



Department for  
International Trade

# Continuing the United Kingdom's Trade Relationship with Kenya

**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**

December 2020



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Presented to Parliament

by the Secretary of State for International Trade

by Command of Her Majesty

December 2020



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## Introduction

1. This report explains HM Government's approach to delivering continuity in the United Kingdom's trade relationship with Kenya now that we have left the European Union ("EU").
2. With our exit from the EU, HM Government has sought to deliver the maximum possible certainty to businesses and consumers through ensuring continuity in our existing trade relationships. This will benefit consumers and businesses; it is in no-one's interests to disrupt existing trade flows.
3. To achieve this, HM Government has developed new agreements that replicate, as far as possible, the effects of our existing trade arrangements with existing partners. These agreements form the starting point for our future trade agreements with partners.
4. Wherever possible, HM Government has sought a technical replication of these agreements, but in some cases, it has applied bespoke solutions for individual agreements as necessary to ensure continuity of effect.
5. While we (in our capacity as a member of the EU) and Kenya both signed an Economic Partnership Agreement between the East African Community Partner States and the EU and its Member States (the "EAC-EU EPA"), this agreement has not yet been signed by all EAC Partner States and therefore has not yet been brought into force. Until the end of the transition period provided for under the 2019 Withdrawal Agreement (the "Transition Period"), Kenya has duty-free, quota-free access to our markets through the EU's Market Access Regulation (MAR), however, we are not replicating this arrangement at the end of the Transition Period. Whilst the agreement covers trade in goods between Britain and Kenya today, it remains open to any other East African Community (EAC) country to join at any time.
6. 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 ("the EPA") is based on the EAC-EU EPA. It is intended to take effect at the end of the Transition Period (or as soon as possible thereafter).
7. This report gives details of, and explains the reasons for, any significant differences between the EPA and the EAC-EU EPA.
8. The report sets out the general drafting changes which are consistent across all our continuity trade agreements and which do not have a significant impact on the effect of our current trade relationships. It also explains any significant differences between the trade related provisions in the EPA and the EAC-EU EPA. The report also includes some discussion of the economic impacts and focuses solely on the changes made to our trading arrangements with Kenya (the "Parties") as a result of moving from the current arrangement to a new agreement. Any other impacts resulting from our exit from the EU or the nature of the Future Economic Partnership have been excluded from this report.

## Legal approach

9. We have chosen the form of treaty text that the States involved agree is the most pragmatic and sensible in the circumstances, taking into account the wishes of partner countries. Accordingly, some agreements have been drafted in long form to reflect these wishes. The EPA is a long form agreement.

10. To draft the EPA, the negotiating States have reproduced all relevant sections of the EAC-EU EPA with necessary technical and administrative changes to make this operable as an agreement between us and Kenya that is open to accession by other EAC Partner States.

## **Resources**

11. This report is intended to aid businesses, consumers and parliamentarians in understanding any significant differences made to our trade relationship with Kenya by the EPA and the reasons for any changes, and their impact.
12. Should you wish to view the EAC-EU EPA as originally published when negotiations were finalised between the EU and EAC, it can be found online on the [website](#) of the European Commission.
13. Should you wish to view the full text of the EPA, it will be laid in Parliament alongside an Explanatory Memorandum as part of our treaty ratification process in accordance with the Constitutional Reform and Governance Act 2010. The text will also be available on GOV.UK.

## Economic Background

14. This section provides a country-specific background analysis of trade between the United Kingdom and Kenya.

### Trade between the United Kingdom and Kenya

15. Kenya is our 73<sup>rd</sup> largest trading partner<sup>1</sup>, accounting for around 0.1% of total trade. Total trade in goods and services between us and Kenya was £1.4 billion in 2019.<sup>2</sup>

16. HM Government expects the EPA to benefit consumers and support jobs and economic development in Kenya by providing continuity in trading arrangements including duty-free and quota-free market access. In 2019, our market accounted for 43% of Kenya's exports of vegetables, as well as at least 9% of cut flowers.<sup>3</sup>

17. In 2019, exports to Kenya were £800 million, making it our 68<sup>th</sup> largest export market (accounting for around 0.1% of our total exports). Imports in goods and services from Kenya were £607 million, making it our 71<sup>st</sup> largest import source (accounting for around 0.1% of our total imports)<sup>4</sup>.

**Table 1: Trade between the United Kingdom and Kenya, 2019 (£ million)**

	Trade in goods	Trade in services	Total trade
Exports to Kenya	384	416	800
Imports from Kenya	321	286	607
Total trade	705	702	1,407

Source: [ONS. \(2020\). UK total trade: all countries, non-seasonally adjusted](#) (accessed 9<sup>th</sup> November 2020).

