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Paper laid by Chairperson Departmental Committee on Finance Tuesday 20/9/2016 Morning Sitting

NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – FOURTH SESSION

JOINT COMMITTEES ON FINANCE, PLANNING & TRADE AND REGIONAL INTEGRATION

PROGRESS REPORT ON THE CONSIDERATION OF THE RATIFICATION OF ECONOMIC PARTNERSHIP AGREEMENT (EPA)

DIRECTORATE OF COMMITTEE SERVICES,
CLERKS CHAMBERS,
PARLIAMENT BUILDINGS
<u>NAIROBI</u> <u>SEPTEMBER, 2016</u>

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ABBREVIATIONS

CET	-	Common External Tariff
COMESA	-	Common Market for East and South Africa
EAC	-	East African Community
EBA	-	Every But Arms
EC	-	European Commission
EDF	-	European Development Fund
EPA	-	Economic Partnership Agreement
ESA	-	East and South Africa
EU	-	European Union
FPA	-	Fish Partnership Agreement
GATT	-	General Agreement on Tariff and Trade
GSP	-	Generalized System of preference
SADC	-	South African Development Community
SPS	-	Sanitary and Phytosanitary
TBT	-	Technical Barriers to Trade

CHAIRPERSON'S FOREWORD

Through his letter to the Clerk of the National Assembly dated 7th September 2016, and Pursuant to Section 8 of the Treaty Making and Ratification Act, the Principal Secretary for the State Department of Trade requested the National Assembly to expedite ratification of the Economic Partnership Agreement between the East African Community (EAC) and the European Union (EU). He further indicated that if Kenya had not signed and ratified the EPA by 30th September, preferential access of Kenya's exports to the EU quota free duty free basis would be lost. This will lead to lose of 70% of Kenya's export market; loss of over 4 million jobs and investments estimated at over KES 200 bn.

Upon receipt of the Communication, the Speaker referred the matter to the joint Committee on Finance, Planning & Trade and Regional Integration for consideration pursuant to Standing Order 216 and 212 respectively.

In processing the Agreement, the Committee called for memoranda from the general public through the print media on 10thSeptember 2016 and met with the Cabinet Secretary for Industrialization, Trade and Cooperatives for briefing before compiling this report.

The Committee appreciates the assistance provided by the Office of the Speaker and the Clerk of the National Assembly that enabled it to discharge its functions during the approval hearings.

Finally, I wish to express my appreciation to the Honourable Members of the Committees who dedicated their time to participate in the preparation of this Report.

It is therefore my pleasant duty and privilege, on behalf of the Joint Committee on Finance, Planning & Trade and Regional Integration to table its Report in the House on the consideration for ratification of the Economic Partnership Agreement (EPA) pursuant to section 8(2) of the Treaty Making and Ratification Act.

Hon. Benjamin Langat, CBS, MP

EXECUTIVE SUMMARY

This report contains the Joint Committee's findings during the consideration of the Economic Partnership Agreement (EPA). The Principal Secretary for the State Department of Trade through his letter dated 7th September 2016 requested the National Assembly to approve ratification of the Agreement.

During the consideration period, the Joint Committee met with the Cabinet Secretary for Industrialization, Trade and Cooperatives for a briefing session. The Joint Committee also called for memoranda from the general public regarding the agreement. At the time of compiling its report, nobody had forwarded any memoranda to the Committee.

On compliance of the ratification process with the Treaty Making and Ratification Act, the Committee noted that due process had been followed in the negotiations and signing of the Agreement. The Committee further noted that upon ratification, Kenya stands to maintain EU markets for Kenyan goods, opening up of new areas for Kenyan exports (over 1000 tariff lines) within the EU, promote industrialization through value addition, secure investments and jobs, integrating marine and inland fisheries in EPAs through Fish Partnership Agreement (FPA) and trade remedies provisions to prevent dumping among other benefits.

The Committee noted that in the unlikely event that Kenya does not ratify the EPA, it is estimated that over 70% of Kenya's exports stand to be lost if Kenya is removed from current preferential market access to the EU. This will lead to unemployment of about 4 million people. The country also stands to lose investments estimated at over KES 200 bn in floriculture, horticulture, fisheries, and agro-processing sectors.

On the signing of the EPAs, the Committee noted that Kenya, Rwanda and all the 28 countries of the EU had already signed as of 1st September 2016. Uganda had indicated that it will sign while the rest of the EAC countries will deliberate further on the way forward before January 2017. It is however worth noting that it is only Kenya within the EAC that will lose its market access to the EU if she does not rarify by 1st October 2016 due to her classification as a developing country. Therefore, Kenya needs to urgently ratify the EPA to enjoy the benefits highlighted above and avoid the danger of losing the EU market.

1.0 MANDATE OF THE COMMITTEE

1.1.0 DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE

The Committee on Finance, planning & Trade is one of the Departmental Committees of the National Assembly established under Standing Order 216 and mandated:

(a) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;

(b) To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation.

(c) To study and review all legislation referred to it.;

(d) To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;

(e) To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary and as may be referred to them by the House;

(f) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (*Committee on Appointments*); and

(g) Make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

1.1.2 COMMITTEE ON REGIONAL INTEGRATION

The Select Committee on Regional Integration is established under Standing Order No. 212 and is mandated to:-

a. Enhance the role and involvement of the House in intensification and development of the integration process in the East African Community and the greater African region;
b. Examine the records of all the relevant debates and resolutions of the meetings of the East African Legislative Assembly;
c. Examine the Bills introduced in the East African Legislative Assembly and Acts of the East African Community;

d. Examine the records of all the relevant debates and resolutions of the meetings of the Pan African Parliament, the African, Caribbean and Pacific-European Union Joint Parliamentary Assembly and other regional integration bodies;
e. Inquire into and examine any other matter relating to regional integration generally requiring action by the House

1.2 COMMITTEE MEMBERSHIP

1.3.1 DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE

Chairman	The Hon. Benjamin Langat, MP
Vice Chairman	The Hon. Nelson Gaichuhie, MP
Members	The Hon. Dr. Oburu Oginga, MP
	The Hon. Jimmy Nuru Angwenyi, MP
	The Hon. Eng. Shadrack Manga, MP
	The Hon. Ahmed Shakeel Shabbir Ahmed, MP
	The Hon. Sammy Koech, MP
	The Hon. Sammy Mwaita, MP
	The Hon. Tiras N. Ngahu, MP
	The Hon. Abdikadir Ore Ahmed, MP
	The Hon. Abdullswamad Sheriff, MP
	The Hon. Abdul Rahim Dawood, MP
	The Hon. Alfred W. Sambu, MP
	The Hon. Anyanga Andrew Toboso, MP
	The Hon. Daniel E. Nanok, MP
	The Hon. Dennis Waweru, MP
	The Hon. Joash Olum, MP
	The Hon. Iringo Cyprian Kubai, MP
	The Hon. Jones M Mlolwa, MP
	The Hon. Joseph Limo, MP
	The Hon. Kirwa Stephen Bitok, MP
	The Hon. Lati Lelelit, MP
	The Hon. Mary Emase, MP
	The Hon. Ogendo Rose Nyamunga, MP

The Hon. Patrick Makau King'ola, MP
The Hon. Ronald Tonui, MP
The Hon. Sakaja Johnson, MP
The Hon. Sakwa John Bunyasi, MP
The Hon. Sumra Irshadali, MP

