



ICPAK Workshop Customs & International Trade

18 Aug 2021

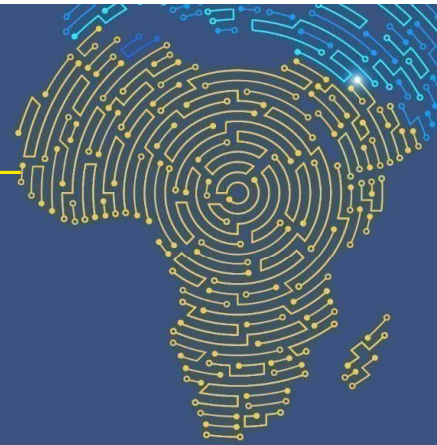
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Building a better
working world

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2. Customs processes (Customs valuation, tariff classification)
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1

Introduction

Introduction

What is it?

- Import tax is a tax on physical imports of goods across a border. Does not apply to services (exception assists / intangibles/royalties/license fees)
- Export tax is a tax on physical exports of goods across a border
- Customs duties include import duty, excise duty, import VAT, infrastructure levy, environmental levy, export duty, etc

How is it charged?

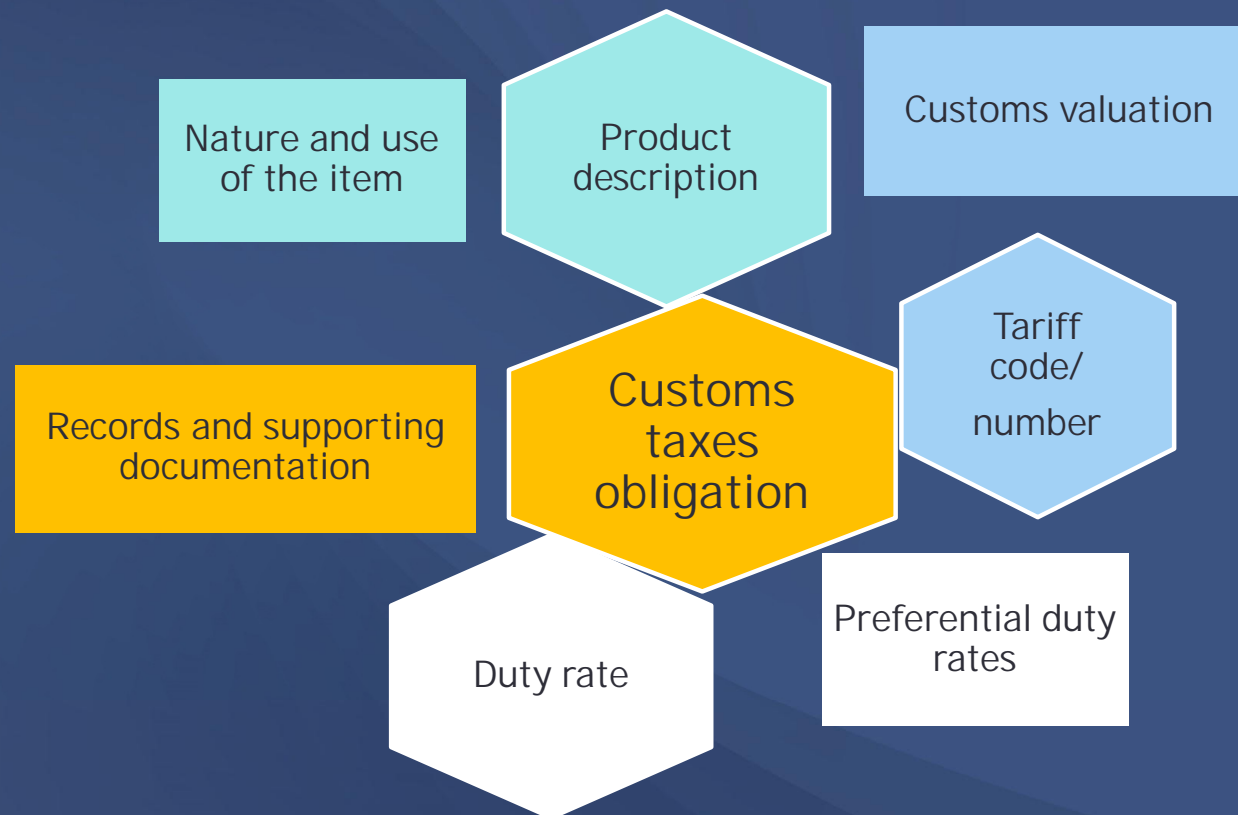
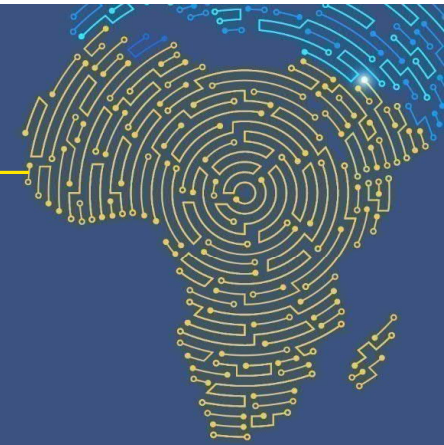
- Usually at a percentage based on “customs” value
- Some few items are on specific amounts

What are the rates?

- Depending upon type of product 0% to 25% for import duty. Sensitive items have higher rates.
- EAC CET reviews ongoing – plans to move from 3 to 4 band structure

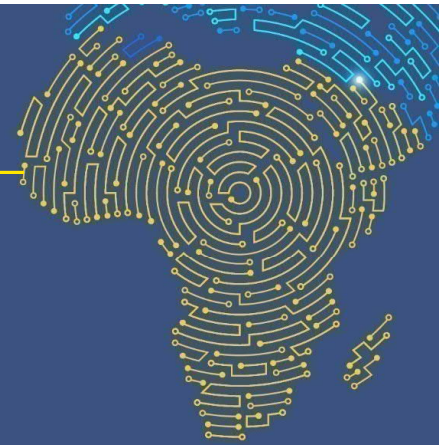


Customs taxes obligation - Key features

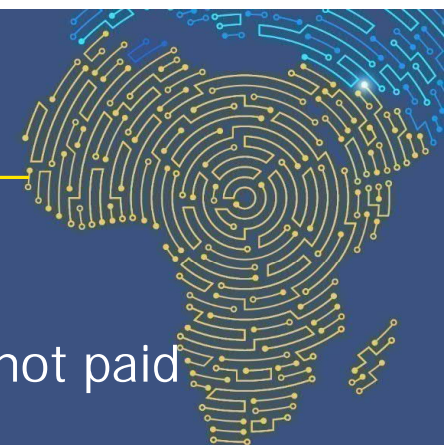


Customs Legal Framework

- EAC Customs Management Act 2004
 - ❖ Used across the EAC by all member states
 - ❖ Also has EAC regulations to guide certain procedures
- EAC Common External Tariff 2007, 2012, 2017
- EAC Duty Remission regulations
 - ❖ Governs approvals of duty remission on some goods
- EPZ / SEZ Acts
 - ❖ Govern the operations of the Export Processing Zones and the Special Economic Zones
- Excise Duty Act, 2015
 - ❖ Provides for the imposition, assessment and collection of excise duties
- VAT Act , 2013
- Miscellaneous fees and charges Act