18. Using data from HMRC for trade in goods only, Table 2 shows that in 2019 the top goods exported to Kenya were vehicles other than railway or tramway stock (HS87, £67 million), machinery and mechanical appliances (HS84, £63 million) and pharmaceutical products (HS85, £27 million), together representing nearly a half of the total value of our goods exported to Kenya. Our top goods imported from Kenya were coffee, tea and spices (HS09, £121 million, mostly black tea), edible vegetables (HS07, £79 million, mostly green beans) and live trees and plants (HS06, £54 million, mostly cut flowers), together representing around 80% of the total value of goods imported from Kenya.

<sup>1</sup> EU member states are treated as individual trading partners with the UK.

<sup>2</sup> ONS (2020), [UK total trade: all countries, non-seasonally adjusted \(accessed 13<sup>th</sup> November 2020\)](#).

<sup>3</sup> DIT's own calculations using data from [UN COMTRADE](#) (accessed November 2020). Figures are given for imports from Kenya of product categories HS 7 (*vegetables and certain roots and tubers, edible*) and HS 603 (*Flowers; cut flowers and flower buds of a kind suitable for bouquets or for ornamental purpose*), reported by the UK, as a proportion of the total imports of the same products from Kenya reported by all countries. These figures may differ from those implied by export data reported by Kenya. Some Kenyan flowers which are ultimately sold to UK consumers may not be counted in these figures where they reach the UK via flower auctions in the Netherlands.

<sup>4</sup> ONS (2020), [UK total trade: all countries, non-seasonally adjusted \(accessed 13<sup>th</sup> November 2020\)](#).

**Table 2: Top 5 United Kingdom goods exports to and imports from Kenya, 2019 (HS2<sup>5</sup>, £ million)**

<b>Top 5 United Kingdom goods exports to Kenya</b>	<b>Value</b>	<b>Top 5 United Kingdom goods imports from Kenya</b>	<b>Value</b>
Vehicles other than railway or tramway stock	67	Coffee, tea and spices	121
Machinery and mechanical appliances	63	Edible vegetables	79
Pharmaceutical products	27	Live Trees and plants	54
Electrical machinery and equipment	25	Machinery and mechanical appliances	21
Paper and paperboard; articles of paper pulp	19	Preparations of veg, fruit or nuts	7

Source: [HMRC trade statistics by commodity code](#) (accessed 9<sup>th</sup> November 2020). Sectors classified according to Harmonised System chapters. Data presented is recorded on a physical movement basis where a good is recorded as an export (import) if it physically leaves (enters) the economic territory of a country.

19. A detailed breakdown of types of services traded is not available for our trade with Kenya.
20. ONS data is recorded on a 'Balance of Payments' or 'change of ownership' basis where a good or service leaving (entering) the economic territory of a country is recorded as an export (import) only if it has changed ownership between the resident of the reporting country and non-residents. Goods exports (imports) are recorded by HMRC if a good physically leaves (enters) the economic territory of a country.

### **United Kingdom businesses exporting to and importing from Kenya**

21. In 2019, HMRC estimated that around 2,502 VAT registered British businesses exported goods to Kenya and around 433 imported goods from Kenya.<sup>6</sup> As these figures only include businesses trading in goods, they are likely to underestimate the total number of businesses trading with Kenya.
22. For context, provisional survey data from the ONS shows that around 340,500 (non-financial) registered businesses in Great Britain traded in either goods or services or both in 2018 with another country.<sup>7</sup> This was just under 15% of all VAT/PAYE registered businesses. There were around 211,100 (non-financial) registered businesses in Great Britain engaged in goods trade with another country and 188,400 (non-financial) registered businesses trading in services in 2018. Some of these businesses traded in both goods and services. There will be other businesses trading internationally, which are not identified by these surveys as they are not registered for VAT. Neither of these sources include businesses trading below the VAT registration threshold.

<sup>5</sup> The Harmonized System (HS) is an international nomenclature for the classification of products. It allows participating countries to classify traded goods on a common basis for customs purposes. HS2 refers to the high-level "chapters" of the HS system (i.e., the first two digits of the HS code)

<sup>6</sup> HMRC (2020). [Regional trade statistics interactive analysis: first quarter 2020 \(accessed 9th September 2020\)](#). Proportional count method.

<sup>7</sup> ONS (2019). [Annual Business Survey: Non-financial business economy, exporters and importers in Great Britain 2018 \(accessed 9th September 2020\)](#).



