



REPUBLIC OF KENYA 01 MAR 2016



MINISTRY OF EAST AFRICAN AFFAIRS, COMMERCE AND TOURISM/ MINISTRY OF AGRICULTURE, LIVESTOCK AND FISHERIES

CABINET MEMORANDUM ON THE RATIFICATION OF THE EAC PROTOCOL ON SANITARY AND PHYTOSANITARY (SPS) MEASURES

1.0 OBJECTIVE OF THE MEMORANDUM



The objective of the memorandum is to inform the Cabinet about the East African Community (EAC) Protocol on Sanitary and Phytosanitary (Food Safety, Animal and Plant health) Measures and to request the Cabinet to approve its ratification.

2.0 BACKGROUND OF THE SUBJECT MATTER

The Treaty for the Establishment of the East African Community provides that the objectives of the Community is to develop programmes and policies aimed at widening and deepening cooperation among the Partner States.

In furtherance of these objectives, the EAC Protocol on Sanitary and Phytosanitary Measures was developed. Sanitary and phytosanitary measures are interventions applied to protect human, animal or plant life from diseases arising from biological or chemical substances or from the entry and spread

of disease causing organisms within the territories of the Partner States.

The process leading to the development of the Protocol started pursuant to a decision of the first meeting of the EAC Sectoral Council on Agriculture and Food Security held on 8th September 2006. The Protocol, developed in accordance with Article 108 of the EAC Treaty and Article 38 (1) and (2) of the EAC Customs Union Protocol, was negotiated by experts from the EAC Partner States. Stakeholder participation was sought at all stages in the preparation of the Protocol.

After completion, it was approved by the 14th Summit of the EAC Heads of State on 30th November 2012 and thereafter signed by the Partner States respective Ministers present at the 5th Meeting of the Sectoral Council on Agriculture and Food Security held on 12th July 2013.

At its 27th Meeting held from 27th – 31st August 2013, the EAC Council of Ministers urged Partner States to expedite the ratification of the Protocol and deposit instruments of ratification with the EAC Secretary General by June 2014 (EAC/CM 27/ Directive 19).

The principal objective of the Protocol is to adopt and enforce sanitary and phytosanitary measures in order to minimize their negative effects on trade. The Protocol elaborates rules for application which relate to the use of sanitary and phytosanitary measures and recognizes the rights of importing countries to implement these measures.

The specific objectives of the Protocol are too;

- a) Promote trade in goods and agricultural commodities within the Community and between the Community and other trading partners;
- b) Promote within the Community, the implementation of the principles on harmonization, equivalence, regionalization, transparency and risk assessment in the Agreement on the Application of Sanitary and Phytosanitary measures;
- c) Strengthen cooperation and coordination of sanitary and phytosanitary measures and activities at national and regional levels based on common understanding and application within the Community; and
- d) Enhance the sanitary and phytosanitary status through science based approach in the Community.

In order to implement the Protocol, the Republic of Kenya will be expected to cooperate with the other EAC Partner States in the harmonization of plant health, animal health and food safety measures.

This would be achieved by among others, the designation of appropriate authorities to implement the Protocol, facilitation of smooth movement of food and agricultural commodities through appropriate border posts controls, information sharing through the establishment and maintenance of a regional management system, undertaking to jointly seek technical assistance to build capacity for compliance and harmonization of relevant policies and laws.

The Protocol is consistent with the Constitution and is not contrary with any constitutional values and objectives. Its ratification will not necessitate any amendment(s) to the Constitution. The legislative intervention anticipated for the implementation of the Protocol is the development of a regional legislation to be enacted by the East African Legislative Assembly.

Although reservation is permitted under the EAC Treaty, there are no reservations recommended in this protocol since Kenya stands to benefit from its ratification and implementation. Thus, the Republic of Kenya does not propose to raise any reservation.

3.0 ANALYSIS OF THE PROBLEM

Agriculture is the backbone of the Kenyan economy. In the recent past, the East African Community region has faced challenges in sustaining food security for its growing population. This has been caused in part, by harm caused to human, animal and plant life by the spread of disease causing organisms or biological or chemical substances; for instance the aflatoxin problems in maize imports to Kenya. Cross border trade in agricultural products aimed at smoothing out gluts and shortages in the region has also been negatively impacted on. Among the EAC Partner States, Kenya more prone to shortages than gluts and therefore stands to benefit more from improved Agricultural commodities trade in the region. However, as trade increases, caution must be exercised to ensure food safety to humans and protection of animals and plants against cross border disease and pests spread. This is anticipated to be realized through implementation of this SPS Protocol.