1.3.2 COMMITTEE ON REGIONAL INTEGRATION

Chairperson	The Hon. Florence Kajuju, MP
Vice Chairperson	The Hon. Christopher Nakuleu, MP
Members	The Hon. David Ouma Ochieng, MP
	The Hon. Bady Twalib Bady, MP
	The Hon. Robert Mbui, MP
	The Hon. Anyanga Andrew Toboso, MP
	The Hon. Florence Mwikali Mutua, MP
	The Hon. Ogendo Rose Nyamunga, MP
	The Hon. Alois Lentoimaga, MP
	The Hon. Anthony Kimaru, MP
	The Hon. David Kariithi, MP
	The Hon. Wanjiku Muhia, MP
	The Hon. Ali Wario, MP
	The Hon. Eric Keter, MP
	The Hon. Mary Seneta, MP
	The Hon. Gideon Konchella, MP
	The Hon. Dido Ali Rasso, MP
	The Hon. Ann Nyokabi, MP
	The Hon. Emmanuel Wangwe, MP
	The Hon. Peter Shehe, MP
	The Hon. Alex Mwiru, MP
	The Hon. Mark Lomunokol, MP
	The Hon. Sarah Korere, MP
	The Hon. Iringo Cyprian Kubai, MP
	The Hon. Timothy Bosire, MP

The Hon. Joseph Kahangara, MP

The Hon. Andrew Mwadime, MP

The Hon. Alfred Agoi, MP

The Hon. Willy Baraka Mtengo, MP

1.3 COMMITTEE SECRETARIAT

First Clerk Assistant	Evans Oanda
Third Clerk Assistant	Nicodemus Maluki
Third Clerk Assistant	Fredrick Otieno
Legal Counsel II	Brigita Mati
Legal Counsel II	Emma Essendi
Research Officer III	Eric Ososi
Research Officer III	Sharon C. Rotino

1.4 RECOMMENDATION

The National Assembly approves the ratification of the Economic Partnership Agreement (EPA) pursuant to Section 8 of the Treaty making and Ratification Act of 2012.

2.0 BACKGROUND INFORMATION

2.1Historical Perspective of EPAs

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

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

At the same time, the regime faced additional challenges at the WTO. The non-reciprocal preferential market access extended to Kenya and other ACP countries was often challenged by other WTO member countries for being discriminatory to WTO developing countries who were not members of the ACP Group and therefore incompatible with the WTO rules.

Additionally, ACP continued to face obstacles in accessing the EU market due to the supply side constraints, and technical and health standards that were imposed unilaterally by the EU. Consequently, the ACP and the EU agreed to address these concerns through the Economic Partnership Agreement which is compliant with WTO rules as well as promoting South-South trading opportunities through regional integration and enhancing ACP countries' access to the global market.

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

2.2 Status of EPAs negotiations

Following the EAC Summit directive of 2002 and 2007 for EAC to negotiate the EPA as a bloc, Kenya has been negotiating the EPA with the EU along with other EAC Partner States, since October 2007. The negotiation of the EAC-EU EPA was finalized on 14th October 2014, when the EAC Partner States and the EU initialed the text to signify conclusion of the EPA negotiations. Subsequently, the EPA text underwent legal scrubbing and translation into EU languages and Kiswahili paving the way for signing and ratification.

The text has been signed by all EU Partner States and is ready for EAC Partner States to sign as well. Decision for EAC Partner States to sign the EPA by June 2016 was made during the EAC Council and Heads of State meeting in February and March 2016.

2.3Kenya's position on EPAs

Kenya has been put on Notice by the EU that unless the country signs and ratifies the EPA by 30th September 2016, it would lose its Duty Free Quota Free EU market access preference. These market preferences were extended to Kenya in December 2014 on the understanding that Kenya will have signed and ratified the initialed EAC-EU EPA by 1st of October2016.To avoid this, Kenya signed the EPAs alongside Rwanda on 1st September 2016. Kenya therefore needs to ratify the EPA and notify the EU of the ratification before 30th September 2016, in order for the country not to lose the Duty Free Quota Free market access. It is worth noting that it is only Kenya and Rwanda within the EAC that have signed the EPAs as of now.

2.4 Ratification process and Public Participation.

The process of ratification of treaties and international agreements is provided for under the Treaty Making and Ratification Act of 2012. The Act obligates both the Executive the Legislature to involve the Public in treaty making and its ratification. Pursuant to Article 118 and Section 8 (3) of the Treaty Making and Ratification Act, the National Assembly placed an advert on the print media on 10thSeptember 2016 asking for memoranda on the EPA.

However, at the time of compiling this report, the Committee had not received any memorandum from the public.

2.5 Summary of what was agreed in EPAs

a) Trade in Goods:

i) Market Access Offers

EU Offer to EAC: The EU offered the EAC Partner States duty free quota free market access for all products with exception of arms and ammunition. Further, the EU offered an automatic derogation for 2,000 tonnes of tuna loins per year (Article 41 of the Rules of Origin); and a tariff rate quota at zero duty of 15,000 tonnes of sugar for 2008/2009 originating from the EAC Partner States to take care of the transition period in the gradual liberalisation of sugar.

EAC offer to EU: The EAC market access offer to the EU entails the following:-

- Liberalization of the **82.6%** of the EAC market for the EU imports within a period **25 years**;
- Seven years moratorium period before liberalisation commences;
- An exclusion of sensitive products, which account for **17.4%** of total trade with the EU.

  The products to be liberalised include raw material and capital goods **(65.4%)** which are already zero rated and largely intermediate products **(14.6%)** which attract a **10%** import duty. The phase down of the latter products will commence once the agreement enters into force upon ratification. The products in this batch contribute to the competitiveness of both agriculture and industrial sectors.

ii) Rules of Origin

In order for Kenya and EAC goods to enter the EU market on duty free basis, they must meet conditions set out in the rules of origin that demonstrate that the goods are originating from EAC. The rules were developed guided by the EAC industrial development goals, which recognized the nascent stage of industrial development in the EAC hence need for simple rules that EAC products can easily meet. The rules agreed therefore encourage value addition and promote industrial development through use of local raw materials and provide for flexibility to source raw materials from wide range of countries and regions. This is a contrast with the Lome Conventions and Cotonou Partnership Agreement.

iii) Customs and Trade Facilitation

The EPA has provided for an enabling customs and trade facilitation environment aimed at ensuring easy access of Kenya's and other EAC Partner States products into the EU market. This is to be realized through a commitment by the Parties to reinforce cooperation in the Customs and Trade facilitation area, particularly with regard to relevant legislation and procedures, administrative capacity of the relevant administrations and information sharing in order to meet the set objectives. The Parties agreed to accord the EAC countries flexibilities in terms of transitional periods and capacity building to smoothly implement the foreseen commitments on customs and trade facilitation.

iv) <u>Trade Defence Measures</u>

The agreement provides for Trade defence measures, such as **Safeguards**, **Antidumping** and **countervailing measures** to take care of import surges and subsidised imports. This is an important tool for the EAC for use in protecting the domestic industry and agriculture sector for products which are not excluded from liberalisation.

b) Fisheries

The chapter on fisheries covers marine and inland fisheries. It provides a framework of cooperation in conservation, management and exploitation of marine fisheries resources. The framework also provides a chance where Kenya can conclude a bilateral fisheries agreement with the EC on fisheries, as a strategy towards exploitation of the marine fisheries resources.

c) Economic and Development Cooperation

The text contains a comprehensive development chapter in which the EU commit to contribute towards the resources required for development under the EDF Regional Indicative Programme, Aid for Trade and the EU budget. The chapter includes a detailed development matrix, which is annexed as an integral part of the EPA agreement, detailing regional and national priority projects identified by EAC to be supported by the EU. This is aimed at addressing the supply side constraints the EAC has been facing in exporting to the EU. Effective implementation of EU commitments under this topic, will be monitored through a monitoring and evaluation mechanism and set targets before the signing of EPA.

