



End of the Project Report on Article 10.1 of TFA

Long Term TA to Support the State Department for
Trade and Enterprise Development to implement
Category C Measures of the World Trade
Organization Trade Facilitation Agreement

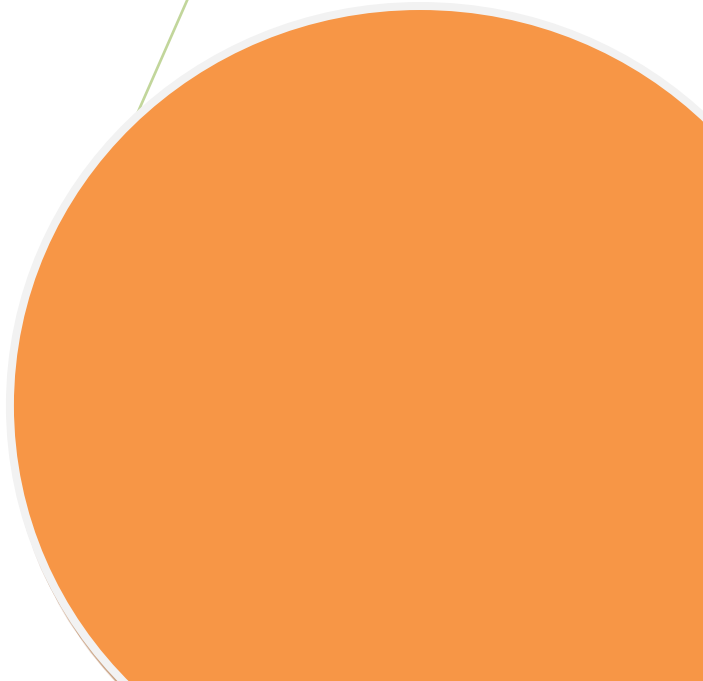
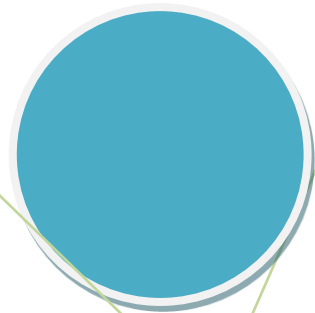
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To

Nairobi, 25 September 2023
Ministry of Investments, Trade & Industry



Approval of the report

This document has been approved for submission by Trade Hub East Africa Ltd. 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)

Long Term Technical Assistance to Support the State Department for Trade to Implement Category C Measures of the Trade Facilitation Agreement of the World Trade Organization

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List of Acronyms and Abbreviations

ACP-	African- Caribbean and Pacific Countries
AfCFTA-	African Continental Free Trade Area
EABC-	East African Business Council
EAC-	East African Community
ECOWAS-	Economic Commission of West African States
NTFC-	National Committee on Trade Facilitation
M&E-	Monitoring and Evaluation
SDT&ED-	State Department for Trade and Enterprise Development
THEA-	Trade Hub East Africa
TFA-	Trade Facilitation Agreement
TMEA-	Trademark East Africa (Now TradeMark (Africa))
TWGs-	Thematic Working Group
WCO-	World Customs Organization
WTO-	World Trade Organization

1 Executive Summary

Article 10.1 of the Trade Facilitation agreement (TFA) encourages World Trade Organization (WTO) members to hold periodic reviews to simplify both trade formalities and documents relating to import, export and trade in transit. These periodic reviews are geared towards rapid clearance and release of goods and to reduce compliance costs and clearance time. The Article further requires the use of the least restrictive measures available and to eliminate those that are no longer required.

Kenya notified this Article 10.1 under Category C Measures, meaning that the country needed sufficient time and resources to be able to fully implement it, and in its notification to the WTO, Kenya notified its definitive date of implementation as 30th June 2026. Against this background, Trademark Africa (TMA) extended technical assistance to Support the State Department for Trade and Enterprise Development to implement the provisions of this Article earlier than the stipulated timeline.

This project sought to specifically minimise the complex nature of import, export and transit formalities and also to reduce and simplify import, export and transit documentation requirements with a view to expediting clearance of goods in accordance with international best practices. The assignment delivered the following results;

Result 1: A report on the analysis of national trade procedures and recommendations for aligning them with regional trade protocols. The report was done and approved by NTFC. The report's comparative analysis of the national trade processes and documentation requirements for cargo clearance vis a vis the EAC Regional protocols indicate that there is an alignment between the two national and regional frameworks. Indeed, Kenya has signed on and made commitments to the principles enunciated in the EAC protocols. Furthermore, it has adopted and domesticated the EAC regional laws, regulations, and procedure manuals which are applied locally. In particular, Kenya applies the EAC Customs Management Act (EACCMA) 2004 and its regulations; the One Stop Border Post (OSBP) Act of 2016 and its regulation and the EAC Standardization Quality Assurance Metrology Testing Act of 2006 (SQAMT) Act and its regulations among other EAC laws. Whereas some PGAs involved in cargo clearance apply national laws, this is at the verification/inspection stage and there are no equivalent EAC laws to enable a comparative analysis.

Result 2: A report on the analysis of the legal and regulatory environment. This report was done and approved by the NTFC. Proposals for regulatory and procedural reforms aiming at a clear, concise, transparent legal framework for cargo clearance have been made. The proposals for amendment of specific laws which include, repealing specific sections of laws and regulations, combining certain sections and/or repealing entire Acts of laws. It also proposes the best

approach to present this to the powers that be so that the results of this review are implemented comprehensively.

Result 3: Development of simplified Standard Operating Procedures. A total of 10 SOPs for ports, airports and Land borders are detailed in the report. The report highlights the various measures undertaken by the country to streamline and integrate the activities of the partner government agencies operating at points of entry/exit and goes on to propose a set of Standard Operating Procedures aimed at harmonizing and simplifying the process flows at Kenya's entry and exit establishments based on applicable laws and regulations.

These proposed Standard Operating Procedures have therefore been developed using the legal and regulatory framework underpinning the operations of Partner Government Agencies at the points of entry and exit. This is part of the effort to enable Kenya achieve full implementation of Article 10.1 of the World Trade Organization's Trade Facilitation Agreement. In fact based on the field visits, analysis of the current cargo clearance procedures, processes and documentation, the consultancy observed that a lot still needs to be done to enable the country fully implement the requirements of Article 10.1 of the WTO Trade Facilitation Agreement.

The proposed SOPs are in a simplified format in order to make it easy to enhance trade facilitation and thus reduce cost of doing business in the country. They provide specific guidelines on the sequence of processes and activities performed by government agencies at the border and they aim at being a one stop reference document for all government agencies/departments as well as other players with the task of ensuring efficiency and harmony in the inspection, verification and clearance of import, export and transit cargo at the ports/points of entry and exit in Kenya.

Result 4: Development of the Documentation Toolkit. This work focused on capturing simplified and reduced documentation as well as simplified formalities. The process was completed after the analysis of legal and regulatory framework, and the development of the new SOPs. This was done by categorizing the agencies and their respective documents, forms, and procedures by grouping them in their respective sectors, for example., agriculture, textile, industrial, medical & medical equipment, etc., showing each category the new revised documents required as well as the procedures and the new time required for each document to be filled.

The three development phases, that is the capture, review, and training phases, ensured that the Trade Documentation Toolkit is effective, efficient, and accessible to all users. With the successful implementation of the toolkit, Kenya, through the NTFC will be well on its way to achieving the requirements of Article 10.1 of the WTO Trade Facilitation Agreement (FTA).

2 INTRODUCTION

Article 10.1 of the Trade Facilitation agreement (TFA) encourages World Trade Organization (WTO) members to hold periodic reviews to simplify both trade formalities and documents relating to import, export and trade in transit. These periodic reviews are geared towards rapid clearance and release of goods and to reduce compliance costs and clearance time. The Article further requires the use of the least restrictive measures available and to eliminate those that are no longer required.

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The Contract between Trade Hub East Africa Ltd. (THEA) and Trade Mark Africa (TMA) for the “Long Term Support to the then State Department for Trade and Enterprise Development (STE&ED) to implement category C Measures of the Agreement on Trade Facilitation of the WTO” was signed on 30 August 2022. The main aim of the project is to support the Department in implementing Article 10.1 Measure of the WTO TFA in line with the revised Needs Assistance Report (2021). Article 10.1 is intended to minimize the complex nature of import, export and transit formalities and also to reduce and simplify import, export and transit documentation requirements with a view to expediting clearance of cargo in accordance with international best practice. The overall objective of this project is to reduce costs and time taken to clear goods at the port of entry/exit.

2.0. OBJECTIVE AND SCOPE OF THE ASSIGNMENT

This section covers the objectives and the scope of the assignment as well beneficiaries of the outcome of this project.

2.1. Objective of the Assignment

The objective of Article 10.1 is to make it easier for traders to access the information they need to comply with customs and other border agencies requirements, thereby reducing the time taken and cost of customs clearance and promoting trade facilitation. In addition, the availability of information under Art. 10.1 can help to prevent corruption and improve the overall transparency and efficiency of the entire process.

