Shippers Council of Eastern Africa

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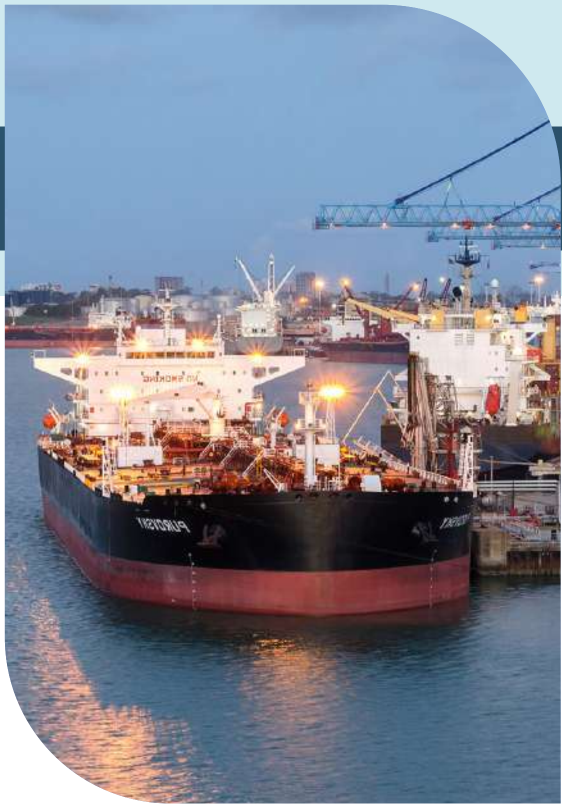
Study on fees, charges and penalties levied/paid to border agencies (Article 6 of TFA)

REPORT

2021

Internal Approval of the Report



This report presents the results of the "Consultancy Services for Article 6 of the TFA and also determining all other Fees, Charges and Penalties Levied/Paid to Border Agencies".

The report is based on review of available background secondary data on the agencies, online survey, one-on-one meetings with importers and exporters as well as their representatives.

The report has been approved for submission by Trade Hub East Africa based on a review of satisfactory adherence to our policies on:

- Quality assurance and risk management
- Financial management and Value for Money (VfM)
- Personnel recruitment and management
- Performance Management and Monitoring and Evaluation (M&E)

Team Members for the Project Implementation:

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4. Ms. Roselyn Amadi – Senior Legal Advisor

Executive Summary

This report is the outcome of the consultancy that Shippers Council of East Africa (SCEA) commissioned and facilitated by Kenya Private Sector Alliance (KEPSA). It has analyzed various fees, charges, and penalties levied by government border agencies in connection with import and export trade and has pointed out those that are directly related or not to the cost of services rendered. This was done in line with the Trade Facilitation Agreement (TFA) which aims to make trade across borders faster, cheaper, and more predictable. The consultancy also examined fees and charges levied by County Governments to establish whether they are within the provisions of Article 6 of the TFA as well as their impact on trade.

The report is divided into five parts as presented below:

- ***Part I – Introduction and Background:*** This basically points out why the fees, charges and penalties at the Kenyan borders have remained high and the effort that the WTO is making through the Trade Facilitation Agreement to ensure that the business community carry on with their import/export trade in a predictable, transparent, and conducive environment.

  This part also highlights briefly how the TFA is structured in terms of rules as well as special and differential treatment for developing and least developed countries. It also explains how these group of countries are to make notifications on their categorized TFA measures to the WTO Secretariat as well as how to access technical assistance and capacity building from development partners for the implementation of TFA.

  The details of this consultancy assignment and methodology used in its execution have also been covered under this part.

- ***Part II – Fees and Charges Levied by Border Agencies:*** This part has listed all fees and charges levied by the border agencies and has further analyzed them pointing out those that are directly related to import/export trade as well as those which do not.

- ***Part III – Legal Issues Related to Fees, Charges and Penalties:*** The East African Community Customs Management Act (EACCMA) was the main legislation from which the applicable penalties were identified and listed. Under this part, the legal sections, the offences, and applicable penalties have been generated in form of a matrix.

- ***Part IV – Best Practices Identified from some WTO Countries Implementing TFA:*** The Trade Facilitation Indicator (TFI) score developed by the OECD (Reference period: Feb.2017 to Jan. 2020) was the basis on which Kenya's performance in terms of border fees and charges was gauged against the following group of countries: New Zealand (1.929), Singapore (1.923), China (1.923), Japan (1.786) and Kenya (1.692). TFI Takes values from 0 to 2, where 2 is designated as the best performance to be achieved.
- ***Part V – Conclusion and Way Forward:*** The consultancy observed that from the field visits, statutory documents of various border agencies as well as those of the East Africa Community, stakeholders are hardly consulted when fees and charges are determined or reviewed. Similarly, interviews established that they are not consulted during the establishment of new fees and charges.

As the way forward, this consultancy recommends that SCEA and KEPSA lobby the GoK to undertake the following:

a. The fees, charges and penalties are all scattered in various Acts and Regulations. We identified 23 institutions and 18 laws of Kenya that address article 6 of the TFA. For purposes of speedy and expedited clearance, customs fees and charges ought to be published and centrally accessible to all interested parties, the number of players and applicable laws should also be streamlined and consolidated. The EACCMA should be the only applicable law where all issues of fees, charges and penalties are addressed in light of EAC's common external tariff regime. It is therefore recommended that SCEA should lobby for policy guidelines to be generated to give guidance to the country on how to implement this Article in view of this finding.

b. During interactions with non-state stakeholders, we observed that they are not satisfied with fees and charges relating to alterations of customs documents that have no revenue implications. They feel the charges are unnecessarily high and we therefore recommend that SCEA can advocate for some of the levies be reduced or be phased out altogether.

c. While some border agencies publish their fees and charges, this is not uniform across the agencies. Adequate time is also not accorded stakeholders to give their views. It is also not clear if stakeholder views are taken into consideration when establishing/reviewing the fees and charges. It is therefore recommended that time should be allowed for public participation before the fees and charges are agreed upon and adopted. This will accord the stakeholders a sense of recognition and help reduce the common feeling of "them versus us" that was found to be prevalent during our interaction with them. This is an area in which SCEA may wish to lobby for implementation.

d. It is also recommended that stakeholders should be given adequate time after publication of the fees and charges before implementation commences. This will enable the stakeholders to familiarize and get buy-in into the fees and charges and thus avoid disruption of import/export trade. While there is no standard time prescribed as adequate for this measure for all border agencies, the WTO generally recommends a period of 6 months as being reasonable during which stakeholders can prepare to comment and implement new and reviewed fees and charges.

e. The reason for introducing new fees and charges should be disclosed through public participation fora and evaluation done to establish their relationship with importation and exportation of goods. Therefore, those fees and charges not falling under the purview of Article 6 of the TFA and thus not related to the importation and exportation of goods need to be reviewed with a view to having them phased out.

f. The number and diversity of the fees and charges should also be reduced and simplified and limited to approximate cost of the services rendered. In addition, penalties imposed should depend on facts and circumstances of the case and be commensurate with the degree and severity of each case. The multiplicity of charges by border agencies checking for similar requirements on same consignments was also an issue highlighted by the stakeholders. We therefore recommend that the SCEA and KEPSA should lobby the GoK for the harmonization of their functions.

g. We also recommend that concessions to offenders who voluntarily report any infractions be considered across the agencies. This will encourage stakeholders to collaborate more with the agencies and lead to reduced tax evasion practices. This will be a win-win measure for the agencies and importers/exporters. The validation meeting appreciated this recommendation and emphasized that border agencies should make effort to embrace this practice as provided for in Article 6 of TFA. In this respect, a voluntary disclosure programme should be initiated by stakeholders

h. Some agencies which do not have presence at the border points should not levy any fees and charges since they are not there to provide service.

i. Truckers (transporters) raised complaints about the Regional Cargo Tracking System unit of KRA penalizing them on minor traffic offences like overlapping on the way to Malaba. The Unit also charges customs warehouse rent as a result even where the goods are not involved in any customs offence and have not deviated from the gazetted transit route. It is therefore recommended that consultations should be held with customs to resolve this matter and leave traffic offences to the police.

j. The consultancy observed that fees and charges such as IDF and Railway levy cannot be linked to any provision of Article 6 of the TFA and therefore incompatible with WTO rules. It is therefore recommended that such fees and charges should be reviewed to ensure conformity with Article 6 of the TFA.

k. Finally, it is also recommended that the SCEA and KEPSA should make advocacy presentations to the relevant authorities with the support of the NTFC to revise domestic laws for smooth implementation of the TFA

l. During validation meeting, stakeholders felt that since Kenya is a Member of EAC, it should take lead in ensuring that fees and charges within the customs union are harmonized.

m. The validation meeting noted that the level of awareness of TFA provisions needed to be improved. In this regard, The Ministry of Industrialization, Trade and Enterprise Development was requested to come up with outreach training programme to address this challenge.

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Acronyms

CET	Common External Tariff
CFS	Container Freight Station
EAC	East African Community
EACCMA	East African Community Customs Management Act Common External Tariff
ED	Excise Duty
EDA	Excise Duty Act
IDF	Import Declaration Fees
KEBS	Kenya Bureau of Standards
KENTRADE	Kenya Trade Network Agency
KEPHIS	Kenya Plant Health Inspectorate Services
KEPSA	Kenya Private Sector Alliance
KMA	Kenya Maritime Authority
KNCCI	Kenya National Chamber of Commerce and Industry
KPA	Kenya Ports Authority
KRA	Kenya Revenue Authority
PPB	Pharmacy and Poisons Board
RDL	Railway Development Levy
SCEA	Shippers Council of East Africa
TFA	Trade Facilitation Agreement
THEA	Trade Hub East Africa
VAT	Value Added Tax
WCO	World Customs Organization
WTO	World Trade Organization

Acknowledgments

Trade Hub East Africa Limited is thankful to the Shippers Council of Eastern Africa for according to us the opportunity to provide consultancy services for the implementation of Article 6 of the Trade Facilitation Agreement of the World Trade Organization. We immeasurably appreciate the support provided from time to time by the ***Chief Executive Officer***, Mr. Gilbert Langat and his staff at the Shipper's Council of Eastern Africa during the implementation of this project.

The successful implementation of this project was made possible through the generous funding that came from the Kenya Private Sector Alliance.

The views expressed in this report are those of the authors and do not necessarily reflect the views of the Shippers Council of Eastern Africa.


NO SMOKING
PUROVSKY

Part I: Introduction and Background

It has been noted that fees and charges levied by border agencies at the ports of entry and exit have gone up significantly because the government allocations have not been adequate to enable them function optimally. In this regard, the fees and charges levied in form of appropriation in aid (AIA) is seen as alternative means of raising additional funds to bridge gaps experienced in their operational budgets. This has contributed to increased cost of doing business in the country.

To ensure that the business community carry on their businesses in a predictable, transparent and conducive environment, Article 6 of the Trade Facilitation Agreement (TFA) requires that all the relevant information regarding fees and charges relating to export or import are published widely. Members are therefore required to publish fees and charges related to importation and exportation in a transparent and predictable manner, and to periodically review them according to the cost-recovery principle in accordance with the Article, a country is required to ensure that adequate period is available between the official publications of a new or amended fee or charge and their entry into force. This will allow businesses to familiarise with the new or amended fee before it is put into effect and becomes enforceable. The Article allows countries to undertake a periodic review of fees and charges imposed with the purpose of reducing these as much as possible. Whereas the review is mandatory, the reduction in the number and diversity of fees should take place 'where practicable'.

Article 6 also requires that fees and charges must be limited in amount to the approximate cost of the services rendered. Additionally, this article requires that members who apply civil and administrative Customs penalties shall impose such penalties only on the person responsible for the violation and ensure amount of such penalties are proportionate to the degree and sensitivity of the violation.