## Economic impact of the EPA

23. In 2007, the European Commission published a Sustainability Impact Assessment (SIA) covering all the EPAs that the EU had concluded with African, Caribbean and Pacific (ACP) States.<sup>8</sup> The studies this SIA contained used a mix of qualitative and quantitative techniques, including some computable general equilibrium (CGE) and partial equilibrium (PE) modelling. It found that the EPAs could have a positive effect on two-way trade flows for both Least Developed Countries (LDCs) and non-LDCs, like Kenya, and could have a positive impact on the economy through increased production for both LDCs and non-LDCs. The range of sizes of this positive effect was found to be “very wide (from modest to substantial)”. It also estimated that there would be a positive social impact through greater employment and incomes. However, there was uncertainty over the effects on the environment.
24. A sustainability impact assessment with a focus on several countries in the East and South of Africa, including Kenya, analysed the expected impacts of an EU EPA on the horticulture sector (roses, green beans and green peas). Drawing on quantitative and qualitative information provided by Kenyan firms, the study assessed that under an EPA Kenyan exports would remain competitive and would therefore likely increase in value compared to a scenario where Kenyan exports faced some tariffs under the EU’s GSP unilateral preferences scheme. The study concluded that the EAC-EU EPA would lead to an increase in Kenyan horticultural production, exports and FDI, generating a positive impact on jobs and GDP and benefitting consumers.<sup>9</sup>
25. The European Commission has highlighted other general development benefits associated with EPAs for partner countries.<sup>10</sup> These range from creating new business, trade and investment opportunities, to positive labour market impacts and support for farmers and consumers, and to promoting economic integration into the local region.
26. The tariff liberalisation schedule agreed by Kenya as part of the EAC-EU EPA is asymmetric, to be implemented gradually over 25 years. The EAC committed to liberalise tariff lines covering around 83% of EAC goods imports from the EU by value, more than half of which are already imported duty free from the entire world.<sup>11</sup> This takes account of the different levels of development between the European Union and EAC countries including Kenya. In addition, if local industry were to be threatened by import surges from the EU, the EAC-EU EPA would allow safeguard measures to be triggered to protect industrial sectors and infant industries.<sup>12</sup>
27. In 2015, the then Department for International Development commissioned a Rapid Evidence Assessment on the empirical impact of FTAs between developed and developing countries. It focussed on economic development in developing countries.<sup>13</sup> The assessment concluded that there is mixed evidence on the observed impacts of FTAs on trade between developed and developing countries, and while some studies find large positive impacts of

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<sup>8</sup> European Commission (2007), [‘Sustainability Impact Assessment of the EU-ACP Economic Partnership Agreements – Summary of key findings, policy recommendations and lessons learned – Executive summary’](#)

<sup>9</sup> European Commission (2006), [‘Sustainability Impact Assessment \(SIA\) of the EU-ACP Economic partnership Agreements – Horticulture in Eastern and Southern Africa’](#)

<sup>10</sup> European Commission (2016) [‘10 benefits of Economic Partnership Agreements \(EPAs\)’](#)

<sup>11</sup> European Commission (2015), [‘Economic Partnership Agreement between the EU and the Eastern African Community \(EAC\)’](#)

<sup>12</sup> European Commission (2017), [‘Economic Partnership Agreements’](#)

<sup>13</sup> DFID (2015), [‘The Impact of Free Trade Agreements between Developed and Developing Countries on Economic Development in Developing Countries’](#)

FTAs on the value of trade flows, others find minor or no impacts. This could be explained by methodological differences between studies, by differences in the content of agreements, or by the political, economic and institutional context of FTA partners. The Rapid Evidence Assessment also found that the empirical literature did not provide conclusive guidance on the overall impact of FTAs on economic development, due to a few significant gaps in coverage, particularly regarding the revenue, distributional and social/environmental effects of FTAs.

### **Potential benefit to the United Kingdom if the EPA is brought into effect**

28. The EPA not being applied would result in our businesses losing access to preferences negotiated in the EPA. This would include the imposition of many tariffs on our imports from Kenya, and loss of access to preferential tariff rates which Kenya is due to implement for our exporters in the future.<sup>14</sup> Any benefits derived from Kenya's current duty-free access such as increases in trade flows may then be reversed.
29. It is unlikely that the entire effect of Kenya's current duty-free access would diminish. Tariffs would revert to MFN or GSP rates in some cases, but it could take longer for some of the other benefits to be lost. Some gains might endure even in the long-term. For example, business connections formed because of Kenya's current duty-free access might endure.
30. The size of the impact of not bringing the EPA into force would depend on the responsiveness of trade flows to increased costs brought about by the loss of access to preferential tariff rates.<sup>15</sup>

### **Immediate impact if not brought into effect**

#### **Impact of tariffs under current MFN and GSP rates<sup>16</sup>**

31. Much international goods trade takes place in products for which MFN rates are already zero. However, trade and association agreements provide additional opportunities by reducing tariffs on products where this is not the case. Kenya currently benefits from duty-free access to our markets due to the EU's MAR, and this access will be provided for beyond the end of the Transition Period after Brexit through the EPA. If the EPA is not brought into effect, tariffs on imports from Kenya would revert to MFN rates, other than where Kenya's exports benefit from reduced tariffs under the unilateral preference scheme that we are implementing when the Transition Period comes to an end (the "UK Generalised Scheme of Preferences ("UK GSP"), see paragraph 36). This would lead to an increase in duties on some of our imports from Kenya.
32. For 2021, the annual increase in duties on our imports from Kenya if the EPA is not brought into effect is estimated to be around £10.5 million.<sup>17</sup> This estimate assumes that the current

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<sup>14</sup> UK exports to Kenya currently face non-zero MFN tariffs in most tariff lines listed in annex II b and c of the EPA. For these tariff lines Kenya has agreed to progressive tariff liberalisation over 25 years from when the agreement is implemented, which will eventually lead to duty savings for UK exporters.