Import procedures



When goods enter the country they are declared as:

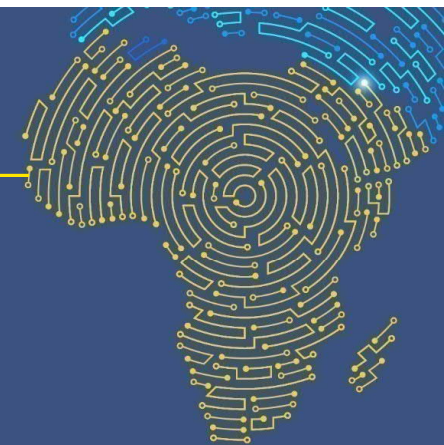
- Imports for home use – Taxes are paid before release
- Imports for warehousing/manufacturing under bond– Taxes deferred/not paid
- Imports for re export – No taxes paid but goods are bonded first
- Imports for temporary importation – No taxes paid
- Imports in transit- No Taxes paid
- Imports for inward processing or outward processing
- Imports for manufacturing under bond

Different import codes apply (e.g. IM4, IM5, IM7, EX1, EX3)

- Generally the following documentation is required:
 - Commercial invoice/s & packing list
 - Certificate of origin, bill of lading, airway bill
 - Certificate of conformity and other phytosanitary certificates, etc

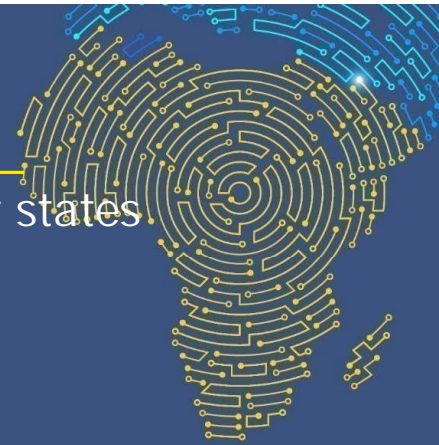


Export procedures



- Export means to take or cause to take out of a Partner State. This can happen in different ways:-
 - Direct Export
 - Re – Export
- Generally exports are not taxed with a few exceptions.
- **Direct Exports**
 - These are locally made in Kenya or originate from Kenya
 - An export certificate may be required
- **Re exports**
 - First imported then later exported out of Kenya
- **Single Customs Territory (SCT) 'transfers'**

Single Customs Territory - SCT Key Aspects



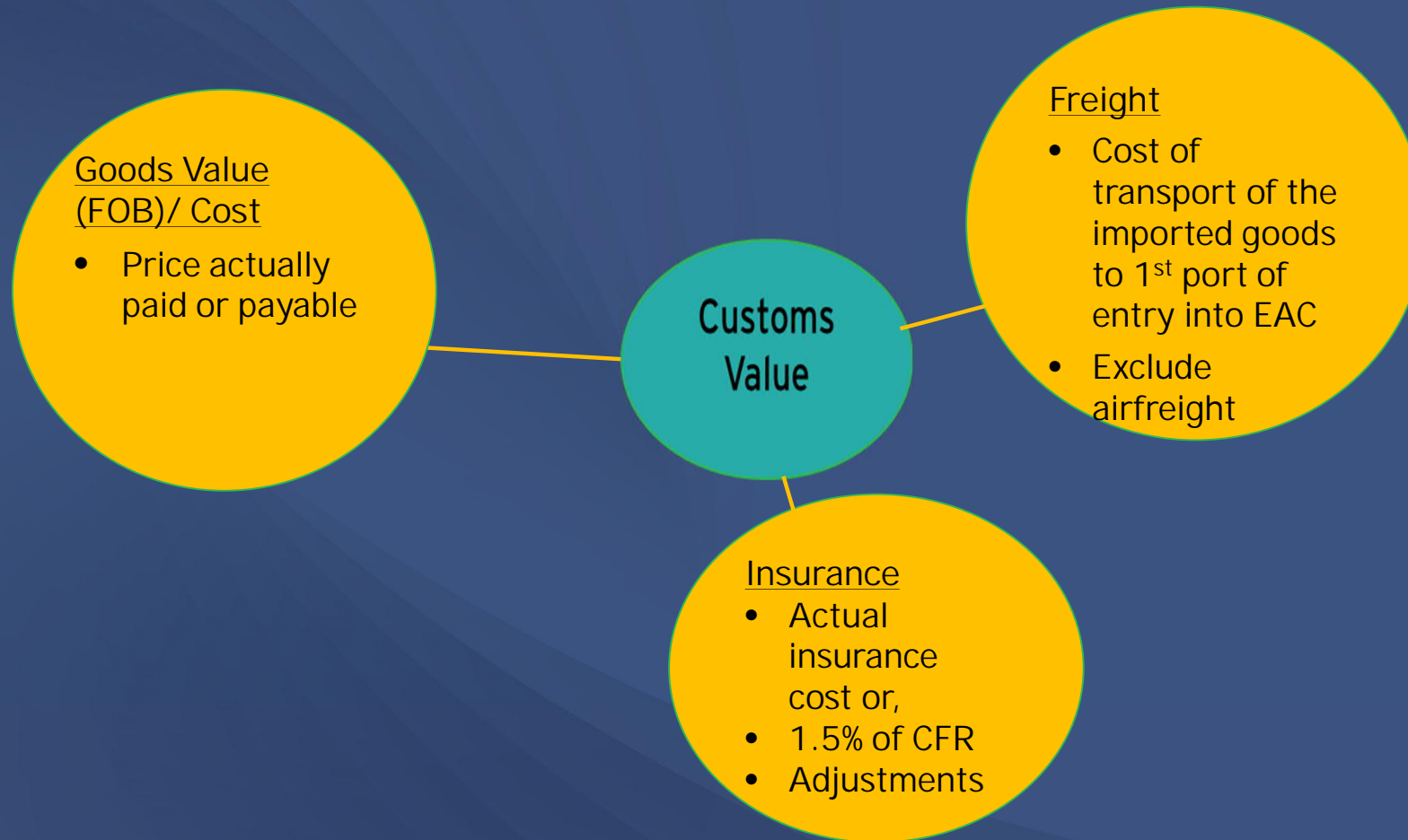
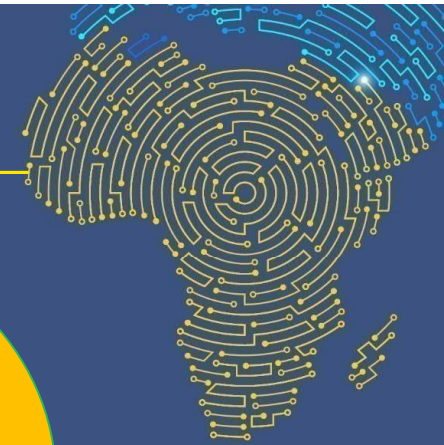
- With the full implementation of the EAC Customs Union ALL five EAC member states became one.
 - Only one declaration – in the partner state importing a product
 - No transit declarations
 - Goods are accompanied by a C2 along the corridor
 - One regional customs transit guarantee (RCTG) bond used through out
 - Data to facilitate entry into port received in advance
- Entry into the EAC territory using any of the frontiers will be considered as entry into the community- Single Customs Territory
- Goods moving from one partner state to another will be considered local and NOT Exports
- When export related incentives are approved for manufacturers the definition of export excludes EAC member states



