



EAC RESPONSE TO THE PETITION BY SMART FOR AN OUT-OF-CYCLE AGOA ELIGIBILITY REVIEW FOR RWANDA, TANZANIA AND UGANDA

1. BACKGROUND

The EAC Secretariat has learnt of a notice for a public hearing by the U.S. Trade Representative (USTR) scheduled on 13th July 2017 in regard to a petition made on 21st March 2017 by the Secondary Materials and Recycled Textiles Association (SMART) requesting for an out-of-cycle review to determine whether the Republic of Kenya, Republic of Rwanda, United Republic of Tanzania, and Republic of Uganda are meeting the AGOA eligibility criteria.

The EAC is a regional integration bloc comprising of six Partner States of which the four countries indicated in the petition are active members. Since 2005 and 2010 the EAC has been implementing a Customs Union and Common Market respectively, whereby the trade policies and regimes have been harmonized. Given the common trade implementation framework that is engrained in the common EAC Protocols and laws, the EAC Secretariat feels obliged as a key stakeholder to provide a response and clarification to the petition as required in the notice for public hearing.

The issues raised in the petition allude that:

- (i) The decision of EAC Heads of State in March 2016, to phase-in a ban on imports of used clothing and footwear is imposing significant economic hardship on the U.S. used clothing industry, and is in violation of the AGOA statutory eligibility criteria to make continual progress towards establishing a market based economy and eliminating barriers to U.S. trade and investment.
- (ii) EAC increased the import tariff on used clothing from \$0.20 to \$0.40 per kg from July 2015.
- (iii) The used clothing industry in the U.S. employs a substantial number of people estimated at 40,000 in the private sector and 150,000 employees in the not-for-profit partners.

- (iv) The ban of used clothing by the EAC Heads of State has led to a loss of 24,000 jobs and at least 40,000 US based jobs in the private sector will be affected.
- (v) Used clothing exports to EAC countries is significant at approximately \$124 million hence a phase-in ban of used clothing is leading to a significant decline in revenue for the industry.
- (vi) The ban will substantially suppress the price of used clothing and cause untold environmental costs and damage to US since the used clothing will be discarded into the local landfills in US.
- (vii) The ban will lead to significant job losses to people in EAC involved in imported used clothing.
- (viii) The ban will deny EAC people access to much needed access to affordable quality apparel which will create a void for cheap substitutes from China and the Far East which will promote smuggling.
- (ix) No duty increment has been announced for imports of China and other Asian produced textiles.
- (x) The banning of used clothes in order to protect and develop local industry goes directly counter to the concept of developing a market based economy as required by AGOA beneficiaries.
- (xi) The ban and duty increases will create greater poverty in EAC nations by eliminating hundreds of thousands of jobs in EAC and make available clothing far less affordable.
- (xii) The Trade Policy Staff Committee (TPSC) should temporarily suspend EAC countries indicated in the petition from duty free access to U.S. and AGOA for all currently eligible exports until they take steps to reverse the ban by removing the increased duties and halting any further activity towards the ban.

Following the petition it has come to the attention of the EAC Secretariat that:

- (i) USTR, in consultation with the Trade Policy Staff Committee (TPSC), has announced the initiation of an out-of-cycle review of the AGOA eligibility of the Republic of Rwanda, United Republic of Tanzania, and Republic of Uganda.
- (ii) USTR has determined that an out-of-cycle review of Kenya's AGOA eligibility is not warranted at this time, due to recent actions taken by Kenya, including reversing tariff increases, effective July 1, 2017, and committing not to ban imports of used clothing through policy measures that are more trade-restrictive than necessary to protect human health.
- (iii) The AGOA Subcommittee of the TPSC will consider written comments, written testimony, and oral testimony in response to this notice to develop recommendations for the President as to whether the Republic of Rwanda, United Republic of Tanzania, and Republic of Uganda are meeting the AGOA eligibility criteria.
- (iv) The AGOA Subcommittee of the TPSC will convene a public hearing on July 13, 2017.