This project sought to specifically minimise the complex nature of import, export and transit formalities and also to reduce and simplify import, export and transit documentation requirements with a view to expediting clearance of goods in accordance with international best practices.

2.2. Scope of Work

In accordance with the terms of reference (TORs) and discussions that took place between the SDT&ED, TMA and THEA, the consulting firm provided Technical Assistance (TA) to the National Trade Facilitation Committee (NTFC) to achieve the following:

- a) Alignment of national trade procedures among border agencies in accordance with the regional Protocols.
- b) Develop documentation toolkit and train stakeholders on business process analysis;
- c) Undertake legislative and regulatory review on procedures and documentation requirements;
- d) Develop simplified Standard Operating Procedures (SOPs) for trade regulatory agencies for ease of trading;
- e) Carry out stakeholders' sensitization on the simplification of procedures in collaboration with NTFC; and
- f) Support SDT&ED in the development and implementation of the communication strategy in the context of Trade Facilitation Agreement.

To achieve the above, the project worked with key border agencies and the NTFC. The methodology adopted included carrying out baseline surveys, physical interviews and desktop research to deliver various tasks under the ToRs.

2.2. Project beneficiaries/stakeholders

This project provided Kenyan business community and other stakeholders with transparent information on simplified procedures relating to import/export formalities, through detailed practical and up-to-date descriptions of steps to go through as seen from the user's point of view. In this case and considering the scope of the project as a national endeavour, the project has been working with relevant border agencies, business associations and importers, exporters including goods in transit .

3.0 PROJECT BENEFITS

When this Article is fully operational, the envisaged benefits are enormous key among them:

- Fewer and simplified documents that are easier to complete;
- Simpler and clearer border procedures that reduce the burden of compliance;
- Lower transaction costs as a result of reduction in time, financial and human resources;
- Harmonization of forms and processes that allow smooth document transmission between countries and among border agencies;
- Easier reproduction and reduced risks of errors resulting in less cases where traders have to go through multiple iteration of submitting and correcting documentations;
- Smoother transmission to automation and electronic document submission, and
- Reduction in the need to hire agents for complex requirements and fines imposed due to incorrect documentation which are particularly burdensome for SMEs.

There are also many benefits for government agencies that provide opportunities to harmonize forms and processes; allow smooth transmission of information between countries and among agencies; capture and analyze information requirements; remove duplication and standardize data and map data to international standards in order to help improve administration controls and private sector compliance.

4.0. SUMMARY OF KEY ACTIVITIES CARRIED OUT AT THE INCEPTION PHASE

The key activities undertaken included preparatory meetings with the relevant Ministries, Agencies and other institutions that play their respective roles in the implementation of the TFA. THEA undertook desk reviews of the current formalities and documentations used in import/export and transit trade. The exercise was intended to establish whether the national clearance processes are aligned to the existing regional protocols under the East African Community (EAC). Another major activity that was undertaken was the design, development and testing of the documentation toolkit that will assist policy makers to implement Article 10.1.

4.1. Details of key meetings held.

A total of ten (10) meetings have been held with various project stakeholders. Details of these meetings are provided here below.

4.1.1. Meeting with the Principal Secretary- State Department for Trade held on 6th September 2022

The purpose of this meeting was to establish a common understanding on the Project Terms of Reference (ToRs) and the scope of the assignment. The PS informed the meeting that he had appointed Mr. Daniel Wachira, Chief Trade Development Officer and Mr. Mathew Kamau, Senior Officer as the contact persons for the purpose of the implementation of the Project.

The following key issues were raised and agreed upon;

- i. It was agreed that some officers from the Department would be attached to the project as part of capacity building;
- ii. The review of Legislative and Regulatory procedures, and documentation would be confined to key border agencies involved in import/export trade;
- iii. Sensitization on revised SOPs be organized and carried out in former provincial administrative regions;
- iv. The Department's communication strategy to be focused on contents relating to Trade Facilitation, and
- v. The meeting agreed that the Consultants would be facilitated by the Ministry to access the WTO Members website.

4.1.2. Meeting with NTFC Secretariat

After meeting the PS, THEA and the NTFC Secretariat held another meeting at Technical Level. During the meeting THEA took the Secretariat through what Article 10.1 entails and thereafter covered the scope of work and expected outcome of the assignment. The meeting endorsed the PS appointments of the project contact officers at the Ministry. The meeting agreed on the frequency of meetings between THEA and the Ministry, it being understood that some meeting could be urgently called at very short notice depending on the issues at hand. It was further agreed that some officers from the Ministry would be attached to THEA offices as part of capacity building related to this assignment. THEA would be reporting to the Department regularly and copy TMA for information. The meeting clarified the role of each party, namely SDT, THEA and TMA.

The SDT would monitor the project deliverables and provide feedback, organize and facilitate workshops, make requests for workshops from TMA, provide requested data and, materials and facilitate consultants to interview key stakeholders.

TMA would monitor project deliverables and provide feedback, facilitate workshops and NTFC

meetings while ensuring prompt payments under the contract.

Finally, THEA would implement the project in accordance with the agreed timelines, keep SDT and TMA updated on the project progress and advise on any delay/challenges that would affect progress and seek guidance accordingly.

4.1.3. Virtual Meeting with TMA

On 8 September 2022, THEA held a virtual meeting with Mr. Joshua Mutunga, Programme Manager at TMA. The meeting clarified two Key issues. The first one was regarding communication strategy where it was agreed that the scope of the communication strategy would be restricted to trade facilitation issues. The second issue was that the implementation of tasks foreseen in the project would take into consideration the priority of the Ministry. This meeting with TMA was part of the project kick-off activities.

4.1.4. Meeting of the National Trade Facilitation Committee (NTFC)

The full meeting of the NTFC was held on 15 September 2022, which discussed, reviewed and approved the project Inception Report. The Inception Report covered the following;

- The objectives of the assignment, scope and understanding of the terms of reference
- Project benefits and expected outcome
- Assumptions, risks and mitigation
- Project organization and implementation.
- Responsibilities and reporting mechanism and
- Project activities, results and timelines

Following the approval of the report, THEA submitted the final Inception Report after incorporating comments that had been raised during the NTFC meeting. The report was presented to the PS, SDT and TMA Kenya Country Manager.

4.1.5. Meeting with KENTRADE on 27 September 2022

The purpose of the meeting was to understand how agencies and traders use the Kentrade platform to facilitate clearance of goods. THEA was more interested to find out the existing documentation used in import/export and goods in transit. This formed the basis of the review of documentation with a view to reducing and making them simpler and user friendly.

4.1.6. Full NTFC Meeting

On 25 October 2022, THEA made a presentation on progress of the project to the NTFC meeting held in Naivasha where it was noted that most of the members were new and as such THEA had

to cover what Art. 10.1 entails. During this meeting, a number of issues came up for discussion:

- It was noted that there were a number of projects in the pipeline and as such the Ministry was requested to consider establishing a steering committee to oversee their implementation and ensure complementarity.
- Some participants wanted to know if what Kenya was doing is being replicated in other EAC member States to ensure harmonization of procedures and reduction of documentation. For the time being, it was noted that only Kenya was working on this assignment hoping that the rest of the EAC would follow soon.

This meeting proved very useful in aligning the expectations of the NTFC with the project and securing the required support to deliver the assignment. During this meeting, the NTFC appreciated the progress and urged THEA to ensure delivery timelines were met.

4.1.7. Machakos Retreat

A retreat was held in Machakos on 22 December 2022. The purpose of the retreat was to brief NTFC members on the progress THEA had made in the implementation of the Project. THEA made presentations on national goods clearance processes and effort made to align them with regional protocols, identified legal issues and the structure of the documentation toolkit. The presentations that THEA made on project implementation progress are attached to this report as Annex 3.

4.1.8. Meeting with Kenya International Freight Forwarders Association Secretariat (KIFWA)

On 1 February 2023, THEA held a meeting with the Secretary and Chairman of the KIFWA Nairobi branch. The meeting discussed the import/export formalities and documentation used in clearing the goods and those in transit including procedures covered under OSBPs. KIFWA indicated that Clearing and Forwarding Agents faced challenges related to border procedures and crossings that caused unnecessary delays at the border.

It was observed that the requirement for the Ogyfrem certificate for DRC goods was one of the challenges faced since the issuing body was not domiciled within the Port of Mombasa hence delays in processing the certificates. Similarly, the issuance of the Certificate of destination for goods destined to South Sudan faced some challenges emanating from conflicting circulars from Juba even though the issuing office is domiciled inside the port of Mombasa. It was also not clear who between the importer and clearing agent was responsible for fee for the certificate which is usually denominated in US Dollars.