The Article, therefore, guides in the determination of the amount of fees and charges to be levied by government agencies corresponding in amount to the cost of services rendered. The purpose of this measure is to make the charges and fees limited to the approximate cost of services rendered and carried out in a transparent, predictable, and reliable manner. The requirement to relate fees and charges to the approximate cost of the services rendered ensures that no undue fees and charges are imposed on customs processing of goods. This reduces the overall cost imposed on traders for exportation and importation, thereby benefiting Small and Medium sized Enterprises (SMEs).

When fees and charges are based on the approximate cost of the service rendered without any attempt to impose unnecessary and unjustified costs, traders are better able to understand the rationale behind their imposition, justify their existence and understand any change in the amount of fees and charges levied. Implementation of this measure enhances accountability in government agencies, improve the image of Customs authorities and reputation of the member Country among key stakeholders.

The Article further obliges each World Trade Organization (WTO) Member to impose fair penalties, proportionate and in a transparent way, for any breach of a customs law, regulation, or procedural requirement. The penalty is to be imposed on the person(s) responsible for that violation. In this connection, it is important for Kenya to specify at least the applicable fees and charges that businesses are required to pay, the reasons for their existence and imposition, the responsible levying authority within their territory and the modalities of payment as a minimum requirement.

In line with the TFA, Kenya, submitted its commitments to the WTO, where it classified Article 6 under Category C, meaning that the country needed time and resources to fully implement this measure. Article 6 of TFA is the one directly focusing on fees and charges as well as applicability of penalties that governmental authorities assess on, or in connection with, imports or exports. Even though fees and charges have always been imposed, the TFA requires that the amount and purposes of any fees or charges imposed on imports or exports must be consistent with the TFA Article 6, which requires publication of information about fees and charges as well as periodic review of such fees and charges.

With a predictable policy on fees and charges, Kenya's border procedures will be simplified and harmonized, hence cross-border cargo traffic is likely to increase in volume as lesser time will be taken to cross the border and this would have cost lowering effect on trade.

However, no recent survey has been carried out on fees and charges and penalties in Kenya levied by each border agency and port authority to establish the structure and number of such fees and charges and penalties in existence in the country's borders. This means no clear policy guidelines are available to guide the country on the implementation of Article 6. A transparent, equitable and predictable policy on fees and charges will ensure information relating to such fees and charges is accessed by all traders on an unbiased and predictable basis, bringing more traders into the market and increasing the volume of existing trade with a positive consequence on economic growth and employment creation.

This consultancy was commissioned by the SCEA and facilitated by KEPSA. It has analyzed various fees and charges that traders pay in connection with import and export trade and pointed out those that are directly related or not in relation to the cost of services rendered. This is in line with TFA which aims to make trade across borders faster, cheaper and more predictable. The consultancy also examined fees and charges levied by County governments to establish whether they are within the provisions of Article 6 and their impact on trade.

1.0 Trade Facilitation Agreement at a glance

The TFA is the most significant multilateral trade accord to have entered into force in recent years. The agreement covers the administration of border procedures, and its implementation is expected to have an important impact on trade as well as contributing to economic growth and the achievement of sustainable development objectives.

Full implementation of the TFA is subject to transition periods and capacity building needs under a novel approach to special and differential treatment accorded to developing and least developed countries in the agreement. While this approach is expected to improve implementation in the long run, it could create short-term uncertainty.

The eventual full implementation of the TFA's technical trade facilitation measures will also contribute to the achievement of the Sustainable Development Goals (SDGs), including, among others, increasing Aid for Trade support for developing countries (target 8.a), implementing the principle of special and differential treatment for developing countries (target 10.a), and mobilizing additional financial resources for developing countries from multiple sources.

The Protocol of Amendment was open for acceptance by members in November 2014 and entered into force on 22 February 2017, once two-thirds of the members had deposited instruments of acceptance. Members that have implemented the TFA are required to extend the benefits on a Most Favoured Nation (MFN) basis to all WTO members, even to those that have not yet ratified.

The purpose of the TFA is to expedite the movement, release, and clearance of goods, including goods in transit. Section I contains the technical trade facilitation measures that make up the bulk of the implementation obligations while Section II contains an elaborate regime for SDT, defining the roles and responsibilities of developing, least developed, and developed countries related to implementation transitions and support for capacity building. Section II also recognizes the potential difficulties that developing countries and LDCs may face in implementing the trade facilitation measures in Section I.

Special and Preferential Treatment in the Agreement provides developing and Least Developed Countries (LDCs) with largely self-determined and variable transition periods for implementation, either according to specified time periods or conditional upon obtaining the assistance and support for building the capacity necessary to do so. Developing countries and LDCs self-designate the TFA provisions in one of the three Categories, signaling their ability to implement according to the implementation schedule and conditions associated with that Category. The Measures are ccategorised into A, B and C

- ***Category A*** – provisions that a member will implement by the time the agreement enters into force (for LDCs, one year after).
- ***Category B*** – provisions that a member will implement after a transitional period following entry into force of the Agreement, and
- ***Category C*** – contains provisions that a Developing Country/LDC Member will not implement after a transitional period until such time that they have acquired capacity provided through technical assistance and capacity building programme

2.0 Assignment

Kenya, as a developing country, in her notification of TFA Categories A, B and C Measures as required by the Agreement classified this Measure under Category C. This means its implementation is burdensome in terms of human and financial resources and therefore it can only be implemented with the support of the development partners. The following benefits are envisaged among others for both government and private sector when this Article is fully implemented:

a) All fees and charges shall be openly and transparently published either electronically or printed media and shall be made accessible to all interested parties.

b) When they have been reviewed and published, sufficient time would be allowed for public participation before they are mutually agreed and adopted.

c) The reason for introducing new fees and charges shall be disclosed and evaluated to establish their relationship with importation and exportation of goods.

d) Their number and diversity shall be reduced and simplified and shall also be limited in amount to approximate cost to the services rendered on or in connection with specific import or export operation in question.

e) Penalties imposed shall depend on facts and circumstances of the case and shall be commensurate with the degree and severity of each case.

The provisions of this Article therefore foster good government/private sector working relationship at the borders, leading to increased revenue as evasions would be significantly reduced as well as the cost of doing cross-border trade.

This review will enable KEPSA and SCEA as well as their members to participate more meaningfully in NTFC and TWGs meetings and hence contribute to the implementation of the TFA.

Against this background, this assignment undertook a comprehensive review of these fees and charges as well as penalties imposed.

The assignment addressed key issues identified here below:

Key Assignment Issues	Methodology
Establishment and tabulation of all fees and charges levied by government agencies	This was done through desk review and online survey, one-on-one meetings with importers and exporters as well as their representatives.
Establishment of how fees and charges are determined, who is involved and how such fees are established and implemented.	Literature review, field visits and meetings with agencies.
Establishment of concessions if any for an offender who volunteers any anomalies/errors and how this is treated	Held discussions with border agencies, traders and trade associations.
Documentation of all the fees and charges levied as well as penalties imposed in relation to services rendered.	Desk reviews and consultations with key stakeholders were undertaken.
Relationship between EACMA and Article 6 of the TFA.	Reviewed the EACMA and appreciated how it affects fees, charges and penalties.

Key Assignment Issues	Methodology
Reviewing of fees, charges, and penalties.	Held discussions and engagement with border agencies and private sector operators -importers and exporters to understand how the fees and charges and penalties are reviewed and how they come into force.
Legal basis for determining the fees, charges and penalties.	Reviewed Parliamentary Acts and Presidential Executive Orders establishing the institutions charging the fees, charges and penalties.
Establish how fees, charges and penalties are announced and published and the involvement of stakeholders.	Interviewed border agencies, private sector stakeholders and civil society.
Establish whether the fees and charges commensurate with the services rendered and whether penalties imposed are onerous or modest.	Carried out interviews with the institutions rendering the services and the end users.
Reviewing how some countries have implemented Article 6 of the TFA	Carried out desk research, interviewed some officials at the WTO secretariat.
Recommendations and way forward.	Collated and analysed all the information gathered and documented actionable recommendations.

3.0 Detailed methodology

To effectively achieve the objectives of the study, triangulation approach was preferred and involved the utilization of multiple methods and data. To be more specific, the methodology included literature review, secondary data analysis, and primary survey data collection using a structured questionnaire, key informant interviews and case study analysis. Next sections provide detailed description.

3.1. Facilitation of data collection

a) Literature review and secondary data analysis/reference documents

Literature review was aimed at identifying trade and trade-related fees, charges, and penalties. This involved reviewing border agencies procedures relating to the imposition of fees, charges and penalties as well as mechanisms in place to handle mitigating factors when a person voluntarily discloses circumstances leading to a breach of law or regulation.

Reference was made to the following documentation; East Africa Customs Management Act (ECMA) 2004, ECMA Regulations 2010, EAC Customs Union Protocols, Finance Bills, Customs & Excise Act (Cap 472), KRA Act 1995, KRA ICMS, The Mombasa Port & Northern Corridor Community Charter, Kenya National Electronic Single Window System, Single Customs Territory Procedure Manual, Miscellaneous Fees and Charges Act 2016, The Standards Act (Cap 496), KEBs PVOC Programme

Operations Manual, KEBs Pre-Export Verification of Conformity to Standards Guidelines for Exporters and Importers, KEPHIS Act 2012, Plant Protection Act (Cap 324), Plant Protection Act (Cap 324) Subsidiary Legislation (Rev. 2012), Presidential Executive Orders, Kenya Constitution 2010, KPA Tariff Book etc.

The outcome of this review provided insights and avenues necessary for advocacy in change management at the respective agencies

Case study analysis of the EACCMA, 2004, and its regulations

This involved an in-depth analysis of the EACCMA 2004 in relation to the provisions of Article 6 of the TFA. Additionally, the analysis was done to develop an outline of legal and regulatory provisions governing the application of these fees, charges and penalties. Further, our experts conducted a benchmarking study to compare these charges, fees and penalties with countries that have complied with Article 6 of the FTA. Successes, challenges and insights were identified to inform policy interventions.

b) Target population

All government border agencies that are in some way involved in regulating trade. The practice is that each agency will come up with its fees, charges and penalties in its regulatory framework. For instance, KENTRADE has 7 categories of fees and charges while KRA has in place 5 types of fees and charges. KEBS on the other hand has an avalanche of fees charged through its PVOC programme ranging from 0.35- 0.75 per cent of the FOB value as well as other fees including the testing, registration, sampling and re-inspection fees, among others.

In order to clearly and comprehensively map out the fees, charges and penalties, our experts worked with all border agencies as the target population. Officials in these agencies were interviewed to get first- hand information while desk research was conducted to gather additional information relating to fees, charges and penalties.

c) Sampling and sample size

The sample size of relevant agencies and other stakeholders as well as sectors to be sampled were limited to 10 in each sector. This was considered to be large enough and considered sufficiently representative in terms of sectors and company sizes e.g., large, medium, MSME etc.

Key project stakeholders

In the course of carrying out this study, the following stakeholders were engaged:

Public sector stakeholders included the following:

- Kenya Revenue Authority
- Kenya Ports Authority
- East African Community (EAC)
- National Police Service
- Department of Immigration

- Port Health Services
- Kenya Bureau of Standards
- Directorate of Veterinary Services
- Kenya Forest Service
- Kenya Plant Health Inspectorate Services
- Anti-Counterfeit Authority
- Kenya Wildlife Service
- Kenya Trade Network Agency
- Pharmacy and Poisons Board
- National Biosafety Authority
- Agriculture and Food Authority
- Mines and Geology
- Fisheries Department
- Kenya Maritime authority
- KEPROBA
- Kenya Meat Commission
- Northern Corridor Transit Transport Coordination Authority
- Competition Authority of Kenya (to establish its relevance on fees and charges)

Private sector stakeholders included the following:

- Shippers Council of Eastern Africa
- Kenya Private Sector Alliance & its Sector working Groups
- Kenya Association of Manufacturers & its Sector working Groups
- Kenya National Chamber of Commerce and Industry
- Fresh Produce Exporters Association of Kenya
- Kenya Flower Council
- East Africa Tea Traders Association
- Exports of Milk
- Exports of Cement
- Exporter & Imports of Steel Products
- Exporters & Importers of Petroleum Products
- Cereal Millers Association
- Consolidators, Transporters & Container Freight Stations

d) Survey instrument

A structured questionnaire was developed for administration to targeted respondents. The questionnaire was primarily aimed at identifying all fees, charges and penalties imposed by the border agencies and port authorities. The questionnaire also focused on gathering information on how public participation is included in the introduction of new fees, charges and penalties as well as establish how the fees and charges are reviewed.

e) Data collection

An introductory letter with a background on survey and objectives was prepared for use by our experts to appraise respondents of the importance of the study. Data collection was carried out through interviews. Since COVID-19 pandemic is still ravaging the country, some interviews were carried out through e-platforms such as zoom, Skype, Teams among others. Before e-interview, each of the participant was contacted via e-mail or telephone in order to schedule an appointment. All information from respondents was kept confidential. Our experts will however endeavoured to attend face-to-face interviews as the situation allowed.

f) Key informant interview

Key informant interviews (KII) involved a select number of officials who are familiar with the border regulatory processes. They provided needed information, ideas, and insights on the subject matter. The number of key informants was kept at a maximum of 10 individuals from non-profits, business and government. The KIIs were conducted using an interview guide that listed topics and issues to be covered during a particular session.

