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June 30, 2017

VIA REGULATIONS.GOV (Docket No. USTR-2017-0008)

Office of the United States Trade Representative
Trade Policy Staff Committee
AGOA Implementation Subcommittee
600 17th Street, NW
Washington, D.C. 20508

Re: Out-of-cycle Review of African Growth and Opportunity Act Eligibility and Benefits for Rwanda, Tanzania, and Uganda, 82 Fed. Reg. 28217 (June 20, 2017) – Public Comments of Secondary Materials and Recycled Textiles Association

Dear Trade Policy Staff Committee:

On behalf of our client, the Secondary Materials and Recycled Textiles Association ("SMART"), we hereby respond to the invitation of the Trade Policy Staff Committee ("TPSC") to comment regarding the out-of-cycle review of African Growth and Opportunity Act ("AGOA") beneficiary countries Kenya, Rwanda, Tanzania, and Uganda as provided for under § 111(d)(2)(a) of AGOA (19 U.S.C. § 2466a(d)(2)(a)).[1]

[1] *Request for Comments and Notice of Public Hearing Concerning an Out-of-Cycle Review of Rwanda, Tanzania, and Uganda Eligibility for Benefits Under the African Growth and Opportunity Act*, 82 Fed. Reg. 28217 (USTR June 20, 2017). Kenya has communicated to the USTR that it would not proceed to implement higher tariffs on imports of secondhand clothing, and thus it is not currently subject to this out-of-cycle review. *Id.* However, a recent news report states that Kenya is implementing a minimum import duty on containers of "used goods." Accompanying that report is a photograph showing bundles of secondhand clothing. *See* Attachment A hereto. This report strongly suggests that Kenya may consider secondhand clothing to be a "used good" subject to this minimum duty on containers. The application of such a duty to secondhand clothing would negate Kenya's communications

SMART welcomes the opportunity to provide input in this out-of-cycle review because SMART has grave concerns regarding the ban on imports of secondhand clothing (also referred to as "used clothing") which these countries have recently begun to phase in. This ban on imports would directly and negatively affect the exports of SMART's member companies to the East African Community ("EAC"). As detailed below, the initial stages of the implementation of this ban are already having an impact on exports of secondhand clothing from the United States to Kenya, Rwanda, Tanzania, and Uganda. Implementation of the ban would expressly violate one of the key obligations of AGOA beneficiaries -- to work toward elimination of barriers to U.S. trade and investment. It would also create severe economic hardships for the secondhand clothing industry in the United States, cost jobs in the United States as well as in Kenya, Tanzania, Rwanda, and Uganda, and result in other negative consequences in the United States and EAC.

Description of SMART and Its Members

SMART is a non-profit trade association founded in 1932 that represents mostly small and medium-sized companies involved in using, converting, and recycling pre- and post-consumer textiles and other secondary materials. The activities of this nearly $1 billion industry are very diverse.

Some SMART members recover and process "pre-consumer" by-products from the textile and fiber industries to be used in new materials for automobiles, home furnishings, and a variety of other products. Others buy and sell "post-consumer" secondhand textiles, purchasing

to the USTR. If this new duty is in fact imposed on secondhand clothing, SMART urges that Kenya should be treated as subject to this out-of-cycle review and subject to the same relief as Rwanda, Tanzania, and Uganda.

excess textile donations collected from various charities and commercial sources (e.g., the Salvation Army, Goodwill, hospitals, hotels, industrial laundries, etc.), while others collect used textiles dropped off by the public via clothing collection bins conveniently located throughout communities. Some of these recovered textiles become wiping and polishing cloths used in institutional and industrial settings while others are reprocessed into fibers for furniture stuffing, upholstery, insulation, building, and other materials. The items that can be reused as apparel are usually exported, typically to least developed and developing countries such as those in East Africa, where demand for affordable, quality clothing is especially high. It should be pointed out that while the recycled fiber is a useful by-product of the clothing recycling trade, it is the resale of good, usable clothing that renders the overall industry profitable.