In addition, concerns were raised over the non-recognition of the AEO Program operators by government border agencies other than KRA-Customs. Complaints about delays occasioned by government agencies like Anti- Counterfeit Authority were also raised in the meeting

4.1.9. Meeting with the Kenya Flower Council Management

On 16 February 2023, THEA held a meeting with the Chief Executive Officer (CEO) of the Kenya Flower Council where the following issues were raised and discussed;

- The council raised the issue of cumbersome export processes and documentation for instance of KEPHIS insistence on open boxes to take samples for testing leading to truck pile-up at the export points.
- The requirement by the Agriculture and Food Authority (AFA) HCDA Directorate for an export license for every single consignment.
- Concerns were also raised about poor coordination/ communication between the AFA IT systems and the KENTRADE platform leading to delays in processing documents.

4.1.10. Meeting with the Directorate of Veterinary Services (DVS)

On 22 February 2023, THEA held a meeting with the Assistant Director of DVS in charge at JKIA and the Principal Inspection officer. Key issues discussed during the meeting are as follows;

- Held discussions on procedures and documentation based on a detailed analysis of their standard operating procedures forwarded in earlier to THEA. During this meeting, concerns were raised about Port Health communication regarding Halal Certification that involves documents from a variety of organizations. The need for requirement of Halal document even for goods being shipped to non- Muslim countries was also raised by the DVS since the certification is only a social standard and not a legal requirement.
- During the meeting, it was observed that DVS is yet to automate though they have some online processes. Too many copies of documents are also required for their processes.
- Further, DVS raised concerns with too many other government agencies such as DCI, Anti-Narcotics Unit, NIS, KAA Security, Airport Police ATPU, ACA, among others being involved in DVS work therefore creating too much focus on security at the expense of trade facilitation.
- The HS classification of goods involving differentiation of animal and human products was also raised. The same is witnessed regarding animal and human medical devices.
- The Directorate admitted that they have challenges in getting adequate staff numbers to carry out verification of goods.

4.1.11. Meeting with the Kenya Bureau of Standards

On 9 March 2023, THEA held a virtual meeting with Kenya Bureau of Standards which was attended by officers from various KEBS stations across the country. The meeting discussed the following key issues;

- The THEA team was taken through the pre-shipment inspection process right from the submission of the request for certification up to the obtaining of the Certificate of Conformity.
- The documents required for the whole pre-shipment inspection process were also discussed.
- Destination Inspection process and the documentation involved was also discussed in detail.

4.1.12. Meeting of the full NTFC

Between 4th and 8th September 2023, an NTFC Workshop was held in Machakos to review the status of Category C Measures. Among other outcomes, the meeting adopted the deliverables of this TA effectively bringing the project to a successful closure.

In conclusion, the above meetings were important as they provided clarity on formalities and documentations by border agencies.

During the last twelve months, the following key activities have been carried out in line with the ToRs and various discussions arising from the above meetings.

5.0. PREPARATION AND DELIVERY OF THE PROJECT INCEPTION REPORT

After the kick-off meetings with the client and the project beneficiary, THEA reorganized and established a dedicated project team for the implementation of this project. This included support staff and requisite working tools as well as consumables. An electronic library was established as a depository of project documents. The consultants conducted a review of available data and literature on Trade Facilitation to lay the basis of this assignment.

The review of the available data and literature on TF formed the basis of preparing the inception report which was submitted within the stipulated time of 14 working day.

The aim of the Inception Report (IR) was to provide guidance to the operationalization of the project, and to set up the project structure. The IR was, therefore, based on the ToRs for the Long Term Technical Assistance to support the SDT& ED to implement Category C Measures of the

TFA, the Technical Proposal documents and the outcome of discussions between MIT&ED, and TMA, the development partner supporting this project.

The IR updated the technical proposal documents, presented a time schedule for the entire project period in line with the contract, described institutional linkages and management and coordination mechanisms, identifies project environment, and risks and provided a clear set of expected results. Accordingly, the IR was used as a basis for explaining the project design, expected output and results as well as the entire series of project activities. Inputs received during inception meetings were incorporated into the report and have been of significant value during project implementation.

6.0. ANALYSIS OF NATIONAL TRADE PROCEDURES AND DEVELOPMENT OF RECOMMENDATIONS FOR ALIGNING THEM WITH REGIONAL TRADE PROTOCOLS.

THEA worked collaboratively with the National Trade Facilitation Committee (NTFC) and other stakeholders through a series of meetings and consultations. Similarly, meetings and interviews were held with a number of Government border agencies including the Customs and Border Control Department of KRA, KEPHIS, Port Health Service, Kenya Bureau of Standards, and Directorate of Veterinary Services. The consultants also held meetings with private sector stakeholders like KIFWA and Kenya Flower Council.

A report on comparative analysis between National and regional trade procedures and customs protocols was prepared under deliverable No. 2, which established the status of the implementation of Article 10.1 in Kenya and the extent of the alignment of Domestic Laws to the EAC Regional Laws on Cargo Clearance. The report also contains a set of recommendations on the alignment of national trade procedures and documentation among border agencies in accordance with regional trade protocols.

THEA observed that the information sourced from the field visits, analysis of the current cargo clearance procedures and documentation, as well as the EAC trade protocols, a lot still needed to be done to enable the country to implement fully the requirements of Article 10.1 of the WTO Trade Facilitation Agreement. From the analysis, THEA has come up with some recommendations that the NTFC will find useful in charting the way forward. These are enumerated below: -

6.1. Establishment of a ONE STOP CENTRE at the Port of Mombasa

Instead of removing some government agencies from the ports of entry / exit and in order to harmonize the operations of the many government agencies, THEA recommend an ideal infrastructure akin to the OSBPs, for proper inspection at Mombasa port and ICDs viz:

- a. The setting up of One Stop Centre (OSC) to facilitate the processing of cargo clearance and documentation. This facility can house all government agencies with a mandate in import/export cargo processing. It will require the agencies to relocate their operational centres and be accommodated under one roof with offices for staff and all necessary facilities for handling, processing and filing documents. This will also eliminate the use of the accountability form which has increased the inter-agency bureaucracy. The One Stop Centre will improve coordination and communication among the agencies and lead to simplification and efficiency of the clearance process. All these government agencies should operate in liaison, harmony and cooperation while respecting each other's competencies in order to streamline the inspection process.
- b. Establishment of a Central Documentation Office where all import and export documents

are lodged for inspection. This will eliminate the need for traders having to travel long distances to obtain these services.

- c. Provision of Central Verification Areas where goods are verified for compliance with import and export regulations.
- d. Development of a “Process and Procedure Manual “for the Mombasa port/ ICDN. The manual will contain all the Standard Operating Procedures (SOPs) and charges for clearance of cargo. All processes, procedures and tariff charges for clearance of goods will be clearly shown in the manual. The manual will also provide key information and a uniform guide to the entire clearance process.
- e. This arrangement should also be extended to the Container Freight Stations (CFSs). Currently there are challenges experienced by importers whenever they seek for government agency services in these stations. The agencies’ officers have to shuttle between the CFSs in order to provide the required services. An arrangement that ensures the continued availability of the agencies’ officers will enable them operate jointly within the stations and thus eliminate this operational hurdle.

6.2 Documentation

The south African Revenue Service use a Single Administrative Document (SAD) to facilitate Customs Procedures that accommodate the needs of other government agencies. Similarly Tanzania Revenue Authority has developed a single administrative document for use at the port of Dar es Salaam to facilitate the operations of all government agencies at the port. In the case of Tanzania, the introduction of the single entry document has not violated any of the EAC cargo clearance protocols. This could be replicated in Kenya as follows:-

- i. **Mombasa Port and ICDs:** THEA recommends that the Kenya Revenue Authority-Customs and Kenya Ports Authority develop a Joint Administrative Document (**JAD**) that can accommodate the requirements of all the government agencies involved in cargo clearance. This will allow the agencies to ensure import regulations regarding declaration, documentation, certification, verification of goods and quality standards are satisfied without causing unnecessary delays that lead to high clearance and storage costs.
- ii. **Imports at OSBPs:** THEA recommends that the OSBP Foreign Registered Motor Vehicle Inspection and Release Form currently used by the Customs, Directorate of Criminal Investigation and Police be enhanced to cover other goods. The enhanced document can be subdivided into separate sections for the various types of goods. This can then be used as a single Joint Verification Document (JVD) for border crossings.
- iii. **Exports at OSBPs:** We recommend that the Joint Verification Office Certificate of

- Exports Approval Template for fuel Transit entries to South Sudan and Congo be enhanced and similarly segmented to cover all other export goods as one document.
- iv. It was also noted that KRA- customs at times do not recognize declarations on COC in relation to the HS Commodity Codes used for various products. This leads to delays in clearance when such instances occur. THEA, therefore, recommend the use of an enhanced COC bearing HS codes that can be recognized by all government agencies.

