions to the USA to get these illegal and unfair Trump tariffs removed. It is unclear what concessions the USA will require, but some the Executive Order announcing these Trump tariffs highlighted the non-tariff barriers in the 2025 US National Trade Estimate (NTE) Report.⁷² The Kenyan section of this Report includes:

- Kenya's failure to ratify the problematic and TRIPS+ World Intellectual Property Organization (WIPO) Internet Treaties,⁷³ which deal particularly with copyright and related rights in the digital environment. The Kenya-UAE CEPA requires Kenya to reaffirm their obligations in these WIPO Internet Treaties.⁷⁴ Therefore if Kenya ratifies or complies with these problematic WIPO Internet Treaties to comply with the UAE CEPA (in return for what seem to be no benefits from the UAE CEPA since it has no goods market access and no effective mode 4 market access for Kenya which are the two areas where developing countries can traditionally benefit from FTAs), it loses the ability to offer this to the USA in order to get these US tariffs removed.

In this NTE Report, it also complains about the lack of data/market exclusivity on medicines in other countries and the Kenya-UAE CEPA requires five years of market exclusivity on medicines^f (in return for no apparent benefits from the UAE), so ratifying the UAE CEPA would mean Kenya loses that bargaining chip to get these US tariffs removed.

If Kenya wants to liberalise services, or have stronger intellectual property protection etc, it can always do this unilaterally instead of locking it in via this CEPA in return for no goods market access etc. If these changes are made unilaterally instead of via a free trade agreement (FTA), if it turns out to be problematic, Kenya can reverse it because it is not locked in by a trade agreement. Making these changes unilaterally also leaves Kenya with bargaining chips to offer in trying to get the Trump tariffs removed etc. The UAE CEPA does not appear to provide any enforceable aid and in fact may result in less Kenyan government revenue, see below.

Initial Provisions and General Definitions Chapter

The CEPA general definitions include a broad and non-exhaustive definition of 'measure' which includes laws, regulations, rules, procedures, decisions, practices, administrative actions etc,⁷⁵ so

^f Which in practice would be given to big pharmaceutical companies from the whole world including the USA since it is too difficult to implement the law only with respect to UAE pharmaceutical companies given the use of subsidiaries etc

obligations with 'measure' in it in the CEPA are very broad. E.g. Kenya is required to take such reasonable 'measures' as may be available to it to make subnational governments comply with the whole CEPA.⁷⁶ This chapter is enforceable via the CEPA's dispute settlement chapter, see below.

GOODS CHAPTERS

The CEPA does not currently contain goods market access (those negotiations will be done via the East African Community structures⁷⁷). In a free trade agreement (FTA) with a more developed country (e.g. the UAE's GNI/capita is 23 times larger than Kenya's), the goods chapter is generally the chapter where the poorer country can benefit since it lowers the import tariffs on the poorer country's cheaper agricultural or manufactured products. However, since there is no goods market access in the CEPA, it is unclear what the economic benefits are for Kenya from the CEPA to offset the costs of the other CEPA chapters below.

TRADE FACILITATION CHAPTER

Context: The WTO concluded new rules on trade facilitation (the Trade Facilitation Agreement (TFA)) in 2013 and they came into force in 2017⁷⁸ and both Kenya and the UAE are bound by it⁷⁹. These TFA rules are already difficult and expensive to comply with for many developing countries and so the TFA includes special and differential treatment where developing countries have transition periods (including until after they have received assistance and capacity building for TFA provisions they have designated as 'Category C').⁸⁰ The UAE has already been able to implement 100% of the TFA rules⁸¹ but Kenya has only been able to implement 43.7% of the TFA rules so far.⁸² This is not surprising because it is very expensive to buy, maintain and update the equipment requirement to implement the TFA provisions as well as pay the salaries of the extra staff etc and UAE's GNI/capita is 23 times larger than Kenya's.⁸³ E.g. Kenya scheduled 70.2% of its TFA commitments as Category C (to be implemented once sufficient technical assistance and capacity building has been provided).

If the CEPA trade facilitation (TF) provisions are the same as the TFA, this is already a substantive new obligation because:

- It makes it enforceable via the CEPA's dispute settlement (see below) when WTO rules (including the TFA) are not currently enforceable at the WTO since its Appellate Body is not functioning (see above).
- There is none of the TFA's special and differential treatment/transition periods in the CEPA trade facilitation chapter so there are no transition periods for Kenya (even though Kenya still has not been able to comply with the TFA).
- Since the UAE has already complied with 100% of the TFA provisions, this would not require the UAE to do anything but would entail onerous efforts by and significant new legal liability for Kenya, without any assistance or capacity building from the UAE.

If the CEPA trade facilitation chapter has obligations which go beyond the TFA, that is even more difficult for Kenya (since Kenya has not even been able to comply with the TFA so far, unlike the UAE) and the CEPA TF chapter does not have any enforceable technical assistance or capacity building or transition periods etc. This TF chapter is enforceable via the CEPA's dispute settlement chapter, see below.

What are the benefits for Kenya of this CEPA trade facilitation chapter? Since the UAE has already completely implemented the WTO's TFA, Kenyan exports to the UAE already benefit from this. Are there still serious obstacles to Kenyan exports which are addressed by this CEPA chapter? Or is it only new and enforceable obligations that will be expensive and difficult for Kenya to implement?

SERVICES CHAPTER

While Kenya and the UAE are both bound by the services rules in the WTO (the General Agreement on Trade in Services (GATS)), it is not currently enforceable at the WTO, see above. Therefore the various GATS rules (and those of Kenya's GATS services liberalisation commitments) which have

been copied/incorporated into the CEPA exposes Kenya to new legal liability, especially if Kenya's GATS commitments are problematic or have mistakes, see below.

Like the GATS, the CEPA services chapter applies to measures by Parties affecting trade in services⁸⁴ (which is defined the same broad way⁸⁵) which is defined to include the same Modes 1-4⁸⁶. While it is good that the CEPA excludes subsidies, grants, government procurement and public services from the scope of the services chapter,⁸⁷ the definition of public services is too narrow to be effective, see below.

This scope provision also excludes employment, residence, citizenship and visas from the scope of the services chapter, so even if the UAE gives Mode 4 market access to Kenyans on paper, it can still refuse to issue visas to Kenyans and so any such Mode 4 market access would be ineffective. (Furthermore, there is nothing in the CEPA services chapter that requires the UAE to recognise Kenyan qualifications (e.g. as doctors, lawyers, engineers etc), see below).

The CEPA includes a most-favoured nation (MFN) provision⁸⁸ which specifies that if Kenya enters into a services agreement with another country (e.g. the USA) after the CEPA comes into force, then Kenya must consider a request by the UAE to incorporate the same benefits that Kenya gave the USA into the UAE CEPA.

The Kenya-UAE CEPA services chapter requires Kenya to liberalise in many more service sectors than it has at the WTO. E.g. Kenya did not liberalise these services sectors in the WTO but has in the UAE CEPA:

- some business services,
- some construction services,
- all retail services (except: Mode 4 and sale of motorbikes and their parts),
- some environmental services,
- some health services (including all hospital services except Mode 4),
- some maritime transport services,
- some groundhandling^h and airport management services,
- some rail transport services.

This is very surprising given:

- the implications this has for various Kenyan laws (see below for some examples)
- the lessons learned from the COVID pandemic in terms of lockdowns etc, see below.
- the way it increases legal liability under the existing Kenya-UAE Bilateral Investment Agreement (BIA), see below

We were surprised to see that Kenya has completely liberalised hospital services (except for Mode 4) in the CEPA. Hospitals services are a very sensitive sector and liberalising it means they are subject to the restrictions on regulation in the CEPA including that Kenya cannot cap foreign equity, cannot require hospitals to be non-profit (e.g. as they are in Japan⁸⁹). If Kenya wanted more foreign direct investment (FDI) in hospitals, it could always unilaterally liberalise it and then close it again if it turns out to be a problem.

Even though Kenya has liberalised many more service sectors in the CEPA (including sensitive sectors such as hospital services) than it has in GATS, the CEPA still includes a built-in obligation to negotiate additional liberalisation in successive rounds of negotiations starting within a year of the CEPA coming into force.

Some examples of Kenyan laws and regulations etc which may have to be changed to comply with the CEPA services chapter

⁸⁴ Mode 1 is where the service supplier and consumer are in different countries e.g. call centres

Mode 2 is where the consumer travels abroad (e.g. tourism).

Mode 3 is foreign direct investment (e.g. a UAE hotel opens in Kenya)

Mode 4 is where the human being who supplies the service works abroad e.g. a Kenyan going to work in the UAE, https://www.wto.org/english/thewto_e/20y_e/services_brochure2015_e.pdf

^h Defined in Article 9.1 to include passenger and baggage handling, catering, ramp services, air cargo and mail handling, aircraft: fuelling, cleaning and servicing etc.

There may be many Kenyan measures (laws, regulations etc) which need to be changed at national and subnational level to comply with the CEPA services chapter. A comprehensive study needs to be done. Some examples are below.

Mineral dealerships:

Kenya's distribution services liberalisation (all wholesale, retail, on commission and franchising except sale of motorbikes and mode 4) appears to mean it has liberalised mineral dealerships.⁹⁰ However according to the US government 'Mineral dealership licenses are only issued to Kenyan citizens or to corporations where at least 60 percent shareholding is held by Kenyan citizens.'⁹¹ This requirement appears to be no longer possible with respect to UAE companies (they have to be allowed to have 100% shareholding in mineral dealership licences), so:

- Kenya would have to change the Mining Act which requires 60% shareholding by Kenyan citizens for mineral dealership licences.
- in practice it is difficult for developing countries to differentiate where companies come from since they can incorporate in many places etc, so Kenya may liberalise the distribution sector with respect to the whole world, including the USA who has listed this as a restriction⁹² (which Kenya could use as a bargaining chip to get rid of the US tariffs, but not if it is already doing so with respect to the whole world because of this UAE CEPA).

Insurance Sector

The US government notes these restrictions on foreign investment in Kenya: 'The Kenya Insurance Act of 2010 limits foreign capital investment in insurance companies to two-thirds, with no single person holding more than a 25 percent ownership share.'⁹³

- If these Kenya Insurance Act requirements apply to both life and non-life insurance, the non-life insurance requirements will need to be removed due to the CEPA. This is because Kenya's services schedule in the CEPA only has an exception to allow the requirement for one-third of the paid-up capital to be held by Kenyans for **life** insurance.ⁱ There is no equivalent limitation to national treatment and market access for **non-life** insurance in Kenya's CEPA services schedule.
- Kenya's 25% cap on how many shares an individual can own in an insurance company is a market access limitation which needed to be listed in Kenya's services schedule where it has committed the insurance sector to be saved. Because Kenya did not include an exception for this in its CEPA services schedule where it liberalised the insurance sector,⁹⁴ it will need to remove this requirement to comply with the CEPA.

Foreigners being able to buy land in Kenya

Kenya's UAE CEPA schedule also appears allows UAE companies to buy land in Kenya (which presumably violates Art 65 of the Kenyan 2010 Constitution). This is because Kenya has made full Mode 3 commitments in hotels in both GATS and the UAE CEPA and although Kenya's services schedule in the UAE CEPA has a horizontal limitation/exception to national treatment that a foreign service supplier cannot own land on a freehold basis (only lease it), footnote 3 on page 2 of Annex 9B says this does not apply to sectors already committed under GATS. (In GATS, Kenya's services schedule does not have an exception to prevent foreign hotels from being able to buy land in Kenya⁹⁵). So, the exception is good, but because it does not apply to Kenya's GATS commitments (e.g. in the hotel sector) which have been incorporated into Kenya's CEPA schedule, UAE hotel companies can still buy land in Kenya.

This was a common mistake in GATS schedules e.g. Fiji's GATS schedule.⁹⁶ However the GATS schedule of other countries like Timor Leste have avoided this mistake by having a horizontal exception/limitation that allows them to keep their restriction on foreigners owning land.⁹⁷

Since GATS is not currently enforceable because the WTO Appellate Body is not working (see above), that means Kenya cannot currently be penalised at the WTO for failing to allow foreign hotel owners

ⁱ See mode 3) limitation on market access on page 20 of Annex 9B which is listed for life insurance (this limitation applies to both market access and national treatment according to Article 9.5.3), but not for non-life insurance (on page 21 of Annex 9B).

to buy land. Therefore, it is a significant commitment to reiterate the GATS commitment (without the domestic land ownership exception applying to it) in this enforceable CEPA provision.

Some Implications for Pandemic Lockdowns

During the COVID pandemic, some countries prevented bars and luxury shops from opening to curb the spread of the disease or specified that restaurants could only provide takeaway services. These kinds of restrictions in a future pandemic would violate services market access commitments under the CEPA and it is not clear the health exception would be sufficient, see below. This is because Article 9.7 CEPA specifies that in the service sectors liberalised, Kenya cannot impose on the whole country of a 'regional subdivision'^j, lockdowns on services companies the UAE. This is because Article 9.7.2a) and c) is equivalent to Art XVI.2a) and c) of the General Agreement on Trade in Services (GATS) at the World Trade Organization (WTO) where the WTO's Appellate Body found that a US ban on gambling violated Art XVI.2a) (restriction on the number of companies that can supply the service) and c) (restriction on the quantity of output) in GATS.⁹⁸

Public Services Exception

The public services exception in the CEPA⁹⁹ is the same as in the GATS which has been heavily criticised for being too narrow because it only applies to services which are 'supplied neither on a commercial basis, nor in competition with one or more service suppliers.'¹⁰⁰ A 'commercial basis' could include full market price, not-for-profit cost recovery or even a partial user charge.¹⁰¹ In most countries there is a private school or hospital which competes with public schools/hospitals etc, so these would not be public services under this definition. In some countries there may even be private fire-fighting services (e.g. in airports or large factories), so then even the fire department may not be a public service under this definition.

It is particularly concerning that this inadequate public services exception has been copied into the CEPA when Kenya has made services liberalisation commitments in sensitive sectors such as hospitals and other health services which it had not liberalised in the GATS.

Domestic Regulation Disciplines

Where the CEPA incorporates GATS services domestic regulation disciplines (SDRD),¹⁰² it now applies to more sectors since Kenya has liberalised more services sectors in the CEPA than it has at the WTO. (In addition to making incorporated GATS SDRD enforceable when they are not currently enforceable at the WTO, see above).

Kenya has not joined the problematic optional plurilateral Joint Initiative on Services Domestic Regulation (JISDR)¹⁰³ which restricts the ability to regulate services,¹⁰⁴ presumably because it thought the costs outweighed the benefits to it. Therefore we were surprised to see that the CEPA includes some even stronger requirements than the JISDR. E.g.:

- Article 9.11.4b) of the CEPA is stronger than its equivalent JISDR provision¹⁰⁵ because:
 - the JISDR is only 'to the extent practicable' which is not in the CEPA
 - the JISDR has a safeguard that deadlines do not need to be extended which is missing in the CEPA
 - the CEPA requires Kenya to identify 'all' the additional information required, something that is not required by the JISDR
- Article 9.11.4d) of the CEPA is stronger than its equivalent JISDR provision¹⁰⁶ including because:
 - The CEPA requires the applicant to be informed **in writing** (whereas the JISDR allows it to be done orally)
 - The CEPA requires it to be done 'without delay', whereas the JISDR does not specify a timeframe
 - The JISDR has safeguards that the CEPA is missing:

^j 'regional subdivision' is not defined in the CEPA. It may have been agreed in the CEPA negotiating history whether regional subdivision means county and/or municipality etc.

- another application only needs to be allowed 'solely on the basis of a previously rejected application'
 - governments can require the application's content to be revised.
- These CEPA domestic regulation provisions apply to all the services sectors that Kenya has committed in the CEPA and will increase the burdens on Kenyan regulators and may require additional government spending to pay for any extra civil servants needed to provide all this assistance to applicants for licences (e.g. for hotels, banks etc).

While Article 9.11.1 of the CEPA does say that 'Each Party may regulate and introduce new regulations on services and services suppliers within its territory in order to meet national policy objectives':

- this is only an exception for 'regulations' whereas the obligations in Article 9.11 often apply to 'measures' which is defined broadly and non-exhaustively to include laws, regulations, procedures etc, see above.
- this apparent exception is cancelled out by the rest of the sentence: 'in so far as such regulations do not impair any rights and obligations arising from this Agreement.' This means that this exception cannot be used to override any problematic obligations, so it cancels itself out.

Furthermore, the CEPA does not even include the minimal transition periods (up to 7 years for developing countries)¹⁰⁷ and encouragement to provide technical assistance and capacity building¹⁰⁸ which are in the JISDR.

The CEPA does not require recognition of Kenyan qualifications

If Kenyan qualifications are not recognised in the UAE, Kenyan professionals (e.g. doctors, nurses, engineers and lawyers) cannot effectively work in their professions in the UAE, even if the UAE provides Mode 4 market access in the CEPA on paper. However, the CEPA does not require the UAE to recognise Kenyan qualifications. Article 9.12 of the CEPA **leaves it up to** the UAE whether it recognises Kenyan qualifications e.g. medical/engineering/legal etc qualifications. If the UAE recognises qualifications from another country (e.g. the USA), it merely has to **offer** Kenya the **opportunity** to: negotiate equivalent recognition or demonstrate that Kenyan qualifications should also be recognised. The UAE also only has to **encourage where possible** its professional bodies to explore the possibility of recognition and pursue mutually acceptable standards and criteria.

The main area where developing countries can benefit from services liberalisation is if there is effective Mode 4 market access allowing their citizens to work in the other country in the FTA with visas and recognition of their qualifications (e.g. their medical/law/accounting/engineering etc degrees). However, this is not in the CEPA as can be seen above.

Overall

This services chapter is enforceable via the CEPA's dispute settlement chapter (see below) and has no special and differential treatment (e.g. transition periods etc) for Kenya.

INVESTMENT CHAPTER

There is already a UAE-Kenya Bilateral Investment Agreement (BIA) which already has extensive protections for UAE investors in Kenya including a broad non-exhaustive definition of 'investment', fair and equitable treatment (the most successful basis for investor-to-state dispute settlement (ISDS) cases¹⁰⁹), national treatment, most-favoured nation (MFN) treatment, expropriation, free movement of capital, ISDS etc.

CEPA investment chapter includes an agreement to review this existing UAE-Kenya BIA to make it more comprehensive in coverage.¹¹⁰ Presumably this could be by adding additional problematic provisions like restrictions on performance requirements etc. But this is going against the trend where governments are realising the problems with these investment treaties e.g. there are 18 known ISDS cases where investors have been awarded at least US\$1 billion each.¹¹¹ E.g.:

- the EU¹¹² and UK¹¹³ are withdrawing from the Energy Charter Treaty because it restricts their ability to take climate change measures.
- The Trump¹¹⁴ and Biden¹¹⁵ Administrations are against ISDS.
- The Australian¹¹⁶ and New Zealand¹¹⁷ governments are against ISDS etc.
- South Africa, Indonesia, India, Ecuador, Bolivia etc have been withdrawing from their bilateral investment treaties (BITs).¹¹⁸

The CEPA services chapter is likely to increase liability under this UAE BIA if UAE investors are able to invest in more sectors in Kenya (e.g. in construction services) because of the services chapter liberalisation (which includes Mode 3, i.e. foreign direct investment (FDI), see above). UAE investors are known to have sued in 12 ISDS cases already,¹¹⁹ and there have been 30 known ISDS cases about construction in the past which investors have won and many more pending,¹²⁰ so it is not an idle threat.

Fortunately, the CEPA investment chapter is not subject to dispute settlement, but the services liberalisation in the CEPA services chapter still increases Kenya's legal liability under the existing UAE BIA's dispute settlement mechanisms including ISDS.

DIGITAL TRADE CHAPTER

This chapter appears to contain a number of provisions demanded by US big tech companies such as Google, Amazon, Facebook, Twitter etc.¹²¹ Since the US is not in this CEPA and these companies are not Kenyan or UAE companies, it is unclear why a Kenya-UAE CEPA includes the wish list of US big tech companies so they can benefit from the CEPA provisions for free. Especially at a time when Kenya may need bargaining chips to get Trump's tariffs removed and some of these CEPA digital trade chapter provisions are what the US has been seeking.¹²²

The CEPA digital trade chapter includes:

- A ban on customs duties on downloading: movies, music, video games, computer software, eBooks etc from 'a person of a Party' (which is not defined) for as long as there is a WTO decision on this.¹²³ E.g. Amazon.com has an office in the UAE, so is unclear if the CEPA bans tariffs on buying ebooks etc from Amazon.com. The WTO decisions banning customs duties on downloads are not enforceable,^k but this CEPA digital trade chapter is. The temporary multilateral version of this ban on customs duties on downloading movies and music etc is calculated to have cost Nigeria US\$1.2billion in 2020 alone¹²⁴ and this is likely to have increased as more is digitised (instead of paper copies of books, music CDs and films on DVDs etc coming across the border and paying tariffs). It would be useful to know how much potential tariff revenue Kenya is giving up by including this provision in the CEPA.
- A provision requiring digital products from the UAE to be treated as well as those from Kenya (national treatment) or another country (most-favoured nation treatment).¹²⁵ This provision can prevent laws which:¹²⁶

^k The multilateral moratorium on customs duties on electronic transmissions is scheduled to expire in March 2026 (unless it is renewed) and these temporary moratoria are anyway not enforceable via the WTO's dispute settlement mechanism.

Kenya is still in the optional plurilateral JSI ecommerce agreement at the WTO which also has this provision. (Of the 91 countries who were negotiating the JSI ecommerce, these 20 countries (including the USA) dropped out of the final JSI ecommerce text because it was so problematic: Brazil, Cameroon, Colombia, Côte d'Ivoire, Ecuador, El Salvador, Guatemala, Honduras, Indonesia, Mexico, Nicaragua, Nigeria, Panama, Philippines, Russian Federation, Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, Thailand, Türkiye, United States, Uruguay. Countries like South Africa and India were never in it). But the JSI ecommerce provisions have been blocked from being added to the WTO rulebook (by India, Indonesia, South Africa, Turkey etc) and even if they were, the WTO Appellate Body is not working (and the US will not allow it to come back to life for the foreseeable future, especially now that Trump is wholesale defying WTO rules with his 2 April 2025 tariffs), so they would still not be ultimately enforceable at the WTO.

- require platforms such as Facebook and Google to share their advertising revenue with newspapers the way that Australia etc require.¹
- restrict (as Korea's law does) the ability of platforms such as Google and Apple to force videogame companies to use their payment systems (where they can charge a 30% commission on sales etc) etc,
- are pro-competition (e.g. various EU laws).

Even though this provision was pushed by the USA in its FTAs (e.g. it is in the Trump Administration's 2020 negotiating objectives for its Kenya-USFTA¹²⁷), the Biden Administration withdrew its proposal of this provision from the JSI ecommerce negotiations in October 2023¹²⁸. This provision is also not in the final JSI ecommerce text, yet it is still in this CEPA.

- Deregulation of the security of electronic transactions (with an exception for one category of transactions).¹²⁹ This CEPA provisions means it must be left to consumers and businesses how secure and/or interoperable their systems are.
 - Because of market failures, many governments in both developed (e.g. USA and EU) and developing countries (e.g. Kenya, Mauritius, Nigeria, Malaysia and India) regulate electronic authentication methods e.g. to prevent credit card/identify theft, ensure the security of online banking, ensure the cybersecurity of critical infrastructure such as oil/gas pipelines, ensure interoperability and efficiency of transactions (e.g. between hospitals and health insurance companies etc).¹³⁰
 - E.g. in Kenya: 'Microfinance institutions guideline: Institutions shall ensure that agents: i) Identify customers with at least two factor authentication while performing any transaction requiring identification'.¹³¹
 - Since the CEPA only allows one category of transactions, if it is used to preserve this Kenyan microfinance institutions guideline, Kenya cannot have other regulations e.g. to ensure the cybersecurity of online banking/credit cards/oil and gas pipelines etc.
 - While the CEPA has a security exception, it is insufficient for cybersecurity requirements in times of peace etc, see below.

MSME AND COOPERATION CHAPTERS

There are micro, small and medium-sized enterprise (MSME) and cooperation chapters in the CEPA. However, they only have vague provisions on cooperation (e.g. via seminars), require the CEPA text etc to be put on a website, have a committee to discuss the issues and any resources must be agreed by both the UAE and Kenya. In addition, both these chapters are unenforceable (they are excluded from the scope of the CEPA dispute settlement chapter. I.e. these chapters do not require the UAE to provide US\$Xmillion in aid to Kenya each year. The provisions in these chapters apply equally to Kenya and the UAE so Kenya is also supposed to aid the UAE, even though the UAE's GNI per capita is 23 times larger than Kenya's¹³².

DISPUTE SETTLEMENT CHAPTER

The CEPA chapters discussed above (except the MSMEs and cooperation chapter) are enforceable because the CEPA dispute settlement chapter applies to all CEPA chapters unless otherwise specified.¹³³ If Kenya does not comply with the CEPA (e.g. the IP chapter) and is sued by the UAE and loses, the UAE can suspend equivalent benefits until Kenya complies with the IP chapter.¹³⁴

GENERALLY

¹ Since local newspapers and broadcasters are losing revenue to big tech companies, Australia, Canada, Indonesia etc have implemented laws to require big tech platforms like Facebook and Google to share revenue with newspapers etc when they use their content. E.g. it resulted in almost A\$250million per year from big tech to newspapers etc and allowed newspapers to increase their staff by 50%. See also <https://www.bbc.co.uk/mediaaction/insight-and-impact/insightblog/indonesia/regulation-and-big-tech> and <https://www.abc.net.au/news/2025-04-02/media-bargaining-code-tariffs-trump/105124278>.

We note that the CEPA text released still has a number of typos in it (e.g. 'Article XX.14' is presumably supposed to be 'Article 16.14' and 'GPA' is defined in Article 1.3 but then not used in the text). So this text presumably still needs to at least be legally scrubbed to fix such errors. There appears to be no special and differential treatment/transition periods for Kenya (even though the UAE's GNI/capita is 23 times larger than Kenya's¹³⁵), except for some transition periods in Kenya's services schedule (which the UAE also has). Even US FTAs e.g. the Trans-Pacific Partnership (TPP) included transition periods, including for the TRIPS+ provisions on medicines such as market exclusivity.¹³⁶

CONCLUSION

We therefore urge you to remove all TRIPS+ provisions before ratification of the CEPA if at all it needs to be ratified because costs significantly outweigh any benefits, as outlined above. We look forward to the opportunity to discuss our concerns with you in more detail.

Appendix: Grace period – some preliminary implications

Executive summary

While a few inventors may benefit from a grace period (and these benefits can be obtained in other ways), there are costs for consumers, other inventors and producers, patent examiners etc. According to the European Patent Office's Economic and Scientific Advisory Board, the costs of a grace period include:¹³⁷

- Increased legal uncertainty
- Complicating the patent system (including reduced efficiency in patent examination and processing)
- Increased costs of advisory opinions and litigation
- Delaying entry into the public domain
- Increased risk of unintentional infringement by competitors

Introduction

What is a grace period?

The grace period is a period before a patent application is filed when disclosure of the invention can be done without losing novelty.

The benefits of a grace period are:

- To reduce the risk of accidental disclosure by the inventor which means it is not novel anymore and so cannot be patented
- To allow earlier dissemination of research to increase knowledge spillovers.

It is that this helps inventors disclose the invention eg to funders (eg via an exhibition) so they can invest in producing the invention etc. However there are a number of problems caused by the grace period, some of which are outlined in this note.

The USA and Japan have been pressuring countries to agree to grace periods.¹³⁸

Length and breadth of grace periods

Length:

Some countries have a grace period eg of 6 or 12 months.¹³⁹ Of the countries in WIPO wanting a grace period as of 2006, 37 wanted it for 6 months, 22 wanted it for 12 months.¹⁴⁰ (The longer the grace period, the more additional inventions which will be patented, see below).

What grace period is available for:

Some countries only allow grace periods for novelty or inventive step. E.g. the European Patent Convention only allows grace periods for novelty (not for inventive step).¹⁴¹

Situations where grace period is available:

Some grace periods are broader than others. Eg some may only allow grace periods for displaying the invention at a recognised exhibition. The European Patent Office (EPO) only recognized two

exhibitions in 2016.¹⁴² This meant there is more legal certainty because it is easier to check whether there were any relevant disclosures at this limited number of exhibitions.^m

Even if Kenya already has a grace period, including it in the CEPA:

- a) locks it in. Therefore if it turns out to be difficult to administer or causes too much to be patented, the country cannot repeal the grace period the way it can if it is merely in its law.
- b) May lengthen it (e.g. if the Kenya only has a grace period for 6 months since the CEPA grace period is for 12 months).
- c) May broaden it e.g. if Kenya only allows a grace period for:
 - a. certain limited disclosures (e.g. in exhibitions), since CEPA broadens it to any public disclosure
 - b. novelty or inventive step, since the CEPA grace period appears to apply to both
 - c. disclosures by the inventor, since the CEPA applies to disclosures by the inventor, patent application or anyone who obtained the information from the inventor/applicant whether inside/outside Kenya.

Some concerns about grace periods

Some of the problems caused by grace periods are outlined below.

Implications for consumers

Grace periods can have implications for purchasers of patent products/their generic versions, e.g. patients needing generic medicines, or farmers/manufacturers needing inputs or governments needing to buy generic environmental technology/subsidise medicines etc.

Professor Carlos Correa notes that the impact of the grace period is that more (e.g. medicines) will be patented because the grace period 'expands the scope for patenting, as inventions disclosed during that period would be eligible for protection, notwithstanding that they would have been deemed in the prior art in accordance with the general rule on novelty'.¹⁴³

A grace period can also delay the entry of generic medicines and other products because it causes 'Postponement of the moment at which the invention will fall into the public domain. Important patents which are maintained for the full patent term are likely to fall in the public domain later for graced patents than would be the case if no grace period were available'.¹⁴⁴

The Nobel Prize winning¹⁴⁵ humanitarian organisation Doctors Without Borders therefore recommends the rejection of the grace period proposed in the Regional Comprehensive Economic Partnership (RCEP).¹⁴⁶ RCEP includes countries which are more and less developed than Kenya.¹⁴⁷

Implications for third parties

Third parties such as generic companies and other inventors need to be able to tell if an invention is patented so that they can make/import generic versions or invent around it: The 'grace period would also mean that, for others working in the same area of medicines or medical technology, there would be additional uncertainty as to whether they can work on or produce a particular medicine or medical technology disclosed by any person for fear that a patent application may be filed 12 months later'.¹⁴⁸

A grace period would decrease legal certainty

A grace period increases legal uncertainty both before and after the patent on the invention concerned is granted according to the European Patent Office's Economic and Scientific Advisory Board.¹⁴⁹ This is because:

- 'it would take longer before third parties could know whether an application has been filed for the subject matter or whether the invention is and shall remain in the public domain'
- 'there would also be legal uncertainty post-grant, related to difficulties of determining the status of items of potential prior art for the assessment of the validity of granted patents.' A grace

^m As the industry association representing 90% of the chemical industry in Germany noted: 'where third-party patents are traced the rules of the German and European patent law enable the identification of an objective reference date (priority date) and of objective reference content (the description in writing of the invention as submitted). This results in a maximum of legal certainty and security of investments', <https://www.vci.de/vci/downloads-vci/firstspirit-1413809313891vci-position-on-grace-periode-140714-en.pdf>. This reduces costs for inventors, see below.

period would 'Increase in the costs of obtaining freedom to operate opinions and in litigation costs. Post-grant, the assessment of the prior art and thus of the validity of granted patents would be more difficult than in the absence of a grace period. This may lead to an increase in the costs of litigation and in the costs of obtaining freedom to operate opinions. Moreover, the fact that an invention is put into the public domain prior to filing may cause an increase in disputes over entitlement, contributing to litigation costs.'