Currently, Kenya imports 3 million bags of maize, 6 million bags of beans and 3 million bags of rice. On the other hand, Kenya is advanced in seed production whose trade can boost its earnings. In the absence of this protocol, Non tariff barriers keep coming up to curtail the free flow of trade.

In order to address these challenges, the EAC Treaty seeks to promote co-operation in the agricultural sector with the objective of achievement of food security and rational agricultural production within the Community. Of relevance to this Protocol is Article 108 providing for co-operation in the control of animal and plant diseases, such as Trans-boundary animals and plants diseases as well as invasive pests. In addition, wild animals and plant diseases and pests such as Cyprus aphids that threatened to wipe out Cyprus trees from this region during the 20th century.

Further, the 4th EAC Development Strategy 2011/2012-2015/2016 identifies harmonization of sanitary and phytosanitary standards as a strategic intervention in the priority area of promotion of agricultural productivity and value addition for increased cross border trade and sustainable food security.

The harmonization of sanitary and phytosanitary measures will improve the human, animal and plant life in all the Partner States and will ensure the rational development of the agricultural sector and increase quality production to ensure food security and free trade in agricultural products within the Community.

To this end, the implementation of the Protocol will be beneficial in addressing the identified problem through application and harmonization of sanitary and phytosanitary standards in the Community.

4.0 OPTIONS OF THE WAY FORWARD

Given the need to protect the human, animal and plant health and life in all the Partner States as a means of ensuring food security and free trade in agricultural products, it is necessary to strengthen the existing institutional framework for adoption and enforcement of sanitary and phytosanitary measures. It is expected that the implementation of the Protocol will result in;

- a) Increased trade in goods and agricultural commodities within the Community and between the Community and other trading partners;
- b) Harmonization of plant health, animal health and food safety measures;
- c) Harmonization of national policies, laws and regulations on sanitary and phytosanitary measures;
- d) smooth movement of food and agricultural commodities through appropriate border posts controls; and
- e) Establishment of relevant institutional frameworks for enforcement of sanitary and phytosanitary measures within the Community.

To date, the Protocol has been adopted by the EAC Council of Ministers, approved by the EAC Heads of State Summit and

subsequently signed by Partner States respective Ministers present at the 5th Meeting of the Sectoral Council on Agriculture and Food Security held on 12th July 2013.

In order to allow for the entry into force, it is proposed that the Republic of Kenya ratifies the EAC Protocol on Sanitary and Phytosanitary Measures alongside the other Partner States. The ratification of the Protocol would positively affect our national interests in the achievement of food security and increased cross border trade in agricultural products.

This Protocol is a regional trade matter that will not have any implications on matters relating to counties.

5.0 FINANCIAL IMPLICATIONS

Since the implementation of this Protocol will be incorporated into existing institutional frameworks and therefore no drastic budgetary changes are envisaged in terms of financial implications. In addition, the protocol burden is mostly regional rather than Kenya.

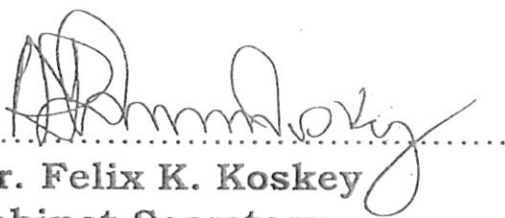
6.0 RECOMMENDATIONS TO CABINET

The Cabinet is requested to;

- a) take note of the contents of this Cabinet Memorandum;
- b) approve ratification of the EAC Protocol on Sanitary and Phytosanitary Measures;

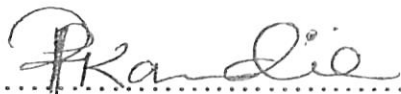
c) direct the Cabinet Secretary, Foreign Affairs to submit the Protocol and a memorandum on the Protocol to the Speaker of the National Assembly

Signed



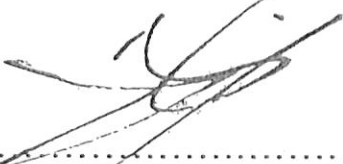
Mr. Felix K. Koskey
Cabinet Secretary
Ministry of Agriculture, Livestock & Fisheries

