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**Committee on Regional Trade Agreements**

**FACTUAL PRESENTATION**

**ECONOMIC PARTNERSHIP AGREEMENT BETWEEN KENYA AND THE UNITED KINGDOM  
(GOODS)**

*Report by the Secretariat*

This report prepared for the consideration of the Economic Partnership Agreement between Kenya and the United Kingdom has been drawn up by the WTO Secretariat on its own responsibility and in full consultation with the Parties. The factual presentation reproduces as closely as possible the terminology used in the Agreement and in the comments provided and does not imply official endorsement or acceptance by the Secretariat of such terminology. The report has been drawn up in accordance with the rules and procedures contained in the Decision for a Transparency Mechanism for Regional Trade Agreements (WT/L/671) and thus does not imply any value judgement by the Secretariat regarding the contents of the Agreement.

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**Table of Contents**

	<i>Page</i>
<b>1 TRADE ENVIRONMENT.....</b>	<b>4</b>
1.1 Merchandise trade .....	4
<b>2 CHARACTERISTIC ELEMENTS OF THE AGREEMENT .....</b>	<b>6</b>
2.1 Background information .....	6
<b>3 PROVISIONS ON TRADE IN GOODS .....</b>	<b>8</b>
3.1 Import duties and charges, and quantitative restrictions.....	8
3.1.1 General provisions .....	8
3.1.2 Liberalization of trade and tariff lines .....	9
3.1.3 Liberalization schedule .....	10
3.1.3.1 The United Kingdom .....	10
3.1.3.2 Kenya.....	11
3.1.4 Tariff rate quotas.....	13
3.2 Rules of origin.....	13
3.3 Export duties and charges, and quantitative restrictions .....	16
3.4 Regulatory provisions of the agreement .....	16
3.4.1 Standards.....	16
3.4.1.1 Sanitary and phytosanitary measures.....	16
3.4.1.2 Technical barriers to trade .....	17
3.4.2 Safeguard mechanisms .....	17
3.4.2.1 Multilateral safeguards.....	17
3.4.2.2 Bilateral safeguards.....	17
3.4.2.3 Balance of payment safeguards .....	18
3.4.3 Anti-dumping and countervailing measures.....	18
3.4.4 Subsidies and State-aid .....	19
3.4.5 Customs-related procedures.....	19
3.4.6 Other regulations.....	20
3.5 Sector-Specific Provisions of the Agreement .....	20
3.5.1 Agriculture.....	20
3.5.2 Fisheries.....	21
<b>4 GENERAL PROVISIONS OF THE AGREEMENT .....</b>	<b>21</b>
4.1 Transparency.....	21
4.2 Current payments and capital movements .....	22
4.3 Exceptions.....	22
4.3.1 General and security exceptions .....	22
4.3.2 Taxation .....	22
4.4 Accession and withdrawal .....	22
4.5 Institutional framework .....	22
4.6 Dispute settlement .....	23
4.7 Relationship with other agreements concluded by the parties.....	24

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4.8	Government procurement.....	26
4.9	Intellectual property rights .....	26
4.10	Environment .....	26
4.11	Labour .....	26
4.12	Electronic commerce .....	27
4.13	Small and medium-sized enterprises .....	27
4.14	Other .....	27
4.14.1	Cooperation .....	27
<b>ANNEX 1</b>	<b>.....</b>	<b>29</b>

Key Facts	
<b>Parties to the Agreement:</b>	Kenya and the United Kingdom
<b>Date of Signature:</b>	8 December 2020
<b>Date of Entry into Force:</b>	1 January 2021 (provisional application on the basis of a Memorandum of Understanding) 22 March 2021 (entry into force of the Agreement)
<b>Date of Notification:</b>	31 December 2020
<b>Full implementation:</b>	2046

## 1 TRADE ENVIRONMENT

1.1. The Economic Partnership Agreement between the Republic of Kenya, a Member of the East African Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, (hereafter the Agreement) is the 3<sup>rd</sup> regional trade agreement (RTA) in force involving Kenya and one of the 37 RTAs in force involving the United Kingdom notified to the WTO.

### 1.1 Merchandise trade

1.2. The UK and Kenya differ substantially in their participation in world trade. In 2020, the UK was the 12<sup>th</sup> largest exporter and the 5<sup>th</sup> largest importer of merchandise in the world (respectively 2.30% of world total exports and 3.56% of world total imports).<sup>1</sup> Its total merchandise exports amounted to USD 403.9 billion, its total merchandise imports to USD 632.6 billion and trade represented 31.2% of its GDP valued at USD 2.71 trillion.<sup>2</sup> By comparison, in the same year, Kenya ranked 103<sup>rd</sup> in terms of global exports and 81<sup>st</sup> in terms of global imports (respectively 0.03% of world exports and 0.09% of world imports).<sup>3</sup> In 2020, trade accounted for 15.6% in Kenya's GDP of USD 99.29 billion with total merchandise exports amounting to USD 6.02 billion and total merchandise imports to USD 15.40 billion.<sup>4</sup>

1.3. At the bilateral level, in 2020, the UK was Kenya's 13<sup>th</sup> largest source of imports (1.77% of Kenya's total imports) and 4<sup>th</sup> largest destination for exports (7.79% of Kenya's total exports).<sup>5</sup> Kenya on the other hand is a relatively small provider and buyer of goods for the UK. In 2020, it accounted for 0.1% of the UK's total imports and exports, and was its 47<sup>th</sup> largest import and 50<sup>th</sup> largest export partner.<sup>6</sup>

1.4. Chart 1.1 summarizes the trends in global trade of the Parties as well as their bilateral trade relations for the period 2018-2020. Both Parties recorded a trade deficit with the world. The UK's global trade deficit rose from USD 185.8 billion in 2018 to USD 227 billion in 2019 and USD 228.7 billion in 2020 whereas Kenya's global trade deficit decreased to USD 9.38 billion in 2020 after reaching USD 11.33 billion in 2018 and USD 11.37 billion in 2019. At the bilateral level, the UK had a trade deficit with Kenya which fluctuated between 2018-2020 and doubled over the period.

<sup>1</sup> Ranks in world trade and shares in world trade are based on WTO Trade Profiles (2021).

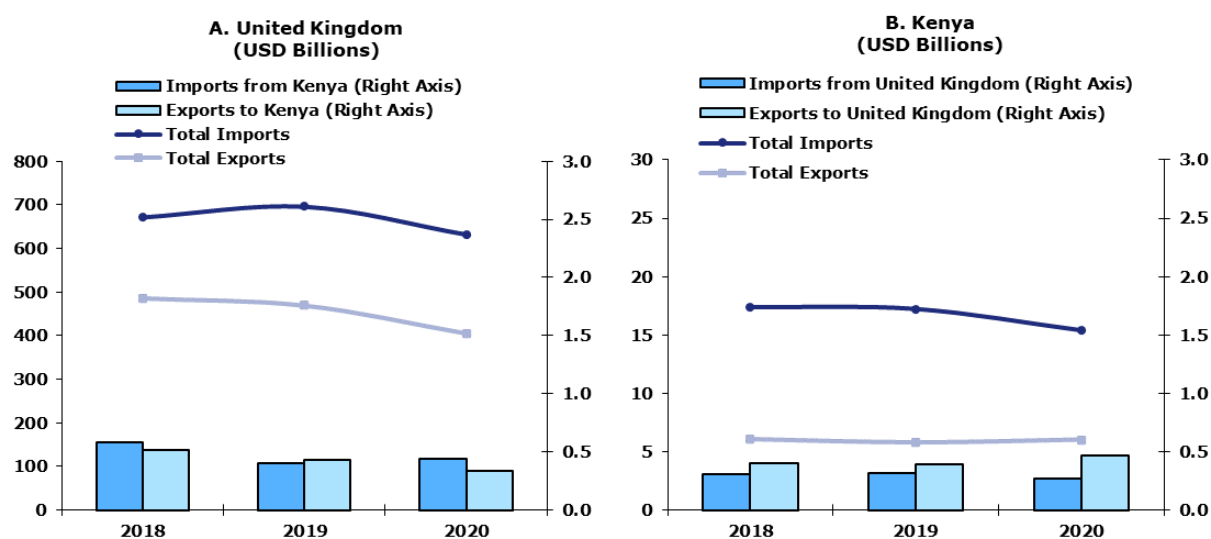
<sup>2</sup> Based on data provided by the UK authorities and WTO Trade Profiles (2021).

<sup>3</sup> WTO Trade Profiles (2021).

<sup>4</sup> Based on WTO Trade Profiles (2021) and data provided by UNSD Comtrade database.

<sup>5</sup> Data from UNSD Comtrade database excluding intra-EU trade.

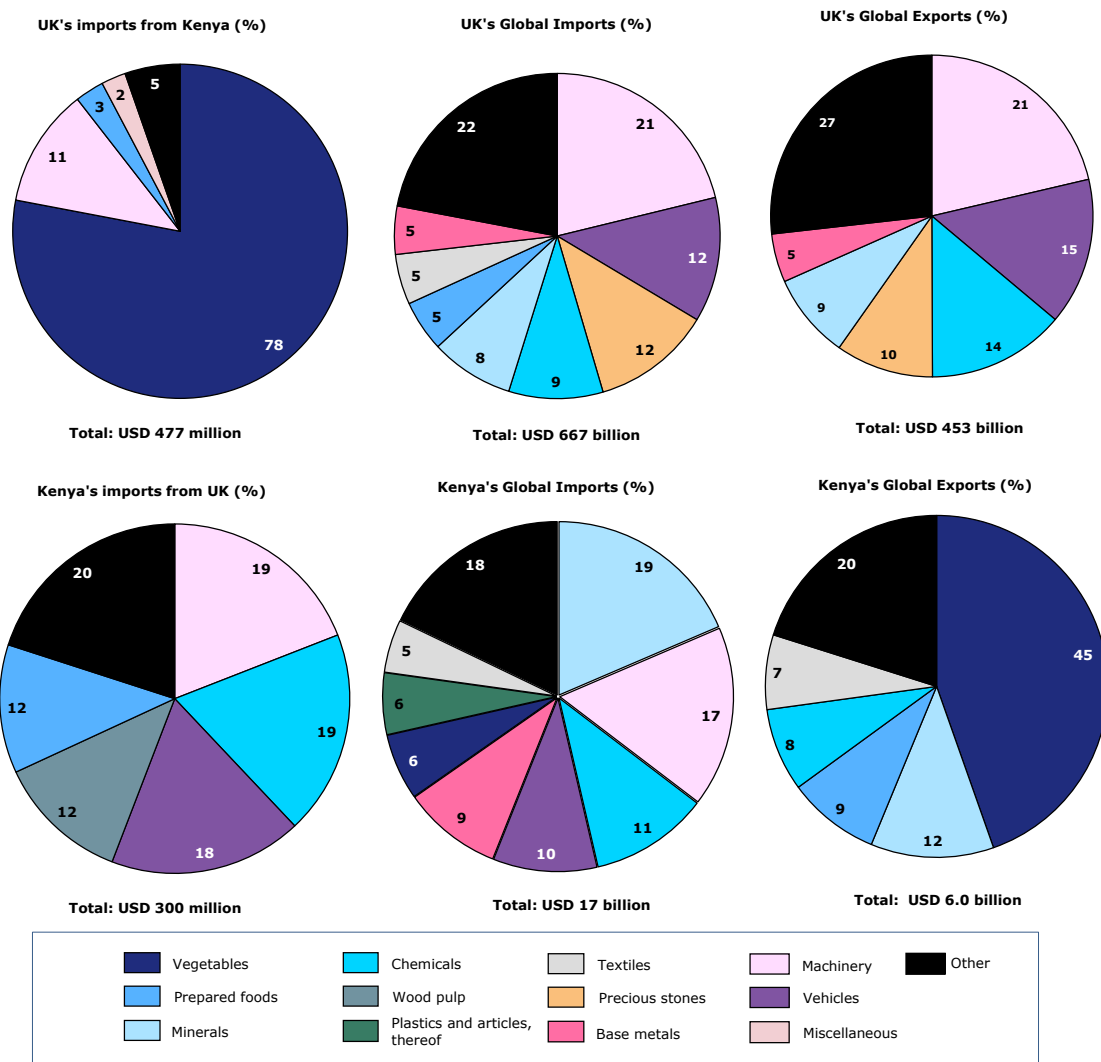
<sup>6</sup> Data provided by the UK excluding intra-EU trade.

**Chart 1.1 United Kingdom-Kenya: Merchandise bilateral trade and with world (2018-2020)**

Source: Based on data provided by the UK authorities and UNSD, Comtrade database.