<sup>15</sup> Head K and Mayer T (2014), '[Gravity Equations - Workhorse, toolkit and cookbook](#)', *Handbook of International Economics*, 4, pp. 131-195.

Dhingra S, et al. (2018), '[Beyond Tariff Reductions: What Extra Boost from Trade Agreement Provisions?](#)' *CEP Discussion Paper No 1532*, LSE, pp. 1-38.

<sup>16</sup> Tariff schedules used in this impact assessment are the applied tariff rates, not bound tariff rates.

<sup>17</sup> DIT calculations using tariff data from the UK's GSP/MFN schedule and Eurostat trade data (accessed October 2020) for imports. Implied additional duties are calculated using the difference in GSP/MFN and preferential tariff rates (simple average tariffs at CN8 level) and the value of trade for each product at CN8

patterns of trade remain unchanged in future and that tariffs on these imports would otherwise revert to our “General Framework” GSP rates on certain eligible goods, and to our MFN tariff rates on ineligible goods<sup>18</sup>. Given these assumptions, this estimate should be treated as an indicative estimate of the magnitude of the trade barrier under this scenario.

33. Under the same assumptions, the largest implied increases in import duties would be in edible vegetables and certain roots and tubers (HS07) of around £4.8 million, Live trees and other plants including cut flowers (HS06) of around £4.2 million, and preparations of preparations of vegetables, fruit, nuts or other parts of plants (HS20) of around £1.0 million.
34. These estimates assume that all tariff preferences at present are fully utilised by exporters. DIT estimates suggest that 97% of our eligible goods imports from Kenya in 2019 were imported utilising Kenya’s current duty-free preferential access.<sup>19</sup> This means that the actual increase in duties could be lower than the estimates above.
35. The total duty which could apply on our imports would also depend on how quantities and prices of traded products adjusted to the imposition of tariffs. If our producers were not previously utilising the preferential rates or producers and consumers changed their behaviour in response to higher tariffs, this cost would be lower than estimated above.
36. We are implementing a unilateral preferences scheme, the UK GSP, when the Transition Period after Brexit comes to an end. Countries that currently benefit from preferential access to the EU through the EU Generalised Scheme of Preferences (“EU GSP”) will continue to receive the same access through the UK GSP, and we will follow the EU GSP eligibility criteria<sup>20</sup>. As Kenya is classified as a Lower-Middle Income Country by the World Bank, Kenya would be eligible for unilateral preferences under the General Framework of the UK GSP. This approach would provide tariff reductions, but not the same level of access as that offered by the EPA. Only eligible developing countries can benefit from the unilateral preferences provided by the UK GSP.
37. At present, British businesses face Kenya’s MFN tariffs for goods exports to Kenya. Annex II(a) of the EPA contains the preferential tariff liberalisation commitments which will apply to our exports to Kenya immediately once the agreement is applied. For all tariff lines within this annex Kenya has listed its applied MFN tariff rates as being 0%, so there would be no expected immediate increase to duties on our exports if the EPA is not brought into effect.

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level in 2019. Different approaches and data sources for this analysis are likely to yield different results. Calculations on export duties also assume trade is not eligible for duty relief under inward/outward processing rules, nor under specific plurilateral agreements such as those covering civil aviation and pharmaceuticals, nor WTO or preferential quotas. Calculations on import duties take into account inward/outward processing rules and trade which is eligible for relief under specific plurilateral agreements but not WTO or preferential quotas.

<sup>18</sup> Under EU GSP, Kenya has graduated out of unilateral preference eligibility for live trees and plants (HS06). The UK GSP will replicate the EU’s approach to product graduation and will continue to graduate horticultural goods from Kenya, so these tariffs would therefore revert to MFN rather than GSP tariffs. As with the EU GSP, there are other products for which the UK GSP tariff schedule offers no reduction in duties as compared to the UK MFN tariff schedule.

<sup>19</sup> DIT calculations using data from [Eurostat](#). Note that using a single year does not account for fluctuating trends in bilateral trade flows, which can be significant. In general, data on the preference utilisation of trade deals is not readily accessible and should be treated with caution. They indicate whether businesses trading in goods are benefitting from negotiated preferences, but do not tell us which or how many businesses are using these preferences. The data doesn’t cover services trade.

<sup>20</sup> HM Government will put in place a [trade preference scheme](#) from 1 January 2021 which maintains the preferential market access we currently offer to around 70 developing countries under the EU GSP. This includes granting duty-free, quota-free access to Least Developed Countries, which is a target in the UN’s Sustainable Development Goals and is in line with our commitments in the WTO.