Date: 15.1.014



Mrs. Phyllis J. Kandie
Cabinet Secretary
Ministry of East African Affairs,
Commerce & Tourism

Date: 23.12.13



Prof. Githu Muigai
Attorney General
Office of the Attorney General &
Department of Justice

Date: 13.1.14

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Mr. Henry K. Rotich
Cabinet Secretary
The National Treasury


Date:



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**EAST AFRICAN COMMUNITY PROTOCOL
ON SANTARY AND PHYTOSANITARY (SPS)
MEASURES**

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ARRANGEMENT OF ARTICLES

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PURSUANT TO THE PROVISIONS OF CHAPTER XVIII OF THE TREATY FOR THE ESTABLISHMENT OF THE EAST AFRICAN COMMUNITY, THE PROVISIONS OF THE PROTOCOL ON SANITARY AND PHYTOSANITARY MEASURES ARE HEREBY SET FORTH:

PREAMBLE

WHEREAS the Republic of Burundi, the Republic of Kenya, the Republic of Rwanda, The United Republic of Tanzania and the Republic of Uganda are parties to the Treaty for the Establishment of the East African Community (hereinafter referred to as "the Partner States");

RECOGNIZING that under the provisions of Article 151 of the Treaty, the Partner States undertook to conclude such Protocols as may be necessary in each area of co-operation, which shall spell out the objectives and scope of, and institutional mechanisms for, co-operation and integration;

RECALLING that Articles 105 to 110 of Chapter 18 of the Treaty provide for Partner States to cooperate in agriculture and food security;

CONSCIOUS that Article 108 of the Treaty provides for cooperation in the control of plant and animal diseases and Article 38 of the Protocol on the Establishment of the East African Community Customs Union requires the Partner States to take cognisance of cooperation in sanitary and phytosanitary measures in order to facilitate trade within the community and other trading partners;

NOTING that the harmonisation of sanitary and phytosanitary measures will improve the human, animal and plant life or health situation in all the Partner States and will ensure the rational development of the agricultural sector, and increase quality production to ensure food security and safety and free trade in agricultural products within the Community and other trading partners;

ACKNOWLEDGING the important contribution of international standards, guidelines and recommendations as well as harmonisation of sanitary and phytosanitary measures in the Community;

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HEREBY AGREE AS FOLLOWS:

Article 1

Interpretation

In this Protocol, except where the context otherwise requires,

“animal” includes mammals, birds, bees, aquatic animals and wild fauna;

“area of low pest prevalence” means an area, as identified by the competent authority, in which a specific pest occurs at low levels and which is subject to effective surveillance, control or eradication measures;

“biological control agent” means a natural enemy, antagonist or competitor, or other organism, used for pest control;

“border post” means any official point of entry or exit, and includes an airport, or any port, railway station or road check-point open to regional and international trade of commodities, where import food and agricultural commodities inspections can be performed;

“Community” means the East African Community established by Article 2 of the Treaty;

“competent authority” means a government institution with the mandate to regulate and enforce sanitary and phytosanitary measures;

“contaminant” means any biological or chemical agent, foreign matter or other substance not intentionally added to food, which may compromise food safety;

“Council” means the Council of Ministers established by Article 9 of the Treaty;

“infected zone” means a zone in which the absence of the disease under consideration has not been demonstrated by the requirements specified in international standards;

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“international standards, guidelines and recommendations” means-

- (a) for food safety, the standards, guidelines and recommendations established by the Codex Alimentarius Commission relating to biological, chemical or physical hazards including food additives, veterinary drug and pesticide residues, heavy metals, methods of analysis and sampling, and codes and guidelines of hygienic practice;
- (b) for animal health and zoonoses, the standards, guidelines and recommendations developed under the auspices of the World Organisation for Animal Health;
- (c) for plant health, the international standards, guidelines and recommendations developed under the auspices of the Secretariat of the International Plant Protection Convention in cooperation with regional organizations operating within the framework of the International Plant Protection Convention; and
- (d) for other matters not covered under paragraphs (a) to (c), appropriate standards, guidelines and recommendations promulgated by other relevant international organizations open for membership to all the Partner States, as may be identified by the Committee;

“establishment” means the premises where animals are kept;

