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Boss
13/11/2025



THIRTEENTH PARLIAMENT – FOURTH SESSION – 2025

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY AND
COOPERATIVES

REPORT

ON THE RATIFICATION OF THE COMPREHENSIVE ECONOMIC
PARTNERSHIP AGREEMENT (CEPA) BETWEEN THE GOVERNMENTS OF
KENYA AND THE UNITED ARAB EMIRATES (UAE)

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 13 NOV 2025	
DAY: <u>Thurs</u>	
TABLED BY:	Hon Marianne Kitany MP, VC PC, Trade, Ind & Coop
CLERK-AT THE-TABLE:	P Muga 

Published by:

The Directorate of Departmental Committees
Clerk's Chambers
Parliament Buildings
NAIROBI

November, 2025

TABLE OF CONTENTS

LIST OF ANNEXURES (VOLUME II OF THE REPORT)	4
CHAIRPERSON'S FOREWORD	5
1.0 PREFACE	7
1.1 Introduction.....	7
1.2 Establishment and Mandate of the Committee	7
1.3 Committee Subjects	7
1.4 Committee Membership.....	8
1.5 Committee Secretariat	10
2.0 BACKGROUND	11
2.1 Introduction.....	11
2.2 Overview of the Memorandum	12
2.3 Overview of chapters.....	13
2.4 Ratification by the National Assembly	16
2.5 Observations.....	17
3.0 ANALYSIS OF THE COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT	18
3.1 Legal Provisions on Treaty-Making and Ratification.....	18
3.2 Role of the National Assembly in Treaty Making and Ratification.....	19
3.3 Consideration by the National Assembly	20
3.4 PUBLIC PARTICIPATION ON THE AGREEMENT.....	24
4.0 STAKEHOLDER VIEWS ON THE COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT BETWEEN THE UNITED ARAB EMIRATES OF THE ONE PART, AND THE REPUBLIC OF KENYA, A MEMBER OF THE EAST AFRICAN COMMUNITY, OF THE OTHER PART	26
4.1 Kenya Revenue Authority.....	26
4.2 Office of the Attorney General and Department of Justice.....	27
4.3 Kenya Accreditation Service (KENAS).....	32
4.4 The Council of Governors	33
4.5 Tea Board of Kenya	37
4.6 Eco-news Africa (ENA).....	38
4.7 The Kenya Institute for Public Policy Research and Analysis.....	50
4.8 Institute of Economic Affairs	51
4.9 The Pharmacy and Poisons Board (PPB).....	52
4.10 Pharmaceutical Society of Kenya (PSK)	53
4.11 Kenya Pharmaceutical Distributors Association (K.P.D.A.).....	54
4.12 The Kenya Private Sector Alliance (KEPSA)	56
5.0 COMMITTEE OBSERVATIONS	58
6.0 FINDINGS	63
7.0 COMMITTEE RECOMMENDATION	64

LIST OF ABBREVIATIONS

AIDS	Acquired Immunodeficiency Syndrome
BETA	Bottom-Up Economic Transformation Agenda
CEPA	Comprehensive Economic Partnership Agreement
COG	Council of Governors
EAC	East Africa Community
GCC	Gulf Cooperation Council
GDP	Gross Domestic Product
IEA	Institute of Economic Affairs
IP	Intellectual Property
KIPPRA	Kenya Institute of Public Policy Research and Analysis
KRA	Kenya Revenue Authority
MTP IV	Medium Term Plan No. Four
MSMEs	Micro, Small and Medium Enterprises
TRIPs	Trade-Related Aspects of Intellectual Property Rights
UAE	United Arab Emirates
WTO	World Trade Organisation

LIST OF ANNEXURES (VOLUME II OF THE REPORT)

- Annexure 1: The adoption list of the report
- Annexure 2: Minutes on the adoption proceedings of the Committee
- Annexure 3: Advertisement notifying the public participation and submission of memoranda
- Annexure 4: Invitation letters to stakeholders
- Annexure 5: Submissions received from the public and stakeholders
- Annexure 6: The Memorandum on the Ratification of the Comprehensive Economic Partnership Agreement (CEPA) between the Government of Kenya and the United Arab Emirates (UAE)

CHAIRPERSON'S FOREWORD

The Comprehensive Economic Partnership Agreement (Hereinafter referred to as "the CEPA") between the governments of Kenya and the United Arab Emirates was laid before the House on Tuesday, 11th March 2025 and committed to the Departmental Committee on Trade, Industry and Cooperatives for consideration and reporting to the House.

The CEPA was presented to the National Assembly for ratification according to the provisions of the Constitution and the Treaty Making and Ratification Act of 2012, having been signed on 14th January 2025 between the governments of Kenya and the UAE.

The UAE is a key trading partner for Kenya, ranking as the country's sixth-largest export market and second-largest import source. Over the past nine years, trade between the two nations has grown by 169.24%, reaching Ksh. 383.68 billion in 2022. Kenya exports products such as tea, meat, fruits, vegetables, and flowers to the UAE, while key imports from the UAE include petroleum oils, telephone sets, and cement clinker. Additionally, the UAE is part of the Gulf Cooperation Council (GCC), which allows it preferential trade access to several Middle Eastern countries. This agreement, therefore, offers Kenya an opportunity to expand its trade footprint in the region.

Pursuant to the provisions of Article 118 (1) (b) of the Constitution on public participation and Section 8(3) of the Treaty Making and Ratification Act of 2012, the Committee placed advertisements in two local dailies of nationwide circulation, on Thursday 20th March, 2025, requesting for submissions of memoranda on the CEPA. The Committee received memoranda from the public and stakeholders.

The Committee recommends that the House **APPROVES the Ratification** of the Comprehensive Economic Partnership Agreement between the Republic of Kenya, of the one part, and the United Arab Emirates, of the other part **WITH RESERVATIONS on Article 13:33 on the Protection of Undisclosed Test or other Data for Pharmaceutical Products** pursuant to Section 8(4) of the Treaty Making and Ratification Act, Cap. 4D and Standing Order 170A(4)(c)(ii) of the National Assembly Standing Orders.