German law and the European Patent Convention (EPC) specify that the only disclosure of patent subject-matter within 6 months prior to patent filing which has no prejudicial effect is if that disclosure took place within a presentation of the invention at an official or officially recognised exhibition or is due to an evident abuse of law to the detriment of the patent applicant. According to the industry association representing 90% of the chemical industry in Germany (VCI) (which categorises the current German law and EPC as not having a grace period):¹⁵⁰

'In the existing legal situation in Germany and in Europe, the reader of a (scientific) publication within the above-described "freedom-to-operate" analysis can assume that he/she may freely use the information given in this publication if 18 months after the scientific publication no relevant patent applications of an earlier priority date can be found: because the patent filing for an invention and the technical teaching in that application are usually disclosed 18 months after the filing date. In the existing legal situation, the companies can fully resort to all of the published non-patent literature, use it if they wish and possibly make further developments by way of improvements to existing inventions.

With the immense and constantly rising numbers of scientific publications that come out every year and are generally accessible, the "freedom-to-operate" analysis is a great challenge to the companies already under existing law. The experiences of companies in countries with grace periods show that introducing a grace period in Germany or Europe would once more significantly increase the amount of research necessary: because after 18 months it can be no longer assumed automatically that the published scientific findings may be used freely, since it would need to be expected – at any time and as a matter of principle – that a grace period is claimed for a patent application.

In this connection, further points of legal uncertainty would ensue and render it even more difficult to assess the patent situation. For example, introducing a grace period would give rise to several questions of whether a pre-publication of a potentially relevant third-party patent takes into account the state-of-the art or not and, consequently, whether a third-party patent constitutes a problem or not. Concretely, the following questions would need to be asked by way of example:

- In the first place: does the third-party patent owner claim the grace period?
- Does the pre-publication really go back to the inventor of the third-party patent?
- What is the course of action with several inventors or joint patent applications (e.g. two companies) if the pre-publication constituting a bar as to novelty was made by only one inventor alone?
- To what extent does the pre-publication need to be taken into consideration as the state-of-the art for the third-party patent?
- How to proceed with verbal disclosures or a general public display?
- In cases of dispute: how long does it take to reach a decision? Must development/production stops of several years be feared?

... there is the risk of a general increase in legal disputes in connection with the grace period, leading to clearly higher financial burdens for the companies and longer disruptions of development/and or production with an uncertain outcome. These aspects are a major danger to competitiveness, especially for SMEs.'

Grace period makes it more difficult for inventors

According to the industry association representing 90% of the chemical industry in Germany (VCI), the increased legal uncertainty due to a grace period (see above) is problematic.¹⁵¹

‘In innovative industries like the chemical industry, companies need to be able to assess the patent situation as reliably as possible before investing in research and development (R&D). For example, this is important in the strategic assessment of fields of technology or of concrete R&D projects – and within this assessment it needs to be found out whether third-party patents stand in the way of own developments or prevent a return on the necessary investment. In professional R&D processes this is done by way of so-called “Freedom-to-Operate” analyses which constitute legal assessments of relevant third-party patents. If uncertain legal points emerge in the assessment of thirdparty patents, this can delay the development process or development projects might even be given up entirely. At the very least, it becomes necessary to invest in a deeper assessment of patent law aspects, channelling these funds away from the actual innovation process. This risk increases considerably due to a multitude of open questions in an introduction of a grace period. . . As described above, a grace period would cause a high level of legal uncertainty and thus be detrimental to innovation.’ⁿ

Do universities need grace periods?

The members of the German chemical industry association (VCI) frequently collaborate with universities and other researchers and finds they are aware of the implications of disclosure before patenting and have patent exploitation agencies to advise them, so the lack of a grace period has not been a problem for them.¹⁵²

‘The proponents of a grace period frequently emphasise an alleged need by universities and other research facilities. Their argument is an alleged conflict at universities and research institutes between the necessity of early publication of scientific findings on the one hand and the prejudicial effect of pre-publication on inventions/novelties on the other, holding that this conflict cannot be resolved due to the lack of a grace period. In their numerous cooperation activities with the above-named partners, the VCI member companies have not encountered any such problems. Rather, the companies of the chemical-pharmaceutical industry note that the recent years have seen a strong professionalization of science in IP management, especially in patent law. This is also reflected in the setting up of many patent exploitation agencies. From the VCI’s viewpoint, these cooperation partners of the member companies are proficient in handling the German and European patent systems. No cases are known of pre-publications with a prejudicial effect on patents having been made by scientific cooperation partners. . . ‘Unlike from what some of the stakeholders might expect, introducing a grace period would not make IP management any easier for SMEs and universities or research institutes.’

Grace period makes it more difficult for SMEs

‘Unlike from what some of the stakeholders might expect, introducing a grace period would not make IP management any easier for SMEs and universities or research institutes.’¹⁵³

For example, if there is a grace period, SMEs ‘would need to gather their data for all of their publications and ensure that the grace period has not expired before filing the relevant patent applications. In this context, it is frequently forgotten that a grace period is no general “free ticket” for the disclosure of an invention prior to patent filing. Also with a grace period, deadlines need to be observed, checked and complied with. Needless to say that such deadlines can be missed too.

Moreover, early publication can lead to a loss of legal protection in other countries which have no grace period or where grace periods are shaped differently. . .

Furthermore, the proponents of a grace period entirely overlook that – based on the publication by an inventor – third parties could file their own patent application with an even earlier priority date than

ⁿ VCI categorises the German and European Patent Convention systems as not allowing a grace period (even though they specify ‘disclosure of a patent subject-matter within 6 months prior to patent filing has no prejudicial effect if that disclosure took place within a presentation of the invention at an official or officially recognised exhibition or is due to an evident abuse of law to the detriment of the patent applicant or his/her legal predecessor. Such protection of exhibitions and reasons of equity should not be confounded with a grace period’, <https://www.vci.de/vci/downloads-vci/firstspirit-1413809313891vci-position-on-grace-periode-140714-en.pdf>).

that of the patent filing by the inventor him/herself, barring the commercialisation of the invention. Those who are calling for a grace period in order to possibly use it systematically are running high risks. The existing system provides a meaningful incentive – also commercially – to first of all protect innovations under patent law instead of presenting them to third parties practically free-of-charge and “in the comfort of their homes”. It is the latter scenario that could bring about a situation where the commercial use of research results is no longer possible or at least no longer attractive.¹⁵⁴

‘the VCI acknowledges that – especially among some SMEs – isolated problems might arise which the impacted parties attribute to the lack of a grace period. However, the VCI takes the view that these problems are not primarily due to this lack of a grace period and cannot be solved by introducing one. Quite the contrary, a considerable amount of legal uncertainty would be the price to be paid by SMEs and all other users of the patent system for an introduction of a grace period’.¹⁵⁵

‘the main policy objection invoked in Europe against the adoption of a grace period is that it creates legal uncertainty for third parties, which may find it difficult to ascertain the state of the art in regard to the application or patent of a competitor, if pre-filing publications which would be novelty-destroying are later found to be graced. The simplicity and legal certainty offered by the EPC in terms of the definition of prior art is considered by European users to be one of the most attractive aspects of the European patent system.’¹⁵⁶

German chemical industry opposes grace periods

VCI is the industry association which represents 90% of the chemical industry in Germany, (including German subsidiaries of foreign businesses) and it notes that:¹⁵⁷

- ‘A grace period would bring a large degree of legal uncertainty and, consequently, impair innovation. . . A high level of legal certainty and clear-cut legal rules are central to creating attractive framework conditions and security of investments’
 - ‘Introducing a grace period would make IP management more difficult, especially for small and mid-sized enterprises (SMEs) and universities/research institutes’
 - ‘grace periods are used only in rare exceptional cases in the relevant countries. Those exceptional cases cannot be the reason for far-reaching legislative changes, such as introducing a grace period’ (See Annex below for details).
 - ‘Exceptional sector- or technology-specific cases of pre-disclosure prejudicial to innovation or regarding the use of grace periods are not representative. Therefore, they should not give rise to calls for a grace period, and they should not be decisive for legal changes of such far-reaching impact.’
 - Even if rules increasing transparency about clinical trial data (eg so dangerous side effects are not hidden by patent owners) are introduced, there is still no need to introduce a grace period. This is because an application on a patent for a medicine is usually filed as soon as the medicine is found to work in a test tube, long before any clinical trials which may disclose the medicine begin: ‘Generally, patents in the field of pharmaceutical products are filed a long time before the underlying clinical trials are finalised – and comprehensive transparency rules are to apply only at the end of these trials. Consequently, a grace period is likely to be used only marginally in such cases. Therefore, this sector-specific feature should not be taken as the reason for a change in patent law that would affect all sectors and industries.’
 - Therefore ‘the companies represented by the VCI see no need to introduce a grace period.’
- There were 59 British respondents to a 2002 UK consultation on grace period (individual inventors, SMEs, patent agents, academics and large companies) and they were mostly happy with model E or if a grace period had to be introduced, for it to be for a maximum of 6 months.¹⁵⁸

Implications for patent examiners

‘A grace period also makes the work of patent offices more complicated, which, in times of backlogs and work-sharing, implies policy issues of systemic relevance. At the EPO, given the extremely narrow range of declarations filed in relation to Art. 55 EPC, the application of the novelty requirement for searchable prior art is simple: where the date of publication of a document is prior to the filing or priority date of the application, inclusion into the state of the art may be ascertained from the face of the document. Where a grace period exists, other issues may become pertinent, such as the origin of the

disclosure, or whether the invention thus disclosed is that of the subsequent applicant's. These may require additional office actions, which impact on the duration and efficiency of the procedure.¹⁵⁹

The European Patent Office's Economic and Scientific Advisory Board also noted that a grace period would could result in 'a systemic negative impact on the functioning of the patent system because introducing a grace period may complicate the process of identifying the applicable prior art. Single items of potential prior art would require investigation as to the origin and circumstances before they could be identified as such. Pre-grant, this may result in a lengthening of the granting procedure, a loss of operational efficiency and an increase in patenting costs due to the potential need for additional communications between the examiner and the applicant.'¹⁶⁰

Who benefits from a grace period?

Inventor A who accidentally discloses the invention A during the grace period benefits from a grace period for invention A. However, as noted above, if there is a grace period, other inventors who want to invent around the product A then have to spend more time and effort figuring out whether product A is patented etc.

Furthermore, since all RCEP countries (with enough data) except Japan are net intellectual property (IP) importers, they do not have many inventors who can benefit from a grace period.

US companies benefit if CEPA includes a grace period (since countries generally implement it with respect to applicants from the whole world, not just from the UAE, since it is too difficult to determine whether a company is from the UAE given subsidiaries etc). 'Patents originally filed in the US but subsequently filed in countries without a 12 month grace period cannot benefit from the grace period exception in the US. This disfavours US companies and is the reason why the US pushes trading partners to adopt grace periods. All US trade agreements, including the proposed TPP Agreement, require 12 month grace periods.'¹⁶¹

In European discussions, 'The FR delegation stated unequivocally that inventors should be advised to patent their inventions before disclosing them in any way.'¹⁶²

As can be seen from the German chemical industries above, even some inventors do not want grace periods.

There are other ways to obtain the benefits of a grace period which have fewer costs, for example:

Benefit of grace period (GP)	Alternative
Reduced risk of accidental novelty-destroying disclosure ¹⁶³	Since the GP only protects against accidental disclosure during the GP (eg 12 months), it is not a total solution because the GP does not protect against accidental disclosures at any time. The French government instead suggests educating inventors (eg via offices with patent expertise in universities and research institutions) not to disclose their invention without patenting it.
Earlier research dissemination ¹⁶⁴	This can also be achieved by filing an earlier patent application
For inventions which cannot be tested in secret, a grace period may allow such inventions to be improved or their effectiveness to be more accurately assessed prior to filing a patent application. ¹⁶⁵	Based on the Annex below, this is likely to be rare and a patent application could still be filed first.
Disclosure to potential funders	This can also be achieved by filing an earlier patent application

Implications when combined with other TRIPS+ provisions

According to the EPO's Economic and Scientific Advisory Board, a grace period can result in 'Increased risk of unintentional infringement by competitors. There might be a higher risk of

unintentional infringements by third parties using a disclosed invention unaware of the fact that the invention might eventually be patented. These parties then would become infringers.¹⁶⁶

Therefore the implications of a grace period also need to be considered in combination with any other TRIPS+ provisions which may be proposed in a free trade agreement (FTA) such as the CEPA. For example if the CEPA has TRIPS+ enforcement, then a generic company which unintentionally infringes a patent (by using a disclosed invention which can eventually be patented due to a grace period) could face a much higher penalty.^o This can discourage generic producers of medicines, environmental and other technology etc from producing.

Conclusion

Careful cost-benefit analyses need to be carried out of the implications of agreeing to a grace period. These should include consideration of the implications for: consumers (eg if more medicines are patented due to the grace period), generic companies and other inventors who want to avoid infringing the patent, patent examiners etc. 'The advantages that a grace period would bring for a very small number of users must not be paid at the price of disadvantages for the vast majority of applicants and for the functioning of the patent system overall.'¹⁶⁷ This is because as the German chemical industry noted (see above), grace periods would decrease legal certainty, which increases costs for many inventors and SMEs, for a provision which is rarely used (see Annex) and which is to solve a problem (disclosure before filing the patent application) which can be solved in other ways: eg as the French government said: by educating inventors (for example universities often have an office that advises them on patents) to apply for patents before disclosing their inventions.

Even British companies said that if a grace period had to be introduced, it should be for a maximum of six months. If even German chemical companies (including large companies such as subsidiaries of multinationals) are only able to cope with a very short and narrow grace period (6 months and only for officially recognised exhibitions (of which there are about two per year) or abuse that harms the applicant), then the SMEs in Kenya are likely to find it difficult even to implement such a limited grace period. Grace periods should be left to each country to introduce and adapt in accordance with their level of development and the capacity of their SMEs etc to be able to cope with any grace period.

It does not make sense for net IP importers to lock-in a grace period in a free trade agreement (FTA) like the CEPA.

Annex: extent of use of grace period¹⁶⁸

'In 2013 the patent offices of the USA (USPTO), Japan (JPO), Germany (DPMA), Great Britain, France and Denmark as well as the European Patent Office (EPO) carried out a consultation on the international harmonisation of patent law ("Tegernsee survey").

Within this consultation it was enquired, inter alia, about the real use of grace periods by patent applicants in those countries where grace periods were in place.

The results available from this consultation show that patent applicants really use grace periods only in rare exceptional cases:

In Japan over 80% of the respondent SMEs stated to have relied on the grace period in maximally 1% of all patent applications. Roughly a further 10% stated to have used the grace period in maximally 10% of applications. Nearly 100% of the research institutes answered that they resorted to the grace period in maximally 10% of applications. Around 30% of research institutes added that they used the grace period merely in maximally 1% of applications. Finally, over 95% of large companies stated to have used the grace period in maximally 1% of applications.

In Europe 21.6% of the survey participants stated to have needed a grace period less than once per 1000 patent applications (< 0.1%). Another 27% replied that they used a grace period in 0.1% of applications. 43% of the respondents relied on the grace period merely in 1% of applications. The EPO summed up the survey results as follows: "... for 63% of respondents, the grace period has either never been relied upon or has been a factor in an infinitesimally small number of cases."

^o Unless there are effective exceptions for prior use rights

Moreover, 61.5% of the respondents in Germany opposed the introduction of a grace period. Among those who had resorted to the grace period provisions in other countries, only well over half (55%) spoke for introducing a grace period in Europe.

In their answers to the USPTO, 82% of respondents originating in Europe stated to have never relied on a grace period.⁷

‘Furthermore. . . the mere fact that a grace period was claimed should not lead to the deduction that an unintended disclosure had to be circumvented; we find this deduction per se misleading. The instrument of a grace period might have been used deliberately even though it might have been possible to patent the invention also without the grace period option.’

¹ <http://www.parliament.go.ke/sites/default/files/2025-03/Memorandum%20to%20the%20National%20Assembly%20to%20Commence%20the%20Ratification%20Process%20of%20the%20Kenya%20-United%20Arab%20Emirates%20Comprehensive%20Economic%20Partnership%20Agreement%20-1.pdf>

² https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm

³ https://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm

⁴ <https://www.twm.my/title2/wto.info/2025/ti250315.htm>

⁵ https://www.wto.org/english/tratop_e/dispu_e/appellate_body_e.htm

⁶ <https://www.twm.my/title2/wto.info/2025/ti250315.htm>

⁷ Because Kenya has not joined the optional Multi-Party Interim Appeal Arbitration Arrangement (MPIA) that enables decisions to become final while the AB is not working, https://wtoplurilaterals.info/plural_initiative/the-mpia/

⁸ Article 13.33.1

⁹ E.g. see <https://www.npr.org/sections/health-shots/2015/03/19/393856788/why-is-u-s-insulin-so-expensive>

¹⁰ Article 13.33.2

¹¹ <https://haiweb.org/storage/2015/07/Kenya-Report-Pricing-Surveys.pdf>

¹² <https://haiweb.org/wp-content/uploads/2015/07/Kenya-Summary-Report-Pricing-Surveys.pdf>

¹³ <https://data.worldbank.org/indicator/NY.GNP.PCAP.CD>

¹⁴ E.g. see <https://wikileaks.org/tpp-ip2/tpp-ip2-chapter.pdf>

¹⁵ <https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-in-force/cptpp/comprehensive-and-progressive-agreement-for-trans-pacific-partnership-text-and-resources>

¹⁶ <https://www.commerce.gov.in/international-trade/trade-agreements/comprehensive-economic-partnership-agreement-between-the-government-of-the-republic-of-india-and-the-government-of-the-united-arab-emirates-uae/>

¹⁷ <https://rtais.wto.org/UI/PublicShowMemberRTAIDCard.aspx?rtaid=1198>

¹⁸ India's is US\$2,540 and Kenya's is US\$2,110, <https://data.worldbank.org/indicator/NY.GNP.PCAP.CD>

¹⁹ E.g. see <https://phrma.org/resources/phrma-special-301-submission-2025>

²⁰ https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/east-african-community-eac/eu-kenya-agreement_en

²¹ ‘Regionalism, Bilateralism, and ‘TRIP Plus’ Agreements: The Threat to Developing Countries’, Ruth Mayne, Occasional Paper, Human Development Report 2005, UNDP.

²² <http://www.cepr.net/index.php/publications/reports/issues-in-trade-and-protectionism>

²³ https://www.citizen.org/wp-content/uploads/WTO-General-Exceptions-Paper_.pdf

²⁴ E.g. https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds512_e.htm and

https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds567_e.htm

²⁵ Article 16.4

²⁶ Article 16.25

²⁷ <https://data.worldbank.org/indicator/NY.GNP.PCAP.CD>

²⁸ E.g. see <https://wikileaks.org/tpp-ip2/tpp-ip2-chapter.pdf>

²⁹ <https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-in-force/cptpp/comprehensive-and-progressive-agreement-for-trans-pacific-partnership-text-and-resources>

³⁰ E.g. see <https://phrma.org/resources/phrma-special-301-submission-2025>

³¹ https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/east-african-community-eac/eu-kenya-agreement_en

³² <https://www.whitehouse.gov/articles/2025/02/reciprocal-trade-and-tariffs/>

³³ <https://www.washingtontimes.com/news/2025/mar/31/trump-unveil-liberation-day-tariffs-major-rose-garden-event-cabinet/>

- ³⁴ <https://www.commerce.gov.in/international-trade/trade-agreements/comprehensive-economic-partnership-agreement-between-the-government-of-the-republic-of-india-and-the-government-of-the-united-arab-emirates-uae/>
- ³⁵ <https://rtais.wto.org/UI/PublicShowMemberRTAIDCard.aspx?rtaid=1198>
- ³⁶ India's is US\$2,540 and Kenya's is US\$2,110, <https://data.worldbank.org/indicator/NY.GNP.PCAP.CD>
- ³⁷ https://web.archive.org/web/20181011215133/https://www.ifpma.org/wp-content/uploads/2016/01/IFPMA_2011_Data_Exclusivity_En_Web.pdf
- ³⁸ <https://msfaccess.org/trading-away-health-eu-mercosur-trade-agreement>
- ³⁹ <https://www.nejm.org/doi/full/10.1056/NEJMp1003126>
- ⁴⁰ <https://www.nejm.org/doi/full/10.1056/NEJMp1003126>
- ⁴¹ <https://pubmed.ncbi.nlm.nih.gov/21506623/> and <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9013034/>
- ⁴² http://www.canadiangenerics.ca/en/news/nov_14_06.shtml
- ⁴³ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4108121/#B24>
- ⁴⁴ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7008687/>
- ⁴⁵ https://publications.gc.ca/collections/collection_2019/dpb-pbo/YN5-176-2019-eng.pdf
- ⁴⁶ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9013034/>
- ⁴⁷ https://health.ec.europa.eu/system/files/2016-11/ev_20110616_co02_en_0.pdf
- ⁴⁸ <https://www.aph.gov.au/DocumentStore.ashx?id=801c99f0-f79a-4434-94b2-303cbd97e9bd&subId=565217>
- ⁴⁹ <https://www.tm.mahidol.ac.th/seameo/2010-41-3/23-4785.pdf>
- ⁵⁰ https://igbamedicines.org/doc/IQVIA-IGBA_Impact%20of%20FTAs%20on%20generic%20and%20biosimilar%20markets_Final%20Deck%20-%20October%202020.pdf
- ⁵¹ See Exhibit 3 of <https://cpath.org/sitebuildercontent/sitebuilderfiles/GuateCpathhaonline8-25-09.pdf>
- ⁵² <https://policy-practice.oxfam.org/resources/all-costs-no-benefits-how-trips-plus-intellectual-property-rules-in-the-us-jord-114080/>
- ⁵³ <https://policy-practice.oxfam.org/resources/all-costs-no-benefits-how-trips-plus-intellectual-property-rules-in-the-us-jord-114080/>
- ⁵⁴ https://dash.harvard.edu/bitstream/handle/1/41292244/scottmorton%20cstern%20cstern_biosimilars_WP.pdf?sequence=1&isAllowed=y
- ⁵⁵ And see footnote 44 in the same document, https://www.twn.my/title2/FTAs/Intellectual_Property/IP_and_Access_to_Medicines/TradeAgreementsandAccessstoMedicationsUnderTheBushAdmini.pdf
- ⁵⁶ https://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/a.hrc.11.12_en.pdf
- ⁵⁷ https://unitaid.org/assets/TPPA-Report_Final.pdf
- ⁵⁸ <https://www.medicinesforeurope.com/wp-content/uploads/2021/03/Medicines%20for%20Europe%20Position%20Paper%20On%20Patent%20Linkage%20-%20May%202019.pdf>
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- ⁶⁵ <https://twn.my/title2/wto.info/2025/ti250315.htm>
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ENDORSED BY THE FOLLOWING ORGANIZATIONS

1. Econews Africa
2. Action Aid International Kenya
3. The Kenya Legal & Ethical Issues Network on HIV and AIDS (KELIN)
4. Cancer Must Bow
5. Wote Youth and Development Projects
6. Network of Tuberculosis Champions Kenya



REPUBLIC OF KENYA

MINISTRY OF INVESTMENTS, TRADE AND INDUSTRY

BRIEF ON THE KENYA – UAE COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT

Purpose:

For use by the Cabinet Secretary during a stakeholders' meeting with the Departmental Committee on Trade, Industry and Cooperatives as part of the ratification process for the Kenya – United Emirates Comprehensive Economic Partnership Agreement on 28th April 2025

1. Introduction

- Kenya and the United Arab Emirates (UAE) begun bilateral engagements in July 2021 through exchange of letters between the Ministers responsible for Trade, with the UAE conveying its interest in opening bilateral consultations that would culminate into negotiations for a Comprehensive Economic Partnership Agreement between the two countries.
- The consultations reviewed the state of Kenya - UAE trade and economic cooperation and undertook to explore the possibility of deepening the cooperation within the limitations imposed on both countries by their respective memberships to Regional Trade blocks i.e. East African Community (EAC) and Gulf Cooperation Council (GCC).
- The consultations concluded with the Kenya Cabinet approving negotiations, conclusion and signature of the Agreement between the two parties. The agreement was signed on 14th January 2024 in Abu Dhabi, the United Arab Emirates.

2. The Agreement

- The full title of the Agreement is “**The Comprehensive Economic Partnership Agreement between Kenya and the United Arab Emirates.**”

- The agreement is called comprehensive because it encompasses trade in goods, economic cooperation, investment and trade in services
- It covers General Provisions, Trade in goods, Rules of Origin, Customs Procedures and Trade Facilitation, Sanitary and Phytosanitary Measures, Technical Barriers to Trade, Trade Remedies, Investment, Digital Trade, Procurement, Intellectual Property Rights, Small and Medium Enterprises, Economic Cooperation, Investment, Dispute Settlement, Exceptions, Administration of the Agreement, and Final Provisions.
- However, it excludes market access (tariff liberalisation) as both Parties agreed to negotiate this chapter with all the EAC Partner States, when ready.

3. Justification for the agreement

- The total trade between Kenya and UAE over the decade has shown a positive trajectory. In 2023, the United Arab Emirates was Kenya's 6th largest export market, absorbing 5.5% of exports and 2nd largest import source accounting for 15.7% of the imports.
- Trade trends between the two parties indicate that two-way trade grew by 169.24 percent over nine years from Ksh. 142.5 billion in 2013 to Ksh. 383.68 billion in 2022. Kenya's exports to UAE amounted to USD 373.6 million and USD 401.5 million in 2022 and 2023 while imports

from the UAE were valued at USD 3.45 billion and USD 2.95 billion during the same period.

- Kenya's main exports to the UAE were mainly tea, the meat of sheep or goats, fruits, vegetables, and cut flowers while imports from UAE were mainly petroleum oils and oils obtained from bituminous minerals and polymers of propylene in primary forms, telephone sets, and cement clinker.

4. Justification of the agreement

- The UAE is a member of the Gulf Cooperation Council (GCC) countries and has strong economic ties with its partners Saudi Arabia, Kuwait, Bahrain, and Oman; they share a common market and a customs union. Under the Greater Arab Free Trade Area Agreement (GAFTA), the UAE has free trade access to most Middle East countries and our ambition is gain strategic access to these markets.
- The Kenya - UAE CEPA provides the country with a unique opportunity to enter into a reciprocal bilateral trade and development cooperation arrangements with one of the emerging global economic powerhouses.
- Both Kenya and the UAE hold “gate way” location status in their respective regions – Kenya as the point of entry into the Eastern Africa region while the UAE is the entry point to the greater Middle-Eastern region covering the gulf and the former the Commonwealth of Independent

States' countries to the south of the Russian Federation. Kenya will therefore utilise the excellent UAE logistics and other connections to trade more with these countries as the UAE utilises Kenya's good will to penetrate the rest of Africa.

5. Obligations in the Agreement

a. Policy and legislative considerations

The CEPA, along with all other trade agreements are anchored in the National Trade Policy and the Integrated National Exports Development and Promotion Strategy. Despite this, the Kenya – UAE CEPA requires ratification by the National Assembly in accordance with the Treaty Making and Ratification Act of 2012, revised in 2018. This is the reason we are here; to obtain your support for the approval of the agreement.

b. Administrative obligations

Kenya and the UAE are required to set up a Joint Committee to steer the implementation of the CEPA. For Kenya, the chair of the council shall be the Cabinet Secretary for the time being responsible for International Trade.

c. Ministerial obligation

The CEPA is to be implemented by the Ministry of Investments, Trade and Industry and any such successor

Ministry/Department. We hope to roll out a programme to sensitize the Kenya producers and exporters across the country on the benefits of this agreement and how to utilize them

d. Financial Implications

There will no financial losses resulting from tariff liberalisation given the agreement excludes market access, which the Parties have agreed to negotiate with all the EAC Partner State, when ready.

6. Benefits of the Agreement to the Kenyan people

- Expanding exports for Kenyan products to the UAE and the wider Middle-East and near-East particularly meat and meat products, horticulture (fruits and vegetables), tea, coffee, and spices, among others. This is because the agreement accords Kenya producers the certainty and predictability needed to enhance production for exporting to the UAE. For example in 2023, the UAE imported from the rest of the world:

- ✓ Tea valued at USD221 million but only USD78.5 million from Kenya;
- ✓ Coffee valued at USD300.7 million but only USD1.21 million from Kenya;
- ✓ Spices valued at USD 126.2 million but only USD 618 thousand from Kenya;

- ✓ Meat and meat products valued at USD2.51 billion and only USD74.5 million from Kenya;
 - ✓ Edible fruits and nuts valued at USD2.7 billion but only USD38.7 million from Kenya;
 - ✓ Cut flowers where we supplying USD32.7 million against imports of USD78.8 million; and,
 - ✓ Vegetables valued at USD217 million and only USD6.7 million.
- The agreement has refined measures to facilitate trade through a common understanding of customs procedures and trade facilitation measures, and also sanitary and phytosanitary measures.
 - Expanding opportunities for services trade, since the agreement has created a common approach to rules on trade in services between the two countries.
 - Kenya has become one of leading global actors in the export of services, with exports valued at USD 6.2 billion (Ksh. 806 trillion) in 2023. The UAE on the other hand imported services valued at USD 96.91 billion in 2022, and our intention is tap into this huge market, in areas such as telecommunications and IT, construction, business services, transport, education, health and the digital economy, among others. Further, Kenya intends to tap into UAE's investment capital and expertise in air and maritime transport, distributive trade and real estate development.

- It is noted that this is the very first time that Kenya is entering bilateral arrangements with another party on trade in services.
- Increased investment in Kenya particularly in sectors such as ICT, healthcare, agriculture and several other areas.
- Expanded technical cooperation.

7. Possible negative effects:

There are no possible negative effects on local industries because the two Parties have not negotiated any bilateral tariff liberalization. The applicable EAC Common External Tariff regime remains in place.

8. Measures to mitigate any negative effects arising from the agreement

- **Trade Remedies Provisions: Safeguards, Countervailing Measures and Anti-dumping** - provides for trade remedies to safeguard against unfair trade practices which leads to market distortion.
- **Amendment Clause** - provides flexibility to the Parties to seek for amendments on any provisions when need arises.
- **Mandatory 5 Year Review Clause** - provides for a comprehensive mandatory review of the entire agreement every 5 years.
- **Exit clause** - provides for flexibility to the Parties to exit the agreement upon giving one year written notice.

9. Request to the Departmental Committee

The Departmental Committee is therefore invited to:

- Take note of the Kenya – UAE CEPA as an instrument that provides the country with a unique opportunity for reciprocal bilateral trade in goods, services and development cooperation arrangements with one of the emerging global economic powerhouses; and,
- Approve the agreement for Ratification in accordance to Section 7 of the **Treaty Making and Ratification Act** No. 45 of 2012 (Act No. 18 of 2014 and Act No. 18 of 2018).

*Prepared by the State Department for Trade
April 2025*



REPUBLIC OF KENYA

MINISTRY OF INVESTMENTS, TRADE AND INDUSTRY

OFFICE OF THE CABINET SECRETARY

RESPONSES TO QUESTIONS ON THE COMPREHENSIVE
ECONOMIC PARTNERSHIP AGREEMENT BETWEEN THE
REPUBLIC OF KENYA AND THE UNITED ARAB EMIRATES

PURPOSE:

For use by Hon. Lee Kinyanjui while appearing before the
Departmental Joint Sitting of the Departmental Committee on
Trade, Industry and Cooperative, and the Departmental
Committee on Health of the National Assembly on 13th November
2025

Opening remarks

Hon. Chair persons, and members of the Departmental Committee on Trade, Industry and Cooperatives; and the Departmental Committee on Health.