This consultancy thus reviews and analyzes various fees and charges other than duties related to import and export trade currently applied by customs, other government agencies and private sector players in connection with importation and exportation. It also considers penalties imposed for legal or administrative breaches which should be fairly grounded on objective facts and must be commensurate with the severity of infringement. The reviews and analyses have been undertaken against Article 6 of the World Trade Organization (WTO).

The consultancy undertook the following:

- determined fees, charges and penalties imposed on imports and exports (government and private sector)
- established direct or indirect link between these charges, fees and penalties and import and export trade
- pointed out those that are not related to the cost of services rendered
- established how the charges, fees and levies are published
- identified the laws upon which they are anchored
- established justifications for the amounts charged
- commented on the impact of these observations in relation to the intent and purpose of Article 6 of TFA of WTO, and
- Determined the impact of the fees, charges and penalties on import and export trade.

Part II: Fees and charges levied by Border Agencies and Private Sector

1. Kenya Revenue Authority

Table 2.1: Kenya Revenue Authority

Overtime Fees Payable to a Customs Officer		Trade Relationship
Criteria	**Rate**	**Relationship to Imports /Exports**
Vehicle carrying passengers and baggage	Up to US$ 20 per vehicle	Direct relationship, but not proportionately linked to the cost of the service rendered
Carrying services at a premise not normally carried on	US$ 20 per hour	Directly related, but not proportionately linked to the cost of service rendered
Cautionary visits	As the proper officer may deem necessary	Un predictable charges, yet directly linked to export and import trade
License Fees and Customs Warehouse Rent		Trade Relationship
Criteria	Rate	Relationship to Import/Export
Annual license fee for bonded warehouse	US$ 1,500	Directly related, but not proportionately linked to the cost of service rendered
Customs warehouse rent	US$ 0.30 per cubic metre	Directly related
Request due to sufferance wharf	Sufficient amount to be deposited with proper officer to cover the expenses	Directly related, but not proportionately linked to the cost of service rendered. It is also difficult to establish what "sufficient amount" entails
Customs agent services application	US$50 & and license fee of US$ 400	Indirectly related, with no proportionate link to the service rendered

Overtime Fees Payable to a Customs Officer		Trade Relationship
Criteria	**Rate**	**Relationship to Imports /Exports**
Allowance for food for an officer stationed on board of a vessel/aircraft	To be determined by the Commissioner	Indirectly related, but not proportionately linked to the service rendered. The allowance is also unpredictable as payable amount is at the discretion of the Commissioner
Licensing fee for any vehicle /vessel conveying goods under customs control	US$ 200	Directly related, but not proportionately linked to the cost of service rendered
Note: *In our view in cases where the Commissioner or Proper Officer are given leeway to determine fees and charges, may result into financial burden to an importer/exporter. Fees and charges should be clearly documented to avoid any ambiguities.*		

Table 2.2: Section 216 of EACCM Regulations (2010) provides the fees payable for services or certificates under the Regulations.

S/No.	Service or Certificate	Fees US $	Relationship to Imports/Exports
a.	Certificate of a copy of any document	5.00	Directly related, but not proportionately linked to the cost of the service rendered
b.	Issuance of a landing certificate, for each original entry in which goods are entered	10.00	Directly related, but not proportionately linked to the cost of the service rendered
c.	Transhipment	10.00	Indirectly related
d.	Transfer of ownership	10.00	Directly related, but not proportionately linked to the cost of the service rendered
e.	Issuance of certificate of weight for a consignment	5.00	Direct relationship
f.	Approval of alterations in the marks, numbers or other particulars in any document submitted to customs, other than an invalid manifest	5.00	Directly related, but proportionately not linked to the cost of the service rendered
g.	Cancellation of entries	10.00	Directly related, but not proportionately linked to the cost of the service rendered
h.	Issuance or certificate of any other certificate or document issued by Customs	3.00	Directly related
i	Amendment of an inward report	10.00	Directly related, but not proportionately linked to the cost of the service rendered
Note: *The above fees should not be levied in excess of such costs. Such costs may seem reasonable to big businesses but to SMEs they could appear punitive.*			

Other Fees and Charges

a) Import Declaration Fees (IDF)

b) Railway Development Levy (RDL)

c) Merchant Shipping Levy (MSL)

Table 2.3: Import Declaration Fees (IDF)

Rate	Reason for Levying Fees	Relationship to Imports
2% of the customs value of goods imported for home use	To pay for Kenya's contributions to the African Union & other International Organizations	Reason for the levying is not related to trade in any way
1.5% of the customs value of goods imported for home use	Used for construction and operation of a standard gauge railway	Reason for the levying is not related to trade in any way

Analysis:

It is noted that the fees and charges levied by the Kenya Revenue Authority are properly published for the stakeholders' use, except where the commissioner or proper officer have the leeway to determine the charges and fees at their discretion. However, it is noted that in cases where the Commissioner or Proper Officer are given leeway to determine fees and charges, the result is an additional financial burden to importers/exporters. Fees and charges should be clearly documented and predictable to avoid any ambiguities.

We observed that most of such fees and charges are also not directly linked to the cost of the services rendered, though they have some relationship with import and export trade. This adds to the cost of doing business which may scare investment.

We also observed that some specific fees and charges are not commensurate with the services rendered. They are established and even reviewed without the participation of stakeholders in international trade in the country and are thus not fully in conformity with the intent and purpose of article 6 of the TFA.

During interactions with non-state stakeholders, we observed that they are not satisfied with fees and charges relating to alterations to customs documents that have no revenue implications and therefore recommended that they should not be levied at all. For example, it is common for declared trucks transporting import goods from Partner Community States to break down and be replaced by others. Importers only come to learn of the truck changes when the goods arrive at the border. However, Customs compel them to pay alteration fees, yet this is a common occurrence in transportation of goods and has no revenue implications at all. While such costs may seem reasonable to big businesses, they appear to be punitive to SMEs.

At Malaba, border station truckers complained that the Regional Cargo Tracking System unit of KRA are in the habit of charging transporters Customs Warehouse rent for trucks along the road that get involved in minor traffic offences like overlapping on the way to Malaba. This occurs even where the goods are not involved in any customs infraction. This causes inconveniences and delays leading to extra charges to importers and exporters since the unit's offices are located far away in Bungoma and one has to travel long distances to sort out the issues.

One big contradiction was however, noted between the practices of Customs Authorities at Malaba and Namanga. At Malaba, stakeholders confirmed that there were no concessions for offenders who willingly come forward and report the offence committed unknowingly. For instance, in situations where goods are imported on open trucks while the declaration indicated the goods were containerized. They will still be compelled to pay alteration fees instead of just being allowed to make the alterations freely and without any payment.

At Namanga on the other hand customs officers confirmed that Section 219 0f EACCMA, 2004 provides for concessions to offenders who voluntarily disclose any infractions of the regulations. They also confirmed that they do give such concessions on a case-to-case basis.

2. Kenya Bureau of Standards (KEBS)

Fees and charges are levied in respect to inspection and pre-verification services and in accordance with the following importation arrangements in place:

a) Route A: (Consignment Inspection and Testing)

Under this Route, products to be shipped must be both tested and physically inspected to demonstrate conformity to relevant standards. This route is open to all products being imported by either traders or manufacturers.

b) Route B: (Product Registration)

This route offers a fast-track certification process for goods with reasonable and consistent levels of quality through registration of such products.

c) Route C: Product Licensing

This route is open only to manufacturers who can demonstrate existence of a quality management system in their production/ manufacturing process.

d) Route D: Consolidated Cargo Imports

This route is open only to registered importers of consolidated cargo.

Table 2.4: Fees charged under the PVOC Program

Route	Payment	Minimum	Maximum	Relationship to Import/ Exports
Route A	0.60% of the FOB Value	USD 265	USD 2,700	Directly related
Route B	0.55% of the FOB Value	USD 265	USD 2,700	Directly related
Route C	0.35% of the FOB Value	USD 265	USD 2,700	Directly related
Route D	0.75% of the FOB Value	USD 265	USD 2,700	Directly related

Table 2.5: Direct Assessment Goods at Ports of Entry

S/No	Shipment value (KES)	Amount (KES)	Relationship to Imports/ Exports
1	Direct assessment goods with value below200,000 for East African Community (EAC)Products without Regional quality marks	2,000	Directly related
2	Any other Direct Assessment of Goods	5% with a minimum of 1,000	Directly related

Table 2.6: Destination Inspection Fees for goods exported from countries without PVoC, Reworking and Alteration of Certificate of Conformity (CoC)

S/No	Description	Amount	Relationship to Imports/Exports
1	Inspection fee for Regionally produced goods without regional quality marks	0.6% Cost Insurance Freight (CIF) or at a minimum of USO 265	Directly related
2	Inspection fee for Re-exports from EAC Partner States	0.6% Cost Insurance Freight (CIF) or at a minimum of USO 265	Directly related
3	Amendment of CoCs already issued	0.6% Cost Insurance Freight (CIF) or at a minimum of USO 265	Directly related
4	Re-work fee	3% of Cost Insurance Freight (CIF)or at a minimum KShs.20,000	Directly related

Table 2.7: Courier Goods at Ports of Entry

S/No	Shipment value (KES)	Amount (KES)	Relationship to Imports/Exports
1	50,000 and below	1,000	Directly related
2	50,001 -100,000	1,500	Directly related
3	100,001-500,000	1,800 or 0.6% whichever is higher	Directly related
4	Above 500,000	5% of the value or 3,000 for exempteditems	Directly related

The above fees cover documentary verification, physical inspection and sampling including sealing of the containers where applicable.

Analysis:

The bureau publishes the fees and charges it levies on its website for the use of its existing and potential clients and whenever KEBS wishes to alter its fees, a written notification is sent at least two calendar months before the implementation of the changes. However, some stakeholders, in most border points complained that they are ambushed by the agency in relation to some of the fees and charges and end up with very limited time within which they are expected to comply. There is also no participation of stakeholders during any review of fees and charges. They only know about them at time of publication and implementation.

At the border stations, stakeholders feel there is duplication of roles by KEBS, KEPHIS, and AFA on agricultural products, more so since the agencies levy separate fees and charges on the same consignment, while they check for similar requirements like aflatoxin levels and moisture content.

We also noted that KEBS does not give any concessions to offenders who voluntarily report any infraction. The responsibility for penalties normally lie with the importers through their Customs Clearing agents.

3. Kenya Plant Health Inspectorate Service

Kenya Plant Health Inspectorate Services (KEPHIS) is mandated to inspect both import and export agricultural produce/products to ensure freedom from pests and diseases. The inspection services entail sampling and visual inspections.

Laboratory tests where necessary are charged separately.

The fees are levied based on the weight of the product at a specific rate.

