East Africa Customs and Trade spotlight

A focus on East Africa's customs and trade environment

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Spotlight

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01

DRC's integration to the East African Community (EAC)

The Democratic Republic of Congo was officially admitted as the 7th member of the East African Community on 29th March, 2022.

Inspiration and Stimulation to join the community.

Some of the key factors for DRC's push to join the EAC include but are not limited to:- the need to foster strong relationships, pave way for reconciliation, rectification and ease tensions and security related disputes.

What this move means for the East African Community.

- DRC's admission to the EAC bloc comes with an increased GDP and expanded market size making the community a home for over 300 million people.
- The increase in the market size comes with huge potential for employment and investment opportunities in the region.
- According to the East African Community Repository, the ascension has also increased the GDP of the region to about 250 billion dollars from US$ 240 billion recorded in 2019 (based on current market prices).
- The ascension is poised to improve the East African Community's overall Balance of payment position (BOP) as result of increase in manufacturing activities and growth of infrastructure that are aimed at increasing the overall EAC export market.
- DRC brings with it vast mineral wealth inclusive of diamonds, gold, copper, cobalt as well as other resources and opens up the corridor from the Indian ocean to the Atlantic ocean. The growth in mineral trade means a great boost to the overall economic growth of the community.
- Ascension into the community is also a channel through which trade barriers and increased market access will be enforced. This will further enhance the overall regional competitiveness both internally and externally.
- The Ascension comes with the strong need for improved inter-connectivity and modernized cross-border transport mechanisms and infrastructure. These enhancements once implemented will foster improved trade relations and address logistical challenges associated with using DRC's distant western ports for import and export purposes.

Key Note:

Implication to DRC

The Ascension means that DRC becomes party to the Treaty establishing the EAC and deposits the instruments of acceptance with the Secretary General. It will then join all the sectors, programs, laws & legislations and activities of the bloc.

However, for DRC to fully be integrated into the community, it will need to have Parliamentary and Ministerial sittings to ensure that its internal organs are aligned to the requirements of the community's pillars mainly the customs union and the common market protocols.

02

Know your Tariff!

2022 Amendments to the East African Community Common External Tariff (EAC-CET).

The EAC – CET (also universally referred to as the Harmonized System - HS) primary objective is to create a base that allows for free trade within a larger market spread than that of the individual countries that comprise it.

- It is a system used to uniformly categorize, identify, name and code physical goods that are moved across borders among various jurisdictions.
- The EAC-CET serves as a guide on which import duty is determined for customs purposes.
- The current EAC-CET comprises a three band structure in the form of raw materials and capital goods (0%), intermediate goods (10%) and final goods (25%) and a Sensitive Items (SI) list which consists of rates that are over and above 25%.
- It is imperative to state that the HS is revised after every 5 years through the World Customs Organization.
- Accordingly on January 1 2022, the 7th Amendment to the Harmonised System (HS) was brought into force.
- For the case of East Africa, the revised and updated EAC-CET 2022 version will be rolled out on 1st July 2022 after analysis and further discussion by the customs administrations on both the national and regional levels.
- The Changes will also be reflected in the East African Community Gazette that is printed and published on 30th June every year.
- In a meeting held on 5th May 2022, the EAC Ministerial body in charge of Trade and Finance adopted 35% as the fourth band of the EAC Common External Tariff.
- Various products like fresh-cut flowers, leather products, coffee, cereals, sugar and confectionary are accommodated for in this 4th band.
- The key motive behind introduction of the fourth band is to reduce the stays of application that trigger trade distortion thereby reducing ambiguity and ensuring uniform treatment of the goods in question.

Additionally, the various items indicated in the fourth band (35%) are mostly sensitive items in sense that there is either sufficient local production of the same or there is a need to encourage and grow local production. So importation of the same with in the normal tax bands of (0-25%) would hurt the local market.

Therefore the move will encourage large scale local and regional goods production, encourage foreign direct investment, encourage infrastructural development and industrialization, protect local industries, increase food security and create employment opportunities. This will in turn boost the overall regional economic growth.

HS 2022 – Key Insights

The new HS 2022 amendments focus on the current trade through the recognition of new product streams while addressing environmental and social issues of global concern.

It covers a total of 251 sets of amendments covering a various range of goods moving across borders. Some of the major amendments include but are not limited to:

- **Tobacco and Nicotine based products:** new provisions on these products resulted from the difficulties in classification of the same, lack of visibility in trade statistics and the very high monetary value of these products.
- **Unmanned aerial vehicles (drones):** these gain their own specific provision to simplify the classification of the aircraft.
- **Smart phones:** these will gain their own subheading and note, which will also clarify and confirm the current heading classification of the multifunctional devices.
- **Health and safety kits:** there has been global recognition of the dangers of delays in the deployment of tools for the rapid diagnosis of infectious diseases in outbreaks. There have been inserted new provisions for clinical trial kits for medical research to enable classification without information on the ingredients which will foster cross-border medical research.
- **Radioactive materials and items required for construction of explosives:** new provisions included to safe guard the protection of society and the fight against terrorism.

The amendments in HS 2022 include clarification of texts to ensure uniform application of the nomenclature. Given the wide scope of the changes however, not all of them are included in this article and we advise the readers to read the amendment for other changes not encompassed hereunder.