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support provided during its Sittings. The Committee also wishes to thank the public and stakeholders who submitted their comments on the CEPA. Finally, I wish to express appreciation to the Honourable Members of the Committee and the Committee Secretariat for their immense contribution towards the preparation and production of this Report.

Pursuant to Section 8(4) of the Treaty Making and Ratification Act, Cap. 4D and Standing Order 199, it is my pleasant duty to present the Report of the Departmental Committee on Trade, Industry and Cooperatives on its consideration of the Treaty on the Establishment of the Comprehensive Economic Partnership Agreement between the Republic of Kenya and the United Arab Emirates.



Hon. Benard Masaka Shinali, MP

Chairperson, Committee on Trade, Industry and Cooperatives

1.0 PREFACE

1.1 Introduction

1. The Departmental Committee on Trade, Industry and Cooperatives received a memorandum from the Ministry of Investments, Trade, and Industry regarding the National Assembly on the Kenya-UAE Comprehensive Economic Partnership Agreement (CEPA), dated 21st February 2025, and signed by the Hon. Lee Kinyanjui, Cabinet Secretary, Ministry of Investments, Trade, and Industry. This memorandum informed the National Assembly about the Kenya-United Arab Emirates (UAE) Comprehensive Economic Partnership Agreement (CEPA) and seeks approval to commence the ratification process. The agreement aims to enhance trade, investment, and economic cooperation between the two countries.

1.2 Establishment and Mandate of the Committee

2. The Departmental Committee on Trade, Industry and Cooperatives is established under Standing Order 216 and is mandated to, among others, “**examine treaties, agreements and conventions**”.

1.3 Committee Subjects

3. The subject matter of the Departmental Committee on Trade, Industry and Cooperatives is stated in the Second Schedule of the National Assembly Standing Orders and includes, among others, “trade and commerce”.
4. In line with the assigned subject matter and in executing this mandate, the Committee oversees the following Ministries, Departments, and Agencies (MDAs):
 - i. State Department for Cooperatives
 - ii. State Department for Trade
 - iii. State Department for Industry
 - iv. State Department for MSMEs Development
 - v. State Department for Investment Promotion

1.4 Committee Membership

5. The House constituted the Committee on Thursday, 27th October, 2022 and comprises the following Members:

Chairperson

Hon. Benard Masaka Shinali, MP

Ikolomani Constituency

Orange Democratic Movement (ODM)

Vice Chairperson

Hon. Marianne Jebet Kitany, MP

Aldai Constituency

United Democratic Alliance (UDA)

Hon. Robert Githinji Gichimu, MP

Gichugu Constituency

United Democratic Alliance (UDA)

Hon. Dr. Wilberforce Ojiambo Oundo, MP

Funyula Constituency

Orange Democratic Movement (ODM)

Hon. Dr. Beatrice Kahai Adagala, MP

Vihiga County

Amani National Congress (ANC)

Hon. Joyce Kamene, MP

Machakos County

Wiper Democratic Movement–Kenya

Hon. Joshua Mbithi Mutua Mwalyo, MP

Masinga Constituency

Independent Member

Hon. Anthony Tom Oluoch, MP

Mathare Constituency

Orange Democratic Movement (ODM)

Hon. Guyo Adhe Wario, MP

North Horr Constituency

KANU

Hon. Samuel Sakimba Parashina, MP

Kajiado South

Orange Democratic Movement (ODM)

Hon. Amos Maina Mwago, MP

Starehe Constituency

Jubilee Party

Hon. Adams Korir Kipsanai, MP

Keiyo North Constituency

United Democratic Alliance (UDA)

Hon. Michael Wainaina Wambugu, MP

Othaya Constituency

United Democratic Alliance (UDA)

Hon. Alfred Kiprono Mutai, MP

Kuresoi North Constituency

United Democratic Alliance (UDA)

Hon. John Mbwire, MP

Taita Taveta Constituency

Wiper Democratic Movement–Kenya

1.5 Committee Secretariat

6. The Committee Secretariat comprises the following technical staff:

Mr. Abenayo Wasike

Principal Clerk Assistant I/Head of Secretariat

Ms. Carolyne Musyoka

Hansard Reporter II (Clerk Asst)

Ms. Evelyn Kerubo

Clerk Assistant III

Ms. Doreen Karani

Senior Legal Counsel

Ms. Priscilla Saidi

Research Officer III

Ms. Pauline Sifuma

Hansard Officer II

Ms. Priscilla Wangu

Fiscal Analyst II

Ms. Florence Wanja

Protocol Officer

Mr. Daniel Psirmoi

Media Relations Officer III

Ms. Peris Kaburi

Serjeant At Arms

Mr. Cosmas Akhonya

Audio Officer

2.0 BACKGROUND

2.1 Introduction

7. The memorandum states that Kenya and the UAE signed the CEPA on January 14, 2025, in Abu Dhabi. The agreement covers several areas, including trade in goods, investment, digital trade, customs procedures, intellectual property rights, and economic cooperation. **However, tariff liberalization, which would determine market access, has been excluded from the current agreement and will be negotiated later when all East African Community (EAC) partner states are ready.**

2.1.1 Why This Agreement Is Important

8. The memorandum states that the UAE is a key trading partner for Kenya, ranking as the country's sixth-largest export market and second-largest import source. Over the past nine years, trade between the two nations has grown by 169.24%, reaching Ksh. 383.68 billion in 2022. Kenya exports products such as tea, meat, fruits, vegetables, and flowers to the UAE, while key imports from the UAE include petroleum oils, telephone sets, and cement clinker. Additionally, the UAE is part of the Gulf Cooperation Council (GCC), which allows it preferential trade access to several Middle Eastern countries. This agreement, therefore, offers Kenya an opportunity to expand its trade footprint in the region.