6.3 Use of Technology

THEA recommends increased use of technology in the following key areas:

- i) The use of intelligent technologies will improve the PVoC Program in Kenya, as it will ensure seamless data sharing between PVoC agents and the relevant border agencies tasked with ensuring the efficient clearance of goods. It will also ensure timely payment of levies and faster clearance of cargo from the port and ICDN by traders.
- ii) Technology can also be used to facilitate remote inspection of goods. In Germany for instance, SGS, who are tasked with the inspection, verification of cargo, uses a mobile application that enables traders to conduct verifications in their own warehouses and the customs authorities only monitor the verification on a live feed and can accept the verification and officially release the goods. The estimated savings on time is around 50 percent.
- iii) The use of digital signatures – with the ever increasing number of electronic transactions and documents, the use of digital signatures will make it possible to trust and act upon transactions as if they were printed on paper and signed by a trusted source. The digital signatures can thus be used as proof of authenticity and as such government agencies will be able to electronically identify the sender. With this technology, cargo clearance will be more convenient and faster.
- iv) KENTRADE also need to use such technologies to ensure that the Kenya National Single Window System facilitates the entire import process from vessel arrival until delivery of the goods to the importer.

6.4 Pre Arrival Processing (PAP)

This refers to the electronic submission of import data and documents to customs and other government agencies for processing before the actual arrival of the goods. It enables release of legitimate cargo immediately upon arrival while subjecting risky cargo to other intervention measures. It is thus a trade facilitation measure which promotes expedited cargo release through

points of entry.

- i) For instance, the Standard Operating Procedures for Container Terminals at the Ports of Dubai, Port Elizabeth and Cape Town include a number of Pre-arrival notification Procedures before vessel arrival. In Germany, in order to avoid any delays and extra charges, masters of ships calling at the port of Hamburg contact the port authority and provide their Expected Time of Arrival (ETA) data 12 hours and finally 1 hour prior to the arrival at the port, giving relevant details such as name of vessel. This arrangement could be available to all traders using the ports.
- ii) In Kenya Pre Arrival Processing is enjoyed mostly by AEOs. However, even here release sometimes gets delayed until the container physically arrive in the port. There are also delays caused by the intervention of other government agencies.
- iii) While Pre-arrival Processing has led to expedited clearance of goods, THEA recommends that this procedure should not be confined to AEO operators only but should be extended to consignments belonging to other traders through enhanced use of risk management techniques.

6.5 Collaboration and Sharing of Information by Government Agencies

Despite the use of the Single Window system, there is still duplication of roles and an overlap of duties amongst the government agencies involved the importation process. For instance, an importer of beans is required to obtain an import health certificate from Port Health, Plant Import Permit from KEPHIS and Import license from the AFA Horticultural Crops Directorate. The purpose of all these documents is to certify that the beans being imported into Kenya are fit for human consumption

The simplification of documentary requirements is one the best practices which have reduced the time and cost of importation in many jurisdictions. The World Bank Report on Trade Logistics in the Global Economy states that cooperation among government agencies is important in trade facilitation. Indeed it is at the core of the requirements of Article 10.1 of the WTO Trade Facilitation Agreement.

- i. THEA, therefore, recommend that duplication of roles should be eliminated in order to reduce the documentary requirements in the importation of goods into Kenya. This will in turn enable the reduction of clearance time and the attendant costs.
- ii. It is also recommended that the enabling laws of the various government agencies involved in cargo clearance be amended to eliminate duplication of roles.
- iii. In addition, it is recommended that statutory delays should not lead to traders being penalized. Service Level Agreements (SLAs) can be used to minimize delays occasioned by repetitive inspection interventions. Further, agencies that occasion delays as a result

of their interventions should take responsibility for the delays and recommend to the Kenya Ports Authority for the waiver or reduction of the accrued extra storage charges.

- iv. Communication between the AFA Directorates' systems and KEPHIS system should be improved.

6.6 Training of Stakeholders

In the European Union, for instance, SGS specialists offer manufacturers exporting goods to Germany, training in order to set up their production processes that meet the requirements of the German market

- a. In this regard it is recommend that PVoC Agents in exporting countries should carry out trainings to ensure that exporters are aware of Kenyan Standards before beginning their manufacturing or production processes.
- b. Similarly, KEBS should train local importers to be aware of the local standards for goods in order to avoid relying solely on the exporter's declarations
- c. KRA and KENTRADE should also take up increased training of importers/ exporters on the online portals to ease the importation process. KRA Customs should in particular expand their training on ICMS to more stakeholders outside the Clearing and Forwarding Agents fraternity.

6.7 Use of Risk Management

One of the most critical elements in the release and clearance formalities is risk management or the use of risk-based rules and procedures. The Revised Kyoto Convention (RKC) requires member countries to concentrate customs and other border controls on high-risk consignments and expedite the release of low risk consignments. This is particularly important during the pre-arrival clearance of cargo. Given the importance of effective risk management, which allows the balancing of trade control and trade facilitation, it is worth considering having a regional cooperation initiative in the East African Community on sharing good practices on risk management for efficient and effective trade facilitation.

6.8 Collective Inspection of Goods

- i. Cross-border regulatory agencies should coordinate efforts to execute control on high-risk cargo. The procedures for conducting the checks should be clear to the trader and if a shipment needs to be inspected by multiple agencies, it should be done at the same time by all parties involved, or by a lead agency (e.g. Customs) authorized to conduct the check on behalf of another agency.

- ii. The similarities and distinctiveness of the different types of controls utilized by different Cross Border Regulatory Agencies should be holistically examined to ensure effective outcomes for all, and where feasible, the inspection of the goods could also be conducted at designated inland locations, instead of at the borders.
- iii. It is also recommended that partner government agencies should take responsibility occasioned by their interventions and advise Kenya Ports Authority to waive the extra storage charges.

6.9 Authorized Economic Operator System

The EAC Partner States have implemented a program for mutual recognition of compliant traders. Economic operators recognized under this program qualify for a number of benefits in all Partner States. Partner States have also agreed on procedures for accrediting traders into the program, benefits to accord the traders and a common framework for management of the Regional Authorized Economic Operator (AEO) program.

- It was observed that in the course of implementing the AEO program, most One Stop Border Posts (OSBPs) have only one lane for all goods including those on the AEO program hence hindering smooth flow of goods. It is, therefore, recommended the OSBPs infrastructure be reconfigured in order to introduce distinct lanes for different categories of importers/exporters to make the AEOs program truly beneficial to traders as well as government agencies.
- It is also recommended that other partner government agencies be involved in the determination of firms to be upgraded to the Authorized Economic Operator status. This would allow agencies to recognize the AEO operators in order to enhance faster clearance of cargo. Joint accreditation for the program can be enabled through an arrangement that will allow each agency to develop its own criteria for accreditation. This will result in recognition of the AEO operator status across the board.
- There is also need to harmonize operations of the AEO program at the regional level so that the program does not only benefit traders importing goods into the country but also those exporting goods out of the country.
- THEA was informed that there was a National Taskforce on Authorized Economic Operators (AEOs) that has been mandated to harmonize operations of the program. It is expected that the task force will address the shortcomings and challenges that the program has faced during the period it has existed.

6.10 Border Processes Regulations

Kenya made great strides to ensure compliance with the EAC regional protocols, laws and regulations. This has involved wholesome domestication of the regional framework for customs

management. Indeed, Kenya Customs has been implementing EACCMA 2004 and its Regulations of 2010 and the OSBP Act, 2016 for almost 2 decades without major challenges. The Excise Act 2015 has also been in operation for over 7 years. It rightly follows that the transition period for implementation of customs management laws has elapsed and thus THEA recommends that Kenya repeals the Custom and Excise Act 1978 from its law books. Legal practice usually calls for repeal of competitive laws where a new one is enacted. Further, EAC partner states that still maintain their Customs and Excise Acts or their equivalent should be encouraged to repeal this laws to show their commitment to the regional Single Customs Territory.

Kenya operates a National AEO program administered by the Customs. However, it is unlike the AEO program under the SCT. The EAC SCT, calls for Partner states to develop a AEO program for the mutual recognition of the compliant traders under the regional AEO program regardless of the certifying state. In this case Kenya Customs and Border Management has not wholly aligned to the EAC SCT principle of mutual recognition. THEA recommends that KRA in conjunction with equivalent agencies in the EAC expand national programs by taking measures to mutually recognize accredited AEOs of other partner states in accordance with the EAC SCT.

It is noted that the OSBP Regulations, 2017 are not comprehensive enough to enable effective implementation of the Act. Notably, the OSBP Act cover a wide field of actions by stakeholders at the common frontiers. For instance, in an effort to minimize formalities, border officials carry out joint verifications and have therefore created a number of documentations for those activities. These joint administrative documents used at common frontiers are not provided for in the OSBP Act or Regulations. These Regulations have been in operation for over 5 years and are due for a review. THEA recommends that a review of the same be done to develop a more comprehensive OSBP Regulations to cover specific joint activities & regularize documentation.

6.11 Points of overlap for some regulated imported products

Cargo verification has been a challenge at the ports/ points of entry and exit due to the many government agencies involved in the clearance process. This is prevalent in the importation process of regulated products into the country. Due to lack of coordination among the relevant government agencies, numerous certificates, permits and fees are required to import these products. This ultimately increases the cost and time for documentary and regulatory compliance and results in gaps and overlaps in the inspection, verification and clearance of goods. We therefore recommend the following:

- That since most of these permits /inspections serve the same purpose, there is need to streamline and ultimately do away with some of the permits in order to make the importation process more efficient.