d) **Sanitary and Phytosanitary (SPS) and Technical Barriers to Trade (TBT)Measures**

The EPA has provided a robust framework of cooperation between EAC and the EU on SPS and TBT measures. The primary goal is to ensure transparency and objectivity in SPS and TBT measures in order to safeguard against surprises that frustrate exports.

e) Agriculture

The EPA provides for cooperation between the EAC and the EU on agriculture development geared towards addressing challenges faced in agricultural sector. Under this chapter the EPA provides a guide on how to deal with subsidised agricultural products destined for the EAC market. The EU committed not to import into the EAC subsidised products on duty free basis. The agreement further provides for a Comprehensive Dialogue forum where any serious challenges faced by either Party in the implementation of the agreement will be discussed with a view to resolve them.

f) Good Governance in the Tax area

The agreement contains provision that recognises the importance of cooperation on the principles of good governance in the area of taxation through the relevant authorities in line with the respective national laws and regulations of each Party. The provision poses no challenge since it has **no** commitment, and restricts any action to the existing laws and regulations of each Party.

g) Institutional Arrangement, Final Provisions and Dispute Settlement

The agreement provides for the establishment of the requisite institutional structures to facilitate the implementation of the agreement. The structures established include EPA Council, Committee of Senior Officials, and Consultative Committee, among others. The Parties also agreed on Dispute Settlement mechanism aimed at avoidance of disputes and settlement of any dispute between the Parties concerning the interpretation and application of this Agreement. Final provisions are also agreed detailing aspects such as entry into force, provisional application, amendment and review mechanism and life span of the agreement among others.

h) Areas of Future Negotiations/Rendez -vous clause

The following are areas of future negotiations as agreed by both Parties:-

- Trade in services;
- Trade related issues namely:
    - •Competition policy;
    - •Investment and private sector development;
    - •Trade, environment and sustainable development;
    - •Intellectual property rights;
    - •Transparency in public procurement, and;
- Any other areas that the Parties may agree upon.

Scope of negotiations in these areas can only be undertaken when both Parties have mutually agreed to negotiate them.

2.6 Possible risks of EPAs and their mitigation by Kenya

The EPA is largely **asymmetrical** in terms of level of liberalisation, the rules of origin and other commitments undertaken by each Party. The following were achieved as a strategy to address any unforeseen negative impact and ensure EPAs delivered the intended development objectives:

a) Limited market opening for EU products

Limited numbers of EU products are being liberalized over a period of 18 years from the date the agreement enters into force. About 54% of these products are intermediate goods where reduction of tariffs to zero will contribute towards competitiveness and thus stimulate industrial and economic development. This implies minimal revenue loss, which will be mitigated by economic benefits arising from economic growth that will be stimulated by EPAs. Economic growth is expected from sectors such as cotton and textile where the EU market has been opened through relaxation of the rules of origin, and removal of high tariffs and tariff escalation for agro processed products.

Over 65.4% of EU exports into Kenya and EAC countries were coming in duty free under the EAC Customs Union. This is a demonstration that bulk of EU's exports into Kenya and the EAC region are mainly raw material and capital goods.

b) **Exclusion of sensitive products accounting for 17.4% of total trade with the EU**

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

c) Negotiated asymmetrical and simplified rules of origin which are supportive of agricultural and industrial development, laying emphasis on value addition for agricultural products. The agreed rules would achieve what the Lome and Cotonou Conventions failed to achieve i.e. promote industrial development in the EAC region;

d) **Comprehensive Development Chapter and Development Matrix**

The Matrix contains comprehensive infrastructural and non-infrastructural development program to address infrastructural and non-infrastructural constraints that have been singled out as inhibiting industrial and agricultural competitiveness.

e) Negotiated improved predictability of EAC's and EU's trade regulatory requirements such as SPS requirements and Product Quality Standards through a negotiated protocol on SPS management; and a capacity building program for trade facilitation institutions such as KEPHIS, KEBS, Department of Veterinary, Customs Department, etc.

f) Integrating marine and inland fisheries in EPAs. This is expected to unlock a huge potential for Kenya marine fisheries, which if fully exploited is expected to rival current dominance of inland fisheries exports, to the benefit of Kenya's overall economic development. The Cabinet recently approved negotiations for Bilateral Fisheries agreement with the EU which will enhance the development and utilization of the marine resources among other options.

g) **Trade Remedies provisions- Safeguard, Countervailing measures**

Over and above the exclusion of agricultural and products of strategic importance to the EAC economies, and the provisions to curb subsidised agricultural products from entering EAC on duty free basis, the agreement contains elaborate provisions on Safeguards and Countervailing measures aimed at protecting the agriculture and industrial sectors from unforeseen influx of imports and subsidised imports from the EU.

h) **Amendment Clause**

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

i) **Review Clause - 5year review**

The agreement provides for a **comprehensive review** of the entire agreement after every 5 years. This is another flexibility clause that allows the parties to amend any provisions which pose challenges in the cause of implementation of the EPA agreement, or in response to the changing circumstances.

j) **Exit clause**

The agreement provides for flexibility to the Parties to **quit t**he agreement if they are not satisfied in the cause of the implementation. Exiting the agreement requires one to give a **one** year simple notice to the other Party.

3.0 SUBMISSIONS FROM THE MINISTRY OF INDUSTRY, TRADE AND COOPERATIVES

On 13th September 2016, the Committee met with the Cabinet Secretary for Industry, Trade and Cooperatives for a briefing session. During his presentation, the Cabinet Secretary highlighted the following:

3.1 Status of EPA negotiations

1. Kenyan exports are currently accessing the EU market Quota Free Duty Free under the EU Market Access Regulation (MAR) 1528/2007 that was signed between the EU and the EAC in 2007. This was done when it was apparent that the EPA negotiations that had been started in 2000 to address the shortcomings of the non-reciprocal preferential market access under the Lome Convention could not be concluded by December 2007 as envisaged.

2. EAC-EU- EPA negotiations were concluded, and EPA Text initialed by the Senior Officials (Principal/Permanent Secretaries) on 14th October 2014. Due to the delays in the conclusion, EAC missed the deadline of 1stOctober 2014. As a result of this and due to its categorization as a developing county, unlike the rest of EAC countries which are categorized as least developed countries, Kenya was placed under GSP. This meant that Kenya lost its Quota Free Market Free access to the EU market. This lead to huge losses of Kenya exports estimated to be KES 1 billion monthly. Kenya was reinstated into the Market Access Regulation in December 2014when her government promised the EU that it could rally her EAC colleagues to sign the EPA by 30th September 2016.

3. The text has been signed by all EU Partner States and is ready for EAC Partner States to sign as well. Decision for EAC Partner States to sign the EPA by June 2016 was made during the EAC Council and Heads of State meeting in February and March 2016.

4. As the regional process of signing and ratifying the EPA is ongoing, Kenya has been put on Notice by the EU that unless the country signs and ratifies the EPA by 30th September 2016, it would lose its Duty Free Quota Free EU market access preference.

5. The EU Commission in July 2016 submitted a proposal to the EU Parliament to withdraw Kenya's market preferences in the EU because the country had not signed the EPA and was

unlikely to have signed and ratified the EPA by 30th September 2016. This proposal was subject of deliberation by the EU Parliament International Committee on 31st August 2016.