2. RESPONSE TO THE PETITION BY SMART

As earlier indicated, the EAC finds it imperative to provide a submission clarifying on the issues raised in the petition. This stems from the fact that EAC as an integrated regional body pursues and implements harmonized trade regimes under the Customs Union which is being consolidated into a Single Customs Territory. Secondly, EAC has been galvanizing its industrialization development agenda through common programs and strategies to promote our industrial sector, export promotion and value chain development. The response also arises from the fact that the petition has been sparked off by a collective decision made by EAC Heads of State in relation to promotion of textile and footwear manufacturing, which touches on importation of used clothing. The response is therefore as follows:

- (i) EAC Heads of State Summit which is comprised of the Presidents of the six Partner States is the apex organ of the EAC which gives direction and impetus to the integration process of the EAC. One of the fundamental goals under the EAC Treaty is to promote industrialization in the EAC in order to attain a competitive position in global trade. Textile and footwear manufacturing among others was identified as a priority sector where EAC should put focus. The decision of the Heads of State in March 2016 was to revamp the textile sector and the whole value chain which had once been one of the vibrant sectors in the 1960s and 70s. Indeed EAC countries were among the major producers of cotton, lint and fabrics in Africa. The decision did not slap a ban on the importation of textiles but is an initiative to promote the textile and footwear industry while progressively phasing out used textiles on a gradual basis.
- (ii) The EAC has a tariff structure that was exhaustively negotiated by EAC Partner States before the coming into force of the Customs Union in 2005. After comprehensive analysis of the EAC economic environment, a simple and moderate three-band structure of 0% for raw materials, 10% for intermediate goods, and 25% for finished goods was agreed upon. Fifty Six (56) products including worn clothes/footwear and cotton fabrics were placed under a sensitive list based on a clearly defined criteria and their rates were above 25%.
- (iii) The Common External Tariff is compliant with the WTO requirements in regard to tariff binding and the two trade policy reviews undertaken by the WTO in 2006 and 2012 fully endorsed the EAC trade regime as satisfactory and compatible with WTO.
- (iv) In 2003/2004 while negotiating the EAC tariff it was decided to protect the textile industry in EAC, hence worn clothing were give a duty rate of 50% or \$ 0.75 per kg (whichever is higher) based on the international researched values at that time. Likewise 15 products of cotton fabrics and garments were also given a sensitive rate of 50%. However, the sensitive rates of worn clothing were revised downwards to 35% or \$0.20 (whichever is higher) immediately thereafter in July 2015 after realizing that the abrupt rise of the rate in some partner states would negatively impact on the used garment sector in the region. It should be

noted that the adoption of specific rate alternately with the ad valorem rate was to address the challenges of valuation of used clothing. The specific threshold of \$0.20 per kg was derived by applying the 35% on average CIF prices of the used clothing once landed at the first port of entry such as Mombasa and Dar es Salaam.

- (v) The review of the specific duty threshold from \$0.20 to \$0.40 per kg while maintaining the 35% was not a tariff increment but a realignment made after 11 years to reflect the realistic landing price of used clothing to be compatible with the ad valorem rate of 35%. This was done through a comprehensive analysis as indicated here below:

2.6.2. Review of the specific duty rates of worn clothing and other worn articles in the EAC Common External Tariff.

The Sectoral Council considered the proposal to review the specific duty rates in the EAC Common External Tariff in the year 2014. The review of the specific rates on Rice and Sugar was finalized and adopted by the Council in 2015. Furthermore, the Secretariat was directed to finalize the research on specific duty rate for Worn clothing and other worn articles of worn clothing.

The current import duty rate of worn clothing and other worn articles is 35% or \$0.20/kg whichever is higher. The Experts identified the current prices of the worn clothing and other worn articles through various sources of data on international market prices and came up with the following findings:

Table 1: Worn Clothing and Other Worn Articles Fob Value USD/Kg.