1.5. The commodity structure of trade between the Parties, as well as of their global trade in the period 2018-2020, is shown in Chart 1.2 on the basis of Harmonized System (HS) sections. The data suggests that there are complementarities in trade between the Parties. During 2018-2020, the main products imported by the UK from Kenya were vegetable products (78% of its imports from Kenya), which form Kenya's largest global export categories (45% of its global exports). During the same period, machinery, chemicals and vehicles which, apart from minerals, were Kenya's main global imports (37.5% of its global imports) were also Kenya's top three imports from the UK (55.9% of its imports from the UK) and the UK's main global export categories.

**Chart 1.2 United Kingdom-Kenya: Product composition of merchandise trade by HS Section, annual average (2018-2020)**



Source: Based on data provided by the Parties and UNSD, Comtrade database.

## 2 CHARACTERISTIC ELEMENTS OF THE AGREEMENT

### 2.1 Background information

2.1. The Agreement replicates the Economic Partnership Agreement between the East African Community Partner States and the European Union (the EAC-EU EPA) with minor changes to accommodate the new bi-lateral context following the UK's departure from the EU. The Agreement is regional in scope as it is intended to be an agreement with the entire EAC membership, however Kenya is currently the only EAC signatory. Note the EU-EAC agreement is not currently in force. The UK and Kenya signed on 8 December 2020 and notified to the WTO on 31 December 2020 under Article XXIV:7(a) of GATT 1994. The Agreement was implemented from 1 January 2021 on the basis of a Memorandum of Understanding and, following completion of domestic procedures for ratification, it entered into force on 22 March 2021.<sup>7</sup> Due to its regional scope the Agreement mainly refers to Kenya as the "EAC Partner State(s)". For the purpose of this factual presentation, and following the terminology used in the Agreement, "Kenya" and the "EAC Partner State(s)" are used interchangeably.

<sup>7</sup> WT/REG417/N/1 and WT/REG417/N/1/Add.1.

2.2. The text of the Agreement, together with its annexes, is available on the Parties' official websites:

**Kenya:**

[Signed Kenya UK EPA Main Text.pdf \(trade.go.ke\);](#)  
[Kenya UK EPA Annex 1 2 and 3.pdf \(trade.go.ke\);](#)  
[EPA extract - Annex II.pdf \(trade.go.ke\)](#)

**The United Kingdom:** [CP 339 – Economic Partnership Agreement between the United Kingdom of Great Britain and Northern Ireland, of the one part, and the Republic of Kenya, a Member of the East African Community, of the other part \(publishing.service.gov.uk\)](#)

2.3. The Agreement consists of nine Parts divided into Titles and Chapters, and 146 Articles. It includes three Annexes and two Protocols that form part of the Agreement (Box 2.1).

**Box 2.1 Structure of the Agreement**

<b>Part I</b>	<b>General provisions</b>
<b>Part II</b>	<b>Trade in goods</b>
Title I	Customs duties and free movement of goods
Title II	Non-tariff measures
Title III	Customs cooperation and trade facilitation
Title IV	Sanitary and phytosanitary measures
Title V	Standards, technical regulations and conformity assessment
Title VI	Trade defence measures
<b>Part III</b>	<b>Fisheries</b>
Title I	General provisions
Title II	Marine fisheries
Title III	Inland fisheries and aquaculture development
<b>Part IV</b>	<b>Agriculture</b>
<b>Part V</b>	<b>Economic and development cooperation</b>
Title I	Infrastructure
Title II	Agriculture
Title III	Private sector development
Title IV	Fisheries
Title V	Water and environment
Title VI	Sanitary and phytosanitary measures
Title VII	Technical barriers to trade
Title VIII	Customs and trade facilitation
Title IX	EPA adjustment measures
Title X	Resource mobilisation
<b>Part VI</b>	<b>Institutional provisions</b>
<b>Part VII</b>	<b>Dispute avoidance and settlement</b>
Title I	Dispute avoidance
Title II	Dispute settlement
Title III	Common provisions
<b>Part VIII</b>	<b>General exceptions</b>

<b>Part IX</b>	<b>General and final provisions</b>
<b>Annexes</b>	
Annex I	Customs duties on products originating in the EAC Partner State(s)
Annex II	Customs duties on products originating in the UK
Annex III	Joint statement of the Parties on the objectives and essential and fundamental elements of this Agreement
<b>Protocols</b>	
Protocol 1	Concerning the definition of the concept of "originating products" and the methods of administrative cooperation
Protocol 2	On mutual administrative assistance in customs matters

Source: WTO Secretariat, based on the Agreement.

2.4. The Agreement aims to *inter alia* contribute to economic growth and development through a strengthened trade and development partnership; promote regional integration, economic cooperation and good governance in the EAC; promote the gradual integration of the EAC into the world economy according to its political choices and development priorities; foster the structural transformation of the EAC economies and their diversification and competitiveness by enhancing their production supply and trading capacity; improve EAC capacity in trade policy and trade-related issues; establish and implement an effective, predictable and transparent regional regulatory framework for trade and investment in the EAC Partner State(s); and strengthen existing relations between the Parties on the basis of solidarity and mutual interest. It aims to establish an agreement consistent with Article XXIV of the GATT 1994; facilitate continuation of trade by the EAC Partner State(s) through economic and trade cooperation; and establish the framework and scope for potential negotiations including for trade in services, trade related issues and other areas of interest to the Parties.

2.5. The Agreement aims to strengthen integration in the EAC; ensure asymmetry in favour of the EAC Party State(s) in trade liberalization and the application of trade related measures and trade defence measures; allows the EAC Partner State(s) to maintain regional preferences with other African countries and regions without having to extend them to the UK; and contribute to enhance the production, supply and trading capacities of the EAC Partner State(s) (Article 2).

### 3 PROVISIONS ON TRADE IN GOODS

3.1. Trade in goods between the Parties is governed by Part II of the Agreement. The objectives are to provide full duty-free and quota-free market access for goods originating in the EAC Partner State(s) into the UK market, to liberalize progressively and gradually the EAC Partner State(s)' markets for goods originating from the UK and to preserve and improve market access conditions to ensure that the EAC Partner State(s) fully benefits from the Agreement (Article 5).

#### 3.1 Import duties and charges, and quantitative restrictions

##### 3.1.1 General provisions

3.2. According to Article 10, products originating in the EAC Partner State(s) are imported free of customs duties<sup>8</sup> into the UK under the conditions set out in Annex I.<sup>9</sup> Article 11 stipulates that products originating in the UK are imported into the EAC Partner State(s) under the conditions set

<sup>8</sup> Pursuant to Article 6 of the Agreement, a customs duty refers to any duty or charge of any kind imposed on or in connection with the importation of goods, including any form of surtax or surcharge, but does not include charges equivalent to internal taxes levied in accordance with Article 20 (National treatment on internal taxation and regulation), measures applied in accordance with Title VI (Trade defence), and fees or other charges imposed in accordance with Article 8 (Fees and other charges).

<sup>9</sup> Under Annex I the UK eliminates tariffs on all imports from the EAC Partner State(s) falling under HS Chapters 1-97, except for Chapter 93. Special conditions for the import of sugar (under HS 1703) from a least developed member of the EAC are also provided for.



out in the schedule of tariff liberalisation in Annex II.<sup>10</sup> A transition of 25 years is provided for the EAC Partner State(s) to implement their liberalization commitments under the Agreement.

3.3. The Agreement includes a standstill clause (Article 12) whereby the Parties agree not to increase their applied customs duties, except when trade defence measures are adopted under Articles 48-50. In view of a wider African regional integration, the Parties may modify, in the EPA Council, the level of customs duties stipulated in Annex II for UK products imported into the EAC Partner State(s), consistently with Article XXIV of GATT 1994.

3.4. Customs duties are imposed once for goods originating in one Party imported into the other Party. Any duty paid upon importation into an EAC Partner State will be refunded fully when the goods leave the EAC Partner State where first imported for another EAC Partner State. The duty is to be paid in the EAC Partner State where the goods are consumed (Article 13).

3.5. Article 15 provides for an MFN clause if the Parties become party to a free trade agreement (FTA)<sup>11</sup> after the signature of the Agreement. If the UK becomes party to an FTA with a third party, it shall grant to the EAC Partner State(s) any more favourable treatment resulting from it. If the EAC Partner State(s) becomes party to an FTA, it has the same obligation with respect to the UK, only if the third party is a "major trading economy".<sup>12</sup> If the UK can demonstrate that it has been given less favourable treatment than that extended by the EAC Partner State(s) to a major trading economy, the Parties shall consult and decide how best to implement these MFN provisions. However, these provisions do not oblige the Parties to extend reciprocally any preferential treatment applicable as a result of one of them being party to a FTA with third parties on the date of signature of the Agreement. Moreover, they do not apply to FTAs between the EAC Partner State(s) and countries of the ACP Group, or other African countries and regions. The Parties also agree to grant national treatment on internal taxation and regulation based on the provisions of Article 20, which is largely inspired by Article III of GATT 1994.

3.6. Pursuant to Article 19, all prohibitions or restrictions on the importation between the Parties, other than customs duties, taxes, fees and other charges provided for under Article 6, whether made effective through quotas, licenses or other measures, are eliminated upon the entry into force of the Agreement. New import prohibitions or restrictions cannot be introduced in trade between the Parties unless they fall within Part II, Title VI (trade defence measures), or they are necessary for the application of standards or regulations for the classification, grading or marketing of commodities in international trade.

### **3.1.2 Liberalization of trade and tariff lines**

3.7. The Parties' tariff liberalization schemes are detailed in Annexes I and II of the Agreement.

3.8. The UK commits to eliminate customs duties on all products of HS Chapters 1 to 97 – except those of Chapter 93 – originating in an EAC Partner State upon the entry into force of the Agreement. For products of Chapter 93 (Arms and ammunition), it will continue to impose the applied MFN duty. The importation of products of tariff heading 1701 (Cane or beet sugar and chemically pure sucrose) originating in an EAC Partner State that is a least developed country will remain subject to the provisions of Article 50 on bilateral safeguards. The provisions on bilateral safeguards might also be applied to products of tariff heading 1701 when the UK market price for white sugar falls during two consecutive months below 80% of its level during the previous marketing year; this will not be applied for five years after the entry into force of the Agreement and during this period, the percentage specified (80%) will be reviewed by the Parties (Annex I).

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<sup>10</sup> See Section 3.1.2 below.

<sup>11</sup> For the purposes of Article 15, a "free trade agreement" (FTA) means an agreement substantially liberalising trade and substantially eliminating discriminatory measures and / or prohibiting new or more discriminatory measures among Parties at the entry into force of that agreement or within a reasonable time frame.

<sup>12</sup> Under the Agreement, a "major trading economy" means any developed country, or any country accounting for a share of world merchandise exports above 1% in the year before the entry into force of the free trade agreement referred to in Article 15, or any group of countries acting individually, collectively or through a free trade agreement accounting collectively for a share of world merchandise exports above 1.5% in the year before the entry into force of the free trade agreement referred to in Article 15.

3.9. The EAC Partner State(s)' tariff liberalization and staging categories are detailed in Annex II. Products originating in the UK are classified in four groups listed in Annexes II(a) to II(d):

- a. Tariffs on goods listed in Annex II(a) were eliminated upon entry into force of the Agreement;
- b. Tariffs on goods listed in Annex II(b) will be progressively eliminated over nine years starting seven years following entry into force of the Agreement (by 2036);
- c. Tariffs on goods listed in Annex II(c) will be progressively eliminated over 14 years starting 12 years following entry into force of the Agreement (by 2046); and
- d. Goods listed in Annex II (d) are excluded from tariff liberalization.

### 3.1.3 Liberalization schedule

#### 3.1.3.1 The United Kingdom

3.10. Table 3.1 shows the UK's tariff elimination commitments under the Agreement. In 2021, 4,462 lines (47% of the UK tariff schedule) were duty-free on an MFN basis, covering 56.4% of the UK's imports from Kenya during 2018-2020.<sup>13</sup> Under the Agreement, the UK bound at zero the duties applied to all the remaining products, except 15 lines, so that 99.8% of its total lines are now duty-free which correspond to all of its imports from Kenya in 2018-2020. As shown in Table 3.2, the 15 lines remaining dutiable cover arms and ammunition (HS Section XIX, Chapter 93) for which the MFN rate, averaging 2% in 2021 applies.

**Table 3.1 United Kingdom: Tariff elimination commitments under the Agreement and corresponding average trade**

Duty phase-out period	Tariff lines in UK's tariff schedule		UK's imports from Kenya (2018-20) <sup>a</sup>	
	Number	%	Value (USD million) <sup>b</sup>	%
2021 (MFN)	4,462	47.0	268.1	56.4
2021	5,017	52.8	207.3	43.6
Remain dutiable	15	0.2	0.0	0.0
<b>Total</b>	<b>9,494</b>	<b>100.0</b>	<b>475.4</b>	<b>100.0</b>

a Import coverage is for HS chapters 1-97. Totals exclude values that are suppressed at the product line level due to being potentially disclosive.

b The import values were reported in GBP and converted into USD using the exchange rates of 0.749531540259847(2018), 0.783445110011929 (2019) and 0.779999576697153 (2020).