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

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

3.2 Situational Analysis

The Scope of the EAC-EU EPA negotiations was premised on Trade in Goods, Fisheries, Agriculture, Economic and Development Cooperation, Institutional Provisions, Dispute settlement, General Exceptions and finally General Provisions. These are itemized below.

Trade in Goods – EAC Exports to the EU

Feature	**What it means for EAC Partner States and Kenya**
EU committed to provide FULL DUTY-FREE AND QUOTA-FREE market access conditions for goods originating in the EAC Partner States into the market of the EU on a secure, long-term and predictable basis [Article 10]	• Over 1,000 tariff lines which were subjected to import duties now liberalized under EPA • Over 60% of Kenya's total exports which would face GSP tariffs if no EPA now saved from facing such tariffs
Flexible Asymmetric Rules of Origin [Article 9 and EAC-EU EPA Protocol I]	• Easy to meet rules for agro-processed as well as other manufactured products • Broadened raw material source base -

	regional, EU and EAC Partner countries, among others

What EU Market Access Offer Means for Kenya (Figures in Euro Millions)

Meat of bovine animals, fresh or chilled [HS0201]	2008	2009	2010	2011	2012	2013	2014	2015
Total EU Intra Imports	6,930	6,856	7,234	7,910	8,246	8,044	8,027	8,385
Extra-EU Imports	890	762	903	1,012	1,021	1,076	1,216	1,370
Extra-EU Ms as a % of Total EU market	13%	11%	12%	13%	12%	13%	15%	16%
Key Africa Supplier Countries								
Botswana	21	25	32	2	1	11	15	28
Namibia	21	25	37	23	25	26	32	39

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Key Africa Supplier Countries								
Botswana	21	25	32	2	1	11	15	28
Namibia	**21**	**25**	**37**	**23**	**25**	**26**	**32**	**39**

Meat of bovine animals, frozen [HS Code 0202]	2008	2009	2010	2011	2012	2013	2014	2015
Total EU Intra EU Imports	1,227	1,130	1,212	1,300	1,413	1,338	1,312	1,410
Extra-EU Imports	405	448	404	441	419	422	409	436
Extra-EU Ms as a % of Total EU market	33%	40%	33%	34%	30%	32%	31%	31%
Key Africa Supplier Countries								
Botswana	8.7	8.5	13.0	0.8	0.3	10.8	10.6	10.9
Namibia	4.4	9.0	8.6	8.0	11.7	17.0	8.6	15.8

What EU Market Access Offer Means for Kenya (Figures in Euro Millions)

Fish, fresh or chilled, excluding fish fillets and other fish meat of heading 0304 - [HS 0302]	2008	2009	2010	2011	2012	2013	2014	2015
Total EU market	3,200	3,237	3,907	4,052	4,002	4,638	4,959	5,249
Extra-EU Imports	2,319	2,494	3,045	2,935	2,981	3,757	4,100	4,443

Extra-EU Ms as a % of Total EU market	72%	77%	78%	72%	74%	81%	83%	85%
Key Africa Supplier Countries								
Kenya	0.61	0.02	0.03	0.90	0.61	0.06	1.72	1.16
Madagascar	1.82	1.47	2.61	2.59	2.19	2.35	2.38	2.49
Mauritius	0.44	0.51	0.47	0.46	0.57	0.85	0.85	1.32
Morocco	85.21	80.00	67.19	58.94	52.54	52.33	53.44	54.25
Mozambique	0.69	0.34	0.35	0.17	0.12	0.07	0.05	
South Africa	52.22	42.54	33.95	33.11	27.35	15.49	13.64	12.86
Tunisia	11.95	6.94	4.90	5.56	3.84	3.18	3.03	3.83

What EU Market Access Offer Means for Kenya (Figures in Euro Millions)

	2008	2009	2010	2011	2012	2013	2014	2015
Fish, frozen, excluding fish fillets and other fish meat of heading 0304 [HS 0303]								
Total EU Intra Imports	1,364	1,199	1,300	1,502	1,566	1,560	1,632	1,790
Extra-EU Imports	1,111	1,145	1,218	1,301	1,341	1,237	1,269	1,340
Extra-EU Ms as a % of Total EU market	81%	95%	94%	87%	86%	79%	78%	75%
Key Africa Supplier Countries								
Kenya	5.00	2.66	3.45	2.83	2.59	2.15	1.59	2.28

Madagascar	1.00	0.74	0.45	1.04	1.06	0.85	0.84	1.15
Mauritius	1.98	1.46	0.98	7.96	9.31	6.15	4.74	6.96
Morocco	30.00	29.82	25.42	29.05	40.08	44.92	44.56	42.65
Namibia	48.68	48.36	44.30	48.44	51.78	41.70	42.71	47.98

What EU Market Access Offer Means for Kenya (Figures in Euro Millions)

	2008	2009	2010	2011	2012	2013	2014	2015
Fish, frozen, excluding fish fillets and other fish meat of heading 0304 [HS 0303]								
Total EU Intra Imports	1,364	1,199	1,300	1,502	1,566	1,560	1,632	1,790
Extra-EU Imports	1,111	1,145	1,218	1,301	1,341	1,237	1,269	1,340
Extra-EU Ms as a % of Total EU market	81%	95%	94%	87%	86%	79%	78%	75%
Key Africa Supplier Countries								
~~Kenya~~	~~5.00~~	~~2.66~~	~~3.45~~	~~2.83~~	~~2.59~~	~~2.15~~	~~1.59~~	~~2.28~~
Madagascar	1.00	0.74	0.45	1.04	1.06	0.85	0.84	1.15
Mauritius	1.98	1.46	0.98	7.96	9.31	6.15	4.74	6.96
Morocco	30.00	29.82	25.42	29.05	40.08	44.92	44.56	42.65
Namibia	48.68	48.36	44.30	48.44	51.78	41.70	42.71	47.98

What EU Market Access Offer Means for Kenya (Figures in Euro Millions)

	2008	2009	2010	2011	2012	2013	2014	2015
Cut flowers and flower buds of a kind suitable for bouquets ...[HS 0603]								
Total EU market	2,688	2,500	2,646	2,693	2,718	2,778	2,861	2,961
Extra-EU Imports	913	884	914	953	984	958	1,053	1,099
Extra-EU Ms as a % of Total EU market	34%	35%	35%	35%	36%	34%	37%	37%
Key Africa Supplier Countries								
Ethiopia	67.53	90.57	110.39	126.69	140.62	145.86	165.06	173.37
Kenya	370.89	344.76	334.69	355.88	373.97	361.27	396.20	410.91
Morocco	3.38	3.15	3.16	3.04	3.09	4.52	5.88	6.49
South Africa	15.77	15.69	18.96	17.28	16.54	16.80	18.42	18.11
Tanzania, United Republic of	11.39	10.46	8.85	8.20	7.66	8.65	7.60	6.65
Uganda	24.85	25.12	22.71	23.81	25.81	27.95	26.06	25.91

What EU Market Access Offer Means for Kenya (Figures in Euro Millions)

	2008	2009	2010	2011	2012	2013	2014	2015
Edible vegetables and certain roots and tubers [HS Chapter 7]								
Total EU market	15,140	14,464	16,551	16,263	17,126	18,821	17,921	19,694
Extra-EU Imports	3,624	3,268	3,635	3,769	3,667	3,832	3,911	4,299
Extra-EU Ms as a % of Total EU market	24%	23%	22%	23%	21%	20%	22%	22%