Through these business activities, for-profit textile recyclers create meaningful employment for tens of thousands of people who drive local economies and generate much-needed tax revenue across the United States. They also generate meaningful income for numerous well-respected charities and make vital contributions to state and national environmental goals through the recycling of nearly four billion pounds of clothing and other textile waste that otherwise would go to a landfill each year.

Background of Secondhand Clothing/Footwear Ban in the EAC

SMART has significant concerns about the proposed ban on secondhand clothing and footwear imports in the EAC nations of Kenya, Rwanda, Tanzania, and Uganda. This ban was first proposed by these four countries (along with non-AGOA beneficiary Burundi) in February 2015 during the 16th EAC Heads of State Summit, with EAC trade ministers claiming that a ban was needed to boost their domestic textile industries.[2] Given the significant toll such a ban would have on the secondhand clothing industry, SMART immediately reached out to the U.S. Department of Commerce's Office of Textile and Apparel ("OTEXA") and the Office of the U.S. Trade Representative. These agencies quickly engaged, and U.S. government officials attempted multiple interventions on SMART's behalf during both in-person meetings with EAC officials and in formal written correspondence.

Unfortunately, these contacts appear to have had little effect on EAC leaders, who subsequently announced in a March 2016 joint communiqué that they were moving ahead with the ban. In that statement, the African leaders promised to work together to develop their domestic textile and leather industries, "...with a view to phasing out importation of textiles and footwear within three years ... with a view to fast tracking the process."[3] Although that communiqué offered no details about how this phase-in would occur, subsequent media reports confirmed the EAC trade ministers planned to implement the ban in stages, more than likely beginning with import duty increases on secondhand clothing and shoes.

Those plans quickly came into fruition. In June 2016, the Tanzanian legislature voted to approve a budget that doubled import duties on secondhand clothing, increasing these tariffs from $0.20 per kilogram to $0.40 per kilogram.[4] In that same month, Kenya and Uganda announced tariff increases on used clothing imports similar to those announced by Tanzania,

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[2] Communiqué of the 16th Ordinary Summit of the East African Community Heads of State, 20 February 2015, 6. < http://eac.int/news-and-media/statements/20150220/16th-ordinary-eac-heads-state-summit>

[3] Joint Communiqué: 17th Ordinary Summit of the East African Community Heads of State, 2016 March, http://www.president.go.ke/2016/03/02/17th-ordinary-summit-of-the-east-african-community-headsof-state/.

[4] "Tanzania: House Passes 2016/17 Budget as Opposition Remains Out." All Africa, 21 June 2016, <http://allafrica.com/stories/201606210541.html>

according to SMART's members' customer contacts in these countries. At about the same time, the government of Rwanda raised import duties on secondhand clothing by 1,150 percent (from $0.20 per kilogram to $2.50 per kilogram) and by 900 percent on used shoes (from $0.50 per kilogram to $5.00 per kilogram).[5] These tariff increases are so high that they amount to a *de facto* ban on the secondhand clothing industry and confirm that these countries are moving full steam ahead on implementing the proposed ban.

<u>The Ban Violates the Requirements for AGOA Eligibility</u>

As was noted in the Federal Register notice announcing this out-of-cycle AGOA review,

> The President may designate a country as a beneficiary sub-Saharan African country eligible for these benefits of AGOA if he determines that the country meets the eligibility criteria set forth in: (1) Section 104 of AGOA (19 U.S.C. § 3703); and (2) section 502 of the 1974 Act (19 U.S.C. § 2462).
>
> Section 104 of AGOA includes requirements that *the country has established or is making continual progress toward establishing, inter alia: A market-based economy*; the rule of law, political pluralism, and the right to due process; *the elimination of barriers to U.S. trade and investment; economic policies to reduce poverty*; a system to combat corruption and bribery; and the protection of internationally recognized worker rights.[6] (emphasis added)

Banning the importation of an otherwise legitimate product – secondhand clothing -- in order to protect and develop one's own industry conflicts with the statutory requirement that

[5] "Rwanda multiplies import duties on used items," Daily Nation, 4 July 2016. http://www.nation.co.ke/business/Rwanda-multiplies-import-duties-on-used-items/-/996/3278548/-/fvelak/-/index.html

[6] Request for Comments and Notice of Public Hearing Concerning an Out-of-Cycle Review of Rwanda, Tanzania, and Uganda Eligibility for Benefits Under the African Growth and Opportunity Act, 82 Fed. Reg. 28217 (June 20, 2017).