Thank you very much for the invitation to apprise on 12 areas of concern that have been brought to your attention with regard to Intellectual Property Rights in the Kenya – United Arab Emirates Comprehensive Economic Partnership Agreement, in respect to public health. However, please allow me to give you a few highlights of the CEPA before answering the specific questions.

Introduction

- Kenya and the United Arab Emirates Union signed the Comprehensive Economic Partnership Agreement on 14th January 2025 in Abu Dhabi, United Arab Emirates.
- The full title of the Agreement is **“The Comprehensive Economic Partnership Agreement between Kenya, of the one part, and the United Arab Emirates, of the other part.**
- The agreement covers General Provisions, Trade in goods, Rules of Origin, Customs Procedures and Trade Facilitation, Sanitary and Phytosanitary Measures, Technical Barriers to Trade, Trade Remedies, Investment, Digital Trade, Procurement, Intellectual Property Rights, Small and Medium Enterprises, Economic Cooperation, Investment, Dispute

Settlement, Exceptions, Administration of the Agreement, and Final Provisions.

- The agreement excludes market access (tariff liberalisation) as both Parties have agreed to negotiate this chapter with all the EAC Partner States when ready.

Intellectual Property Rights

- The Intellectual Property Rights is dealt with under Chapter 13. Generally, the Chapter reaffirms the commitments the Parties have to the TRIPS Agreement and other international Agreements that both Parties have acceded to and ascribe to the provisions thereto. The Chapter is fundamentally aligned to the TRIPS Agreement. A synopsis of the Chapter is as follows:
 - ✓ Section A - General Provisions-Definition, Objectives, principles, nature and scope of obligations. This covers Public health, national treatment, transparency and application of the Chapter.
 - ✓ Section B - Cooperation-establishment of a subcommittee on IPR and Patent cooperation.
 - ✓ Section C - Trade Marks, Domain names,
 - ✓ Section D - Country names.
 - ✓ Section E - Geographical Indications
 - ✓ Section F - Patents and Industrial Designs

- ✓ Section G - Undisclosed Test or Other Data for Pharmaceutical Products
- ✓ Section H - Copyright and Related Rights
- ✓ Section I - Enforcement and Border Measures

Responses to the questions

- a. Issue: What rationale was used to agree to a five-year data exclusivity period under Article 13.33, although TRIPS does not require such a measure?

Response:

- The rationale was a delicate negotiated balance between the negotiating Parties, the provisions of the TRIPS Agreement, and weighed against global practices.
- Article 70 of the TRIPS agreement on the Protection of Existing Subject Matter states: Where a product is the subject of a patent application in a Member in accordance with paragraph 8(a), *exclusive marketing rights shall be granted, notwithstanding the provisions of Part VI, for a period of five years after obtaining marketing approval in that Member* or until a product patent is granted or rejected in that Member state, whichever period is shorter, provided that, subsequent to the entry into force of the WTO Agreement, a patent application has been filed and a patent granted for that product in another Member and marketing approval obtained in such other Member.

- It can be noted that patents usually have a longer term than data exclusivity and both run concurrently in developed countries. Therefore, data exclusivity is of practical value only when there is no patent or the remainder of the patent term on approval is shorter than the period of exclusivity. If there is no patent, as for example when an application is rejected because the invention claimed is not new or does not involve an inventive step, then data exclusivity confers a period of monopoly.
- The concept of protecting test data gained international prominence through the Paris Convention and was later reinforced by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Under TRIPS Article 39 (3), member states must protect test data against unfair commercial use and disclosure.
- This obligation mandates a predefined period where second entrants cannot rely on bioequivalence to avoid extensive tests for efficacy and safety. It strikes a balance, enabling the originator to recover their testing expenses while ensuring the availability of safe and effective products in the market.
- Although there is no uniform standard for enacting and implementing data exclusivity laws, the period during which originators can enjoy exclusivity after marketing approval typically ranges from 5 to 10 years. For example, the US

through the Hatch-Waxman Act of 1984 (The Drug Price Competition and Patent Term Restoration Act - Public Law 98 - 417) provides 5 years of data exclusivity for new drugs and 3 years for new indications of existing drugs. Many others like those in the EU, Australia, and New Zealand, data protection systems, withholding the results of patented inventions from the public and Research and Development agencies for up to five years. Some others even extend patent terms in case of lengthy approval processes. For example, China offers 6 years of data exclusivity, the Philippines 8 years, Brazil 10 years, Korea 8 years, and Taiwan 6 years. Japan's data exclusivity ranges from 4 to 10 years

- b. **Issue - Did the Ministry conduct a cost-benefit analysis to assess the trade and health implications of accepting TRIPS – Plus obligations?**

Response:

- The Ministry did not conduct a cost – benefit analysis to assess the trade and health implications. The Ministry borrowed heavily from the Kenya – US STIP negotiations where a lot of progress had already been made on the negotiations.
- c. **Issue: What trade or market access benefits did Kenya receive in exchange for accepting a higher intellectual property protection under CEPA?**

Response:

- The TRIPS Chapter was negotiated as is and therefore was not enjoined to any chapter. However, we also took into

consideration that the UAE is an upcoming hub for pharmaceutical products, the growth and expansion of the pharmaceutical sector and the UAE's strategic location as a crucial distribution hub for the Middle East, Africa, and South Asia.

- The well-established infrastructure of ports, free zones, and air cargo facilitates and boosts pharmaceutical companies' ability to distribute high-quality medicines throughout the region; and,
 - Importantly, the need for Kenya to diversify its import sources of pharmaceutical products and reduce the heavy reliance of India, China and European sources.
- d. Issue: Did the Ministry compare the text of the CEPA between the UAE with similar agreement such as the text from the CEPA between India –UAE that excludes TRIPS-Plus?

Response:

- The Ministry took into consideration and there are a number of similarities between the Kenya- UAE CEPA and the UAE-India CEPA. Examples:
 - ✓ Kenya CEPA: Article 13.32: *Exceptions*; Article 13: *3 Principals* and Article 13.6: *Intellectual Property and Public Health*;
 - ✓ India CEPA: Article 11.27: *Exceptions*; Article 11.3: *Principals*; Article 11.29: *Protection of Undisclosed Test and Other Data for Pharmaceutical Products*; Article 11.6: *TRIPS and Public*

Health; and, Article 11.29: Protection of Undisclosed Test or Other Data for Pharmaceutical Products, sub-article 2 (1).

- ✓ The UAE tabled the text of the CEPA with India as the basis of their negotiations, and therefore the two texts are not dissimilar. However, India is remarkable global pharmaceutical powerhouse has applied its pivotal Section 3(d) of the Indian Patent Act 1970 to exclude TRIPS-Plus provisions from CEPA with the UAE to shield the country's generic and biotech sectors from other pharmaceutical producing countries.
 - It is important to note that while India does not allow data exclusivity, the patent holder is subject to its domestic laws.
- e. What measures has the Ministry established to protect Kenya against disputes or retaliatory actions if Kenya does not comply with Article 13.33?

Response:

- Intellectual property rights are territorial in nature and therefore disputes arising would normally follow the normal due course with the relevant Competent National Authority and if not satisfied the party can apply for judicial process within the territory.
- However, the following principles under TRIPS can be invoked if disputes arise:

✓ **ARTICLE 13.3: Principles**

The Parties may *adopt appropriate measures to prevent the abuse of intellectual property rights by right holders or resort to practices* that unreasonably restrain trade or adversely affect

the international transfer of technology provided that such measures are consistent with this Agreement.

✓ **Article 27: Patentable subject matter**

Provides for a member to even “*exclude from patentability inventions, prevention within their territory* of the commercial exploitation of which is necessary to protect public order or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment”

✓ **Article 30: Exceptions to Rights Conferred**

Members may *provide limited exceptions to the exclusive rights conferred by a patent*, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

✓ **Article 31: Other Use Without Authorization of the Right Holder (Compulsory Licensing)**

This article lays down the procedures to be used for compulsory licensing in emergencies.

- f. How will the Ministry address possible reputational harm or policy hesitation that may result from the enforcement of the CEPA?

Response:

- The CEPA in Chapter 14 on Administration of the Agreement establishes a Joint Committee composed of representatives of

the UAE and Kenya at the level of Ministers; senior officials; and technical officials.

- Article 14.7 lists the functions of the Joint Committee which shall be to :
 - ✓ review and assess the results and overall operation of this Agreement in the light of the experience gained during its application and its objectives;
 - ✓ consider and recommend any amendments to this Agreement that may be proposed by either Party, including the modification of concessions made under this Agreement;
 - ✓ endeavour to amicably resolve disputes between the Parties arising from the interpretation or application of this Agreement;
 - ✓ consider any other matter that may affect the operation of this Agreement;
- It is our view that these provision, and indeed the work of the entire Joint Committee is able to address any emerging concerns resulting from implementing the CEPA.
- g. **Issue: Does the Ministry have a frame work for consultation among ministries before Kenya approves generic medicines that may raise compliance concerns under CEPA?**

Response:

- To be given by Ministry of Health
- h. **Issue: How the Ministry will implement the public health safeguards referenced in Article 13.6 CEPA and the Doha**

Declaration on TRIPS and Public Health during pandemics and other health emergencies;

Response:

- While the World Trade Organization TRIPS Agreement sets the minimum standards for intellectual property protection, in order to encourage innovation, the Agreement, through the Doha Declaration of 2001 provides flexibilities which aim to balance these rights with public health needs, ensuring access to medicine for all particularly for developing countries.
- Article 13.6 in the CEPA emphasizes this provision in the TRIPS agreement and its interpretation in a way that supports public health objectives and promotes access to medicines for all populations.
- Such flexibilities and exceptions include:
 - ✓ Compulsory licensing to enable production or importation of generic versions of patented medicines without the consent of the patent holder particularly in cases of public health emergencies;
 - ✓ Flexibilities that ensure public health needs are met such as allowing exceptions to patent rights;
 - ✓ Affordable access to medicines especially for diseases that disproportionately affect low-income populations
- Additionally, the TRIPS Agreement itself makes the following provisions:

✓ **Article 31: Other Use Without Authorization of the Right Holder**

This article lays down the procedures to be used in emergencies and specifically in paragraph (b) which states: *A member may waive the requirement of consent for authorization by the right holder in “case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. In situations of national emergency or other circumstances of extreme urgency, the right holder shall, nevertheless, be notified as soon as reasonably practicable”*

Article 66: Least-Developed Country Members, sub article 2: *allows Developed country Members to “provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least-developed country Members in order to enable them to create a sound and viable technological base”* and this can be used to apply for relevant technology transfer.

The CEPA therefore recognizes and reaffirms the two Parties' commitment to the implementation of the Doha Declaration with respect to public health and access to medicines. The Agreement reaffirms and adopts the flexibilities under the TRIPS Agreement that promote public health and access to medicine including any waivers on access to vaccines during pandemics. The TRIPS flexibilities are still accessible even within

the CEPA including compulsory licensing, parallel importation by the recognition of the exhaustion of rights to be adopted by each party.

- i. **Issue: How does the Ministry interpret Kenya's right to issue compulsory licenses or import generics during emergencies under CEPA**

Response:

- Kenya's right to compulsory licensing is guaranteed in CEPA at:
 - ✓ Article 13.33 (3 a & b);
 - ✓ Article 13.6: Intellectual Property and Public Health; and
 - in,
 - ✓ Article 31 of TRIPS on "Other use without the authorization of the right holder"

- j. **Issue: Explain how the Ministry will ensure policy coherence between international trade agreements and constitutional right to health**

Response:

- Sec. 43 (1a) of the Kenya Constitution 2010 guarantees every person a right to the highest attainable standard of health, which includes the right to health care services, including reproductive health care;
- The Constitution of Kenya is the supreme law together with any international or multilateral laws which Kenya is a party to including trade agreements.

- Kenya negotiates trade agreements to diversify trade, boost economic development and attract investments which in turn will ensure achievement of the rights and freedoms including right to health as guaranteed by the Constitution.

Moreover, in every agreement, provisions for review are embedded which are to ensure alignment of provisions with our domestic laws and any other new developments that arise after coming into force.

- k. **Issue: Mechanisms that the Ministry will establish for periodic monitoring and reporting on the impact of CEPA on access to medicines and local pharmaceutical manufacturing**

Response:

- As mentioned earlier, the CEPA in Chapter 14 on Administration of the Agreement establishes a Joint Committee composed of representatives of the UAE and Kenya at the level of Ministers; senior officials; and technical officials.
- Article 14.7 lists the functions of the Joint Committee which shall be to:
 - ✓ review and assess the results and overall operation of this Agreement in the light of the experience gained during its application and its objectives;
 - ✓ consider and recommend any amendments to this Agreement that may be proposed by either Party, including the modification of concessions made under this Agreement;

- ✓ endeavour to amicably resolve disputes between the Parties arising from the interpretation or application of this Agreement;
- ✓ consider any other matter that may affect the operation of this Agreement;
- It is our view that these provision, and indeed the work of the entire Joint Committee is able to address any emerging concerns resulting from implementing the CEPA.
- l. Issue: Explain how public consultations will continue after ratification to ensure transparency and stakeholder engagement in implementation of the CEPA?

Response:

- The Ministry, through the State Department for Trade working in collaboration with Business Membership Organizations, intends to roll out a programme of sensitizing the business community and other stakeholders across all the counties on the benefits of the agreement;
- We will also develop a CEPA implementation Strategy to facilitate its implementation.

I thank you very much

CHAPTER 13 INTELLECTUAL PROPERTY

SECTION A General Provisions

ARTICLE 13.1: Definitions

For the purposes of this Chapter:

intellectual property refers to all categories of intellectual property that are the subject of Sections one through seven of Part II of the TRIPS Agreement;

national means, in respect of the relevant right, a person of a Party that would meet the criteria for eligibility for protection provided for in the agreements listed in Article 13.5 of this agreement or the TRIPS Agreement; and

WIPO means the World Intellectual Property Organization.

ARTICLE 13.2: Objectives

The Parties shall endeavour to promote, support, protect and enforce intellectual property rights so as to contribute to the promotion of trade, investment, technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

ARTICLE 13.3: Principles

The Parties may adopt appropriate measures to prevent the abuse of intellectual property rights by right holders or resort to practices that unreasonably restrain trade or adversely affect the international transfer of technology provided that such measures are consistent with this Agreement.

ARTICLE 13.4: Nature and Scope of Obligations

Each Party shall give effect to the provisions of this Chapter. A Party may, but shall not be obliged to, provide more extensive protection for, or enforcement of, intellectual property rights under its law than is required by this Chapter and the



TRIPS agreement, provided that such protection or enforcement does not contravene the provisions of this Chapter and the TRIPS Agreement. Each Party shall be free to determine the appropriate method of implementing the provisions of this Chapter and the TRIPS Agreement within its own legal system and practice.

ARTICLE 13.5: International Agreements

The Parties reaffirm their obligations set out in the following multilateral agreements:

- (a) *Patent Cooperation Treaty* of 19 June 1970, as revised by the *Washington Act of 2001*;
- (b) *Paris Convention for the Protection of Industrial Property*, done on 20 March 1883, as revised by the *Stockholm Act of 1967* ("Paris Convention");
- (c) *Berne Convention for the Protection of Literary and Artistic Works*, done on 9 September 1886, as revised by the *Paris Act of 1971* ("Berne Convention");
- (d) *Madrid Protocol relating to the Madrid Agreement concerning the International Registration of Marks*, done on 27 June 1989;
- (e) *WIPO Performances and Phonogram Treaty*, done on 20 December 1996;
- (f) *International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations*, done on 26 October 1961;
- (g) *WIPO Copyright Treaty*, done on 20 December 1996;
- (h) *Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled*, done on 27 June 2013; and
- (i) *International Convention for the Protection of New Varieties of Plants*, done on 19 March 1991.

ARTICLE 13.6: Intellectual Property and Public Health

1. A Party may, in formulating or amending its laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and



technological development, provided that such measures are consistent with the provisions of this Chapter and TRIPS Agreement.

2. The Parties recognise the principles established in the *Declaration on The TRIPS Agreement and Public Health*, done on 14 November 2001 (the "Doha Declaration") by the Ministerial Conference of the WTO and confirm that the provisions of this Chapter are without prejudice to the Doha Declaration.

ARTICLE 13.7: National Treatment

1. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to nationals of another Party treatment no less favourable than it accords to its own nationals with regard to the protection of intellectual property rights subject to the exceptions applicable under international treaties to which the Parties are member.
2. With respect to secondary uses of phonograms by means of analogue communications and free over-the-air broadcasting, however, a Party may limit the rights of the performers and producers of another Party to the rights its persons are accorded within the jurisdiction of that other Party.
3. A Party may derogate from paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of another Party to designate an address for service of process in its territory, or to appoint an agent in its territory, provided that such derogation is:
 - (a) necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter and TRIPS Agreement, and;
 - (b) not applied in a manner that would constitute a disguised restriction on trade.
4. Paragraph 1 does not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

ARTICLE 13.8: Transparency

1. Each Party shall endeavour, subject to its legal system and practice, to make available information concerning application and registration of trademarks, geographical indications, industrial designs, patents and plant variety rights accessible for the general public.



2. The Parties also acknowledge the importance of informational materials, such as publicly accessible databases of registered intellectual property rights that assist in the identification of subject matter that has fallen into the public domain.
3. Each Party shall endeavour to make available such information in the English language.

ARTICLE 13.9: Application of Chapter to Existing Subject Matter and Prior Acts

1. Unless otherwise provided in this Chapter, this Chapter gives rise to obligations in respect of all subject matter existing at the date of entry into force of this Agreement for a Party and that is protected on that date in the territory of a Party where protection is claimed, or that meets or comes subsequently to meet the criteria for protection under this Chapter.
2. Unless otherwise provided in this Chapter, a Party shall not be required to restore protection to subject matter that on the date of entry into force of this Agreement for that Party has fallen into the public domain in its territory.
3. This Chapter does not give rise to obligations in respect of acts that occurred before the date of entry into force of this Agreement for a Party.

ARTICLE 13.10: Exhaustion of Intellectual Property Rights

Without prejudice to any provisions addressing the exhaustion of intellectual property rights in international agreements to which a Party is a member, nothing in this Chapter prevents a Party from determining whether or under what conditions the exhaustion of intellectual property rights applies under its legal system.

SECTION B Cooperation

ARTICLE 13.11: Cooperation Activities and Initiatives

1. The Parties shall endeavour to cooperate on the subject matter covered by this Chapter, such as through appropriate coordination, training and exchange of information between the respective intellectual property offices of the Parties, or other institutions, as determined by each Party. Cooperation activities and initiatives undertaken under this Chapter shall be subject to the availability of resources, and on request, and on terms and



conditions mutually agreed upon between the Parties. Cooperation may cover areas such as:

- (a) developments in domestic and international intellectual property policy;
 - (b) intellectual property administration and registration systems;
 - (c) education and awareness relating to intellectual property;
 - (d) intellectual property issues relevant to:
 - (i) SMEs; and
 - (ii) empowering women and youth.
 - (e) policies involving the use of intellectual property for research, innovation and economic growth;
 - (f) implementation of multilateral intellectual property agreements;
 - (g) technical assistance and capacity-building;
 - (h) enforcement of intellectual property rights; and
 - (i) other activities and initiatives as may be mutually determined between the Parties.
2. The Parties may establish a Subcommittee on Intellectual Property in accordance with Article 14.1.3 (Joint Committee).

ARTICLE 13.12: Patent Cooperation

1. The Parties recognise the importance of improving the quality and efficiency of their respective patent registration systems as well as simplifying and streamlining the procedures and processes of their respective patent offices for the benefit of all users of the patent system and the public as a whole.
2. Further to paragraph 1, the Parties shall endeavour to cooperate among their respective patent offices to facilitate the sharing and use of search and examination work with the other Party. This may include:
 - (a) making search and examination results available to the patent office of the other Party; and



- (b) exchanging information on quality assurance systems and quality standards relating to patent examination.
3. The Parties shall endeavour to share patent information on science, technology, innovation activities, and the generation, transfer and dissemination of technology, subject to any confidentiality requirements in their domestic laws and regulations.
4. In order to reduce the complexity and cost of obtaining the grant of a patent, the Parties shall endeavour to cooperate to reduce differences in the procedures and processes of their respective patent offices.

SECTION C Trademarks

ARTICLE 13.13: Types of Signs Registrable as Trademarks

Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs whether rendered in two-dimensional or three-dimensional form, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, a Party may make registrability depend on distinctiveness acquired through use. A Party may in addition include the registration of the sound marks in accordance with the national laws and regulations of the Party.

ARTICLE 13.14: Collective and Certification Marks

Each Party shall provide that trademarks may include collective marks and certification marks. A Party is not obligated to treat certification marks as a separate category in its law, provided that those marks are protected. Each Party may also provide that signs that may serve as geographical indications are capable of protection under its trademark system.¹

¹ For the purpose of clarity "rights management information" shall be interpreted to be as provided under Article 12 of the WCT.

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ARTICLE 13.15: Use of Identical or Similar Signs

Each Party shall provide that the owner of a registered trademark has the exclusive right to prevent third parties that do not have the owner's consent from using in the course of trade identical or similar signs, including geographical indications,^{2,3} for goods or services that are related to those goods or services in respect of which the owner's trademark is registered, where such use would result in a likelihood of confusion. In the case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.

ARTICLE 13.16: Exceptions

A Party may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that those exceptions take account of the legitimate interest of the owner of the trademark and of third parties.

ARTICLE 13.17: Well-Known Trademarks

1. Neither Party shall require as a condition for determining that a trademark is well-known that the trademark has been registered in the Party or in another jurisdiction.
2. Article 6 *bis* of the Paris Convention shall apply, *mutatis mutandis*, to goods or services that are not identical or similar to those identified by a well-known trademark,⁴ whether registered or not, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the trademark, and provided that the interests of the owner of the trademark are likely to be damaged by such use.
3. Each Party recognises the importance of the *Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks* as adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of WIPO at the Thirty-Fourth Series of Meetings

² For greater certainty, the exclusive right in this Article applies to cases of unauthorised use of geographical indications with goods for which the trademark is registered, in cases in which the use of that geographical indication in the course of trade would result in a likelihood of confusion as to the source of the goods.

³ For greater certainty, the Parties understand that this Article should not be interpreted to affect their rights and obligations under Articles 22 and 23 of the TRIPS Agreement.

⁴ In determining whether a trademark is well-known in a Party, that Party need not require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods or services.



of the Assemblies of the Member States of WIPO on 20 to 29 September 1999.

4. Each Party shall provide for appropriate measures to refuse the application or cancel the registration and prohibit the use of a trademark that is identical or similar to a well-known trademark,⁵ for identical or similar goods or services, if the use of that trademark is likely to cause confusion with the prior well-known trademark. A Party may also provide such measures including in cases in which the subsequent trademark is likely to deceive.

ARTICLE 13.18: Procedural Aspects of Examination, Opposition and Cancellation

Each Party shall provide a system for the examination and registration of trademarks which includes, among other things:

- (a) communicating to the applicant in writing, which may be by electronic means, the reasons for any refusal to register a trademark;
- (b) providing the applicant with an opportunity to respond to communications from the competent authorities, to contest any initial refusal, and to make a judicial appeal of any final refusal to register a trademark;
- (c) providing an opportunity to oppose the registration of a trademark or to seek cancellation of a trademark; and
- (d) requiring administrative decisions in opposition and cancellation proceedings to be reasoned and in writing, which may be provided by electronic means.

ARTICLE 13.19: Electronic Trademarks System

Each Party shall endeavour to provide:

- (a) a system for the electronic application for, and maintenance of, trademarks; and
- (b) a publicly available electronic information system, including an online database, of trademark applications and of registered trademarks.

⁵ The Parties understand that a well-known trademark is one that was already well-known before, as determined by a Party, the application for, registration of or use of the first-mentioned trademark.



ARTICLE 13.20: Classification of Goods and Services

Each Party shall adopt or maintain a trademark classification system that is consistent with the *Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks*, done on 15 June 1957, as revised and amended ("Nice Classification"). Each Party shall provide that:

- (a) registrations and the publications of applications indicate the goods and services by their names, grouped according to the classes established by the Nice Classification;⁶ and
- (b) goods or services may not be considered as being similar to each other on the ground that, in any registration or publication, they are classified in the same class of the Nice Classification. Conversely, each Party shall provide that goods or services may not be considered as being dissimilar from each other on the ground that, in any registration or publication, they are classified in different classes of the Nice Classification.

ARTICLE 13.21: Term of Protection for Trademarks

Each Party shall provide that initial registration and each renewal of registration of a trademark is for a term of no less than 10 years. The registration of a trademark shall be renewable indefinitely.

ARTICLE 13.22: Non-Recordal of a License

Neither Party may demand the registration of trademark licenses as a prerequisite for establishing the license's authenticity according to national laws and regulations of each Party.

ARTICLE 13.23: Domain Names

In connection with each Party's system for the management of its country-code top-level domain ("ccTLD") domain names, the following shall be available:

- (a) an appropriate procedure for the settlement of disputes, preferably, or modelled along the same lines as, the principles established in the

⁶ A Party that relies on translations of the Nice Classification shall follow updated versions of the Nice Classification to the extent that official translations have been issued and published.



Uniform Domain-Name Dispute-Resolution Policy, as approved by the Internet Corporation for Assigned Names and Numbers (ICANN) or that:

- (i) is designed to resolve disputes expeditiously;
- (ii) is fair and equitable;
- (iii) is not overly burdensome; and
- (iv) does not preclude resort to judicial proceedings.

SECTION D Country Names

ARTICLE 13.24: Country Names

Each Party may provide the legal means for interested persons to prevent commercial use of the country name of a Party in relation to a good in a manner that misleads consumers as to the origin of that good.

SECTION E Geographical Indications

ARTICLE 13.25: Recognition of Geographical Indications

1. Geographical indication means an indication that identifies a good as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation, or other characteristic of the good is essentially attributable to its geographical origin.
2. The Parties recognise that geographical indications may be protected through a trademark or *sui generis* system or other legal means.
3. The Parties may recognise the geographical indications protected and originating in the territories of the Parties according to national laws and regulations.

ARTICLE 13.26: Administrative Procedures for the Protection of Geographical Indications

Each Party shall provide administrative procedures for the protection or recognition of geographical indications through a trademark, a *sui generis* system or other legal

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means. Each Party shall, with respect to applications for protection or requests for recognition, ensure that its laws and regulations governing the filing of those applications or requests for recognition are readily available to the public and clearly sets out the procedures for these actions.

ARTICLE 13.27: Date of Protection of a Geographical Indication

If a Party grants protection or recognition to a geographical indication that protection or recognition shall commence no earlier than the filing date⁷ or date of request for recognition in the Party or the registration date in the Party, as applicable.

SECTION F Patents and Industrial Design

ARTICLE 13.28: Grace Period

Each Party shall disregard information contained in public disclosures of an invention related to an application to register a patent⁸ if the public disclosure:

- (a) was made by the inventor, applicant or a person that obtained the information from the inventor or applicant inside or outside the territory of each Party; and
- (b) occurred within at least 12 months prior to the date of filing of the application.

ARTICLE 13.29: Procedural Aspects of Examination, Opposition and Invalidity of Registered Patent and Industrial Design

1. Each Party shall provide a system for the examination and registration of patents or industrial designs which includes:
 - (a) communicating to the applicant in writing, which may be by electronic means, the reasons for any refusal to register patent or industrial design; and

⁷ For greater certainty, the filing date referred to in this Article includes, as applicable, the priority filing date under the Paris Convention.

⁸ For greater certainty, patent may include utility model in accordance with national law and regulations.



- (b) providing the applicant with an opportunity to respond to communications from the competent authorities, to contest any initial refusal, and to appeal for any final refusal to register patent or industrial design.
- 2. Each Party shall provide opportunity for interested parties to seek cancellation or invalidation of a registered patent. A Party may, in addition, provide an opportunity for interested parties to oppose the registration of patent.
- 3. Each Party shall provide opportunity for interested parties to oppose the registration of an industrial design, and in addition may provide an opportunity to seek cancellation or invalidation of the registration of industrial design.
- 4. Each Party shall ensure that making decisions in opposition, cancellation, or invalidation proceedings to be reasoned and in writing, which may be delivered by electronic means.

ARTICLE 13.30: Amendments, Corrections, and Observations

- 1. Each Party shall provide an applicant for patent with at least one opportunity to make amendments, corrections or observations in connection with its application.
- 2. Each Party shall provide a right holder of patent with at least one opportunity to make amendments or corrections after registration provided that such amendments or corrections do not change or expand the scope of the patent right as a whole.⁹
- 3. Each Party may apply paragraphs 1 and 2, subject to any necessary modifications, with respect to amendments, corrections or observations to applications for industrial design registration, and registered industrial designs.

ARTICLE 13.31: Industrial Design Protection

- 1. Each Party shall ensure that requirements for securing or enforcing registered industrial design protection do not unreasonably impair the opportunity to obtain or enforce such protection.

⁹ It is understood that the amendments or corrections which do not change or expand the scope of the right means that the scope of the patent or industrial design right stays same as before or reduced.



2. The duration of protection available for registered industrial designs shall amount to at least 10 years.

ARTICLE 13.32: Exceptions

A Party may provide limited exceptions to the exclusive rights conferred by a patent or an industrial design, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent or an industrial design and do not unreasonably prejudice the legitimate interests of the right holder, taking account of the legitimate interests of third parties.

SECTION G

Protection of Undisclosed Test or Other Data

ARTICLE 13.33: Protection Of Undisclosed Test Or Other Data For Pharmaceutical Products

1. If a Party requires, as a condition for granting marketing approval for a new pharmaceutical product, the submission of undisclosed test or other data concerning either or both the safety and efficacy of the product, that Party shall not permit third persons, without the consent of the person that previously submitted such information, to market the same or a similar¹⁰ product on the basis of:
 - (a) that information; or
 - (b) the marketing approval granted to the person that submitted such information,for at least five years from the date of marketing approval of the new pharmaceutical product in the territory of the Party.
2. A Party shall adopt or maintain a system other than judicial proceedings that precludes, based upon patent information submitted to the regulatory authority by a patent holder or the applicant for marketing approval, the issuance of marketing approval to any third person seeking to market a pharmaceutical product subject to a patent claiming that product, unless by consent or acquiescence of the patent holder.

¹⁰ For greater certainty, for the purposes of this Section, a pharmaceutical product is "similar" to a previously approved pharmaceutical product if the marketing approval, or, in the alternative, the applicant's request for such approval, of that similar pharmaceutical product is based upon the undisclosed test or other data concerning the safety and efficacy of the previously approved pharmaceutical product, or the prior approval of that previously approved product.



3. Notwithstanding paragraph 1, a Party may take measures to protect public health in accordance with:
- (a) the Declaration on TRIPS and Public Health;
 - (b) any waiver of any provision of the TRIPS Agreement granted by WTO Members in accordance with the WTO Agreement to implement the Declaration on TRIPS and Public Health and that is in force between the Parties; or
 - (c) any amendment of the TRIPS Agreement to implement the Declaration on TRIPS and Public Health that enters into force with respect to the Parties.
4. For the purposes of paragraph 1, a new pharmaceutical product means a pharmaceutical product that contains an active ingredient for which no other pharmaceutical product containing the same active ingredient has previously obtained marketing approval in the country.