2.1.2 Commitments Under the Agreement

9. To implement the Agreement, Kenya must meet several obligations. In terms of policy and legislation, the agreement aligns with the National Trade Policy, but it requires ratification by Parliament under the Treaty Making and Ratification Act of 2012. Administratively, a Joint Committee will be established to oversee implementation, with the Cabinet Secretary responsible for international trade serving as the chair. Financially, the agreement does not create immediate costs, as market access negotiations have been postponed.

2.1.3 Benefits for Kenya

10. The memorandum states that the agreement is expected to bring significant benefits to Kenya. It will expand export opportunities, especially for products like meat, horticulture, tea, and coffee, to the UAE and Middle Eastern markets. Trade

facilitation measures will improve customs procedures, making it easier for Kenyan businesses to trade with the UAE. The Agreement is also expected to attract increased foreign investment in sectors such as ICT, healthcare, and agriculture while fostering technical cooperation and budget support from the UAE.

2.1.4 Possible Challenges & Solutions

11. The memorandum states that despite the benefits, some challenges may arise, particularly increased competition for local industries from UAE products. To address this, the agreement includes provisions for trade remedies, such as safeguards and anti-dumping measures, to protect local businesses from unfair competition. Additionally, an amendment clause allows for modifications to the Agreement if necessary, while a **mandatory five-year** review ensures periodic assessment of its effectiveness. Should the agreement prove unfavorable, Kenya retains the right to **withdraw with a one-year written notice**.

2.2 Overview of the Memorandum

2.2.1 Introduction

12. The Comprehensive Economic Partnership Agreement between Kenya and the United Arab Emirates (UAE) was signed on **14th January 2025** in **Abu Dhabi** and aims to enhance trade, investment, and economic cooperation.

2.2.2 Objectives of the Agreement

13. The Agreement aims to:
 - (a) Strengthen trade and investment relations between Kenya and the UAE.
 - (b) Provide a framework for cooperation in trade, investment, and economic matters.
 - (c) Facilitate trade by reducing non-tariff barriers and improving customs procedures.
 - (d) Support small and medium enterprises (SMEs) and digital trade.
 - (e) Enhance cooperation in sectors such as agriculture, energy, and technology.

2.2.3 Key Provisions of the Agreement

14. The agreement includes provisions covering:
 - (a) Trade in goods and services.
 - (b) Rules of origin and customs procedures.

- (c) Sanitary and phytosanitary measures.
- (d) Investment promotion and protection.
- (e) Intellectual property rights and digital trade.
- (f) Dispute resolution mechanisms.

2.3 Overview of chapters

15. The provisions relate to the establishment of the agreement, objectives, relation to other agreements, transparency, and market access considerations. Article 1.1 establishes a **Comprehensive Economic Partnership Agreement between the UAE and Kenya to deepen economic cooperation between the Parties**. The clause states that UAE and Kenya will use their best endeavours towards negotiating a **Comprehensive Economic Partnership Agreement between the UAE and the East African Community**.

16. **Chapter 2 contains provisions regulating matters relating to Trade in Goods.** The provisions regulate matters relating to; scope and coverage; national treatment; import and export restrictions; goods re-entered after repair or alteration; temporary admission of goods; export duties and charges; fees and formalities; customs valuation; non-tariff measures; administration of trade regulations; agricultural export subsidies; price controls; and, the rendezvous clause.

17. **Chapter 3 contains provisions regulating matters relating to Rules of Origin.** The provisions regulate matters relating to: origin criteria; cumulation; minimal operations and processes; direct transport rule; certificate of origin; and verification procedures.

18. **Chapter 4 contains provisions regulating matters relating to Customs Procedures and Trade Facilitation.** The provisions regulate matters relating to simplification of procedures, risk management, and advance rulings.

19. **Chapter 5 contains provisions regulating matters relating to Sanitary and Phytosanitary Measures.** The provisions regulate matters relating to general provisions, objectives, scope, and risk assessment.

- 20. Chapter 6 contains provisions regulating matters relating to Technical Barriers to Trade.** The provisions regulate matters relating to standards and technical regulations and conformity assessment.
- 21. Chapter 7 contains provisions regulating matters relating to Trade Remedies.** Article 7.1 contains provisions regulating matters relating to Global Safeguard Measures. Article 7.2 contains provisions regulating matters relating to Bilateral Safeguards.
- 22. Chapter 8 contains provisions regulating matters relating to Competition Policy.** Article 8.1 contains provisions regulating matters relating to antitrust and merger control.
- 23. Chapter 9 contains provisions regulating matters relating to Trade in Services.** Article 9.1 contains provisions regulating matters relating to General Provisions. Article 9.2 contains provisions regulating matters relating to market access.
- 24. Chapter 10 contains provisions regulating matters relating to Digital Trade.** Article 10.1 contains provisions regulating matters relating to General Principles
- 25. Chapter 11 contains provisions regulating matters relating to Small and Medium-Sized Enterprises (SMEs).** Article 11.1 contains provisions regulating matters relating to cooperation and information sharing
- 26. Chapter 12 contains provisions regulating matters relating to Economic and Development Cooperation.** Article 12.1 contains provisions regulating matters relating to Scope and Objectives. Article 12.2 contains provisions regulating matters relating to development financing
- 27. Chapter 13 contains provisions regulating matters relating to Intellectual Property.** Article 13.1 contains provisions regulating matters relating to Definitions. Article 13.2 contains provisions regulating matters relating to National Treatment. Article

13.3 contains provisions regulating matters relating to copyrights and trademarks.