Note: Certain products in the UK schedule are classified beyond the HS 8-digit level. In cases where the 8-digit contains both dutiable and duty-free sub-lines the entire 8-digit line is recorded as dutiable. Tariff lines subject to in-quota rates are excluded in the computation. Based on the HS 2017 nomenclature.

Source: WTO estimates based on data provided by UK.

**Table 3.2 United Kingdom: Tariff elimination under the Agreement, by HS Section**

HS Section	MFN 2021			Duty Free Lines under the Agreement (2021)	Remain Dutiable	Avg. Dutiable Tariff
	Avg. Tariff (%)	No. of lines	Duty free lines			
I	8.9	956	109	847		
II	4.4	554	213	341		
III	4.8	129	30	99		
IV	12.9	869	119	750		
V	0.4	231	202	29		
VI	2.7	1,226	550	676		
VII	3.7	301	86	215		
VIII	1.4	130	73	57		
IX	1.1	235	189	46		

<sup>13</sup> In 2021, the UK's applied MFN tariff consisted of 9,494 lines. Of these lines, 8,613 (90.72% of the tariff) were subject to *ad valorem* rates of duty, 647 to specific rates, 230 to compound duties and 4 to mixed rates.

HS Section	MFN 2021			Duty Free Lines under the Agreement (2021)	Remain Dutiable	Avg. Dutiable Tariff
	Avg. Tariff (%)	No. of lines	Duty free lines			
X	0.0	195	195			
XI	7.0	1,149	243	906		
XII	7.3	106	17	89		
XIII	2.0	234	162	72		
XIV	0.5	58	47	11		
XV	0.6	955	804	151		
XVI	0.7	1,338	981	357		
XVII	3.7	286	121	165		
XVIII	0.6	299	218	81		
XIX	1.4	22	7		15	2.0
XX	1.4	214	89	125		
XXI	0.0	7	7			
<b>Total</b>	<b>3.8</b>	<b>9,494</b>	<b>4,462</b>	<b>5,017</b>	<b>15</b>	<b>2.0</b>

Note: Tariff lines subject to in-quota rates are excluded in the computation. For the calculation of averages, specific rates are excluded, and the *ad valorem* part of alternate rates are included. For the tariff lines subject to seasonal duties<sup>14</sup>, the average rate for the entire year is used for the calculation. The products classified beyond the HS 8-digit level are counted once and their tariff rates are averaged to the 8-digit level.

Source: WTO estimates based on data provided by the UK.

### 3.1.3.2 Kenya

3.11. Table 3.3 shows Kenya's tariff elimination commitments under the Agreement. In 2020, 1,988 lines in Kenya's tariff schedule<sup>15</sup> (36.6% of the tariff) were duty free on an MFN basis, which accounted for 54.5% of imports from the UK during 2018-2020. In 2021, Kenya started its tariff liberalization process by liberalizing 23 lines under which 0.2% of imports entered from the UK in 2018-20. After ten years of implementation, by 2030 37% of Kenya's tariff is expected to be duty free for imports from the UK, under which 54.7% of imports from the UK entered in 2018-20. Further liberalization is to take place in 2036 (1,031 lines) and in 2045 (976 lines). By 2045, 73.94% of Kenya's tariff will be duty free under the Agreement, accounting for 76.1% of the country's imports from UK in 2018-2020. At the end of the implementation period, 1,420 lines (26.1% of the tariff) corresponding to nearly 24% of Kenya's imports from the UK will remain dutiable.

**Table 3.3 Kenya: Tariff elimination commitments under the Agreement and corresponding average trade**

Duty phase-out period	Number of lines	% of total lines in Kenya's tariff schedule	Value of Kenya's imports from the UK <sup>a</sup> (2018-2020) USD million	% of Kenya's total imports from the UK (2018-2020)
2020 (MFN)	1,988	36.6	169.5	54.5
2021	23	0.4	0.6	0.2
2036	1,031	19.0	57.7	18.5
2045	976	17.9	9.0	2.9
Remain dutiable	1,420	26.1	74.5	23.9
<b>Total</b>	<b>5,438</b>	<b>100.0</b>	<b>311.3</b>	<b>100.0</b>

Notes: MFN 2020 is the latest available data for Kenya in the WTO-IDB  
Based on the HS 2012 nomenclature.

Source: WTO estimates based on data provided by the Kenyan authorities.

3.12. Table 3.4 shows Kenya's tariff elimination by HS section with regards to the UK. In 2036 and 2045, Kenya will liberalize 2,007 lines, the majority of which fall under Section I (live animals: 226

<sup>14</sup> Tariff lines 0302.41.00, 0302.43.90, 0302.44.00, 0303.51.00, 0303.53.90, 0303.54.10, 0303.89.40, 0304.59.50, 0304.99.23, 0702.00.00, 0708.10.00, 0805.10.22, 0805.10.24, 0805.10.28, 0808.10.80, 0808.30.90, 0809.29.00 and 0809.40.05 are subject to MFN seasonal duties.

<sup>15</sup> In 2021, Kenya's tariff consisted of 5,438 lines at the eight-digit level (HS 2012 nomenclature). Of these lines, 5,285 (over 97% of the total) were subject to *ad valorem* rates of duty. The remaining 153 lines had mixed rates of duty.

lines), Section XI (textiles: 276 lines), Section XV (base metals: 319 lines) and Section XVI (machinery: 301 lines). In 2045, 1,420 lines from all Sections but three (natural pearls and precious stones; arms and ammunition; and works of art) will remain subject to duties averaging 24.3%. Most of the dutiable lines remaining will concern base metals from Section XI (over 33% of the lines) and agricultural products from Sections I to IV (31%).

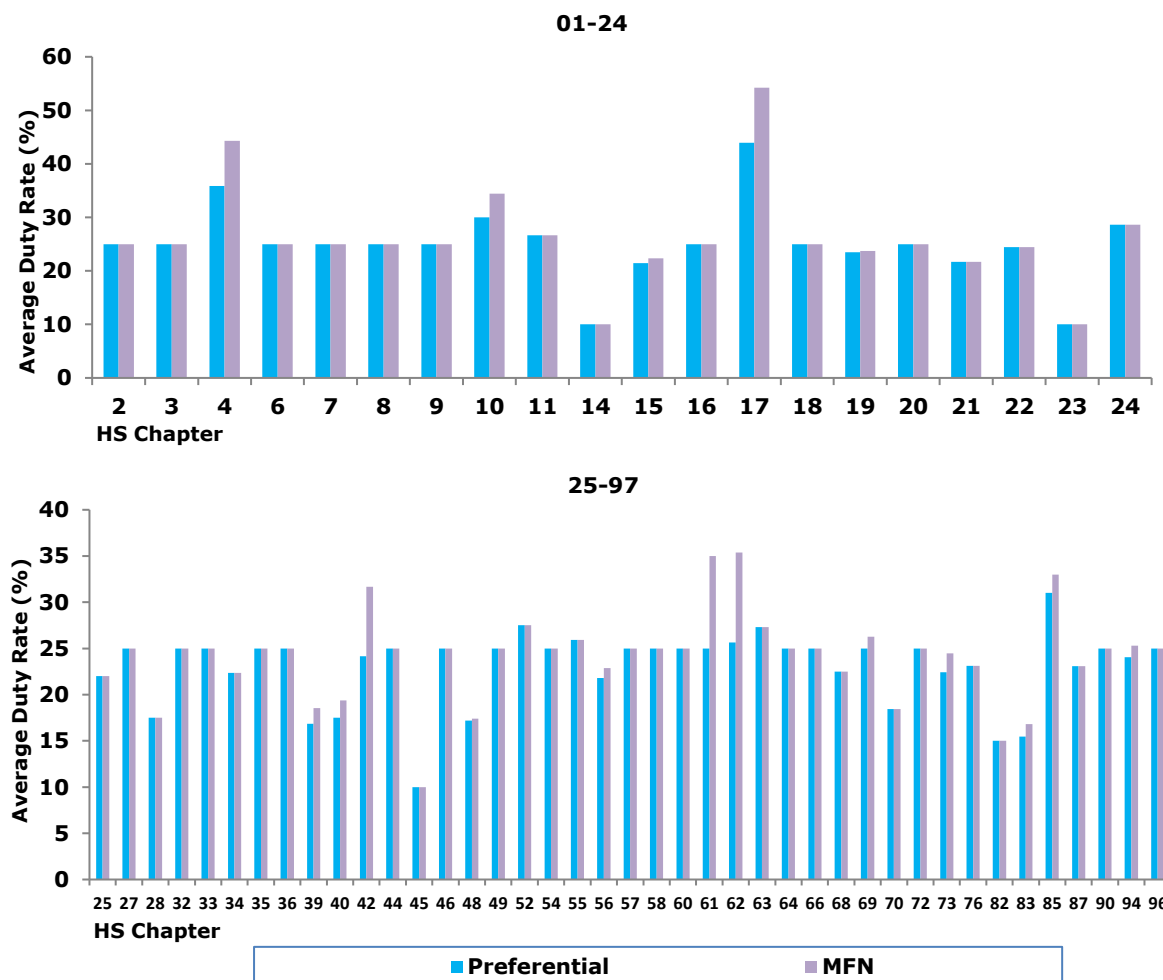
**Table 3.4 Kenya: Tariff elimination under the Agreement, by HS Section**

HS Section	MFN Average %	Number of lines	Duty-free lines under MFN 2020	Number of duty-free lines under the Agreement			Remaining dutiable lines	Avg. Final Tariff (Dutiable)
				2021	2036	2045		
I	25.5	347	15		1	225	106	28.0
II	19.8	307	38		50	75	144	25.3
III	14.3	52	12	2	13	8	17	21.5
IV	24.5	229	9		23	23	174	26.5
V	4.8	171	109		48	8	6	22.5
VI	3.0	815	673	4	66	22	50	23.8
VII	10.7	242	87	1	48	19	87	16.9
VIII	16.0	69	5		41	5	18	24.2
IX	16.4	95	22		15	13	45	24.0
X	11.6	153	45		18	12	78	17.5
XI	23.5	810	63		149	127	471	25.8
XII	21.9	47	1		8	15	23	25.0
XIII	17.4	148	17		32	39	60	21.0
XIV	22.4	57	6			51		
XV	11.7	575	190	9	235	84	57	21.1
XVI	6.3	791	480	4	201	96	10	31.0
XVII	7.5	168	99	3	27	8	31	23.1
XVIII	8.8	212	112		42	55	3	25.0
XIX	25.0	18			2	16		
XX	23.0	125	5		12	68	40	24.3
XXI	25.0	7				7		
<b>Total</b>	<b>13.6</b>	<b>5,438</b>	<b>1,988</b>	<b>23</b>	<b>1,031</b>	<b>976</b>	<b>1,420</b>	<b>24.3</b>

Notes: MFN 2020 is the latest available data for Kenya in the WTO-IDB  
 For the calculation of averages, specific rates are excluded, and the *ad valorem* parts of alternate rates are included.  
 Based on the HS 2012 nomenclature.

Source: WTO estimates based on data provided by the Kenyan authorities.

3.13. At the HS Chapter level, 61 Chapters will remain dutiable with an average final preferential tariff of 24.3% (Chart 3.1). For all those Chapters, the preferential rates, which range from 10% in Chapters 14, 23 and 45 (vegetable products, waste from food industries and cork articles) to 43.9% in Chapter 17 (sugars), are lower than or equal to the MFN rates, showing the granting of additional preferences under the Agreement.

**Chart 3.1 Kenya: Average of dutiable rates, by HS Chapter**

Based on the HS 2012 nomenclature.

Source: WTO estimates based on data provided by the Kenyan authorities.

### 3.1.4 Tariff rate quotas

3.14. There are no tariff rate quotas under the Agreement.

## 3.2 Rules of origin

3.15. The rules of origin are set out in Protocol 1 (concerning the definition of the concept of "originating products" and methods of administrative cooperation).

3.16. Pursuant to Article 2<sup>16</sup>, products are considered originating when they are wholly obtained in one of the Parties within the meaning of Article 7, or obtained in a Party incorporating materials which have not been wholly obtained there but have undergone sufficient working or processing in that Party within the meaning of Article 8.

3.17. Article 8 refers to product specific rules of origin which allow products not wholly obtained to be considered as sufficiently worked or processed. For this, they must fulfil the conditions set out in Annex II which lists the working or processing required to obtain originating status. Generally, these conditions require a specific processing operation, a change in tariff classification at the chapter or heading level; and/or either that the value of non-originating materials used does not exceed a

<sup>16</sup> Unless otherwise specified, all articles, titles and annexes in this section refer to Protocol 1 to the Agreement.

certain percentage (ranging from 15% to 70%) of the ex-works price of the final product, or that the weight of the non-originating materials used does not exceed a certain percentage (ranging from 20% to 60%) of the weight of the final product.