Table 2.8: Schedule of charges levied by the service

Weight in KGs	Fees	Relationship to Imports/Exports
0-20,000	50 cents per kilo with a minimum of kshs 2,000	Directly related
20,001- 400,000	25 cents per kilo	Directly related
400,001-1,000,000	15 cents per kilo	Directly related
Above 1,000,000	5 cents per kilo	Directly related

Table 2.9: Grading and inspection services

Description	Fees	Relationship to Imports/Exports
Local tea & coffee for export: . Per entry/consignee -per ex-warehouse export entry	 - ksh 20,000 - ksh 5,000	Directly related but not linked to service rendered
Empty ship inspection/survey	10,000	Indirectly related
Large vessel (over 10,000 MTs)	5,000	Indirectly related
Small vessel (less than 10,000MT) (about, dhows, canoes)	1,000	Indirectly related
Large containers (40 ft.) inspection (each)	1,000	Indirectly related

Description	Fees	Relationship to Imports/Exports
Small containers (20 ft.) inspection (each)	500	Indirectly related
Moisture content determination per sample	1,000	Indirectly related
Large aircrafts (each)	3,000	Indirectly related
Small aircrafts (and balloons) (each)	1,500	Indirectly related
Sample of minor consignment for quality examination per consignment	5,000	Indirectly related

Table 2.10: Phytosanitary (Plant Health) Inspections

Description	Fees	Relationship to Imports/Exports
Plant import	600	Directly related
Phytosanitary certificate (Commercial commodities)	1,000	Directly related
Phytosanitary certificate for fresh produce	500	Directly related
Search fee for phytosanitary documents	200	Directly related
Amendments /Replacement of phytosanitary documents	1,000	Directly related
Inspection at ports of entry/exit (Nairobi)	1,000	Directly related
On-farm inspection including visits to open quarantine sites per hectare	1,000	Indirectly related
Plus, additional charge per Ha. (Excluding charge of transport and subsistence)	2,500	Indirectly related
Premises/commodity inspection – Routine (Excluding transport costs and subsistence)	1,000	Indirectly related
Inspection of Quarantine facility	5,000	Indirectly related
Farm visits	2,000	Indirectly related
Nursery Inspections and Certifications (a) Inspection (b) Certification (c) Renewal of certificate	 2,000 5,000 1,000 per year	Indirectly related

Analysis:

This is one of the few government agencies that levies simplified fees and charges. The agency also dutifully publishes its fees for the use of its clients. It is noted that while some of the fees are directly related to the cost of the service rendered, there are some that do not.

According to the Plant Protection Act, Chapter 324 of the laws of Kenya, fees and charges are levied on a graduated scale based on weight. This notwithstanding, we observed that a fee of kshs 7,600 is levied per truck for the animal feeds regardless of the size of the consignment. Stakeholders feel this fee is arbitrary and not commensurate with the service rendered for there is no value for money on this charge. Stakeholders also feel there is duplication of roles by KEBS, KEPHIS, and AFA on agricultural products. The agencies levy separate fees and charges on same consignment, yet they check for similar requirements like aflatoxin levels and moisture content.

4. Kenya Ports Authority

The Authority levies fees and charges based on the nature of services being offered viz:

a) Stevedoring Charges

Stevedoring means transfer or movement of cargo within the vessel and/or between the vessel and the quay or the next mode of transportation. Under this category, the charges are levied as follows:

i) Conventional Cargo stevedoring charges

There are 21 different fees and charges on this category. The charges are levied on Dry General, Dry Bulk and Liquid Bulk cargo

Table 2.11: Examples of stevedoring charges in this category

Description of Service	Rate per ton or part thereof	Relationship to Imports/ Exports
Dry general cargo discharging, loading, shifting on board without landing	$7.50	Indirectly related
General cargo discharged or loaded from/to a RORO vessel via the ramp	$6.00	Directly related
Import dry bulk or liquid bulk cargo handled via conveyors or pipeline	$6.00	Directly related
Export dry bulk or liquid bulk cargo handled via conveyors or pipeline	$1.00	Directly related
Import dry cargo handled from a vessel via any other mechanical method to a waiting truck or to a bagging facility on the quay.	$4.40	Directly related

ii) Containerized Cargo stevedoring charges

There are 11 different charges/fees on this category of Cargo.

Table 2.12: Examples of stevedoring charges in this category

Description of Service	Rate per move- 20' container	Rate per move- 40' container	Relationship to Imports/Exports
Discharging, shifting on board without landing on cellular vessel	$99.00	$148.00	Indirectly related
Discharging, shifting on board without landing on non-cellular vessel	$120.00	$180.00	Indirectly related
Discharging, shifting on board without landing on RORO vessel	$74.00	$110.00	Indirectly related
Out of Gauge container (Import/Export)	$200.00	$300.00	Indirectly related

b) Shore handling Charges

Shore-handling means handling, transfer or removal of cargo to or from the quay or jetty and the transit sheds, warehouses or stacking yards. Empty containers for repatriation are exempt from payment of Shore-handling charges. The charges are levied in a manner similar to stevedoring charges:

i) Conventional Cargo

There are 23 different charges/fees in this category.

Table 2.13: Examples of conventional cargo charges

Description of Service	Rate per ton or part thereof	Relationship to imports /exports
Imports- Domestic	$8.00	Directly related
Exports- Domestic	$6.50	Directly related
Imports- Transit	$6.50	Directly related
Exports- Transit	$5.00	Directly relation
Import cargo Handled at ICDs	$6.00	Directly related
Export cargo Handled at ICDs	$4.00	Directly related
Shut-out cargo withdrawn from the port	$6.00	Indirectly related
Fumigation of cargo	$3.00	Directly related
Import cargo handled at the port	$8.00	Directly related
Export cargo handled at the port	$6.00	Directly related

ii) *Containerized Cargo*

There are 15 different charges/fees in this category.

Table 2.14: Examples of containerized cargo charges

Description of Service	Rate per 20′ Container	Rate of 40′ Container	Relationship to Import/ Export
Imports- Domestic- Full	$105.00	$160.00	Directly related
Exports- Domestic- Full	$53.00	$80.00	Directly related
Imports- Transit - Full	$85.00	$125.00	Directly related
Exports- Transit- Full	$40.00	$65.00	Directly related
Domestic & Transit FCL Imports to CFS (KPA nominated)	$65.00	$105.00	Directly related
Domestic & transit FCL Imports to CFS (Consignee nominated)	$85.00	$125.00	Directly related

c) Wharfage Charges

Wharfage charges are raised on all cargo including empty containers passing over the quays, wharves, jetties and buoys. Transshipment cargo which is exclusively handled by the Authority is exempted from this charge.

There are 10 different charges/fees in this category.

Table 2.15: Examples of wharfage charges

Description of Service	Rate per unit 20′ Container	Rate per unit 40′ Container	Relationship to Imports/Exports
Domestic and Transit Full containers both Imports and Exports	$70.00	$105.00	Indirectly related
Domestic and Transit Empty containers both Imports and Exports	$30.00	$45.00	Indirectly related

Note: *Shore-handling, wharfage & storage charges for containers handled at nominated CFSs are levied and collected at the stations.*

d) Storage Charges/Penalties

These are charges levied on cargo remaining in the Port Area after expiry of the allowed free period. There are 35 different charges/penalties under this category.

Table 2.16: Examples of storage charges/penalties

Description of Service	Rate per day 20' containers	Rate per day 40'containers	Relationship to Imports/Exports
Domestic Import containers:			
– First 4 consecutive days	Free	Free	Directly related
– Thereafter up to date container is removed: 5 to 7 days	$30.00	$60.00	Directly related
8 t0 15 days	$35.00	$70.00	Directly related
16 to 24 days	$40.00	$80.00	Directly related
Over 24 days	$45.00	$90.00	Directly related
Domestic export containers: – First 4 consecutive days	Free	Free	Directly related
Thereafter up to the date vessel is berthed	$20.00	$30.00	Directly related
Domestic containers through ICDs: – First 11 consecutive days	Free	Free	Directly related
Thereafter up to the date container is removed from the depot	$20.00	$30.00	Directly related
Domestic and Transit Export containers through ICDs: – First 15 consecutive days	Free	Free	Directly related
– Thereafter up to the date vessel is berthed	$16.00	$24.00	Directly related
Out of Gauge containers from date of receipt or landing	$80.00	$120.00	Directly related
Dangerous cargo, from second day of receipt or landing (Export/ Import)	$40.00	$66.00	Directly related

e) Shore-handling, wharfage & storage charges for containers handled at Nominated CFSs:

Table 2.17: Examples of shore-handling, wharfage & storage charges

Description of Service		Rate per day or part thereof 20' container	Rate per day or part therefore 40' container	Relationship to imports/exports
Import – Domestic - Full		$90.00	$135.00	Directly related
Imports – Transit- Full		$80.00	$120.00	Directly related
Wharfage charges: – Domestic and Transit Full containers both imports and exports		$70.00	105.00	Directly related
Domestic Import containers: – First 4 consecutive days		Free	Free	Directly related
	-5 t0 7 days	$25.00	$50.00	Directly related
	-8 to 15 days	$30.00	$60.00	Directly related
	-Over 24 days	$40.00	$80.00	Directly related
	Containers remaining at nominated CFSs in excess of free periods: – First 4 consecutive days	Free	Free	Directly related
	– 5 to 7 days	$25.00	$50.00	Directly related
	– 8 to 15 days	$30.00	$60.00	Directly related
	– 16 to 24 days	$40.00	$80.00	Directly related

f) Charges for general services

These are charges for hire of staff and equipment not covered elsewhere in the port tariff book.

There are 22 different charges/fees in this category.

Table 2.18: Examples of charges for general services:

Description of Service	Rate per Hour or Part thereof	Relationship to Imports/ Exports
Management or supervisory staff	$12.00	Directly related
Skilled staff e.g., Crane Driver, Forklift Driver, Serang, Artisan, Firemen etc.	$10.00	Directly related

Description of Service	Rate per Hour or Part thereof	Relationship to Imports/ Exports
Semi- Skilled e.g., Labourer, Watchman etc.	$6.00	Directly related
Pilot boat inclusive of crew	$1000.00	Directly related
Mooring boat inclusive of crew	$500.00	Directly related
VIP launch inclusive of crew	$1000.00	Directly related
Fire appliance inclusive of minimum crew for non-operational activities	$150.00	Directly related
Tipper truck or flatbed lorry inclusive of driver	$100.00	Directly related
Van, pickup or saloon car inclusive of driver	$50.00	Directly related
Forklift or tractor less than 10 tons inclusive of driver	$50.00	Directly related
Forklift or Tractor 10 to 16 tons inclusive of driver	$100.00	Directly related

g) Port pass fees:

Annual Port Pass/Entry charges

Table 2.19: Examples of port pass fees

Description of Fees	Rate in KES per Twelve consecutive months	Relationship to imports/ exports
Ordinary pass	1,000.00	Indirectly related
VIP pass	3,000.00	Indirectly related
Motor Bike, Scooter (Vespa)	300.00	Indirectly related
Saloon car	750.00	Indirectly related
Pick up, SUV, CUV	1,000.00	Indirectly related
Taxi	1,500.00	Indirectly related
Van, canter, Minibus	2,000.00	Indirectly related

Analysis.

We noted that the Authority publishes its fees and charges as part of its responsibility to the port users. However, stakeholders feel the processes involved in the formulation, establishment, determination and review of the fees and charges is not transparent and their involvement is minimal.

We also noted that cargo nominated to CFSs by the Kenya Ports Authority are subjected to lower charges as compared to cargo destined to the CFFs through nomination by consignees themselves. This preferential treatment appears meant to discourage traders from exercising their right to clear cargo through the CFSs of their choice. It is noted too that these charges/fees have a direct link to the movement of imports and exports but stakeholders feel they are not proportionate to the services rendered. They therefore feel there is no justification for the differential treatment as there is no value for money on these such fees and charges.

5. Kenya Airports Authority (KAA)

Kenya Airports Authority is charged with the responsibility of managing and operating all airports in Kenya. It is not directly involved in cargo clearance operations at the airports.