- 28. Chapter 14 contains provisions regulating matters relating to the Administration of the Agreement.** Article 14.1 contains provisions regulating matters relating to the Joint Committee.
- 29. Chapter 15 contains provisions regulating matters relating to exceptions.**
- 30. Chapter 16 contains provisions regulating matters relating to Dispute Settlement.** Article 16.1, 2 and 3 contains provisions regulating matters relating to consultations, mediation, and arbitration. Chapter 16 outlines a structured process for resolving disputes between parties fairly and efficiently. The process begins with a party requesting information about an issue before formally raising a dispute. If a disagreement arises, the parties must first attempt to resolve it through consultations in good faith. If consultations fail, they may engage in mediation or conciliation as alternative dispute resolution methods. If these efforts do not lead to a resolution, the complaining party can request the establishment of a panel.
- 31.** A panel of three independent experts in trade and international law is then formed to assess the dispute objectively. Panelists must remain neutral, adhere to a code of conduct, and be selected based on their expertise and fairness. The panel follows a set procedure, beginning with an urgency determination if requested. It then gathers necessary information and delivers an interim report within 90 days, followed by a final report within 120 days.
- 32.** Once the panel reaches a decision, the losing party must take corrective measures promptly and in good faith. If compliance does not occur, the winning party may seek compensation or suspend benefits under the agreement. Costs for the panel and related expenses are shared equally between the parties unless agreed otherwise. This structured approach ensures accountability and fairness, providing a clear mechanism to resolve disputes efficiently and effectively.

33. Chapter 17 contains provisions regulating matters relating to Final Provisions, including matters relating to annexes and amendments, entry into force and, withdrawal provisions.

34. Article 12.1 contains provisions regulating matters relating to General Provisions. Article 12.1 of the Agreement states that the importance of economic and development cooperation in strengthening bilateral relations and supporting trade and investment growth with the aim of:(a) facilitating trade and investment between the Parties; (b) promoting inclusive and sustainable economic growth; (c) supporting capacity building initiatives, particularly for SMEs; (d) encouraging technology transfer and innovation; and (e) fostering partnerships in key sectors of mutual interest.

2.4 Ratification by the National Assembly

35. Section 8 of the Treaty-Making and Ratification Act (Cap. 4D) provides that where the Cabinet approves the ratification of a treaty, the Cabinet Secretary shall submit the treaty and a memorandum on the treaty to the Speaker of National Assembly. The relevant parliamentary committee shall, during its consideration of the Treaty, ensure public participation in the ratification process in accordance with laid down parliamentary procedures.

36. Section 8(3) of the Treaty-Making and Ratification Act (Cap. 4D) provides that the National Assembly may approve the ratification of a treaty with or without reservations to specific provisions of the treaty. Standing Order 170A (1) of the National Assembly Standing Orders provides that (1) A treaty submitted to the National Assembly for ratification shall be laid on the Table of the House and stand committed to the relevant Committee for consideration. Standing Order 170A (2) provides that the committee shall undertake public participation before submitting its report to the House.

37. The Departmental Committee of Trade, Industry and Cooperatives is required to undertake public participation in accordance with Standing Order 170A.

2.5 Observations

38. The Agreement aims to: strengthen trade and investment relations between Kenya and the UAE; provide a framework for cooperation in trade, investment, and economic matters; facilitate trade by reducing non-tariff barriers and improving customs procedures; support small and medium enterprises and digital trade; and enhance cooperation in sectors such as agriculture, energy, and technology.
39. The Agreement includes provisions covering trade in goods and services; rules of origin and customs procedures; sanitary and phytosanitary measures; investment promotion and protection; intellectual property rights and digital trade; and dispute resolution mechanisms.
40. The Departmental Committee of Trade, Industry and Cooperatives is required to undertake public participation in accordance with standing order 170A.

3.0 ANALYSIS OF THE COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT

3.1 Legal Provisions on Treaty-Making and Ratification

41. Article 2(5) of the Constitution of Kenya, 2010, provides the general rules of international law, while Article 2(6) of the Constitution provides that any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.
42. The Treaty-Making and Ratification Act, No. 45 of 2012 (hereinafter referred to as “the Act”), was enacted by Parliament to give effect to Article 2(6) of the Constitution. The Act governs the making and ratification of treaties in Kenya.
43. Section 2 of the Act defines a treaty as an “international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation and includes a convention”.
44. Under the Constitution and the Act, the responsibility of initiating the treaty-making process, negotiating and ratifying a Treaty lies with the Executive. In making this decision, the Executive ought to be guided by Section 5(2) of the Act, which provides considerations that must be followed, including;
- a) the need that the new treaty is to meet;
 - b) the existing legal regime, including the extent of its applicability to the perceived problem;
 - c) the probability of reaching the required measure of agreement on the solution aimed for;
 - d) any relevant legislative efforts related to the perceived problem;
 - e) the optimal form for the proposed treaty;
 - f) the likelihood that the proposed treaty shall be accepted by a sufficient number of states, where the treaty is multilateral;
 - g) the anticipated time schedule for completing the treaty-making process;
 - h) the expected costs of formulating and adopting the treaty to Kenya; and

- i) in formulating treaties relating to technical or scientific problems, whether extensive scientific studies or research have been carried out to determine the parameters of the problem and the lines of potential solutions.

3.2 Role of the National Assembly in Treaty Making and Ratification

45. Although initiation of the treaty-making process is the role of the Executive, Parliament as the legislative arm decides whether a Treaty shall form part of the law of Kenya, upon which the treaty comes into force. This flows from Article 94(5) of the Constitution, which provides that “no person or body, other than Parliament, has the power to make provision having the force of law in Kenya, except under authority conferred by this Constitution or by legislation”.
46. After the Treaty has been approved by the National Assembly, it therefore becomes binding upon Kenya, and Kenya cannot invoke the provisions of its domestic law to justify any failure to perform its obligations under a treaty ratified by it.
47. According to the Vienna Convention on the Law of Treaties, 1969, which governs the making and ratification of treaties internationally, a treaty becomes binding on a state upon ratification.
48. Section 2 of the Treaty Making and Ratification Act defines ratification as “the international act by which the State signifies its consent to be bound by a treaty, and includes acceptance, approval and accession where the treaty so provides”.
49. Under Section 7 of the Act, where the Government intends to ratify a treaty, the Cabinet Secretary of the relevant Ministry shall, in consultation with the Attorney-General, submit to the Cabinet the treaty, together with a memorandum outlining—
 - a) the objects and subject matter of the treaty;
 - b) any constitutional implications including—
 - i. any proposed amendment to the Constitution; and
 - ii. that the treaty is consistent with the Constitution and promotes constitutional values and objectives;
 - c) the national interests which may be affected by the ratification of the treaty;