2

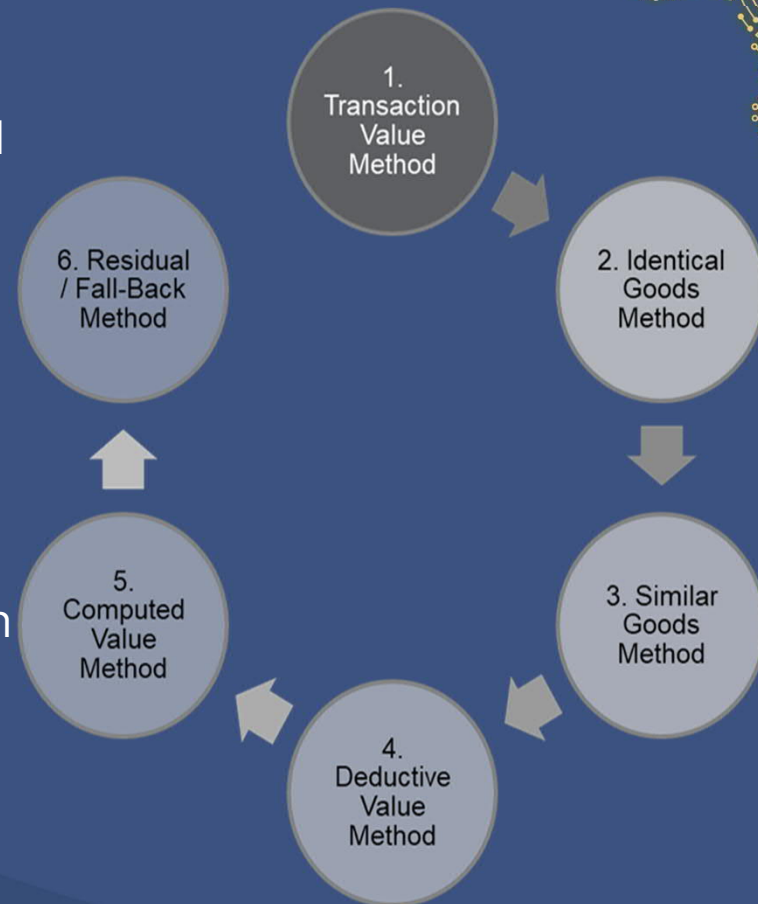
Customs processes- customs valuation

Customs Valuation



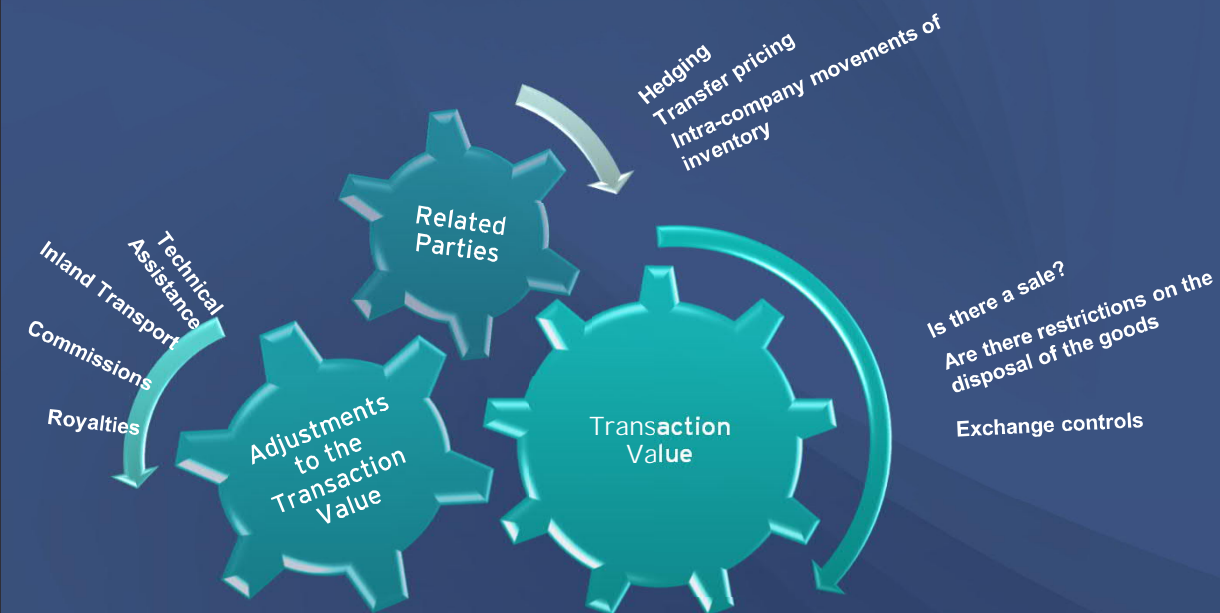
Valuation models at a glance

- ▶ Starting point is the Transaction Value Method – Method 1
 - ▶ Arms length price as indicated on invoice
 - ▶ Majority of transactions will fall under this method
- ▶ Where Transaction Value Method cannot apply, a hierarchical sequence of valuation methods must be adopted until an acceptable alternative method is established
- ▶ TV method conditions:
 - ▶ No restrictions on the buyer that can affect the value of the goods
 - ▶ Price of the goods is not subject to some condition or consideration for which a value cannot be determined
 - ▶ No part of the proceeds of the goods will accrue directly or indirectly to the seller unless adjusted
 - ▶ The buyer & seller are not related, unless the relationship did not influence the price