3.18. Article 8 also contains a *de minimis* or tolerance provision which permits the use of non-originating materials which would not otherwise be permitted to be used in the manufacture of product if their total value or net weight does not exceed: (a) 15% of the weight of the final good for agricultural products under HS Chapters 2 and 4-24 other than processed fish products under Chapter 16; or (b) 15% of the ex-works price of the products, except for textiles and clothing (Chapters 50-63).<sup>17</sup> However, simple working or processing operations listed in Article 9 (e.g. preserving, washing, assembling and packing) are regarded as insufficient to grant originating status whether or not the requirements of Article 8 are satisfied. An absorption rule provided for in Article 8 ensures that if a product which has acquired originating status is used in the manufacture of another product, no account shall be taken of any non-originating materials which may have been used in its manufacture.

3.19. Protocol 1 permits bilateral, full and diagonal cumulation under certain conditions described in Articles 3, 4, 5 and 6. Products shall be considered as originating in an EAC Partner State if they are produced there, incorporating materials originating in the UK or in the EU, in another ACP State and imported duty free and quota free into the UK, in the Overseas Countries and Territories (OCTs)<sup>18</sup> or in the other EAC Partner State(s), provided the working or processing carried out in that EAC Partner State goes beyond the operations referred to in Article 9(1). Similarly, products shall be considered as originating in the UK if they are produced there, incorporating materials originating in an EAC Partner State or in the EU, in the other ACP States with which the UK has a preferential (reciprocal) trade agreement (PTA) or in the OCTs, provided the working or processing carried out in the UK goes beyond the operations referred to in Article 9(1). It is not necessary for such materials to have undergone sufficient working or processing (Articles 4.1 and 5.1).<sup>19</sup>

3.20. Concerning full cumulation, working or processing carried out in the UK, the EU, the other EAC Partner State(s), other ACP States or in the OCTs are considered as having been carried out in an EAC Partner State if the products produced undergo subsequent working or processing in the EAC Partner State (Article 4). Working or processing carried out in an EAC Partner State, the EU, the other ACP States with which the UK applies a PTA or the OCTs can be considered as having been carried out in the UK if the products obtained there have undergone subsequent working or processing (Article 5).

3.21. When the working or processing carried out in a Party does not go beyond the operations referred to in Article 9(1), the product obtained is considered as originating in that Party only when the value added there exceeds the value of the materials used in any one of the other countries or territories. If this is not so, the product obtained shall be considered as originating in the country or territory which accounts for the highest value of materials used in the manufacture of the final product (Articles 4 and 5).

3.22. Cumulation shall only apply under certain conditions and excludes certain products.<sup>20</sup> Pursuant to Article 4, cumulation in an EAC Partner State may only be applied provided that all the countries and territories involved in the acquisition of the originating status have entered into an undertaking with each other, using the template in Annex X (on administrative cooperation). Cumulation in an EAC Partner State in respect of the EU and the EU OCTs may only be applied if (a) all the countries and territories involved have concluded an arrangement or agreement on administrative cooperation which ensures the correct implementation of Article 4; and (b) such arrangement or agreement has been notified to the UK by the EAC Partner State(s) or a competent

<sup>17</sup> For products falling within Chapters 50 to 63, tolerances are mentioned in notes 6 and 7 of Part I of Annex II.

<sup>18</sup> OCTs are listed in Annex VIII.

<sup>19</sup> The origin of the materials originating in ACP States and in the UK OCTs is determined according to the rules of origin of the UK's PTAs with these States and territories and in accordance with Article 28 (Information procedure for cumulation purposes); the origin of materials originating in the EU and in the EU OCTs is determined in accordance with the rules of origin of the Agreement (Articles 4.2 and 5.1).

<sup>20</sup> Under Articles 4.9 and 5.5, cumulation shall not apply to materials falling under HS 1604 and 1605 (fish preparations) originating in the EPA Pacific States according to Article 6(6) of Protocol II to the Interim Partnership Agreement between the UK and the Pacific States or any future comprehensive EPA between these parties.

body representing the relevant countries or territories. According to the Parties no notification has been received. Cumulation in the UK may only be applied if (a) all the countries and territories involved in the acquisition of the originating status and the country of destination have concluded an arrangement or agreement on administrative co-operation which ensures a correct implementation of Article 5; and (b) the UK has provided the EAC Partner State(s) with details of these arrangements or agreements.<sup>21</sup>

3.23. Non-originating materials which at importation to the UK qualify for MFN duty free rates are considered originating in an EAC Partner State when incorporated into a product obtained there. It shall not be necessary that such materials have undergone sufficient working or processing, provided they have undergone working or processing beyond that referred to in Article 9(1) (Article 3).<sup>22</sup> Materials originating in countries which have duty-free and quota-free access to the UK's market shall be considered as originating in an EAC Partner State when incorporated into a product obtained there provided that: they have undergone working or processing beyond that referred to in Article 9(1); they originate in countries or territories benefiting from arrangements under the UK's Generalized Scheme of Preferences (GSP); and they originate in countries that benefitted from arrangements under the EU's GSP scheme on the date this system ceased to be applicable to the UK (Article 6).<sup>23</sup> At the request of an EAC Partner State, cumulation may also be provided for materials originating in countries and territories benefiting from the UK's duty-free and quota-free treatment arrangement under the conditions set out in Article 6. The UK shall notify annually to the Special Committee on Customs and Trade Facilitation<sup>24</sup> the list of materials and countries to which these provisions apply. According to the Parties no notifications have been made to date.

3.24. Protocol 1 also has provisions relating to the unit of qualification (Article 10); accessories, spare parts and tools (Article 11); sets (Article 12); and neutral elements (Article 13).

3.25. The principle of territoriality recognized by Article 14 requires that, except as provided for in Articles 3-6 (dealing with cumulation) or unless it can be demonstrated to the satisfaction of customs authorities that the returning goods are the same goods as those exported and they have not undergone any operation beyond those for preservation during export, the conditions for acquiring originating status must be fulfilled without interruption in the Parties. Title IV contains requirements concerning proof of origin as well as procedures and conditions for the issue of a Movement Certificate EUR1 or an Origin Declaration (Articles 17-22). Exporters who make frequent shipments may be authorized by the authorities of the exporting country to make out origin declarations irrespective of the value of the products concerned (Article 23). The Agreement does not establish any outward processing mechanism.

3.26. Title V describes arrangements for administrative cooperation. The Parties undertake to put into place the necessary national and regional arrangements required for the implementation and enforcement of the rules and procedures laid down in Protocol 1 including, where appropriate, the arrangements necessary for the application of bilateral and diagonal cumulation and cumulation with countries benefitting from duty-free and quota-free access to the UK market; as well as the administrative structures and systems necessary for the appropriate management and control of the origin of products and compliance with other conditions in Protocol 1. Title V also outlines details for verification of proofs of origin. When disputes arise from verification procedures which cannot be settled between the customs authorities requesting a verification and the customs authorities responsible for carrying out the verification, or for questions on the interpretation of the Protocol, they shall be submitted to the Special Committee on Customs and Trade Facilitation (Article 38). Finally, under Article 40, a derogation for a period of generally five years from the Protocol may be adopted by the Special Committee where the development of existing industries or the creation of

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<sup>21</sup> Cumulation applies and has been notified (see <https://www.gov.uk/government/publications/notice-of-fulfilment-from-the-united-kingdom-on-cumulation-with-trading-partners-december-2020/notice-of-fulfilment-from-the-united-kingdom-on-cumulation-with-trading-partners-31-december-2020>).

<sup>22</sup> Materials originating in countries whose exports are subject to anti-dumping or countervailing duties at the time of importation or materials classified in subheadings of the HS which include dutiable tariff lines at the eight-digit level are excluded from cumulation under this provision (Article 3.4).

<sup>23</sup> Such cumulation shall not apply to materials originating in countries whose particular exports are subject to anti-dumping or countervailing measures, materials classified in sub-headings of the HS which include dutiable lines at the eight-digit level, tuna products under HS Chapters 3 for which the duties are suspended under the GSP; and materials for which the tariff preferences are removed as a result of graduation, a temporary withdrawal or of safeguard clauses in accordance the GSP (Article 6.1).

<sup>24</sup> See Section 3.4.5 below.



new ones in the EAC Partner State(s) justifies them. According to the Parties, no derogations have been adopted.

3.27. The Special Committee reviews every five years or whenever the Parties request, the rules of origin with a view to making any necessary amendments or adaptations (Article 42).

### **3.3 Export duties and charges, and quantitative restrictions**

3.28. Each Party commits to not institute new duties or taxes in connection with the exportation of goods to the other Party that are in excess of those imposed on like products destined for internal sale (Article 14.1).

3.29. However, after notifying the UK, the EAC Partner State(s) can impose a temporary duty or tax on the exportation of goods to foster the development of domestic industry; to maintain currency stability when the increase in the world price of an export commodity creates the risk of a currency overvaluation; or to protect revenue, food security and environment. Such taxes should concern a limited number of products for a limited period of time and be reviewed by the EPA Council for renewal after 48 months (Articles 14.2 and 14.3). Any more favourable treatment consisting of or in relation to taxes applied by the EAC Partner State(s) to exports of products destined for a major trading economy shall, from the entry into force of the Agreement, be accorded to the like product destined for the UK (Article 14.4).

3.30. Pursuant to Article 19, all prohibitions or restrictions on the exportation or sale for exports between the Parties, other than customs duties, taxes, fees and other charges provided for under Article 6, are eliminated upon the entry into force of the Agreement. New export prohibitions or restrictions cannot be introduced in trade between the Parties unless they fall within Part II, Title VI (Trade defence measures); they are temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party; or they are necessary to the application of standards or regulations for the classification, grading or marketing of commodities in international trade. (Article 19.2).

### **3.4 Regulatory provisions of the agreement**

#### **3.4.1 Standards**

3.31. Part II of the Agreement contains provisions on sanitary and phytosanitary measures (Title IV) and on technical barriers to trade (Title V).

##### **3.4.1.1 Sanitary and phytosanitary measures**

3.32. Provisions on sanitary and phytosanitary (SPS) measures (Articles 30-40) refer to the WTO SPS Agreement. The Parties reaffirm their rights and obligations under the international treaties and agreements in this area to which they are party (Article 32). They are sovereign in implementing SPS measures consistent with the WTO SPS Agreement and they commit to consult each other before introducing any new SPS measure through the notification mechanism provided for in the WTO SPS Agreement, to support each other in gathering information needed to make informed decisions, and to promote linkages, joint ventures, and joint research and development between their institutions and laboratories (Article 32).

3.33. The Parties agree to establish or modify SPS measures on the basis of scientific justifications and according to the WTO SPS Agreement (Article 33). They aim to achieve harmonization of their respective rules and procedures, including inspection, testing and certification procedures (Article 34). Reaffirming the principles of equivalence consistent with the WTO SPS Agreement, each Party commits to give reasonable access, upon request, to the other for inspection, testing and other relevant procedures (Article 35). The Agreement includes provisions on zoning and compartmentalisation taking into account the provisions of Article 6 of the WTO SPS Agreement (Article 36). Article 38 provides that the Parties will agree on conformity assessment procedures in the SPS domain.

3.34. Transparency provisions refer to the WTO SPS Agreement and to the importance of effective mechanisms for consultation, notification and exchange of information with respect to SPS



measures. The Parties undertake to establish mechanisms for exchange of information on any changes in the SPS import requirements that may affect their trade (Article 37). They agree to cooperate to promote information exchange on products of export interest to them and on other areas relevant to their trade relations, building in particular on Article 7 of the WTO SPS Agreement, as well as to promote transparency as regards the sampling, analysis and action following official controls on feed and food from either Party (article 39).

3.35. Pursuant to Article 40, the Parties shall notify each other of their respective competent authorities responsible for the implementation of SPS measures under the Agreement. According to the Parties both parties have exchanged details on each other's competent authorities.

#### **3.4.1.2 Technical barriers to trade**

3.36. Title V (Articles 41-47), which deals with standards, technical regulations and conformity assessment, expressly refers to the WTO TBT Agreement and its definitions (Article 41). The Parties affirm their rights and obligations under the TBT Agreement, such as their obligations concerning transparency, notification and sharing of information (Article 44), as well as their rights and commitments under other international arrangements relating to the protection of the environment and biodiversity in particular (Article 42). The Parties may negotiate mutual recognition agreements in sectors of mutual economic interest (Article 43) and agreements on the mutual recognition of conformity assessment (Article 46). The Parties indicate that no MRAs have been negotiated or agreed to date. They shall endeavour to harmonise their standards, technical regulations and conformity assessment procedures (Article 45).