- d) obligations imposed on Kenya by the treaty;
- e) requirements for implementation of the treaty;
- f) policy and legislative considerations;
- g) financial implications;
- h) ministerial responsibility;
- i) implications on matters relating to counties;
- j) the summary of the process leading to the adoption of the treaty;
- k) the date of signature;
- l) the number of states that are party to the treaty;
- m) the views of the public on the ratification of the treaty;
- n) whether the treaty sought to be ratified permits reservations and any recommendations on reservations and declarations;
- o) the proposed text of any reservations that should be entered when ratifying the treaty to protect or advance national interests or ensure conformity with the Constitution; and
- p) whether expenditure of public funds will be incurred in implementing the treaty and an estimate, where possible, of the expenditure.

3.3 Consideration by the National Assembly

3.3.1 The Treaty Making and Ratification Act, No. 45 of 2012

50. Section 8 of the Treaty-Making and Ratification Act, No. 45 of 2012, provides for the consideration of Treaties by Parliament. Upon approval of a Treaty by Cabinet, the relevant Cabinet Secretary shall submit the Treaty together with a memorandum on the Treaty to the Speaker of the National Assembly for tabling pursuant to the Standing Orders.

Section 8(3) of the Treaty Making and Ratification Act, No. 45 of 2012, provides that the relevant Parliamentary Committee in the National Assembly is tasked with consideration of the Treaty, and shall ensure public participation in the ratification process in accordance with the laid down parliamentary procedures.

3.3.2 Decision on Ratification by the National Assembly

51. The National Assembly may;
- a) **refuse to approve the ratification of a Treaty**-where the National Assembly refuses to approve the ratification of a treaty, the Clerk of the National Assembly shall submit the resolution of the House to the relevant Cabinet Secretary within fourteen (14) days of such resolution (Section 8(7) of the Act), and the Government shall not ratify the said Treaty;
 - b) **approve the ratification of a Treaty without reservations** to specific provisions of the treaty (Section 8(4) of the Act) - where the ratification of a treaty is approved by the National Assembly without any reservations to the treaty, the relevant Cabinet Secretary (the Cabinet Secretary for the time being responsible for the subject matter of the treaty) shall, within thirty (30) days from the date of the approval of the ratification of the treaty request the Cabinet Secretary (Cabinet Secretary responsible for the time being responsible for matters relating to foreign affairs) to prepare the instrument of ratification of the treaty; or
 - c) **approve the ratification of a Treaty with reservations to specific provisions of the treaty** - where a treaty is approved for ratification with reservations to some provisions of the treaty, the treaty shall be ratified with those reservations to the corresponding article in the treaty.
52. Proposed reservations made by the National Assembly are introduced as a provision into the Treaty in line with the procedure set out in the Standing Orders (Section 8(5) of the Act).
53. In deciding on the approval for ratification of a Treaty, Section 8(9) of the Act provides that the National Assembly shall not approve;
- a) the ratification of a treaty or part of it if its provisions are contrary to the Constitution; and
 - b) a reservation to a treaty or part of it, if that reservation negates any of the provisions of the Constitution, even if the reservation is permitted under the relevant treaty.

54. Section 12 of the Act provides that a Treaty cannot be ratified unless the same has been considered and approved by the Cabinet and Parliament. A person who ratifies a Treaty without following this process commits an offence and shall be liable to imprisonment for a term not exceeding fifteen (15) years, or to a fine not exceeding twenty (20) million shillings, or to both such fine or imprisonment.

3.3.3 The National Assembly Standing Orders

55. One of the functions of Departmental Committees under Standing Order 216(5) (fa) is to “*examine treaties, agreements and conventions*”.

56. The procedure of the ratification of treaties is guided by Part XXI, and in particular, Standing Order 170A of the National Assembly Standing Orders. Standing Order 170A provides;

“(1) A treaty submitted to the National Assembly for ratification shall be laid on the Table of the House and stand committed to the relevant Committee for consideration.

(2) The committee shall undertake public participation before submitting its report to the House.

(3) In addition to the information required to be submitted to the National Assembly under written law, the committee may require the relevant Cabinet Secretary to submit further information, including—

a) the social and environmental impact of the treaty in the short-term, medium-term term and long-term; and,

b) the nature and evidence of any public participation conducted on the treaty.

(4) The report of the committee to the House shall include—

a) information on the views of the people on the ratification of the treaty emanating from public participation conducted by the committee;

b) the findings of the committee on the treaty and any other information the committee may deem necessary; and

c) a recommendation that the House—

(i) approves the ratification of the treaty, or

(ii) *approves the ratification of the treaty with reservations, or*

(iii) *reject the ratification of the treaty.*

(5) *In approving ratification of a Treaty with reservations, the House shall specify the affected provisions of the Treaty and the proposed text of each reservation, which may include prescription of timelines within which an obligation is to be fulfilled before implementation of the Treaty.*

(6) *Upon decision of the House on a Treaty, the Clerk shall, within seven (7) days, notify the relevant Cabinet Secretary and enter the information in the register of treaties.”*

3.4 PUBLIC PARTICIPATION ON THE AGREEMENT

(a) Legal Provision on Public Participation

57. Article 118 (1) (b) of the Constitution of Kenya provides as follows;

“Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees.”

58. Section 8 of the Treaty Making and Ratification Act, No. 45 of 2012 provides for the consideration of Treaties by Parliament. Upon approval of a Treaty by Cabinet, the relevant Cabinet Secretary shall submit the Treaty together with a memorandum on the Treaty to the Speaker of the National Assembly for tabling pursuant to the Standing Orders.