Transaction value

- ▶ Assess and evaluate supplier relationships
- ▶ Assess and evaluate supplier costs, charges and expenses
- ▶ Assess and evaluate supplier or agent's contracts



Transaction value

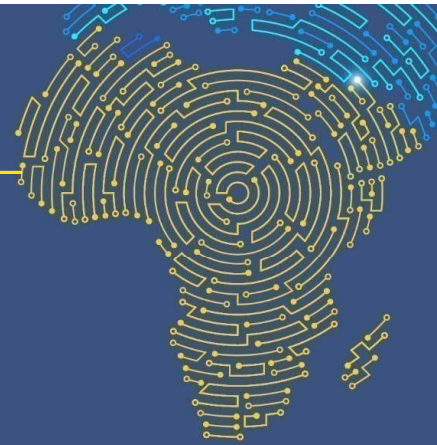
Price paid or payable

Sold

For export

Pertinent Questions

- Do you purchase goods from related parties?
- Do you pay royalties/license/patent fees, commission (buying or selling)?
- Payments to supplier other than for imported goods?
- Retroactive transfer pricing adjustments?
- Free of charge goods or samples?
- Goods purchased on discounts - how is the invoice presented?



Alternative valuation models

Only if Method
#1 cannot be
used

Is there a price
for identical
goods?

No

Is there a price
for similar
goods?

No

Apply Method #2
Identical Goods

Apply Method #3
Similar Goods

Fallback Method
#6: Variation of
#1 to #5
(reasonable
means)

Apply
Method #4
Deductive

Apply
Method #5
Computed

Normally an
Option

3

Customs processes-Tariff classification

Tariff classification - introduction

- Customs laws require that all imports are “classified” according to the type of good
- This aids with:
 - ❖ Assessment of the proper duty to be paid
 - ❖ Determining whether permission is needed to import the good
 - ❖ Whether any reduction in duty rates is applicable
- Incorrect classification may result in:
 - ❖ Over/underpayment of customs duties
 - ❖ Breaches of import restrictions
 - ❖ Fines and penalties



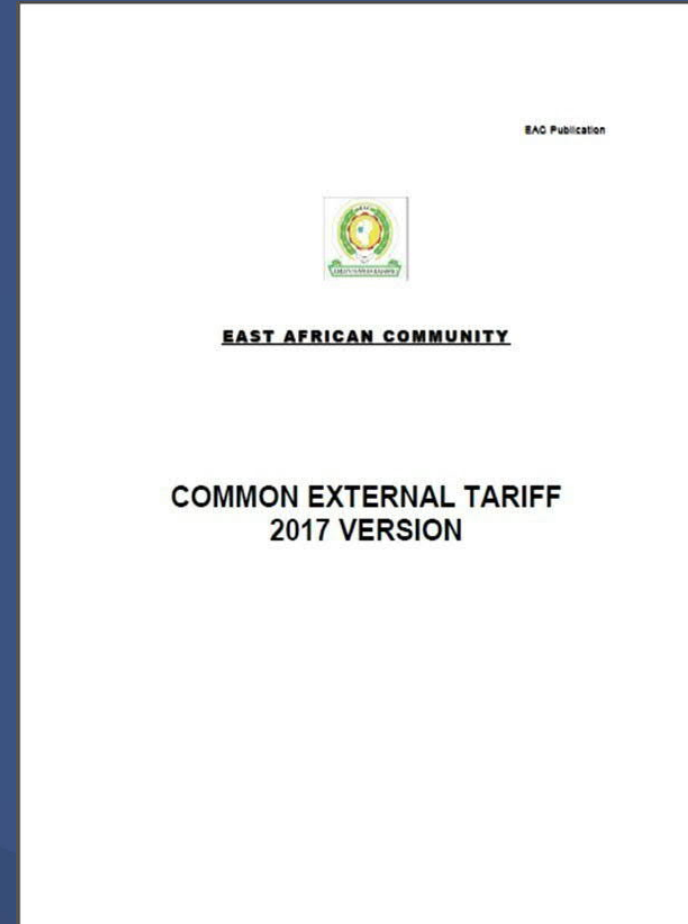
Tariff classification/ Common External Tariff

Structure

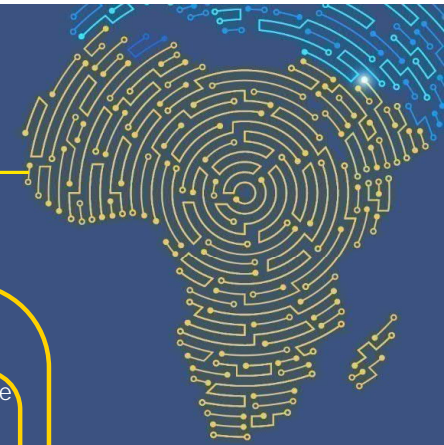
- ▶ 21 Sections
- ▶ Section Notes
- ▶ 99 Chapters
- ▶ Over 5000 items

General interpretative rules

- ▶ Indicate the hierarchy of the available products
- ▶ Widen the scope of the headings
- ▶ Rules applicable in cases where a product may be classified in different tariff headings



General interpretation rules (GIR)



Rule 1

Reference in a heading to an item includes a ref to an incomplete or unfinished article, provided it has the essential character of the complete or finished article.

Rule 6

Only subheadings at the same level are comparable.

Rule 5

Containers, specially-fitted to contain goods of a certain kind, presented with the goods, must be classified with such article. Packing materials presented with the goods, and normally used for packing, must be classified with the goods.

Rule 2

2. Any reference in a heading to a material or substance includes a reference to mixtures or combinations of that material or substance with other materials or substances. Any ref. To goods made from that material/substance incl. goods made wholly/partly of it.

Rules of
Tariff
Classification:
General Notes in Sch.1

Rule 4

Goods which cannot be classified into 3, can be classified under the heading for goods to which they are most akin.