S/N	Description of worn clothing/supplies	USD/Kg	AVERAGE USD/Kg
1.	Used clothing used summer wear	0.75-1.50	1.13
2.	Premium mixed warehouse bulk wholesale second hand used clothing	0.60-1.40	2
3.	Bulk wholesale used clothing, clothes second hand dress	0.50-1.50	1
4.	China 100% cotton used	0.29-0.39	0.34
5.	Cheap second hand clothing, wholesale second hand clothes Germany	0.70-1,50	1.1
6.	Cotton, Silk, jeans, polyester, etc materials and adults, children, babies, age group used clothing and shoes origin second hand	0.8-1.50	1,15
7.	Summer used clothing in bulk	1.3 – 1.5	1.4

8.	Total Average		1.16
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Source: <http://www.alibaba.com/tradesearchusedarticles>

From the findings above, the average FOB price of worn clothing and other worn articles is USD 1.16/Kg and the average of low price ranges is USD 0.70/Kg, therefore the recommendable specific duty rate for Worn clothing and other worn articles be USD 0.40/Kg which is 35% of the FOB USD 1.16/Kg.

The Experts also took note of the current FOB prices applicable in the Partner States as presented in the table below:

Product	Rwanda (FOB)USD	Kenya (FOB)USD	Burundi (FOB)USD	Tanzania (FOB)USD	Uganda (FOB)USD
Second hand clothes	Grade 1=1/kg Other grades=0.75/kg	Grade 1=1/kg Grade 2=0.75/kg	0.70/kg	0.48/kg	0.85/kg
Second hand shoes	Grade 1=1/kg Other grades=0.75/kg	Grade 1=1/kg Grade 2=0.75/kg	0.70/kg	0.53/kg	USA, UK and Canada is 1.20/kg Other countries is 0.91/kg Sorted from Partner States is 2.4/kg

From the findings above, the average FOB price of worn clothing and other worn articles is USD 1.16/Kg and the average of low price ranges is USD 0.70/Kg, therefore the recommendable specific duty rate for worn clothing and other worn articles be USD 0.40/Kg.

Recommendation:

From the above findings and conclusions the team recommends that the specific duty rate for worn clothing and other worn articles be USD 0.40/Kg.

From the above the \$0.20 per kg had become redundant because the base CIF values used in Partner States would yield higher taxes if 35% is applied compared to \$0.20 per Kg since the principle of “whichever is higher” would apply.

- (vi) It suffices to note that the review of the specific rate does not isolate worn clothing but covered all sensitive goods including rice and sugar. Sugar was revised from 100% or \$200 per MT to 100% or \$450 per MT while rice changed from 75% or \$200 per MT to 75% or \$345 per MT. Other items such as cement, crown corks and match boxes were dropped from the sensitive list.
- (vii) The sensitive rate on worn clothing is not discriminatory to imports from USA but applies to all imports of used clothing from any country. Preliminary data in-

dicates that most used clothes imported in EAC Partner States originate from China, Canada and USA. Likewise new cotton fabrics and garments are also subjected to 50% import duty and the leading exporter of cotton fabrics and fabrics of cotton mixed with synthetic materials originate from the Far East and China. It should be noted that the rest of fabrics of textiles and garments not under the sensitive list attract the maximum rate of 25%. It is therefore not realistic to assume that textiles are not subjected to high taxes when imported from China and other countries.