In these tariff lines, covering around a third to a half of our goods exports to Kenya, exporters will however be guaranteed to face a 0% tariff rate in the future and will therefore be protected against any increases in Kenya's applied MFN tariffs<sup>21</sup>.

38. Tariff duties are transfers, where the cost to business is equal to the extra tariff revenue collected by the Exchequer and Kenya Government. However, there could be wider effects of increased costs of trade, including negative impacts on consumer choice, prices, and ultimately economic growth and welfare. Estimates of implied additional duties do not therefore constitute an estimate of the impact.

## **Businesses**

39. Additional duties could be absorbed by either British or Kenyan businesses (depending on whether it is the importer or exporter paying the duty), passed on to consumers, or existing trade patterns could be interrupted. This could impact on the competitiveness of British businesses, leading to disruptions in supply chains and job losses in the short term.
40. Businesses that rely on imports as part of their supply chains may be affected if import prices rise, including British exporters that rely on Kenyan inputs to export goods to the rest of the world. In 2016 (latest data), around 15.4% of the value added in British gross exports reflected imports from abroad, though the data does not provide how much of this added value comprises imports from Kenya.<sup>22</sup> Companies which rely on imports from Kenya would also become less competitive. However, given the small share of our trade with Kenya, it is expected that any impacts would be relatively small.

## **Consumers**

41. Imported products could be more expensive for consumers if retailers pass on additional duties to consumers through increases in domestic prices. This could disproportionately affect certain groups of consumers, depending on the specific sectors affected. Consumers might also see a reduction in the choice of products and services available. Given the small share of our trade with Kenya, this impact may be relatively small overall but could be noticeable on specific product lines.

## **Longer term impact if not brought into effect**

42. In the long run, we would forgo the longer-term benefits that the EPA would have brought us. This could result in our Gross Domestic Product (GDP) marginally decreasing in the long term if the agreement is not brought into effect. Given the small share of our trade with Kenya, it is expected that any impact on GDP would be relatively small.

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<sup>21</sup> DIT calculations using tariff data from the EAC [tariff liberalisation schedule](#) and 2019 UK-reported trade data from [WITS](#), both reported according to HS 2012 classification. Tariff lines at HS6 level of disaggregation covering 34% of UK exports to Kenya are listed in annex A only, while tariffs lines at HS6 covering 57% of UK exports to Kenya are listed in annex A and at least one other annex due to differential classification of products within the HS6 code at the national tariff line level of disaggregation.

<sup>22</sup> OECD, 2018. [Trade in Value Added \(TIVA\): Origin of value added in gross exports, December 2018](#). Experimental statistics.

## **Explanation of this Agreement, including Significant Differences between the EPA and the EAC-EU EPA**

43. This section provides a discussion of changes in the EPA. 'General Provisions' sets out the generic technical changes that have been made, consistent with the approach taken in all continuity agreements. 'Transitional Provisions' details specific changes that have been agreed in the main agreement, which take account of the development aims of the EPA and circumstances within Kenya.

## General Provisions

### Removal and replacement of references to the EU

44. Reference to the “European Union”, the “EU”, and all EU Treaties have been removed or replaced, as have references to the “European Community”.
45. References to “Member States” have been deleted or replaced with references to the “United Kingdom” (as appropriate).
46. References to EU institutions have been replaced with appropriate British-equivalent institutions or deleted (as appropriate).
47. Certain provisions relevant only to the EU, such as provisions which apply only to EU Outermost Regions, have been deleted, as have provisions relating to the accession of EU Member States and relating to EU languages (other than English and other languages which remain relevant to particular agreements).

### Territorial Application

48. The Territorial Application article sets out to which territories the EPA applies, and how it applies to them.
49. In the EAC-EU EPA, the Territorial Application article defined the territorial coverage of the agreement on the EU side by reference to the Treaty on European Union (“TEU”) and the Treaty on the Functioning of the European Union (“TFEU”, formerly the Treaty establishing the European Community). In the EPA, this has been replaced by an article which ensures that the agreement applies to the United Kingdom; and to the specified territories engaged in trade for whose international relations we are responsible in the same way as was intended in the EAC-EU EPA. Those territories can be separated into categories based upon the application of the EU Treaties under EU law to date. These categories of territory are:
  - a. Gibraltar, to which, broadly, provisions not relating to goods or customs apply; and
  - b. the Channel Islands and the Isle of Man, to which, broadly, provisions relating to tariffs and trade in goods apply.
50. The Overseas Territories (Anguilla; Bermuda; British Antarctic Territory; British Indian Ocean Territory; Cayman Islands; Falkland Islands; Montserrat; Pitcairn Islands; St Helena, Ascension and Tristan da Cunha; South Georgia and the South Sandwich Islands; Turks and Caicos Islands; and British Virgin Islands), benefit from some specific provisions on cumulation with respect to rules of origin.

### Title, Contracting Parties and Accessions

51. As ‘Least Developed Countries’, all other members of the East African Community (EAC) will continue to benefit from duty-free quota-free access after the Transition Period through our Generalised Scheme of Preferences Least Developed Countries Framework. This would not have been the case for Kenya.