3.37. Pursuant to Article 47, the body responsible for the implementation of Title V in the UK is the Government of the UK and the EAC Partner State(s) will notify the UK of its respective technical regulatory bodies. According to Kenya the notification has not been submitted to the UK yet.

#### **3.4.2 Safeguard mechanisms**

3.38. Part II, Title VI of the Agreement governs the application of multilateral safeguards (article 49), and of bilateral safeguards (Article 50).

##### **3.4.2.1 Multilateral safeguards**

3.39. Nothing in the Agreement shall prevent the Parties from adopting measures under Article XIX of GATT 1994, the WTO Agreement on Safeguards (hereafter the Safeguards Agreement), and Article 5 of the WTO Agreement on Agriculture (Article 49.1). This provision is subject to the WTO dispute settlement rules (Article 49.4). However, in the light of the overall development objectives of the Agreement and the small size of the economies of the EAC Partner State(s), the UK will exclude imports from any EAC Partner State from such multilateral measures (Article 49.2). This exclusion, which is applicable for a period of five years from the entry into force of the Agreement, can be extended upon review by the EPA Council based on the development needs of the EAC Partner State(s). This review shall take place no later than 120 days before the end of five-year period (Article 49.3).

##### **3.4.2.2 Bilateral safeguards**

3.40. Pursuant to Article 50, the Parties may apply bilateral safeguards of limited duration if a product originating in one Party is being imported into the territory of the other Party in such increased quantities and under such conditions as to cause or threaten to cause: a) serious injury to the domestic industry producing like or directly competitive products in the territory of the importing Party; b) disturbances in a sector of the economy that could result in major social problems or difficulties which could jeopardize the economic situation of the importing country; or c) disturbances in the markets of like or directly competitive agricultural products or in the mechanisms regulating those markets (article 50.2).

3.41. Bilateral safeguard measures may consist of a) a suspension of the further tariff reductions under the Agreement for the product concerned; b) an increase in tariffs on the product concerned to a level that does not exceed the duty applied to other WTO Members; and/or c) the introduction of tariff rate quotas on the product concerned (Article 50.3).

3.42. When products from the UK are being imported into the EAC Partner State(s) in such increased quantities and under such conditions as to cause or threaten to cause one of the situations referred to above, the EAC Partner State(s) may take surveillance or safeguard measures limited to its territory. During a period of 10 years from the entry into force of the Agreement (extendable for 5 more years by the EPA Council), the EAC Partner State(s) may also apply bilateral safeguards when, as a result of tariff reduction, a product from the UK is imported in such increased quantities and under such conditions as to cause or threaten to cause disturbances to an infant industry producing like or directly competitive products (Article 50.4).

3.43. Bilateral safeguard measures cannot exceed what is necessary to remedy or prevent the serious injury or disturbances caused or threatened to be caused by imports and shall not be applied for more than two years, which can be extended for a further period of two years. When the importing country is the EAC Partner State(s), this duration may be of four years and can be extended for a further four years. Safeguard measures exceeding one year shall have clear elements leading to their termination. A safeguard measure can be applied to the import of a product that has previously been subject to such a measure but only after a period of at least one year since the expiration of the previous measure (Article 50.5).

3.44. Before applying any safeguard measure, the Parties shall refer the matter for examination to the Committee of Senior Officials which may make recommendations to remedy the situation. If no recommendations have been made, or if no satisfactory solution has been reached within 30 days of the matter being referred, the importing Party may adopt appropriate measures to remedy the situation. In selecting a safeguard measure, priority must be given to those which least disturb the operation of the Agreement. All bilateral safeguard measures taken shall be notified immediately to the Committee of Senior Officials and shall be the subject of periodic consultations within that body in order to establish a timetable for their abolition (Article 50.6).

3.45. In exceptional circumstances requiring immediate action, the importing Party may take a measure on a provisional basis. The period of application of such measure shall not exceed 180 days for measures taken by the UK and 200 days for measures taken by the EAC Partner State(s). The duration of a provisional measure shall be counted as part of the period of duration of a safeguard measure and its extension. The importing Party shall inform the other Party and refer the matter to the Committee of Senior Officials for examination (Article 50.7).

3.46. The WTO Agreement cannot be invoked to preclude a Party from adopting bilateral safeguards in accordance with the Agreement.

#### **3.4.2.3 Balance of payment safeguards**

3.47. When a Party is in serious balance of payments and external financial difficulties, or under threat thereof, it may take restrictive measures in accordance with the WTO Agreement and the Articles of Agreement of the IMF. These measures shall be non-discriminatory and of limited duration and they may not go beyond that necessary to remedy the balance of payments situation. The Party taking such a measure shall promptly inform the other Party and the EPA Council and present as soon as possible a time schedule for eliminating the measure. Consultations shall be held promptly within the EPA Council to assess the balance of payments situation of the concerned Party and the restrictions adopted as well as to address the compliance of the measures with the Agreement (Article 131).

#### **3.4.3 Anti-dumping and countervailing measures**

3.48. Provisions on anti-dumping and countervailing measures (Article 48) reaffirm expressly the relevant WTO Agreements.

3.49. Nothing in the Agreement shall prevent the Parties from adopting anti-dumping or countervailing measures in accordance with the WTO Agreements. Before imposing any definitive duties, the Parties shall consider the possibility of constructive remedies as provided for in the relevant WTO Agreements. Where an anti-dumping or countervailing measure has been imposed by either Party, a judicial review shall be conducted only in one single forum. Where anti-dumping or countervailing measures can be imposed on a regional and on a national basis, the Parties will ensure that these measures are not applied simultaneously to the same product by the regional and national

authorities. A Party shall notify the other Party of the receipt of a properly documented complaint before initiating an investigation. The WTO dispute settlement rules apply to any disputes over these issues.

#### **3.4.4 Subsidies and State-aid**

3.50. The Agreement does not include specific provisions on subsidies nor on State-aid. Article 68 concerning domestic policy measures in agriculture provides that each Party shall ensure transparency in the area of agricultural support related to trade in agricultural products. It further states that the UK shall report periodically within the Agriculture Dialogue to the EAC Partner State(s) on the legal basis, form and amount of such support. Furthermore, as from the entry into force of the Agreement, the UK shall not grant export subsidies for all agricultural products to the EAC Partner State(s).

#### **3.4.5 Customs-related procedures**

3.51. The Parties agree that Article VII of the GATT 1994 and the Agreement on the Implementation of Article VII of the GATT 1994 shall govern customs valuation rules applied to trade between them (Article 18). They undertake to cooperate with a view to reaching a common approach to issues relating to customs valuation (Article 18.2), to facilitating the movement of goods and simplifying customs procedures (Article 13.3) and to combating irregularities and fraud in customs and related matters (Article 16.1).

3.52. The Agreement puts an emphasis on cooperation in customs-related issues. In Title III (on customs cooperation and trade facilitation), the Parties specify that their objectives, amongst others, are to promote harmonisation of customs legislation and procedures at the regional level, to provide support to the EAC Partner State(s)' customs administrations to implement the Agreement and other international customs best practices, and to enhance cooperation between their customs authorities and other related border agencies (Article 22).

3.53. The Parties agree that their customs legislation and procedures should be based on international instruments and standards, and should be non-discriminatory and transparent. To ease and simplify customs operations, the Parties should use a single administrative document or electronic equivalent to establish customs declarations in their territories; modern customs techniques, including risk assessment, simplified procedures for entry and release of goods, post release controls and audits and to provide further facilitation for operators that meet high levels of compliance with customs legislation and procedures; any penalties should be proportionate to the infringement and fees and charges, which shall not be applicable on consular services in respect of trade in goods, should be commensurate with the service and not be calculated on an *ad valorem* basis. They agree to the need to eliminate any requirement for the mandatory use of pre-shipment inspection and to eliminate all requirements for the mandatory use of customs brokers (Article 24). They commit to ensure freedom of transit through their territories (Article 25). A five year transition period from the date of entry into force of the Agreement is provided to the EAC Partner State(s) to meet its customs-related commitments (Article 27).

3.54. Under Protocol 2 on mutual administrative assistance in customs matters the Parties agree to assist each other to ensure the correct application of customs legislation, in particular by preventing, investigating and combating operations in breach of that legislation. The provision of assistance can be spontaneous or upon request. The Protocol also includes provisions on information exchange and confidentiality, the participation of experts and witnesses in judicial or administrative proceedings, and assistance expenses.

3.55. Under Article 29, the Parties establish a Special Committee on Customs and Trade Facilitation whose functions are to monitor implementation and administration of Title III and Protocol 1 on rules of origin; provide a forum to consult and discuss issues relating to customs; enhance cooperation on the development, application and enforcement of rules of origin and related customs procedures as well as on capacity building and technical assistance; and address any other issues agreed by the Parties under Title III. The Special Committee shall report to the EPA Council. The Parties indicated that the meeting of the Special Committee is being planned.

### 3.4.6 Other regulations

3.56. The Agreement includes a rendez-vous clause providing that, within five years upon entry into force of the Agreement, the Parties undertake to conclude negotiations in trade in services, as well as on other trade-related issues such as competition policy; investment and private sector development; trade, environment and sustainable development; intellectual property rights; transparency in public procurement; and any other areas agreed by the Parties (Article 3).

## 3.5 Sector-Specific Provisions of the Agreement

### 3.5.1 Agriculture

3.57. Part IV of the Agreement deals with agriculture, including crops, livestock and productive insects. The Parties agree that their fundamental objective in this area is sustainable agricultural development which covers *inter alia* food and livelihood security, rural development and poverty reduction in the EAC Partner State(s) (Article 58). Underlining the multi-functional role agriculture plays in the EAC Partner State(s), the Parties resolve to work together to attract necessary investment (Article 59). They shall establish an EAC-UK Comprehensive Dialogue on Agriculture and Rural Development Policy (the "Agriculture Dialogue") to monitor progress in the sector and provide a forum for exchange and cooperation on the Parties' respective domestic agricultural policies and, in particular, the role of agriculture in the EAC Partner State(s) in raising farm incomes, food security, sustainable use of resources, rural development and economic growth. The Agriculture Dialogue shall take place within the Committee of Senior Officials<sup>25</sup> (Article 60). The Parties indicate that the working procedures of the Agriculture Dialogue are still to be agreed.

3.58. The Parties recognize the importance of integrating the agricultural sector across the EAC Partner State(s), through the progressive removal of barriers and the provision of an appropriate regulatory and institutional framework, harmonisation and convergence of policies (Article 61). They agree to a regional strategy for enhancing supply capacities in agriculture (Article 65).

3.59. The Parties recognize the need to establish, improve and enhance food security information systems, including national early warning systems, as well as vulnerability assessment and monitoring systems, and implement capacity building actions, in conjunction with and through existing international and regional mechanisms (Article 66). They also agree to cooperate to develop and promote the use of modern agricultural technologies in areas such as irrigation and fertigation, artificial insemination, improved seed, pest management, packaging and handling, biotechnologies or risk assessment (Article 67).

3.60. Pursuant to Article 68, each Party commits to ensure transparency in support related to trade in agricultural products. The UK will report periodically within the Agriculture Dialogue to the EAC Partner State(s) on the legal basis, form and amount of such support. Such information will be made available by the Parties or on their behalf on a publicly accessible website. Issues that may arise in relation to the access of the Parties' agricultural products to each other's markets will be examined by the Committee of Senior Officials which may make recommendations to the EPA Council.

3.61. Recognizing the challenges faced by the EAC Partner State(s) because of their dependence on the export of primary agricultural commodities, the Parties agree to cooperate to: strengthen Public-Private-Partnerships in investment for production, processing and marketing of agricultural commodities; cooperate in developing capacities to access niche markets; support diversification of agricultural production and export products in the EAC Partner State(s); and improve producers' revenue by developing the marketing of value added agricultural products (Article 69).

3.62. The Parties agree to assist countries that are net food importing EAC Partner State(s) to develop programmes to ensure food security and to support efforts to address constraints for food production, storage and distribution in the EAC region, source food aid from within the EAC Partner State(s) and other African Regional Economic Communities (RECs) as far as possible; and improve coordination of food aid. They shall ensure that the provision of food aid is in full conformity with measures aimed at preventing commercial displacement: food aid transactions should be needs

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<sup>25</sup> See Section 4.5.

driven and in the form of grants, and should not be tied directly or indirectly to commercial exports of agricultural products or of other goods and services (Article 71).

3.63. In Article 72, the Parties identify key sectors and agree to cooperate to foster livelihood security, agricultural infrastructure, technical support services, agricultural financing services and rural development. The Parties also agree to exchange experiences and information on best practices and consult on all issues contributing to their objectives in the agriculture sector (Article 73).