SECTION H

Copyright and Related Rights

ARTICLE 13.34: Definitions

For the purposes of Article 13.35 and 13.37 through 13.44, the following definitions apply with respect to performers and producers of phonograms:

broadcasting means the transmission by wireless means for public reception of sounds or of images and sounds or of the representations thereof; such transmission by satellite is also "broadcasting"; transmission of encrypted signals is "broadcasting" if the means for decrypting are provided to the public by the broadcasting organisation or with its consent;

communication to the public of a performance or a phonogram means the transmission to the public by any medium, other than by broadcasting, of sounds of a performance or the sounds or the representations of sounds fixed in a phonogram;

fixation means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced, or communicated through a device;

performance means a performance fixed in a phonogram unless otherwise specified;

performers means actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore;



phonogram means the fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in a cinematographic or other audio-visual work;

producer of a phonogram means a person that takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representations of sounds; and

publication of a performance or phonogram means the offering of copies of the performance or the phonogram to the public, with the consent of the right holder, and provided that copies are offered to the public in reasonable quantity.

right to authorise or prohibit means that with respect to copyright and related rights, the term right to authorise or prohibit refers to exclusive rights.

ARTICLE 13.35: Right of Reproduction

Each Party shall provide¹¹ to authors, performers, and producers of phonograms¹² the exclusive right to authorise or prohibit all reproduction of their works, performances or phonograms in any manner or form, including in electronic form.

ARTICLE 13.36: Right of Communication to the Public

Without prejudice to Articles 11(1)(ii), 11bis(1)(i) and (ii), 11ter(1)(ii), 14(1)(ii), and 14bis(1) of the Berne Convention, each Party shall provide to authors the exclusive right to authorise or prohibit the communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them.¹³

nationals a term of copyright protection that exceeds life of the author plus 50 years, nothing in this Article or Article 13.7 shall preclude that Party from applying Article 7(8) of the Berne Convention with respect to the term in excess of the term provided in this subparagraph of protection for works of another Party.

¹² References to "authors, performers, and producers of phonograms" refer also to any of their successors in interest.

¹³ The Parties understand that the mere provision of physical facilities for enabling or making a communication does not in itself amount to communication within the meaning of this Chapter or the Berne Convention. The Parties further understand that nothing in this Article precludes a Party from applying Article 11bis(2) of the Berne Convention.



ARTICLE 13.37: Right of Distribution

Each Party shall provide to authors, performers and producers of phonograms the exclusive right to authorise or prohibit the making available to the public of the original and copies¹⁴ of their works, performances and phonograms through sale or other transfer of ownership.

ARTICLE 13.38: Related Rights

1. Each Party shall accord the rights provided for in this Chapter with respect to performers and producers of phonograms: to the performers and producers of phonograms that are nationals¹⁵ of another Party; and to performances or phonograms first published or first fixed¹⁶ in the territory of another Party.¹⁷ A performance or phonogram shall be considered first published in the territory of a Party if it is published in the territory of that Party within 30 days of its original publication.
2. Each Party shall provide to performers the exclusive right to authorise or prohibit:
 - (a) the broadcasting and communication to the public of their unfixed performances, unless the performance is already a broadcast performance; and
 - (b) the fixation of their unfixed performances.
3. Each Party shall provide to performers and producers of phonograms the exclusive right to authorise or prohibit the broadcasting or any communication to the public of their performances or phonograms, by wire

¹⁴ The expressions "copies" and "original and copies", that are subject to the right of distribution in this Article, refer exclusively to fixed copies that can be put into circulation as tangible objects.

¹⁵ For the purposes of determining criteria for eligibility under this Article, with respect to performers, a Party may treat "nationals" as those who would meet the criteria for eligibility under Article 3 of the WPPT.

¹⁶ For the purposes of this Article, fixation means the finalisation of the master tape or its equivalent.

¹⁷ For greater certainty, in this paragraph with respect to performances or phonograms first published or first fixed in the territory of a Party, a Party may apply the criterion of publication, or alternatively, the criterion of fixation, or both. For greater certainty, consistent with Article 13.7 of this agreement, each Party shall accord to performances and phonograms first published or first fixed in the territory of another Party treatment no less favourable than it accords to performances or phonograms first published or first fixed in its own territory.



- (ii) anonymous and pseudonymous works are protected for a period of 50 years as of the beginning of the calendar year subsequent to the year in which such works have been first published, ²⁴ Performance or Phonogram, not less than 50 years from the end of the calendar year of the creation of the work, performance or phonogram.

ARTICLE 13.40: Limitations and Exceptions

1. With respect to this Section, each Party shall confine limitations or exceptions to exclusive rights to certain special cases that do not conflict with a normal exploitation of the work, performance or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder.
2. This Article does not reduce or extend the scope of applicability of the limitations and exceptions permitted by the TRIPS Agreement, the Berne Convention, the WIPO Copyright Treaty (WCT) or the WIPO Performances Phonograms Treaty (WPPT).

ARTICLE 13.41: Balance in Copyright and Related Rights Systems

Each Party shall endeavour to achieve an appropriate balance in its copyright and related rights system, among other things by means of limitations or exceptions that are consistent with Article 13.40, including those for the digital environment, giving due consideration to legitimate purposes such as, but not limited to: criticism; comment; news reporting; teaching, scholarship, research, and other similar purposes; and facilitating access to published works for persons who are blind, visually impaired or otherwise print disabled.^{25, 26}

²⁴ In case the author of such works has been known or specified or has disclosed his identity, the protection will be lifetime of the author and fifty years thereafter commencing as of the beginning of the calendar year subsequent to the author's death.

²⁵ As recognised by the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, done at Marrakesh, 27 June 2013 (Marrakesh Treaty).

²⁶ For greater certainty, a use that has commercial aspects may in appropriate circumstances be considered to have a legitimate purpose under Article 13.40.



or wireless means,^{18, 19} and the making available to the public of those performances or phonograms in such a way that members of the public may access them from a place and at a time individually chosen by them.

4. Notwithstanding subparagraph (a), the application of the right referred to in subparagraph (a) to analogue transmissions and non-interactive free over-the-air broadcasts, and exceptions or limitations to this right for those activities, is a matter of each Party's law.²⁰

ARTICLE 13.39: Term of Protection for Copyright and Related Rights

Each Party shall provide that in cases in which the term of protection of a work, performance or phonogram is to be calculated:²¹

- (a) on the basis of the life of a natural person, the term shall be not less than the life of the author and 50 years after the author's death;²² and
- (b) on a basis other than the life of a natural person, the term shall be:
 - (i) not less than 50 years from the end of the calendar year of the first authorised publication²³ of the work, performance or phonogram; or

¹⁸ With respect to broadcasting and communication to the public, a Party may satisfy the obligation by applying Article 15(1) and Article 15(4) of the WPPT and may also apply Article 15(2) of the WPPT, provided that it is done in a manner consistent with that Party's obligations under Article 13.7 of this agreement.

¹⁹ For greater certainty, the obligation under this paragraph does not include broadcasting or communication to the public, by wire or wireless means, of the sounds or representations of sounds fixed in a phonogram that are incorporated in a cinematographic or other audio-visual work.

²⁰ For the purposes of this subparagraph the Parties understand that a Party may provide for the retransmission of non-interactive, free over-the-air broadcasts, provided that these retransmissions are lawfully permitted by that Party's government communications authority; any entity engaging in these retransmissions complies with the relevant rules, orders or regulations of that authority; and these retransmissions do not include those delivered and accessed over the Internet. For greater certainty this footnote does not limit a Party's ability to avail itself of this subparagraph.

²¹ For greater certainty, in implementing this Article, nothing prevents a Party from promoting certainty for the legitimate use and exploitation of a work, performance or phonogram during its term of protection, consistent with Article 13.40 and that Party's international obligations.

²² The Parties understand that if a Party provides its nationals a term of copyright protection that exceeds life of the author plus 50 years, nothing in this Article or Article 13.7 shall preclude that Party from applying Article 7(8) of the Berne Convention with respect to the term in excess of the term provided in this subparagraph of protection for works of another Party.

²³ For greater certainty, for the purposes of subparagraph (b), if a Party's law provides for the calculation of term from fixation rather than from the first authorised publication, that Party may continue to calculate the term from fixation.



ARTICLE 13.42: Contractual Transfers

Each Party shall provide that for copyright and related rights, any person acquiring or holding any economic right²⁷ in a work, performance or phonogram:

- (a) may freely and separately transfer that right by written contract; and
- (b) by virtue of contract, including contracts of employment underlying the creation of works, performances or phonograms, shall be able to exercise that right in that person's own name and enjoy fully the benefits derived from that right.²⁸

ARTICLE 13.43: Obligations Concerning Protection of Technological Measures and Rights Management Information

1. Each party shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors, performers or producers of phonograms in connection with the exercise of their rights as provided under Article 13.35, Article 13.36, Article 13.37 and Article 13.38 of this Agreement, that restrict acts, in respect of their works, performances or phonograms, which are not authorised by the authors, performers or producers of phonograms concerned or permitted by law.
2. Each Party shall provide adequate and effective legal remedies against any person who knowingly, without authorisation removes or alter any electronic rights management information and/or distribute, import for distribution, broadcast or communicate to the public, without authority, works or copies of works knowing that electronic rights management information²⁹ has been removed or altered without authority.

ARTICLE 13.44: Collective Management

The Parties recognise the role of collective management societies for copyright and related rights in collecting and distributing royalties based on practices that are fair,

²⁷ For greater certainty, this provision does not affect the exercise of moral rights.

²⁸ Nothing in this Article affects a Party's ability to establish: (i) which specific contracts underlying the creation of works, performances or phonograms shall, in the absence of a written agreement, result in a transfer of economic rights by operation of law; and (ii) reasonable limits to protect the interests of the original right holders, taking into account the legitimate interests of the transferees.

²⁹ For the purpose of clarity "rights management information" shall be interpreted to be as provided under Article 12 of the WCT.



efficient, transparent and accountable, which may include appropriate record keeping and reporting mechanisms.

SECTION I Enforcement

ARTICLE 13.40: General Obligation in Enforcement

Each Party shall ensure that enforcement procedures as specified in Part III, Section 1 of the TRIPS Agreement are available under its law so as to permit effective action against any act of infringement of intellectual property rights covered by this Chapter, including expeditious remedies to prevent infringements and remedies that constitute a deterrent to further infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse. Each Party will upon request provide available information according to its national laws and regulations to facilitate the enforcement of IPRs.

ARTICLE 13.46: Border Measures

1. Each Party shall, in conformity with its domestic law and regulations and the provisions of Part III, Section 4 of the TRIPS Agreement adopt or maintain procedures to enable a right holder, who has valid grounds for suspecting that the importations of counterfeit trademark or pirated copyright goods may take place, to lodge an application in writing with the competent authorities, administrative or judicial, in the Party in which the border measure procedures are applied, for the suspension by that Party's customs authorities of the release into free circulation of such goods.
2. A Party may enable such an application to be made in respect of goods which involve other infringements of intellectual property rights, provided that the requirements of Part III, Section 4 of the TRIPS Agreement are met. A Party may also provide for corresponding procedures concerning the suspension by the customs authorities of the release of infringing goods destined for exportation from their territory as per its domestic laws and regulation.



EMERGING ISSUES FOLLOWING CONDUCT OF PUBLIC PARTICIPATION ON THE COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT BETWEEN KENYA AND THE UNITED ARAB EMIRATES

Below is a summary of the aforementioned concerns raised by stakeholders; for your attention-

1. **Econews Africa (ENA)** observed that ratification of the CEPA should not be approved or if approved, ought to be approved with reservations, on the grounds –
 - (a) THAT it undermines access to affordable medicines in Kenya or to ratify the treaty with reservations on TRIPS+ provisions. The intellectual property (IP) chapter of the CEPA has a number of TRIPS+ provisions in it that go substantively beyond the TRIPS obligations (even when they were enforceable), which have a range of implications, including the ability to access affordable generic medicines as soon as possible in Kenya. The Kenya-UAE CEPA has a hard obligation for *market exclusivity* for five years from the latest possible date for both the information in the dossier and the fact of the marketing approval. This means that even if there is no patent on a medicine generic versions still cannot be approved by the medicine regulator as safe and effective and so reach Kenyan patients for 5 years. The Kenya-UAE CEPA also has a hard linkage obligation that prevents compulsory licenses from being effective and requires the Kenyan government to be the patent police when even the USA's Food and Drug Administration does not have the capacity to do so (and the EU refuses to implement linkage). Kenya currently does not have such data exclusivity or linkage, so this would be a significant change. Article 21(2) of the Constitution requires the State to implement laws and policies to achieve progressive realisation of the right to health. This right will be greatly undermined by these CEPA provisions, as can be seen above. The UAE may be able to afford to comply with these TRIPS+ provisions on medicines since its GNI per capita is US\$49,020 (23 times larger than Kenya's), but Kenya cannot for the reasons outlined above. A comparison of some relevant provisions in those other UAE FTAs such as with Türkiye and India to those in the Kenya-UAE Comprehensive Economic Partnership Agreement (CEPA) shows that no other UAE FTA (whether recent or old FTAs) has the TRIPS+ 5 years of market exclusivity and patent linkage that Kenya has agreed to in its CEPA, and it therefore appears as though Kenya is being asked to do more than countries with higher GNI/capita. Although the CEPA has some exceptions, they are insufficient.
 - (b) The Kenya-UAE CEPA the CEPA does not currently contain goods market access (those negotiations will be done via the East African Community structures). In a free trade agreement (FTA) with a more developed country (e.g. the UAE's GNI/capita is 23 times larger than Kenya's), the goods

chapter is generally the chapter where the poorer country can benefit since it lowers the import tariffs on the poorer country's cheaper agricultural or manufactured products. However, since there is no goods market access in the CEPA, it is unclear what the economic benefits are for Kenya from the CEPA to offset the costs of the other chapters.

- (c) The Kenya-UAE CEPA the benefits for Kenya on the CEPA trade facilitation chapter are unclear. Since the UAE has already completely implemented the WTO's TFA, Kenyan exports to the UAE already benefit from this. Are there still serious obstacles to Kenyan exports which are addressed by this CEPA chapter? Or is it only new and enforceable obligations that will be expensive and difficult for Kenya to implement?
- (d) THAT the Kenya-UAE CEPA the Kenya-UAE CEPA services chapter requires Kenya to liberalise in many more service sectors than it has at the WTO. E.g. Kenya did not liberalise some business services, some construction services, some health services sectors in the WTO but has in the UAE CEPA. This is very surprising given the implications this has for various Kenyan laws, the lessons learned from the COVID pandemic in terms of lockdowns etc, the way it increases legal liability under the existing Kenya-UAE Bilateral Investment Agreement.
- (e) THAT Kenya's UAE CEPA schedule also appears allows UAE companies to buy land in Kenya (which presumably violates Art 65 of the Kenyan 2010 Constitution). This is because Kenya has made full Mode 3 commitments in hotels in both GATS and the UAE CEPA and although Kenya's services schedule in the UAE CEPA has a horizontal limitation/exception to national treatment that a foreign service supplier cannot own land on a freehold basis (only lease it), footnote 3 on page 2 of Annex 9B says this does not apply to sectors already committed under GATS (In GATS, Kenya's services schedule does not have an exception to prevent foreign hotels from being able to buy land in Kenya). This was a common mistake in GATS schedules e.g. Fiji's GATS schedule. However, the GATS schedule of other countries like Timor Leste have avoided this mistake by having a horizontal exception/limitation that allows them to keep their restriction on foreigners owning land.
- (f) THAT the public services exception in the CEPA99 is the same as in the GATS which has been heavily criticised for being too narrow because it only applies to services which are 'supplied neither on a commercial basis, nor in competition with one or more service suppliers.'
- (g) THAT during the COVID -19 pandemic, some countries prevented bars and luxury shops from opening to curb the spread of the disease or specified that restaurants could only provide takeaway services. These kinds of restrictions in a future pandemic would violate services market access commitments under the CEPA and it is not clear the health exception would be sufficient.
- (h) THAT if Kenyan qualifications are not recognised in the UAE, Kenyan professionals (e.g. doctors, nurses, engineers and lawyers) cannot effectively work in their professions in the UAE, even if the UAE provides

Mode 4 market access in the CEPA on paper. The main area where developing countries can benefit from services liberalisation is if there is effective Mode 4 market access allowing their citizens to work in the other country in the FTA with visas and recognition of their qualifications (e.g. their medical/law/accounting/engineering etc degrees). However, this is not in the CEPA.

- (i) THAT there is already a UAE-Kenya Bilateral Investment Agreement (BIA) which already has extensive protections for UAE investors in Kenya. CEPA investment chapter includes an agreement to review this existing UAE-Kenya BIA to make it more comprehensive in coverage. Presumably this could be by adding additional problematic provisions like restrictions on performance requirements. The CEPA services chapter is likely to increase liability under this UAE BIA if UAE investors are able to invest in more sectors in Kenya (e.g. in construction services) because of the services chapter liberalisation UAE investors are known to have sued in 12 ISDS cases already
- (j) THAT the Digital trade chapter appears to contain a number of provisions demanded by US big tech companies such as Google, Amazon, Facebook, Twitter etc. Since the US is not in this CEPA and these companies are not Kenyan or UAE companies, it is unclear why a Kenya-UAE CEPA includes the wish list of US big tech companies so they can benefit from the CEPA provisions for free. Especially at a time when Kenya may need bargaining chips to get Trump's tariffs removed and some of these CEPA digital trade chapter provisions are what the US has been seeking. The CEPA digital trade chapter includes a ban on customs duties on downloading: movies, music, video games, computer software, eBooks etc from 'a person of a Party' and a provision requiring digital products from the UAE to be treated as well as those from Kenya (national treatment) or another country

2. Micro and Small Enterprises Authority (MSEA)

The Authority posited that in order to maximize benefits for Kenyan SMESs, particularly micro-enterprises, the following gaps and recommendations for consideration had been identified-

- (a) Establishment of a Bilateral SME Development Fund: The CEPA lacks specific financial mechanisms to support SMESs. It proposed a joint Kenya-UAE fund to provide grants, loans, and credit guarantees, ensuring micro-enterprises can access capital to leverage trade opportunities.
- (b) Detail Capacity-Building Programs: While capacity building is noted, it recommends a concrete action plan with timelines and sector-specific initiatives, coordinated with Kenyan institutions, to enhance SMES competitiveness.
- (c) Set Measurable Targets: To ensure accountability, the SME Subcommittee should establish quantifiable goals (e.g., 20% export growth for Kenyan SMEs by 2030) and report progress annually.

- (d) Secure Interim Market Access: Given the exclusion of tariff liberalization, it urged an interim bilateral tariff reduction for key SMES exports (e.g., tea, horticulture) to provide immediate benefits pending EAC negotiations.
- (e) Address Micro-Enterprises Explicitly: The Agreement should include tailored provisions for micro-enterprises, such as simplified certification and digital literacy programs, reflecting their dominance in Kenya's economy.
- (f) Mitigate Competition Risks: To protect Kenyan SMESs from potential UAE competition, it was suggested that temporary safeguards like quotas or anti-dumping measures be put in place during the initial phase.

3. The Kenya Institute for Public Policy Research and Analysis (KIPPRA) observed that-

- (a) Future review could consider provisions on environment and climate change action. This will support the greening of trade between the two countries.
- (b) The agreement provides for a review of the agreement every five years. It is important to add "...or when the need arises" in a future review of the agreement.

4. Kenya Revenue Authority (KRA)

KRA recommends to have the below areas included within the Agreement;

No	Clause	Recommendation
1.	Article 2: Objectives	Include: Strengthening risk-based cargo screening to safeguard trade while ensuring the smooth flow of legitimate goods.
2.	Article 5.2: Objectives	Include: Promote mutual recognition of sanitary and phytosanitary standards, inspection results, and conformity assessments to reduce duplication, facilitate faster clearance, and ensure the safety of trade goods (this is mentioned in Article 5.5(3) but not in the objectives).
3.	Article 14	Proposal for training of the Joint Committee members on CEPA. This should be separate from stakeholder sensitizations.

5. KENYA ACCREDITATION SERVICE (KENAS)

KENAS Proposed inclusion under Chapter 6: Technical Barriers to Trade: Addition of Article 6.XX (propose 6.7) on Accreditation as follows:

- (a) Each Party shall consider a request by the other Party to negotiate agreements or arrangements for the mutual recognition of accreditation testing, inspection, certification, and verification.

- (b) Each Party shall ensure, whenever possible, that the results of accredited conformity assessment activities conducted in the territory of the other Party are accepted. Where a Party does not accept the results of an accreditation conducted in the territory of the other Party, it shall, at the request of the other Party, explain the reasons for its decision.

The rationale for the proposal is that Kenya has recently enacted laws to assure quality, safety, and environmental assurance through the KENAS Act, No. 17 of 2019, and the Business Laws Amendment Act (2024). This provides for assessment and accreditation of conformity assessment bodies that carry out testing, inspection, certification and verification activities. KENAS is a signatory member of the mutual recognition arrangements and multilateral arrangements with International Laboratory Accreditation cooperation and International Accreditation Forum. Proposal is made for the inclusion of the provision for an Article on Accreditation, which is only a subject in mention in provision of Cooperation in Article 6.7

6. COUNCIL OF GOVERNORS

No.	Section	Provisions in the Policy	Proposed Amendment	Justification
1.	4. Obligations in the Agreement <i>Read together with (Article 1.5 Relations to Other Agreements & Article 1.6 – Regional and Local Government)</i>	4. Obligations in the Agreement a) Policy and legislative considerations b) Administrative obligations c) Ministerial obligation d) Financial Implications	Amend to include: Regional implications (OR Regional Approaches)	To provide clarity on how the agreement is going to be implemented cognizant of existing regional and international agreements entered into by Kenya, particularly the East Africa Community (EAC) Agreement. Similarly, the obligations to UAE in relations to Greater Arab Free Trade Area Agreement)
2.	6. Possible negative effects of the Agreement to the Kenyan People	6. Possible negative effects include: - Local industries are likely to face more competition over time from UAE zero-rated products	Amend by providing more clarity on how local industries are likely to be affected in terms of unfair competition. Also include the possible adverse effects on small and emerging businesses,	To provide clarity on how trade on zero-rated products will be implemented noting that section 2 (d) highlights that the agreement excludes market access (tariff liberalization) as both parties have agreed to

			employees' wages, job losses and non-tariff measures	negotiate this chapter with all the EAC Partner States when ready. The possible effects in the agreement are not clearly outlined. There has been instance before where zero-rated provisions have been misused by traders for their on gains.
3.	7. Measures to mitigate any negative effects arising from the agreement	7. Measures to mitigate any negative effects arising from the agreement a) Trade Remedies provisions b) Amendment Clause c) Mandatory 5-year Review Clause d) Exit Clause	Amend to include: (e) Relations with other EAC Partner States	To provide for mechanisms to mitigate the possible negative effects to the Kenya's regional partner states from UEA Imports.
4.	Article 14.1: Joint Committee	7. The functions of the joint committee shall be to: a) b) h)	Expand the functions of the joint committee to i) Handle issues arising from the regional agreements entered by parties	Currently, the agreement has not provided avenues for parties to address conflicting issues arising from regional agreements previously entered by the parties with the current CEPA.
5.	Article 2.4: National Treatment & Article 2.5 Classification of Goods and Transposition of	1. Each party shall ensure that the transposition of its schedule of Tariff commitments does not afford less	Amend the section to provide more details in regards to the favourable treatment resulting from a free trade agreement with respect to goods covered by this agreement that are	Currently, goods from EAC enjoys favourable treatment within the EAC Countries. The clear synergies and alignment of the treatment of goods as a result of these two agreements is needed.

	Schedules	favourable treatment to an originating good of the other Party. If the process of transposition results in a disagreement on the applicable tariff, then this matter shall be referred to the Joint Committee.	originating from the EAC.	
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1. For better coordination and implementation of this agreement, the CoG proposes the inclusion of County Governments in the Joint Committees, standing committees, ad hoc subcommittees and working groups established in the Agreement.
2. The need for wider public sensitization on the Comprehensive Economic Partnership Agreement, in line with the Ratification to ensure wider coverage, an implementation plan can be developed incorporating county officers as the TOTs and champions for this agreement.



REPUBLIC OF KENYA
MINISTRY OF INVESTMENTS, TRADE AND INDUSTRY
STATE DEPARTMENT FOR TRADE

**EMERGING ISSUES FOLLOWING PUBLIC PARTICIPATION ON THE
RATIFICATION OF THE COMPREHENSIVE ECONOMIC PARTNERSHIP
AGREEMENT BETWEEN KENYA AND THE UNITED ARAB EMIRATES**

Introduction

Kenya and the United Arab Emirates signed a Comprehensive Economic Agreement on 14th February 2024 in Abu Dhabi. The Agreement covers 14 chapters but does not include market access. This paper seeks to provide responses, and make clarification on the issues raised by the stakeholders.

1. Issues raised by Eco News Africa (ENA)

- a. *Intellectual Property Rights is dealt with under Chapter 13 in the CEPA.*

Preliminaries:

Generally, the Chapter reaffirms the two Parties commitments to the TRIPS Agreement and other international Agreements that both have acceded to and ascribe to the provisions thereto. The Chapter is fundamentally aligned to the TRIPS Agreement. A synopsis of the IPR Chapter is as follows:

Section A - General Provisions: Definition, objectives, principles, nature and scope of obligations; and public health, national treatment, transparency and application of the Chapter.

Section B – Cooperation: establishment of a subcommittee on IPR and Patent cooperation.

Section C - Trade Marks, Domain names,

Section D - Country names.

Section E - Geographical Indications

Section F - Patents and Industrial Designs

Section G - Undisclosed Test or Other Data for Pharmaceutical Products

Section H - Copyright and Related Rights

Section I - Enforcement and Border Measures

Response to the Issues Raised

Grace Period

Issue: CEPA has granted a grace period of at least 12 months before the filing date of a patent application.

Response: The grace period granted to an inventor under Article 13:28 of CEPA is in relation to public disclosures. An inventor, who may include a Kenyan inventor, has a grace period of 12 months prior to filing a patent application, not to lose the novelty of the invention. This is a safeguard that in practice, is quite beneficial to developing countries whose IP awareness is quite low. The fact that patent filing is based "on the first to file", and more often than not, most researchers and professors (inventors) are usually under immense pressure to publish before filing of patent applications.

Section 23 (4) of the Industrial Property Act, 2001 gives the same grace period of 12 months as it in the CEPA prior to the filing date of a patent application as quoted hereunder: -

"(2) For the purposes of this Act, everything made available to the public anywhere in the world by means of written disclosure (including drawings and other illustrations) or, by oral disclosure, use, exhibition or other non-written means shall be considered prior art:

*For the purposes of subsection (2), a disclosure of the invention shall not be taken into consideration if it occurred not earlier **than twelve months** before the filing date or, where applicable, the priority date of the application and if it was by reason or in consequence of—*

(a) acts committed by the applicant or his predecessor in title; or

(b) an evident abuse committed by a third party in relation to the applicant or his predecessor in title."

The commitment made under the Agreement with respect to the grace period is therefore in conformity with Kenya's domestic patent laws as per

the Industrial Property Act, 2001 and will benefit both parties to the Agreement in the filing of patent applications.

Data and Market Exclusivity

Issue: That Article 13.33 of CEPA is TRIPS plus and is a hard obligation for market exclusivity for five years for both the information in the dossier and the fact of the market approval.

Response:

The issue of protection of undisclosed test or other data for pharmaceutical products under CEPA is restricted to undisclosed data submitted to a regulatory body for approval of a new drug. This is a mandatory requirement for pharmaceutical products in Kenya and the Regulator, the Pharmacy and Poisons Board, mainly uses the data to assess the products quality, safety and efficacy before the same is approved for use in patents.

Article 39 of the TRIPS Agreement provides for the protection of undisclosed data but gives an exception when the data is necessary to protect the public and therefore parties are at liberty to protect the said data as a way of safeguarding the data and not compromising the inventors' findings to third parties but at the same time the exception safeguards against abuse for unfair commercial practices and waives the protection when the data is necessary to protect the public.

The period of 5 years was agreed upon after consultations with the Pharmacy and Poisons Board, and it is noted that most of the approvals are given within the said period.

Data exclusivity does not in any way extend patent rights and sometimes they do not run concurrently. The Article does not prevent the introduction of generic versions of any innovative drug during the data exclusivity period as long as the marketing approval of the generic versions do not rely on the innovators test data OR unless approval is granted by the innovator if the test data is to be used. The Patent owner is at liberty to disclose the data to third parties even if the patent has expired.

Kenya and most developing countries have no capacity to manufacture pharmaceutical products and therefore Article 13: 33(3) has a safeguard stating as follows:

"Notwithstanding the provisions of paragraph 1 on undisclosed test or other data, a party may take measures to protect the public health in accordance with:

The declaration on TRIPS and Public Health

- ***Any waiver provisions of the TRIPS Agreement to implement the Doha Declaration***
- ***Any amendments to TRIPS to implement the Declaration.***

It is vital to point out that the exclusivity is limited to new pharmaceutical products with new active ingredient that has never obtained market approval to avoid the issue of evergreening or extending the patent protection duration."

Nothing bars the Government of Kenya albeit the 5 years protection of undisclosed data, the right to disregard this protection in cases of health emergencies and pandemics OR to use any of the flexibilities under the TRIPS Agreement including compulsory licensing.

In any event, Kenya does not allow new use in determining the patentability of an invention under the Industrial Property Act and further the exception in Article 13:33(3) quoted above reinstates that the exclusivity is only based on a new pharmaceutical product with a new active ingredient that has never obtained any market approval.

GENERAL RESPONSE ON PUBLIC HEALTH SAFEGUARDS AND EXCEPTIONS EMBEDDED WITHIN CEPA

Article 13.6 of the Agreement: Parties will adopt the relevant laws, make necessary amendments to protect public healthprovided the measures are consistent with the provisions of the CEPA IPR Chapter and the TRIPS Agreement.

Article 13.6 (2): Parties recognize the principles established in the Declaration on the TRIPS Agreement and Public Health done on 14th November 2001 (DOHA DECLARATION) and confirm that the Provisions of the IPR Chapter are without prejudice to the Doha Declaration.

The Doha Declaration was a response to concerns that the TRIPS Agreement might hinder access to affordable medicines in developing countries, particularly for those affected by epidemics like HIV/AIDS, tuberculosis, and malaria. It aimed to ensure that the protection of intellectual property rights does not come at the cost of public health.

The Doha Declaration was adopted to:

i. Strengthen the position of developing countries:

It provided a basis for arguments that supported the use of TRIPS flexibilities to address public health challenges.

ii. Facilitate access to essential medicines:

It helped pave the way for developing countries to access affordable generic versions of patented drugs, which was crucial in combating widespread diseases like HIV/AIDS.

iii. Promote a balanced approach:

It underscored the importance of balancing the rights of intellectual property holders with the right to health and the needs of developing countries

The CEPA recognizes and reaffirms the Parties' commitment to the implementation of the Doha Declaration with respect to public health and access to medicines. The Agreement reaffirms and adopts the flexibilities under the TRIPS Agreement that promote public health and access to medicine including any waivers on access to vaccines during pandemics. The TRIPS flexibilities are still accessible even within the CEPA including compulsory licensing, parallel importation by the recognition of the exhaustion of rights to be adopted by each party.

b. Lack of goods market access chapter –

The CEPA does not include tariff liberalisation on grounds that Kenya didn't not make tariff offers. This is because it would have been in breach of the EAC Customs Management Act 2004, the Common External Tariff and the Protocol establishing the EAC Customs Union. Such breach would have undermined regional integration, and the same time would have led to Kenya losing the EAC Market for those products which the UAE has an interest in Kenya opening market for. EAC Market is so strategic for Kenya for manufactured, agriculture and agro-processed products. Both Parties agreed that tariff liberalisation be negotiated by All the EAC, and the EAC Council of Ministers has taken the decision to negotiate, including market access, with the UAE as a bloc. Even without such market access, Kenyan goods already enjoy tariff preferences on entering the UAE given that the UAE as a member of the GCC have in place a CET ranging between 0 -5%, and this is where most Kenyan

products fall except for alcohol and cigarettes which attract 100% given UAE is predominantly a Muslim community. On the other hand, nearly 95% of UAE goods entering Kenya and the EAC is petroleum oil which attracts 0% duty.