Rule 3

If goods are classifiable under 2 or more headings:

3.1. The heading which provides the more *specific* description. If, however, 2 or more headings refer to only part of the materials or substances which make up composite goods, then both headings must be regarded as equally specific.



3.2. If mixtures and composite goods cannot be classified in terms of Point 1, then they must be classified by the material/component which gives them their *essential character*.



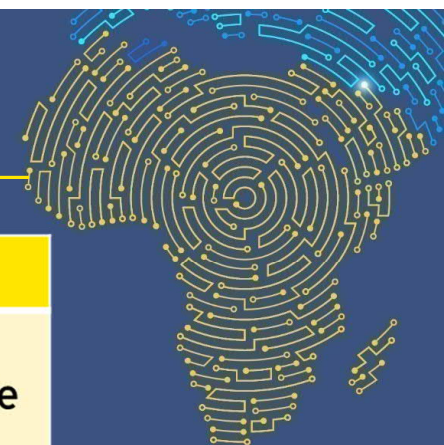
3.3. If goods cannot be classified in terms of points 1 and 2, they must be classified under the heading which *occurs last* in numerical order among those which could equally apply.

Classification of unassembled plant and machinery

- A machine in a disassembled or unassembled state may be imported in **several consignments** over a period of time if this is necessary for convenience of trade or transport.
- The machine parts can be declared under one tariff heading or subheading as the assembled machine provided the declarant makes written application to KRA **not later than the first consignment** and attach:
 - a manual and diagram of the machine
 - a general inventory of key components
 - Supply contract/sale agreement
- All the constituent parts must be imported through the **same entry point** within the allowed time. Each partial importation shall be cross-referenced with the manual and diagram and **Proper and consistent descriptions** should be provided in declarations



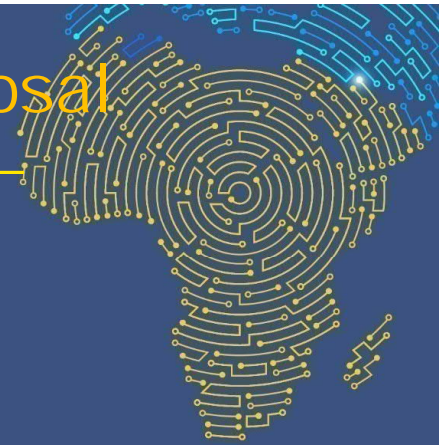
Applicable import duty rates



	Category	Description
0%	Raw materials	Goods not subjected to any form of transformation in production. This category also includes residues, waste and scrap in as far as they are only necessary for recovery of raw materials
	Capital goods	Durable industrial production goods i.e. most plant and machinery
10%	Intermediate goods	Goods that have undergone some degree of transformation. Such goods would require further processing before they are ready for final consumption. This category also includes 'parts' as far as they are identified as such in the HS code
25%	Finished goods	Goods that are ready for consumption
> 25%	Sensitive goods	Goods considered of economic importance by the Partner States e.g. sugar, milk, rice, wheat, etc.

Comprehensive CET review four band structure proposal

1. 0%
 2. 10%
 3. 25%
 4. 30% Or 35%
- Sensitive Items

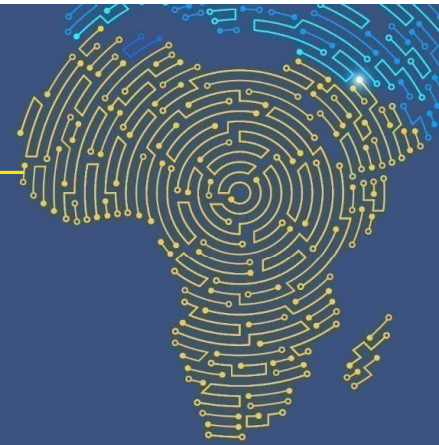


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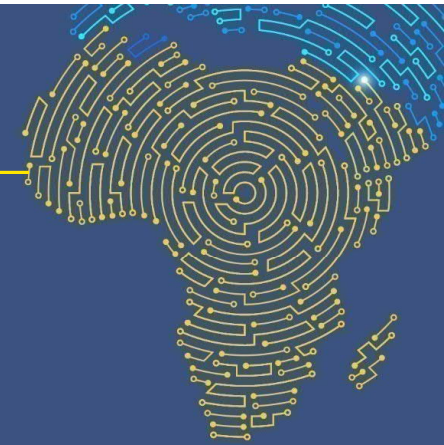
Post Clearance Audits

Post Clearance Audits - Introduction

- The Customs Post Clearance Audit is conducted by revenue authority officials pursuant to the provisions of Sections 235 and 236 of the East African Community Customs Management Act, 2004
- It is conducted on a company's customs transactions for a given period of time, with a view to ascertaining compliance with customs legislation



Post Clearance Audits - Documentation



- Audited Financial Statements
- Import & Export entries and supporting documents
 - Commercial Invoices
 - Packing lists
 - Bill of lading/airway bill
 - Insurance and freight invoices
 - Export documents from country of export
- Evidence of payments to suppliers, customs, shippers, insurance port authorities, etc
- Bank statements, deposit slips, transfer slips, cheque counterfoils

Post Clearance Audits – Key focus areas

- The revenue authority has recently prioritized the following tax risks when conducting post clearance audits:



Valuation: determination that the customs value declared in a passed import entry is supported (invoices, freight notes, insurance cover notes, and royalty agreements)



Proof of payment: taxes due per the entry have been paid and payments made to the supplier correspond to the value of the goods.



Tariff classification: declared goods classification corresponds to the actual goods.



Regulatory compliance: licenses and permits required for importation, exportation, transshipment, transit or handling of the goods have been obtained.

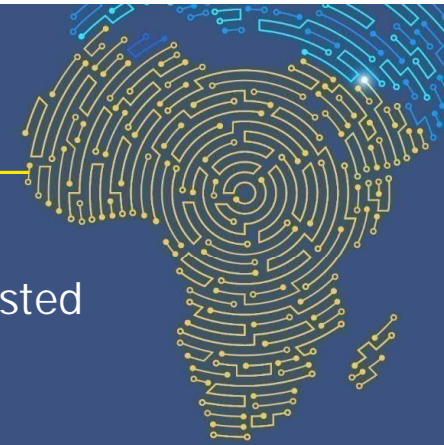


Exemptions & remissions: utilized exemptions/remissions from customs duty have been lawfully obtained.



Restrictions: economic sanctions on prohibited and restricted goods have been adhered to..