### **3.5.2 Fisheries**

3.64. Part III of the Agreement is devoted to fisheries. Recognizing that fisheries constitute a key economic sector as well as an important source of food and foreign exchange for the EAC Partner State(s), and are also of considerable interest for the UK, the Parties agree to cooperate on the sustainable development and management of the fisheries sector, including marine and inland fisheries as well as aquaculture (Articles 51-52).

3.65. Part III, Title II, contains provisions on the utilisation, conservation and management of marine fisheries resources, aiming at optimising the benefits from fisheries for the EAC Partner State(s) through investment, capacity building and improved market access (Article 53). The Parties agree to take a precautionary approach in determining levels of sustainable catch, fishing capacity and other management strategies. Each EAC Partner State may take appropriate measures, including seasonal and gear restrictions to protect its territorial waters and ensure the sustainability of artisanal and coastal fisheries. It shall coordinate action with the UK to ensure the management and conservation of all fish species, including tuna and tuna-like resources and facilitate relevant scientific research. The Parties shall promote the membership of all the concerned EAC Partner State(s) in the Indian Ocean Tuna Commission (IOTC) and other relevant fisheries organisations. They agree to take appropriate measures when an increase in effort results in catch levels above the target sustainable level established by the competent national authority. In order to conserve and manage straddling stocks and highly migratory fish stocks, the Parties shall ensure compliance by vessels flying their flags with relevant national, regional and sub-regional fisheries management measures and related national laws and regulations (Articles 53-54).

3.66. The Parties commit to observe vessel management and post-harvest arrangements emerging from the IOTC and any other relevant regional fisheries organisations. They shall set out minimum conditions with respect to monitoring, control and surveillance of UK fishing vessels operating in the waters of the EAC Partner State(s). The Parties agree to cooperate in developing and implementing national/regional training programmes for EAC nationals to facilitate their effective participation in the fishing industry. They shall also undertake coordinated efforts to prevent, deter and eliminate IUU fishing (Article 55).

3.67. Finally, Part III, Title III, contains provisions on inland fisheries, coastal and aquaculture development in the EAC Partner State(s). The objectives of cooperation in this area are to promote sustainable exploitation of inland fisheries resources, and enhance aquaculture production, remove supply-side constraints, improve fish and fish products quality to meet international SPS measures, improve access to the UK market, address intra-regional trade barriers, attract capital inflows and investment in the sector, build capacity and enhance access to financial support for private investors in inland fisheries and aquaculture development (Article 56).

## **4 GENERAL PROVISIONS OF THE AGREEMENT**

### **4.1 Transparency**

4.1. In addition to specific transparency provisions found in various parts of the Agreement, Article 134 on transparency and confidentiality requires that the Parties promptly publish or make available their laws, regulations, procedures and administrative rulings as well as any international commitments on any trade matter covered by the Agreement. The information is considered to have been provided when it has been notified to the Governments of the EAC Partner State(s) and the UK, to the WTO or on the official and fee-free websites of the Parties.

4.2. Nothing in the Agreement shall require the Parties to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest,

or which would prejudice the legitimate commercial interests of particular public or private enterprises, except to the extent that it may be necessary to be disclosed in the context of a dispute settlement proceeding under the Agreement. Where such disclosure is considered necessary by a panel established under the dispute settlement provisions of the Agreement, the panel shall ensure that confidentiality is fully protected.

## **4.2 Current payments and capital movements**

4.3. The Agreement does not contain specific provisions on current payments and capital movements other than Article 131 dealing with balance of payments difficulties.<sup>26</sup>

## **4.3 Exceptions**

### **4.3.1 General and security exceptions**

4.4. Part VIII of the Agreement includes provisions on general exceptions (Article 128) and on security exceptions (Article 129), which mirror Articles XX and XXI of the GATT with some additions. Under Article 128, the Parties have the right to take measures necessary to protect public security or to maintain public order and under Article 129, they have the right to take any measure relating to government procurement indispensable for national security or national defence purposes. The Parties shall inform to the fullest extent possible the Committee of Senior Officials of measures taken under Part VIII and of their termination.

### **4.3.2 Taxation**

4.5. Nothing in the Agreement or in any arrangement adopted under the Agreement shall be construed to prevent a Party from distinguishing in its fiscal legislation between taxpayers who are not in the same situation, in particular with regard to residency or where they have investments. The Agreement also does not prevent the Parties from adopting or enforcing any measure aimed at preventing the avoidance of or evasion of taxes under any avoidance of double taxation agreements or other tax arrangements or domestic fiscal arrangements. Furthermore, nothing in the Agreement shall affect the rights and obligations of the Parties under any tax convention. In the event of any inconsistency between the Agreement and any such convention, the latter shall prevail to the extent of the inconsistency (Article 130).

## **4.4 Accession and withdrawal**

4.6. Pursuant to Article 143, the Agreement is open to accession by any State that is a Contracting Party to the Treaty for the Establishment of the East African Community. Requests for accession must be submitted to the EPA Council for approval. The EPA Council may decide on any transitional or amending measures that might be necessary. Once the request is approved, the EAC State may deposit an instrument of accession with the relevant depositary. The Agreement will enter into force for the acceding State on the date its instrument of accession is deposited or on such other date agreed by that State and the Parties. Upon accession of another EAC State the title of the Agreement shall be updated to include the State that has acceded to the Agreement.

4.7. Regarding withdrawal, a Party may give written notice to the other of its intention to denounce the Agreement. The denunciation will take effect one year after such a notification (Article 139).

## **4.5 Institutional framework**

4.8. Institutional provisions included in Part VI (Articles 103-108) provide for the establishment of the EPA Council, the Committee of Senior Officials, the Consultative Committee and any institutions and Committees as may be decided under the Agreement.

4.9. The EPA Council established under Article 104 is the main institutional body of the Agreement and is responsible, among others, for the operation and implementation of the Agreement, the examination of any major issue arising within the framework of the Agreement and the examination of proposals and recommendations by the Parties for the review and amendment of the Agreement.

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<sup>26</sup> See Section 3.4.2.3 above.



It is composed of representatives of the Parties at ministerial level and co-chaired by a representative of each Party. It has the power to take decisions which are binding on the Parties and to adopt recommendations from the Committee of Senior Officials in writing by mutual agreement. The EPA Council shall establish and adopt within six months after the entry into force of the Agreement the Rules of Procedure required for the establishment of the Arbitration Panel. It shall meet at regular intervals not exceeding two years and extraordinarily whenever circumstances require, in agreement by the Parties (Articles 104-105). According to the Parties the EPA Council meeting will take place later this year. The Rules of Procedure for the Arbitration Panel are currently being agreed.

4.10. A Committee of Senior Officials is established under Article 106 to assist the EPA Council in the performance of its duties, consider reports of the specialised committees and submit reports and recommendations on the implementation of the Agreement to the EPA Council. Its functions relate to both trade and development. It is composed of Permanent or Principal Secretaries from the EAC Partner State(s) and representatives from the UK at Senior Official level and is co-chaired by the Parties. The Committee may establish any special technical groups to deal with specific matters falling within its competence. The Parties are currently planning the Committee of Senior Officials meeting.

4.11. An EPA Consultative Committee is established under Article 108 to assist the Committee of Senior Officials to promote dialogue and cooperation with the private sector and civil society organisations. Participation in the EPA Consultative Committee will be decided by the EPA Council, upon recommendations from the Committee of Senior Officials. The Committee shall carry out its activities on the basis of consultation by the Committee of Senior Officials or on its own initiative and make recommendations to the Committee of Senior Officials.

#### **4.6 Dispute settlement**

4.12. Part VII deals with the avoidance and settlement of any dispute between the Parties concerning the interpretation and application of the Agreement in good faith, with the aim of arriving at, where possible, a mutually agreed solution (Article 109).

4.13. The Parties shall endeavour to resolve any dispute through consultations (Article 110) and, if consultations fail, they have the option of pursuing mediation (Article 111). Consultations shall be held within 20 days (as soon as practicable and in any event within 15 days for matters of urgency) of the date of receipt of the request (unless otherwise agreed by the Parties). They shall be deemed concluded within 60 days (30 days for urgent matters) of the date of receipt of the request unless the Parties agree to continue the consultations. If the requested Party does not respond within ten days of the date of receipt of the request, if consultations are not held within the relevant timeframes, or if no agreement is reached when the consultations end, either Party may request settlement of the dispute through arbitration. The Parties may also seek recourse through mediation under Article 111, but this is not a required step before going to arbitration.

4.14. The complaining Party can give notice to initiate the procedure for the establishment of an arbitration panel under Article 112. Such notice must be made in writing to the Party complained against and to the Committee of Senior Officials. The arbitration panel, composed of three arbitrators, will issue to the Parties an interim report containing its findings and conclusions, within 90 days from its date of establishment as a general rule (Article 114). The Parties may submit their written comments to the arbitration panel within 15 days of the notification of the report. The Arbitration panel ruling must be notified to the Parties and the Committee of Senior Officials within 120 days from the date of the panel's establishment. It shall include recommendations as to how the Party complained against could bring itself into compliance (Article 115). The Party complained against must notify the complaining Party and the Committee of Senior Officials before the end of a reasonable period of time of any measure that it has taken to comply with the arbitration panel ruling (Article 116). In case of disagreement as to whether the Party complained against has complied with the ruling, either Party may request in writing the arbitration panel to rule on the matter. The panel will endeavour to notify its ruling within 45 days of the date of the submission of the request, or 30 days for urgent cases including those involving perishable and seasonal goods. In case of non-compliance by the Party complained against, the complaining Party is entitled, upon notification to the other Party, to adopt appropriate measures or to request the Party complained against to provide an offer for temporary compensation. These compensation or appropriate retaliatory measures shall be temporary (Article 117). The Party complained against must notify the other Party and the Committee of Senior Officials of any measure it has taken to comply with the

ruling of the arbitration panel and of its request for an end to application of appropriate measures by the complaining Party. In case of disagreement between the Parties on the compatibility of the notified measure, the complaining Party can request in writing the arbitration panel to rule on the matter. If the arbitration panel rules that the measure taken to comply is not in conformity, it will determine whether the complaining Party can continue to apply appropriate measures. If it rules that the measure taken to comply is in conformity, the appropriate measures must be terminated immediately following the date of the ruling (Article 118). The arbitration panel ruling is final and binding on Parties (Article 124).

4.15. Recourse to dispute settlement under the Agreement is without prejudice to the Parties' actions within the WTO framework. Once a Party has initiated a dispute settlement proceeding either under the Agreement or under the WTO Agreement, with respect to a particular measure, it may not initiate a proceeding on the same measure in the other forum until the first proceeding has ended. In addition, a Party must not seek redress for the breach of an obligation which is identical under the Agreement and under the WTO Agreement in the two fora, unless the forum selected fails to make findings for procedural or jurisdictional reasons. The Agreement shall not preclude a Party from implementing the suspension of obligations authorized by the Dispute Settlement Body of the WTO and conversely, the WTO Agreement shall not preclude a Party from suspending obligations under the Agreement (Article 126).

#### 4.7 Relationship with other agreements concluded by the parties

4.16. As indicated, the Agreement is based on the Economic Partnership Agreement between the East African Community Partner States and the European Union (the EAC-EU EPA), which is not currently in force. Table 4.1 lists all RTAs in force (in addition to the Agreement) to which the UK and Kenya are party, both notified and not notified.