- Agencies that have overlapping functions can enter into service level arrangements with their counterparts to carry out inspections on their behalf even as they maintain their levies. For instance, Port Health can inspect goods on behalf of PPB and AFA Directorates.
- That equal emphasis, if not more be given to trade facilitation as opposed to the current situation where focus has mainly been on security and regulatory facilitation.

7.0. DEVELOPMENT OF THE TRADE DOCUMENTATION TOOLKIT

The development of the Trade Documentation Toolkit was done in three phases as outlined below:

Capture Phase: The first phase focused on capturing the current documents, forms, and procedures required in the import & export process. The documents, forms, and laws will also be quantified in terms of numbers, and each procedure have been quantified in terms of numbers as well as the time or duration it takes to complete it.

Review Phase: This phase focused on capturing simplified and reduced documentation as well as simplified formalities. The process was completed after the analysis of legal and regulatory framework, and the development of the new SOPs. This was done by categorizing the agencies and their respective documents, forms, and procedures by grouping them in their respective sectors, for example., agriculture, textile, industrial, medical & medical equipment, etc., showing each category the new revised documents required as well as the procedures and the new time required for each document to be filled.

Training Phase: The last phase included a hands-on workshop, including training on how the toolkit works and how to use it.

The three development phases, that is the capture, review, and training phases, ensured that the Trade Documentation Toolkit is effective, efficient, and accessible to all users. With the successful implementation of the toolkit, Kenya, through the NTFC will be well on its way to achieving the requirements of Article 10.1 of the WTO Trade Facilitation Agreement (FTA).

Way Forward

THEA has done a market search and below is our recommendation on the requirements and specifications that the Ministry will require to host the toolkit if it deems it necessary.

The first option is to host it at the trade information portal at the ministry of Investment, Trade and Investment at an extra cost as detailed below.

Alternatively, they can choose to host the toolkit at the KENTRADE Platform but to be restricted to the government and government agencies use.

Requirements and Estimated Costs:

1. Hardware Requirements:

- Server Machine: \$1,000 (Dell PowerEdge T140 Tower)

2. Software Requirements:

- Windows Server SE License: \$1,069
- Web Server (Apache for Windows): Free
- PHP 8.0: Free
- MySQL Database Server 5.7: Free

3. Server Configuration:

- Configuration and Optimization: \$1,500+ (Cost for professional setup)

4. Security:

- SSL Certificate: \$50 per year (for a basic certificate)
- Firewall and Security Software: \$200 (for a commercial solution)

5. Backup and Disaster Recovery:

- Backup Software or Service: \$50 - \$200+ per month (depending on the service provider)

Operational Costs:

1. Maintenance and Support:

- IT Staff or Managed Hosting Service: \$500 - \$2,000+ per month (for managed hosting)
 - Server Maintenance and Updates: \$100 - \$500+ per month
2. **Domain and SSL Certificate:**
 - Domain Registration: \$10 per year (varies based on domain)
 - SSL Certificate Renewal: \$50 per year (for a basic certificate)
 3. **Backup Solutions:**
 - Ongoing Backup Costs: \$50 - \$200+ per month (varies based on the chosen solution)
 4. **Support and Training:**
 - Training and Support Packages: \$500 - \$2,000+ per year (optional)
 5. **Bandwidth and Data Transfer:**
 - Monthly Bandwidth Costs: \$10 - \$100+ per month (varies with traffic)

8.0. ANALYSIS OF THE LEGAL AND REGULATORY ENVIRONMENT

8.1. Methodology

THEA was tasked with undertaking the legal and regulatory review of existing formalities and documentation requirements. The team investigated the assumption that traders are burdened in terms of time and costs in the process of cargo clearance by unnecessary and complex legal and regulatory obligations. Towards this end, THEA carried out a qualitative analysis of online literature through desk research pertaining to the national, regional, and international laws and regulations affecting the clearance of goods in Kenya.

Primary data collected by the team included field surveys to collect information on existing formalities and documentation in use, the challenges faced by the PGAs, and the initiatives undertaken individually and collectively by the various PGAs to circumvent to challenges faced in cargo clearance. It further interviewed importers and exporters to identify challenges faced when using existing formalities and documentation. This was on the larger part carried out through one-on-one structured interviews with officers from select PGAs at their places of work although phone and video interviews were conducted intermittently. The interviewees were selected by the PGAs and were experts in the various clearing processes. The team also had the opportunity to observe a number of processes in real time i.e., a physical inspection at the Nairobi Inland Container Depot (ICDN).

Existing data like forms, Standard Operating Procedure (SOP) documents, licenses, and permits used in the clearing process were collected on visits to the PoEs and offices of the PGAs. These documents were mostly, shared via emails although in a few circumstances, they were collected at the end of the interview. The team identified a number of missing documentations which for one reason or another could not be availed by the PGAs.

Our team carried out a thematic analysis by examining the laws creating and mandating action by PGAs with the objective of identifying duplications of processes and documents, the complexity of processes and unnecessary laws and regulations. It involved identifying which laws or regulations prescribed what action or document and examining the limitations of that law as regards the clearing processes and where possible identifying possible reviews of that law. A

content analysis of the collected documents was carried out to assess their duplicity and necessity to enable making findings and necessary recommendations.

8.2. Laws and Regulations Governing Clearance of Goods at PoEs

Kenya applies domestic, regional as well as international laws and regulations in the process of clearing and release of goods at its PoEs. The domestic laws are numerous and include customs management laws and other laws prescribing action of PGAs involved in the goods clearance process. These include; the Kenya Revenue Act No. 2 of 1995, Kenya Port Authority Act Cap 391, The Kenya Plant Health Inspectorate Service Act No. 54 of 2012, Foods, Drugs and Substance Act Cap 254, the National Electronic Single Window System Act, of 2022, the Standards Act Cap 496, Public Health Act Cap 242 etc.

The regional laws applicable in Kenya are mostly the EAC laws and regulations on customs management. It is noteworthy that Kenya has made commitments to the EAC Customs Union Protocol 2004. It has also ratified the EAC Customs Management Act (EACCMA) of 2004, the EACCMA Regulations of 2010 and the One Stop Border Posts Act of 2016 which now form the main legal instruments applied by the Customs Department in good clearance and release. International law to which Kenya has made commitments and must therefore observe include; the WCO International Convention on the Simplification and Harmonization of Customs Procedures, the Revised Kyoto Convention on customs formalities, the WTO Trade Facilitation Agreement.

8.3. Key observations

The report's comparative analysis of the national trade processes and documentation requirements for cargo clearance vis a vis the EAC Regional protocols indicate that there is an alignment between the two national and regional frameworks. Indeed, Kenya has signed on and made commitments to the principles enunciated in the EAC protocols. Furthermore, it has adopted and domesticated the EAC regional laws, regulations, and procedure manuals which are applied locally. In particular, Kenya applies the EAC Customs Management Act (EACCMA) 2004 and its regulations; the One Stop Border Post (OSBP) Act of 2016 and its regulation and the EAC Standardization Quality Assurance Metrology Testing Act of 2006 (SQAMT) Act and its regulations among other EAC laws. Whereas some PGAs involved in cargo clearance apply national laws, this is at the verification/inspection stage and there are no equivalent EAC laws to enable a comparative analysis.

Whereas Kenya has for years sought to initiate a number of programs that aim to reduce the encumbrances in cargo clearance at its PoEs, there still exist numerous formalities and documentation requirements that are in conflict with its commitment under the TFA Article 10.1. There exist to Kenya's credit programs such as the Authorized Economic Operators (AEO) program; the National Electronic Single Window System which integrates and centralizes trade-related procedures; the pre-shipment and pre-arrival processes and a coordinated border management system. Kenya has also automated a number of processes including; the registration and processing of entries/declarations, automated releases, and automation of port gates.

However, issues of multiple registrations for traders to obtain licenses/permits in every concerned PGA creates unnecessary paperwork. This challenge may be overcome by creating a single national registration repository center accessible by all PGAs and traders. Notably, an expanded single administrative document may also be developed to replace form C17 and revoke others i.e., C2, C4 which are also used to make declarations/entries.

Efficient and harmonized cargo clearance procedures are crucial for promoting trade facilitation and fostering economic growth. By aligning the existing laws and regulations in Kenya with the WTO TFA Article 10.1, opportunities can be identified to simplify, streamline, and harmonize the cargo clearance process. Recommendations such as simplifying, standardizing and or reduction of complex and unnecessary documentation, and improving the efficiency of certain programs i.e., the single window system, comprehensive port automation, enhancing the pre-shipment and pre-arrival processes, enabling operations 24/7 at the PoEs etc can contribute to the effective implementation of trade facilitation measures in Kenya. Thus, ultimately benefiting both the government and the business community.