(c) **Trade facilitation:** It is true that the UAE has advanced a lot in terms trade facilitation where it notified on the three categories (category A, B, and C measures) at the WTO while Kenya has only notified two measures i.e category A and B, measures. Kenya requires capacity building to be able to implement category measures, and since the UAE under this agreement offered to support in the capacity building, CEPA under the Cooperation are a will be useful on this.

(d)The Trade in Services chapter is one of the areas of focus of the Kenya UAE CEPA.

The objective is **to progressively liberalise trade in services** to provide market access for services suppliers of both parties. Bilateral agreements on trade in services allow WTO members to negotiate specific market access commitments with each other, going beyond the general obligations under the General Agreement on Trade in Services (GATS). This can be beneficial for several reasons, including fostering stronger trade relations, addressing unique market needs, and facilitating quicker negotiations on specialized services.

This however, has to be negotiated in line with Article V of the GATS Agreement which highlights the need for substantial sectoral coverage as well as no a priori exclusions of sectors or modes of supply. To this end, Kenya's (and UAE's) overall schedule of Specific Commitments under the Kenya- UAE CEPA is based on three premises:

1. Article V of the GATS
2. Her schedule within the framework of the WTO General Agreement on Trade in Services as a basis (GATS Plus); and
3. The request and offer negotiation process held at bilateral level.

(e)It is noted that the principles guiding scheduling of Schedules of Specific Commitments dictate that for sectors that were not subject to negotiations but in which, nevertheless, a party had made previous commitments within the WTO GATS, these commitments must be reflected in the schedules of the new agreement.

It is in view of this that the footnote was made. It is noted that under the GATS, Kenya did not schedule any limitations under the Tourism sector. The interpretive effect is that this sector was fully liberalised with no restrictions registered.

Whereas a WTO Member may modify or withdraw any commitment in its Schedule, at any time, this requires a process of notification of intent to withdraw a commitment and negotiations on the same, with provisions under GATS for the need for Compensatory adjustments to be made on a Most-Favoured-Nation basis.

The footnote therefore is to ensure that the new sectors being committed align with the Constitution, which was promulgated six years after Kenya made the GATS commitments. It is worth noting that international law to which Kenya is a signatory, is recognized as domestic law. Nevertheless, Kenya could consider modifying her commitments under GATS to have full alignment with the Constitution.

(f) No issue

(g) It is our considered opinion that the general exceptions provided for under the Agreement could adequately justify exceptions to the application of provisions of the agreement and in particular on matters regarding health.

(h) As rightly suggested, liberalization under Mode 4 is of critical importance to developing countries, including Kenya. It is in this regard that deeper concessions for Kenya services suppliers were made by UAE. In addition, the article on Recognition provides that a Party may recognise, or encourage its relevant competent bodies to recognise, the education or experience obtained, requirements met, or licences or certifications granted in the other Party. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement between the Parties or their relevant competent bodies, or may be accorded autonomously. This provides scope for Kenya to enter into negotiations with the UAE towards recognition of qualifications for its professionals.

(i) Kenya – UAE Bilateral Investment Treaty - The comment states that: “ (i) *That there is already a UAE-Kenya Bilateral Investment Agreement (BIA)*

which has already has extensive protections for UAE investors in Kenya. CEPA investment chapter includes an agreement to review this existing UAE-Kenya BIA to make it more comprehensive in coverage. Presumably this could be by adding additional problematic provisions like restrictions on performance requirements. The CEPA services chapter is likely to increase liability under this UAE BIA if UAE investors are able to invest in more sectors in Kenya (e.g in the construction services) because of the services chapter liberalization UAE investors are known to have sued in 12 ISDS cases already"

Response:

Article 8.1 of Chapter 8 of the Kenya - UAE CEPA indeed acknowledges the existence of a bilateral investment agreement between Kenya and the UAE. The Agreement states:

In Article 8.1 on the UAE - Kenya Bilateral Investment Agreement, the agreement states: *The Parties note the existence of and reaffirm the Agreement between the Government of the Republic of Kenya and the Government of the United Arab Emirates on the Promotion and Protection of Investments, signed at Abu Dhabi on 23 November 2014 ("UAE-Kenya Bilateral Investment Agreement").*

In Article 8.2, *The Parties agree to revise the existing UAE-Kenya Bilateral Investment Agreement with a view to making it more comprehensive in coverage.*

The Parties were of the view that there was no need to replicate the BIA in its entirety in the CEPA under the Chapter on investment but rather decided to make reference to it. Kenya was initially of the view that the two countries should have revised the BIA and have it form part of Chapter 8, considering that the BIA was negotiated before 2014 and since then the international investment agreements (IIAs) arena had experienced tremendous reforms. As a compromise, the Parties agreed to the provision (8.1 (2)) providing for a revision of the BIA by the Parties with a view to making it more comprehensive in coverage.

Kenya's intention with the revision is to conclude a new BIA that reflects emerging issues that include: the need to balance investors rights and

obligations with those of the host state and to reflect some of the reform recommendations emanating from UNTAD and Working Group III of UNCITRAL. This is further informed by Kenya's IIA Model and Policy of 2020. Kenya's IIA reform agenda has seen the country terminate her BIA with Netherlands and four more agreements have been tabled before Cabinet for termination approval with a view to address the need for reforms and emerging issues.

Conclusion

The comment by **Eco News Africa** that the proposed revision of the BIA with the UAE could be presumably to add problematic provisions like restrictions on performance requirements is not factual and is based on an assumption, as rightly stated.

(j) Digital Trade: This is on the issue raised that Digital trade chapter appears to contain a number of provisions demanded by US big tech companies such as Google, Amazon, Facebook, Twitter, etc.

Response - The issues raised are too generalised and on assumption; there is no specific article in the Digital Trade which is referred or mentions of the US big tech companies in the CEPA on Digital trade or implied.

Response part 2 - ARTICLE 10.4: Customs Duties

In Paragraph 1 it is states that "Each Party shall maintain its current practice of not imposing customs duties on digital or electronic transmissions, between a person of a Party and a person of the other Party in accordance with the WTO Ministerial Decision in relation to Electronic Commerce"

Response

- Persons from both parties are treated the same way to the extent that they are not subjected to customs duties.
- This CEPA is between the two parties as for the internal treatment prevailing taxes shall apply which is fair since all citizens are subjected to the same taxes.

2. Micro and Small Enterprises Authority – It is noted that negotiators for the chapter on MSMEs were drawn from MSEA and the State Department for MSMES. The CEPA however establishes a framework through which the concerns and proposals in items (a – e) raised by MSEA can be dealt with. The agreement in Article 11.4 establishes an MSME Subcommittee comprising of comprising national and local

government, as well as private sector, representatives of each Party. The MSME Subcommittee shall:

- (a) *identify ways to assist MSME in the Parties' territories to take advantage of the commercial opportunities resulting from this Agreement and to strengthen MSME competitiveness;*
- (b) *identify and recommend ways for further cooperation between the Parties to develop and enhance partnerships between MSMEs of the Parties;*
- (c) *exchange and discuss each Party's experiences and best practices in supporting and assisting MSME exporters with respect to, among other things, training programs, trade education, trade finance, trade missions, trade facilitation, digital trade, identifying commercial partners in the territories of the Parties, and establishing good business credentials;*

Mitigating Competition Risks - The concerns raised in this item (f) will be addressed through Chapter 7 on Trade Remedies

3. **The observations by the Kenya** Institute of Public Policy Research and Analysis are noted and will be acted upon during such reviews.

4. Kenya Revenue Authority -

The agreement provides for periodical reviews (every five years) and amendment of any provision which may not be to the interest of the parties or that may be presenting challenges in the implementation. The issues raised by Kenya Revenue Authority will be addressed in accordance with these two provisions.

Matters of training joint Committee Members will be executed administratively as part of capacity building, its not limiting where its captured in the current text.

5. Kenya National Accreditation Service (KENAS)

The issues and proposed amendments by KENAS will be addressed in the context of the review and amendment provision of the CEPA which provides for amendment of any section of the Agreement whenever there is a challenge in the implementation. Furthermore, some of the issues are captured under the Economic Cooperation section- Article.6.

6. Council of Governors

Matters raised by the Governors are noted. However, the issues surrounding the effects of zero-rated products on the domestic industries will not arise since this agreement doesn't include product liberalization as the market access was not negotiated. The market access component was agreed to be negotiated under the EAC Framework, therefore there will be no implication on the regional dimension.

With respect to issues on mitigation measures, we note that there are already existing instruments/mechanisms within the EAC and other regional frameworks that controls movement of goods from one Partner State to the other, notably the Rules of Origin instruments controls products which are not originating from not to access the neighbors on preferential (duty free) terms.

Matters on sensitization of stakeholders once the agreement is ratified is a key point and it will be the first step to execute in the implementation of the CEPA.

The proposal to include the County Governments in the Committees, Sub-Committees is noted and should be addressed in line with the amendment clause of the agreement.

STATE DEPARTMENT FOR TRADE

12TH JUNE, 2025

OFFICE OF THE ATTORNEY GENERAL
&
DEPARTMENT OF JUSTICE



RE: SUBMISSION TO THE DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY AND COOPERATIVES REGARDING THE COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT (CEPA) BETWEEN KENYA AND THE UNITED ARAB EMIRATES

Reference is made to the above matter and a letter Ref: NA/DDC/TIC/2025/010 dated the 19th March, 2025 inviting Ministries, Departments and Agencies to a meeting with the Departmental Committee on Trade, Industry and Cooperatives inviting submissions on the Comprehensive Economic Partnership Agreement (CEPA) between the Republic of Kenya and the United Arab Emirates.

The Kenya and UAE CEPA was signed on 14th January, 2025. The Agreement covers the following areas;

- i. **Trade in Goods-** the objective of the Chapter is to create a liberalised market for trade in goods and promote each Party's trade in goods through progressive elimination of tariffs, enhanced efficiency of customs procedures, enhanced cooperation in technical barriers to trade and Sanitary and Phytosanitary measures and development of value chains.
 - The Agreement however excludes market access (tariff liberalization) as both Parties agreed to negotiate this Chapter with all the EAC Partner States when ready. The rationale is that the Republic of Kenya is a member of the EAC Customs Union Protocol which establishes a Common External Tariff to be applied on goods imported into the EAC region from other foreign countries.
- ii. **Rules of Origin-** the Chapter sets out the criteria for determining the origin of goods for purposes of implementing the Agreement;
- iii. **Customs Procedures and Trade Facilitation** – the Chapter calls each Party to periodically review their customs procedures with a view of further simplification to facilitate bilateral trade. The Parties undertake that their customs laws and procedures shall be transparent, non-discriminatory and avoid unnecessary obstacles to trade.

- iv. **Sanitary and Phytosanitary (SPS) measures** – the objectives of the Chapter are to ensure that SPS measures implemented by a Party do not create unjustified barriers to trade; enhance transparency and understanding in the implementation of SPS measures; and protect human, animal and plant life or health in the territories of the Parties while facilitating trade.
- v. **Technical Barriers to Trade (TBT)** – the objective of the Chapter is to facilitate trade by eliminating technical barriers to trade, enhancing transparency and promoting greater regulatory cooperation and good regulatory practices. The Chapter shall apply to the preparation, adoption and application of all standards, technical regulations and conformity assessment procedures of central level Government bodies that may affect trade of goods between the Parties.
- vi. **Trade Remedies** – the Chapter shall apply to investigations and measures taken by either Party on Anti-dumping, Countervailing and Safeguard Measures to safeguard against unfair trade practices which lead to market distortion. The Chapter is important for the Republic of Kenya to mitigate any negative effect that local industries may experience arising from competition from some UAE products;
- vii. **Investment** – the Chapter reaffirms the intent of the Parties to promote an attractive investment climate. It takes cognizance of the Agreement between the Government of the Republic of Kenya and the Government of the UAE on the Promotion and Protection of Investment signed in Abu Dhabi on 23rd November, 2014. Through the CEPA, the Parties undertake to review the Kenya – UAE BIT with a view to making it more comprehensive in coverage.
 - The Parties further undertake to establish a Sub-Committee on Investment composed of representatives of both Parties. The Chapter is exempt from the dispute settlement mechanism of this CEPA Agreement.
- viii. **Trade in Services** – the objectives of this Chapter are to progressively liberalize trade in services with a view to providing market access for services and service suppliers of the Parties.
 - The Chapter does not however apply to procurement by Government agencies of services purchased for government purposes; services supplied in exercise of Government authority; subsidies or grants provided by a Party; measures affecting natural persons of a Party seeking access to the employment market of the other Party or measures regarding citizenship, residence or employment on a permanent basis.

- The Agreement provides that the Parties shall enter into successive rounds of negotiations, beginning not later than one year from the date of entry into force of the Agreement and periodically thereafter, with a view to achieving a progressively higher level of liberalisation. The process of progressive liberalisation will be directed towards increasing the general level of specific commitments undertaken by parties under this Agreement.
 - The Chapter also provides for the application of the Most Favoured Nation Treatment where if, after the entry into force of this Agreement, a Party enters into any agreement on trade in services with a non-Party, it shall consider a request by other Party for incorporation herein of treatment no less favourable than that provided under the aforementioned agreement.
- ix. **Digital Trade** - The objectives of this Chapter are to foster an environment conducive to the further advancement of digital trade, including electronic commerce and the digital transformation of the global economy, by strengthening their bilateral relations on these matters
- Each Party will be required to maintain its current practice of not imposing customs duties on digital or electronic transmissions, between a person of a Party and a person of the other Party in accordance with the WTO Ministerial Decision in relation to Electronic Commerce. The moratorium shall depend on further outcomes in the WTO Ministerial Decisions on customs duties on electronic transmission within the framework of the Work Programme on Electronic Commerce.
- x. **Micro, Small and Medium Enterprises** - The Parties undertake to enhance commercial opportunities for MSMEs and each Party undertakes to seek to increase trade and investment opportunities and shall identify and promote priority sectors and value chains that will enhance MSMEs participation in international trade
- The Parties further undertake to establish a Sub-Committee on Micro, Small and Medium Enterprises composed of representatives of both Parties. The Chapter is exempt from the dispute settlement mechanism of this CEPA Agreement.
- xi. **Economic and Development Cooperation** - Economic and Development Cooperation under the Agreement covers the following sectors; manufacturing industry; trade and investment promotion; tourism; human resource development; ICT and the digital economy; financial services; infrastructure and logistics enhancement; agriculture and livestock; private sector development; fisheries and blue economy; water, environment and the green economy; health; energy; SPS; TBT; customs and trade facilitation; transport; shipping and maritime; export market and product development; and structured commodities trading.

- The Parties undertake to establish a Sub-Committee on Economic and Development Cooperation composed of representatives of both Parties.
 - The Chapter is exempt from the dispute settlement mechanism of this CEPA Agreement and any differences arising out of the Application of the Chapter shall be settled amicably.
- xii. **Intellectual Property** - The Chapter provides that the Parties shall endeavour to promote, support and enforce intellectual property rights so as to contribute to the promotion of trade, investment, technological innovation and transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare.
- xiii. **Administration of the Agreement** – the Agreement provides for the establishment of a Joint Committee comprising of Kenya and UAE at the level of ministers, senior officials (PSs) and technical officers. The Joint Committee shall meet within one year of the entry into force of this Agreement. Thereafter, it shall meet every two years unless the Parties agree otherwise.
- The purpose of the Joint Committee is to review and assess the results and overall operation of this Agreement; consider and recommend any amendments to this Agreement that may be proposed by either Party; endeavour to amicably resolve disputes between the Parties arising from the interpretation or application of this Agreement; supervise and coordinate the work of all sub-committees and working groups established under this Agreement; and adopt decisions or make recommendations as envisaged by this Agreement.
- xiv. **Dispute Settlement** - The Chapter seeks to establish an effective and efficient mechanism for avoiding and settling disputes between the Parties concerning the interpretation and application of this Agreement with a view to reaching, where possible, a mutually agreed solution.
- The dispute resolution procedure at the first instance involves consultations. The Parties may also settle disputes at any time through good offices conciliation or mediation. If the Parties agree not to have consultations, or if consultations or conciliation have been concluded and no mutually agreed solution has been reached, the next recourse is to solve the dispute through a Panel.
 - The Panel comprising of three persons with expertise in law, international trade, and other matters covered by this Agreement make its decisions, including its reports by consensus, but if consensus is not possible then by majority of its members. If a mutually agreed solution is reached during the panel procedure, the Parties shall jointly notify that solution to the chairperson of the panel. Upon such notification, the panel shall be terminated.

- xv. **Final Provisions** – the Agreement shall be reviewed every five years from the date of its entry into force. The Agreement shall enter into force on the first day of the second month following the date of receipt of the last written notification.
- xvi. **Validity** - This Agreement is valid for an indefinite period unless terminated by either Party in accordance with the terms herein. However, either Party may terminate this Agreement by written notification to the other Party, and such termination shall take effect six months after the date of the notification.
- xvii. **Accession** - This Agreement is also open for accession by any country or group of countries including a contracting Party to the EAC Treaty after the date of entry into force of this Agreement. Accession by other EAC Partner States would be ideal as it would enable negotiation of market access (tariff

The benefits of the Agreement to the Republic of Kenya are as follows;

- i. Expanding exports for Kenyan products to the UAE and Middle East particularly meat and meat products, horticulture, tea, coffee among others. In 2023, the UAE was Kenya's 6th largest export market absorbing 5.5% of exports;
- ii. Agreement provides measures to facilitate trade through a common understanding of customs procedures and trade facilitation measures;
- iii. Will provide opportunities for increased investment in Kenya particularly in the ICT, healthcare and agriculture; and
- iv. Expanded technical cooperation between Kenya and UAE.

Ratification of the Agreement will not require enactment of new legislation or amendment of existing legislation.

Kenya-UAE CEPA

16 April 2025

Background

- The Kenya-UAE Comprehensive Economic Partnership Agreement signed on 14/1/2025
 - The Kenyan National Assembly is now being asked to start the process of ratifying it.
 - In 2022:
 - 5% of Kenya's goods exports went to the UAE
 - 0.35% of the UAE's goods exports went to Kenya
 - In a free trade agreement (FTA), Kenya would be most likely to benefit from:
 - Goods market access (where the other country in the FTA reduces or removes import tariffs on Kenyan products). **This is not in the CEPA**
 - Services Mode 4 market access, visas and recognition of qualifications (enabling Kenyans to work in the other country). **This is not in the CEPA.**
- So where are the benefits for Kenya from this CEPA to outweigh the costs of the problematic provisions in this CEPA?

Intellectual property (IP) chapter

- The CEPA IP chapter includes a number of provisions which require broader and stronger intellectual property rights than even World Trade Organization (WTO) rules require and which would be new obligations for Kenya. Examples are:
 - 5 year monopoly (market exclusivity) on the clinical trial data used to prove a medicine is effective (e.g. for cancer) and safe (does not have dangerous side effects). This means even if there is no patent, patients cannot have access to the cheaper equivalent generic versions of medicines (whether made by local generic companies or imported).
 - Medicine prices in Kenya are already unaffordably high for patients and if the government agrees to the price increases for medicines due to this CEPA, then it can treat fewer patients for the same amount of money.
- Some examples of the impact of this exclusivity provision on medicine prices:
 - In Guatemala: Medicines with this exclusivity are 166-846% more expensive
 - In Jordan, this exclusivity made medicines up to 800% more expensive than in Egypt (which does not have exclusivity)
 - It was predicted to cost Colombia's public health system an additional US\$396million from 2003-2025
 - Peru: 10 years of exclusivity would lead to an increase of more than US\$300million in 2025 expenditure
 - USA:
 - It raised the price of an old medicine in the USA by more than 50 times
 - Just 6 months of exclusivity for just 3 medicine classes would cost the US Medicaid population US\$430million
 - Canada:
 - 8 years of this exclusivity was calculated to add \$600million to prescription medicine costs in 5 years
 - Exclusivity would have prolonged monopolies in Canada by 2 years which would increase costs by C\$1.6billion/year.
 - 2 years of exclusivity for biologics alone (e.g. vaccines etc) could cost up to \$305.8million in additional spending in Canada

IP chapter continued

- The CEPA also includes a hard patent linkage requirement which:
 - Prevents compulsory licences (CLs) from becoming effective. (CLs are commonly used to n cheaper generic versions of medicines during the patent period. E.g. CLs:
 - Reduced the price of:
 - HIV/AIDS medicines by 81% in Malaysia
 - Hepatitis C cure in Malaysia from US\$71,300 per patient to US\$100
 - Kidney and liver cancer medicine in India by 97%
 - For 7 medicines are saving Thailand US\$370million over 5 years
 - If used to reduce the cost of 2nd line medicines for HIV/AIDS would save Thailand US\$3.2billion to 202
 - Saved Rwanda 75% on costs
 - Saved Taiwan 73% on oseltamivir
 - Saved Brazil US\$104million on one medicine.
 - requires the Kenyan medicine regulator to be the patent police when even the USA's Food Administration does not have the capacity to do so (and the EU refuses to implement linka
 - Was calculated to cost Malaysia up to an extra US\$74million in spending in 2026
- The UN Special Rapporteur on the Right to Health recommends developing counti to these stronger intellectual property provisions. The African Union Ministers of I Ministers of Trade are concerned about these provisions. Generic medicine manu concerned about these provisions since they lose significant market share.
- Even when there is a goods chapter in the FTA, these TRIPS+ provisions if they del entry of just the top 5 medicines by 2 years were calculated to cost Australia 28 ti the benefits of the FTA. The Kenya-UAE CEPA does not even have any goods mark offset the costs of this chapter alone.

IP chapter continued

In 2023 President Ruto 'unveiled the Universal Health Coverage plan, ensuring that every Kenyan will have access to free health services at all Level 1, 2, and 3 dispensaries and health centers across the nation. In a resounding commitment, President Ruto stated that at all Level 1, 2, and 3 dispensaries and health centers, every Kenyan will get treatment for free. The bill will be covered by the government through the Primary Health Care Fund.' . . . Those without the ability to pay will receive treatment at government hospitals at no cost.

USAID cuts: some impacts

- ‘In Kenya approximately 41,000 doctors, nurses, technical and management staff and community workers were supported by the US government
- ‘The Kenyan Government released a comprehensive report on 24 detailing the impact of the US Government funding cuts. Key recommendations include:
 - Immediate actions:
 - Establish an emergency health contingency fund.
 - **Mobilize domestic resources and reallocate the national budget.**
 - **Begin high-level diplomatic negotiations with the United States.’**

Kenya aims to strengthen domestic pharmaceutical manufacturing capacity

A 2024 article noted that:

- Kenyan manufacturers have about 30% of the Kenyan pharmaceuticals market
- “These achievements in the pharmaceutical industry have impacted Kenya’s economy by contributing to growth in Gross Domestic Product (GDP) and health care access, increase in the number of local access to certain products, reducing prices of locally produced medical products given transport and import costs”
- ‘The Government will strengthen local pharmaceutical manufacturing capacity to reduce the cost and enhance implementation of the Universal Health Coverage (UHC)’
- The Health Cabinet Secretary said:
 - ‘that developing Kenya’s pharmaceutical manufacturing sector has been considered a core part of building a resilient and sustainable healthcare system that can respond to routine needs and emergencies as projected in the Covid-19 pandemic, demonstrated the risk to the African Continent, therefore, highlighting the importance of local pharmaceutical manufacturing.
 - “The benefits of establishing local manufacturing are manifold and can be seen in many other emerging economies that have successfully built domestic pharmaceutical industries. Some of these include increased public health security during times of pandemics and outbreaks, greater ability to timely address Africa-specific diseases, improved preparedness, and expansion of the skilled workforce among others,”
 - “To achieve the ambitious goal, the African Union and its member states need to reduce our current dependence on imported active pharmaceutical ingredients (APIs) and excipients to 50 percent and grow our local capacity to produce such input materials, increase the proportion of pharmaceutical manufacturers that meet national good manufacturing practices standards from 65 percent to 100 percent, and support local manufacturers that fully comply with requirements for good manufacturing practices,”

Services chapter

Generally:

- Services can be thought of as everything you cannot drop on your foot. E.g. bank, hospitals, construction, telecoms etc
- Services liberalisation means allowing the UAE to supply as much of the service as possible including owning 100% of the company etc (unless relevant exceptions are specified)
- The main area where developing countries can benefit from services liberalisation is through effective Mode 4 market access allowing their citizens to work in the other country with visas and recognition of their qualifications (e.g. their medical/law/accounting etc degrees).

In the CEPA:

- There is no effective Mode 4 market access since it explicitly says: the countries must issue visas, it does not apply to permanent employment and the countries are not required to recognise qualifications. So Kenyans are not guaranteed to be able to work in the CEPA
- Kenya has agreed to liberalise many additional services sectors beyond those it liberalised under the WTO including: all shops except for motorbike and parts shops, construction services, ambulances, nursing homes, some shipping and rail transport services etc

Services chapter continued

The CEPA services chapter appears to require amendments to a number of Kenyan laws, e.g.:

- The Mining Act requirements that at least 60% shareholding by Kenyan citizens to hold a mineral dealership licence. (Kenya's services commitments in the CEPA must allow the UAE to have 100% shareholdings of mineral dealership licences)
- The Insurance Act:
 - 25% cap on how many shares an individual can own in an insurance company. (Kenya's services commitments in the CEPA require it to allow one UAE individual to hold 100% of the shares in an insurance company)
 - requirement that one-third of paid up capital be held by Kenyans for non-life insurance services commitments in the CEPA means it must allow the UAE to hold 100% of the capital in an insurance company).
- The restrictions on foreigners buying land in Article 65 of the Constitution. (Kenya's services commitments require it to allow UAE hotels etc to buy land in Kenya)
- Since in practice it is often difficult to differentiate where foreign investors are located (given multinational companies' subsidiaries in the UAE etc) Kenya may encourage this services liberalisation to companies from the whole world.

Digital trade chapter

- This chapter appears to be based on US multinational company including those by Google, Amazon, Facebook, Apple, X etc.
- CEPA includes: No tariffs on downloading movies, music, video computer software, ebooks etc from 'a person of a Party' (which is defined) for as long as there is a WTO decision on this. E.g. Amazon has an office in the UAE, so does the CEPA ban tariffs on buying from Amazon.com?
 - The WTO decisions banning customs duties on downloads are not enforced in this CEPA digital trade chapter.
 - How much revenue will Kenya lose from this?

Digital trade chapter continued

CEPA includes non-discriminatory treatment of digital products provisions that prevent laws which:

- require platforms such as Facebook and Google to share their advertising revenue with newspapers the way that Australia etc require, or
- restrict (as Korea's law does) the ability of platforms such as Google to force videogame companies to use their payment systems (where they charge a 30% commission on sales etc) etc,
- are pro-competition (e.g. various EU laws).

<https://rethinktrade.org/reports/digital-trade-doublespeak-big-techs-hijack-of-trade-lingo-to-attack-anti-monopoly-competition-policies/>, <https://medium.com/rethinktrade/trade-law-hijacked-big-techs-digital-trade-doublespeak-again-8af0a37cead9>, <https://www.warren.senate.gov/imo/media/doc/USTRA%20REPORT.pdf> and <https://rethinktrade.org/wp-content/uploads/2023/03/International-Preemption-by-Trade-Agreement.pdf>

The industry association for Google, Amazon, Facebook, Apple etc has identified Africa as discriminating against their platforms, and they have pushed for this kind of non-discriminatory provision in trade negotiations, pre-empting to try and get these measures removed.

Digital trade chapter continued

- CEPA includes deregulation of electronic authentication provision means leaving it to consumers and businesses to decide how secure electronic transactions are.
 - Because of market failures, many governments in both developed (e.g. US) and developing countries (e.g. Kenya, Mauritius, Nigeria, Malaysia and India) have introduced electronic authentication methods e.g. to prevent credit card fraud, ensure the security of online banking, ensure the cybersecurity of critical infrastructure as oil/gas pipelines, ensure interoperability and efficiency of transactions between hospitals and health insurance companies etc).
 - E.g. in Kenya: 'Microfinance institutions guideline: Institutions shall ensure agents: i) Identify customers with at least two factor authentication while any transaction requiring identification'
- This CEPA provision prevents these regulations except for 1 category of transactions

Exceptions and dispute settlement

- Although the CEPA has some exceptions, they are insufficient e.g.:
 - The health and environment exception does not apply to the intellectual property and it has been copied from the WTO where it is so difficult to use that governments succeeded twice in 48 attempts
 - The privacy exception and prudential defence has been copied from the WTO self-cancelling so do not override problematic provisions in the CEPA
 - The security exception is limited to the listed circumstances, so does not include cybersecurity in times of peace etc and it has been found at the WTO to not be
 - Other CEPA exceptions are often self-cancelling (they cannot be used to override problematic provisions) or irrelevant.
- The CEPA dispute settlement chapter makes the whole CEPA (unless provided) enforceable via the UAE being able to sue Kenya at an international tribunal (or vice versa). If the UAE wins and Kenya does not change it to comply with the CEPA, the UAE can suspend the benefits it was provided in this CEPA
 - All the provisions mentioned today can be enforced via this mechanism

MSME and cooperation chapters

- There is an MSME chapter in the CEPA but it merely:

- has vague provisions on cooperation,
- requires the CEPA text etc to be put on a website and
- has a subcommittee to discuss MSME issues.

Even then the chapter is not enforceable

- There is a cooperation chapter in the CEPA but it:

- Merely has vague provisions about cooperation via seminars etc, se committee
- Explicitly says resources must be agreed by both the UAE and Kenya

Even then the chapter is not enforceable

Thank you

For more information: e.odari@econews-africa.org



SUBMISSIONS ON THE COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT (CEPA) BETWEEN KENYA AND THE UAE (UNITED ARAB EMIRATE) WITH RESPECT TO MICRO, SMALL, AND MEDIUM ENTERPRISES (SMEs)

Submitted by: Micro and Small Enterprises Authority (MSEA)
Date: March 28, 2025

CONTENTS

- I. Introduction
- II. Alignment of CEPA with SME Committee Submissions
- III. Identified Gaps and Recommendations
- IV. Additional Recommendations on Specific Sub-Clauses
 - A. SMEs in Digital Trade
 - B. SMEs in Goods Trade
- V. Submission to the Trade Committee of the National Assembly of Kenya

I. INTRODUCTION

The Micro and Small Enterprises Authority (MSEA) welcomes the inclusion of **Chapter 12: Small and Medium Enterprises** in the Kenya-UAE Comprehensive Economic Partnership Agreement (CEPA). This chapter aligns with MSEA's objectives to foster cooperation, enhance trade opportunities, and support SMEs, including women and youth-owned enterprises, as key drivers of economic growth. This submission analyzes CEPA's provisions for SMEs, identifies potential gaps, and provides actionable recommendations that benefit Kenyan SMEs, particularly microenterprises.

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CEPA comprehensively incorporates SME Committee recommendations as follows:

1. Recognition of SMEs' Role & Cooperation

- **SME Committee Submission:** Recognizes SMEs' fundamental role in economic growth and calls for close cooperation.
- **CEPA Provision (Article 12.1):** Affirms SMEs' role and commits to cooperation for job creation and growth.

2. Private Sector Involvement

- **SME Committee Submission:** Acknowledges the private sector's integral role in SME cooperation.
- **CEPA Provision (Article 12.1):** Includes private sector participation in SME cooperation initiatives.

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- **CEPA Provision (Article 12.2):** Supports cooperation between SME centers, incubators, and web-based platforms for business linkages.

4. SME Subcommittee Responsibilities

- **SME Committee Submission:** Outlines 14 key responsibilities, including capacity building and digital trade promotion.
- **CEPA Provision (Article 12.4):** Establishes an SME Subcommittee to oversee these tasks.

