



The Institute of Certified Public Accountants of Kenya

SUBMISSION

ON

**THE PROPOSED AMENDMENT OF ARTICLE 24(2) OF THE PROTOCOL ON THE
ESTABLISHMENT OF THE EAST AFRICAN COMMUNITY CUSTOMS UNION**

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INTRODUCTION AND BACKGROUND INFORMATION

The Institute of Certified Public Accountants of Kenya (ICPAK) is a statutory body of accountants established under by the Accountants Act of 1978, and as repealed under the Accountants Act Number 15 of 2008, mandated to develop and regulate the Accountancy Profession in Kenya. It is also a member of the International Federation of Accountants (IFAC), the global umbrella body for the accountancy profession.

A customs union is an agreement between two or more neighboring countries to remove trade barriers, reduce or abolish customs duty, and eliminate quotas among themselves and to adopt a common external tariff against non-member countries. Such unions were defined by the General Agreement on Tariffs and Trade (GATT) and are the third stage of economic integration.

The benefits of a customs union include:

1. Increased efficiency: A custom union ensures that producers from partner states who produce at the least price are able to supply consumers. This further reduces consumer exploitation.
2. Enhanced cooperation: A custom union improves economic cooperation among member states. This reduces unhealthy competition and facilitates seamless flow of goods and services.

Examples of custom unions include the European Union (EU), the Southern African Customs Union (SACU), the Economic Community of West African States (ECOWAS) and the East African Community (EAC). The EAC in which Kenya is a member, was established by the provisions under Article 2 and 5(2) of the EAC Treaty which requires partner states to establish among themselves a Customs Union. The founding partner states (the Republic of Kenya, the Republic of Uganda and the United Republic of Tanzania) ratified the EAC Treaty on the 30th day of November, 1999. Under paragraph 7 of Article 75 of the EAC Treaty, partner states were required to conclude the Protocol on the Establishment of a Customs Union within a period of four (4) years. Following this, the protocol came into force on 1st January 2005 upon ratification by the three (3) original partner states. Further, Article 24 of the Protocol establishes the East African Community Committee on Trade Remedies to handle matters pertaining to anti-dumping measures, rules of origin, among others. Paragraph 2 provides that the Committee shall be composed of nine (9) members, qualified and competent in matters of trade, customs and law and requires each Partner State to nominate three (3) members to the Committee.

The current Article 24(2) of the Protocol excludes the Republics of Rwanda and Burundi from nominating members to the EAC Trade Remedies Committee, having assented to the EAC Treaty and by extension to the Protocol in 2007. It is against this that the Summit on the 29th April, 2009 approved the amendment to Article 24(2) of the Protocol to read as “The Committee shall be composed of Members, qualified and competent in matter of trade, customs and law”. The intent was to enable the Republics of Rwanda and Burundi to also nominate members to the Committee. However, this amendment shall not come into force until such a time that all partner states ratify it as provided for under Article 150(6) of the EAC Treaty.

The Institute welcomes ratification of the Protocol on the Amendment of Article 24(2) of The Protocol on the Establishment of the East African Community Customs Union as it notes that there will be benefits that accrue to the country once the process is concluded including among others, enhanced cooperation. This will further promote efficiency and effectiveness in regional trade. However, the Institute also notes that ratifying the amendment will have financial implications to Kenya. There is lack of clarity on the criterion used to finance the activities of committee.

Table: Summary of the proposals on the Protocol on the Establishment of the East African Community Customs Union

#	Article	Provision in the Memorandum	Issue of Concern	Proposed Amendment	Justification
1.	24(2)	<p>Ratify the amendment of Article 24(2) of the Principal Act (Protocol on the Establishment of the East African Community Customs Union) which reads:</p> <p>“The Committee shall be composed of nine (9) members, qualified and competent in matters of trade, customs and law and “Each Partner State shall nominate three members to the Committee”.</p> <p>The current Article 24(2) of the Protocol excludes the Republics of Rwanda and Burundi from nominating members to the EAC Trade Remedies Committee, having assented to the EAC Treaty and by extension to the Protocol in 2007.</p> <p>The memorandum proposes that the Article 24(2) shall read as: “The Committee shall be composed of Members, qualified and competent in matter of trade, customs and law”. It further reads that this amendment will have financial implication on Kenya.</p>	<p>Ratifying the Amendment has financial implications to Kenya. There is lack of clarity on how much financial cost Kenya will incur.</p>	<p>Amend Article 24(2) to read:</p> <p>a) <i>The Committee shall be composed of Members, qualified and competent in matter of trade, finance, customs and law;</i></p> <p>b) <i>Each partner state shall contribute an equal amount towards the funding of the Committee activities.</i></p>	<p>Article 132(4) of the EAC Treaty provides that “The budget of the Community shall be funded by equal contributions by the Partner States and receipts from regional and international donations and any other sources as may be determined by the Council”</p> <p>The composition of the committees should factor in the need for professionals in accounting and finance to support the development, review and execution of the Community's and Committee's budget.</p>

In conclusion, the Institute welcomes the amendment with further amendment to include a clause that specifies that each partner state shall contribute an equal amount towards financing the activities of the Committee as well as including professionals with finance and accounting knowledge.