Instead, it has licensed several private companies to carry out the cargo handling business and therefore only plays the role of landlord to air cargo handlers.

The following is the list of cargo handlers at the airport:

a. African Cargo Handling Limited
b. Signon Freight
c. Kenya Airfreight Handling Limited
d. Swiss port Kenya Limited
e. DHL
f. Cargo Service Centre Shed
g. Air freight Services Courier
h. Baggage Hall

Following is the table of charges and fees levied at JKIA on imports and exports:

Table 2.20: JKIA charges

	Imports	**Airport Handling Charges**				
	Working Hours	8.00 a.m. - 1.00 p.m., 2.00 p.m. - 5.00 p.m. Saturday/Sunday - Closed				
		KQ(ACHL+KAHL)	**AFS**	**Siginon**	**Swiss port**	**Mitchell Cotts**
1	Handling charges per kg	0.18	0.18	0.2	0.18	0.2
	Minimum Charge	15.00	15.00	20.00	15.00	20.00
2	Break bulk Fee	20.00	20.00	25.00	20.00	25.00
3	Dip mail Category (A)	10.00	10.00	10.00	6.00	10.00
4	Cold Storage per kilo per day in addition to normal storage charges	0.06	0.08	0.08	NIL	0.08
	Minimum Charge	20.00	20.00	20.00	NIL	20.00
5	Strong room storage per kilo in addition to normal charges	0.18	0.18	0.18	NIL	0.18
	Minimum Charge	20.00	30.00	30.00	NIL	30.00
6	Additional charges for delivery outside normal working hours per kilo	0.18	0.18		0.18	

	Imports	Airport Handling Charges				
	Working Hours	8.00 a.m. - 1.00 p.m., 2.00 p.m. - 5.00 p.m. Saturday/Sunday - Closed				
		KQ(ACHL+KAHL)	AFS	Siginon	Swiss port	Mitchell Cotts
	Minimum Charge	40.00	40.00	40.00	40.00	40.00
7	Preparation of substitute AOA/ICD/Invoice/Receipt	40.00	50.00	50.00	NIL	50.00
8	Storage per kilo per day	0.15	0.15	0.15	0.15	0.15
	Minimum Charge	15.00	15.00	15.00	15.00	15.00
	Grace period	48 hours	2 working days	48 hrs. excluding weekends	2 days	48 hrs. excluding weekends
9	Courier Handling Per kilo	0.12	0.06	NIL	0.06	NIL
	Minimum Charge	10	6.00	NIL	6.00	NIL
10	DGR Handling per kilo	0.15	0.18	0.15	NIL	0.15
	Minimum Charge	40.00	30.00	50.00	NIL	50.00
11	Inter-bond Transfer Per Kilo	0.06	0.07	0.07	NIL	0.07
	Minimum Charge	20.00	30.00	30.00	NIL	30
	Transshipment fee per AWB	NIL	NIL	NIL	NIL	NIL
12	Live Animals Administration per kilo	0.05	0.07	0.07	NIL	0.07
	Minimum Charge	15.00	30.00	30.00	NIL	30.00

	Exports					
		KQ(ACHL+KAHL)	AFS	Siginon	Swiss port	Mitchell Cotts
1	Handling un-palletized cargo per kilo	0.06	0.06	0.07	0.06	0.07
	Minimum Charge	15.00	15.00	15.00	15.00	15.00
	Fruits and Vegetables	NIL	NIL	NIL	NIL	NIL
	Minimum Charge	NIL	NIL	NIL	NIL	NIL
	Fresh Fish	NIL	NIL	NIL	NIL	NIL
	Minimum Charge	NIL	NIL	NIL	NIL	NIL
2	Towing of shipper BUP per ULD	18.00	20.00	NIL	20.00	NIL
	Minimum Charge	NIL	NIL	NIL	NIL	NIL

	Exports					
		KQ(ACHL+KAHL)	AFS	Siginon	Swiss port	Mitchell Cotts
3	Inter-bond transfer Per Kilo	0.06	0.07	NIL	0.01	NIL
	Minimum Charge	20.00	20.00	NIL	20.00	NIL
4	Airway bill amendment/ cancellation	15.00	20.00	10.00	NIL	10.00
5	Airway bill documentation	25.00	30.00	20.00	NIL	20.00
6	Dip mail Category (A) Handling	10.00	10.00	6.00	6.00	6.00
7	Strong room storage per kilo in addition to normal storage charges	0.18	0.18	0.20	0.08	0.20
	Minimum Charge	20.00	20.00	20.00	20.00	20.00
8	Cold Storage per kilo per day in addition to normal storage charges	0.06	0.08	0.08	0.08	0.08
	Minimum Charge	20.00	20.00	20.00	20.00	20.00
	Grace period	08 hours	8hours	8hours	8 hours	8hours
9	Customs bond fee per consignment	15.00	15.00	15.00	15.00	15.00
10	Storage per kilo per day	0.18	0.18	0.15	0.18	0.15
	Minimum Charge	15.00	15.00	15.00	15.00	15.00
	Grace Period	07 days	7 days	7days	7days	7days
11	Pre-acceptance storage per kilo per day	0.18	0.18	0.18	0.18	0.18
	Minimum Charge	15.00	15.00	15.00	15.00	15.00
12	Storage for transit loose cargo per kilo per day	0.18	0.18	0.15	NIL	0.15
13	Storage of BUP per ULD per day or part thereof	40.00	50.00	NIL	NIL	NIL
14	Storage of transit BUP per ULD per day of part thereof	50.00	50.00	NIL	NIL	NIL
15	Addition charge DGR acceptance per kilo	0.15	0.15	NIL	NIL	NIL
	Minimum charge	25.00	30.00	NIL	NIL	NIL
16	X-ray security screening per kilo	0.06	0.06	NIL	NIL	NIL

	Exports					
		KQ(ACHL+KAHL)	AFS	Siginon	Swiss port	Mitchell Cotts
	Minimum charge	20.00	20.00	NIL	NIL	NIL
17	Courier handling per kilo	0.10	0.06	NIL	NIL	NIL
	Minimum charge	10.00	6.00	NIL	NIL	NIL
18	Live animals' administration per kilo	0.06	0.07	NIL	NIL	NIL
	Minimum charge	20.00	30.00	NIL	NIL	NIL
19	Hire of pallet dollies per hour or part thereof	50.00	NIL	NIL	NIL	NIL
20	Forklift charges per hour or part thereof				NIL	
	Up to 5T	100.00	100.00	100	NIL	100.00
	Over 5T	200.00	200.00	200	NIL	200.00
21	Hire of tractor per hour or part thereof	100.00	100.00	NIL	NIL	NIL
22	Hire of pallet transporter per hour or part thereof	100.00	NIL	NIL	NIL	NIL

Analysis:

We noted that the Kenya Airports Authority (KAA) publishes the fees and charges as required under Article 6 of the TFA. However, it was observed that the review of fees and charges is done without the stakeholders' involvement in the whole process. It was also noted that all these charges directly impact the import and export trade through JKIA. They therefore come under the definition of fees and charges under Article 6 of the TFA.

It was observed that the model of cargo handling by the KAA creates competition among the cargo handlers. Since these cargo operators compete against each other, the charges and fees are competitive and importers/exporters and reflect the requirements on fees and charges prescribed in Article 6 of the TFA.

Airport Handling Charges Comparison- JKIA, Entebbe, Dar-es-salaam, Dubai, Addis Ababa.

The cargo handling charges compare favorably with those levied by airports in the East African Community viz Entebbe and Dar-es salaam. However, they are considerably higher than those charged at Addis Ababa and Dubai airports.

Table 2.21: Airport handling charges comparisson - JKIA, Entebbe, Dar es Salaam, Dubai & Addis

	IMPORTS	JKIA					ENTEBBE	DAR ES SALAAM	SOUTH AFRICA		DUBAI	ADDIS
	WORKING HOURS	**8.00 a.m - 1.00 p.m, 2.00 p.m. - 5.00 p.m. Saturday/Sunday - Closed**					**Mon-Fri 8.00 a.m - 12.40 p.m, 2.00 p.m- 5.00 p.m. Saturday 8.00 a.m. - 1.00 p.m. Sunday - Closed**	**Mon-Fri 8.00 a.m - 1.00 p.m, 2.00 p.m. - 5.00 p.m. Saturday 8.00 a.m- 1.00p.m. Sunday - Closed**			**24**	**24**
		KQ(ACHL+KAHL)	AFS	Siginon	Swiss port	Mitchell Cotts			Swiss port	Menzies		
1	Handling charges per kg	0.18	0.18	0.2	0.18	0.2	0.15	0.075	0.060	0.050		0.2
	Minimum Charge	15.00	15.00	20.00	15.00	20.00	15.00	20.00	25.60	22.08		50.00
2	Break bulk Fee	20.00	20.00	25.00	20.00	25.00	NIL	NIL	2.73	2.26		NIL
3	Dip mail Category (A)	10.00	10.00	10.00	6.00	10.00	NIL	15.00				NIL
4	Cold Storage per kilo per day in addition to normal storage charges	0.06	0.08	0.08	NIL	0.08	0.07	0.07	0.10	0.08		NIL
	Minimum Charge	20.00	20.00	20.00	NIL	20.00	15.00	20.00	25.60	31.82		NIL
5	Strong room storage per kilo in addition to normal charges	0.18	0.18	0.18	NIL	0.18	NIL	NIL	NIL	NIL		NIL
	Minimum Charge	20.00	30.00	30.00	NIL	30.00	NIL	NIL	NIL	NIL		NIL

	IMPORTS	JKIA					ENTEBBE	DAR ES SALAAM	SOUTH AFRICA		DUBAI	ADDIS
6	Additional charges for delivery outside normal working hours per kilo	0.18	0.18		0.18		NIL	NIL	NIL	NIL		NIL
	Minimum Charge	40.00	40.00	40.00	40.00	40.00	NIL	NIL	NIL	NIL		NIL
7	Preparation of substitute AOA/ICD/ Invoice/Receipt	40.00	50.00	50.00	NIL	50.00	NIL					NIL
8	Storage per kilo per day	0.15	0.15	0.15	0.15	0.15	0.05	0.05 (3days grace)	0.05	0.06		0.002
	Minimum Charge	15.00	15.00	15.00	15.00	15.00	15.00	20.00	25.60	27.58		2.20
	Grace period	48 hours	2 working days	48 hrs excluding weekends	2 days	48 hrs excluding weekends	NIL	NIL	2 days	2 Days		NIL
9	Courier Handling Per kilo	0.12	0.06	NIL	0.06	NIL	NIL		NIL	NIL		NIL
	Minimum Charge	10	6.00	NIL	6.00	NIL	NIL	3.00 per bag	NIL	NIL		NIL
10	DGR Handling per kilo	0.15	0.18	0.15	NIL	0.15	NIL	0.15	NIL	NIL	102.45 per shipment	NIL
	Minimum Charge	40.00	30.00	50.00	NIL	50.00	NIL	30.00	NIL	NIL		NIL

	IMPORTS	JKIA					ENTEBBE	DAR ES SALAAM	SOUTH AFRICA		DUBAI	ADDIS
11	Inter-bond Transfer Per Kilo	0.06	0.07	0.07	NIL	0.07	0.15	NIL	NIL	NIL		NIL
	Minimum Charge	20.00	30.00	30.00	NIL	30	15.00	NIL	NIL	NIL		NIL
	Transhipment fee per AWB	NIL	NIL	NIL	NIL	NIL	35.00		NIL	NIL	NIL	NIL
12	Live Animals Administration per kilo	0.05	0.07	0.07	NIL	0.07	NIL	0.16	NIL	NIL		NIL
	Minimum Charge	15.00	30.00	30.00	NIL	30.00	NIL	40.00	NIL	NIL		NIL