8.4. Recommendations

The report identified a set of specific recommendations for facilitating the clearance of goods that maybe undertaken by various agencies concerned at PoEs. They include proposals for regulatory and procedural reforms aiming at a clear, concise, transparent legal framework for cargo clearance is made. They also include proposals for amendment of laws which may include, repealing or combining certain part of the law and regulations. It also proposes the best approach to present this to the powers that be so that the results of this review are implemented comprehensively;

8.4.1. Compliance with EAC Regional Protocols

Kenya made great strides to ensure compliance with the EAC regional protocols, laws and regulations. This has involved wholesome domestication of the regional framework for customs management. Indeed, Kenya Customs has been implementing EACCMA 2004 and its Regulations of 2010 and the OSBP Act, 2016 for almost 2 decades without major challenges. The Excise Act 2015 has also been in operation for over 7 years. It rightly follows that the transition period for implementation of customs management laws has elapsed and thus THEA recommends that Kenya repeals the Custom and Excise Act 1978 from its law books. Legal practice usually calls for repeal of competitive laws where a new one is enacted. Further, EAC partner states that still maintain their Customs and Excise Acts or their equivalent should be encouraged to repeal these laws to show their commitment to the regional Single Customs Territory.

Kenya operates a National AEO program administered by Customs. However, it is unlike the AEO program under the SCT. The EAC SCT, calls for Partner states to develop an AEO program for the mutual recognition of the compliant traders under the regional AEO program regardless of the certifying state. In this case, Kenya Customs and Border Management has not wholly aligned with the EAC SCT principle of mutual recognition. THEA recommends that KRA in conjunction with equivalent customs authorities in the EAC expand national programs by taking measures to mutually recognize accredited AEOs of other partner states in accordance with the EAC SCT.

It is noted that the OSBP Regulations, 2017 are not comprehensive enough to enable effective implementation of the Act. Notably, the OSBP Act covers a wide field of actions by stakeholders at the common frontiers. For instance, in an effort to minimize formalities, border officials carry out joint verifications and have therefore created a number of documentations for those activities. Whereas these joint administration actions are anchored in S. 10 of EACCMA 2004, the resultant joint administrative documents used at common frontiers are not provided for in law or regulations. These Regulations have been in operation for over 5 years and are due for a review. THEA recommends that a review of the same be done to develop more comprehensive OSBP Regulations to cover specific joint activities and regularize documentation.

Whereas it is imperative that Kenya complies with EAC regional laws, these regional laws must also be amended to enable compliance with the commitments under the TFA Article 10.1. It is paramount to note that any amendment to the EAC regional laws and regulations will require action from all EAC member states. Unlike the case of amending national laws, amendment of regional laws requires the consensus of all partner states. In this case, the status of the partners' implementation of 10.1 TFA must be considered. Kenya may need to convince other EAC members to adopt its initiatives relating to its commitments under TFA Art. 10.1 where they affect the current EAC customs laws. In a nutshell, it's imperative for Kenya to coordinate with EAC to ensure its reforms are synchronized with those of other EAC partner states.

8.4.2. National Automated and Neutrally Located Repository for Registration of Traders

Traders are required under various laws implemented by Customs and PGAs to register with the various concerned agencies so as to be issued licenses and or permits to import/export. Currently, traders need to register themselves with a minimum of three agencies so as to be able to import/export hence burdensome and conflicts with the requirements under TFA Art. 10.1 regarding simplification of processes. A number of agencies have not automated their registration process and still require the submission of paper applications. There is therefore a need to automate the registration process by creating a national electronic registration repository center that is neutrally located and accessible by all PGAs and traders. This will exist for the purpose of registering all traders despite the type of product they trade in.

This national repository may be housed and managed by KENTRADE. KENTRADE may be required to liaise with all other agencies to identify and agree on criteria for registration of traders. Agencies may review the criteria periodically so as to eventually come up with a collective criterion for all agencies. This registration repository if implemented will result in a reduction of the number of application forms that traders need to complete as well as reduction of numerous licenses issued by various agencies. For instance, documentation for licensing and permit applications by KEPHIS, DVS, PHS, KEBS can eventually be contained in one document/form and the approval issued on one similar document. This will make the process less complex for traders and reduce documentation requirements as per TFA Art. 10.1. An amendment of all registration laws of the agencies will thus follow.

8.4.3. Use of Single Administrative Document for Entries

Entries/declarations are guided by the EACCMA 2004 and its regulations which requires the submission of numerous documents as identified in Part 3 above plus supporting documentation. Of importance is form C17 which registers almost all entries in the EACCMA 2004. However other forms i.e., C2, C3, C4, C5, C34 and any other form required for making entries and declarations for vessels, aircrafts and vehicles may be combined to develop a single document for administrating these processes. It therefore follows that C17 may be amended and expanded to include all data requirements of the above-mentioned forms. It may form the basis for a single administrative document. The related laws may as result, be amended. For instance, EACCMA Regulation 2010 regulations 11, 12 and 13 on report of aircraft, vessels and their cargo may possibly be amended to provide for designing one document. Forms C.3 and C.4 can thus be combined into one form/document that reports the arrival of an aircraft or vessel. May also be combined with form C2 which indicates packages that have no Bill of Lading.

9.0. DEVELOPMENT OF THE SIMPLIFIED STANDARD OPERATING PROCEDURES

Due to the presence and operation of many government agencies, cargo verification has been a challenge at the ports / points of entry and exit. Each agency has its own legislated mandate and generally operate within the confines of its own Standard Operating Procedures. There has therefore been lack of proper coordination between government agencies and this has resulted in delays which have a cost implication on imported goods with the resultant cost being passed onto consumers. It is to be noted that both the cost of doing business and efficiency at the points of entry and exit are dependent on the actions of the Partner government agencies and other facilitators entities having the task of ensuring smooth clearance of cargo. In order to minimize these delays and enhance cargo clearance effectiveness, it becomes necessary to develop unified and simplified Standard Operating Procedures for the use of government agencies with a mandate at the points of entry/exit. Such procedures are for use only for purposes of goods clearance at the entry and exit points and should not infringe on the SOPs used internally by the respective agencies

The assignment involved the undertaking of the legal and regulatory review of the existing formalities and documentation requirements and using the review, develop simplified SOPs for trade regulatory agencies at the points of entry and exit. The project is therefore expected to help Kenya harmonize her border Partner Government Agencies operating procedures to enable the country meet her obligations under Article 10.1 of the TFA.

9.1. Methodology

The consultant worked collaboratively with the (NTFC) and other stakeholders through a series of meetings and consultations. The consultant also did a review and mapping of existing trade procedures and documentations. These included analyzing trade clearance procedures e.g., border crossing procedures in selected government agencies, through desk research, targeted interviews with government agencies such as Customs and Border Control, Kenya Bureau of Standards, Kenya Ports Authority, Directorate of Veterinary Services, Kenya Plant Health Inspectorate, among others. The consultant also held meetings/interviews with private sector stakeholders.

9.2. Simplified Standard Operating Procedures (SOPs)

Standard Operating Procedures are defined as detailed descriptions of each step in the flow of a process and the way in which these steps are performed in a particular business process. They are written instructions that outline the steps to be followed in a specific process or task. The SOPs detail the work processes that are to be conducted or followed and the way activities are to be performed to facilitate consistent conformance to safety and quality system requirements.

They assist in the performance and management of organizations to document procedures and ensure compliance with regulations and standards are designed to ensure that tasks are performed consistently, efficiently, and safely.

The proposed Standard Operating Procedures (SOPs) have therefore been developed using the legal and regulatory framework underpinning the operations of Partner Government Agencies at the points of entry and exit. This is part of the effort to enable Kenya achieve full implementation of Article 10.1 of the World Trade Organization’s Trade Facilitation Agreement. In fact based on the field visits, analysis of the current cargo clearance procedures, processes and documentation, the consultancy observed that a lot still needs to be done to enable the country fully implement the requirements of Article 10.1 of the WTO Trade Facilitation Agreement.

