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THE EAST AFRICAN COMMUNITY CUSTOMS MANAGEMENT
(COMPLIANCE AND ENFORCEMENT) REGULATIONS, 2012

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**THE EAST AFRICAN COMMUNITY CUSTOMS
MANAGEMENT (COMPLIANCE AND
ENFORCEMENT) REGULATIONS, 2012**

IN EXERCISE of the powers conferred by section 251 of the East African Community Customs Management Act, 2004, the Council of Ministers makes these Regulations this 28th day of November, 2011.

**PART I
PRELIMINARY PROVISIONS**

1. These Regulations may be cited as the East African Community Customs Management (Compliance and Enforcement) Regulations, 2012. Citation

2. In these Regulations, unless the context otherwise requires— Inter-pretation

“Act” means the East African Community Customs Management Act, 2004;

“administrative assistance” means measures taken by the Directorate or Customs on behalf of another customs administration in cooperation for the enforcement of customs laws;

“assistance” includes any type of assistance between Customs of Partner States that may be required in the implementation of these Regulations;

“authorised economic operator” includes an importer, exporter, customs agent, warehouse operator, or any other person involved in the international movement of goods and has been approved by the Customs administration as complying with World Customs Organisation supply chain security standards;

“clearance of goods” means the process of accomplishment of Customs formalities under the Act, which is subjected to any goods under customs control;

“competent authority” means an authority in a Partner State authorised to perform a specified function;

“customs offence” means an act or action which contravenes the Act or these Regulations;

“information” means any data, processed or analysed, and any documents, reports or any other communication in any format and includes, electronic, certified or authenticated copies of these;

“international trade supply chain” means the processes involved in the movement of goods from the country of origin or supply to the country of final destination;

“party under audit” means an owner of goods under audit or any related party;

“person” means a natural or a legal person;

“personal data” means any data concerning an identified or identifiable person;

“post-clearance audit” means an audit conducted subsequent to the release of cargo from Customs control, to verify the accuracy and authenticity of declarations, the person’s commercial data, business system, records and books;

“premises” includes place of residence, business, operations site, production or business facility, and any place where related products, records, documents, accounting journals, computer files and other information are stored or located;

“requested Customs” means the Customs from which assistance is requested;

“requesting Customs” means the Customs which requests for assistance.

PART II ADMINISTRATION

3. (1) The Directorate shall be responsible for coordinating and monitoring the implementation of these Regulations.

Coordination
and
monitoring
enforcement
of Customs
law.

(2) For the purposes of sub regulation (1), the Directorate shall—

- (a) in liaison with Customs, other Partner State relevant authorities and relevant international bodies, compile and disseminate information on customs offences;
- (b) facilitate the exchange of information and publications on illicit trafficking of goods;
- (c) co-ordinate training for proper officers on prevention, investigation and suppression of customs offences;
- (d) co-ordinate sensitisation programmes for stakeholders on customs offences and compliance with Customs law;
- (e) ensure and co-ordinate quality control of customs operations; and
- (f) co-ordinate administrative assistance between Customs.

(3) The Customs of a Partner State shall upon request—

- (a) forward to the Directorate information on customs offences committed within the Partner State; and
- (b) forward to the Directorate information on administrative measures taken in relation to transit goods and transfer of goods from the Partner State to other Partner States.

(4) The Directorate may communicate the information provided under this Part to the Customs of the other Partner States where necessary and within reasonable time.

4. (1) The Commissioner of a Partner State shall upon request—

- (a) provide the Commissioner of another Partner State with administrative assistance for the proper application of Customs law, for the prevention, investigation and suppression of customs offences and to ensure the security of the international trade supply chain; and
- (b) exchange information with the Commissioners of other Partner States, in the enforcement of the Act.

(2) The Commissioner who provides assistance or exchanges information on customs offences under sub-regulation (1) shall, notify the Directorate.

(3) The Commissioner of a Partner State shall designate an appropriate officer in the Customs to be the contact point to communicate with the Directorate.

(4) The Directorate shall, where necessary, communicate any information provided under sub-regulation (2) to the other Partner States.