5. Additional CEPA Provisions

- **Article 12.3 (Information Sharing):** Mandates a free public website with SME-relevant trade data.
- **Article 12.5 (Non-Application of Dispute Settlement):** Emphasizes cooperation over legal enforcement.

III. IDENTIFIED GAPS AND RECOMMENDATIONS

While CEPA aligns with our stated objectives, there are areas where practical implementation or specificity could be improved on. These are opportunities to ensure the Agreement delivers tangible benefits for Kenyan SMEs:

1. Lack of Specific Funding Mechanisms

Gap: CEPA does not mention specific financial commitments or mechanisms (e.g., grants, loans, or credit guarantees) to support SMEs, particularly in accessing capital and credit (mentioned in Article 12.2(c)).

Recommendation: Propose the establishment of a bilateral SME Development Fund or a credit facility with UAE partners to provide direct financial support to Kenyan SMEs, especially micro-enterprises, which often lack collateral.

2. Limited Detail on Capacity Building Programs

Gap: While capacity building is mentioned (Article 12.4(e)), there's no detail on the scope, frequency, or funding of these programs.

Recommendation: Suggest a detailed action plan for capacity building, including timelines, target sectors (e.g., agriculture, ICT), and collaboration with Kenyan institutions like the Micro and Small Enterprises Authority to tailor programs to local needs.

3. No Specific Targets or Metrics for Success

Gap: The Agreement lacks measurable targets (e.g., percentage increase in SME exports, number of SMEs integrated into supply chains) to evaluate the success of SME initiatives.

Recommendation: Advocate for the SME Subcommittee to set quantifiable goals (e.g., 20% increase in Kenyan SME exports to UAE by 2030) and report progress annually to ensure accountability.

4. Exclusion of Market Access Commitments

Gap: CEPA excludes tariff liberalization (market access) for now, deferring it to future negotiations with the East African Community (EAC) (Article 2.19). This limits immediate trade benefits for SMEs exporting to the UAE.

Recommendation: Push for an interim bilateral tariff reduction schedule for key Kenyan SMES exports (e.g., tea, horticulture) to provide immediate market access advantages pending EAC-wide negotiations.

5. Insufficient Focus on Micro Enterprises

Gap: CEPA uses "SMEs" broadly without specific provisions for micro-enterprises, which dominate Kenya's SMES sector and face unique challenges (e.g., informality, limited digital access).

Recommendation: Request an amendment or side letter to explicitly address micro-enterprises, including simplified certification processes and targeted digital literacy programs.

6. Potential Competition from UAE SMEs

Gap: The Memorandum notes possible negative effects, such as competition from UAE zero-rated products (page 8). This could disproportionately affect Kenyan micro and small enterprises without protective measures.

Recommendation: Propose safeguards (e.g., temporary quotas or anti-dumping measures) to protect vulnerable Kenyan SMESs during the initial implementation phase.

IV. ADDITIONAL RECOMMENDATIONS ON SPECIFIC SUB-CLAUSES

A. SMESs IN DIGITAL TRADE

CEPA's digital trade provisions (Chapter 10) offer significant opportunities for SMESs:

1. **Article 10.2 (Objectives):** Fosters an environment for digital trade and reduces barriers, enabling SMESs to leverage ecommerce globally.
2. **Article 10.4 (Customs Duties):** Moratorium on duties for electronic transmissions eliminates costs for SMESs selling digital products.
3. **Article 10.5 (Non-Discriminatory Treatment):** Ensures equal treatment of SMES digital products, fostering fair competition.
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5. **Article 10.8 (Paperless Trading):** Streamlines export processes via electronic documents, benefiting resource limited SMESs.
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9. **Article 10.15 (Digital Invoicing):** Reduces costs through interoperable invoicing systems.
10. **Article 10.16 (Digital Payments):** Enables seamless payment systems critical for SMES cash flow.

B. SMES IN GOODS TRADE

Key concerns in **Chapter 2: Trade in Goods:**

1. Compliance Burdens in Customs Procedures

- **Issue:** High fees and complex licensing for SMEs.
- **Recommendation:** set a minimum value threshold (KES 500,000) below which imported goods would be exempt from certain customs duties and taxes.

2. Limited Market Access for SME Products

- **Issue:** No specific tariff provisions for SME sectors.
- **Recommendation:** Fast-track tariff elimination for **20 SME priority products** (e.g., textiles, handicrafts, agriculture).

3. Infrastructure Gaps

- **Issue:** Lack of SME-friendly customs and warehousing.
- **Recommendation:** Establish **CEPA-SME Trade Hubs** for certification, packaging, and training.

4. Information Asymmetry

- **Issue:** Limited SME access to trade data.
- **Recommendation:** Link **SME Help Desks** to the **CEPA trade information portal**.

V. SUBMISSION TO THE TRADE COMMITTEE OF THE NATIONAL ASSEMBLY OF KENYA

Whereas the Micro and Small Enterprises Authority commends the inclusion of Chapter 12 in the Kenya-UAE CEPA, which comprehensively addresses the promotion and support of SMEs as a driver of economic growth. The Agreement aligns with our objectives to foster cooperation, enhance trade opportunities, and support women and youth-owned enterprises. However, to maximize benefits for Kenyan SMESs, particularly micro-enterprises, we identify the following gaps and recommendations for consideration during the submission process:

- 1. Establish a Bilateral SME Development Fund:** The CEPA lacks specific financial mechanisms to support SMESs. We propose a joint Kenya-UAE fund to provide grants, loans, and credit guarantees, ensuring micro-enterprises can access capital to leverage trade opportunities.
- 2. Detail Capacity Building Programs:** While capacity building is noted, we recommend a concrete action plan with timelines and sector-specific initiatives, coordinated with Kenyan institutions, to enhance SMES competitiveness.
- 3. Set Measurable Targets:** To ensure accountability, the SME Subcommittee should establish quantifiable goals (e.g., 20% export growth for Kenyan SMEs by 2030) and report progress annually.
- 4. Secure Interim Market Access:** Given the exclusion of tariff liberalization, we urge an interim bilateral tariff reduction for key SMES exports (e.g., tea, horticulture) to provide immediate benefits pending EAC negotiations.
- 5. Address Micro-Enterprises Explicitly:** The Agreement should include tailored provisions for micro-enterprises, such as simplified certification and digital literacy programs, reflecting their dominance in Kenya's economy.
- 6. Mitigate Competition Risks:** To protect Kenyan SMESs from potential UAE competition, we suggest temporary safeguards like quotas or anti-dumping measures during the initial phase.



**MICRO AND SMALL ENTERPRISES
AUTHORITY**

Tel: 020-340006
Cell: +254 700 666 000
+254 770 666 000
Email: mseakenya@gmail.com
When replying, Please quote:

Utalii House, 10th Floor Left Wing
Utalii Lane, Along Uhuru Highway
P.O. Box 48823 – 00100
**NAIROBI
KENYA**

Ref: MSEA/7/08/82

Date 2nd April, 2025

Clerk of the National Assembly
P.O. Box 41842-00100
NAIROBI.

Dear *Chuka,*

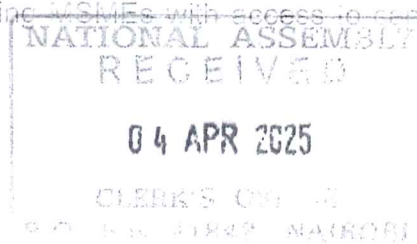
**RE: FORWARDING OF SUBMISSION OF THE COMPREHENSIVE ECONOMIC
PARTNERSHIP AGREEMENT (CEPA) BETWEEN KENYA AND THE UNITED
ARAB EMIRATES (UAE)**

Reference is made to your letter dated 19th March 2025 Ref: NA/DDC/TIC/2025/010 and a letter dated 28th March 2025, Ref: NA/DDC/TIC/2025/012 on the above subject matter.

The Comprehensive Economic Partnership Agreement between Kenya and the UAE is a landmark trade and investment framework designed to strengthen economic ties between the two nations. For Micro, Small and Medium Entrepreneurs (MSMEs) in Kenya, the agreement presents transformative opportunities by enhancing market access, reducing trade barriers, and fostering a conducive environment for growth and innovation.

CEPA Specifically facilitates preferential access to the UAE's dynamic market, one of the most robust in the Middle East, enabling Kenyan MSMEs to export goods and services with reduced tariffs and streamlined customs processes. This is particularly vital for sectors such as agriculture, textiles, handicrafts, and small-scale manufacturing, where MSMEs dominate.

Moreover, the Comprehensive Economic Partnership Agreement (CEPA) promotes investment flows from the UAE into Kenya, providing MSMEs with access to capital.



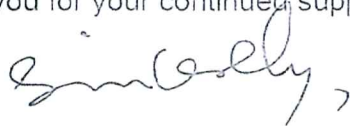
technology, and expertise that can enhance productivity and competitiveness. By integrating Kenyan MSMEs into global value chains, the agreement supports job creation, income generation, and poverty reduction—key priorities for Kenya's economic development. Additionally, Comprehensive Economic Partnership Agreement (CEPA) provisions for capacity building and technical assistance will empower MSMEs to meet international standards, further boosting their ability to compete in regional and global markets.

This submission reflects our commitment to ensuring that the voices of MSMEs are heard in shaping this pivotal agreement. We believe the Comprehensive Economic Partnership Agreement (CEPA) will unlock unprecedented opportunities for growth, resilience, and sustainability for Kenya's micro and small enterprises, aligning with national goals of economic empowerment and inclusive development.

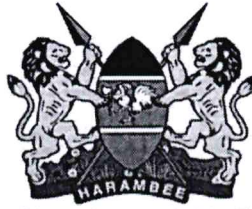
The purpose of this letter therefore is to forward the submission of the Comprehensive Economic Partnership Agreement (CEPA) as requested.

Thank you for your continued support.

Yours



HENRY M. RITHAA
DIRECTOR GENERAL/CEO



**THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK**

P. O. Box 41842-00100
Nairobi, Kenya
Main Parliament Buildings

Telephone: +254202848000 ext. 3300
Email: cna@parliament.go.ke
www.parliament.go.ke/the-national-assembly

**When replying, please quote
REF: NA/DDC/TIC/2025 (024)**

5th June, 2025

Ms. Regina Akoth Ombam
Principal Secretary
State Department for Trade
Ministry of Investments, Trade and Industry
Kenyatta Avenue, Teleposta Towers, 18th Floor
NAIROBI.

Dear *Mr. Ombam*

**REF: REQUEST FOR INFORMATION BY THE DEPARTMENTAL COMMITTEE
ON TRADE, INDUSTRY AND COOPERATIVES REGARDING THE
COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT (CEPA)
BETWEEN KENYA AND UNITED ARAB EMIRATES**

The above subject matter refers.

As you are aware, the Departmental Committee on Trade, Industry and Cooperatives is seized of the Comprehensive Economic Partnership Agreement between Kenya and the United Arab Emirates for consideration and reporting to the House.

Pursuant to the provisions of Article 118 (1) (b) of the Constitution on public participation and Section 8(3) of the Treaty Making and Ratification Act of 2012, as well as Standing Order 170A (2) of the National Assembly Standing Orders, the Committee has undertaken public participation on the CEPA.

To this end, the Committee received various memoranda from the public and stakeholders both in support of the ratification of the CEPA as well as others raising concerns on the impact of some of the provisions in the Agreement both in the short term and long term. A summary of these concerns is attached herewith for your reference. In view of the foregoing, the Committee observed that the concerns raised by the public and stakeholders are weighty and of a technical nature.

Accordingly, and pursuant to Standing Order 170(3), the Committee seeks your written rejoinder on the aforementioned concerns as well as further information on the safeguard mechanisms in place to address these concerns. This will enable the Committee to firm-up on

its recommendations. A soft copy of the same may be sent via email to cna@parliament.go.ke to be received on or before **Thursday, 12th June 2025 at 5:00 pm.**

Our liaison officers for this subject are **Mr. Abenayo Wasike**; Tel No. **0721352053** or email: abenayo.makokha@parliament.go.ke and **Ms. Everlyn K. Orina** Tel No. **0711 201 833** or email: everlyn.orina@parliament.go.ke.

Yours



JEREMIAH NDOMBI, MBS
FOR: CLERK OF THE NATIONAL ASSEMBLY

Copy: Hon. Lee Kinyajui
Cabinet Secretary
Ministry of Investments, Trade and Industry
17th Floor, NSSF Building Block A
NAIROBI



SUBMISSIONS ON THE COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT (CEPA) BETWEEN KENYA AND THE UAE (UNITED ARAB EMIRATE) WITH RESPECT TO MICRO, SMALL, AND MEDIUM ENTERPRISES (SMEs)

Submitted by: Micro and Small Enterprises Authority (MSEA)
Date: March 28, 2025

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DDC
8
4/4/25

Our Ref: KIPPRA/4/2

2nd April 2025

The Clerk
National Assembly of Kenya
P.O Box 41842-00100
Nairobi

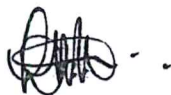
Benjamin Magut
pls facilitate
meeting 7/4/25

INVITATION FOR A MEETING WITH THE DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY AND COOPERATIVES REGARDING THE COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT (CEPA) BETWEEN KENYA AND THE UNITED ARABS EMIRATES

We acknowledge receipt of your letter Ref: NA/DDC/TIC/2025/010 dated 19th March 2025 regarding the invitation to a stakeholder meeting with the Departmental Committee on Trade, Industry, and Cooperatives, which was rescheduled to 10th April 2025 at Parliament Buildings.

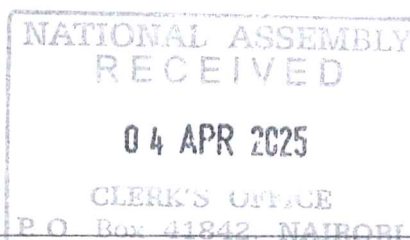
The purpose of this letter is to confirm our participation and to submit our presentation for your review in preparation for the upcoming meeting.

Once again, we appreciate the invitation and look forward to an insightful and productive discussion.



DR ELDAH ONSOMU
Ag EXECUTIVE DIRECTOR

Mr. Abenayo Wasike
pls. facilitate the meeting.
ckaskei
7/4/2025



Input into Kenya-United Arab Emirate (UAE) Comprehensive Economic Partnership Agreement (CEPA)

- ❖ Encourage the Ministry to establish early-warning systems or Micro, Small and Medium Enterprises (MSME) feedback loops to flag Non-Tariff Measures (NTMs) that could hinder exports.
- ❖ Parliament may require the Ministry of Trade to quantify expected Foreign Direct Investment (FDI) inflows or provide case studies (e.g., UAE agri-logistics firms or hospitals seeking to enter Kenya).
- ❖ Develop an impact assessment model to monitor local sectors post-ratification.
- ❖ Publicize mechanisms for MSMEs to file complaints or seek safeguard protection.
- ❖ There is a need to include a matrix of institutions to lead implementation and the role that they are likely to play. For example:
 - ❖ *Ministry responsible for Trade → oversight & joint committee coordination.*
 - ❖ *Kenya Bureau of Standards/ Kenya Revenue Authority (KEBS/KRA) → Rules of Origin & customs alignment.*
 - ❖ *Private Sector Alliances → feedback channels.*
- ❖ Recommend a Kenya–Middle East market development strategy riding on the Comprehensive Economic Partnership Agreement (CEPA), with United Arab Emirates (UAE) as a hub.

Input into Kenya-United Arab Emirate (UAE) Comprehensive Economic Partnership Agreement (CEPA)

- ❖ Strengthening of institutional links between the Joint Committee and the private sector—
 - ❑ *Information sharing with the private sector;*
 - ❑ *Foster capacity-building for youth-led tech SMEs in Kenya*
- ❖ Harmonization of non-tariff measures between the two markets—
 - ❑ *Mutual recognition of standards between the two countries*
 - ❑ *Strengthen information sharing on standards and technical regulations*
- ❖ Current provisions on E-Commerce and digital trade—
 - ❑ *Will cover the growing digitalization of trade.*
 - ❑ *Will promote Kenya's fintech sector and e-commerce.*
 - ❑ *Ensure there is compliance with Kenya's Data Protection Act by traders, especially as UAE operates in a stricter compliance environment.*

Input into Kenya-United Arab Emirate (UAE) Comprehensive Economic Partnership Agreement (CEPA)

- ❖ The agreement excludes tariff liberalization for now, which means Kenya will negotiate market access under the East African Community (EAC) framework at a later stage.
 - CEPA's Rendezvous Clause (Article 2.19) commits both parties to negotiate tariff access as part of a broader EAC-wide deal, providing Kenya with a pathway for eventual tariff-free access to UAE markets.
- ❖ Future review could consider provisions on environment and climate change action—
 - This will support greening of trade between the two countries;
 - *Support sustainable development and actualization of Kenya's Nationally Determined Contributions (NDCs)*
- ❖ The agreement provides for review of the agreement after every five years
 - *It is important to add "...or when need arises" in future review of the agreement.*



**The KENYA INSTITUTE for PUBLIC
POLICY RESEARCH and ANALYSIS**

Thinking Policy Together

Comprehensive Economic Partnership Agreement (CEPA) between Kenya and United Arab Emirate (UAE)

Presented By: KIPPRA

Date: *Friday, April 4, 2025*

THANK YOU

For your Attention



The KENYA INSTITUTE for PUBLIC
POLICY RESEARCH and ANALYSIS
Thinking Policy Together

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Recommendation to parliament

❖ The Memorandum provides sufficient legal, policy, and strategic justification to support the ratification of the Comprehensive Economic Partnership Agreement (CEPA);

❖ Parliament is advised to:

1. Approve ratification in accordance with Section 7 of the Treaty Making and Ratification Act.
2. Request supplementary submissions from the Ministry of Trade on:
 - *East African Community (EAC) coordination plan for market access.*
 - *Micro, Small and Medium Enterprises (MSME) support mechanisms and capacity-building.*
 - *Environmental and gender safeguards.*
 - *Sector-specific investment and export readiness strategies.*
3. Mandate regular reporting every 12 months on Comprehensive Economic Partnerships' (CEPA's) progress and impact.

TEA INDUSTRY INPUT INTO THE KENYA - UNITED ARAB EMIRATES (UAE) COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT (CEPA)

OVERVIEW OF THE TEA TRADE BETWEEN KENYA AND THE UNITED ARAB EMIRATES

Tea is the most consumed beverage in the UAE, with 60.29% of residents consuming it. This can be attributed to the cultural importance of tea in the region, as well as the fact that it is a hot beverage that can be enjoyed indoors in air-conditioned environments.

According to the ITC 2023 report, the main tea suppliers to the UAE are Kenya (42%), India (21%) and Sri Lanka (14%), with the most imported types of tea imported being black tea, green tea, and herbal tea.

UAE as a key Re - export Market

The United Arab Emirates has over the years grown to be the world's leading trading hub for tea. In 2021, United Arab Emirates exported \$316M in Tea, making it the 5th largest exporter of Tea in the world. In the same year, Tea was the 87th most exported product in United Arab Emirates.

Currently it commands a 60% share of global tea re-export market covering 154 countries with top destinations being Saudi Arabia (\$65.5M), Kuwait (\$34.7M), Iraq (\$28M), Russia (\$25.7M), and China (\$25M). According to the Observatory of Economic Complexities (OEC) report, the fastest growing UAE export markets for Tea between 2022 and 2023 were China (\$24.3M), Bahrain (\$7.02M), and Russia (\$3.51M).

Dubai is the commercial hub for the UAE and is a major center for the re-export of tea, especially to countries in the Middle East, North Africa, and

Central Asia. Tea is not grown in the UAE, but the country's strategic location at the crossroads of major shipping routes has made it a hub for the trade in tea and other goods.

Dubai has been a key international gateway for the trade since the early 1900s when the world's first tea plantations were established in India and Sri Lanka. Its strategic location midway between the tea producing and consuming countries has been a natural advantage. Today, the emirate is one of the world's largest re-exporters of tea, with an estimated 60-70% of its tea imports being re-exported to other countries.

The re-export business remains a top priority for the UAE government with Vice-president and ruler of Dubai being quoted on 28th March 2023 stating as follows:

“We will double the country's re-export by developing specialized areas in cooperation with local governments, establishing the International Trade Links Centre, launching supportive programmes and increasing foreign investments in the service sector.

The national agenda for re-export development 2030, includes 24 initiatives and programmes, aiming to achieving 50 percent increase in the added value of the UAE economy through re-exports by 2030, through benefiting from the 50 integrated commercial representative offices for the UAE in five continents across the world”.

Dubai's tea re-export industry is supported by a well-developed infrastructure, including modern ports, efficient customs procedures, and a range of logistics services. Below are the top 10 destinations for UAE Tea exports for 2021 reflecting 77% of total value contribution.

**ADVANTAGE OF THE KENYA - UNITED ARAB EMIRATES (UAE)
COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT (CEPA)
WITH RESPECT TO TEA TRADE**

Having reviewed the above agreement; the Tea industry notes the following;

1. The UAE is a member of the Gulf Cooperation Council (GCC) countries and has strong economic ties with its partners Saudi Arabia, Kuwait, Bahrain, and Oman; they share a common market and a customs union. Under the Greater Arab Free Trade Area Agreement (GAFTA), the UAE has free trade access to most Middle East countries to which Kenya could gain strategic access.
2. The UAE applies the GCC Common External Tariff rate of between 0% and 5% on Kenyan goods, with limited exceptions on tobacco and alcoholic beverages. On the other hand, Kenya applies the EAC CET tariff of between 0% and 35% on goods from the UAE. This will subsist until the UAE negotiates tariff schedules with all the EAC Partner States collectively.
3. Kenya Tea industry will benefit through expanding Tea exports for Kenyan tea to the UAE and Middle East. The agreement has refined measures to facilitate trade through a common understanding of customs procedures and trade facilitation measures, and also sanitary and phytosanitary measures.
4. The agreement allows for expanded Technical co-operation with which Kenya can benefit with respect to value Addition.
5. Possible negative effects include:
 - The Parties have agreed to negotiate market access (tariff liberalization) with all the EAC Partner States when ready. Removal of import duties from products once undertaken under this agreement may eventually lead to loss of government revenue over the agreed liberalization period; and,

TBK

TEA BOARD OF KENYA

Realizing the Tea Promise

- Local Tea industries are likely to face more competition over time from UAE zero rated products and the agreement may in turn favor UAE to be more of a Global Tea Re-export center as opposed to Kenya being renown as a Tea origin country. Brand visibility for Kenya tea may be camouflaged or eclipsed by the agreement



**KENYA REVENUE AUTHORITY'S SUBMISSION ON THE KENYA – UNITED
ARAB EMIRATES COMPREHENSIVE ECONOMIC PARTNERSHIP
AGREEMENT (CEPA)**

MARCH 2025

Page 1 of 2

KENYA REVENUE AUTHORITY
Confirmed
P.O. Box 48240 - 00100, NAIROBI
Date: 7/4/2025
Sign: [Signature]

1.0 Introduction

Comprehensive Economic Partnership Agreement (CEPA) seeks to achieve several key objectives between Kenya and the United Arab Emirates (UAE) as follows:

- Eliminating technical barriers to trade and simplified Customs procedures.
- Trade Facilitation.
- Expand market access for goods and services in Kenya and the UAE.
- Promote industrialization and strengthen regional value chains.
- Attract Foreign-Direct investment and promote technology transfer.
- Support Kenya's Bottom Up Economic Transformation Agenda.
- Promote sustainability and growth of green economy.

CEPA is expected to unlock new opportunities, enhance bilateral relations and contribute to the economic transformation of both regions.

1.0 Recommendations

Kenya Revenue Authority (KRA) recommends to have the following areas included within the Agreement:

No.	Clause	Recommendation
1.	Article 2: Objectives	Include: Strengthening of risk based cargo screening to safeguard trade while ensuring the smooth flow of legitimate goods.
2.	Article 5.2: Objectives	Include: Promote mutual recognition of sanitary and phytosanitary standards, inspection results and conformity assessments to reduce duplication, facilitate faster clearance and ensure safety of trade goods (this is mentioned in Article 5.5 (3) but not in the objectives.
3.	Article 14	Proposal for training of the Joint Committee members on CEPA. This should be separate from stakeholder sensitizations.

Our Ref: KENAS/CEO/23B

3rd April 2025

Mr. Samuel Njoroge, CBS
Clerk of the National Assembly
P. O. Box 414842 - 001000
NAIROBI

Email: cna@parliament.go.ke

Dear

**SUBMISSION OF COMMENTS ON THE COMPREHENSIVE PARTNERSHIP AGREEMENT (CEPA)
BETWEEN KENYA AND UNITED ARAB EMIRATES**

Reference is made to the letter reference NA/DDC/TIC/2025/010 dated 19th March 2025, inviting institutions for the meeting of the Departmental Committee on Trade, Industry and Cooperatives regarding the Comprehensive Economic Partnership agreement (CEPA) between Kenya and the United Arab Emirates.

Kenya Accreditation Service (KENAS) is a State Corporation established by the Kenya Accreditation Service Act, 2019, to be the sole national accreditation body. The key mandate is to assess and accredit institutions offering conformity assessment services, ultimately reducing technical barriers to trade and facilitating the exchange of goods and services between countries. KENAS is also an International Laboratory Accreditation Cooperation Mutual Recognition Arrangement (ILAC MRA) and International Accreditation Forum Multilateral Arrangement (IAF MLA) signatory member on behalf of Kenya.

Further, before public participation on the CEPA between Kenya and the UAE, submissions were requested for submission.

Kenya Accreditation Service (KENAS), the sole national accreditation body, appreciates the invitation and provides the following comments on the CEPA between KE-UAE for your kind consideration.

Thanking you in advance for positive consideration of the proposal.

Yours

Dr. Walter Ongeti
CHIEF EXECUTIVE OFFICER
WON/Inu

Copy to: Prof. Juma Mukhwana
Principal Secretary
State Department for Industry
NAIROBI

Submission of Memoranda on the Comprehensive Economic Partnership Agreement [CEPA] between the Government of Kenya and the United Arab Emirates

Date: 3rd April 2025

Submitted By:	Kenya Accreditation Service (KENAS)	Email:	ceo@kenas.go.ke or info@kenas.go.ke
Address:	P. O. Box 47400-00100 Nairobi, Kenya	Phone:	020 484 0000

Article	Current Text	Proposed Change	Justification
Not included	Proposal for inclusion of Article 6.XX	Proposed inclusion under Chapter 6: Technical Barriers to Trade: Addition of Article 6.XX (propose 6.7) on Accreditation: i) Each Party shall give positive consideration to a request by the other Party to negotiate agreements or arrangements for the mutual recognition of accreditation testing, inspection, certification and verification. ii) Each Party shall ensure, whenever possible, that the results of accredited conformity assessment activities conducted in the territory of the other Party are accepted. Where a Party does not accept the results of an accreditation conducted in the territory of the other Party, it shall, on request of the other Party, explain the reasons for its decision.	Kenya has recently enacted laws to assure quality, safety and environmental assurance through the KENAS Act, No 17 of 2019 and the Business Laws Amendment Act (2024). This provides for assessment and accreditation of conformity assessment bodies that carryout testing, inspection, certification and verification activities. KENAS is a signatory member of the mutual recognition arrangements and multilateral arrangements with International Laboratory Accreditation cooperation and International Accreditation Forum. Proposal is made for the inclusion of the provision for an Article on Accreditation, which is only a subject in mention in provision of Cooperation in Article 6.7.

Authorization

Name: Dr. Walter Ongeti Signature: _____

Designation: Chief Executive Officer Date: _____

IEA-Kenya, Commentary on Kenya-UAE Comprehensive Economic Partnership Agreement

By 14th January 2024, Kenya had begun negotiations for a free trade agreement with the United Arab Emirates. Kenya can place its faith in economic principles by pursuing unilateral free trade policy. Incidentally, this would reduce the cost of negotiating trade deals. The ultimate objective would be to exploit its own comparative advantage by reducing the costs to suppliers of importing intermediate goods and to expand consumer choice, disposable income and overall welfare of its own consumers.

In the year 2023, 13.7% of Kenya's US\$20.9 billion in imports came from the United Arab Emirates. In that year, the UAE was Kenya's second most important import partner. Of the US\$ 2.86 billion imported from the United Arab Emirates, 83.3% was made in refined petroleum. In that same year, Kenya made US\$ 8.59 billion million in exports to the world. 8.33% of Kenya's exports to the world were made to the United Arab Emirates. Of the US\$ 716 million in exports to the UAE, 49.7% were made in gold. Vegetable products made up just above 20% while sheep and goat meat made up 11.8% of Kenya's exports to that country.

By the year 2023, 2% of the World's shipping containers pass through the UAE. That country is also the world's 5th largest re-export hub. 27% of UAE's global trade was dependent on re-exports. The UAE is a leading reexporter of rice, diamonds, gold, coffee and tea. Incredibly, the UAE and the middle east do not produce these products. These facts provide the impetus behind the UAE's search for foreign markets. The Comprehensive Economic Partnership Agreement or CEPA is a free trade agreement that the UAE has pursued with a number of partners around the world. By September 2023, the UAE has signed agreements with 5 countries. By April 2025, the UAE had signed the agreement with 26 countries around the world. Free trade agreements are a tool that the UAE expects to exploit to ensure that it maintains a leading position in global trade. In all, the UAE is an example of the benefits of trade liberalization.

The Memorandum to the National Assembly to Commence the Ratification Process of the Kenya - United Arab Emirates Comprehensive Economic Partnership Agreement was sent to the Kenyan Parliament on 21st February 2025. Importantly, the CEPA excludes market access. Kenya and the UAE agreed to negotiate market access with all EAC partner states in the future.

The agreement provides access for Kenyan products to the UAE and Middle Eastern markets but does not provide the UAE with access to Kenyan markets. The elimination of tariff and non tariff barriers is to be progressive while development and promotion of value chains, and opportunities for trade diversification and industrialization. The agreement also restricts subsidization of traded products. Although the principle of supporting industrialization and product and market diversification is useful, the elimination of trade barriers need not have been progressive. Intermediate goods will not be penalized for non originating materials. This is a good principle. Finally, the length of the agreement implies that the agreement will have a high processing cost. It would be cheaper to liberalize markets unilaterally.

The objective of trade liberalization is to exploit comparative advantages in trade, to allow the free flow of factors of production, factor returns, people, and goods and services across borders.

This is the feature of global economic integration. As it can be pursued unilaterally, trade liberalization need not be accompanied by institutional integration. Customs need not exist. Tariffs need not be harmonized. They can be abandoned all together. As the UAE is an important hub for intermediate goods, and, by extension, a burgeoning manufacturing hub, a free trade agreement with the country can offer Kenyan entrepreneurs with an opportunity to integrate themselves into global value and supply chains. One important feature of a physical trade hub is that it lowers costs of aggregation and transportation through scale while offering a high level of connectivity to those firms that have access to it. Not only should Kenya pursue this free trade agreement with the UAE, that nation should pursue similar agreements with other global shipping hubs like Singapore. In order to reduce the costs of negotiation, and to pursue a policy that places faith in economic principles, Kenya should unilaterally liberalize its trade with the world.