	EXPORTS	JKIA					ENTEBBE	DAR ES SALAAM			DUBAI	ADDIS
		KQ(ACHL+KAHL)	AFS	Siginon	Swiss port	Mitchell Cotts						
1	Handling un-palletised cargo per kilo	0.06	0.06	0.07	0.06	0.07	0.01	0.075	NIL	NIL	0.06	0.05
	Minimum Charge	15.00	15.00	15.00	15.00	15.00	15.00	20.00	NIL	NIL	10.93	NIL
	Fruits and Vegetables	NIL	NIL	NIL	NIL	NIL	0.05	NIL	NIL	NIL	NIL	NIL
	Minimum Charge	NIL	NIL	NIL	NIL	NIL	15.00	NIL	NIL	NIL	NIL	NIL
	Minimum Charge	NIL	NIL	NIL	NIL	NIL	15.00	NIL	NIL	NIL	NIL	NIL
2	Towing of shipper BUP per ULD	18.00	20.00	NIL	20.00	NIL	NIL	NIL	NIL	NIL	NIL	NIL

	EXPORTS	JKIA					ENTEBBE	DAR ES SALAAM			DUBAI	ADDIS
		KQ(ACHL+KAHL)	AFS	Siginon	Swiss port	Mitchell Cotts						
	Minimum Charge	NIL	NIL	NIL	NIL	NIL	NIL	NIL	NIL	NIL	NIL	NIL
3	Inter-bond transfer Per Kilo	0.06	0.07	NIL	0.01	NIL	NIL	NIL	NIL	NIL	NIL	NIL
	Minimum Charge	20.00	20.00	NIL	20.00	NIL	NIL	NIL	NIL	NIL	NIL	NIL
4	Airway bill amendment/ cancellation	15.00	20.00	10.00	NIL	10.00	NIL	10.00	33.25	NIL	NIL	NIL
5	Airway bill documentation	25.00	30.00	20.00	NIL	20.00	NIL	NIL	NIL	NIL	NIL	NIL
6	Dip mail Category (A) Handling	10.00	10.00	6.00	6.00	6.00	NIL	6.00	NIL	NIL	NIL	NIL
							NIL	6.00	NIL	NIL	NIL	NIL
7	Strong room storage per kilo in addition to normal storage charges	0.18	0.18	0.20	0.08	0.20	NIL	0.065	NIL	NIL	NIL	NIL
	Minimum Charge	20.00	20.00	20.00	20.00	20.00	NIL	20.00	NIL	NIL	NIL	NIL
8	Cold Storage per kilo per day in addition to normal storage charges	0.06	0.08	0.08	0.08	0.08	NIL	NIL	NIL	NIL	NIL	NIL
	Minimum Charge	20.00	20.00	20.00	20.00	20.00	NIL	NIL	NIL	NIL	NIL	NIL

		JKIA					ENTEBBE	DAR ES SALAAM			DUBAI	ADDIS
	EXPORTS	KQ(ACHL+KAHL)	AFS	Siginon	Swiss port	Mitchell Cotts						
	Grace period	08 hours	8hours	8hours	8 hours	8hours	NIL	NIL	NIL	NIL	NIL	NIL
9	Customs bond fee per consignment	15.00	15.00	15.00	15.00	15.00	NIL	NIL	NIL	NIL	NIL	NIL
10	Storage per kilo per day	0.18	0.18	0.15	0.18	0.15	NIL	0.065	NIL	NIL	NIL	NIL
	Minimum Charge	15.00	15.00	15.00	15.00	15.00	NIL	20.00	NIL	NIL	NIL	NIL
	Grace Period	07 days	7 days	7days	7days	7days	NIL	NIL	NIL	NIL	NIL	NIL
11	Pre-acceptance storage per kilo per day	0.18	0.18	0.18	0.18	0.18	NIL	NIL	NIL	NIL	NIL	NIL
	Minimum Charge	15.00	15.00	15.00	15.00	15.00	NIL	NIL	NIL	NIL	NIL	NIL
12	Storage for transit loose cargo per kilo per day	0.18	0.18	0.15	NIL	0.15	NIL	NIL	NIL	NIL	NIL	NIL
13	Storage of BUP per ULD per day or part thereof	40.00	50.00	NIL	NIL	NIL	NIL	NIL	NIL	NIL	NIL	NIL
14	Storage of transit BUP per ULD per day of part thereof	50.00	50.00	NIL	NIL	NIL	NIL	NIL	NIL	NIL	NIL	NIL
15	Addition charge DGR acceptance per kilo	0.15	0.15	NIL	NIL	NIL	NIL	0.15	NIL	NIL	NIL	NIL
	Minimum charge	25.00	30.00	NIL	NIL	NIL	NIL	50.00	NIL	NIL	NIL	NIL

		JKIA					ENTEBBE	DAR ES SALAAM			DUBAI	ADDIS
	EXPORTS	KQ(ACHL+KAHL)	AFS	Siginon	Swiss port	Mitchell Cotts						
16	X-ray security screening per kilo	0.06	0.06	NIL	NIL	NIL	NIL	0.010	NIL	NIL	0.06	NIL
	Minimum charge	20.00	20.00	NIL	NIL	NIL	NIL	5	NIL	NIL	8.04	NIL
17	Courier handling per kilo	0.10	0.06	NIL	NIL	NIL	NIL		NIL	NIL	NIL	NIL
	Minimum charge	10.00	6.00	NIL	NIL	NIL	NIL		NIL	NIL	NIL	NIL
18	Live animals administration per kilo	0.06	0.07	NIL	NIL	NIL	NIL	0.16	NIL	NIL	NIL	NIL
	Minimum charge	20.00	30.00	NIL	NIL	NIL	NIL	40	16.63	NIL	NIL	NIL
19	Hire of pallet dollies per hour or part thereof	50.00	NIL	NIL	NIL	NIL	NIL	NIL	NIL	NIL	NIL	NIL
20	Forklift charges per hour or part thereof				NIL		NIL	NIL	NIL	NIL	NIL	NIL
	Upto 5T	100.00	100.00	100	NIL	100.00	NIL	100 (3 tons and below)	NIL	NIL	NIL	NIL
	Over 5T	200.00	200.00	200	NIL	200.00	NIL	150 (4 tons and above)	NIL	NIL	NIL	NIL
21	Hire of tractor per hour or part thereof	100.00	100.00	NIL	NIL	NIL	NIL	NIL	NIL	NIL	NIL	NIL
22	Hire of pallet transporter per hour or part thereof	100.00	NIL	NIL	NIL	NIL	NIL	NIL	NIL	NIL	NIL	NIL

Other Border Based Organizations

The following agencies also have a presence at the border and charge some fees:

6. Anti-Radiation Agency

This agency levies fees of Ksh 2,000 per truck regardless of load size on products like milk, soya, apples, and wine. Stakeholders feel the fees are not justified and there is no value for money since no service is rendered as the agency is not on site at the border points. However, payment for the fee is mandatory on the Kentrade platform before import/exports documents can be processed by Customs. Stakeholders therefore have no choice but to pay the fee.

7. Port Health Services

Port Health Services levies a fee of Ksh 1,000 per truck on foodstuffs. This fee is paid through Kentrade platform before documents can be processed by Customs. However, according to stakeholders at the border stations, the agency does not carry out any tests on the foodstuffs since they do not do any verification. There is therefore no justification for this charge and there is no value for money.

8. Directorate of Veterinary Services

The Directorate of Veterinary Services levies charges on imported animal feeds of Ksh 1,000 per truck as payment for inspection through Kentrade platform. Stakeholders therefore have no option but to pay the fees. They feel there is no value for money since they are compelled to pay in order for their documents to be processed by the Customs. The directorate confines its verifications on live animals and do not verify the animal feeds.

9. Kenya Forestry Service

Kenya Forestry Service levies fees on Timber logs of Ksh 2,000 per truck at the border stations which the stakeholders feel the fee is too high and it is not value for money but did not offer any justification

10. National Bio-safety Authority

The National Biosafety Authority levies a fee of Ksh 1,000 per consignment through the Kentrade platform that is mandatory. However, no verification of the goods is undertaken at the time of importation. This is a charge for no work done by the Agency. There is therefore no justification for this charge and yet it is a direct charge on imports.

11. County Governments

County governments where transit, import/export trade pass through have a system of collecting fees (cess) outside the OSBPs. This tends to increase the cost of doing business and our observation is that the central government should interrogate them with a view of having them standardized in order to reduce the cost of doing business.


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Part III: Legal Issues related to Fees, Charges and Penalties

Laws and Regulations under which Fees, Charges and Penalties are Anchored

To determine the legal framework under which the import and export stakeholders operate the following laws, regulations and circulars have been examined.

1. East Africa Customs Management Act (EACCMA) 2004
2. EACCMA Regulations 2010
3. EAC Customs Union Protocols
4. Finance Bills
5. Customs & Excise Act (Cap 472),
6. KRA Act 1995
7. KRA ICMS
8. The Mombasa Port & Northern Corridor Community Charter
9. Kenya National Electronic Single Window System
10. Single Customs Territory Procedure Manual
11. Miscellaneous Fees and Charges Act 2016
12. The Standards Act (Cap 496)
13. KEBs PVOC Programme Operations Manual
14. KEBs Pre-Export Verification of Conformity to Standards Guidelines for Exporters and Importers
15. KEPHIS Act 2012, Plant Protection Act (Cap 324)
16. Plant Protection Act (Cap 324) Subsidiary Legislation (Rev. 2012)
17. Presidential Executive Orders, and
18. Kenya Constitution 2010.

Matrix for Penalties under the EACCMA

Table 3.1: Matrix for Penalties under the EACCMA

Section	Offense	Fine/s not exceeding	Term not exceeding	Forfeiture
14,5 ICD	Contravening licensing provisions	$1,000	N/A	N/A
15.4	Custom area offenses	$1,000	N/A	+Goods
16.4	Interference with goods in customs	$1,000	or 3 Years	+Goods
24.5	Failure to make proper report by a master of a vessel	N/A	N/A	Goods
29.3	Failure to report when arriving overland	N/A	N/A	Goods
30.5	Arriving by train	N/A	N/A	Goods
31.4	Arriving overland other than by a vehicle	N/A	N/A	Goods
33.6	Contravenes directions on unloading and removal of cargo	N/A	N/A	Goods
39.2	Contravenes conditions of removing goods without paying duty	N/A	N/A	Goods
43.2	Contravenes procedures of warehousing	N/A	N/A	Goods
48.5	Contravenes warehousing rules	N/A	N/A	Goods
49.5	Removal to a bonded warehouse	N/A	N/A	Goods
51.2	Contravenes conditions imposed by the Commissioner	N/A	N/A	Goods
52.2	Contravenes conditions on removal of goods without paying duty	N/A	N/A	Goods
55.3	Contravenes rules on goods used as stores on aircraft or vessel	N/A	N/A	Goods

Section	Offense	Fine/s not exceeding	Term not exceeding	Forfeiture
59.3	Refusal to leave a warehouse when directed	$250	or one year	.N/A
60.3	Goods for home consumption be removed within 14 days	N/A	N/A	Goods forfeited and destroyed or otherwise deposed
61.0	Penalty for unlawful taking warehouse goods	25% of the dutiable value of the goods	or 2 years	N/A
64.3	Warehouse keeper to obey the rules	$ 1,000	N/A	N/A
65.3	Stowage and storage rules	$1,000	N/A	Goods
67.3	Warehouse keeper substituted goods etc.	25% of the value of the said goods	N/A	N/A
75.2	Contravenes loading entry rules	N/A	N/A	Goods
77.2	Goods for export not to be discharged	N/A	N/A	Goods
77.2	Goods for export not to be discharged	N/A	N/A	Goods
78.7	Provisions on export e.g. payment of security	$ 5,000	3 years	+ Goods
79.2	Rules on stores for aircrafts and vessels	N/A	N/A	Goods
80.2	Short shipment of non-bonded goods	$ 500	N/A	N/A
83.3	Vehicles departing overland	N/A	N/A	Goods
84.5	Departure other than by vehicle	N/A	N/A	Goods
91.1	Goods not in manifest	N/A	N/A	Goods
105.4	Refusal by Master of Coasting vehicle to answer questions on board	$250	N/A	Aircraft or vessel seized until fine paid
119.4	Goods deposed without payment of duty	N/A	N/A	Goods