Key issues identified during audits

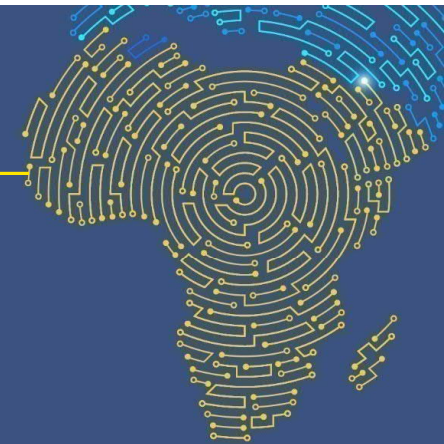


1. Undervaluation – Additions to Customs value
 - Declaration to customs authority the value of goods without adding the listed adjustments to customs value
2. Wrong Classification of goods
 - Intentionally or unintentionally
3. Wrong declaration of origin of goods or lack of certificate of origin
4. Lack of proof of exports
 - Export confirmation in Customs Simba/ICMS system or lack of stamped bill of entry at exit point
5. Temporary imports
 - Not retiring bonds/ returning goods imported
6. Use of INCOTERMS

5

Emerging issues- Customs management in wake of AfCFTA

Africa Continental Free Trade Area (AfCFTA)



- An Africa continentwide free trade area established through a consolidated agreement comprising
 - Protocol of trade in goods
 - Protocol of trade in services
 - Protocol on dispute settlement
- AfCFTA has the following objectives:
- AfCFTA was established under Article 2 of Part II of the African Continental Free Trade Area Agreement
- 54 out of 55 African States have ratified the Agreement triggering its coming to force on May 2019.



AfCFTA in numbers

People

**1.2
Billion**

AfCFTA will bring together **all 55 member states**

"The eyes of the World are turned toward Africa."

AU Chair and Egypt President, Abdel Fattah al-Sisi



54

No of Signatories that have signed the consolidated text of the Agreement Establishing the AfCFTA



Countries

1 Country (of the 55 AU member states) has yet to sign the AfCFTA Agreement



No of Countries that have deposited their instruments of ratification with the Depository **34**



34 Countries had complied with their domestic requirements for the ratification of the AfCFTA Agreement

Economics

52.3%

Potential to **boost** intra-African trade and **double** this trade



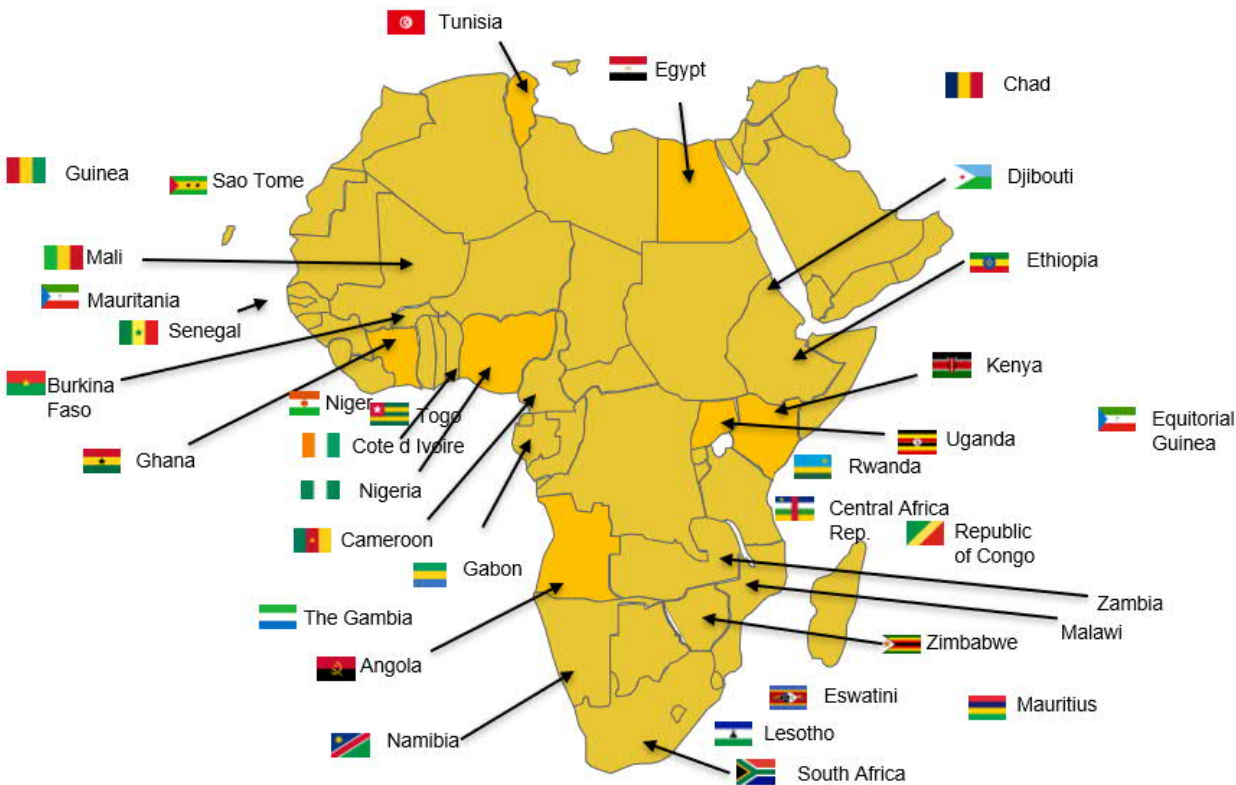
\$3.4 Trillion

The estimated combined GDP 2022



Source: Africa Union

State Parties - 36

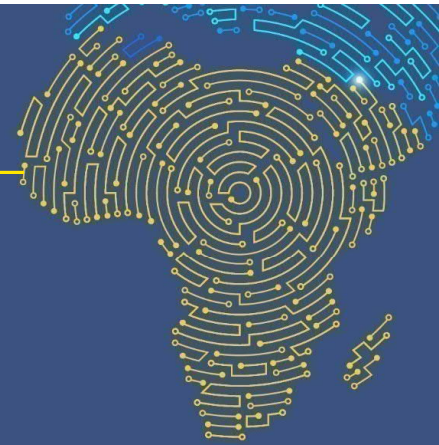


Non State Parties

- Eritrea – Not a member
- Algeria
- Morocco
- Tanzania
- DRC
- Sudan
- Libya
- Botswana
- Benin
- Mozambique
- Madagascar
- Somalia
- South Sudan
- Burundi- Joined recently
- Liberia
- Cape Verde
- Guinea-Bissau
- Comoros
- Seychelles

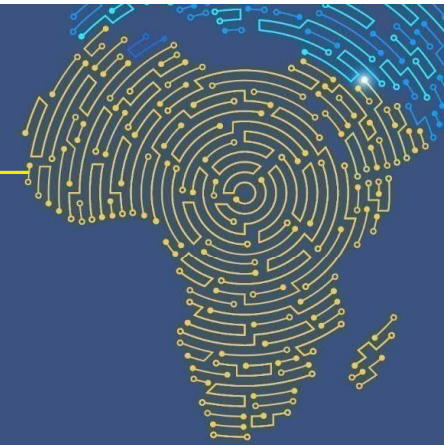


What is required to fulfil AfCFTA by State Parties?