59. Section 8(3) of the Treaty Making and Ratification Act, No. 45 of 2012 provides that;

*“the relevant Parliamentary Committee shall, during its consideration of the Treaty, ensure **public participation** in the ratification process in accordance with laid down parliamentary procedures”.*

60. Standing Order 170A provides that;

“(2) The committee shall undertake public participation before submitting its report to the House.

(4) The report of the Committee to the House shall include—

d) information on the views of the people on the ratification of the treaty emanating from public participation conducted by the committee;

(b) Methodology used by the Committee in Public Participation

61. The Agreement was laid before the House on Tuesday, 11th March, 2025, and committed to the Departmental Committee on Trade, Industry and Cooperatives for consideration and reporting to the House.

62. According to the aforementioned provisions of the Constitution, the Treaty Making and Ratification Act, 2012, and Standing Orders, the Committee through two local daily newspapers of Thursday, 20th March, 2025, published an advertisement inviting

the public and stakeholders to submit memoranda. Further, in a letter dated 11th April, 2025, the Committee wrote to various stakeholders including the Ministry of Finance and Planning, Ministry of Trade, Investment and Industry, Ministry of Foreign and Diaspora Affairs, Office of the Attorney General and Department of Justice, and Kenya Law Reform Commission to submit a memorandum on the Agreement.

63. The Ministry of Trade, Investment and Industry, the Ministry of Foreign and Diaspora Affairs, the Office of the Attorney General and the Department of Justice all supported the Agreement.

4.0 STAKEHOLDER VIEWS ON THE COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT BETWEEN THE UNITED ARAB EMIRATES OF THE ONE PART, AND THE REPUBLIC OF KENYA, A MEMBER OF THE EAST AFRICAN COMMUNITY, OF THE OTHER PART

64. The following are the highlights of stakeholder comments on the ratification of the Treaty —

4.1 Kenya Revenue Authority

65. Kenya Revenue Authority submitted the following;

66. That the Comprehensive Economic Partnership Agreement (CEPA) seeks to achieve several key objectives between Kenya and the United Arab Emirates (UAE) as follows;

- i. Eliminating technical barriers to trade and simplified Customs procedures.
- ii. Trade Facilitation.
- iii. Expand Market access for goods and services in Kenya and the UAE.
- iv. Promote industrialization and strengthen regional value chains.
- v. Attract Foreign- Direct investment and promote Technology Transfer.
- vi. Support Kenya's Bottom-Up Economic Transformation Agenda.
- vii. Promote Sustainability and Growth of Green Economy.

67. The CEPA is expected to unlock new opportunities, enhance bilateral relations and contribute to the economic transformation of both regions.

68. Kenya Revenue Authority (KRA) recommends to have the below areas included within the Agreement;

No	Clause	Recommendation
1.	Article 2: Objectives	Include: Strengthening of risk based cargo screening to safeguard trade while ensuring the smooth flow of legitimate goods.
2.	Article 5.2: Objectives	Include: Promote mutual recognition of sanitary and phytosanitary standards, inspection results and conformity assessments to reduce duplication, facilitate faster clearance and ensure safety of trade

		goods (this is mentioned in article 5.5 (3) but not in the objectives.
3.	Article 14	Proposal for training of the Joint Committee members on CEPA. This should be separate from stakeholder sensitizations.

4.2 Office of the Attorney General and Department of Justice

The Office of the Attorney General and the Department of Justice submitted that;

69. The Kenya and UAE CEPA was signed on 14th January, 2025. The Agreement covers the following areas;

- i. **Trade in Goods**- the objective of the Chapter is to create a liberalized market for trade in goods and promote each Party's trade in goods through progressive elimination of tariffs, enhanced efficiency of customs procedures, enhanced cooperation in technical barriers to trade and Sanitary and Phytosanitary measures and development of value chains.

The Agreement however excludes market access (tariff liberalization) as both Parties agreed to negotiate this Chapter with all the EAC Partner States when ready. The rationale is that the Republic of Kenya is a member of the EAC Customs Union Protocol which establishes a Common External Tariff to be applied on goods imported into the EAC region from other foreign countries.

- ii. **Rules of Origin**- the Chapter sets out the criteria for determining the origin of goods for purposes of implementing the Agreement;
- iii. **Customs Procedures and Trade Facilitation** – the Chapter calls each Party to periodically review their customs procedures with a view of further simplification to facilitate bilateral trade. The Parties undertake that their customs laws and procedures shall be transparent, non-discriminatory and avoid unnecessary obstacles to trade.

- iv. **Sanitary and Phytosanitary (SPS) measures** – the objectives of the Chapter are to ensure that SPS measures implemented by a Party do not create unjustified barriers to trade; enhance transparency and understanding in the implementation of SPS measures; and protect human, animal and plant life or health in the territories of the Parties while facilitating trade.
- v. **Technical Barriers to Trade (TBT)** – the objective of the Chapter is to facilitate trade by eliminating technical barriers to trade, enhancing transparency and promoting greater regulatory cooperation and good regulatory practices. The Chapter shall apply to the preparation, adoption and application of all standards, technical regulations and conformity assessment procedures of central level Government bodies that may affect trade of goods between the Parties.
- vi. **Trade Remedies** – the Chapter shall apply to investigations and measures taken by either Party on Anti-dumping, Countervailing and Safeguard Measures to safeguard against unfair trade practices which lead to market distortion. The Chapter is important for the Republic of Kenya to mitigate any negative effect that local industries may experience arising from competition from some UAE products;
- vii. **Investment** – the Chapter reaffirms the intent of the Parties to promote an attractive investment climate. It takes cognizance of the Agreement between the Government of the Republic of Kenya and the Government of the UAE on the Promotion and Protection of Investment signed in Abu Dhabi on 23rd November, 2014. Through the CEPA, the Parties undertake to review the Kenya – UAE BIT with a view to making it more comprehensive in coverage.

The Parties further undertake to establish a Sub-Committee on Investment composed of representatives of both Parties. The Chapter is exempt from the dispute settlement mechanism of this CEPA Agreement.