52. Whilst the agreement covers trade in goods between Britain and Kenya today, it remains open to any other East African Community (EAC) country to join at any time. Article 143 of the EPA enables other members of the EAC to make an accession request to the EPA Council. The EPA Council would review the effects of an accession and may decide on any transitional or amending measures that may be necessary.
53. The title of the agreement has been changed from the official title of the EAC-EU EPA to reflect that only Kenya is signing the agreement at this point in time. As such, the title of the agreement is 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'. As the agreement allows other EAC members to join in the future, Article 144 allows for amendments to the title.
54. The joint depositaries for the agreement are the Governments of the United Kingdom and the Republic of Kenya. Should another member of the EAC accede to the agreement, then Article 138 (4) of the agreement allows for the depositary arrangements to be reviewed and amended.
55. Article 132 defines the Contracting Parties to the Agreement as the Republic of Kenya and any other Contracting Parties to The Treaty for the Establishment of the East African Community that accede to the Agreement, and the United Kingdom. In accordance with this Article, the Republic of Kenya and any other Contracting Parties to the Treaty for the Establishment of the East African Community are referred to in the Agreement as the 'EAC Partner State(s)'. Article 144 provides for references to 'EAC Partner State(s)' to be updated to 'EAC Partner States' as appropriate in future.

## **Development Cooperation**

56. The original EAC-EU EPA included references to the European Development Fund (EDF) which have been removed.
57. In line with the different approaches of Britain and the EU to programming for development cooperation, and in consideration of Kenya being the only EAC member signing the agreement at this point and the United Kingdom no longer being accompanied by the 27 EU Member States, Annex III of the EAC-EU EPA with the EAC EPA Development Matrix has also been removed and some Articles in Part V have been amended. In particular this includes a new paragraph to confirm that the cooperation provisions in Parts III to V reflect the ambitions of the Parties, but do not create any obligations on us to provide financial or non-financial support in specific areas.

## **Institutions and Committees**

58. All of the joint institutions provided for in the EAC-EU EPA have been replicated in full. The EPA establishes an EPA Council which is responsible for the implementation and operation of the EPA and has the power to take decisions in respect of matters assigned to it by the EPA.

## **Amendment Clauses**

59. Amendment clauses set out the process that must be followed if the parties agree to amend the provisions of the agreement after it enters into force. Though parties to an agreement are generally free to amend it as they deem necessary, amendment clauses serve to make the process clearer and more transparent.

60. There is a general amendment clause in the EAC-EU EPA and a number of clauses that provide for the amendment of parts of the agreement. In line with the principle of continuity of intended effect, we have sought to avoid changes to those provisions. In all but one instance, the language of these provisions has been fully replicated. For instance, under the EPA, the EPA Council may amend the provisions of the Rules of Origin Protocol; and the Special Committee on Customs Co-operation and Rules of Origin may also take decisions regarding derogations from the Rules of Origin protocol. The one exception is where, in negotiations, language was added to Article 40 of the Rules of Origin Protocol to clarify that the quota on tuna loins therein was subject to review by the Committee. This is a clarification rather than a deviation from the review provisions in the EAC-EU EPA.
61. A new provision (Article 144) has also been inserted providing for amendments to the agreement made on accession under Article 143. This new provision provides for changes to be made to the title of the agreement (noted above) and the list of parties to the agreement upon accession of any Contracting Party to the Treaty for the Establishment for the East African Community. It also provides for references to 'EAC Partner State(s)' to be updated as outlined in paragraph 55 above.

## **Entry into Force and Provisional Application**

62. For the EPA to enter into force, it must first be ratified by both the United Kingdom and Kenya. In our domestic law, before an agreement may be ratified, it must be laid before Parliament for scrutiny under the Constitutional Reform and Governance Act 2010 (CRaG Act).
63. Provisional application is a mechanism which enables the parties to apply a treaty 'provisionally' prior to it entering into force, provided that this is in accordance with the relevant party's domestic and constitutional law and that any necessary domestic implementing legislation is in place. In order to ensure that Parties are able to obtain the benefits of the Agreement at the end of the transition period, it may be necessary for the us to provisionally apply the treaty while the procedures set out in the CRaG Act are completed. A number of the existing EU agreements provide for provisional application and were provisionally applied by the us as an EU Member State.
64. The process for provisional application of this Agreement is set out in Article 138. Given that HM Government is seeking to maintain the effects of the existing EU arrangements as we leave the EU, provisional application would be a proportionate approach to manage the timing constraints during this unique period and would reduce the risk of businesses and consumers experiencing disruption as we leave EU.

## **Trade Remedies**

65. Trade remedies provide a safety net for domestic industry against unfair or injurious trading practices caused by dumped, subsidised or unexpected surges of imports of goods. Most WTO members have a trade remedies regime. We will operate our own regime at the end of the Transition Period.