The proposed SOPs are in a simplified format in order to make it easy to enhance Trade facilitation and thus reduce cost of doing business in the country. They provide specific guidelines on the sequence of processes and activities performed by government agencies at the border and they aim at being a one stop reference document for all government agencies/departments as well as other players with the task of ensuring efficiency and harmony in the inspection, verification and clearance of import, export and transit cargo at the ports/points of entry and exit in Kenya. A total of 10 SOPs for ports, airports and land borders were developed detailed here below;

Step	Activity	Responsible PGA	Timelines
SOP 1. Pre- arrival Processing	<ul style="list-style-type: none"> • Importer / Clearing Agent electronically lodge/ apply for Base Document (IDF) through the ICMS. • Harmonized Commodity Description and Coding System (HS) Code for each product is declared. • Base document is processed in ICMS that is linked to KETRADE Platform. • Where goods are regulated, IDF information will be used to generate a UCR which will be electronically submitted to relevant government agency for approval. • checking for compliance • Risk based analysis, profiling and targeting of consignments is done by the agencies through the KESWS 	KRA- Customs, KPA, KEBS, KEPHIS and other permit issuing agencies.	1 Hour

	<ul style="list-style-type: none"> • After approval by Agency, the information is forwarded to Importer/ Clearing Agent to obtain necessary permits. • Issuing of import permits 		
SOP 2. Pre-Export Verification of Conformity (PVoC)	<ul style="list-style-type: none"> • After approval of Base document, importer appoints PVoC agent in the country of supply. • Upon completion of inspection the PVoC agent issues a Certificate of Conformity (COC) where goods conform to Kenyan standards • Where goods not compliant, a Non Conformity certificate is issued. 	Kenya Bureau of Standards, PVoC Agents	30 days or more and depend on importer
SOP 3. Import Entry Declaration, Processing and payment of Duties and Taxes	<ul style="list-style-type: none"> • Importer/Clearing Agent lodges entry through ICMS. • ICMS automatically processes the declaration. • After passing of entry, agent receives notification to pay taxes. • Non- compliant declarations are rejected for owners to rectify • Upon payment of the taxes, evidence of payment is forwarded to the agent online. • Importers under the AEO Program are granted expedited clearance processing • Small cross-border consignments of less than US\$ 2000 and accompanied luggage are given direct assessment at OSBPs and cleared under a simplified regime through ICMS 	KRA- Customs	30 minutes
SOP 4. Vessel / Aircraft Arrival Inspection	<ul style="list-style-type: none"> • Joint Boarding of vessels / Aircraft /Rummaging. • Cargo is offloaded and placed in container terminal • Cargo transferred to Container Freight Stations. 	KRA- Customs, KPA, KAA, Port Health, National Police Service, Immigration	<ul style="list-style-type: none"> • 1Day for Port • 30 minutes for Land

	<ul style="list-style-type: none"> • Cargo offloaded and transferred to Cargo Sheds for airfreight • Security check of Conveyance and goods at Land Border point of entry • Registration of Trucks and Cargo for Land Borders 		Border Stations
SOP 5. Customs / Joint PGA Verification	<ul style="list-style-type: none"> • Allocation of a verification officer is done through ICMS. The customs officer confirms correct declaration of goods and tax payment. • Where the correct duty was not paid, an uplift may be issued and the importer shall be required to pay additional duty and tax. • Scanning • Inspection • Physical verification • Sampling, • Testing • Administrative or legal action for non-conforming consignments by agencies • Approval/ Release by Agencies other than Customs through Single Window release module • Communication between the agencies for joint verification is done through an informal whatsApp group administered by KRA 	KRA-Customs, KPA, KAA, NPS, KEPHIS, ACA, and all other concerned PGAs	1 Hour

<p>SOP 6. KEBS Inspection</p>	<ul style="list-style-type: none"> • Upon completion of inspection, and where the COC shows compliance, goods are handed back to Customs and KPA for release. • Where COC is non-compliant, goods are subjected to physical destination verification. • Goods given conditional Release and verification done at the owners premises • Non-compliant goods are re-exported to country of supply within 30 days. • Those not re-shipped are destroyed by KEBS at owner's expense. 	<p>Kenya Bureau of Standards, KPA, KAA</p>	<p>3 Hours</p>
<p>SOP 7. Cargo Release</p>	<ul style="list-style-type: none"> • After government agencies are through and Final Customs compliance confirmation goods are released, clients will pay port charges • Payment of port charges • After payment of Port charges the cargo is released to the importer / agent: <ul style="list-style-type: none"> i) submit pick up orders ii) Truckers with system generated barcodes can pick up the cargo • Goods enter the Country at Land Border Stations. 	<p>KRA, KPA, KAA, Border Police, NPS</p>	<p>10 to 15 hours depending on clients readiness for cargo at Mombasa port and ICDN, Immediate release at land borders</p>
<p>SOP 8. Consolidated Cargo Inspection and Release</p>	<ul style="list-style-type: none"> • Customs will verify and approve the House Manifest to allow the Consolidator/Consignee or their clearing Agent to prepare the individual Customs Entries • The goods will undergo the prescribed Customs procedures and verification on arrival including inspection by other government agencies • The consignment will be scanned and where there are discrepancies, the goods shall be subjected to physical verification • Where high risk goods subjected to destination tests fail to conform to the relevant Standards, 	<p>KRA- Customs, KR, KPA, KEBS, Port Health, NPS, Other PGAs</p>	<p>3 Hours</p>

	<p>they shall be rejected. Such goods shall be re-shipped or destroyed at the Consolidator’s/Consignee’s own cost.</p> <ul style="list-style-type: none"> Any non-compliant items/goods within a consolidated consignment shall be deposited in the Customs Warehouse pending resolution to facilitate release of compliant items/ goods For regulated goods, the relevant government agency may have to conduct further inspection before the goods are released. Compliant goods are thereafter released 		
SOP 9 Export Cargo Processing	<ul style="list-style-type: none"> Clearing Agents transmit declarations electronically to Customs through ICMS ICMS processes the declaration and communicates through KENTRADE System to enable relevant PGAs to process the required permits. After approval by the PGAs, the entry is passed and exporter notified to move goods to the release point for verification and release. 	KRA, KPA, other PGAs	3 Hours
SOP 10 Verification, Stuffing, Sealing & Release of Export Cargo	<ul style="list-style-type: none"> The goods proceed to the port / Land border of exit. Verification and/or Supervision of 	KRA-Customs, KPA, KAA, KEPHIS, DVS and other relevant government agencies	1 Hour

	<p>stuffing of export cargo</p> <ul style="list-style-type: none"> • Release and exit of cargo from Kenya • After export confirmation has been confirmed a Certificate of Export (COE) is issued 		
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The main purpose of the ten SOPs is to simplify, harmonize and improve the activities of government regulatory agencies in order to enhance their trade facilitation functions at the points of entry and exit. They are also expected to contribute to better compliance to regulatory requirements on the part of international practitioners. The report also covered the documentation requirements for the various government agencies and made recommendations on how to reduce the number of permits and licenses issued by different agencies for the same sector products.

9.3. Observations

All government agencies operating at the points of entry/exit have their own specific legal mandates to execute and therefore need to be accommodated in whatever SOPs framework is developed and adopted for use. It is important to note in all fairness that Kenya has made great strides in streamlining its import procedures and processes through the introduction of the Integrated Customs Management System and the Kenya National Electronic Single Window System. Similarly the Partner Government Agencies have developed their individual Information Technology systems and successfully linked them to the Single Window system. These system linkages have contributed greatly to the speedier cargo clearance at the borders.

Indeed, for the proposed SOPs to be adopted, the intra-agency communication through the KENTRADE platform will be the major determinant of the nature of the impact they will have on cargo clearance. Nonetheless, it is important for the government to eliminate any remaining bottlenecks in the importation process in order to achieve full implementation of Article 10.1 of the Trade Facilitation Agreement. This will turn greatly reduce the cost of doing business in the country. It is therefore imperative for the relevant government agencies to adopt and comply with the proposed SOPs in order to resolve emergent challenges.

Kenya as a country has done reasonably well in trade facilitation, particularly in the area of making use of technological applications. The country is not particularly far behind these Asian frontrunners and the gap can greatly be reduced through adoption of simple to understand and apply procedures. Indeed a set of clearly laid down and simplified Standard Operating procedures

like those proposed earlier can lead the country in making adequate and internationally acclaimed strides in trade facilitation

10.0. DELIVERY OF TRAININGS

Trainings formed a key component of this assignment. During NTFC meetings, trainings were conducted and the last one was on 8th of September 2023, a practical training on the SOPs and the Trade Documentation Tool Kit were conducted to the participants.

11.0. STATUS OF ACHIEVEMENT ON PROJECT DELIVERABLES

As can be observed below, THEA accomplished the assignment within the stipulated timelines.

Contract Deliverables	Achievement status
Submission and approval of Inception Report	Delivered on 15 September 2022
Alignment of National Trade Procedures with regional trade protocols	Draft report on alignment of national trade procedures with regional trade protocols has been prepared and submitted for circulation to the members of the NTFC.
Submission and approval of the Trade Documentation Toolkit and Training programme and mid-term report	<ul style="list-style-type: none"> ▪ Documentation toolkit developed, tested and approved. ▪ Training programme prepared ▪ Mid-term report prepared and submitted to SDT.
Submission and approval of the legal and regulatory review report	The final report was submitted to the agencies and approved by the NFTC on 8 th September 2023.
Submission and approval of simplified Standards Operating Procedures	The final report was submitted to the agencies and approved by the NFTC on 8 th September 2023.
Submission of final project report and policy briefs on WTO thematic areas	Final project report was prepared and submitted to the SDT on 27 th September 2023.

11.0 CHALLENGES AND LESSONS LEARNT.

THEA faced a major challenge by government agencies' failure to submit the procedures and documentations in use causing unavoidable delay in the implementation of the project. To overcome the challenge THEA visited a number of key agencies that provide some but not all the standard operating procedures and documentation arguing that some were for internal processes and could not be shared. The Ministry of Investment Trade and Industry had to intervene so that THEA could access the documents. Nevertheless, not all documents have been provided. This notwithstanding, THEA deployed its network within the agencies and was able to eventually access the documents.