We are also tracking the same and will give you further updates in our upcoming newsletter issues.

03

The record keeping requirement under customs

The record keeping requirement from a customs perspective is a system that necessitates all stakeholders especially importers and exporters to properly archive all documentation employed in the respective cross-border transactions.

- The documentation list includes but is not limited to, Import declaration form (KE), Customs entries and declaration forms, commercial invoices, Certificate of Conformity (if applicable), Bill of Lading, Packing List, exemption letter (if applicable) and certificate of origin.

Section 234 of the East African Community Customs Management Act (EAC-CMA) requires an owner of goods to keep every document required or authorised for the purpose of the EAC-CMA, for a period of five years and failure to do so is an offense.

- As a result of this requirement, a customs officer may at any time within five years of the date of importation or exportation, require the owner of the goods or the person in possession to produce those books for inspection or make a declaration with respect to the weight, measure, value, prices or origin of those particular goods.

- The most common customs-related problems that necessitate document verification are: tariff misclassification, payment of duties either higher Situations where customs invokes health, sanitary, or safety issues, labeling issues involving a certificate of origin, weight, ingredients, marks, also necessities a need for the required documentation.

- Additionally, when a company is selected for Post Clearance Audit, a proper document and record system is necessary to ensure that the audit process is smooth and does not result into additional tax assessments, fine and penalties due to insufficient information. Issues involving the import or packing regulations of the importing country also require that all necessary documents are in place to necessitate such reviews.

Poor Record Keeping:- Implications for non-compliance.

- Poor record keeping is often the result of poor systems and processes. It can also be triggered by a lack of information, training and resources. This can lead to issues such as inaccurate data, poor customer service levels and additionally looked at as an indicator of fraud and other offences.

- Poor record keeping can lead to inability to track and control of all the trade related costs and expenses in order to manage risk. Failure to maintain proper records also increases liabilities, additional assessments during post clearance audits as result of failure to support variances and other concerns raised during the audits and reviews by the revenue authorities.

- Therefore, it is good practice for every importer and exporter and concerned stakeholders to ensure the proper keeping of records with regard to the legal and regulatory frameworks.

04

Post Clearance Audit Review (PCA)

Post Clearance Audit Review is a systematic customs control measure that ensures the accuracy and authenticity of declarations through the examination of relevant books, records, business systems and commercial data kept by persons/ companies directly or indirectly involved in trade.

The increase in volume of international trade and the need for trade facilitation has necessitated the adoption of risk management and audit-based controls.

Post Clearance Audit is one of the most important means/tools used by many countries in the customs reform and modernization.

Post-clearance audit means audit-based Customs control performed subsequent to the release of the cargo from Customs' custody.

The purpose of such audits is to verify the accuracy and authenticity of declarations and covers the control of traders' commercial data, business systems, records and books.

Such an audit can take place at the premises of the trader, and may take into account individual transactions or cover imports and/or exports undertaken over a certain period of time.

Post clearance audits can be conducted on a case-by-case basis, focusing on targeted operators, selected on the grounds of risk analysis of the commodity and the trader, or in a planned, regular way, set out in an annual audit program.

Furthermore, the audit could also be used as criteria to offer special treatment to certain authorized economic operators.

The Post Clearance Audit (PCA) Challenge:

The Post Clearance Audit Reviews bear a daunting burden that requires reconciliation of all declarations made through customs against taxpayer records;

The examination exercises also result in huge variances that come with assessments to pay the extra duty, taxes, fines, and penalties where the taxpayer does not satisfactorily provide fact-based grounds to explain the variances;

The variances are triggered by mismatches between imports/purchases & Exports/Sales in ASYCUDA/SIMBA/ICMS and what is declared in the audited financial statements and submitted returns and other information held by the revenue authority.

The increase in volume of international trade and the need for trade facilitation has necessitated the adoption of risk management and audit-based controls.

Other areas of contention include but are not limited to: non-declaration of imported services, tariff misclassification, misuse of customs procedure codes, non-compliance with preferential regimes, and possible transfer pricing risk/ valuation concerns.

The PCA review is provided for under the East African Community Customs Management Act, 2004 where under Section 235, it requires that a customs officer may within five years from the date of importation, exportation, transfer or manufacture of any goods, require the owner of the goods or a person in possession of documentation relating to the goods, to produce all books, answer any question in relation to the goods or make a declaration with respect to the weight, number, measure or other details as may be required by the officer.

Thus, where an entity or person is cleared at customs in the course of importation or exportation of goods, customs officials have the discretion to perform an audit within five years of the transactions to ensure that there was no violation of customs requirements, laws and regulations and is liable to fines and penalties.

The documents that are audited during a PCA include but are not limited to: books of record for the goods being imported or exported, computer stored information of the details of importation or exportation, bills of lading, invoices, shipping lists, certificate of origin and other declaration documents etc.

Upcoming issue

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01 The Africa Continental Free Trade Area Agreement – **What it means to your business**

02 Authorized Economic Operator – **Key Insights**

03 Export Promotion Schemes in East Africa **– How your business benefits**

04 **Customs Automation**

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