AGOA beneficiaries work toward developing market-based economies.[7] Articles in respected newspapers report that Rwanda, in particular, promotes privileged industries owned by its leading political party the Rwanda Patriotic Front ("RPF"), and requires the local business community to rent and invest according to Government dictates.[8] By placing a *de facto* ban on the imports of used clothing, Rwanda currently manifests the non-market economy based approach that underlies the proposed EAC import ban. The chilling effect on exports to Kenya, Tanzania, and Uganda amounts to a *de facto* ban similar to Rwanda's.

Moreover, the proposed ban on secondhand clothing imports would blatantly contravene the statute's requirement that AGOA beneficiaries work toward eliminating barriers to U.S. trade and investment. Indeed, Rwanda, Tanzania, and Uganda (and perhaps Kenya) propose to erect new barriers to imports of secondhand clothing from the United States at the same time that the United States provides these countries with preferential access to our domestic market through a program that benefits African textile and apparel exports. In direct contravention of the requirements for AGOA benefits, the announced import ban and duty increases constitute the erection of new barriers to U.S. trade rather than their elimination.

If the U.S. government continues to afford AGOA benefits to Tanzania, Uganda, and Rwanda (and Kenya) in the face of a secondhand clothing import ban that plainly violates the requirements imposed by 19 U.S.C. § 3703, the statute will be rendered a nullity. Other African governments and AGOA beneficiaries will likely interpret this as permission to ignore U.S.

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[7] Section 104 of AGOA (19 U.S.C. § 3703).

[8] "Rwanda: If you build it, they may not come." The Economist, 4-10 March 2017, 37. "Business in Rwanda: Party of business." The Economist, 4-10 March 2017, 53.

policy and take advantage of U.S. generosity promoted by AGOA while simultaneously doing considerable harm to U.S. industries.

The Effects of the Ban on the Domestic Secondhand Clothing Industry

In addition to violating the statutory requirements for AGOA eligibility, the higher tariffs being imposed by Rwanda, Tanzania, Uganda (and perhaps Kenya) are already having an impact on U.S. exports of secondhand clothing to the EAC. The volume of exports to Kenya in the period January through April 2017 remained flat when measured against the same period for 2016, with only a slight increase of 1 percent over that time. The volume of exports to Tanzania shows a much larger reduction over the same periods, with a decline of 19 percent in January through April 2017 compared to the same period in 2016. The decline in exports to Uganda from the United States is even more drastic, with the volume of exports falling by 36 percent in January through April 2017 compared to the same time span in 2016. Exports to Rwanda have ceased entirely, with zero exports to the country in January through April 2017. Cumulatively, among the four countries, exports have declined 13 percent in the first four months of 2017 compared to the same period in 2016.[9] With the opening months of 2017 already showing the negative impact that the EAC policy is having on the U.S. secondhand clothing industry, if current trends continue, the industry could easily be looking at downturns of 15%-20% for 2017.

Moreover, in the cases of Kenya, Tanzania and Uganda the duty increases have been "incremental" and therefore have not yet had their full negative impact on exports to those

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[9] *See* 2017 U.S. International Trade Commission Dataweb data for HTS 6309.

countries. However, Rwanda serves as a concrete example of the end result that the EAC policy seeks to obtain: direct shipments to Rwanda have stopped completely.

These additional duties and the resulting decline in exports to Kenya, Tanzania, Uganda, and Rwanda are having a significant negative impact on SMART's members, as evidenced by a recent SMART survey of its relevant members.[10] That survey found:

- 40 percent of SMART survey respondents have already reduced employment by 25 percent or more since the second and third quarters of 2016 when EAC countries raised their duties as the first steps in implementing the full used clothing ban.
- More than 88 percent of SMART survey respondents have experienced a reduction of 25 percent or more in their revenues since the implementation of duty increases by the EAC countries in the second and third quarters of 2016.
- More than 52 percent of SMART survey respondents say they would be forced to reduce their number of employees by at least 50 percent if the EAC countries were to fully implement the import ban.
- More than 94 percent of SMART survey respondents said a full ban on imports of used clothing within the EAC would cause them to experience a 25 percent to 75 percent reduction of revenues.