Admini-
strative
assistance
between
Partner
States

5. (1) A request for administrative assistance or information under regulation 4 shall be in writing accompanied by any information deemed useful for the purpose of complying with the request.

(2) Notwithstanding sub regulation (1) a request may be made verbally.

(3) Where a request is made verbally, the requesting Customs shall, within two working days, put the verbal request in writing or electronically.

(4) A request made under this regulation shall include—

(a) the name of the requesting Customs;

(b) the subject matter giving a brief description of the case under review and the applicable legal and administrative provisions;

(c) the type of assistance requested;

(d) the reasons for the request; and

(e) the names and addresses of the persons to whom the request relates, if known.

(5) Where the requesting Customs requires that a particular procedure or methodology be followed, the requested Customs shall comply with the request, subject to the legal and administrative provisions of the requested Customs.

6. The Customs of a Partner State shall, on its own initiative and without delay, supply assistance to the Customs of another Partner State, where there is a possibility of substantial damage to the economy, public health, public security, security of the international trade supply chain or other vital interests of that other Partner State.

*East African Community Customs Management
(Compliance and Enforcement) Regulations, 2012*

Information
for
application
and
enforcement
of Customs
law

7. (1) The Commissioner of a Partner State shall, upon request or on his or her own initiative, provide the Commissioner of another Partner State with information relevant for the proper application of Customs laws and the prevention, investigation and suppression of customs offences and to ensure the security of the international trade supply chain.

(2) The information in sub-regulation (1) may include—

(a) new and effective enforcement techniques;

(b) new trends, and means or methods used to commit customs offences;

(c) goods known to be subject to customs offences, as well as the transport and storage methods used in respect of these goods;

(d) persons known to have committed customs offences or suspected of being about to commit customs offences; and

(e) any other data that may assist Customs with risk assessment for control and facilitation purposes.

Information
relating to
Customs
offences

8. The Commissioner of a Partner State shall, upon request or on his or her own initiative, provide the Commissioner of another Partner State with information on planned, ongoing or completed activities which provide reasonable proof that a customs offence has been committed or is about to be committed in the territory of that other Partner State.

Advance
exchange of
information

9. (1) The Customs may exchange information in advance of the arrival of any consignments into a Partner State to ensure the security of the regional or international trade supply chain.

(2) The information referred to in sub-regulation (1) shall comprise the following data elements—

- (a) consignor or consignee;
- (b) description of goods and tariff code number;
- (c) United Nations dangerous goods code number, where applicable;
- (d) type of packages identification;
- (e) quantity;
- (f) any other relevant data.

10. (1) A Customs of a Partner State may request the Customs of another Partner State to provide surveillance and patrol services in respect of planned, ongoing or completed activities, where there is reasonable belief that a customs offence has or is about to be committed in that other Partner State.

Surveillance
and patrol

(2) Upon request, the requested Customs shall provide the requesting Customs with information on the goods, means of transportation and premises known to have been used or suspected of being used to commit customs offences in the territory of the requesting Partner State.

(3) The Customs of a Partner State may maintain surveillance and patrol on its own initiative if it has reasonable belief that any planned, ongoing or completed activities, in the Partner State, appear to constitute a customs offence in another Partner State.

11. (1) The Customs of a Partner State may, permit the movement of uncustomed or suspected goods into, through and out of its territory with the knowledge and under the control of the Customs of the other Partner State, with a view to investigate and combat customs offences.

Controlled
delivery

(2) Where the movement in sub-regulation (1) cannot be carried out under the control of the Customs of the Partner State, that Customs shall collaborate with the competent authority of the Partner State or transfer the case to the competent authority which shall provide feedback upon completion of the investigation of the case.

(3) Notwithstanding this regulation, controlled delivery shall not be allowed through a Partner State without the knowledge of the Commissioner.

Recovery of
goods and
duty

12. The Customs of a Partner State may, upon request, provide Customs of another Partner State with assistance for the recovery of goods and duty.