## **Dispute Settlement**

66. The economic benefits of a free trade agreement can only be realised if the agreement is faithfully implemented and complied with. A dispute settlement mechanism in an agreement signals the parties' intention to abide by the agreement, thereby increasing business and



stakeholder confidence that commitments set out in the agreement can, and will, be upheld. The dispute settlement mechanism therefore provides an important deterrent function. It also provides an effective mechanism for enforcing those commitments, and for resolving any disputes that arise.

67. The EPA replicates the effects of the dispute settlement provisions in the EAC-EU EPA.

68. One of the impacts of replicating the dispute settlement chapters of existing or initialled EU trade agreements is that, in the event that a dispute arises, we will be directly responsible for any relevant costs associated with the dispute settlement process.

## Goods

69. Goods chapters in trade agreements set out the treatment and the level of access to the domestic market granted to the goods of each of the respective parties. Such provisions include setting tariff levels and quotas on various products, establishing agricultural safeguards and determining the rules of origin for goods to qualify for preferential treatment. Commitments on tariffs for both us and Kenya have been replicated from the EAC-EU EPA without changes. The duty-free access to our markets that Kenya currently benefits from under the EU's MAR will be provided for in the EPA, and the tariff preferences set out in the agreement for products being traded between Kenya and the United Kingdom will be the same as those signed but never brought into force in the EAC-EU EPA.

## Rules of origin

70. In free trade agreements, rules of origin are used to determine the economic nationality of a good. In order to qualify for preferential tariff rates, a good has to "originate" in one of the parties to the agreement. Trade agreements may also allow materials originating and/or processed in a country other than the exporting Party to count towards meeting the specific origin requirements for preferential treatment, a process known as "cumulation".

71. There are two main categories relevant to determining whether goods "originate" in the exporting country for the purposes of a free trade agreement:

- a. **Wholly obtained** – These are goods that are wholly obtained or produced entirely in a single country. Examples include (i) mineral products extracted from the soil and (ii) live animals born and raised there.
- b. **Substantial transformation** – These are goods that are made from materials which come from more than one country, and the origin is therefore defined as that of the country where the goods were last substantially transformed. This can be determined in three ways:
  - i. **Value added** – This type of rule requires that a particular proportion of the final value of the product be added in the exporting country.
  - ii. **Change in Tariff Classification ("CTC")** – This type of rule requires that the final product be sufficiently different from the imported materials such that it moves to a different tariff classification altogether.
  - iii. **Specific processing or manufacturing** – These rules typically apply where value added or CTC rules may not adequately determine originating status, and where specific processes are required to meet originating criteria.

72. During the Transition Period, all United Kingdom content is currently considered as “originating” in the EU and our exports are designated as “EU origin”. This means that originating materials from, and processing in, Britain and the rest of the EU can be used interchangeably in bilateral trade with existing EU trade agreement partners. This will no longer automatically be the case at the end of the Transition Period.
73. At this point, the designation of our exports will shift from “EU” originating to “UK” originating and EU content will (unless specific provision is made in new agreements) no longer count towards meeting the origin requirements for preferential treatment for either party. While we do not currently trade with Kenya on a reciprocal basis, this change in the designation of origin would have implications for goods traded between us, the EU and Kenya under the reciprocal terms of the transitioned EAC-EU EPA.
74. To address these implications, it has been agreed in the EPA that EU materials and processing can be recognised (i.e., cumulated) in British and Kenyan exports to one another. The EPA also enables cumulation to occur with other third countries where certain conditions are met (for example, where we agree a preferential trade agreement with an ACP State), replicating the mechanism provided for in the EAC-EU EPA.
75. The cumulation arrangements are set out in detail in Title II (Definition of the concept of ‘originating products’) of the rules of origin protocol and are subject to satisfying certain conditions specified in the agreement.
76. The text of the rules of origin Protocol concerning the definition of the concept of ‘originating products’ and methods of administrative cooperation can be found in Protocol 1 of the EPA and is based on Protocol 1 of the EAC-EU EPA.

## **Impact**

77. Currently Kenyan exporters are able to cumulate EU content and processing in their exports to Britain according to the rules of origin laid out in the EU’s MAR. If cumulation of EU content and processing for Kenya were not permitted under the EPA, some Kenya-based exporters might find themselves unable to gain the duty-free access to our market currently granted under the MAR and replicated under the EPA.
78. For example, Kenyan exporters to the United Kingdom who rely on EU content might be excluded from the benefit of the EPA and therefore have to revert to paying higher tariff rates under our GSP, if they continued using EU content, or they might have to review and reassess their existing supply and value chains as a result of this change to existing terms. The impact would, of course, vary across sectors.
79. The EPA provides only for trade between with Kenya and does not provide for either party’s direct trade with the EU, including, for example, where British and Kenyan exporters use content from each other in exports to the EU. The imposition of higher MFN tariffs on such exports, or GSP tariffs where applicable, may have a minor negative impact on trade flows.

