A Bill for an Act

ENTITLED

THE EAST AFRICAN COMMUNITY CUSTOMS MANAGEMENT (AMENDMENT) ACT, 2006.


ENACTED by the East African Legislative Assembly and assented to by the President of the United Republic of Tanzania, the President of the Republic of Kenya and the President of the Republic of Uganda as follows—

1. This Act may be cited as the East African Community Customs Management (Amendment) Act, 2006.

2. The East African Community Customs Management Act, 2004 hereinafter referred to as the “Principal Act” is amended in section 48 (4) by inserting the words “of their release” between the words “days” and “be” appearing in the second line.

3. The Principal Act is amended in section 57(1) by substituting for the word “three” appearing in the second line the word “six”.

4. The Principal Act is amended in section 112(2) by substituting the phrase “31st December, 2006” with the phrase “31st December, 2008”.

Short title. Amendment of section 48 (4). Amendment of section 57 (1). Amendment of section 112 (2).
MEMORANDUM OF OBJECTS AND REASONS

The Principal object of this Bill is to amend the East African Customs Management Act to facilitate the discharge of the functions of the Directorate of customs as provided for in the Act and to facilitate smooth implementation of the Act.

In the course of implementing of the Act, certain operational problems arose which have necessitated the proposed amendments.

1.0 Section 48(4)

The amendment is meant to clarify when the 14 days provided for in this section commences. The release of goods from a customs area where they are entered for warehousing is an appropriate threshold for the determination of the removal of goods to a warehouse. This allows decongestion of customs ports and customs areas and also expedites the clearance of goods. It should be noted that the automated customs clearance system and the manual system makes documentary release and physical release synonymous.

2.0 Section 57 (1)

The proposed amendment is intended to extend the total allowable warehousing period from six to nine months in order to facilitate trade. The extension allows importers to sell or transfer ownership of goods while still in the warehouse. This facility enables importers to re-export goods from the warehouse and to remove bulk cargo from a warehouse on part consignment basis over the given period.

3.0 Section 112 (2)

The proposed amendment of Section 112 is to extend the application of preferential tariff treatment under COMESA and SADC from 31st December 2006 to 31st December 2008. This amendment will enable:
(a) EAC to develop and conclude comprehensive trade arrangements as a bloc at the regional and multilateral level;

(b) EAC to actively participate in the negotiations of the Economic Partnership Agreements with EU which are scheduled to be concluded in 2007, to commence in 2008. This will allow EAC as a bloc to ensure that her interests are taken care of in the ongoing negotiations including the EAC Common External Tariff structure;

(c) Partner States to review and realign their membership in COMESA and SADC given that the COMESA Customs Union will commence in 2008. This will be in accordance with WTO requirement where countries are not allowed to belong to more than one Customs Union;

(d) Implementation of the directive made by the Heads of State at their First Extra Ordinary Summit held in Kampala on 11th April, 2002 and subsequent decisions of the Council in 2004 for EAC to negotiate as a bloc within four years from 2004;

(e) The finalization of the on-going work on negotiating as a bloc where a study has been completed and the study report has been circulated to Partner States for comments;

(f) The finalization of the development of:

   (i) a comprehensive plan of action on the mechanism for trade arrangements with COMESA and SADC, and
(ii) a concept paper on the preparatory framework detailing EAC negotiating position and available options.

DATED this 26th day of September, 2006.

John Arap Koech,
Chairperson,
Council of Ministers.
The following are sections of the Act which the Bill seeks to amend.

48. (1) Where any goods entered to be warehoused are delivered into the custody of the person in charge of a warehouse, the proper officer shall, save where the Commissioner otherwise directs, take a particular account of such goods, whether or not any account thereof has been previously taken.

(2) The proper officer shall, in taking such account, enter in the book for that purpose the name of the aircraft or vessel or the registered number of the vehicle, as the case may be in which the goods were imported or, in the case of the postal articles, the parcel post reference, the name of the owner of such goods, the number of packages, the mark and number of each package, and the value and particulars of the goods.

(3) After such account has been taken and the goods deposited in the warehouse in accordance with the direction of the proper officer, such officer shall certify at the foot of the account that the entry and warehousing of the goods is complete; and such goods shall from that time be considered goods duly warehoused.

(4) Subject to section 50, all goods entered to be warehoused, shall within fourteen days be removed to the warehouse for which they are entered and deposited therein in the package in which they were imported:

Provided that—

(i) in the case of bulk cargo or goods destined for a bonded warehouse located far away from the port of discharge, the Commissioner may allow for such longer period exceeding forty-five days;
(ii) where any goods are permitted to be repacked, skipped, bulked, sorted, lotted or packed, in accordance with section 40, then such goods shall be deposited in the packages in which they were contained when that account thereof was taken.

(5) Any person who contravenes subsection (4) commits an offence and any goods in respect of which such offence has been committed shall be liable to forfeiture.

57. (1) All warehoused goods which have not been removed from a warehouse in accordance with this Act within three months from the date on which they were warehoused may, with the written permission of the Commissioner, be re-warehoused for a further period of three months.

Provided that in the case of—

(a) wines and spirits in bulk warehoused by licensed manufacturers of wines and spirits; or

(b) goods in duty free shop; or

(c) new motor vehicles warehoused by approved motor assemblers and dealers,

the commissioner may, in addition to the period of re-warehousing permitted in this subsection, allow for further period of re-warehousing as he or she may deem appropriate.

(2) where any goods required to be re-warehoused under subsection (1) are not so re-warehoused, then they shall be sold by public auction after one month’s notice of such sale has been given by the proper officer by publication in such manner as the Commissioner may deem fit:

Provided that any such goods which are of a perishable nature may be sold by the proper officer without notice, either by public auction or private treaty, at any time after the expiry of the initial warehousing period.
(3) Where any goods are sold under the provisions of this section, then the proceeds of such sale shall be applied in the order set out below in the discharge of—

(a) the duties;
(b) the expenses of the sale;
(c) any rent and charges due to the Customs or to the warehouse keeper;
(d) the port charges; and
(e) the freight and any other charges.

(4) Where, after proceeds of the sale have been applied in accordance with subsection (3), there is any balance, then such balance shall, if the owner of the goods makes application within one year from the date of the sale, be paid to such owner, or, in any other case, be paid into the Customs revenue.

(5) Where any goods are offered for sale in accordance with this section and cannot be sold for a sum to pay all duties, expenses, rent, freight, and other charges, they may be destroyed or disposed of in such manner as the Commissioner may direct.

112. (1) Preferential tariff treatment shall be applied to goods—

(a) imported under the COMESA and SADC arrangements in the Partner States as prescribed in the Partner States' legislation;

(b) imported under any other tariff arrangement that may be approved by the Council.

(2) Preferential tariff treatment shall not be applied to goods referred to in subsection (1) (a) after 31st December, 2006.