A recent report that SMART received from a U.S. based non-vessel operating common carrier ("NVOCC") that specializes in shipments of used clothing from U.S. ports to Africa substantiates SMART's survey findings. This company, which has extensive experience in East Africa trade lanes, estimated that its traffic to East African ports has declined by 75 percent since the increase in duties almost exactly a year ago.

[10] Based on Results from an industry survey conducted in March 2017. SMART conducted this survey among its member companies. It received 40 percent response rate among relevant members, which is a sufficient basis for SMART to form an accurate estimate of the effects of the EAC ban on the secondhand clothing industry in accordance with survey standards.

The aforementioned points are highly illustrative of the damage to SMART's members that is already being caused by EAC policies. Based on these findings, SMART estimates that the interim duty increases put into place by certain EAC countries last year has led to a *current* loss of 5,000 jobs in the for-profit sector of the U.S. used clothing industry and the loss of another 19,000 jobs in the non-profit sector.[11]

In addition to SMART's member survey, specific recent anecdotal evidence from throughout the used clothing supply chain suggests that the negative effects of the EAC import ban will be more pronounced as time proceeds. Some processors and graders who supply used clothing to the region have already become only marginally profitable, if profitable at all. Thrift stores and suppliers of raw material to the industry, both for-profit and not-for-profit, have already begun to shut down, causing some serious supply disruptions.

Considering the disruption SMART's members are witnessing in the face of the EAC's increased duties, SMART cannot overstate its concern about the impact the import ban will have on the secondhand clothing industry. Even after a 41 percent decline in export volume since

[11] This estimate can be supported under either of two methods. The first approach tallies the U.S. regional industry actors for all for-profit sectors as identified by SMART members familiar with the various actors in the industry. These estimates ranged from 55,000 to 70,000 employees, establishing a conservative "base line" employment estimate. The alternative approach is based on the annual volume of recycled textiles combined with an estimate of the productivity of employees processing used clothing. The Environmental Protection Agency calculates that 2.3 million tons of textiles were salvaged from landfills as of 2013. SMART anticipates that the total quantity of textiles salvaged from landfills will be closer to 2.5 million tons in 2017, due to increased efforts to reduce textile waste diverted to landfills. However, to be conservative, SMART estimates that at least 1.75 million tons of this material will be handled, processed or sold in the for-profit sector of the industry this year. The used clothing industry is relatively labor intensive: the experience of SMART's members is that the average productivity in all jobs in the private sector involving used clothing is 215 pounds per man-day. Assuming a 50 week work year, and 215 pounds processed per man day, results in an estimate of about 65,000 employees. Using the lower, estimated employment figure of 55,000 jobs in the private sector to be conservative, and assuming that the respondents in SMART's recent survey are representative of the industry, 40 percent of the industry would reduce their employees by at least 25 percent (and some by at least 50 percent). 40 percent of 55,000 employees equals 22,000 jobs. Reducing those jobs by 25 percent amounts to a loss of 5,500 jobs. SMART's estimate of 5000 jobs lost in the private sector as a direct result of an EAC import ban is thus conservative.

2014, the EAC nations remain one of the most important markets for U.S. industry's used clothing exports, with direct American exports to the EAC member countries totaling approximately $24 million in 2016.[12] However, used clothing is also exported from the United States into Canada, India, United Arab Emirates, Pakistan, Honduras and Mexico, where it is processed and then re-exported into the EAC. SMART estimates conservatively that the value of U.S. sourced goods that flow via these other countries into the EAC is $100 million.[13] In other words, when taking into account both direct and indirect shipments, the total value increases dramatically to $124 million or about 22 percent of the U.S. industry's total exports each year.[14] It should be noted that this is substantially less than in past years due to the announcement of the import ban and the effects of the recent duty increases.