- viii. **Trade in Services** – the objectives of this Chapter are to progressively liberalize trade in services with a view to providing market access for services and service suppliers of the Parties.

The Chapter does not however apply to procurement by Government agencies of services purchased for government purposes; services supplied in exercise of

Government authority; subsidies or grants provided by a Party; measures affecting natural persons of a Party seeking access to the employment market of the other Party or measures regarding citizenship, residence or employment on a permanent basis.

The Agreement provides that the Parties shall enter into successive rounds of negotiations, beginning not later than one year from the date of entry into force of the Agreement and periodically thereafter, with a view to achieving a progressively higher level of liberalisation. The process of progressive liberalisation will be directed towards increasing the general level of specific commitments undertaken by parties under this Agreement.

The Chapter also provides for the application of the Most Favoured Nation Treatment where if, after the entry into force of this Agreement, a Party enters into any agreement on trade in services with a non-Party, it shall consider a request by other Party for incorporation herein of treatment no less favourable than that provided under the aforementioned agreement.

- ix. **Digital Trade** - The objectives of this Chapter are to foster an environment conducive to the further advancement of digital trade, including electronic commerce and the digital transformation of the global economy, by strengthening their bilateral relations on these matters

Each Party will be required to maintain its current practice of not imposing customs duties on digital or electronic transmissions, between a person of a Party and a person of the other Party in accordance with the WTO Ministerial Decision in relation to Electronic Commerce. The moratorium shall depend on further outcomes in the WTO Ministerial Decisions on customs duties on electronic transmission within the framework of the Work Programme on Electronic Commerce.

- x. **Micro, Small and Medium Enterprises** - The Parties undertake to enhance commercial opportunities for MSMEs and each Party undertakes to seek to increase trade and investment opportunities and shall identify and promote priority sectors and value chains that will enhance MSMEs participation in international trade

The Parties further undertake to establish a Sub-Committee on Micro, Small and Medium Enterprises composed of representatives of both Parties. The Chapter is exempt from the dispute settlement mechanism of this CEPA Agreement.

- xi. **Economic and Development Cooperation** - Economic and Development Cooperation under the Agreement covers the following sectors; manufacturing industry; trade and investment promotion; tourism; human resource development; ICT and the digital economy; financial services; infrastructure and logistics enhancement; agriculture and livestock; private sector development; fisheries and blue economy; water, environment and the green economy; health; energy; SPS; TBT; customs and trade facilitation; transport; shipping and maritime; export market and product development; and structured commodities trading.

The Parties undertake to establish a Sub-Committee on Economic and Development Cooperation composed of representatives of both Parties.

The Chapter is exempt from the dispute settlement mechanism of this CEPA Agreement and any differences arising out of the Application of the Chapter shall be settled amicably.

- xii. **Intellectual Property** - The Chapter provides that the Parties shall endeavour to promote, support and enforce intellectual property rights so as to contribute to the promotion of trade, investment, technological innovation and transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare.
- xiii. **Administration of the Agreement** – the Agreement provides for the establishment of a Joint Committee comprising of Kenya and UAE at the level of ministers, senior officials (PSs) and technical officers. The Joint Committee shall meet within one year of the entry into force of this Agreement. Thereafter, it shall meet every two years unless the Parties agree otherwise.

The purpose of the Joint Committee is to review and assess the results and overall operation of this Agreement; consider and recommend any amendments to this

Agreement that may be proposed by either Party; endeavour to amicably resolve disputes between the Parties arising from the interpretation or application of this Agreement; supervise and coordinate the work of all sub-committees and working groups established under this Agreement; and adopt decisions or make recommendations as envisaged by this Agreement.

- xiv. **Dispute Settlement** - The Chapter seeks to establish an effective and efficient mechanism for avoiding and settling disputes between the Parties concerning the interpretation and application of this Agreement with a view to reaching, where possible, a mutually agreed solution.

The dispute resolution procedure at the first instance involves consultations. The Parties may also settle disputes at any time through good offices conciliation or mediation. If the Parties agree not to have consultations, or if consultations or conciliation have been concluded and no mutually agreed solution has been reached, the next recourse is to solve the dispute through a Panel.

The Panel comprising of three persons with expertise in law, international trade, and other matters covered by this Agreement make its decisions, including its reports by consensus, but if consensus is not possible then by majority of its members. If a mutually agreed solution is reached during the panel procedure, the Parties shall jointly notify that solution to the chairperson of the panel. Upon such notification, the panel shall be terminated.

- xv. **Final Provisions** – the Agreement shall be reviewed every five years from the date of its entry into force. The Agreement shall enter into force on the first day of the second month following the date of receipt of the last written notification.
- xvi. **Validity** - This Agreement is valid for an indefinite period unless terminated by either Party in accordance with the terms herein. However, either Party may terminate this Agreement by written notification to the other Party, and such termination shall take effect six months after the date of the notification.
- xvii. **Accession** - This Agreement is also open for accession by any country or group of countries including a contracting Party to the EAC Treaty after the date of entry into

force of this Agreement. Accession by other EAC Partner States would be ideal as it would enable negotiation of market access (tariff

The benefits of the Agreement to the Republic of Kenya are as follows;

- i. Expanding exports for Kenyan products to the UAE and Middle East particularly meat and meat products, horticulture, tea, coffee among others. In 2023, the UAE was Kenya's 6th largest export market absorbing 5.5% of exports;
- ii. Agreement provides measures to facilitate trade through a common understanding of customs procedures and trade facilitation measures;
- iii. Will provide opportunities for increased investment in Kenya particularly in the ICT, healthcare and agriculture; and
- iv. Expanded technical cooperation between Kenya and UAE.
Ratification of the Agreement will not require enactment of new legislation or amendment of existing legislation.