- (viii) The EAC is highly cognizant of the levels of employment by the used clothing industry in the U.S. and EAC. Equally EAC is desirous of job creation that will arise from revamping its textile and footwear manufacturing value chain and income growth of the people involved in cotton growing, ginning, weaving, garment manufacturing, leather tanning, shoe making and retail business.
- (ix) The fear of environmental impact caused by the discarding of used clothing in US is equally a concern of EAC since eventually the used clothes would also be discarded after use in EAC. It should be noted that EAC both at regional and national level are aggressively developing environmental protection laws and interventions particularly the littering of plastic materials and bags. Used and discarded clothing are equally menace.
- (x) EAC has adopted a deliberate program to promote exports through Export schemes. These schemes are explicitly catered for in the Protocol Establishing the Customs Union, the EAC Customs Management Act and the EAC Regulations. Recently the Council of Ministers decided to establish Special Economic Zones in EAC through the Customs Union Protocol. These schemes which enjoy a wide range of tax incentives have been a vehicle for the apparel and garment manufacturing for AGOA. Presently EAC is considering opening up the Export Scheme products to the local market to boost access to fairly priced garments. Kenya and Rwanda have commenced this program and the results are very positive. Once the textile mills are operationalized in the region, EAC will access fairly priced new apparel similar to that the EAC is exporting to USA under AGOA.
- (xi) Development of the local textile industry will not undermine the market based economy stipulated under AGOA as it will boost more production for export and local market that will see EAC countries enhance its export volumes to the U.S. This will break the current vicious circle of minimal value addition in the region that leads to low income and low investment.
- (xii) Related to the above, it should be noted that EAC trade with U.S. has been increasing progressively since 2005. Apart from worn clothing, EAC countries import significantly from U.S. capital goods, plant and machinery, agro chemicals, aircrafts and parts, furnishing materials, petroleum equipment. It should also be noted that nearly all these products do not attract any duty under the EAC tariff. The EAC has for a long time been registering trade deficits in its trade with USA.
- (xiii) All EAC countries have established open market-based economies as provided in the Treaty. A number of U.S. companies have established in EAC in the ser-

vice and manufacturing sector because of the opportunities created by the EAC integration. The areas include banking, insurance, health, shipping, fast food and manufacturing.

- (xiv) The sanitary requirement on used clothing has been in place for a long time now and it is an international standards normal practice. EAC has progressively been developing a harmonized quality standards program and is currently looking at the used clothing standards so that there are no variations in quality requirements across all the Partner States. All countries in the world have quality standards requirements imposed on both local and imported goods to protect its people and environment. The prohibition of the used undergarments is a hygiene requirements to prevent spread of infectious diseases. This position of EAC to prohibit used undergarments is a position of principle which cannot be varied.
- (xv) The EAC is aware that the business environment is dynamic and the tariff setting cannot be static. Currently a comprehensive review is being undertaken on the tariff structure and rates in response to the trading environment. This review which will end in September 2017 will cover all products in the Tariff Book including used clothing. Realistic considerations will be made based on agreed criteria and empirical data collected. Teams are already in the field collecting quantitative and qualitative data to inform this process. Stakeholders are being consulted including those involved in the trade of used clothing.
- (xvi) Currently there are ongoing discussions under the EAC-U.S. Trade and Investment Partnership which will establish a practical working arrangement between the two parties. Progress has been achieved in a number of areas such as the conclusion of the Cooperation Agreement on Trade Facilitation, Sanitary and Phyto Sanitary measures (SPS) and Technical Barriers to Trade (TBT). EAC is determined to ensure all areas of cooperation are concluded and implemented and this will create a platform on which to discuss such issues without reaching such level. EAC has planned to continue the engagements as agreed and will revive the discussions immediately after this public hearing.

2. CONCLUSION

EAC wishes to reaffirm that the eligibility to AGOA by its Partner States is of great benefit to the people of EAC and U.S. The need to attract more investment is still high on the agenda. EAC has been recognized as the fastest integrating region in Africa having transformed into a Customs Union and Common market in a short time. Collective policy decisions are made to realize the objectives of economic, social, political and cultural cooperation and development. Eligibility to AGOA is therefore a critical vehicle to boost its industrialization and promote exports. The tariff regime is a tool used to manage trade, collect revenue and protect the people and environment. Continuous review will be undertaken to ensure EAC integration is on track without disadvantaging any party.

The EAC is committed to the ongoing Trade and Investment Partnership, where such matters should be discussed and resolved. EAC will immediately engage USTR to progress the Partnership. More information will be provided during the post hearing period.

EAC Secretariat
Arusha
Tanzania
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