SMART believes that as many as 40 U.S. used clothing exporters are directly involved in trade with the EAC. This estimate increases substantially when the various for-profit and not-for-profit clothing collectors and charitable organizations who supply the raw material that gets processed and ultimately exported directly and indirectly to the EAC are taken into account. These companies are located around the country and include, but are not necessarily limited to, the following states: New York, Pennsylvania, Maryland, Georgia, Florida, Texas, California, and Washington. The urban areas of these states have been hit particularly hard. The various not-for-profit collectors are located more evenly throughout the country, and are likely located in

[12] Based on 2016 U.S. International Trade Commission Dataweb data for HTS 6309.

[13] Based on industry market data and estimates.

[14] Based on industry market and data estimates.

every state. Because of the nature of this business, these companies are small- and medium-sized enterprises.

Industry-wide, SMART estimates conservatively that the EAC import ban would result in the loss of at least 40,000 U.S. based jobs within the private sector in collection, processing, and distribution.[15] That figure increases dramatically when jobs in the not-for-profit sector are included. Based on recent conversations with SMART's not-for-profit partners, the not for-for-profit sector easily includes another 150,000 employees. Industry counterparts in Canada, the United Kingdom and the European Union are similarly concerned about the impacts of the import ban and have engaged their public officials who are voicing concerns to the EAC leaders.

Per SMART's calculations above, $124 million in revenues from export trade would be lost, but untold millions would further disappear from various charities. Indeed, well-known organizations like Goodwill, St. Vincent de Paul, and others rely on the sale of donated used clothing to industry exporters as a means to fund their worthwhile charitable activities. Eliminating an important export destination like the EAC will depress prices for secondhand clothing and will dramatically reduce the amount of money these very worthy not-for-profits receive to support their highly beneficial programs. The values mentioned do not express the untold environmental costs and damage that would be done within the United States as perfectly wearable used clothing is increasingly discarded into local landfills.

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[15] *See* Note 11, *supra.*

The Effects of the Ban Within the EAC

Paradoxically, the import ban would result in severe negative consequences within the EAC. Researchers and officials estimate that buying, selling, repairing and/or altering imported secondhand clothing and shoes generate hundreds of thousands of jobs in the EAC, giving workers there the ability to support themselves and provide for their families.[16] Eliminating these jobs would force these entrepreneurs and others into poverty at a time when these countries cannot withstand any additional economic hardship.

Moreover, banning secondhand clothing would also eliminate much needed access to affordable, quality apparel. For the many citizens of these countries that exist on the equivalent of 1-2 dollars or less a day, secondhand clothing and shoes provide their only meaningful access to quality apparel. An import ban on secondhand clothing would make their lives even more difficult. A 2016 article from Rwanda notes that a person in that country can purchase ten pieces of used clothing with a given amount of money but that same sum of money buys only two pieces of new clothing -- even if it is locally made. According to this news report, at least 80 percent of Rwanda's population cannot possibly pay to clothe themselves if they have to depend on new clothing alone.[17]

These economically depressive effects of the proposed ban violate the language of AGOA requiring that a beneficiary country "has established or is making continual progress

[16] *See* Note 11, *supra* (While these estimates pertain the domestic secondhand clothing industry, the analysis can easily be applied to the industry in the EAC).

[17] "Rwanda: Low-Income Earners Worried Over Ban on Second-Hand Clothes." Allafrica.com, 2016 April 27. <http://allafrica.com/stories/201604280018.html>.

toward establishing … economic policies to reduce poverty."[18] Eliminating jobs and reducing individual spending power have the opposite effect. In addition to erecting new barriers to trade with the United States, the secondhand clothing bans manifest a policy that would increase poverty in violation of AGOA Section 104.

Additionally, while criminalizing used clothing would eliminate legal access to used clothing imports, it certainly would not eliminate the need for such imports. The result would be a rise in illegal smuggling of used clothing. Trade in contraband would create administrative enforcement headaches and official corruption problems from the border to the selling point and lead to a loss of government revenue from a previously legal source. While it is generally accepted within the EAC that the ban on used clothing imports is intended to protect and expand local textile manufacturing, that goal cannot be achieved because no duty increases (or import bans) have been announced for imports of Chinese and other Asian produced textiles. The effect of a ban on used clothing would be to create a protected market for Asian apparel that will result in a deluge of imports of poorly made – but likely more costly -- apparel from China and elsewhere. Increased volumes of low-quality imports from Asia have and will continue to do far more to displace the domestic EAC textile industry than the presence of used clothing imported from the United States ever could.