Experts and
witnesses

13. The Customs of a Partner State may, upon request, authorize its officer to appear before a court or tribunal in another Partner State as an expert or a witness in a matter related to the application of Customs laws.

Presence of
officers in
territory of
another
Partner
State

14. (1) The Customs of a Partner State may, for the purpose of investigating a customs offence, request the Customs of another Partner State to authorize the presence of its officer in the territory of the Customs of that other Partner State to—

- (a) examine relevant documents and any other information in respect of the customs offence and be allowed to make and take copies of the documents; or
- (b) be present during an inquiry relevant to the requesting Customs, conducted by the requested Customs.

(2) The presence of the officer referred to in sub-regulation (1) shall be authorised subject to any terms and conditions that the requested Customs may impose.

(3) The officer referred to in sub-regulation (1) shall at all times furnish proof of his or her official identity and his or her official status as granted in the territory of the requested Customs.

(4) The officer shall, while in the territory of a requested Partner State, enjoy the same protection as accorded to its own officers.

15. (1) Where a Customs of a Partner State requests for any assistance from another Customs, the costs involved in the transactions relating to that request shall be incurred by the requesting Customs. Costs

(2) Notwithstanding sub-regulation (1), the Commissioners may agree on how the costs incurred shall be met.

PART III CROSS-BORDER CO-OPERATION

16. (1) A proper officer of the Customs of a Partner State may, upon request to the Customs of another Partner State, pursue an individual committing or suspected to be committing a customs offence into the territory of that Partner State. Pursuit of
offenders

(2) A proper officer who pursues an individual under sub-regulation (1) may, subject to any conditions imposed by the requested Customs, conduct a joint pursuit in the territory of the Partner State of the requested Customs.

17. (1) A proper officer of the Customs of a Partner State may, upon request to the Customs of another Partner State, conduct surveillance of an individual committing or suspected to be committing a customs offence into the territory of that Partner State. Cross-
border
surveillance

(2) Where a proper officer keeps a person under surveillance under sub-regulation (1), the proper officer may, with prior authorisation of the Partner State of the requested Customs and subject to any conditions the concerned Partner States may agree upon, conduct joint surveillance in the territory of the Partner State of the requested Customs.

Joint
investig-
ations

18. (1) The Customs of a Partner State may request the Customs of another Partner State to authorise the proper officers of the requesting Customs to jointly investigate a customs offence in the territory of the requested Partner State.

(2) The investigations under this regulation shall be carried out in accordance with the relevant laws and procedures of the requested Partner State.

Control and
investigation
team

19. (1) The Customs of a Partner State shall, jointly with a Customs of another Partner State, constitute a control and investigation team to detect, investigate and prevent customs offences.

(2) The Customs of the Partner States shall determine the guidelines on the control and investigation team constituted under sub-regulation (1).

(3) The activities of the control and investigation team shall be carried out in accordance with the relevant laws and procedures of the Partner State in whose territory the team carries out its activities.

PART IV POST CLEARANCE AUDIT

Scope of
post
clearance
audit

20. The scope of the post clearance audit procedure shall include—

(a) imported goods;

(b) exported goods;

- (c) bonded facilities and related goods;
- (d) duty remission, refund or rebates, drawbacks and exemptions; and
- (e) any other matters related to goods that are subject to the Customs law.

21. (1) The Customs may, when conducting post clearance audit, require the party under audit to provide all records, documents, accounting journals and computer files or database information related to the exported, imported, transferred or manufactured goods. Conduct of post clearance audit

(2) The Commissioner may, for purposes of sub-regulation (1) and, subject to any conditions he or she deems necessary, designate any officer to conduct the audit.

(3) The Commissioner shall notify the party under audit fifteen days prior to the commencement of the audit, specifying the documents to be availed.