- elimination of tariffs and non-tariff barriers
- liberalisation of trade in services
- cooperation on investment, IP rights and competition policy
- cooperation on all trade-related areas
- cooperation on all customs matters/ implementation of trade facilitation measures
- establishment of a mechanism for settlement of trade disputes
- establishment of an institutional framework for implementation and administration of the AFCFTA

Who will immediately benefit from the AfCFTA



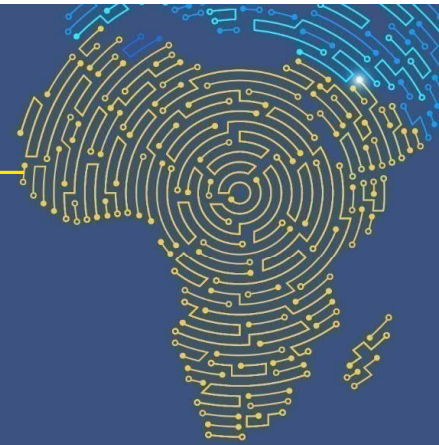
- Residents in the State Parties that ratified the agreement
- Importers from trading State Parties
- Exporters to trading state parties
- Importers and exporters who have fulfilled customs requirements
- Importers of goods/products that were initially dutiable
- Service providers in the top 5 priority sectors?

Modalities for trade in goods

- 90% of tariff lines liberalized over 5 years (LDCs have 10)
- 7% additional tariff lines liberalized over 10 years (LDCs have 13 years)
- 3% tariff lines may be excluded (i.e. sensitive)

What does this mean in reality?

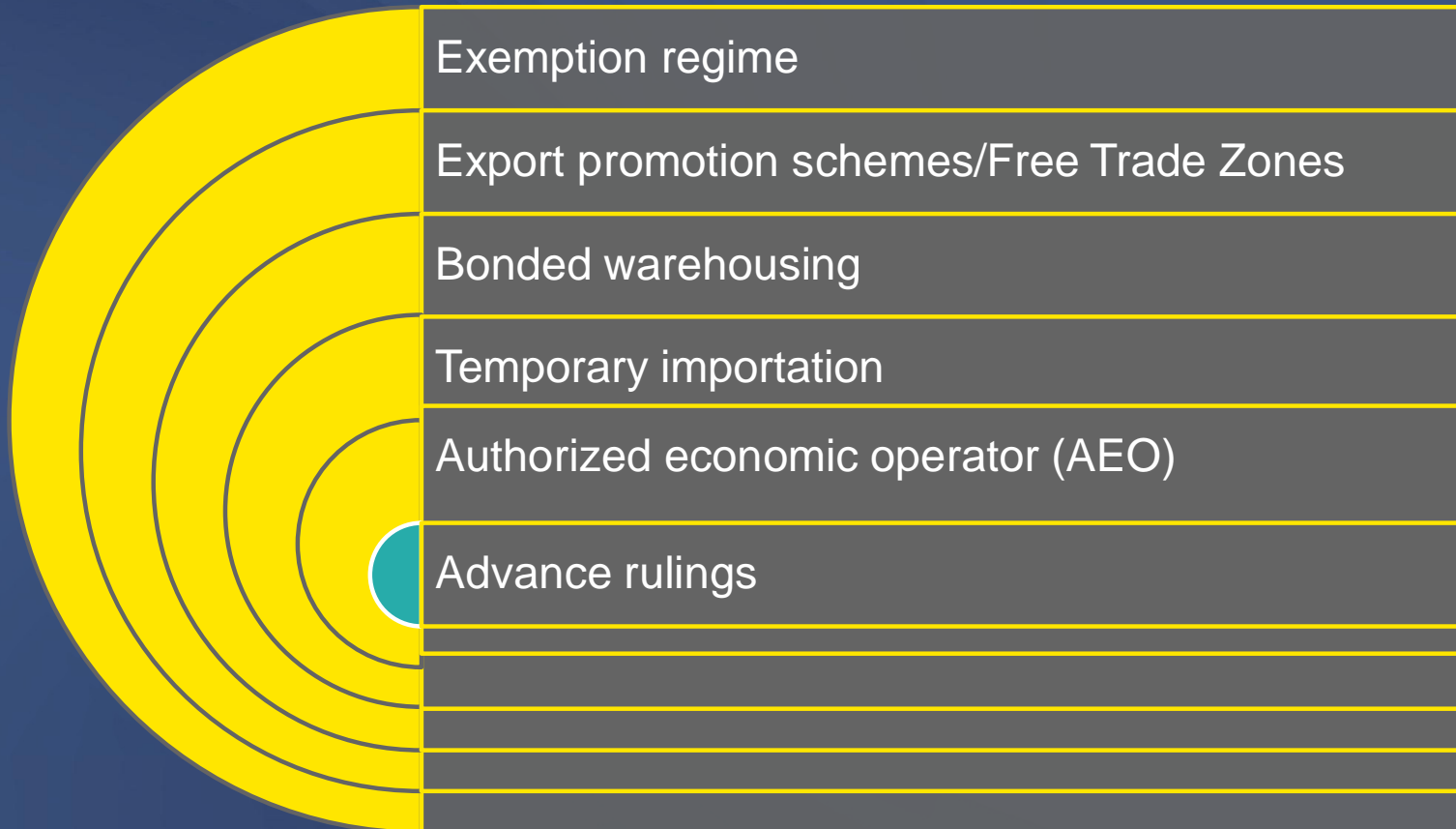
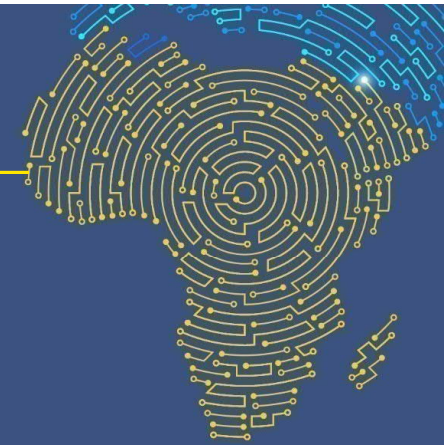
- For EAC/Kenya 66% of the tariff lines will immediately become duty free
- 24% of the tariff lines will be gradually reduced in five years
- 10% of the tariff lines will be negotiated as sensitive goods.