Key Africa Supplier Countries								
Burkina Faso	2.22	3.06	2.13	1.53	2.10	2.05	2.18	2.42
Cameroon	2.41	2.43	2.18	2.14	2.11	1.83	2.22	2.46
Ethiopia	17.34	21.78	18.27	24.43	34.10	35.49	39.18	24.91
Ghana	34.62	17.03	18.02	18.69	16.80	19.86	20.98	20.31
Kenya	188.80	158.67	167.54	165.74	173.33	152.57	160.99	179.17
South Africa	21.69	15.44	14.73	18.67	17.13	16.14	18.88	20.20
Tanzania, United Republic of	5.27	4.42	4.64	7.78	4.99	8.56	10.89	11.73
Uganda	4.30	4.08	4.68	4.61	4.83	6.56	7.79	10.14
Zimbabwe	4.11	4.09	4.07	5.83	8.60	13.50	15.19	18.26

What EU Market Access Offer Means for Kenya (Figures in Euro Millions)

	2008	2009	2010	2011	2012	2013	2014	2015
Preparations of meat, of fish or of crustaceans, molluscs or other aquatic invertebrates [HS Chapter 16]								
Total EU market	8,621	8,385	8,687	9,767	10,527	10,864	11,211	11,892
Extra-EU Imports	4,812	4,474	4,645	5,126	5,642	5,754	5,541	5,739
Extra-EU Ms as a % of Total EU market	56%	53%	53%	52%	54%	53%	49%	48%
Key Africa Supplier Countries								
Ghana	96	94	95	92	119	109	112	171
Kenya	30	11	16	22	26	13	24	18

Madagascar	23	24	31	33	37	43	38	36
Mauritius	178	145	179	193	266	277	247	235
Morocco	286	338	356	333	375	390	380	400
South Africa	15	16	14	17	21	25	20	21

What EU Market Access Offer Means for Kenya (Figures in Euro Millions)

	2008	2009	2010	2011	2012	2013	2014	2015
Preparations of vegetables, fruit, nuts or other parts of plants [HS Chapter 20]								
Total EU market	13,968	13,492	13,842	15,313	15,889	16,331	16,773	17,694
Extra-EU Imports	4,405	3,880	4,166	4,695	4,911	4,990	5,339	6,203
Extra-EU Ms as a % of Total EU market	32%	29%	30%	31%	31%	31%	32%	35%
Key Africa Supplier Countries								
Egypt	19	8	7	8	10	14	39	28
Ghana	2	1	4	4	7	7	3	6
Kenya	102	75	80	101	70	89	84	96
Morocco	105	93	97	100	94	93	111	108
South Africa	95	92	107	100	99	109	110	121

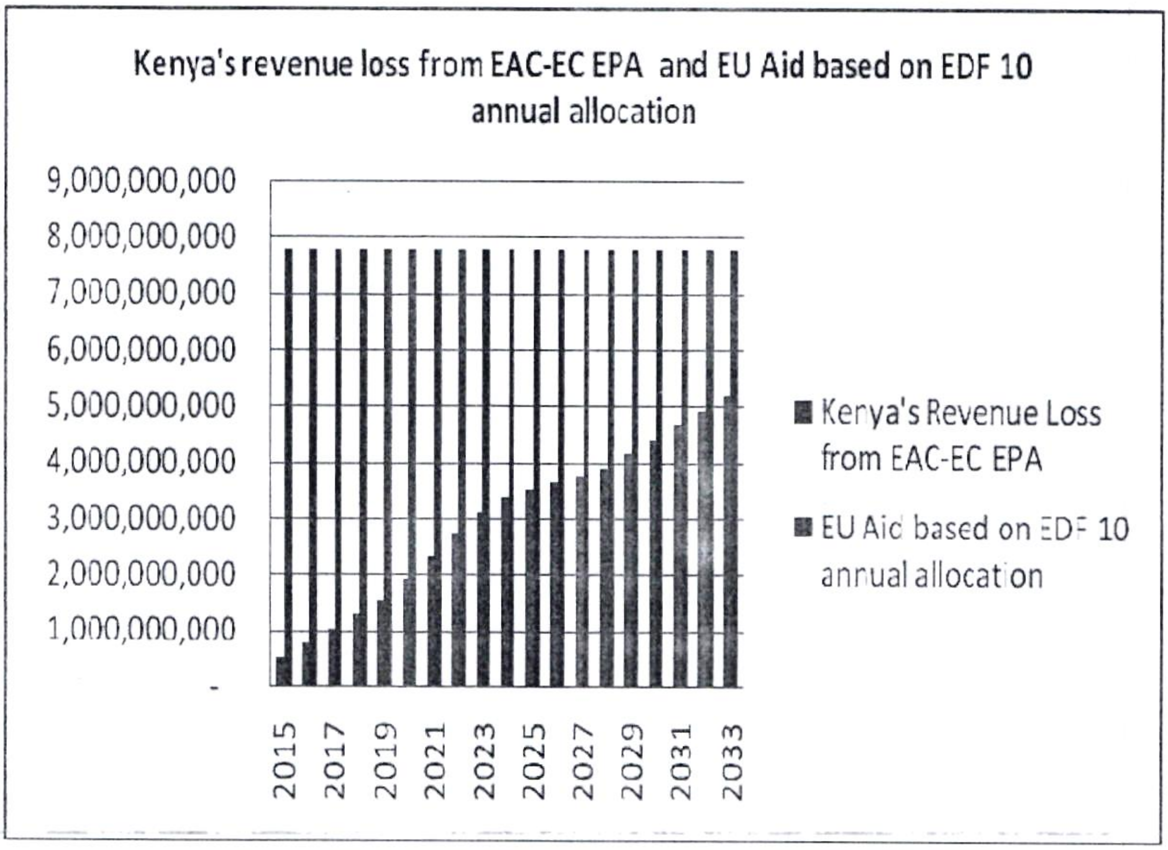
What EU Market Access Offer Means for Kenya (Figures in Euro Millions)

	2008	2009	2010	2011	2012	2013	2014	2015
Articles of apparel and clothing accessories, knitted or crocheted [HS Chapter 61]								
Total EU market	24,576	23,402	25,393	27,340	26,978	27,930	30,798	32,905
Extra-EU Imports	28,527	27,940	31,770	34,440	33,190	33,450	36,810	40,340
Extra-EU Ms as a % of Total EU market	116%	119%	125%	126%	123%	120%	120%	123%
Key Africa Supplier Countries								
Ethiopia	0.0	0.2	2.4	19.3	22.5	29.6	31.7	31.5
Kenya	0.3	0.2	0.2	0.6	0.3	1.1	3.6	2.2
Lesotho	1.2	1.2	1.1	0.8	1.3	0.4	0.1	0.2
Madagascar	143.5	114.3	111.4	131.4	129.8	137.8	141.2	163.7
Mauritius	317.9	285.0	255.1	247.9	225.0	195.3	191.9	179.1
Morocco	672.5	555.2	625.8	678.7	634.1	634.9	683.5	652.2
Tanzania, United Republic of	1.1	0.8	1.3	0.8	1.1	0.5	1.0	1.0
Tunisia	704.8	654.6	686.7	711.9	614.7	576.9	608.8	569.2

Trade in Goods – EAC Market Liberalization for EU Imports

Category of products	**No. of Tariff Lines**	**EAC CET tariff rates**	**Tariff phase down period and rate**	**% of Trade (in value)**	**Rationale used in the negotiations**

Exclusion List	1,323		Will Not be Opened up to the EU imports	17.4%	Protection of agriculture, food security and rural development, industry and regional integration
Raw material/capital goods	1,920	0%	Tariff already at zero so no further reduction	65.4%	Already zero rated under EAC Customs Union
Intermediate products	1,040	10%	Liberalization to start 7 years after EPA comes to effect. If 2017, Liberalization to start in 2023 and end in 2032..	14.6%	Industrial inputs which EAC industries import from EU but which are not at the moment produced in the EAC
Finished products	960	25%	Liberalization to start 12 years after EPA comes to effect. If 2017, Liberalization to start in 2028 and end in 2041	2.6%	Non strategic products in the context of EAC industry and Agricultural sector development.
Total EAC trade to be liberalized				82.6%	



4.0 COMMITTEE OBSERVATIONS

Having considered the EPA, the Committee made the following observations:-

4.1 Objectives of the EPA

The overall objectives of EPAs are to ensure sustainable development of Kenya and other ACP countries, their smooth and gradual integration into the global economy and eradication of poverty. Specifically EPAs aim at: -

- Promoting sustained growth;
- Increasing the production and supply capacity;
- Fostering the structural transformation and diversification of Kenyan economy
- Support for regional integration.