22. The Commissioner shall provide information for purposes of post clearance audit, when requested by the Customs of another Partner State. Exchange of post clearance audit information

23. Post clearance audit shall be conducted in accordance with the guidelines prescribed in the Community post clearance audit manual. Post clearance audit manual

24. The party under audit shall provide adequate facilities to enable the post clearance audit exercise at the party's premises as the Commissioner may require. Party under audit to provide facilities

PART V AUTHORISED ECONOMIC OPERATORS

25. A person shall operate as an authorised economic operator if that person satisfies the following requirements— Requirements for admission

- (a) has been established and operated in the Partner State for at least one year;
- (b) has not committed an offence under the Customs laws or any other tax laws of the Partner States over a period of one year;
- (c) has demonstrated record of compliance for a period of not less than one year;
- (d) has a good financial credibility which is sufficient to fulfill his or her commitments with due regard to the characteristics of the type of business activity; and
- (e) has satisfied any other conditions and requirements as the Commissioner may deem necessary.

Management
of
commercial
records

26. An authorised economic operator shall—

- (a) maintain a system of records which permits Customs to conduct any required audit;
- (b) give Customs full access to the necessary records;
- (c) have internal records access and control systems which are satisfactory to the approving Customs administration;
- (d) appropriately maintain and make available to Customs any authorizations, powers of attorney and licenses relevant to the importation or exportation of merchandise;
- (e) within any limitations provided in national legislation, properly archive records for later production to Customs;

- (f) employ adequate information technology security measures which will protect against access by unauthorised persons; and
- (g) comply with any other requirement as the Customs may deem necessary.

27. (1) An authorised economic operator shall—

Consultation,
cooperation
and
communic-
ation

- (a) provide to Customs clearly identified and readily accessible points of contact for all matters of compliance and enforcement;
- (b) engage in an open and continuing mutual exchange of information with Customs;
- (c) notify customs of any unusual or suspicious cargo documentation or abnormal requests for information on shipments;
- (d) provide timely notification to Customs and any other relevant authorities on discovery of illegal, suspicious or unaccounted for cargo; and
- (e) provide any information or assistance that the operator may deem necessary.

(2) The Customs shall—

- (a) establish procedures for dealing with queries or suspected Customs offences;
- (b) engage in regular consultation with all parties involved in the international trade supply chain and discuss other matters of mutual interest; and
- (c) upon request of an authorised economic operator, provide specific feedback on the performance of the authorised economic operator in addressing security issues related to the international supply chain.

Education,
training and
awareness

28. The Customs and authorised economic operators shall develop mechanisms for the education and training of personnel regarding security policies.

Security
measures

29. The Customs shall establish requirements and mechanisms for authorised economic operators to improve the security for cargo, conveyance, premises, personnel and the global trade supply chain .

Crisis
management
and incident
recovery

30. (1) The authorised economic operators shall establish crisis management and recovery procedures, which shall include planning and disaster recovery measures.

(2) An authorised economic operator shall develop and document, in conjunction with the appropriate authorities, contingency plans for emergency security situations and for disaster recovery, which shall include periodic training of employees and testing of emergency contingency plans.

Measure-
ment,
analysis and
improve-
ment

31. (1) An authorised economic operator shall plan and implement monitoring, measurement, analysis and improvement processes in order to—

- (a) assess consistency with these regulations;
 - (b) ensure integrity and adequacy of the security management system; and
 - (c) identify potential areas for improving the security management system in order to enhance supply chain security.
- (2) The authorised economic operators shall—
- (a) regularly undertake assessments of the security risks in their operations and take appropriate measures to mitigate those risks;

- (b) conduct regular self-assessments of their security management system;
- (c) fully document the self-assessment procedure and those of responsible parties; and
- (d) include in the review assessment results, feedback from the designated parties and recommendations for possible enhancements to be incorporated in a plan for the forthcoming period to ensure continued adequacy of the security management system.

PART VI USE AND MANAGEMENT OF INFORMATION

32. (1) Any information communicated under these Regulations shall be used by the requesting Customs for the purposes for which it is sought.

Use of
information

(2) Notwithstanding sub-regulation (1), the Customs that furnishes information under this regulation may authorise its use for other purposes or by any other competent authority in the territory of the requesting Customs, including its use in criminal investigations, prosecutions or proceedings, subject to any terms and conditions that it may specify.

(3) The requesting Customs shall keep a record of all information including personal data exchanged under these Regulations for a period of 5 years.