Sources:

1. Observatory Economic Complexity
2. Comments by Thani Ahmed Al Zeyoudi, UAE Minister of State For Foreign Trade at the World Trade Organization Public Forum 2023

Our Ref: KENAS/CEO/23B

3rd April 2025

Mr. Samuel Njoroge, CBS
Clerk of the National Assembly
P. O. Box 414842 - 001000
NAIROBI

Email: cna@parliament.go.keDear *Hon. Njoroge*

① DDC
8
8/4/25
② Benjamin magut
pls deal
8/4/25

**SUBMISSION OF COMMENTS ON THE COMPREHENSIVE PARTNERSHIP AGREEMENT
(CEPA) BETWEEN KENYA AND UNITED ARAB EMIRATES**

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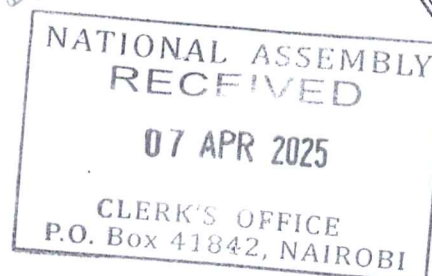
Yours *Dr. Walter Ongeti*

Dr. Walter Ongeti
Dr. Walter Ongeti
CHIEF EXECUTIVE OFFICER
WON/Inu

③ Mr. Abenigo N.
Please TIRA
8/4/25



Copy to: Prof. Juma Mukhwana
Principal Secretary
State Department for Industry
NAIROBI





**ECONEWS
AFRICA**

**SUBMISSION TO KENYAN NATIONAL ASSEMBLY ON SOME OF THE
IMPLICATIONS OF THE INTELLECTUAL PROPERTY CHAPTER OF THE
KENYA-UAE COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT ON
ACCESS TO MEDICINES**

Thank you for the opportunity to submit a memorandum on the Kenya-United Arab Emirates (UAE) Comprehensive Economic Partnership Agreement (CEPA) before the Kenyan National Assembly decides whether to ratify it.

BACKGROUND

Econews Africa (ENA) is a Pan-African research and advocacy organization based in Kenya and works to bridge the local, national, regional and global information gaps on development issues, in particular on trade and investments, the extractive industry and finance and development. We welcome the opportunity to make submissions to Parliament and hope that these will inform decision-making and not only be an exercise to satisfy the requirement for public participation.

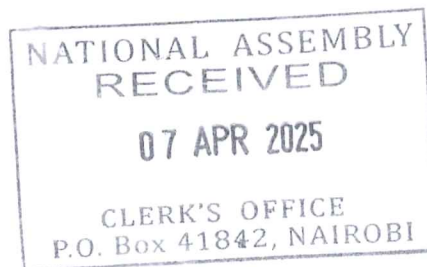
Kenya already struggles with a heavy disease burden. The country already has problems accessing affordable medicines. By way of summary:

- **HIV/AIDS:** According to 2023 data¹, over 1.4 million people live with HIV in Kenya. The country has about 18,000 annual HIV/AIDS related deaths (18,473 in 2022) and has about 1.2 million people on antiretroviral therapy accounting for about 86% of people living with HIV.
- **TUBERCULOSIS:** According to 2022 data², Tuberculosis (TB) in Kenya is estimated at about 133,000 for all forms of TB cases annually. In 2022, the country reported 90,841 TB cases accounting for about 68% case detection. Drug-resistant TB cases are about 1,200 annually. The TB-HIV co-infection rate stands at 20% with that percentage of TB patients also being HIV-positive. The TB deaths in 2022 were about 12,000.
- **CANCER:** According to the Kenya National Cancer Registry³, the country has an estimated 42,000 new cancer cases every year. Annual deaths are 27,000. The leading cancers: include women: Breast (16%), Cervical (13%), Esophageal (7%) Men: Prostate (13%), Oesophageal (12%), Colorectal (6%). The five year prevalence (people living with cancer) is about 100,000+.

¹ See Kenya HIV Estimates Report 2023, NASCOP

² WHO Global TB Report 2023

³ Kenya National Cancer Registry, Globocan 2022



The treatment for these diseases is not cheap. In the case of cancer, for example, the cost of Generic Chemotherapy Drugs* (e.g., Doxorubicin, Cyclophosphamide, Paclitaxel) is estimated at KES 5,000 – 30,000 per dose* (depending on the drug and dosage). In the case of Branded/Targeted Therapy Drugs such as Herceptin /Trastuzumab, Keytruda/Pembrolizumab, the cost is estimated at between KES 100,000 – 500,000 per dose (some can exceed KES 1 million for immunotherapy). For hormonal therapy* (e.g., Tamoxifen, Letrozole): the cost is between KES 500 – 10,000 per month. Cancer patients also need pain management and supportive drugs (e.g., Morphine, Anti-nausea meds) whose cost is estimated at between KES 200 – 10,000 per month (depending on brand and dosage). These are heavy costs at a time when the economy is not doing well.

The Kenyan government has been subsidizing some of these drugs. This is being done at a time of a far-reaching fiscal consolidation program by the International Monetary Fund (IMF). This must also be viewed within the context of cancellation of the United States Presidential Emergency Plan for AIDS Relief (PEPFAR) under the USAID framework.⁴ Getting funding to undertake a subsidy program in the health sector requires that Kenya does not get into trade deals that will make access to medicines a problem when the country is already facing debt sustainability challenges.

SOME COMMENTS ON THE IMPLICATIONS OF SOME OF THE INTELLECTUAL PROPERTY CHAPTER PROVISIONS ON TIMELY ACCESS TO AFFORDABLE MEDICINES

Kenya and the UAE are both Members of the World Trade Organization (WTO)¹ and so the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)² already applies to them. However since the USA has blocked the appointment of Appellate Body (AB) members,³ there are none left, so the AB is no longer functioning.⁴ ('The US stance of blocking the appointments at the Appellate Body has now reached the six-year mark and there is little likelihood that it will be restored at all, said people familiar with the development.'⁵). This means that if Kenya does not comply with TRIPS (e.g. it does not grant patents (20 year monopolies) on relevant vaccines or medicines during a pandemic) and it is sued at the WTO and loses, it can appeal ('into the void') and since the appeal cannot be heard, the decision cannot become final and Kenya cannot be penalised at the WTO for failing to comply with TRIPS.⁶ Therefore since the intellectual property (IP) chapter of this CEPA is enforceable (see below), even incorporating any TRIPS provisions into it is effectively TRIPS+ (i.e. stronger than TRIPS currently) since TRIPS is currently unenforceable at the WTO.

The intellectual property (IP) chapter of the CEPA has a number of TRIPS+ provisions in it that go substantively beyond the TRIPS obligations (even when they were

⁴ See generally Impact of USAID freeze on access to affordable medicines in Kenya. E.g. https://www.unaids.org/en/resources/presscentre/featurestories/2025/march/20250313_Kenya_fs and https://www.unaids.org/en/resources/presscentre/featurestories/2025/april/20250401_Kenya_fs. In Kenya approximately 41,000 doctors, nurses, technical and management staff and community workers were supported by the US government. Kenya and Rwanda are among the list of countries that have reported that domestic resources are being mobilized to maintain priority HIV programmes previously funded by the US.

enforceable) which have a range of implications including on the ability to access affordable generic medicines as soon as possible in Kenya. This submission will touch on some of the main TRIPS+ provisions affecting timely access to affordable medicines.

We were shocked to see that this Kenya-UAE CEPA has:

- A hard obligation for *market exclusivity* for five years from the latest possible date for both the information in the dossier and the fact of the marketing approval.⁷ This means that even if there is no patent on a medicine (e.g. because it is insulin which is vital for diabetics but is not a new invention (it is 100 years old and is extracted from pigs and cattle⁸) so is not eligible for patents) generic versions still cannot be approved by the medicine regulator as safe and effective and so reach Kenyan patients for 5 years.
- A hard linkage obligation⁹ that prevents compulsory licences from being effective and requires the Kenyan government to be the patent police when even the USA's Food and Drug Administration does not have the capacity to do so (and the EU refuses to implement linkage).

The exceptions in the CEPA do not apply to the IP chapter (e.g. the difficult-to-use health exception in Article 15.1), are irrelevant (e.g. security exception in Article 15.2 and taxation exception in Article 15.3) or insufficient (e.g. the purported exceptions in the IP chapter which are self-cancelling etc). The CEPA IP chapter is enforceable because the CEPA dispute settlement chapter applies to the IP chapter¹⁰ and if Kenya does not comply with the IP chapter and is sued by the UAE and loses, the UAE can suspend equivalent benefits until Kenya complies with this IP chapter.¹¹ Kenya current does not have such data exclusivity or linkage, so this would be a significant change. Article 21(2) of the Constitution requires the State to implement laws and policies to achieve progressive realisation of the right to health. This right will be greatly undermined by these CEPA provisions as can be seen above. The UAE may be able to afford to comply with these TRIPS+ provisions on medicines since its GNI per capita is US\$49,020 (23 times larger than Kenya's),¹² but Kenya cannot for the reasons outlined above.

During the Trans-Pacific Partnership (TPP) negotiations with the USA, even developed countries such as Australia¹³ and New Zealand opposed the TRIPS+ provisions on it since it did not suit them as net importers of intellectual property who needed to keep medicines affordable for their citizens. Even the original TPP did not have hard linkage (it only had soft linkage). Consequently, when the US refused to ratify the TPP, the remaining countries (including Australia and New Zealand) suspended most of the TRIPS+ provisions on medicines (including the market exclusivity provision on medicines which is similar to the one in the Kenya-UAE CEPA) in the renamed CPTPP.¹⁴

We are puzzled as to why this CEPA has TRIPS+ provisions on medicines since neither Kenya nor the UAE are the homes of big pharmaceutical companies who have long sought these provisions in order to expand and extend their monopoly profits.¹⁵ This means these provisions benefit the US, EU, UK, Swiss etc big pharmaceutical multinationals, at the expense of Kenyans who need affordable medicines (see above).

In practice when countries implement these TRIPS+ provisions, they implement them with respect to applicants from the whole world. E.g. pharmaceutical companies from

the US, EU, Switzerland, UK etc would also benefit from the exclusivity and linkage provisions above. This means they can free ride and Kenya loses a potentially important bargaining chip in its upcoming built-in rendezvous clause negotiations with the EU on intellectual property¹⁶ and with the USA to remove its imminent reported additional tariffs. (The US government under President Trump is planning to introduce a reciprocal tariff later today (2 April 2025) which takes into account 'nontariff barriers' which is defined to include lack of intellectual property protection¹⁷ which will reportedly apply to all countries in the world, including Kenya¹⁸ in order to get concessions in return for removing these new US tariffs (that violate WTO rules)). Kenya is not even getting any goods market access to the UAE in this CEPA in return for agreeing to these TRIPS+ provisions and the goods chapter is where developing countries such as Kenya can usually benefit from an FTA (e.g. in the removal or reduction of the UAE's tariffs on Kenyan products).

We note that the India-UAE Comprehensive Economic Partnership Agreement (CEPA)¹⁹ which was signed in 2022²⁰ does not have the TRIPS+ provisions on medicines above (exclusivity and linkage) even though India's GNI per capita is higher than Kenya's.²¹

DATA/MARKET EXCLUSIVITY IMPACT ON MEDICINE PRICES - SOME EXAMPLES FROM AROUND THE WORLD

Data or market exclusivity is another monopoly which is often demanded by developed countries such as the USA and EU in their FTAs (even if there is no patent on the medicine).

Colombia has had data exclusivity since 2002²² and a 2012 study found that these data exclusivity requirements cost Colombia an additional US\$396million in additional expenses for its public health system from 2003-2022.²³

Another real life example of the impact of data/market exclusivity is when an old medicine to treat gout (colchicine) was given three years of market exclusivity in the USA as a new indication for this medicine and the company which received it sued to remove existing versions of colchicine from the market and then raised the price by more than 50 times adding \$50million per year to the cost of providing this medicine in the USA.²⁴ It was also given 7 years of market exclusivity for colchicine to treat a rare disease (familial Mediterranean fever), even though this was already a known use of the medicine.²⁵

The USA provides an additional 6 months of market exclusivity for medicine manufacturers which do paediatric studies and a calculation of the impact of the additional 6 months of monopoly prices compared to the generic versions if they had been allowed found that: for just three medicine classes it cost the US Medicaid population US\$430million so the study concluded 'these results suggest that the costs to Medicaid and thus taxpayers are substantial.'²⁶

It was recently estimated that eight years of data exclusivity alone in Canada would have added \$600 million to prescription medicine costs alone in the last five years.²⁷ Another study found that data exclusivity would have prolonged monopolies in Canada by two years which would increase the cost by an additional C\$1,645million/year (13% of the total cost of patented medicines).²⁸ An increase of two years of data exclusivity

for biologics alone (e.g. vaccines etc) could cost up to \$305.8million in additional spending in Canada.²⁹ Canada's Parliamentary Budget Office found that the two-year data exclusivity extension for biologics in the Canada-United States-Mexico Agreement (CUSMA/USMCA) could increase spending by at least \$169million in 2029 and increasing annually thereafter.³⁰

In Peru, 10 years of data exclusivity is calculated to lead to an increase of more than US\$300million in 2025 expenditure.³¹ A study found that market exclusivity for five years in Thailand would increase costs by between US\$146.3 million and US\$696.4 million per year³² and would increase medicine outlays by 9-45% in Thailand.³³ Using WHO methodology, 5 years of data exclusivity was predicted to cost Thailand US\$3.7billion over 15 years.³⁴

The five years of data exclusivity applied in Mexico in 2012 due to its USFTA has resulted in US\$320million in lost cost savings to 2020 (US\$80million in 2018 alone).³⁵ In Guatemala medicines with data exclusivity can cost 166%-846% more than the generic versions.³⁶

When Jordan's medicines were at monopoly prices due to its data exclusivity they were up to 800% more expensive than in Egypt where there was generic competition because there was no data exclusivity or other TRIPS-plus rules.³⁷ For 81 medicines where there is no generic competitor because of data exclusivity in Jordan, spending was increased due to these TRIPS-plus monopolies by \$6.3million-\$22million from 2002-2006 (assuming generics are 30-80% of originator prices).³⁸

Data exclusivity also applies to biologics in some countries and even though biosimilars face higher regulatory hurdles and other barriers (e.g. often they cannot be substituted for the original biologic by pharmacists, only by doctors) once the exclusivity expires and biosimilars (generic biologics) can enter the market:³⁹

- Savings of around US\$1.5billion were likely in the early years of biosimilar competition to 2014 for the countries studied and this is likely to increase as biologics continue to increase as a proportion of pharmaceutical spending and more generic companies learn how to make biosimilars.
- Average market prices fall by about 3.5 percentage points per year after biosimilar entry (or 2.4 percentage points with each biosimilar entrant) but this was up to 7.8% annual price declines for some biologics

PATENT LINKAGE IMPACT – SOME EXAMPLES

Linkage prevents compulsory licences from being effective and requires the Kenyan government to be the patent police. It is so difficult to do that a US Congressional Report found that even the US Government's Food and Drug Administration does not have the capacity to do it because it 'does not have adequate expertise or resources to review the applicability of patents, and it has been unable to prevent abuses of the system by patentholders that have led to delays in the availability of generic drugs'.⁴⁰

The United Nations (UN) Special Rapporteur on the Right to Health (UNSRH) notes that the European Union does not implement linkage and linkage in the US has been abused by patent holders according to a US government study and the Canadian government recognises that linkage has been used to evergreen patents'.⁴¹ Evergreening means allowing patents on new uses of old medicines, new formulations

and dosages etc. It is a TRIPS-plus provision that facilitates the extending of drugs monopoly by additional patents on existing medicines which delays the entry of cheaper generic versions.

For example linkage means that the government becomes the enforcer of even weak patents (instead of the patent holder having to sue companies it thinks are violating the patents). Patents are often weak (found to be invalid when challenged by generic companies), e.g. in the USA in 73% of the cases where a decision was made on the substance, the patent was found to be invalid.⁴² However the increase in litigation costs is a heavy burden especially for small to medium sized companies, impacting their ability to bring generics into the market.⁴³

Linkage has delayed the entry of generics⁴⁴ and prolonged nominal patent terms⁴⁵.

In Canada, linkage has also created a significant backlog in the Canadian Federal Court system. In 2008, there was a team of approximately 30 Federal Court judges devoting some or all of their time to about 350 separate drug patent cases and 'The Supreme Court of Canada has, on multiple occasions, held that the automatic stay issued to patentees under the NOC Regulations is an 'extraordinary' remedy, not available to patentees in any industry outside of the pharmaceutical industry.'⁴⁶

A Malaysian study found that in the worst-case scenario linkage could cause medicine spending in 2026 to increase by RM334million.⁴⁷

CONCLUSION

We therefore urge you not to ratify this CEPA in its current form because of the serious and unnecessary ways it will undermine access to affordable medicines in Kenya. An alternative is to use the revised Parliamentary Standing Orders on the ratification of treaties under 170A (4) (c) and (5) and approve the treaty with reservations on TRIPS Plus provisions. We look forward to the opportunity to discuss our concerns with you in more detail.

¹ https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm

² https://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm

³ <https://www.twn.my/title2/wto.info/2025/ti250315.htm>

⁴ https://www.wto.org/english/tratop_e/dispu_e/appellate_body_e.htm

⁵ <https://www.twn.my/title2/wto.info/2025/ti250315.htm>

⁶ Because Kenya has not joined the optional Multi-Party Interim Appeal Arbitration Arrangement (MPIA) that enables decisions to become final while the AB is not working, https://wtoplurilaterals.info/plural_initiative/the-mpia/

⁷ Article 13.33.1

⁸ E.g. see <https://www.npr.org/sections/health-shots/2015/03/19/393856788/why-is-u-s-insulin-so-expensive>

⁹ Article 13.33.2

¹⁰ Article 16.4

¹¹ Article 16.25

¹² <https://data.worldbank.org/indicator/NY.GNP.PCAP.CD>

¹³ E.g. see <https://wikileaks.org/tpp-ip2/tpp-ip2-chapter.pdf>

¹⁴ <https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-in-force/cptpp/comprehensive-and-progressive-agreement-for-trans-pacific-partnership-text-and-resources>

¹⁵ E.g. see <https://phrma.org/resources/phrma-special-301-submission-2025>

¹⁶ https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/east-african-community-eac/eu-kenya-agreement_en

¹⁷ <https://www.whitehouse.gov/articles/2025/02/reciprocal-trade-and-tariffs/>

- ¹⁸ <https://www.washingtontimes.com/news/2025/mar/31/trump-unveil-liberation-day-tariffs-major-rose-garden-event-cabinet/>
- ¹⁹ <https://www.commerce.gov.in/international-trade/trade-agreements/comprehensive-economic-partnership-agreement-between-the-government-of-the-republic-of-india-and-the-government-of-the-united-arab-emirates-uae/>
- ²⁰ <https://rtais.wto.org/UI/PublicShowMemberRTAIDCard.aspx?rtaid=1198>
- ²¹ India's is US\$2,540 and Kenya's is US\$2,110, <https://data.worldbank.org/indicator/NY.GNP.PCAP.CD>
- ²² https://web.archive.org/web/20181011215133/https://www.ifpma.org/wp-content/uploads/2016/01/IFPMA_2011_Data_Exclusivity_En_Web.pdf
- ²³ <https://msfaccess.org/trading-away-health-eu-mercosur-trade-agreement>
- ²⁴ <https://www.nejm.org/doi/full/10.1056/NEJMp1003126>
- ²⁵ <https://www.nejm.org/doi/full/10.1056/NEJMp1003126>
- ²⁶ <https://pubmed.ncbi.nlm.nih.gov/21506623/> and <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9013034/>
- ²⁷ http://www.canadiangenerics.ca/en/news/nov_14_06.shtml
- ²⁸ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4108121/#B24>
- ²⁹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7008687/>
- ³⁰ https://publications.gc.ca/collections/collection_2019/dpb-pbo/YN5-176-2019-eng.pdf
- ³¹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9013034/>
- ³² https://health.ec.europa.eu/system/files/2016-11/ev_20110616_co02_en_0.pdf
- ³³ <https://www.apf.gov.au/DocumentStore.ashx?id=801c99f0-f79a-4434-94b2-303cbd97e9bd&subId=565217>
- ³⁴ <https://www.tn.mahidol.ac.th/seameo/2010-41-3/23-4785.pdf>
- ³⁵ https://igbamedicines.org/doc/IQVIA-IGBA_Impact%20of%20FTAs%20on%20generic%20and%20biosimilar%20markets_Final%20Deck%20-%20October%202020.pdf
- ³⁶ See Exhibit 3 of <https://cpath.org/sitebuildercontent/sitebuilderfiles/GuateCpathhaonline8-25-09.pdf>
- ³⁷ <https://policy-practice.oxfam.org/resources/all-costs-no-benefits-how-trips-plus-intellectual-property-rules-in-the-us-jord-114080/>
- ³⁸ <https://policy-practice.oxfam.org/resources/all-costs-no-benefits-how-trips-plus-intellectual-property-rules-in-the-us-jord-114080/>
- ³⁹ https://dash.harvard.edu/bitstream/handle/1/41292244/scottmorton%20cstern%20cstern_biosimilars_WP.pdf?sequence=1&isAllowed=y
- ⁴⁰ And see footnote 44 in the same document, https://www.twn.my/title2/FTAs/Intellectual_Property/IP_and_Access_to_Medicines/TradeAgreementsandAccessstoMedicationsUnderTheBushAdmini.pdf
- ⁴¹ https://www.2.ohchr.org/english/bodies/hrcouncil/docs/11session/a.hrc.11.12_en.pdf
- ⁴² https://unitaid.org/assets/TPPA-Report_Final.pdf
- ⁴³ <https://www.medicinesforeurope.com/wp-content/uploads/2021/03/Medicines%20for%20Europe%20Position%20Paper%20On%20Patent%20Linkage%20-%20May%202019.pdf>
- ⁴⁴ <https://scholarship.law.vanderbilt.edu/cgi/viewcontent.cgi?article=1298&context=vjtl;> https://www.wto.org/english/tratop_e/trips_e/colloquium_papers_e/2018_african/chapter_10_2018_african_edit_ion_e.pdf
- ⁴⁵ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9652859/>
- ⁴⁶ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3073891/>
- ⁴⁷ <https://www.saspublishers.com/article/9705/download/>

SIGNED BY THE FOLLOWING ORGANIZATIONS

1. Econews Africa
2. Kenya Legal & Ethical Issues Network on HIV and AIDS (KELIN)



**MEMORANDUM TO THE NATIONAL ASSEMBLY
TO COMMENCE THE RATIFICATION PROCESS OF THE KENYA-UNITED ARAB EMIRATES
COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT**

FROM

THE COUNCIL OF GOVERNORS

26TH MARCH 2025

Introduction

THE COUNCIL OF GOVERNORS,

In recognition of the fact that sovereign power of the state is exercised at two levels of government, that is, the National Government and the County Governments, whose distinctness is recognized by Article 6 (2);

In further recognition of the need to ensure that ALL Agreements are aligned to the principles of the trading system as guided by the World Trade Organization (WTO). These include the fact that a country should not discriminate between its trading partners (giving them equally “most-favoured-nation” or MFN status) and it should not discriminate between its own and foreign products, services or nationals (giving them “national treatment”). Moreover, the agreement should lower trade barriers through negotiations, enhance predictability through binding and transparency, promote fair competition and encourage development and economic reform.

Additionally, cognizant of the fact that trade development and regulation, including – markets, trade licenses, fair trading practices and cooperatives is a fully devolved function under section 7 of Part 2 of the Fourth Schedule to the Constitution; and while international trade agreements are negotiated at the national level, their successful implementation requires active involvement and cooperation of county governments.

Aware of the need for coordinated implementation plan and approach for execution incorporating all the players including the National, County Governments and the private sector. The National and County Governments will have a key role in the governance and implementation of standards, general rules and principles governing the agreement and conformity assessments for the protection of health, policy safety, environment and consumers, for enabling taxation and fair trade. Having reviewed the **Comprehensive Economic Partnership Agreement between Kenya, of the one part, and the United Arab Emirates, of the other part** in its entirety, the Council of Governors recommends the following amendments and proposals for better implementation of the proposed agreement at the County level.

COMMENTS

No.	Section	Provisions in the Policy	Proposed Amendment	Justification
1.	4. Obligations in the Agreement <i>Read together with</i> (Article 1.5 Relations to Other Agreements & Article 1.6 – Regional and Local Government)	4. Obligations in the Agreement a) Policy and legislative considerations b) Administrative obligations c) Ministerial obligation d) Financial Implications	Amend to include: Regional implications (OR Regional Approaches)	To provide clarity on how the agreement is going to be implemented cognizant of existing regional and international agreements entered into by Kenya, particularly the East Africa Community (EAC) Agreement . Similarly, the obligations to UAE in relations to Greater Arab Free Trade Area Agreement)
2.	6. Possible negative effects of the Agreement to	6. Possible negative effects include: - Local industries are likely to face	Amend by providing more clarity on how local industries are likely to be affected in terms of unfair competition.	To provide clarity on how trade on zero-rated products will be implemented noting that section 2 (d) highlights that

No.	Section	Provisions in the Policy	Proposed Amendment	Justification
	the Kenyan People	more competition over time from UAE zero-rated products	Also include the possible adverse effects on small and emerging businesses, employees' wages, job losses and non-tariff measures	the agreement excludes market access (tariff liberalization) as both parties have agreed to negotiate this chapter with all the EAC Partner States when ready. The possible effects in the agreement are not clearly outlined. There has been instance before where zero-rated provisions have been misused by traders for their on gains.
3.	7. Measures to mitigate any negative effects arising from the agreement	7. Measures to mitigate any negative effects arising from the agreement a) Trade Remedies provisions b) Amendment Clause c) Mandatory 5-year Review Clause d) Exit Clause	Amend to include: (e) Relations with other EAC Partner States	To provide for mechanisms to mitigate the possible negative effects to the Kenya's regional partner states from UEA Imports.
4.	Article 14.1: Joint Committee	7. The functions of the joint committee shall be to: a) b)	Expand the functions of the joint committee to i) Handle issues arising from the regional agreements	Currently, the agreement has not provided avenues for parties to address conflicting issues arising from regional agreements previously entered by the parties with the current CEPA.

No.	Section	Provisions in the Policy	Proposed Amendment	Justification
		h)	entered by parties	
5.	Article 2.4: National Treatment & Article 2.5 Classification of Goods and Transposition of Schedules	1. Each party shall ensure that the transposition of its schedule of Tariff commitments does not afford less favourable treatment to an originating good of the other Party. If the process of transposition results in a disagreement on the applicable tariff, then this matter shall be referred to the Joint Committee.	Amend the section to provide more details in regards to the favourable treatment resulting from a free trade agreement with respect to goods covered by this agreement that are originating from the EAC.	Currently, goods from EAC enjoys favourable treatment within the EAC Countries. The clear synergies and alignment of the treatment of goods as a result of these two agreements is needed.

General Comments

1. For better coordination and implementation of this agreement, the Council proposes the inclusion of County Governments in the Joint Committees, standing committees, ad hoc subcommittees and working groups established in the Agreement.
2. The need for wider public sensitization on the Comprehensive Economic Partnership Agreement. To ensure wider coverage, an implementation plan can be developed incorporating county officers as the TOTs and champions for this agreement.



COUNCIL OF GOVERNORS

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Our Ref: COG/6/50/1A vol.20 (35)

3rd April 2025

Mr. Samuel Njoroge, CBS
Clerk of the National Assembly
NAIROBI

Dear Mr. Njoroge,

**MEMORANDUM ON THE COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT
(CEPA) BETWEEN KENYA AND THE UNITED ARAB EMIRATES (UAE)**

The above subject refers.

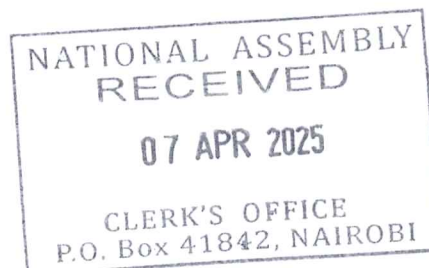
Reference is made to your letter Ref. NA/DDC/TIC/2025/012 dated 28th March 2025, inviting the Council to a stakeholder meeting with the Departmental Committee on Trade, Industry and Cooperatives to deliberate on the Comprehensive Economic Partnership Agreement (CEPA) signed between the Republic of Kenya and the United Arab Emirates ahead of its ratification by the Parliament.

In recognition of the objects of devolution, on the principles of consultation and cooperation as enshrined in Article 6(2) and Article 189 of the Constitution, the Council of Governors has undertaken a review of the CEPA. In line with these constitutional mandates, the Council is pleased to forward the attached memorandum for your consideration, which outlines our recommendations and perspectives on the Agreement.

Please accept the assurance of our highest consideration.

Yours sincerely

Mary Mwiti, EBS
Chief Executive Officer





COUNCIL OF GOVERNORS

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TO COMMENCE THE RATIFICATION PROCESS OF THE KENYA-UNITED ARAB EMIRATES
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12th November 2025

**PHARMACEUTICAL SOCIETY OF KENYA POSITION STATEMENT ON DATA
EXCLUSIVITY PROVISIONS IN THE KENYA-UAE COMPREHENSIVE ECONOMIC
PARTNERSHIP AGREEMENT (CEPA)**

Introduction

The Pharmaceutical Society of Kenya (PSK) is the professional umbrella body for all Pharmacists in Kenya. Established in 1964, PSK represents the pharmacy profession and serves as the guardian of the public interest in matters relating to medicines, pharmaceutical care, and health products.

Our vision is anchored in **Article 43(1)(a) of the Constitution of Kenya, 2010**, which guarantees every person *“the right to the highest attainable standard of health, which includes the right to health care services, including reproductive health care.”*

In the context of pharmaceutical care, **pharmacists are the recognized experts** in defining and ensuring what “the highest attainable standard” means for the Kenyan people. This encompasses safeguarding access to safe, effective, quality, and affordable medicines. As such, PSK has both a professional duty and a constitutional responsibility to evaluate trade agreements, regulatory frameworks, and national policies that may impact access to medicines, Universal Health Coverage (UHC), and the sustainability of Kenya’s pharmaceutical sector.

It is against this background that PSK expresses grave concern regarding the **data exclusivity provisions** introduced in the Kenya–UAE Comprehensive Economic Partnership Agreement (CEPA), specifically **Article 13.33**, which imposes a five-year market exclusivity period for new pharmaceutical products irrespective of patent status.

As the voice of the pharmacy profession and guardian of the public interest, PSK emphasizes that this clause poses **serious risks to access to medicines, Universal Health Coverage (UHC), the regulatory independence of the Pharmacy and Poisons Board (PPB), and Kenya’s local pharmaceutical manufacturing agenda.**

Legal and Policy Concerns

1. Constitutional Right to Health

- The **Constitution of Kenya, 2010 (Article 43(1)(a))** guarantees every Kenyan the right to the highest attainable standard of health, including access to essential medicines.

Page 1 of 7

NATIONAL EXECUTIVES: DR. WAIRIMU NJUKI (PRESIDENT) | DR. SAMMY MASIBO (NATIONAL TREASURER)

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- Provisions that delay entry of affordable generics contradict this constitutional guarantee.
- 2. **Universal Health Coverage (UHC)**
 - UHC is a cornerstone of Kenya's Vision 2030 and health policy commitments. Restricting generic competition undermines affordability and threatens Kenya's ability to achieve UHC.
- 3. **Pharmacy and Poisons Board (PPB) Mandate – Cap 244**
 - Under **Cap 244**, the PPB is the national regulator responsible for ensuring the safety, efficacy, and quality of medicines for Kenyans.
 - Data exclusivity provisions in CEPA risk **undermining PPB's regulatory independence** by binding it to deny approval of safe, quality-assured generics solely due to commercial data protection rules. This shifts PPB's focus from safeguarding public health to enforcing monopolies for multinational firms.
- 4. **Unfair Competition and Abuse of Power**
 - The **Competition Act (2010)** prohibits abuse of dominance and anti-competitive practices. Data exclusivity creates an artificial monopoly, blocking generics even without a patent, and granting excessive market power to multinational companies.
- 5. **Conflict with Local Manufacturing Strategy**
 - Kenya's **National Pharmaceutical Policy and Vision 2030 industrial pillar** prioritize strengthening local manufacturing. Exclusivity provisions directly disadvantage Kenyan manufacturers and hinder self-reliance in medicines supply.