**Table 4.1: United Kingdom and Kenya: participation in other RTAs (notified and non-notified in force), as of 28 June 2022**

RTA Name	Entry into force <sup>a</sup>	Coverage	GATT/WTO Notification	
			Year	WTO Provision
UNITED KINGDOM				
United Kingdom - Iceland, Liechtenstein and Norway	01-Dec-21	Goods & Services	2021	GATT Art. XXIV & GATS Art. V
United Kingdom - Mexico	01-Jun-21	Goods & Services	2021	GATT Art. XXIV & GATS Art. V
United Kingdom - Serbia	20-May-21	Goods & Services	2021	GATT Art. XXIV & GATS Art. V
United Kingdom - Albania	03-May-21	Goods & Services	2021	GATT Art. XXIV & GATS Art. V
United Kingdom - Jordan	01-May-21	Goods	2021	GATT Art. XXIV
United Kingdom - Ghana	05-Mar-21	Goods	2021	GATT Art. XXIV
EU - United Kingdom	01-Jan-21	Goods & Services	2021	GATT Art. XXIV & GATS Art. V
United Kingdom - Cameroon	01-Jan-21	Goods	2020	GATT Art. XXIV
United Kingdom - Canada	01-Jan-21	Goods	2021	GATT Art. XXIV
	01-Apr-21	Services		GATS Art. V
United Kingdom - CARIFORUM States	01-Jan-21	Goods & Services	2020	GATT Art. XXIV & GATS Art. V
United Kingdom - Central America	01-Jan-21	Goods & Services	2020	GATT Art. XXIV & GATS Art. V
United Kingdom - Chile	01-Jan-21	Goods & Services	2020	GATT Art. XXIV & GATS Art. V
United Kingdom - Colombia	01-Jan-21	Goods & Services	2020	GATT Art. XXIV & GATS Art. V
United Kingdom - Côte d'Ivoire	01-Jan-21	Goods	2020	GATT Art. XXIV
United Kingdom - Eastern and Southern Africa States	01-Jan-21	Goods	2020	GATT Art. XXIV
United Kingdom - Ecuador and Peru	01-Jan-21	Goods & Services	2020	GATT Art. XXIV & GATS Art. V
United Kingdom - Egypt	01-Jan-21	Goods	2020	GATT Art. XXIV
United Kingdom - Faroe Islands	01-Jan-21	Goods	2020	GATT Art. XXIV
United Kingdom - Georgia	01-Jan-21	Goods & Services	2020	GATT Art. XXIV & GATS Art. V
United Kingdom - Israel	01-Jan-21	Goods	2020	GATT Art. XXIV
United Kingdom - Japan	01-Jan-21	Goods & Services	2020	GATT Art. XXIV & GATS Art. V
United Kingdom - Kosovo <sup>b</sup>	01-Jan-21	Goods	2020	GATT Art. XXIV
United Kingdom - Lebanon	01-Jan-21	Goods	2020	GATT Art. XXIV
United Kingdom - Morocco	01-Jan-21	Goods	2020	GATT Art. XXIV



RTA Name	Entry into force <sup>a</sup>	Coverage	GATT/WTO Notification	
			Year	WTO Provision
United Kingdom - North Macedonia	01-Jan-21	Goods & Services	2020	GATT Art. XXIV & GATS Art. V
United Kingdom - Norway and Iceland	01-Jan-21	Goods	2020	GATT Art. XXIV
United Kingdom - Pacific States	01-Jan-21	Goods	2020	GATT Art. XXIV
• <i>United Kingdom - Pacific States - Accession of Samoa</i>	01-Jan-21	Goods	2020	GATT Art. XXIV
• <i>United Kingdom - Pacific States - Accession of Solomon Islands</i>	01-Jan-21	Goods	2020	GATT Art. XXIV
United Kingdom - Palestine	01-Jan-21	Goods	2020	GATT Art. XXIV
United Kingdom - Republic of Korea	01-Jan-21	Goods & Services	2020	GATT Art. XXIV & GATS Art. V
United Kingdom - Republic of Moldova	01-Jan-21	Goods & Services	2020	GATT Art. XXIV & GATS Art. V
United Kingdom - SACU and Mozambique	01-Jan-21	Goods	2021	GATT Art. XXIV
United Kingdom - Singapore	01-Jan-21	Goods & Services	2020	GATT Art. XXIV & GATS Art. V
United Kingdom - Switzerland - Liechtenstein	01-Jan-21	Goods	2020	GATT Art. XXIV
United Kingdom - Tunisia	01-Jan-21	Goods	2020	GATT Art. XXIV
United Kingdom - Türkiye	01-Jan-21	Goods	2020	GATT Art. XXIV
United Kingdom - Ukraine	01-Jan-21	Goods & Services	2020	GATT Art. XXIV & GATS Art. V
United Kingdom - Viet Nam	01-Jan-21	Goods & Services	2020	GATT Art. XXIV & GATS Art. V
<b>KENYA</b>				
East African Community (EAC)	07-Jul-00	Goods	2000	Enabling Clause
	01-Jul-10	Services	2012	GATS Art.V
• <i>EAC - Accession of Burundi and Rwanda</i>	01-Jul-07	Goods	2012	Enabling Clause
• <i>EAC - Accession of South Sudan</i>	n.a.	Goods & Services	Not notified	
Common Market for Eastern and Southern Africa (COMESA)	08-Dec-94	Goods	1995	Enabling Clause
• <i>COMESA - Accession of Egypt</i>	17-Feb-99	Goods	2017	Enabling Clause
• <i>COMESA - Accession of Seychelles</i>	11-May-09	Goods	2022	Enabling Clause
• <i>COMESA - Accession of Djibouti</i>	21-Dec-81	Goods	Not notified	
• <i>COMESA - Accession of Libya</i>	03-Jan-05	Goods	Not notified	
• <i>COMESA - Accession of Madagascar</i>	21-Dec-81	Goods	Not notified	
• <i>COMESA - Accession of Somalia</i>	n.a.	Goods	Not notified	
• <i>COMESA - Accession of Tunisia</i>	18-Apr-18	Goods	Not notified	
African Continental Free Trade Area (AfCFTA)	30-May-19	Goods	Not notified	

n.a.: not available.

a Dates of the first entry into force/provisional application for at least one of the Parties. Where dates of provisional application have been provided by the Parties, further notifications to confirm the dates of entry into force are awaited.

b Reference to Kosovo in this table shall be understood to be in the context of the United Nations Security Council resolution 1244 (1999).

Source: WTO Secretariat. Further information on these Agreements and on specific dates of entry into force/provisional applications may be found in the WTO Database on RTAs: <http://rtais.wto.org>.

#### **4.8 Government procurement**

4.17. The Agreement does not contain specific provisions on government procurement. However, a rendez-vous clause provides that, within five years upon its entry into force, the Parties undertake to conclude negotiations on transparency in public procurement (Article 3(b) (v)).

#### **4.9 Intellectual property rights**

4.18. The Agreement does not contain specific provisions relating to intellectual property rights. However, a rendez-vous clause provides that, within five years upon the Agreement's entry into force, the Parties undertake to conclude negotiations on intellectual property rights (Article 3(b) (iv)).

4.19. Furthermore, the Parties agree to cooperate on the identification, recognition and registration of products that could benefit from protection as GIs and any other action aimed at achieving protection for identified products (Article 74).

4.20. In relation to inland fisheries and aquaculture development, the Parties commit to cooperate in the area of legal and regulatory framework through the: development of appropriate legal and regulatory instruments on intellectual property rights and building capacity for their implementation in international trade; and protection of eco-labelling and intellectual property (Article 89).

4.21. Under the general exception clause in Article 128, nothing in the Agreement shall be construed to prevent the adoption or enforcement of measures necessary to secure compliance with laws or regulations relating to the protection of patents, trademarks and copyrights, which are not inconsistent with the provisions of the Agreement.

#### **4.10 Environment**

4.22. In its rendez-vous clause, the Agreement provides that, within five years upon its entry into force, the Parties undertake to conclude negotiations on trade, environment and sustainable development (Article 3(b) (iii)).

4.23. Various provisions of the Agreement refer to the environment. Article 14 on export duties and taxes states that, after notifying the UK, the EAC Partner State(s) can impose a temporary duty or tax in connection with the exportation of goods in certain circumstances, including to protect the environment. In Article 42 dealing with standards, the Parties reaffirm their rights and obligations under the WTO TBT Agreement, while taking account of their rights and commitments under other international arrangements to which they are both parties, including those relating to the protection of environment and biodiversity. Several provisions in Part III (Fisheries) and Part IV (Agriculture) underline the need for the Parties to take into account economic, environmental and social impacts, environmentally friendly and sustainable technologies or environmental conservation.

4.24. In Part V, Title V (Articles 90 to 92), the Parties agree that water, environment and biodiversity are among their targeted areas of economic and development cooperation. Article 92 in particular specifies that the objectives of cooperation on the environment are to: (a) protect, restore and conserve the environment and biodiversity; (b) develop industries of the EAC Partner State(s) that use environmentally friendly technologies; and (c) promote technology development, transfer and application, research and development, innovation and information exchange.

#### **4.11 Labour**

4.25. In its rendez-vous clause, the Agreement provides that, within five years upon its entry into force, the Parties undertake to conclude negotiations on trade, environment and sustainable development (Article 3(b) (iii)).

4.26. There are no further specific provisions concerning labour in the Agreement although several provisions underline the need for the Parties to take into account social impacts and promote livelihood security. Moreover, the Parties recognize that the implementation of the Agreement may be challenging for the EAC Partner State(s) and the UK agrees to work with the EAC Partner State(s) to undertake appropriate cooperation activities aiming *inter alia* at improving the productive and

professional capacities of the workforce of the EAC Partner State(s) including training of workers displaced due to closure of firms or equipping them with new skills for new activities etc. (Article 100).

#### **4.12 Electronic commerce**

4.27. There are no specific provisions directly relating to e-commerce or digital trade in the Agreement.

4.28. However, under Part V (Economic and development cooperation), cooperation between Parties in the Information and Communication Technologies (ICT) sector shall include the development of ICT, competitiveness, innovation and the smooth transition towards the information society. The objectives in this area are to develop the ICT sector and enhance the contribution of ICT in facilitation of trade through e-services, e-commerce, e-government, e-health, secure transactions and other socio-economic sectors. A number of areas for cooperation have been identified in Article 81. They include areas relating to ICT connectivity and cost effectiveness at the national, regional and global levels; dissemination of new ICT; development of the legal and regulatory frameworks on ICT; technology development, transfer and applications, R&D, innovation, information exchange and networks, and marketing; capacity building in human resources, improvement in service standards, and institutional structures; partnerships, linkages and joint ventures between economic operators; and promotion and support for the development of niche markets for ICT-enabled services.

#### **4.13 Small and medium-sized enterprises**

4.29. Various provisions of the Agreement mention the promotion of small-scale activities in the EAC Partner State(s), such as small scale fisheries and small scale farmers, through capacity building of farmers' organisations, exchanging information on investment opportunities and incentives, developing relevant policy measures to support availability of adequate agricultural inputs to small scale farmers on a timely basis and strengthening rural financial services for small-scale producers, processors and traders. In Part V (Economic and development cooperation), the Parties agree to cooperate on enterprise development within the EAC Partner State(s) through *inter alia* supporting the promotion of EAC-UK private sector business dialogue, cooperation and partnerships; efforts on micro, small and medium size enterprises (MSME) promotion and integration into the mainstream business activities; and the promotion of a favourable environment for the development and growth of MSMEs (Article 86). The Parties agree to cooperate to promote investments within the EAC Partner States including supporting the establishment of financial frameworks and instruments adapted to investment needs of SMEs (Article 85).

#### **4.14 Other**

##### **4.14.1 Cooperation**

4.30. Under Part V (Economic and development cooperation), the Parties reaffirm that development cooperation is a core element of their Partnership and they commit to cooperate in order to facilitate the implementation of the Agreement and to support regional integration and development strategies. Cooperation shall include non-financial support to the EAC Partner State(s) as well as financial support, including assistance provided through multilateral and regional organisations. The Parties agree that the cooperation provisions in the Agreement do not create any obligations on the UK to provide financial or non-financial support in any specific area identified. UK financing for development cooperation shall be consistent with the objectives and principles of the Joint Statement of the Parties on the Objectives and Essential and Fundamental Elements of this Agreement as set out at Annex III. This will be primarily guided by the principles of the internationally agreed aid effectiveness agenda and the UK Partnership Principles, and aims to reduce poverty and achieve the Sustainable Development Goals. Consistent with the Paris Declaration on Aid Effectiveness adopted in 2005, the Parties agree to use and support, as appropriate, nationally and/or regionally owned delivery mechanisms, funds or facilities for channelling and coordinating resources for the implementation of the Agreement (Article 75).

4.31. Economic and development cooperation shall aim at enhancing the competitiveness of the EAC Partner State(s); building up supply capacity and enabling the smooth implementation of the

Agreement; transforming the structure of the EAC Partner State(s)' economies through enhancing production, distribution, transport, marketing; developing capacity for trade and to attract investment; strengthening trade, investment policies and regulations; and deepening regional integration (Article 76).

4.32. The Agreement lists priority areas for cooperation which are reviewed in detail in Titles I to X of Part V. The sectors of cooperation identified are: (a) infrastructure including transport, energy, information and communications technology; (b) agriculture and livestock including productive insects; (c) private sector development, including investment promotion and enterprise development; (d) fisheries covering marine and inland fisheries and aquaculture; (e) water and environment; (f) market access issues: SPS measures; TBT; and customs and trade facilitation in the EAC Partner State(s); (g) EPA adjustment measures; and (h) mobilisation of resources.

**ANNEX 1**

1. Tables A1.1-A1.2 present the Parties' tariff elimination schedules by total, agricultural (HS Chapters 01-24) and industrial products (HS Chapters 25-97).