33. Any information communicated under these Regulations shall be protected and treated as confidential.

Confid-
entiality and
protection
of
information

34. (1) Where the information provided under this Part includes personal data, the personal data shall not be furnished to any other competent authority without the consent of the requested Customs.

Personal
data
protection

(2) The requesting Customs shall, upon request, inform the requested Customs how the data was used and the results achieved.

(3) The requested Customs shall ensure that the personal data furnished is lawful, accurate and authenticated.

Central
automated
information
system

35. (1) The Directorate shall have a central automated information system in which shall be kept—

- (a) information on persons known to have committed customs offences;
- (b) the Customs intelligence information; and
- (c) any other relevant Customs related information.

(2) The information kept under sub-regulation (1) shall be for the purpose of—

- (a) risk management;
- (b) prevention, detection, investigation and suppression of Customs offences;
- (c) ensuring the security of the international trade supply chain; and
- (d) any other Customs related intervention.

Management
of central
automated
information
system

36. (1) The Commissioner of a Partner State shall designate an officer in the respective Customs, to be the liaison officer for the central automated information system.

(2) The central automated information system may be accessible to any other officer authorised by the Commissioner of a Partner State.

37. The Customs of the Partner States shall provide to the Directorate data on—

- (a) the case reference, where applicable;
- (b) the goods concerned;
- (c) the routing and means of transportation of the goods concerned;
- (d) the means used to commit the Customs offence;
- (e) indication whether the goods concerned are detected at importation, exportation, in transit or inland;
- (f) the means of detection of the Customs offence; and
- (g) any other relevant data.

Information to be provided to central automated information system

38. For the purpose of regulation 35(1), the Customs of a Partner State shall, communicate to the Directorate the following information—

- (a) on natural persons—
 - (i) family name, maiden name, given names and aliases, and former names, as appropriate;
 - (ii) date and place of birth;
 - (iii) nationality;
 - (iv) type and number of identity documentation;
 - (v) sex;
 - (vi) country of residence;
 - (vii) nature of offence;
 - (viii) occupation;
 - (ix) distinguishing features;
 - (x) prior history or information on suspects;

Information on natural and legal persons

- (xi) registration numbers of the means of transport;
 - (xii) indicators of level of danger that a person may pose;
 - (xiii) specific reason for inclusion of data;
 - (xiv) criminal organisation belonged to;
 - (xv) known associates; and
 - (xvi) any other relevant information;
- (b) on legal persons—
- (i) name, trade name;
 - (ii) country of registration;
 - (iii) registration number;
 - (iv) date of registration;
 - (v) registered office;
 - (vi) trading address;
 - (vii) nature of business;
 - (viii) nature of offence;
 - (ix) prior history or information on suspected legal persons;
 - (x) specific reason for inclusion of data;
 - (xi) names of principal officers or employees; and
 - (xii) any other relevant information.

39. The Committee shall establish technical and operational procedures for the central automated information system which shall include, procedures for—

Procedures
for the
operation of
central
automated
information
system

- (a) communication regarding information of the central automated information system;
- (b) access to the central automated information system;
and
- (c) modification of information in the central automated information system.

40. The Directorate shall establish procedures for the safety and security of the central automated information system for the purpose of—

Respon-
sibility for
security of
central
automated
information
system

- (a) preventing unauthorised access to equipment used for the processing of information in the central automated information system;
- (b) preventing unauthorised access to the central automated information system;
- (c) ensuring that it is possible to check and establish that the officers designated by the Commissioners have access to the central automated information system;
- (d) ensuring that it is possible to check and establish which information is introduced into the central automated information system, by whom, and to monitor queries, if any;
- (e) preventing the unauthorised entry, reading, copying, amendment or deletion of information from the central automated information system during the communication of data and the transportation of data media, or

(f) any other information communication technology security aspects.

Obtaining
information
from a third
party

41. A proper officer may obtain information from a third party if he or she is of the opinion that such information is necessary for the proper application of the Act.



EAST AFRICAN COMMUNITY

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