4.2 EPA negotiation process

The EPA negotiation process started way back in 2000 when it became apparent that the Preferential Trade Regime based was on non-reciprocal Lome Convention through which ACP trade with the EU could not achieve its intended objective of promoting Industrial Development within the ACP countries. This trade arrangement saw export of raw materials instead of industrialization. Exports remained scarcely diversified because of effective rate protection on further processing. Further, ACP's share of total export to EU continued to decline from 6.7% in 1976 to 2.0% in 2007.

Kenya and other ACP countries committed under the Cotonou Partnership Agreement (Art. 36 to 38) to begin negotiations on a new WTO compatible trade arrangements -Economic Partnership Agreements (EPAs). The negotiations were conducted in two phases:

- **The first Phase,** which was the All-ACP level, began in September 2002 with the launch of negotiations on the objectives and the principles of the EPAs as well as issues of common interest to all ACP states. This phase was concluded in 2003.
- **The second phase**, which began in 2003, is at the regional level. This phase dealt with market access issues, development, trade in services, agriculture, fisheries and trade related issues such as intellectual property rights, Legal and institutional arrangements.

The ACP region had initially configured itself into six distinct regional groups under which negotiations with the EU were taking place. These regional groups are as follows: East and Southern Africa (ESA), Southern Africa Development Cooperation (SADC), Economic Commission of West African States (ECOWAS), Central Africa Monetary Union (CEMAC), and The Caribbean and Pacific.

Since the launch of the EPA negotiations, Kenya along with other three EAC countries (Burundi, Rwanda and Uganda) were negotiating EPAs under the ESA configuration, whose membership of 16 countries include: Burundi, Comoros, DR Congo, Djibouti, Eritrea, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Uganda, Zambia and Zimbabwe. Tanzania, a member of the EAC Customs Union was on the other hand pursuing EPA under SADC configuration.

The EAC countries' negotiations of EPAs under different configurations posed a challenge to these countries, because by virtue of their being members of the EAC Customs Union, they were bound by the EAC Customs Union Protocol and the EAC Customs Union management Act to sign EPAs as one customs territory. On October 13th 2007, the EAC Ministers of Trade directed the EAC partner States to harmonize their EPA position and submit a harmonized market access offer to the EC. A strong collaboration between EAC and ESA was also recommended in order to ensure that positions being pursued at EAC were in tandem with COMESA and SADC regional integration processes. In view of these developments, Kenya negotiated EPAs under EAC arrangement until its successful conclusion in October 2014.

It is worth noting that all the EU countries have signed and ratified the EPAs with Kenya and Rwanda being the only countries from the EAC that had signed as at 30th August 2016.

The Government set up an EPA negotiation platform comprising of Government Agencies and Ministries, Private Sector and Civil Society Organizations. The negotiations that lasted over 14 years were backed by authoritative sectoral research that was geared towards informing Kenya's position. One of the renowned studies is the KIPPRA Study of 2006 on the impact of EPA, which guided on issues that needed to be considered in order not to subject the economy to negative impact. As a result of this well researched position, Kenya took lead in the EAC negotiations.

On compliance with the Treaty Making and Ratification Act, it was noted that due process was followed i.e. the EPA was duly approved by the Cabinet and signed before presentation to the National Assembly for ratification.

4.3 Kenya's export to EU

Currently, Kenya accesses the EU market under Every But Arms (EBA). If Kenya will not have ratified the EPAs by 1stOctober 2016 the EC has given notice to remove from this trading arrangement and place her under the Generalized System of Preferences (GSP) regime, which is less favourable compared to EPA since duties ranging from 5% to 22% will be imposed on Kenyan exports to the EU. The other EAC countries will continue accessing the EU market under the EBA arrangement since they are categorised as Least Developed countries. Kenya is categorised as a developing country.

EU remains the second largest destination for Kenya's exports- about 22% of Kenya's total exports goes to the EU, with the United Kingdom being the leading export market, followed by the Netherlands and Germany. Kenya's export to EU mainly consists of:-

i. Horticultural Products (Flower-36% market share, Fruits & Vegetables);
ii. Coffee (Beans roasted);

iii. Tea;
iv. Textiles and Apparel;
v. Fish and fish preparations;
vi. Tobacco ;
vii. Soda ash;
viii. Pyrethrum extract- has continued to decline with time due to the development of artificial substitutes.

4.4 Public Participation

Pursuant to Article 118 of the Constitution and Section 8 of the Treaty Making and Ratification Act, the Committee invited the views of the general public regarding the EPAs through the print media on 10th September 2016. However, at the time of compiling this report, the Committee had not received any memorandum from the public.

4.5 Constitutional Implications

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

4.6 Benefits of the EPAs to the Kenya Economy

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

a) **Secure and maintained EU Market for Kenyan Goods:**

   Duty free, quota free market access in the EU: The EU offered EAC duty free quota free market access for all products, including manufactured/processed products;

b) **Rules of Origin**: Simplified Rules of Origin have been agreed with the EU that makes it easier for Kenya to export into the EU market a wide range of products. The negotiated flexibilities in the rules are supportive of agricultural and industrial development, laying emphasis on value addition for agricultural products. The agreed rules would promote industrial development in the EAC region.

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

c) **Opening up of new areas for exports in the EU:** Over **1,000** tariff lines, most of which are of Kenya's export interest, which were restricted in the previous regime due to high tariffs and tariff escalation in the EU market have now been opened up under the EPA;

d) **EAC-EU platform** that will be used to discuss and resolve EU **Standards and SPS** measures that have continued to constrain Kenya's exports to the EU;

e) **Platform to address** the supply side constraints that hampered Kenya's ability to exploit EU market access opportunities, through the commitments to support the infrastructural and non-infrastructural development program/projects in the EPA Development Matrix geared towards industrial and agricultural competitiveness. The funding of this program is foreseen under the EDF and other funding modalities that are foreseen in the EPA.

f) **Secure investments and jobs** in the Agro-processing and other manufacturing industries, floriculture and horticulture Sectors, Fisheries, Chemical and other related sectors.

g) Losing the EU market would mean losing **foreign earnings**, which may trigger currency instability.