Section	Offense	Fine/s not exceeding	Term not exceeding	Forfeiture
150.2	Refusal to depart within stipulated time	Less 250 tons = $2,000 More than 250 tons = $ 5,000	N/A	Aircraft or vessel seized until fine paid
152.3	Power to board vessel	$ 1,000	N/A	N/A
152.5	goods found in violation	N/A	N/A	Goods
152.7	Goods not accounted for on vessel	10% of duty and payment of duty	N/A	N/A
153.4	Unlawful goods on vessel	N/A	N/A	Goods
155.4	Unlawful goods found on person	N/A	N/A	Goods
157.4	Search of premises	$ 2,500	3 years	N/A
157.5	Goods missing from custom sealed room or premises	25% of the value of the goods	5 years	N/A
160.6	Manufacturing under bond without a license	$ 5,000	and/or 3 years	Goods
166.3	Unlawful disposal of bonded goods	$ 5,000 50% of ex-factory value of the raw materials or of the manufactured goods	and/or 3 years	+Goods
168.4	Removal of goods from export processing zone without permission	$ 5,000 or 50% of the value of the goods whichever is higher	and/or 3 years	Goods
175.3	Compensating goods violation	N/A	N/A	Goods
191.2	Unlawful access to Custom computerized system	individual =$ 5,000 Company = $ 25,000	2 years	N/A

Section	Offense	Fine/s not exceeding	Term not exceeding	Forfeiture
192.0	Interference with computerized system	$ 10,000	3 years	N/A
193	Conspiracy to contravene any provision under the act	N/A	5 years	N/A
196	Inducement to commit an offense	N/A	one year	N/A
197.1	Obstruction	$ 2,500	2 years	N/A
199 (c)	Goods thrown overboard to avoid seizer etc.	Less than 250 tons$ 7,000 More than 250 tons $ 10,000 Person in charge of vehicle = $ 5,000	N/A	Goods forfeited. Vessel or aircraft detained until fine paid or security provided. Vehicle be forfeited
200	Offenses related to prohibited, restricted and unaccustomed goods	50% of the duty on the goods	and/or 5 years	N/A
201	Offenses under the Act	Payment of duty plus fine		N/A
202	Offense for importing concealed goods	50% of the value of the goods	or 5 years	N/A
203	Use of false documents	$10,000	or 3 years	N/A
206	not reporting found unaccustomed good	$ 2500	N/A	Goods
207	Smuggled goods offered for sale	N/A	N/A	Goods
208	Aiding or abetting an offense under the act	$ 5,000	N/A	N/A

Section	Offense	Fine/s not exceeding	Term not exceeding	Forfeiture
209	General penalty	$ 5,000	N/A	N/A
210	Unlawful or unaccustomed goods liable to forfeiture	N/A	N/A	Goods
211.1	Any vessel of less than 250 tons, vehicle, animal or other thing used for importation, exportation or coastwise and is liable to forfeiture	N/A	N/A	Shall be forfeited
211.2	Any vessel of more than 250 tons liable for forfeiture	Master $ 10,000		Any vessel of more than 250 tons liable for forfeiture SHALL NOT BE forfeited but shall be seized until fine is paid
211.3	Any gears	N/A	N/A	Forfeited
212.1	Goods and their packaging liable to forfeiture	N/A	N/A	Shall be forfeited
212.2	Prohibited goods	N/A	N/A	Be re-exported
213.1	Seizer of goods, vessels, vehicles or animals liable for forfeiture	N/A	N/A	Goods may be seized
213.6	Obstruction	$ 2,000	and/or 3 years	N/A
215	Condemnation of things liable for forfeiture	?	?	?
218	Restoration of Seizure	N/A	N/ A	Council may direct release or restoration of seized goods

Part IV: Best practices identified from some of the WTO Member Countries that are implementing the TFA

Kenya's trade facilitation indicator (TFI) score as per the OECD (February 2017 – January 2020) in terms of fees and charges is **1.692**. The TFI take values from 0 to 2, where 2 is designated as the best performance that can be achieved. The Best practice TFI score for Kenya is **1.85** and therefore has plenty of room to improve to meet and surpass the global best practice in terms of implementation of the TFA regarding fees, charges and penalties.

According to the TFA Database[1]. Kenya has notified Article 6 of the TFA under Category C. It has an indicative date of implementation of 22 February 2030 and a definitive date of implementation of 30 June 2033.

1. The assistance required for implementation of Article 6.1 is support to:
    a. Review and simplify the fees and charges levied, basing them on criteria corresponding to the cost of the services rendered
    b. Develop a mechanism for periodic review of fees and charges for purposes of reducing their numbers and diversity
    c. Draft guidelines on fees and charges to be used by the public sector and also set up a pool of experts to assist border agencies to set up their fees and charges
    d. establish a mechanism of addressing an error where a person voluntarily discloses to a Kenya Customs administration the circumstances of a breach of customs law, regulations, or procedural requirements prior to the discovery of that breach by a custom administration
    e. formulate guidelines and policies which will help the officers distinguish between a mistake/error and fraudulent conduct before imposing penalties
    f. develop procedure manuals for assessment of mitigations, settlement and collection of civil and administrative penalties; and
    g. Align domestic law with the relevant provisions of the Trade Facilitation Agreement.

Kenya falls below the best practice in terms of implementation of Article 6 of the TFA in the following ways:

a. Information published on fees and charges - Information is available in paper publications (Gazette, Bulletin, Customs Code)

1 https://tfadatabase.org/members/kenya/technical-assistance-projects/article-6-1

b. Information on fees and charges all-inclusive - Available information does not account for all applicable fees and charges or does not include all information required in WTO TFA Art. 6.1.2

c. Fees and charges periodically reviewed to ensure they are still appropriate and relevant- Fees and charges are reviewed periodically but it is not explicit whether the stakeholders are involved.

It should be kept in mind that the 10 economies with the lowest trade costs are all located in Western Europe or North America. At the other end of the spectrum, the 10 economies with the highest trade costs are either from Africa or Small Island developing states, such as Comoros, Kiribati and Vanuatu. Kenya as the hub of Central and Eastern Africa should aspire to be among the 10 top economies in ease of doing business.

Countries with best practices that have implemented Article 6 of the TFA

There is limited published information on success stories or case studies regarding the implementation of Article 6 of the TFA. However, the OECD has developed a simulator and country comparison tool from which we have collected the following information on select countries. Kenya can learn from these countries as it works towards meeting its implementation commitments.

New Zealand

New Zealand has a 100.0% rate of implementation commitments to date and a high TFI score of 1.929 in as far as fees and charges are concerned. New Zealand has met or surpassed the best practice in terms of implementation of Article 6 of the TFA in the following ways:

a. Information published on fees and charges – In New Zealand, information is displayed on relevant agencies' website (on a dedicated page). Kenya ought to implement this.

b. Information on fees and charges all-inclusive – Both in Kenya and New Zealand, this measure falls below best practice as available information does not account for all applicable fees and charges or does not include all information required in WTO TFA Art. 6.1.2. This measure ought to be implemented to indicate that all applicable fees or charges have been accounted for when providing information and it should include the fees and charges that will be applied, the reason for such fees and charges, the responsible authority and when and how payment is to be made (Kenya does not give reason for fees and charges)

c. Fees and charges periodically reviewed to ensure they are still appropriate and relevant – In New Zealand, fees and charges are reviewed periodically and adapted to changed circumstances. Kenya ought to implement her fees and charges in this fashion.

Singapore

Singapore has a 100.0% rate of implementation commitments to date. Trade facilitation performance in Singapore exceeds or is nearest to the best performance across the WTO members. Performance has improved between 2017 and 2019 in the area of fees and charges among other measures of the TFA. The TFI score in Singapore is 1.923. This high score notwithstanding, there is still room for improvement in as far as further reduction of the number and diversity of fees and charges collected is concerned.

Singapore has met or surpassed the best practice in terms of implementation of Article 6 of the TFA in the following ways:

a. Information published on fees and charges – In Singapore, information is displayed on relevant agencies' website (on a dedicated page). Kenya ought to implement this.

b. Information on fees and charges all-inclusive – In Singapore, all applicable fees or charges have been accounted for when providing information and it should include the fees and charges that will be applied, the reason for such fees and charges, the responsible authority and when and how payment is to be made. Kenya should consider including this form of implementation.

c. Fees and charges periodically reviewed to ensure they are still appropriate and relevant – In Singapore, fees and charges are reviewed periodically and adapted to changed circumstances. Kenya ought to implement in this manner.

Singapore has established a Voluntary Disclosure Programme (VDP) for individuals or companies to voluntarily come forward to disclose errors and omissions committed by them under laws and regulations administered and enforced by Singapore Customs. This programme does not act as an amnesty programme, it however may offer mitigation towards an offender's case.

The disclosure must be complete and made prior to audit checks and investigations. There is, however, no fixed time limit for disclosure. The process of voluntary disclosure is via filling and submission of a VDP form attached with supporting documentation including permits, invoices, packing list, bill of lading among others.

China

China's current rate of implementation commitments stands at 100.0% with a timeframe covering February 2017 to January 2020. It also has a high TFI score of 1.923 in as far as fees and charges are concerned.

China has mostly met or surpassed the best practice in terms of implementation of Article 6 of the TFA in the following ways:

a. Information published on fees and charges – In China, information is displayed on relevant agencies' website (on a dedicated page). Kenya ought to implement this.

b. Evaluation of fees and charges – Kenya has surpassed China's implementation of this. China has some fees and charges calculated on an ad-valorem basis. Kenya's fees and charges are not calculated on an ad-valorem basis or are limited in amount to the approximate cost of the services rendered on or in connection with the specific import or export operation.

c. Information on fees and charges all-inclusive – In China, all applicable fees or charges have been accounted for when providing information and it should include the fees and charges that will be applied, the reason for such fees and charges, the responsible authority and when and how payment is to be made. Kenya should consider including this form of implementation.

d. Fees and charges periodically reviewed to ensure they are still appropriate and relevant – In China, fees and charges are reviewed periodically and adapted to changed circumstances. Kenya ought to implement in this manner.

A presentation of the implementation of WTO TFA by China Customs[2], indicates that China has implemented Articles 6.1 and 6.2 through:

a. The reduction and regulation of fees and charges; and
b. Eliminating customs administrative fees and charges.

It further shows that Article 6.3 of the TFA (voluntary disclosure) has been implemented by Self-disclosure rules added in the PCA regulation (2016)

Japan

Japan has a 100.0% rate of implementation commitments to date and a TFI score of 1.786 in as far as fees and charges are concerned.

Japan has published its Customs Fee on the internet https://www.customs.go.jp/english/exp-imp/customsfee.htm.

This is a lesson for Kenya as the Customs fees ought to be published and centrally accessible to all interested parties.

The scope of Japan's Voluntary Disclosure Programme (VDP)[3] regards customs duty and excise tax. Where errors appear within an original declaration, the taxpayer is required to file an amended return. This ought to be done before the customs inspection. In this case the additional tax for deficient declaration is not imposed.

Kenya

Kenya has an implementation TFI score of 1.692. The best practice score stands at 1.857. The highest score discussed here is New Zealand's 1.929. Kenya therefore ought to fully implement article 6 of the TFA measure by introducing reforms for the proper publication of information on fees and charges, ensuring said fees are all-inclusive, enforcing periodic review of the fees and charges in accordance with the TFA measure. The implementation of the measure will be aided in Kenya receiving the support and assistance required as highlighted above, towards the growth of Kenya's economy and the easing of trade globally.

2. Trade Portals

Kenya Trade Network Agency (KenTrade) is a state Agency under the National Treasury that is mandated to facilitate cross border trade and establish, manage, and implement the National Electronic Single Window System (Kenya TradeNet System).

Their mission is to facilitate trade by simplifying, harmonizing, and automating business processes through management of the TradeNet System and provision of related services for Kenya's global competitiveness.