## **Origin Quotas**

80. Origin Quotas, also known as derogations, allow a volume of specific product lines to be exported under a more lenient rule of origin. They allow exporters who may have struggled to meet the origin requirements in the list of product-specific rules to secure preferential access up to a specified volume threshold.

81. Some derogations must be granted automatically after an application is made to the Committee, so long as the quota applied for falls within a specified volume threshold. The only derogation of this kind in the EAC-EU EPA is an inbound derogation for tuna. The volume threshold within which this derogation will be granted was agreed upon in relation to the size of the EU market. In order for products to be able to benefit from the opportunity to use this derogation in trade with Kenya, this quota threshold needs to be present in the EPA.
82. We have re-sized the threshold to reflect the bilateral trade flows observed in recent years and the fact that we are a smaller market than the EU28. In order to preserve future market access opportunities for British and Kenyan businesses, it was agreed to use a proxy based on trade flow data. Should other member(s) of the EAC accede to the EPA in the future, the revised quota would remain the same.
83. Table A sets out the new quota threshold within which an application for a derogation for tuna products will be automatically approved under the EPA.

**Table A**

	<i>EAC-EU EPA</i>	The EPA
	<i>Tuna origin derogation quota under the EAC-EU EPA, tonnes</i>	<b>Resized tuna origin derogation quota – under the EPA, tonnes</b>
<b>Tuna loins</b>	<i>5,000</i>	681

84. The nature of the impact of this will depend on a number of factors, including existing trading patterns and the response of domestic consumers and businesses to the possible change in tariff.
85. Noting the very low historic trade, we expect that the overall, immediate, impact on British producers and consumers resulting from this approach to be limited.

### **Bilateral Safeguards – Sugar**

86. The EAC-EU EPA includes a provision that allows one Party to apply a bilateral safeguard duty on imports from the other Party if certain conditions are satisfied, including for example if a "disturbance" in a product market arises (the 'bilateral safeguard'). By way of special provision, a disturbance in the EU sugar market for this purpose may be determined to have arisen if the price of sugar falls below a certain level (the 'trigger price mechanism'). In line with the principle of technical replication we are transitioning these provisions and establishing a trigger price mechanism for our sugar market.

88. Data is not, however, available to determine what the appropriate level for the trigger price mechanism should be in the Britain this time. This is particularly the case given recent volatility in sugar prices following the reform of the EU domestic sugar regime. To ensure that the EPA is operable upon entry into force, we have agreed with our partners to suspend the trigger price mechanism temporarily. We have agreed that the Parties will review the price trigger after entry into force of the EPA. The price trigger set in the EAC-EU EPA will reapply after a period of five years, unless the Parties reach agreement on a replacement trigger price.
89. We do not envisage that suspending the safeguard mechanism will have an impact. Given the substantial convergence of British and EU sugar prices with those prevailing on world markets, it is unlikely that it will be appropriate to deploy safeguards in the foreseeable future. Indeed, the EU has not previously needed to utilise this mechanism to implement safeguard duties for sugar. The temporary suspension of the trigger price mechanism does not prevent us from applying a bilateral safeguard duty to sugar imports based on the standard procedures applicable in the EPA.

## **Cotonou Agreement**

90. The EAC-EU EPA contains a range of references to the Partnership Agreement between the EU and the ACP Group of States (“the Cotonou Agreement”). The Cotonou Agreement provides a framework for the EU’s political, development and trade relations with these 79 developing countries. Now that the United Kingdom has left the EU, the Cotonou Agreement will cease to apply to the United Kingdom at the end of the transition period.
91. Some references to the Cotonou Agreement contained in the EAC-EU EPA can be deleted without any change to the effect of the EPA. For others, we have sought to ensure continuity of the effect of the references in the EAC-EU EPA to the Cotonou Agreement which are relevant to our trade relationship with Kenya. Those references include the objectives and essential and fundamental elements set out in the Cotonou Agreement and the ability to take appropriate measures in the event of a violation of those elements. For these references we have replicated the relevant provisions of the Cotonou Agreement in the EPA as Annex III.
92. Annex III of the EPA replicates language from the Cotonou Agreement and the EAC-EU EPA to ensure that rights and responsibilities, democratic principles and the rule of law, and good governance remain as essential and fundamental elements of the EPA. If needed, appropriate measures can be taken in the event of a violation of these elements. Annex III also outlines the principles that will apply to any development cooperation provided to Kenya to support implementation of the EPA. The overall result is a replication of the effects of the Cotonou references in the EAC-EU EPA.

## **Expanding the agreement**

93. The EPA replicates the clause in the EAC-EU EPA which lists areas for future negotiations to expand the agreement. These include trade in services; competition policy; investment and private sector development; trade, environment and sustainable development; intellectual property rights; transparency in public procurement; and any other areas the parties may agree upon.
94. The parties undertake to conclude negotiations on these matters within five years of entry into force.

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