4.6 National Interests that may be affected by ratification of EPAs

i) EU market preservation

The EU is the second most important destination market for Kenya's exports, accounting for 22% or KShs126billion of total exports in 2015. This market can only be guaranteed by ratification of the EPA. Kenya is already on notice from the EU that unless the EPA is ratified and notified by 30th September 2016, this market will be lost with effect from 1st October 2016, as a result of high tariff that will be imposed on Kenyan exports under the alternative trade arrangement - Generalized System of Preferences.

ii) Employment

Ratification of the EPA will save the country from losing employment of the youth and women, who are the majority of the labour force in enterprises that are producing for EU market. An estimated 4 million people will have their jobs and livelihoods protected if EPA is ratified.

iii) Investments

Ratification of the EPA will save the country from the threat of losing investments estimated at over KES200billion in ventures that are producing targeting the EU market.

iv) EU Market Potential

The EPA will increase exports to the EU for the over 1,000 tariff lines that the EU opened under this framework. These include products that Kenya can easily produce and export to the EU, such as beef, several types of meat, agro-processed products, textile and apparel. The market potential for products that Kenya has got export interest in the EU is estimated at over Euro100billion against current Kenya's total export to the EU that in 2015 was a paltry Euro1.3billion.

v) Regional and domestic market opening for EU products;

Kenya, along with the rest of the EAC Partner States has committed to liberalize 82.6% of the regional market to the EU imports. Caution has been taken in taking up this liberalization by ensuring that the economy is shielded from any negative effects.

a) 65.4% of the trade that EAC Partner States committed to liberalize is already zero rated under the EAC Common External Tariff, hence no impact to the economy.

b) 14.6% of the trade that EAC Partner States committed to liberalize comprises intermediate products currently attracting CET rate of 10%. Rationale for liberalization of these products being enhanced competitiveness of industries that import such products from the EU

c) 2.6% of the trade that EAC Partner States committed to liberalize comprises of few finished products which attract CET rate of 25%. The rationale for offering these products for liberalization was: -

   - They are not strategic products as revealed by EAC trade flows and therefore pose minimal threat to regional industries.
   - Infant industry clause in the EPA allows EAC to pick on any of the products under this category or under intermediate goods category and protect them from liberalization for a period of 15years.

d) Exclusion of sensitive products accounting for 17.4% of total trade with the EU

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

4.7 Measures to mitigate any negative effects arising from EPAs

(a) Trade Remedies provisions- Safeguard, Countervailing measures

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

b) Amendment Clause

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

c) Review Clause -5year review

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

d) Exit clause

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

4.8 Compliance of the EPAs with the House resolution of 9th July 2013

During the negotiations on the outstanding/contentious issues the resolutions of the House as passed on 9th July, 2013 were taken into account. The contentious issues that had been highlighted by the House including the Most Favoured Nation (MFN) Clause, Export Taxes, Agriculture (Domestic Support and Export Subsidies), and Reference to Cotonou Partnership Agreement (Non-Execution Clause); Good Governance in tax area and the Turkey Clause, and less restrictive rules of origin were resolved in favour of the EAC. Languages that have no negative effect on the EAC were agreed. Actual agreed language on each of the outstanding articles itemized below

ARTICLE 15: Duties and taxes on exports

EAC managed to maintain flexibility/policy space to use export tax for industrial, development, food security and revenue purposes.EPA Council can only review export tax for renewal purposes.

ARTICLE 16: More favourable treatment resulting from a free trade agreement

EAC managed to remove the automaticity the EU was seeking to benefit from any more favourable treatment applicable as a result of EAC entering into free trade agreement with third parties. The burden of proof is on the EU and each case will be negotiated on how to deal with, no automatic treatment.

ARTICLE 13: Domestic policy measures

1. Each Party shall ensure transparency in the area of agricultural support related to trade in agricultural products. To this end, the EU Party shall report periodically within the Agriculture Dialogue to the EAC Party on the legal basis, form and amount of such support. Such information is deemed to have been provided if it is made available by the Parties or on their behalf on a publicly accessible website.
2. The EU Party shall not grant export subsidies to agricultural products to the EAC countries with effect from the entry into force of this Agreement. The EPA Council shall review this after 48 months.
3. Furthermore, the Committee foreseen in Article 2A shall examine issues that may arise in relation to the access of the Parties Agricultural products to each other's market. The Committee may make recommendations to the EPA Council in accordance with Article (xx).

ARTICLE 2A: Comprehensive Dialogue

The EAC managed to have the EU agree **not to grant export subsidies** to agricultural products to the EAC countries with effect from the entry into force of this Agreement (13(2)) above. And to address agriculture issues arising from agriculture domestic support in the EU, such as competitiveness of EAC agriculture products (13(3)).

ARTICLE 42: Relations with the Cotonou Agreement

The EAC agreed to the above language since it **does not commit** EAC beyond what is in the Cotonou Agreement, which all the EAC Partner States are signatories. This provision is the link to Cotonou and will therefore lapse with the expiry of Cotonou Agreement.

Chapter VII: Good Governance in the Tax Area

The EAC agreed to this provision since it only **recognizes** the importance of principle of good governance in the area of taxation, and more importantly within the **respective laws and regulations** of each country.

Economic and Development Cooperation:

The EU agreed to support infrastructure projects contained in a detailed matrix developed by the EAC. The matrix, together with benchmarks and indicators will form part of the Agreement, together with the other annexes such as rules of rules of origin, SPS, among others.

Turkey Clause .

EAC agreed to this provision since it d**oes not commit** when the EAC should start negotiations with Turkey. This gives room to the EAC to assess the implication negotiating bilateral agreement with Turkey. Moreover, Turkey had written to the EAC requesting for negotiations for Free Trade Agreement and the EAC Ministers responded that the matter shall be studied and will start negotiations when ready.

4.9 The number of states that are party to the EPAs

On the EAC side, there are 5 Partner States, while on the EU side there are 28 EU Member States.

4.10 Reservations

The EPA does not permit reservations or declarations during ratification. The agreement as it stands is complete with all its provisions having been agreed by the Parties.

4.11 Obligations imposed on Kenya by EPA

Kenya, along with the rest of the EAC Partner States has committed to liberalize 82.6% of the regional market to the EU imports. Caution has been taken in taking up this liberalization by ensuring that the economy is shielded from any negative effects.

i) 65.4% of the trade that EAC Partner States committed to liberalize is already zero rated under the EAC Common External Tariff, hence no impact to the economy.

ii) 14.6% of the trade that EAC Partner States committed to liberalize compriseintermediate products currently attracting CET rate of 10%. Rationale for liberalization of these products being enhanced competitiveness of industries that import such products from the EU

iii) 2.6% of the trade that EAC Partner States committed to liberalize comprise of few finished products which attract CET rate of 25%. The rationale for offering these products for liberalization was: -

- They are not strategic products as revealed by EAC trade flows and therefore pose minimal threat to regional industries.
- Infant industry clause in the EPA allows EAC to pick on any of the products under this category or under intermediate goods category and protect them from liberalization for a period of 15years.

5.0 RECOMMENDATION

The National Assembly approves the ratification of the Economic Partnership Agreement (EPA) pursuant to Section 8 of the Treaty making and Ratification Act of 2012.

Signed ....**Date**...19-09-2016...........................

(HON. BENJAMIN LANGAT, MP)

CHAIRPERSON, DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE

NATIONAL ASSEMBLY
RECEIVED
06 SEP 2016
SPEAKER'S OFFICE
P. O. Box 41842, NAIROBI.

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KENYA

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

Date: 7th September, 2016

Mrs. L. Wanjiru
Please deal as discussed. There may be a special sitting on 20th to discuss.
Pjenre. S
8/9/16.

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

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

Dear Colleagues

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

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

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

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

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

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

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

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

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

(i) Memorandum on the EPA prepared by the State Department of Trade and approved by the Cabinet Secretary for Industry, Trade and Cooperatives in line with Part III of Treaty Making and Ratification Act No. 45 of 2012;

(ii) EAC-EU-EPA final English text. The Kiswahili translated version is also available for perusal if required; and,

(iii) Evidence of Cabinet approval. The Cabinet during its last meeting held on 15th June, 2016, considered and approved the signing and ratification of the EAC-EU (EPA).