It should be noted that while import ban proponents often cite the growth of secondhand clothing imports as the reason for the decline of the East African textile industry, in fact, the main cause is the elimination of the import quota system for textiles and apparel when the Multi

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[18] 19 U.S.C. § 3703(1)(D).

Fiber Agreement ("MFA") was terminated in January 2005. While it was in place, the MFA had limited the quantity of textiles that any country could export to developing nations, effectively restricting Chinese shipments and enabling African countries to compete. Once the MFA ended, African markets (and others throughout the world) were deluged by imports of new clothing from countries like China, costing hundreds of thousands of jobs and decimating the African industry.[19] Despite the clearly harmful impact of these Chinese imports have had on the apparel industry in East Africa, the EAC countries have not moved to ban these new clothing imports.

Conclusion and Recommendation

The proposed EAC ban on secondhand clothing imports violates the requirements for continuing eligibility for benefits under AGOA. Moreover, the aforementioned negative effect on the secondhand clothing industry in the United States from increased duties on imports of used clothing into Kenya, Tanzania, Uganda, and Rwanda, coupled with the anticipated negative economic consequences and dramatic job losses if the proposed ban on imports of used clothing is implemented, further justifies taking action through this out-of-cycle review. SMART therefore requests that the TPSC recommend suspending duty-free access to the United States under AGOA for all currently eligible apparel imports from Kenya, Tanzania, Rwanda, and Uganda until such time as those countries roll back all increased import duties on used clothing and commit not to implement their proposed ban on imports of used clothing.

Sincerely,

Lawrence J. Bogard
Peter J. Bogard

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[19] "Loss of textile market costs African jobs." African Renewal Online, 2006 April, 18. <http://www.un.org/africarenewal/magazine/april-2006/loss-textile-market-costs-african-jobs>.

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Second hand dealers lament new

By Willis Oketch | Updated Tue, June 20th 2017 at 11:42 GMT +3

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(Photo Courtesy)

Traders have protested against the introduction of a Sh500,000 standard duty on all imported second-hand cargo at the Mombasa port.

The Kenya Revenue Authority (KRA) says it introduced the standardised duty to fight under-valuation of goods by importers.

Under the new rule, importers will pay the duty for every 20-foot container of second-hand items and Sh1 million for a 40-foot container.

But the rule has elicited protests from clearing and forwarding agents and importers.

"We are not happy with the new directive that importers should pay the same duty for all imported second-hand items," said Rank Network & Logistics Director Clement Ngala.

The agents complained that the introduction of the duty would kill the second-hand imports business.

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The importers also complained that valuation of goods before release from the port to the importers in Mombasa was taking too long.

Julius Musyoki, a customs official, said under the new rule, all second-hand items of similar weight and value would be ranked together.

"The Commission of Custom and Border has decided to standardise the duty on some imported items to harmonise the charges on imported goods of similar weight to fight under valuation," he said.

Mr Musyoki however said the commission had not standardised the minimum duty on second-hand imports because that was not within its mandate.

Mr Ngala also protested against what he viewed as hindering bureaucratic procedures during valuation of imported second-hand goods at the port.

He said the back-and-forth between customs officers and their bosses slowed down clearance of imported goods at the port.

"Most valuation officers cannot assign value for goods until they share what they had valued with their bosses. This means the bosses have no faith in them and when they are not there, no goods can leave the port," said Ngala.

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He added: "Traders in second-hand items will find it difficult to sell their goods in the market after paying a duty of Sh1 million on goods, which sometimes are of low quality."

Valuation data

He suggested that valuation data should be made public so importers can share the information with the customs officers instead of keeping such information secret.

Clearing and forwarding agents demanded the removal of bottlenecks that hindered the fast-tracking of valuation process for imports.

"All customs officers are fully trained to do valuation. I do not see why they must first share the valuation they had made with their bosses," said Ngala.

The agents also faulted the revenue authority's valuation department, which they want scrapped and its work allocated to trained customs officers.

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