“food” means any substance whether processed, semi processed or raw, which is intended for human consumption and includes drinks, chewing gum and any substance which has been used in manufacture, preparation or treatment of food but does not include cosmetics or tobacco or substances used only as drugs;

“food safety” means assurance that food will not cause harm to the consumer when prepared and eaten according to its intended use;

“living modified organisms” means any living organism that possesses a novel combination of genetic material obtained through the use of modern biotechnology;

“modern biotechnology” means the application of-

- (a) in vitro nucleic acid techniques, including recombinant deoxyribonucleic acid (DNA) and direct injection of nucleic acid into cells or organelles; or

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- (b) fusion of cells beyond the taxonomic family, that overcome natural physiological reproductive or recombination barriers and that are not techniques used in traditional breeding and selection;

“pest” means any specie, strain or biotype of plants, animals or pathogenic agents injurious to plants, or plant products, animal or animal products;

“pest free area means” an area in which a specific pest does not occur as demonstrated by scientific evidence and in which, where appropriate, this condition is being officially maintained;

“plant” means living plants and parts thereof including seeds and germplasm;

“plant product” means un-manufactured material of plant origin including grain, and those manufactured products that by their nature or that of their processing, may create a risk for the introduction and spread of pests;

“plant quarantine facility” means an official station for holding plants or plant products in quarantine;

“risk assessment” means the evaluation of the likelihood of entry, establishment or spread of a pest or disease within the territory of an importing Partner State according to the sanitary or phytosanitary measures which might be applied, and of the associated potential biological and economic consequences; or the evaluation of the potential for adverse effects on human or animal health arising from the presence of additives, contaminants, toxins or disease-causing organisms in food, beverages or feedstuffs;

“sanitary and phytosanitary measure” means any measure applied-

- (a) to protect animal or plant life or health within the territory of a Partner State from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms;
- (b) to protect human or animal life or health within the territory of a Partner State from risks arising from biological, chemical and physical substances including additives, contaminants, toxins or disease-causing organisms;

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- (c) to protect human life or health within the territory of a Partner State from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests; or
- (d) to prevent or limit other damage within the territory of a Partner State from the entry, establishment or spread of pests;

“Secretariat” means the Secretariat of the East African Community established by Article 9 of the Treaty;

“Secretary General” means the Secretary General of the Community provided for under Article 67 of the Treaty;

“surveillance” means an official process which collects and records data on pest occurrence or absence by survey, monitoring or other procedures;

“quarantine station” means a facility under the control of a veterinary authority, where an animal or group of animals is maintained in isolation, with no direct or indirect contact with other animals, in order to undergo observation for a specified length of time and, if appropriate, testing and treatment

“technical assistance” means provision of technologies, research and infrastructure, advice, credits, donations and grants, training and equipment;

“traceability of animals” means the ability to follow an animal or a group of animals during all stages of its life; and

“Treaty” means the Treaty for the establishment of the East African Community.

Article 2

Objectives

The objectives of this Protocol are to-

- (a) promote trade in food and agricultural commodities within the Community and between the Community and other trading partners;

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- (b) promote within the Community, the implementation of the principles on harmonisation, equivalence, regionalisation, transparency and risk assessment in the Agreement on the Application of Sanitary and Phytosanitary Measures;
- (c) strengthen cooperation and coordination of sanitary and phytosanitary measures and activities at national and regional level, based on common understanding and application within the Community; and
- (d) enhance the sanitary and phytosanitary status through science based approach in the Community.

Article 3

Scope of Cooperation

1. This Protocol shall apply in the Partner States cooperation in the adoption of sanitary and phytosanitary measures.
2. For the purposes of paragraph 1, the Partner States shall cooperate in the harmonisation of plant health, animal health and food safety measures.

Article 4

Plant Health

1. The Partner States undertake to cooperate in matters of plant health.
2. For purposes of paragraph 1, the Partner States shall -
 - (a) harmonise the inspection and certification procedures of plant and plant products;
 - (b) regulate the importation, research, development and use of living modified organisms and products of modern biotechnology and biological control agents;
 - (c) provide a framework for the management of pests;

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- (d) ensure the safe movement of plants and plant products;
- (e) build systems for surveillance, pest listing, pest risk analysis, pest reporting, and designation of pest free areas and areas of low pest prevalence;
- (f) provide appropriate facilities and strengthening capacity for undertaking phytosanitary measures;
- (g) harmonise import and export documents and procedures;
- (h) harmonise and enforce plant quarantine measures;
- (i) develop a framework for the design and management of plant quarantine facilities; and
- (j) harmonise the registration, identification and traceability of plants and plant products and agro-inputs.