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

Yours

Dr. Chris Kiptoo
PRINCIPAL SECRETARY

Copy to:

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

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

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

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

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

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

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

Mrs. Phyllis J. Kandie, EGH
Cabinet Secretary
Ministry of East African Community (EAC)
Labour and Social Protection
NAIROBI

Mr. Willy Bett
Cabinet Secretary
Ministry of Agriculture, Livestock & Fisheries
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Amb. Monica Juma, DPhil, CBS
Principal Secretary
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Mr. Njee Muturi, CBS
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Dr. Richard Lesiyampe, CBS
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Mr. Andrew Tuimur
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State Department of Livestock
Ministry of Agriculture, Livestock & Fisheries
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Prof. Micheni Ntiba, CBS
Principal Secretary
State Department for Fisheries and the Blue Economy
Ministry of Agriculture, Livestock & Fisheries
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Encl

MINISTRY OF INDUSTRY, TRADE AND COOPERATIVES

PARLIAMENT MEMORANDUM

ON

THE ECONOMIC PARTNERSHIP AGREEMENT

BETWEEN

EAST AFRICAN COMMUNITY PARTNER STATES ON THE ONE HAND

AND

THE EUROPEAN UNION AND ITS MEMBER STATES ON THE OTHER HAND

1.0 OBJECTIVES OF THE MEMORANDUM

The objectives of this Memorandum are to:

i. Inform both houses of Parliament on the finalisation of the Economic Partnership Agreement (EPA) negotiations

ii. Inform both houses of approval by Cabinet in June 2016 for signing and ratification; and

iii. Seek Parliament's ratification of the EPA in good time to allow for notification of the ratification to the EU Council before 30th September 2016, the deadline that Kenya needs to meet in order to avoid trade disruption in the EU market.

2.0 BACKGROUND

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

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

The main objective of the preferential trade regime was to promote industrial development in the ACP countries. However, the preferential trade regime did not achieve its overall objective, since the share of Kenya's exports in the EU market remained very low and scarcely diversified.

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

3.0 PROBLEM ANALYSIS AND JUSTIFICATION

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

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

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

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

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

4.0 CONSTITUTIONAL IMPLICATIONS

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

5.0 EXPECTED BENEFITS OF THE AGREEMENT

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

1. **Secure and maintained EU Market for Kenyan Goods:**

   i. **Duty free, quota free market access in the EU**: The EU offered EAC duty free quota free market access for all products, including manufactured/processed products;

   ii. **Rules of Origin**: Simplified Rules of Origin have been agreed with the EU that makes it easier for Kenya to export into the EU market a wide range of products. The negotiated flexibilities in the rules are supportive of agricultural and industrial development, laying emphasis on value addition for agricultural products. The agreed rules would achieve what the Lome and Cotonou Conventions failed to achieve, i.e. promote industrial development in the EAC region.

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

iii. **Opening up of new areas for exports:** Over **1,000** tariff lines, most of which are of Kenya's export interest, which were restricted in the previous regime due to high tariffs and tariff escalation in the EU market;

iv. **Negotiated understanding/platform** to discuss and resolve EU **standards and SPS** measures that have continued to constraint Kenya's exports to the EU;

v. **Platform to address the** supply side constraints that hampered Kenya's ability to exploit EU market access opportunities, through the commitments to support the infrastructural and non infrastructural development program/projects in the EPA Development Matrix geared towards industrial and agricultural competitiveness. The funding of this program is foreseen under the EDF and other funding modalities that are foreseen in the EPA.

vi. **Secure investments and jobs** in the Horticulture Sector, Fisheries, and in the chemical and other related sectors. Some investors had indicated relocating their investments to the neighbouring countries which benefits from EBAs due to their LDC status. This would translate into job loses.

vii. Losing the EU market would mean losing foreign earnings which may trigger currency instability.

2. **Other implication to the Economy and risk mitigation measures;**

a) Limited market opening for EU products;

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

i) **65.4% being products that are already attracting a tariff of 0% under the Common External Tariff**. The products are mainly raw material, capital goods, medicaments and other essential goods.

ii) **14.6% being intermediate products currently attracting CET rate of 10%**. Rationale for liberalization of these products being enhanced competitiveness of industries that import such products from the EU

iii) **2.6% being few finished products which attract CET rate of 25%**. The rationale for offering these products for liberalization was: -

- They are not strategic products as revealed by EAC trade flows and therefore pose minimal threat to regional industries.
- Infant industry clause in the EPA allows EAC to pick on any of the products under this category or under intermediate goods category and protect them from liberalization for a period of 15years.

b) **Exclusion of sensitive products accounting for 17.4% of total trade with the EU**

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

c) Integrating marine and inland fisheries in EPAs

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

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

d) **Trade Remedies provisions- Safeguard, Countervailing measures**

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

e) **Amendment Clause**

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

f) **Review Clause -5yr review**

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

g) **Exit clause**

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

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

a) The EAC EPA negotiations were guided by the Summit directives of 2002 which were reiterated in June and August 2007. The EAC Partner States in compliance with this directive started negotiating with the EU in October 2007 after leaving East and Southern Africa EPA Negotiating configuration (in the case of Burundi, Kenya, Rwanda and Uganda) and SADC – EPA Configuration (in the case of Tanzania).

b) The EAC Partner States engaged the EU in the EPA negotiations as a bloc for over 9 years that culminated in the initialing of the EPA Text in October, 2014 signifying the conclusion of the negotiations.

c) The EAC working jointly with the EU undertook the legal scrubbing and translation of EPA text into EU languages and Kiswahili, a process that was finalized by early 2016.

d) When the above process was completed, SCTIFI of 26th February 2016 instructed the Secretariat to liaise with the EU to organize the signing of EPA by June, 2016 in view of the impending deadline of 1st October, 2016. The EAC Council of Ministers of 29th February 2016 upheld the decision of SCTIFI.

e) This directive was further supported by the SCTIFI held on 27th May, 2016 which agreed that EAC-EU-EPA be signed in the first week of August 2016 during the Meeting of the Council of Ministers, and during the Sectoral Council of Ministers responsible for EAC on 30th June, 2016.

f) During Extra- Ordinary SCTIFI meeting (via Video Conference) attended by all Partner States except Tanzania, four Partner States confirmed their availability to sign the EPA but Tanzania indicated that she was not yet ready to sign until the prevailing circumstances allows.

g) Kenya and Rwanda, on the basis of the above decisions, have proceeded to sign in view of the fast approaching deadline of 1st October, 2016 pending the signing by the other EAC Partner States.

h) Uganda has indicated intent to sign the EPA during the Summit on 8th September 2016.

i) The Summit is expected to give guidance on the EPA with a view to accommodating countries that have given indication to sign at a later date.

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

6.0 FINANCIAL IMPLICATIONS

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

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

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

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

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

7.0 WAY FORWARD

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

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

8.0 RECOMMENDATIONS TO PARLIAMENT

The Parliament is requested to:

a) Take note of the content of this Memorandum;

b) Take note of the Cabinet approval for signing and ratification; and,

c) Ratify the Economic Partnership Agreement in good time to meet the deadline of 1st of October, 2016.

Signed ……………………………… **Date** 27/09/2016

Dr. Chris Kiptoo
For: Cabinet Secretary
MINISTRY OF INDUSTRY, TRADE AND COOPERATIVES