A project that is crosscutting within government agencies requires deep understanding of the operations of government, the culture and consistency in working together with the same officials for delivery of results.

12.0. CONCLUSION

A number of initiatives have been undertaken by the government of Kenya to reduce delays in cargo clearance. These initiatives are progressive, mostly anchored within the law and relate to commitments under Article 10.1 of the TFA. Notably, they are at different implementation stages due to various factors including a lack of capacity and limited budgetary allocations. They require time, capital and resource infusion to attain their goal of trade facilitation. These initiatives include the Authorized Economic Operator System, Pre-arrival processes, Kenya National Single Window System facilitated by KENTRADE, Coordinated Border Management and the One Stop Border Posts. The challenges faced by border agencies in enforcing these initiatives have been highlighted.

Whereas it is imperative that Kenya complies with EAC regional laws, these regional laws must also be amended to enable compliance with the commitments under the TFA Article 10.1. It is paramount to note that any amendment to the EAC regional laws and regulations will require action from all EAC member states. Unlike the case of amending national laws, amendment of regional laws requires the consensus of all partner states. In this case, the status of the partners' implementation of 10.1 TFA must be considered. Kenya may need to convince other EAC members to adopt its initiatives relating its commitments under TFA Article. 10.1 where they affect the current EAC customs laws. In a nutshell, it's imperative for Kenya to coordinate with EAC to ensure its reforms are synchronized with those of other EAC partner states.

All government agencies operating at the points of entry/exit have their own specific legal mandates to execute and therefore need to be accommodated in whatever SOPs framework is developed and adopted for use. Indeed, for the proposed SOPs to be adopted, the intra-

agency communication through the KENTRADE platform will be the major determinant of the nature of the impact they will have on cargo clearance. Nonetheless, it is important for the government to eliminate any remaining bottlenecks in the importation process in order to achieve full implementation of Article 10.1 of the Trade Facilitation Agreement. This will turn greatly reduce the cost of doing business in the country. It is therefore imperative for the relevant government agencies to adopt and comply with the proposed SOPs in order to resolve emergent challenges.

From our view, the project progressed well, albeit slowly due to slow response by stakeholders especially in relation to requests for submission of documents. The consultant faced some challenges in accessing key documents and information. However, noting the complexity of this project, we appreciate the immeasurable support provided by the State Department for Trade and TMA and all other stakeholders and remain positive that the next phase of the TFA TA will be more coordinated.

ANNEXURES

Project Activities, Results and Timelines

This section contains work plan and accomplished activities under this assignment. It clearly identifies each activity, expected result and timeline in line with the requirements expectations of the SDT&ED and TMA.

Annex 1: Project Work Plan

N°	Activity	2022				2023								
		Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept
1	Inception Phase													
	Detailed review of documents, contract, ToRs													
	Kick-off meetings between THEA on the one hand and TMEA, SDT and NTFC on the other hand													
	Detailed stakeholders' analysis													
	Identify project risks and assumptions and prepare a mitigation plan													
	Prepare project Monitoring and Evaluation Plan													
	Revise work plan in accordance with recommendations from the kick-off meetings													
	Define Reporting structure													

Prepare Inception Report and submit to the SDT for review and approval.													
Deliverable: Approved Project Inception Report within 14 days													
2. Review and recommend required changes to the National Trade Procedures and documentation in line with the Regional Trade Protocols.													
Review and map existing trade procedures and documentations. Activities shall include analyzing trade clearance procedures e.g., border crossing procedures in selected government agencies, desk review, targeted interviews with government agencies such as Customs and Border Control, Kenya Bureau of Standards, Kenya Ports Authority, State Department for Trade, among others).													
Conduct a desk review on the regional trade and customs protocols and compare them with the national trade procedures and documentations, and make recommendations where necessary;													
Prepare a detailed Status Report after completion of the Baseline Survey and initiate the process of reviewing													

<p>the National Trade Procedures and documentations. To trigger the review process, our experts shall share the Status Report with the TWGs, prepare and conduct power point presentations during the TWGs and NTFC meetings. Our experts shall guide the debate on the review and updating through structured engagement meetings and prepare an updated report on National Trade Procedures and documentations. This report shall be made publicly available and shall form part and a critical component of the TFA implementation work plan.</p>													
<p>Organize, in consultation with TMEA and the State Department for Trade, a validation workshop for the National Trade Procedures and Documentation Report before publication. This is to ensure ownership of the document and management of stakeholder’s varied interests.</p>													
<p>Deliverable: A set of recommendations on alignment of National Trade Procedures and Documentations among agencies in accordance with the Regional Trade Protocols</p>													

3.	Development of Documentation Toolkit and Stakeholder sensitization													
	Collect and collate all border trade related documents from various agencies into one document toolkit													
	Train stakeholders on business process analysis													
	Prepare the training programme in consultation with the NTFC													
	Conduct national stakeholder trainings													
	Provide support to SDT&ED to develop and implement a communication strategy to enable it to work collaboratively with border agencies													
	Prepare a training report and submit to SDT and TMEA													
	Prepare mid-term report and submit to SDT and TMEA													
	Deliverables: Mid Term Report, Documentation Toolkit and Training Report													
4.	Undertake Legislative Review on Procedures and documentation													
	Undertake legal and regulatory reviews on existing formalities and documentation requirements with a view to streamlining the formalities,													

	decreasing and simplifying documentation requirements;												
	Carry out field surveys on selected border stakeholders to identify challenges faced from implementing existing formalities and documentation requirements;												
	Analyze the findings and recommend their alignment with the provisions of Article 10.1 of the TFA ;												
	Prepare a draft legal review report and present it to NTFC for comments, adoption and approval;												
	Submit the approved legal review report to SDT for implementation.												
	Deliverable: A report containing recommendations on areas of the laws/regulatory framework that require amendments in line with TFA provisions												
5	Development of Simplified SOPs												
	Conduct process mapping for all border agencies to establish the current status of standard operating procedures to identify challenges, if any, faced by the stakeholders;												
	Using status report, develop simplified draft SOPs for trade regulatory agencies for ease of trading;												

	Present to NTFC simplified draft SOPs for validation and approval;												
	Prepare a training programme on the new SOPs												
	Carry out stakeholders' sensitization on the simplified SOPs in collaboration with the NTFC.												
	Present a report containing the new simplified SOPs and the sensitization report to the SDT and TMEA.												
Deliverable: Simplified SOPs													
6.	Periodic Briefs on WTO Thematic area												
	Conduct research from WTO, UNCTAD and ITC on the implementation of Article 10.1 of the TFA to understand how other countries are implementing Article 10.1 of the TFA.												
	Analyze the findings and Identify best practices and prepare simplified thematic briefs on request for use by SDT &ED.												
7.	Project Closure and Final Report and Policy Briefs												
	Prepare draft Final Report												
	Submit draft for comments from SDT and TMEA teams												
	Incorporate comments and submit Final Report												

Annex 2: Project Report Signoff Template

Name:	Signature & Date	Organization

Annex 3: Presentation of Project Implementation Progress Report to NTFC at Machakos



Outline

- Objective of the Assignment
- Scope of Work & Methodology
- Key Deliverables
- Project Duration
- Implementation Status

Objective of the Assignment

The objective of this assignment is to assist the State Department for Trade to *implement and comply* with Article 10.1 of the FTA which Kenya classified and notified under Category C

Key Deliverables (Cont'd)

- d) Simplified SOPs;
- e) Periodic briefs in WTO thematic areas as required by SDT&ED; and
- f) A final report and a policy brief at the end of the assignment.

Key Deliverables

The consulting firm will submit the following:

- a) Inception report within fourteen working days after signing the contract;
- b) Documentation toolkit, training program for stakeholders and training reports;
- c) A midterm report within 180 days after mobilization;

Project Duration

- Contract signed on 30th August 2022 and is scheduled to terminate on 30th September 2023

Implementation Status

- Inception report is finalized and submitted to the NTFC and TMA and has been subsequently approved and adopted
- Alignment of national trade procedures among border agencies in accordance with the regional Protocols, examination of Standard Operating Procedures as well as documentation in use, is in progress, with a view to recommend how they could be simplified and reduced respectively

**Thank you
(Asanteni)**

Annex 4: References

- Evaluating the Implementation Obligations of the Trade Facilitation Agreement in the Context of Existing Multilateral Trade Rule
- Kenya's Trade Facilitation Needs Assessment Report (2021)
- Marrakesh Agreement Establishing the World Trade Organization
- Trade Facilitation Agreement (2013)
- Trade Facilitation Agreement Facility (2014)
- Kenya's TFA Implementation Three Year Work Plan
- Technical proposal by Trade Hub East Africa on Long Term Technical Assistance to Assist the State Department for Trade to Implement Category C Measures of the Trade Facilitation Agreement of the WTO
- WTO Study on Trade Facilitation and Global Trade (2015)