Article 5

Animal Health

1. The Partner States undertake to cooperate in matters of animal health.
2. For purposes of paragraph 1, the Partner States shall -
 - (a) provide notification of the existence of animal diseases through prompt and transparent sharing of information on trade-sensitive diseases as well as identification of infected zones;
 - (b) harmonise the inspection, certification and approval of establishments, hatcheries, breeding centres, abattoirs, dairies, animal products, and feedstuff;
 - (c) develop a framework for the design and management of animal quarantine stations;
 - (d) standardize sanitary documents including import permits and veterinary certificates;
 - (e) harmonise systems for registration, identification and traceability of animals and animal products;
 - (f) harmonise control of veterinary drugs; and

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(g) harmonise animal welfare measures.

Article 6


Food Safety

1. The Partner States undertake to cooperate in matters of food safety.
2. For purposes of paragraph 1, the Partner States shall -
 - (a) harmonise food inspection, certification and approval procedures;
 - (b) harmonise safety requirements for food derived from genetically modified organisms;
 - (c) provide guidelines for the safe movement of food;
 - (d) harmonise surveillance systems for food-borne hazards in the Community;
 - (e) harmonise the import requirements for food ;
 - (f) notify food-borne hazards through prompt and transparent sharing of information;
 - (g) harmonise and strengthen food traceability systems; and
 - (h) determine the tolerance levels for additives, contaminants, toxins and disease causing organisms in food.

Article 7

Competent Authorities

The Partner States shall designate competent authorities for the purpose of this Protocol.

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Article 8

Border Posts Control

The Partner States undertake to facilitate the smooth movement of food and agricultural commodities by-

- (a) identifying and declaring the border posts that permit movement of food and agricultural commodities across the region;
- (b) conducting joint inspection and clearance of food and agricultural commodities; and
- (c) developing the infrastructure and building capacity in border posts.

Article 9

Sharing of Information and Expertise

The Partner States undertake to cooperate in the sharing of information and expertise related to sanitary and phytosanitary measures through the establishment and maintenance of a regional information management system including-

- (a) a list of contact points for plant health, animal health and food safety;
- (b) a portal on sanitary and phytosanitary measures; and
- (c) any other relevant information.

Article 10

Technical Assistance

The Partner States undertake to jointly seek technical assistance to build capacity for compliance with sanitary and phytosanitary measures.



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Article 11 Harmonization of Policies, Laws and Regulations

1. The Partner States undertake to harmonise their policies, laws and programmes to facilitate the achievement of the objectives of this Protocol.
2. The Council shall issue directives for purposes of implementing this Article.

Article 12 Institutional Arrangements

The Council shall establish and confer powers and authority upon such institutions as the Council may deem necessary to implement the provisions of this Protocol.

Article 13 Regulations, Directives and Decisions

The Council shall from time to time make regulations, issue directives and make decisions as may be necessary for the effective implementation of this Protocol.

Article 14 Dispute Settlement

Any dispute between two or more Partner States arising from interpretation or application of this Protocol shall be settled in accordance with the provisions of the Treaty.

Article 15 Amendment of the Protocol

This Protocol may be amended by the Partner States in accordance with the provisions of Article 150 of the Treaty.

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Article 16
Entry into Force

This Protocol shall enter into force upon ratification and deposit of instruments of ratification with the Secretary General by all the Partner States.

Article 17
Depository and Ratification

1. This Protocol and all instruments of ratification shall be deposited with the Secretary General who shall transmit certified true copies of the Protocol and instruments of ratification to all the Partner States.
2. The Secretary General shall register this Protocol with all regional and international organizations responsible for the implementation of sanitary and phytosanitary measures.

IN WITNESS WHEREOF, WE, the undersigned have appended our signatures hereto

DONE AT ARUSHA, TANZANIA this 12th JULY day of JULY in the year 2013

For and on behalf of the Republic of Kenya	For and on behalf of the Republic of Rwanda	For and on behalf of the Republic of Burundi	For and on behalf of the United Republic of Tanzania	For and on behalf of the Republic of Uganda
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Felix K. Koske

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