6

Duty saving and planning opportunities

Duty saving and planning opportunities



Customs duty exemptions



- EAC Customs Management Act through Section 114 provides that duty shall not be charged on goods listed in Part A (General exemptions) and Part B (Specific exemptions) of the Fifth Schedule subject to specified conditions.

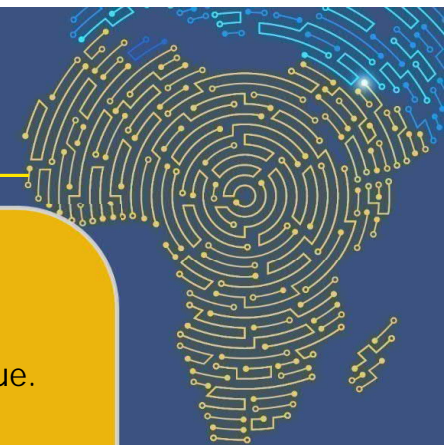
General
exemptions

- Provides exemptions conditions relating to goods imported or purchased before clearance through the customs by or on behalf of privileged persons and institutions

Specific
Exemptions

- Provides exemptions conditions relating to specific goods imported or purchased before clearance through the customs by any person

Specific duty exemptions: examples



Raw materials and finished goods

- Inputs for use in the manufacture of medical diagnostic kits.
- Samples and miscellaneous articles not imported as merchandise with no commercial value.
- Packaging materials and raw materials for manufacture of medicaments upon recommendation of the authority responsible for manufacture of medicaments.
- Heating, ventilating and air conditioning equipment for pharmaceutical manufacturers
- Industrial spare parts imported as replacement parts used exclusively on industrial machinery classified in Chapters 84 and 85 of the EAC CET
- Inputs used in the production of gas cylinders imported by manufacturers of such cylinders

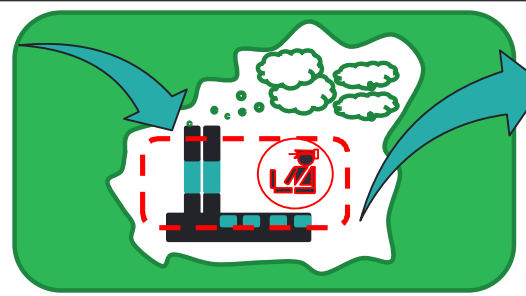
Other exemptions

- Amendment of the exemption of relief goods imported for emergency use in specific areas where natural disaster/calamity has occurred to include any supplies for diagnosis, prevention, treatment, and management of epidemics, pandemics and health hazards as recommended by the competent authority in the Ministry responsible for Health.
- Refrigerated trucks and refrigerated trailers; insulated tankers; heat insulated milk tanks for dairy industry; aluminium cans for dairy industry
- Preparations for cleaning dairy apparatus

Export promotion schemes

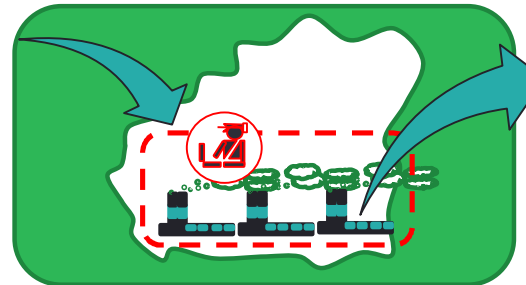
Manufacture Under Bond

Manufacturers who produce goods for export import raw materials free of duty using a bonded warehouse facility. The factory bond is owned by the manufacturer but Customs controlled.



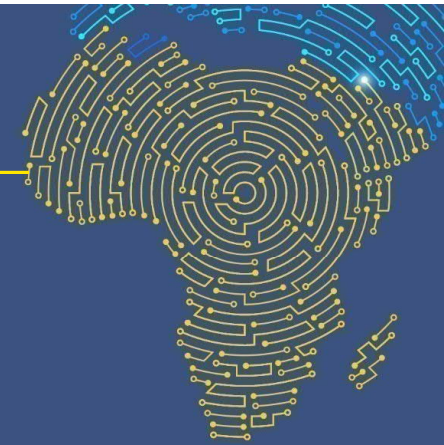
Free Trade Zones/ Export Processing Zones

EPZs open to manufacturers of goods and services for export who import raw materials for use in manufacturing process. SEZs open to both exporters and producers for home consumption.



Duty Drawback

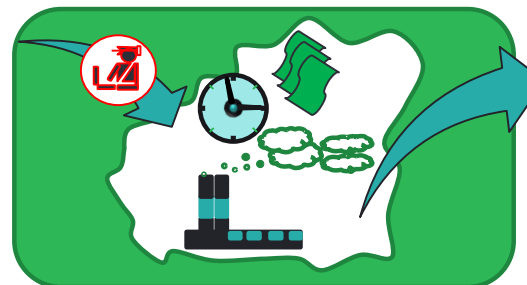
Refund of all customs duties paid on raw materials for goods subsequently exported. This is on application and approval .



Duty saving schemes

Duty Remission and Inward/outward processing

- Duty remissions authorised by the EAC Council of Ministers as per EAC Duty Remissions Regulations.
- Inward/outward processing schemes allow manufacturers to send materials for value addition in or out of Kenya and subsequently be returned or exported.



Bonded warehouses

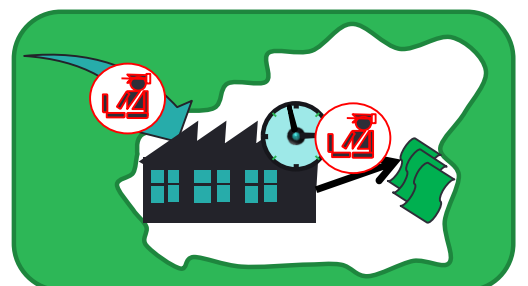
Deferment of duty payment for goods stored in Customs controlled warehouses for a period of time. Three to six months period given, renewable upon application.



Temporary Importation

Goods can be imported on application for one year and re exported thereafter.

Goods must be uniquely identifiable and a bond must be executed equivalent to the taxes payable.



Interactive session – Q & A



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