Public Health Risks

- **Delayed Access to Medicines:** Patients will wait longer for affordable generics, affecting treatment of chronic and life-threatening conditions such as cancer, HIV, diabetes, and hypertension.
- **Double Monopoly:** In addition to the 20-year patent term under TRIPS, a further five-year data exclusivity creates **layered protection** that entrenches high medicine prices.
- **Dependence on Imports:** Restrictions on local firms reduce Kenya's resilience and widen reliance on imported pharmaceuticals.
- **Global Health Security:** Recent disease outbreaks like the COVID-19 pandemic have taught the global community that without adaptable, equitable and inclusive health supply chain



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solutions and enhanced access to health products and technologies, households and countries face catastrophic economic losses. This goes against the spirit of Universal Health Coverage.

PSK Policy Position

In light of these concerns, PSK:

1. **Firmly opposes** the adoption of binding data exclusivity provisions in CEPA and any similar agreements.
2. **Urges the Government of Kenya** to safeguard TRIPS flexibilities that allow compulsory licensing and early generic entry in the interest of public health.
3. **Reaffirms the regulatory mandate of PPB under Cap 244**, and insists that international trade obligations should not erode PPB's independence in protecting public health.
4. **Advocates for trade agreements** that align with Kenya's constitutional obligations, UHC commitments, and local manufacturing policies.
5. **Calls for the immediate release of the full CEPA text** to stakeholders for transparent review and constructive feedback before ratification.
6. **Calls for Zero rating of Pharmaceutical products and inputs**

Conclusion

PSK reiterates that **public health must take precedence over commercial monopolies**. The Society stands ready to work with government, regulators, civil society, and international partners to ensure Kenya's trade obligations uphold the constitutional right to health, strengthen UHC, and create a fair and competitive pharmaceutical sector that benefits all Kenyans.

Dr. Wairimu Mbogo

PRESIDENT

Pharmaceutical Society of Kenya (PSK)



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ADDENDUM

In addition to the above, we have done a conclusive assessment of the Trade agreement and these are the other sections to be considered

Pharmaceutical Society of Kenya (PSK) – Policy Brief on the Kenya–UAE Comprehensive Economic Partnership Agreement (CEPA) ***Clause-by-Clause Health Impact Analysis and PSK Policy Position***

CHAPTER 1 – INITIAL PROVISIONS AND GENERAL DEFINITIONS

Clause (Page/Ref)	Health, Safety & Regulatory Impact	PSK Position / Ask
1.2 – Objectives	Establishes trade liberalization as CEPA's central goal. Without explicit mention of health safeguards, this could make legitimate regulatory actions seem "barriers."	Insert a <i>national interpretive statement</i> affirming that health protection and medicine safety take precedence over trade facilitation where conflict arises.
1.3 – General Definitions	Imports WTO definitions; makes all regulatory acts (PPB, KEBS, MoH) fall under CEPA scrutiny as "measures."	Clearly recognise local institutions. Require every regulation to carry a clear <i>scientific justification note</i> and a <i>public-health objective statement</i> .
1.5 – Transparency	Obligates prior publication of new regulations. Risk: health emergencies may be slowed by pre-notification requirements.	Establish a " <i>Public Health Emergency Carve-out</i> " allowing Kenya to act immediately under Article 5.7 (SPS Emergency Measures).
1.6 – Right to Regulate	Preserves power to regulate for health protection, but only if measures are non-discriminatory and justified.	PSK recommends an exclusion, but also urges the creation of a <i>Public Health Justification Dossier Template</i> used for every major MoH/PPB restriction to pre-empt challenges.

CHAPTER 2 – TRADE IN GOODS (INCLUDING NON-TARIFF MEASURES)

Clause (Page/Ref)	Health Sector Implication	PSK Position / Ask
2.8 – Import Licensing	Licensing must be published and transparent; hidden technical conditions could be challenged.	Recognise locally established institutions. PPB and KEBS to host a <i>centralized online compendium</i> of all import license requirements and fees that must be recognised.



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2.12 – Administrative Fees	Fees must equal service cost, not revenue generation.	Conduct <i>fee cost studies</i> and publicly post them; use this to demonstrate that inspection charges are cost-based, not trade-restrictive.
2.13 – Non-Tariff Measures (NTM)	Allows either Party to nominate a regulatory measure (like PPB quality tests) for review if it's "unnecessary." High risk for health sovereignty.	Recognise reasons behind regulation and if possible, Create an <i>NTM Justification Dossier</i> for each major pharmaceutical control (sterility, GMP, bioequivalence) documenting risk basis and WHO guidance.
2.15 – Temporary Admission of Goods	Facilitates temporary duty-free entry for demo/clinical evaluation devices.	Leverage this for <i>controlled hospital demos and training programs</i> , ensuring PPB oversight to prevent grey-market leaks.

CHAPTER 4 – CUSTOMS PROCEDURES & TRADE FACILITATION

Clause	Health Supply-Chain Impact	PSK Ask
4.16 – Confidentiality	Protects customs health regulator intelligence sharing.	Embed " <i>Confidentiality Clauses</i> " into MoH–PPB–KRA workflows for data on falsified or diverted medicines.
4.17 – CPTF Subcommittee	Platform to address delays at ports for critical health imports.	PSK recommends a <i>standing "Health & Essential Medicines Agenda Item"</i> at each CPTF meeting to expedite clearance for lifesaving products.

CHAPTER 5 – SANITARY & PHYTOSANITARY (SPS) MEASURES

Clause	Public Health & Safety Implication	PSK Position / Ask
5.2 – Objectives	SPS actions must be science-based; precautionary actions allowed but review needed.	Mainly affects Local Manufacturing. Local regulations to be enforced and respected as they are based on global best practice. MoH should maintain a <i>Risk Assessment Dossier Template</i> with lab data and WHO references for every import restriction.
5.6 – Risk Assessment	Measures must be no more restrictive than necessary.	Document evidence, keep review timelines, and show proportionality to defend Kenyan food or nutrition-product safety actions.
5.7 – Emergency Measures	Allows urgent responses to protect life/health.	Use this to <i>fast-track product suspensions and recalls</i> without pre-notification.



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5.11 – SPS Subcommittee	Creates dialogue mechanism for disputes.	PSK should request a <i>seat for pharmacists as technical experts</i> in Kenya's SPS Subcommittee delegation.
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CHAPTER 6 – TECHNICAL BARRIERS TO TRADE (TBT)

Clause	Medicines & Medical Devices Impact	PSK Position / Ask
6.1 – Objectives	Pushes to eliminate “unnecessary” barriers. Risk: PPB safety processes viewed as restrictive.	Each PPB guideline (e.g., GMP, sterility) should NOT BE CONSIDERED as an unnecessary Barrier.
6.4 – Standards	Encourages reliance on international standards (WHO/ISO).	Kenya to adopt a “ <i>Reliance with Discretion</i> ” policy: accept WHO/SRA assessments where justified, but retain local evaluation rights esp. for biologics/high-risk products.
6.5 – Technical Regulations	Requires use of international standards “unless inappropriate.”	For local conditions (e.g., tropical stability, counterfeit risk), Kenya needs their own standards which may even be stricter standards.
6.6 – Conformity Assessment	Promotes mutual recognition (MRAs).	Ensure MRAs are <i>recognition-with-review</i> , not blind acceptance; PPB keeps authority to reject unsafe products/batches even if certified abroad.

CHAPTER 13 – INTELLECTUAL PROPERTY

Clause	Pharmaceutical & Public Health Impact	PSK Policy Ask
13.2 – Objectives	Calls for innovation while balancing welfare.	Embed a <i>UHC affordability clause</i> in all implementing regs.
13.3 – Anti-Abuse	Prevents abuse of IP rights.	Penalize strategic patent listings and frivolous opposition filings .
13.6 – Public Health (Doha)	Affirms TRIPS flexibilities.	Fast-track Government Use & CL procedures .
13.33 – Data Exclusivity (5 years)	Bans PPB from approving generics relying on originator data → delays access, raises costs.	Total Exclusion of this clause.
13.33 – Patent Linkage	Blocks generic approval until patent expiry.	Total Exclusion of this clause



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13.8 – Transparency	Requires patent information disclosure.	Launch <i>Kenya INN↔Patent Portal (KIPI)</i> linked to PPB database.
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CHAPTER 15 – GENERAL EXCEPTIONS (Final Defense Clause)

Clause	Interpretation	PSK Policy Ask
15.1 – GATT/GATS Exceptions	Allows measures “necessary to protect human life or health.”	Always cite this alongside Article 1.6 when defending Kenyan safety measures.
15.2 – Security & Public Morals	Permits restrictive actions in crisis or health threats.	Integrate into the <i>Kenyan Trade Policy Manual</i> as standard justification language for MoH/PPB actions.



**MINISTRY OF HEALTH
PHARMACY AND POISONS BOARD**

**SUBMISSIONS ON THE MINISTRY INVITATION TO A JOINT MEETING WITH
THE DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY AND
COOPERATIVES REGARDING THE COMPREHENSIVE ECONOMIC
PARTNERSHIP AGREEMENT (CEPA)**

We refer to the letter dated 4th November 2025 addressed to the Cabinet Secretary, Ministry of Health, under reference No: NA/DDC/TIC/2025/072, inviting the Ministry to a joint meeting with the Departmental Committee on Trade, Industry and Cooperatives regarding the Comprehensive Economic Partnership Agreement (CEPA).

By way of background, the Pharmacy and Poisons Board ("the Board") is the National Medicines Regulatory Authority of Kenya, established under Section 3 of the Pharmacy and Poisons Act, Cap 244 of the Laws of Kenya. The Board is mandated to protect and promote public health by regulating the pharmacy profession and ensuring access to quality, Safe and effective Health Products and Technologies (HPTs).

In view of the foregoing mandate, the Board herein appraises your office on the specific issues under its statutory mandate, following the invitation for a joint sitting of the Departmental Committees on Trade, Industry and Cooperatives and the Departmental Committee on Health. In the specific instances where a matter lies primarily within the policy competence of the Ministry of Health, we have indicated so and, where helpful, offered technical suggestions for your office's consideration.

The specific aspects within the Board's mandate are thus;

a) **How the Ministry has assessed the potential impact of the five-year data exclusivity under Article 13:33 on access to affordable medicines in Kenya;**

Market exclusivity refers to a period during which a pharmaceutical product, once approved, is protected from competition by generic versions, even if the patent on the active ingredient has expired or is not in place.

The practical impact is that, this is a form of protection that would prevent Kenya's National Medicines Regulatory Authority (the Board) from relying on the originator's quality and clinical data to approve equivalent generic medicines for a specified period. This will therefore result to the originator company enjoying temporary monopoly in the market based on the exclusivity of its regulatory data.

Section 13.33 (1) of the CEPA is framed in the following terms;

"ARTICLE 13.33: Protection of Undisclosed Test Or Other Data For Pharmaceutical Products

If a Party requires, as a condition for granting marketing approval for a new pharmaceutical product, the submission of undisclosed test or other data concerning either or both the safety and efficacy of the product, that Party shall not permit third persons, without the consent of the person that previously submitted such information, to market the same or a similar to product on the basis of:

(a) that information or

*(b) the marketing approval granted to the person that submitted such information, for at **least five years from the date of marketing approval** of the new pharmaceutical product in the territory of the Party.*

The impact of the foregoing provision is that it will require Kenya to implement market exclusivity for products originating from UAE for exclusive period of five years from the date of market approval.

As a consequence, therefore, the Board will not be in a position to rely on the information submitted by the originator company as well as the fact of marketing approval being granted to the originator company to give marketing approval to any third persons to market the same or a similar product i.e. a generic for at least 5 years from the date of marketing approval of the originator product.

Ordinarily, a patent is granted exclusivity for a period of twenty (20) years under TRIPS. Market exclusivity is independent of the foregoing thus it will undermine

availability of generics since even if a patent has expired which would naturally usher in generics, a product cannot be granted marketing approval. The absence of generic competition has effect on access.

b) Whether the Ministry has conducted or reviewed any study on the availability and pricing of essential medicines following CEPA implementation;

Pricing of medicines does not fall within the Board's statutory mandate. Accordingly, the Board has not conducted pricing studies.

On availability, the Board continuously executes its mandate by receiving applications, assessing them for quality, safety and efficacy, and where compliant, granting market authorisation to enable supply.

In light of (a) above, the Board's opinion is that a five-year data exclusivity would constrain market authorization pathways and thereby tend to delay entry of generic equivalents, with adverse implications for availability and competition.

c) The mechanisms that the Ministry will establish to ensure continued access to affordable treatment for diseases such as cancer, HIV/AIDS and emerging pandemics during the exclusivity period;

Kenya is a member of the World Trade Organization (WTO). Taking into consideration the potential impact of intellectual property exclusivities on access to essential medicines, particularly for diseases such as cancer, HIV/AIDS, and emerging pandemics, the Ministry will institute a range of alternative mechanisms anchored in the flexibilities provided under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). These measures are inherent safeguards designed to protect public health while upholding Kenya's international obligations. Within the Board's remit, the following regulatory measures can support access while respecting exclusivity and broader IP rules:

i. Parallel importation of Affordable Medicines

Kenya has a robust legal framework for Parallel importation of medicines. The Pharmacy and Poisons (Parallel importation) Rules, 2019 provides a leeway Leveraging TRIPS' international exhaustion

principle. Therefore, through the Board, the Ministry will facilitate parallel importation from countries where equivalent products are lawfully marketed at lower prices. This will allow timely access to safe, effective, quality assured and cost-effective therapies without contravening patent rights.

ii. Promotion of Local Manufacturing and Technology Transfer

To reduce dependency on imported patented medicines, the Ministry will encourage voluntary licensing, local manufacturing agreements, and technology transfer arrangements with innovators and international agencies. These arrangements will build local capacity while expanding access to safe, effective, quality assured and cost-effective medicines.

iii. Use of compulsory licensing and Government Use Orders

There is a legal framework which allows the government to authorize local production or importation of generic equivalents in cases of public health emergency. This is provided under Sections 80-84 of the Industrial property Act.

d) Whether the Pharmacy and Poisons Board has adequate legal authority to fast-track generic approvals during public health emergencies despite the exclusivity restrictions;

As your office is aware, the Board is the National Medicines Regulatory Authority of Kenya established under Section 3 of the Pharmacy and Poisons Act (Cap. 244) of the Laws of Kenya. Among its statutory functions is the regulation of the manufacture, importation, exportation, distribution, and sale of Health Products and Technologies (HPTs), including the grant, suspension, and withdrawal of marketing authorizations to ensure that all HPTs circulating within the Kenyan market meet the requisite standards of quality, safety, and efficacy.

Further to this mandate, the Pharmacy and Poisons (Registration of Health Products and Technologies) Rules, 2022 confer specific powers upon the Board to act expeditiously in the interest of public health.

- i. Rule 14 thereof provides that “the Board may, where it considers it necessary to protect public or animal health or in the event of a threat to human or animal life or health, issue a provisional certificate of registration for a health product or technology.”
- ii. Rule 15 further empowers the Board to “register a health product or technology for compassionate use by a person whose application

under Rule 4 is pending, or by a sponsor of a clinical trial in relation to an investigational health product or technology.”

In operationalizing these provisions, the Board has developed and implemented detailed procedural guidance documents, namely:

- i. Guidelines on Submission of Documentation for Emergency Use Authorization (EUA) of Health Products and Technologies; and
- ii. Guidelines on Submission of Documentation for Compassionate Use Authorization (CUA) of Health Products and Technologies.

These guidelines, which are publicly accessible through the Board’s official website, outline the criteria, documentation, and review timelines applicable to emergency and compassionate use authorizations. They were effectively applied during the COVID-19 pandemic to facilitate the rapid availability of vaccines, diagnostics, and therapeutics while maintaining regulatory oversight and compliance with quality and safety requirements.

Accordingly, the Board possesses adequate legal authority to fast-track applications and issue provisional or compassionate use authorizations for Health Products and Technologies in situations of public health emergencies. These powers are independent of, but will be exercised consistently with, Kenya’s international obligations, including any exclusivity provisions under CEPA. Where the enforcement of such exclusivity provisions would impede public health response, it would be incumbent invoke the flexibilities under the WTO TRIPS Agreement and the Doha Declaration on TRIPS and Public Health, to enable regulatory action in the public interest.

e) How the Ministry will implement the public health safeguards referenced in Article 13.6 CEPA and the Doha Declaration on TRIPS and Public Health;

The Board respectfully notes that the determination and declaration of a public health emergency falls under the Cabinet Secretary for Health, pursuant to Section 36 of the Public Health Act (Cap. 242).

While the Board does not possess authority to make such declarations, it may be guided by the Ministry once a declaration has been made. The practical triggers may include, inter alia;

- i. a Public Health Emergency of International Concern (PHEIC) declared by the World Health Organization under the International Health Regulations;
- ii. a formal advisory from the National Public Health Institute indicating significant morbidity, mortality, or health system disruption; or
- iii. other circumstances, including national security considerations, as may be advised by the National Security Council.

Upon such declaration, the Board would be duly guided to deploy its emergency regulatory tools, including provisional and compassionate use authorizations, under Cap. 244 and the 2022 Rules.

f) Whether the ministry has developed or proposed any regulations to clarify how compulsory licensing and data use exemptions will function under CEPA;

The Board proposes that the clause on data exclusivity be reserved during implementation

g) The coordination mechanism that the Ministry has established with the Ministry of Trade to ensure implementation of CEPA does not undermine the right to health under Article 43 of the constitution;

The Board notes that the question lies within the policy competence of policy competence of the Ministry of Health and the Ministry of Trade, Industry and Investments, and therefore, respectfully seeks not to make a substantive comment on the same.

h) The steps the Ministry has taken or plans to take to sensitize health sector stakeholders including, hospitals, pharmacies and local manufacturers on the implications of pharmaceutical provisions under CEPA;

In this regard, the Board may undertake the following within its regulatory mandate:

- i. Issuance of regulatory circulars and guidance notes clarifying approval and reliance pathways under CEPA;

- ii. Multi stakeholder engagement with professional associations and manufacturers (including but not limited to, Pharmaceutical Society of Kenya, Kenya Association of Pharmaceutical Industry)

i) How the Ministry will ensure that there is policy coherence between international trade obligations of Kenya and the constitutional right to health;

Kenya is a Member State of the WTO and a signatory to the Agreement on TRIPS, as well as the Doha Declaration on TRIPS and Public Health. These instruments collectively recognize the sovereign right of WTO members to protect public health and, in particular, to promote access to medicines for all.

In line with these obligations, Kenya, through the Board, has consistently exercised the flexibilities permitted under TRIPS, including the implementation of parallel importation mechanisms as stipulated in the Pharmacy and Poisons (Parallel Importation) Rules, 2019. These Rules provide a lawful pathway for the importation of quality-assured, lower-cost medicines from countries where the products are authorised and marketed, thereby enhancing access and affordability while remaining fully compliant with international trade commitments.

The Ministry has continued to support the Board's ongoing institutional strengthening towards attaining WHO Global Benchmarking Tool Maturity Level 3 (ML3).

Achievement of WHO ML3 status will signify that Kenya has a well-functioning, stable, and integrated regulatory system capable of independently regulating the entire life cycle of health products in accordance with international best practices. This, in turn, will enhance the country's ability to exercise regulatory reliance and mutual recognition, thereby ensuring that Kenya continues to meet its public health mandate while fulfilling its international trade obligations in a balanced, coherent, and sustainable manner.

j) The mechanisms the ministry will establish for periodic monitoring and reporting on impact of CEPA on access to medicines and local pharmaceutical manufacturing;

The Board possesses systems, structures, and legal frameworks that will significantly support the Ministry in monitoring and reporting on access, quality, and safety of Health Products and Technologies post-licensure.

The Board's post-approval surveillance framework is anchored in Cap. 244, Laws of Kenya and operationalized through the Pharmacy and Poisons (Pharmacovigilance and Post-Market Surveillance) Rules, 2022. These provisions empower the Board to collect, analyse, and act upon data relating to the quality and safety of health products in the Kenyan market.

The Board hosts the National Pharmacovigilance Center which is also a Regional Centre of Regulatory Excellence (RCORE) in Pharmacovigilance for the East African Community. This underscores the Board's institutional capacity to conduct both active and passive post-market surveillance.

The Board operates a multi-channel, accessible reporting SYSTEMS for adverse events and product quality complaints, including:

- i. An online reporting portal integrated within the PPB website;
- ii. A mobile application available on Android and iOS platforms;
- iii. A USSD code for community-level reporting;
- iv. A dedicated email address for direct reporting; and
- v. A 24-hour telephone number for real-time notifications.

These systems ensure continuous monitoring of the quality and safety of medicines and other HPTs, thereby enabling timely detection of substandard, falsified, or defective products in the supply chain.

Further, pursuant to Rule 9 and Rule 10 of the Pharmacy and Poisons (Registration of Health Products and Technologies) Rules, 2022, the Board undertakes periodic re-evaluation of registered products every five (5) years. In accordance with these rules, a certificate of registration is valid for five years, after which renewal is subject to fulfilment of prescribed regulatory requirements. This involves the review of updated quality, safety, and efficacy data to determine re-registration, ensuring that only compliant products remain on the Kenyan market.

The Board is also in the advanced stages of implementing a national Track and Trace system, which will enable the tracing of every batch of a registered product, from importation or local manufacture, to the final point of dispensing. This will significantly enhance supply chain visibility, prevent infiltration of falsified

products, and support the generation of regulatory intelligence for both national and regional reporting.

Accordingly, the Board affirms that it has adequate mechanisms for continuous monitoring of the quality, safety, and efficacy of Health Products and Technologies post-licensure. These systems are capable of generating regulatory data and evidence to inform the Ministry's periodic reports on the impact of CEPA, particularly regarding Quality, Safety and Efficacy of the Health Products.

The Board remains available to collaborate with the Ministry and other government agencies in developing an integrated monitoring and evaluation framework that leverages these regulatory systems to safeguard the constitutional right to health.

k) How public consultations will continue after ratification to ensure transparency and stakeholders engagement in implementation of CEPA.

The Board notes that the overall coordination of public consultations on the implementation of CEPA rests within the policy mandate of the Ministry of Health, in collaboration with the Ministry of Trade, Industry and Investments, and other relevant government institutions.

Nonetheless, the Board has developed extensive capacity, experience, and institutional mechanisms for stakeholder engagement. This competency has been progressively strengthened over the years through the Board's participatory approach in the formulation and review of regulatory tools, including Guidelines, Notices, and Rules governing the regulation of Health Products and Technologies in Kenya.

The Board has established standing structures and regular stakeholder engagement platforms designed to foster collaboration, transparency, and continuous dialogue with regulated entities and professional bodies. A notable example is the quarterly stakeholder engagement forum with the Kenya Association of Pharmaceutical Industry, where the Board and industry representatives deliberate on emerging regulatory trends, address compliance challenges, and identify practical measures to enhance efficiency and reduce regulatory bottlenecks. The Board routinely engages other associations, including but not limited to the Federation of Kenya Pharmaceutical

Manufacturers, and the Pharmaceutical Society of Kenya, through consultative meetings and in some cases, joint technical working groups.

These mechanisms have created a functional and institutionalized precedence for regulatory consultations, which ensures that all stakeholders remain informed and actively involved in policy and regulatory processes.

Accordingly, the Board affirms that these established systems, networks, and stakeholder engagement practices can be effectively leveraged to support the Ministry of Health in sustaining post-ratification consultations on the implementation of CEPA. This will ensure that all decisions and measures adopted under the Agreement are transparent, evidence-based, and aligned with the constitutional principles of public participation and accountability as enshrined in the Constitution of Kenya.

Compiled by

Dr. Ahmed I. Mohamed

Ag. CHIEF EXECUTIVE OFFICER

6th November 2025



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11/11/2025

To Jeremiah Ndombi, MBS
for Clerk of the National Assembly
Parliament Buildings.

The Kenya Pharmaceutical Distributors Association (K.P.D.A.) wishes to respond back to your office with our comments on the proposed CEPA agreement through the attached document.

Thank you once again for giving us a chance to participate in this noble exercise.
Yours faithfully

A handwritten signature in black ink, appearing to read 'Dr. Kamamia Wa Murichu', is written over a horizontal line.

Dr. Kamamia Wa Murichu
Chairman K.P.D.A.

Bringing quality affordable healthcare to Kenyans



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11/11/2025

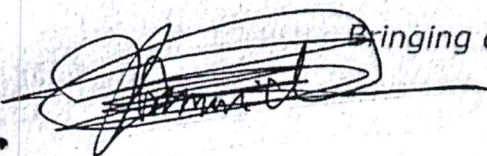
	ARTICLE	NARRATION	IMPLICATION
1.	Article 3:2(d)	Enhanced cooperation in areas of technical barriers to trade	It should also be clearly spelt out to avoid any grey areas.
	Article 2:6	Import and export restriction	These should take into consideration the various Laws that govern trade in pharmaceuticals in Kenya.
	Article 3.16	Principle of territoriality	The country of origin should be clearly stated to avoid a situation where goods are obtained from other countries and being transshipped to U.A.E and then to Kenya.
	Article 3.22	Exemptions form proof of origin	The Customs law from October 2025 in Kenya requires that all goods should have a certificate of origin.
2.	Article 2.8	Import Licensing	This section gives all the powers and rights of import licensing to this agreement, disregarding any other law.

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3.	Article 2.13	Non-tariff measures	Non-tariff barriers include various country rules and guidelines such as drug registration, permit issuance etc. Elimination of such non-tariff barriers will lead to unfair playing grounds and would expose the country to false and substandard goods.
4.	Article 2.18	Subcommittee on trade in goods	The powers of this Committee should be clearly defined especially in terms of scope
5.	Article 4.16	Confidentiality	This prevents access to confidential information, some of which may be very crucial.
6.	Page 175 Page 176	Health Services	Needs clarification
7.	Article 13	Intellectual property	Brings in: i) Confidentiality on data ii) Exclusivity iii) Extended Patent period iv) Hinders access to new technologies and generic manufacturing
8.	Article 13.2	Intellectual property	Brings on the element of protection of Intellectual Property Rights. Disregarding Section 58(2) of the [Industrial Property Act] IP Act 2001.
9.	Chapter 15	15:2 Security exceptions	Removes element of disclosure

 Bringing quality affordable healthcare to Kenyans



TEA BOARD OF KENYA

Realizing the Tea Promise



TBK/ADM/1/2025

4th April, 2025

Clerk of the National Assembly

The National Assembly
Officer of the Clerk
Main Parliament Building
P. O. Box 41842-00100
NAIROBI

Mr. William Ombudo

006
8
7/4/25

pls TNA.
A. W. 8/4/25

Dear Sir,

MEETING WITH THE DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY AND COOPERATIVES REGARDING THE COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT (CEPA) BETWEEN KENYA AND UAE

Reference is made to the letter from the Office of the Clerk of the National Assembly Ref. NA/DDC/TIC/2025/012 dated **28th March, 2025** on the above subject matter.

Please find the attached submissions from the Tea Board of Kenya.

Yours Sincerely

WILLY K. MUTAI
CHIEF EXECUTIVE OFFICER

Benjamin Magut

pls facilitate the DC
on Trade
on transport to consider

W. M. 8/4/25

Encl.



TEA INDUSTRY INPUT INTO THE KENYA - UNITED ARAB EMIRATES (UAE) COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT (CEPA)

OVERVIEW OF THE TEA TRADE BETWEEN KENYA AND THE UNITED ARAB EMIRATES

Tea is the most consumed beverage in the UAE, with 60.29% of residents consuming it. This can be attributed to the cultural importance of tea in the region, as well as the fact that it is a hot beverage that can be enjoyed indoors in air-conditioned environments.

According to the ITC 2023 report, the main tea suppliers to the UAE are Kenya (42%), India (21%) and Sri Lanka (14%), with the most imported types of tea imported being black tea, green tea, and herbal tea.

UAE as a key Re - export Market

The United Arab Emirates has over the years grown to be the world's leading trading hub for tea. In 2021, United Arab Emirates exported \$316M in Tea, making it the 5th largest exporter of Tea in the world. In the same year, Tea was the 87th most exported product in United Arab Emirates.

Currently it commands a 60% share of global tea re-export market covering 154 countries with top destinations being Saudi Arabia (\$65.5M), Kuwait (\$34.7M), Iraq (\$28M), Russia (\$25.7M), and China (\$25M). According to the Observatory of Economic Complexities (OEC) report, the fastest growing UAE export markets for Tea between 2022 and 2023 were China (\$24.3M), Bahrain (\$7.02M), and Russia (\$3.51M).

Dubai is the commercial hub for the UAE and is a major center for the re-export of tea, especially to countries in the Middle East, North Africa, and

Central Asia. Tea is not grown in the UAE, but the country's strategic location at the crossroads of major shipping routes has made it a hub for the trade in tea and other goods.

Dubai has been a key international gateway for the trade since the early 1900s when the world's first tea plantations were established in India and Sri Lanka. Its strategic location midway between the tea producing and consuming countries has been a natural advantage. Today, the emirate is one of the world's largest re-exporters of tea, with an estimated 60-70% of its tea imports being re-exported to other countries.

The re-export business remains a top priority for the UAE government with Vice-president and ruler of Dubai being quoted on 28th March 2023 stating as follows:

“We will double the country's re-export by developing specialized areas in cooperation with local governments, establishing the International Trade Links Centre, launching supportive programmes and increasing foreign investments in the service sector.

The national agenda for re-export development 2030, includes 24 initiatives and programmes, aiming to achieving 50 percent increase in the added value of the UAE economy through re-exports by 2030, through benefiting from the 50 integrated commercial representative offices for the UAE in five continents across the world”.

Dubai's tea re-export industry is supported by a well-developed infrastructure, including modern ports, efficient customs procedures, and a range of logistics services. Below are the top 10 destinations for UAE Tea exports for 2021 reflecting 77% of total value contribution.

**ADVANTAGE OF THE KENYA - UNITED ARAB EMIRATES (UAE)
COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT (CEPA)
WITH RESPECT TO TEA TRADE**

Having reviewed the above agreement; the Tea industry notes the following;

1. The UAE is a member of the Gulf Cooperation Council (GCC) countries and has strong economic ties with its partners Saudi Arabia, Kuwait, Bahrain, and Oman; they share a common market and a customs union. Under the Greater Arab Free Trade Area Agreement (GAFTA), the UAE has free trade access to most Middle East countries to which Kenya could gain strategic access.
2. The UAE applies the GCC Common External Tariff rate of between 0% and 5% on Kenyan goods, with limited exceptions on tobacco and alcoholic beverages. On the other hand, Kenya applies the EAC CET tariff of between 0% and 35% on goods from the UAE. This will subsist until the UAE negotiates tariff schedules with all the EAC Partner States collectively.
3. Kenya Tea industry will benefit through expanding Tea exports for Kenyan tea to the UAE and Middle East. The agreement has refined measures to facilitate trade through a common understanding of customs procedures and trade facilitation measures, and also sanitary and phytosanitary measures.
4. The agreement allows for expanded Technical co-operation with which Kenya can benefit with respect to value Addition.
5. Possible negative effects include:
 - The Parties have agreed to negotiate market access (tariff liberalization) with all the EAC Partner States when ready. Removal of import duties from products once undertaken under this agreement may eventually lead to loss of government revenue over the agreed liberalization period; and,



TEA BOARD OF KENYA

Realizing the Tea Promise

- Local Tea industries are likely to face more competition over time from UAE zero rated products and the agreement may in turn favor UAE to be more of a Global Tea Re-export center as opposed to Kenya being renown as a Tea origin country. Brand visibility for Kenya tea may be camouflaged or eclipsed by the agreement