2. Table A1.1 provides a comparison between MFN rates applied by Kenya to imports from the UK in 2020, at the entry into force of the Agreement, and preferential tariff rates applied by Kenya as part of its scheduled programme of elimination of tariffs under the Agreement. Kenya's average applied MFN rate in 2020 was 13.6% (22.8% and 11.6% for agricultural and industrial products, respectively). Some 36.6% of the tariff was duty free for imports from MFN sources (7.9% for agriculture and 42.5% for industrial products). From 2021 to 2027, Kenya's applied tariff for imports from the UK will decline to 12.7% overall and to 22.2% and 10.7%, respectively, for agricultural and industrial products. The share of duty-free lines applicable to imports from the UK in 2027 will be 37% overall, 8.1% for agricultural products and 43% for industrial products. This will give exporters from the UK a relative margin of preference of 6.6% overall and respectively 2.6% and 7.7% for agricultural and industrial products. By 2031, ten years after implementation, the share of duty-free lines for imports from the UK is expected to remain unchanged. At the end of the implementation period in 2046, UK exporters will face zero duties on 73.9% of Kenya's tariff (52.8% for agricultural products and 78.3% for industrial products).

**Table A1.1 Kenya: Indicators of MFN tariff rates and preferential rates for imports from the United Kingdom**

Origin of goods	Year	ALL PRODUCTS			HS Chapters 1-24			HS Chapters 25-97		
		Average applied tariff		Share of duty-free tariff lines (%)	Average applied tariff		Share of duty-free tariff lines (%)	Average applied tariff		Share of duty-free tariff lines (%)
		Overall (%)	On dutiable (%)		Overall (%)	On dutiable (%)		Overall (%)	On dutiable (%)	
MFN	2020	13.6	21.4	36.6	22.8	24.7	7.9	11.6	20.3	42.5
UK	2021-2027	12.7	20.1	37.0	22.2	24.1	8.1	10.7	18.8	43.0
	2028	12.3	19.5	37.0	22.0	23.9	8.1	10.3	18.0	43.0
	2029	12.1	19.2	37.0	21.9	23.8	8.1	10.1	17.7	43.0
	2030	11.9	18.9	37.0	21.8	23.7	8.1	9.9	17.3	43.0
	2031	11.7	18.6	37.0	21.7	23.6	8.1	9.7	16.9	43.0
	2032	11.5	18.3	37.0	21.6	23.5	8.1	9.4	16.6	43.0
	2033	11.1	17.7	37.0	21.1	23.0	8.1	9.1	15.9	43.0
	2034	10.7	17.0	37.0	20.6	22.4	8.1	8.7	15.2	43.0
	2035	10.3	16.4	37.0	20.0	21.8	8.1	8.3	14.5	43.0
	2036	9.9	22.5	55.9	19.5	23.6	17.4	7.9	21.9	63.9
	2037	9.5	21.5	55.9	18.6	22.5	17.4	7.6	21.0	63.9
	2038	9.2	21.0	55.9	18.2	22.0	17.4	7.4	20.5	63.9
	2039	9.0	20.5	55.9	17.7	21.5	17.4	7.2	20.0	63.9
	2040	8.6	19.5	55.9	16.8	20.4	17.4	6.9	19.0	63.9
	2041	8.1	18.5	55.9	15.9	19.3	17.4	6.5	18.1	63.4
	2042	7.7	17.5	55.9	15.1	18.2	17.4	6.2	17.1	63.9
	2043	7.2	16.5	55.9	14.2	17.2	17.4	5.8	16.1	63.9
	2044	6.8	15.5	55.9	13.3	16.1	17.4	5.4	15.1	63.9
	2045-2046	6.3	24.3	73.9	12.4	26.3	52.8	5.1	23.4	78.3

Note: MFN 2020 is the latest available data for Kenya in the WTO-IDB.

Source: WTO estimates based on data provided by the Kenyan authorities.

3. The UK's MFN applied tariff in 2021 averaged 3.8% overall; the average rate for agricultural products at 8.8% is considerably higher than for industrial products at 2.5%. Around 47% of the tariff is duty free on an MFN basis, 18.8% for agricultural products and 57.1% for industrial products.

Upon entry into force of the Agreement the overall applied tariff for imports from Kenya fell to 0.003%, zero for agriculture and 0.004% for industrial products. As a result this will give Kenyan exporters a relative margin of preference of 99.9% overall, 100% for agricultural products and 99.8% for industrial products.

**Table A1.2 United Kingdom: Indicators of MFN tariff rates and preferential rates for imports from Kenya**

Origin of goods	Year	ALL PRODUCTS			HS Chapters 01-24			HS Chapters 25-97		
		Average applied tariff		Share of duty-free tariff lines (%)	Average applied tariff		Share of duty-free tariff lines (%)	Average applied tariff		Share of duty-free tariff lines (%)
		Overall I (%)	On dutiable (%)		Overall I (%)	On dutiable (%)		Overall I (%)	On dutiable (%)	
MFN	2021	3.8	7.8	47.0	8.9	12.0	18.8	2.5	5.8	57.1
<b>Kenya</b>	<b>2021</b>	<b>0.003</b>	<b>2.0</b>	<b>99.8</b>	<b>0.0</b>	<b>0.0</b>	<b>100.0</b>	<b>0.004</b>	<b>2.0</b>	<b>99.8</b>

Note: Tariff lines subject to in-quota rates are excluded in the computation. For the calculation of averages, specific rates are excluded, and the *ad valorem* part of alternate rates are included.

For the tariff lines subject to seasonal duties, the average rate for the entire year is used for the calculation. The products classified beyond the HS 8-digit level are counted once and their tariff rates are averaged to the 8-digit level.

Source: WTO estimates based on data provided by the UK.

4. Table A1.3 shows market access opportunities for the UK's top 25 exports in the Kenyan market. These exports, which covered 58 lines at the HS 6-digit level, accounted for 38.4% of the UK's global exports in 2018-2020. Of these lines, 38 were already duty-free on an MFN basis in 2020 when the Agreement entered into force. Duties on five lines will be removed by 2036, while the tariffs on one and seven lines will be removed respectively in 2044 and by 2045. Seven lines (covering motor cars and whiskies) will remain dutiable once the Agreement is fully implemented; the MFN applied rate in 2020 ranged from 10.4% to 25%.

**Table A1.3 Kenya: Market access opportunities under the Agreement for the United Kingdom's top 25 exports to the world**

United Kingdom's top export products in 2018 - 2020				Access Conditions to Kenya's import markets						
HS number and description of the product			Share in global exports (%)	MFN 2020				Duty-free in		Remain dutiable
				Avg. MFN applied rate (%)	Number of lines		2036	2044	2045	
					duty-free	duti-able				
710813	Gold, incl. gold plated with platinum, in semi-manufactured forms, for non-monetary purposes	5.6	25.0		1			1		
270900	Petroleum oils and oils obtained from bituminous minerals, crude	4.9	0.0	1						
300490	Medicaments consisting of mixed or unmixed products for therapeutic or prophylactic purposes	3.2	0.0	1						
880330	Parts of aeroplanes or helicopters, n.e.s.	2.9	0.0	1						
841112	Turbojets of a thrust > 25 kn	2.6	0.0	1						
870323	Motor cars and other motor vehicles principally designed for the transport of <10 persons, of a cylinder capacity > 1.500 cm³ but <= 3.000 cm³	2.4	12.5	1	1				1	
841191	Parts of turbojets or turbopropellers, n.e.s.	2.1	0.0	1						

United Kingdom's top export products in 2018 - 2020				Access Conditions to Kenya's import markets					
HS number and description of the product		Share in global exports (%)	MFN 2020				Duty- free in		Remain duti-able
			Avg. MFN applied rate (%)	Number of lines		2036	2044	2045	
				duty -free	duti- able				
870324	Motor cars and other motor vehicles principally designed for the transport of<10 persons, of a cylinder capacity>3.000 cm³	1.7	12.5	1	1				1
220830	Whiskies	1.3	25.0		1				1
271012	Light oils and preparations	1.3	0.0	6					
970110	Paintings, e.g. oil paintings, watercolours and pastels, and drawings executed entirely by hand	1.3	25.0		1			1	
870322	Motor cars and other motor vehicles principally designed for the transport of <10 persons, of a cylinder capacity > 1.000 cm³ but <= 1.500 cm³	1.2	12.5	1	1				1
711319	Articles of jewellery and parts thereof, of precious metal other than silver	1.0	25.0		1			1	
271019	Medium oils and preparations, of petroleum or bituminous minerals, not containing biodiesel, n.e.s.	1.0	5.5	13	6	3		3	
870332	Motor cars and other motor vehicles principally designed for the transport of <10 persons, of a cylinder capacity > 1.500 cm³ but <= 2.500 cm³	0.7	12.5	1	1				1
300220	Vaccines for human medicine	0.6	0.0	1					
870340*	Motor cars and other motor vehicles principally designed for the transport of <10 persons, of a cylinder capacity > 1.500 cm³ but <= 2.500 cm³	0.6	10.4	3	2		1		1
711021	Palladium, unwrought or in powder form	0.6	25.0		1			1	
300215*	Immunological products, for retail sale	0.6	0.0	1					
851762	Machines for the reception, conversion and transmission or regeneration of voice, images or other data	0.6	0.0	1					
382200	Diagnostic or laboratory reagents on a backing, prepared diagnostic or laboratory reagents	0.5	0.0	1					
490199	Printed books, brochures and similar printed matter	0.5	0.0	1					
870333	Motor cars and other motor vehicles principally designed for the transport of <10 persons, incl. station wagons and racing cars, with only diesel engine of a cylinder capacity > 2.500 cm³	0.5	12.5	1	1				1
840890	Compression-ignition internal combustion piston engine "diesel or semi-diesel engine"	0.4	5.0	1	1	1			
870899	Parts and accessories, for tractors, motor vehicles for the transport of ten or more persons	0.4	10.0		1	1			
	Total of above	38.4		38	20	5	1	7	7

\* HS 2012 equivalent: 300215(HS 2017) =300210(HS 2012); 870340(HS2017) =870321 to 870324 and 870390.

Notes: MFN 2020 is the latest available data for Kenya in the WTO-IDB. Based on the HS 2017 nomenclature.

Source: WTO estimates based on the data provided by the Kenyan and the UK authorities.

5. Table A1.4 shows market access opportunities for Kenya's top 25 goods in the UK market. These products accounted for 61.6% of its world exports in 2018-2020 and covered 99 tariff lines at the HS 6-digit level. Of these lines, 28 were already duty free on an MFN basis in 2020. For the remaining 71 lines, duties were bound to zero when the Agreement entered into force.

**Table A1.4 United Kingdom: Market access opportunities under the Agreement for Kenya's top 25 exports to the world**

Kenya's top export products in 2018-20			Access Conditions to UK's markets				
HS number and description		Share in global exports (%)	MFN 2021			No. of duty free lines under the agreement 2021	Remain Dutiable
			Avg. Tariff (%)	No. of duty-free lines	No. of dutiable lines		
090240	Black fermented tea and partly fermented tea	20.4	0.0	1			
060311	Fresh cut roses and buds	8.0	8.0		1	1	
271019	Medium oils and preparations	6.8	1.2	12	13	13	
090111	Coffee	3.5	0.0	1			
261400	Titanium ores and concentrates	2.5	0.0	1			
080440	Fresh or dried avocados	1.9	4.0		1	1	
060319	Fresh cut flowers and buds	1.5	8.0		3	3	
300490	Medicaments	1.4	0.0	1			
240220	Cigarettes	1.2	30.0		2	2	
080262	Fresh or dried macadamia nuts	1.2	2.0		1	1	
070999	Fresh or chilled vegetables	1.2	8.8		6	6	
151110	Crude palm oil	1.0	1.0	1	1	1	
620342	Men's or boys' trousers, bib and brace overalls, breeches and shorts	1.0	12.0		7	7	
283620	Disodium carbonate	1.0	4.0		1	1	
200820	Pineapples	0.9	21.1		9	9	
060210	Unrooted cuttings and slips	0.9	0.0	2			
210690	Food preparations	0.9	12.0		7	7	
721070	Flat products of iron or non-alloy steel	0.9	0.0	2			
071090	Mixtures of vegetables	0.8	14.0		1	1	
340119	Soap and organic surface-active products and preparations	0.8	0.0	1			
261510	Zirconium ores and concentrates	0.8	0.0	1			
620463	Women's or girls' trousers, bib and brace overalls, breeches and shorts	0.7	12.0		5	5	
020450	Fresh, chilled or frozen meat of goats	0.7	12.0		12	12	
070820	Fresh or chilled beans "vigna spp., phaseolus spp."	0.7	10.0		1	1	
250100	Salts	0.7	0.0	5			
<b>Total of above</b>		<b>61.6</b>	<b>6.4</b>	<b>28</b>	<b>71</b>	<b>71</b>	<b>-</b>

Note: Tariff lines subject to in-quota rates are excluded in the computation. For the calculation of averages, specific rates are excluded, and the *ad valorem* part of alternate rates are included.

For the tariff lines subject to seasonal duties, the average rate for the entire year is used for the calculation. The products classified beyond the HS 8-digit level are counted once and their tariff rates are averaged to the 8-digit level.

Source: WTO estimates based on data provided by UK and UNSD Comtrade Database.