2 https://www.wto.org/english/tratop_e/tradfa_e/comm_e/meet2-3may_ie_china_e.pdf
3 http://www.customs.go.jp/english/c-answer_e/imtsukan/1305_e.htm

For Imports:

- Reduced import custom clearance documents from 10 to 5 (www.kra.go.ke) • Exemption of Certificate of Conformity requirement for imports of brand new motor vehicle spare parts (www.kenyalaw.org, www.kebs.org)
- Smart gates at ICD Nairobi have reduced queues
- Faster processing of IDF on Integrated Customs Management System (ICMS) (www.icms.kra.go.ke/)
- Real time tracking of containers
- Speedier clearance through expedited fast track mechanism for exports (www.kra.go.ke)
- Reduced port handling time and cost (www.kpa.go.ke)
- Reduced overall time for customs clearance

For Exports:

- Reduced exports custom clearance documents from 9 to 5 (www.kra.go.ke)
- Reduced documentary costs through elimination of Phytosanitary fees and Export Health Certificate fees (www.kenyalaw.org)
- Elimination of declaration of agro-exports fees, Agriculture and Food Authority (AFA) portal (www.agricultureauthority.go.ke)
- Speedier clearance through expedited fast track mechanism for exports (www.kra.go.ke)
- Reduced port handling time and cost (www.kpa.go.ke)
- Reduced overall time for customs clearance
- KEPHIS, AFA & Port Health now on boarded onto the single window (www.kentrade.go.ke)

On the Portal, they display the Notice on New fees on training modules applicable to the Users of the Trade Net System in the following areas:

a) Permits/Trader Module
b) Port/Manifest Managements
c) Partner Government Agency
d) customs Security Bond Management Module
e) Duty Remissions & Exemptions
f) Urgent Trainings
g) Annual Mandatory Refresher Trainings

The fees for training modules for permits/trader module have gone up from Ksh 10,000 for Nairobi and Mombasa to Ksh 15,000 and in other regions, it has come down from Ksh 18,000 to Ksh 9,000. The same fees are applicable to Port/ manifest management; customs security bond management; duty remissions and exemptions. Training for partner government agency, the rates went up from

Ksh 15,000 for Nairobi and Mombasa to Ksh 22,500 while other regions, training fees have risen from Ksh 27,000 to Ksh 40,500. Any urgent trainings required would attract additional fee of Ksh 5,000. Annual mandatory refresher trainings which were previously free, now attracts Ksh 5,000 per session. Also augmented related services attracts fees of Ksh 300.

Tanzania Trade Portal

There are 25 steps listed, 20 payments charges as of 11/09/2021 and 2 laws. The number of institutions has not been mentioned. However, the requirements for payment and the costs have been provided.

Uganda Trade Portal

The information on the Uganda Trade Portal is that it is a one stop centre for the information that is required for Import, Export and Transit of goods.

The portal guides you on which licences you'll need, where to go, who to see, what documents are needed, costs to pay, law that justifies the step and where to complain in case of any problem.

It further explains that as an example, if you are a trader wishing to export coffee or Fish, you'll select export and you'll see all the steps to follow. No more middlemen. No more hidden costs, No unnecessary delays!

The following laws and regulations are the only one reported on the trade portal supposed to be applicable.

a) The EAC Customs Management Act 2004

b) Uganda National Bureau of Standards import Inspection Clearance regulations 2015 Section 5, 6

c) Uganda National Bureau of Standards, Import Inspection and Clearance regulation 2018 Section 5, 6

It is also published on the Portal that there are 10 steps, 5 institutions, 3 results, 11 required documents and costs showing how to calculate your costs estimates.

Burundi Trade Portal

The Burundi Trade Portal was launched on 28th July 2021. The Portal is meant to map out all her imports, exports and transit procedures as well as fees and time. The next step after mapping will be to simplify and remove unnecessary and redundant bottlenecks.

Summary Observations and Findings

1. The Kenya Bureau of Standards publishes it fees and charges on its website. This is in conformity with Article 6 of the TFA. It is however noted that when it wishes to review them a written notification is sent out at least two calendar months before implementation. However, stakeholders claimed they are not given an opportunity to express their opinions and views for consideration before the fees and charges are altered and effected.

2. For other border agencies, they have not indicated in their websites how they review and alter their fees and charges. Also, there is no indication whether stakeholders are consulted, and

their views taken into consideration before reviewing their fees and charges. Interviews with stakeholders confirmed that they are not given an opportunity to be heard before the charges are established, published, and implemented.

3. We observed that the Kenya Airports Authority is not directly involved in cargo clearance operations at the airports. Instead, it has licensed several private companies to carry out the cargo handling business.

4. The East African Community Customs Management Act (EACCMA) does not explicitly provide for instances when fees and charges are to be levied for a service rendered. Equally, none of its provisions provide for stakeholders' consultations.

5. **Legal Notice 48 (The Plant Protection Fees & Charges) Rules (2009) {S.12 (3) (e)}**, provides for the payment of airline concession fees to obtain clearance of consignments. Furthermore, it states that the Authority is empowered to determine, impose any levy rates, charges, dues or fees for any services performed by the Authority.

   There is nothing in this Legal Notice that requires consultations with stakeholders. The linkage between the fees and charges and the services rendered also cannot be established.

6. **Part C (V) of Kenya Ports Authority Tariff Book:** *states that the Authority may determine and raise charges or dues that are not expressly provided for in the Tariff. (Part C VII) states that* the Authority may impose a surcharge or adjust the rates set out in the Tariff as it deems fit.

   The Tariff Book does not state in any way that stakeholders are consulted in the determination of fees and charges. The authority determines fees and charges as deemed fit. In other words, the fees and charges are fixed unilaterally. The link between these fees and charges and the services rendered also cannot be established.

Part V: Conclusion and way forward

From the foregoing, the consultancy observed after examining most of the statutory documents of various border agencies as well as those of the East Africa Community that non-state stakeholders are hardly consulted when fees and charges are determined or reviewed. Similarly, interviews with non-state stakeholders established that they are not consulted during the establishment of the fees and charges and levies. This has resulted in charges and fees that are difficult to link to actual services rendered.

Looking at Article 6 of the TFA, it has been noted that both developing and developed countries are making effort to implement the Article in line with the notifications that they had made to the WTO. This observation is supported by the state of play of the few selected countries reflected under the Best Practices Section of this report.

Within the EAC, Kenya and other Partner States have made commendable effort in the implementation of the TFA though much remains to be done. This can be ascertained by looking at their respective Trade Portals in their websites. Apart from Burundi whose Portal is in the process of being established, Rwanda, Uganda and Tanzania have simplified the information needed for import and export processing and clearance.

In conclusion, the consultancy wishes to make the following recommendations:

a. The fees, charges and penalties are all scattered in various Acts and Regulations. We identified 23 institutions and 18 laws of Kenya that address article 6 of the TFA. For purposes of speedy and expedited clearance, customs fees and charges ought to be published and centrally accessible to all interested parties, the number of players and applicable laws should also be streamlined and consolidated. The EACCMA should be the only applicable law where all issues of fees, charges and penalties are addressed in light of EAC's common external tariff regime. It is therefore recommended that SCEA should lobby for policy guidelines to be generated to give guidance to the country on how to implement this Article in view of this finding.

b. During interactions with non-state stakeholders, we observed that they are not satisfied with fees and charges relating to alterations of customs documents that have no revenue implications. They feel the charges are unnecessarily high and we therefore recommend that SCEA can advocate for some of the levies be reduced or be phased out altogether.

c. While some border agencies publish their fees and charges, this is not uniform across the agencies. Adequate time is also not accorded stakeholders to give their views. It is also not clear if stakeholder views are taken into consideration when establishing/reviewing the fees and charges. It is therefore recommended that time should be allowed for public participation before the fees and charges are agreed upon and adopted. This will accord the stakeholders a sense of recognition and help reduce the common feeling of “them versus us” that was found to be prevalent during our interaction with them. This is an area in which SCEA may wish to lobby for implementation.

d. It is also recommended that stakeholders should be given adequate time after publication of the fees and charges before implementation commences. This will enable the stakeholders to familiarize and get buy-in into the fees and charges and thus avoid disruption of import/export trade. While there is no standard time prescribed as adequate for this measure for all border agencies, the WTO generally recommends a period of 6 months as being reasonable during which stakeholders can prepare to comment and implement new and reviewed fees and charges.

e. The reason for introducing new fees and charges should be disclosed through public participation fora and evaluation done to establish their relationship with importation and exportation of goods. Therefore, those fees and charges not falling under the purview of Article 6 of the TFA and thus not related to the importation and exportation of goods need to be reviewed with a view to having them phased out.

f. The number and diversity of the fees and charges should also be reduced and simplified and limited to approximate cost of the services rendered. In addition, penalties imposed should depend on facts and circumstances of the case and be commensurate with the degree and severity of each case. The multiplicity of charges by border agencies checking for similar requirements on same consignments was also an issue highlighted by the stakeholders. We therefore recommend that the SCEA and KEPSA should lobby the GoK for the harmonization of their functions.

g. We also recommend that concessions to offenders who voluntarily report any infractions be considered across the agencies. This will encourage stakeholders to collaborate more with the agencies and lead to reduced tax evasion practices. This will be a win-win measure for the agencies and importers/exporters. The validation meeting appreciated this recommendation and emphasized that border agencies should make effort to embrace this practice as provided for in Article 6 of TFA. In this respect, a voluntary disclosure programme should be initiated by stakeholders

h. Some agencies which do not have presence at the border points should not levy any fees and charges since they are not there to provide service.

i. Truckers (transporters) raised complaints about the Regional Cargo Tracking System unit of KRA penalizing them on minor traffic offences like overlapping on the way to Malaba. The Unit also charges customs warehouse rent as a result even where the goods are not involved in any customs offence and have not deviated from the gazetted transit route. It is therefore recommended that consultations should be held with customs to resolve this matter and leave traffic offences to the police.

j. The consultancy observed that fees and charges such as IDF and Railway levy cannot be linked to any provision of Article 6 of the TFA and therefore incompatible with WTO rules. It is therefore recommended that such fees and charges should be reviewed to ensure conformity with Article 6 of the TFA.

k. Finally, it is also recommended that the SCEA and KEPSA should make advocacy presentations to the relevant authorities with the support of the NTFC to revise domestic laws for smooth implementation of the TFA

l. During validation meeting, stakeholders felt that since Kenya is a Member of EAC, it should take lead in ensuring that fees and charges within the customs union are harmonized.

m. The validation meeting noted that the level of awareness of TFA provisions needed to be improved. In this regard, The Ministry of Industrialization, Trade and Enterprise Development was requested to come up with outreach training programme to address this challenge.

Annexes

References

Annex 1: References

- Anti-Counterfeit Amendment Regulations
- EACCMA Regulations 2010
- East Africa Community Customs Management Act (EACCMA) 2004
- Fisheries Management & Development Act
- Forest Fees and Charges-Legal Notice no.21
- Kajiado County Finance Act 2016
- KEBS fee schedule for D-mark, S-mark
- KEBs Pre-Export Verification of Conformity to Standards Guidelines for Exporters and Importers
- KEBs PVOC Programme Operations Manual
- Kentrade Notice on New Fees (1 Nov. 2020)
- Kenya National Chamber and Industry Membership Charges Schedule
- Kenya National Chamber of Chamber of Commerce and Industry Policy brief on Multiple Inter-County Taxes, 2019
- Kenya Ports Authority Tariff 2012 Book
- Kenya Revenue Authority Act, Revised, 1995.
- KEPHIS Act 2012, Plant Protection Act (Cap 324)
- KEPHIS Inspection Fees Schedule
- Maritime Authority fees Regulations
- Merchant Shipping Levy Fees Regulations
- Miscellaneous Fees and Charges Act 2016
- Pharmacy and Poisons Board Fee Structure
- The Mombasa Port & Northern Corridor Community Charter
- The Standards Act (Cap 496)
- Trade Facilitation Agreement (2013)

Validation meeting attendance list

Annex 2: Validation meeting attendance list

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