4.3 Kenya Accreditation Service (KENAS)

70. In its submission on the Comprehensive Economic Partnership Agreement (CEPA), The Kenya Accreditation Service (KENAS) outlined the following recommendations;

Article	Current Text	Proposed Change	Justification
Not included	Proposal for inclusion of Article 6.XX	Proposed inclusion under Chapter 6: Technical Barriers to Trade: Addition of Article 6.XX (propose 6.7) on Accreditation: i) Each Party shall give positive consideration to a request by the other Party to negotiate agreements or arrangements for	Kenya has recently enacted laws to assure quality, safety and environmental assurance through the KENAS Act, No 17 of 2019 and the Business Laws Amendment Act (2024). This provides for assessment and accreditation of conformity assessment bodies that carryout

Article	Current Text	Proposed Change	Justification
		<p>the mutual recognition of accreditation testing, inspection, certification and verification.</p> <p>ii) Each Party shall ensure, whenever possible, that the results of accredited conformity assessment activities conducted in the territory of the other Party are accepted. Where a Party does not accept the results of an accreditation conducted in the territory of the other Party, it shall, on request of the other Party, explain the reasons for its decision.</p>	<p>testing, inspection, certification and verification activities. KENAS is a signatory member of the mutual recognition arrangements and multilateral arrangements with International Laboratory Accreditation cooperation and International Accreditation Forum.</p> <p>Proposal is made for the inclusion of the provision for an Article on Accreditation, which is only a subject in mention in provision of Cooperation in Article 6.7.</p>

4.4 The Council of Governors

The Council of Governors submitted that:

71. Having reviewed the **Comprehensive Economic Partnership Agreement between Kenya, of the one part, and the United Arab Emirates, of the other part** in its entirety, the Council of Governors recommends the following amendments and proposals for better implementation of the proposed agreement at the County level.
72. **Fully Conscious** that Article 2(6) of the Constitution binds the State (National and County Governments) to International Instruments, including treaties or conventions, ratified by Kenya. It is imperative therefore that the views of the County Governments are considered before the signing/ ratification of this Agreement, which has an impact on County Governments.
73. It is premised on the above that Council on behalf of the 47 County Governments submits as follow;

COMMENTS

No.	Section	Provisions in the Policy	Proposed Amendment	Justification
1.	<p>4. Obligations in the Agreement</p> <p><i>Read together with (Article 1.5 Relations to Other Agreements & Article 1.6 – Regional and Local Government)</i></p>	<p>4. Obligations in the Agreement</p> <p>a) Policy and legislative considerations</p> <p>b) Administrative obligations</p> <p>c) Ministerial obligation</p> <p>d) Financial Implications</p>	<p>Amend to include:</p> <p>Regional implications (OR Regional Approaches)</p>	<p>To provide clarity on how the agreement is going to be implemented cognizant of existing regional and international agreements entered into by Kenya, particularly the East Africa Community (EAC) Agreement. Similarly, the obligations to UAE in relations to Greater Arab Free Trade Area Agreement)</p>
2.	<p>6. Possible negative effects of the Agreement to the Kenyan People</p>	<p>6. Possible negative effects include:</p> <p>- Local industries are likely to face more competition over time from UAE zero-rated products</p>	<p>Amend by providing more clarity on how local industries are likely to be affected in terms of unfair competition. Also include the possible adverse effects on small and emerging businesses, employees' wages, job losses and non-tariff measures</p>	<p>To provide clarity on how trade on zero-rated products will be implemented noting that section 2 (d) highlights that the agreement excludes market access (tariff liberalization) as both parties have agreed to negotiate this chapter with all the EAC Partner States when ready.</p> <p>The possible effects in the agreement are not</p>

No.	Section	Provisions in the Policy	Proposed Amendment	Justification
				clearly outlined. There has been instance before where zero-rated provisions have been misused by traders for their on gains.
3.	7. Measures to mitigate any negative effects arising from the agreement	7. Measures to mitigate any negative effects arising from the agreement a) Trade Remedies provisions b) Amendment Clause c) Mandatory 5-year Review Clause d) Exit Clause	Amend to include: (e) Relations with other EAC Partner States	To provide for mechanisms to mitigate the possible negative effects to the Kenya's regional partner states from UEA Imports.
4.	Article 14.1: Joint Committee	7. The functions of the joint committee shall be to: a) b) h)	Expand the functions of the joint committee to i) Handle issues arising from the regional agreements entered by parties	Currently, the agreement has not provided avenues for parties to address conflicting issues arising from regional agreements previously entered by the parties with the current CEPA.

No.	Section	Provisions in the Policy	Proposed Amendment	Justification
5.	Article 2.4: National Treatment & Article 2.5 Classification of Goods and Transposition of Schedules	1. Each party shall ensure that the transposition of its schedule of Tariff commitments does not afford less favourable treatment to an originating good of the other Party. If the process of transposition results in a disagreement on the applicable tariff, then this matter shall be referred to the Joint Committee.	Amend the section to provide more details in regards to the favourable treatment resulting from a free trade agreement with respect to goods covered by this agreement that are originating from the EAC.	Currently, goods from EAC enjoys favourable treatment within the EAC Countries. The clear synergies and alignment of the treatment of goods as a result of these two agreements is needed.

General Comments

- i. For better coordination and implementation of this agreement, the Council proposes the inclusion of County Governments in the Joint Committees, standing committees, ad hoc subcommittees and working groups established in the Agreement.
- ii. The need for wider public sensitization on the Comprehensive Economic Partnership Agreement, in line with the Ratification to ensure wider coverage, an implementation

plan can be developed incorporating county officers as the TOTs and champions for this agreement.

- iii. Ensure due process is followed in ratification/ signing of this agreement as envisaged in the Treaty Making and Ratification Act.

4.5 Tea Board of Kenya

The tea board of Kenya stated that;

74. The UAE is a Member of the Gulf Cooperation Council (GCC) countries and has strong economic ties with its partners Saudi Arabia, Kuwait, Bahrain, and Oman; they share a common market and a customs union. Under the Greater Arab Free Trade Area Agreement (GAFTA), the UAE has free trade access to most Middle East countries to which Kenya could gain strategic access.
75. The UAE applies the GCC Common External Tariff rate of between 0% and 5% on Kenyan goods, with limited exceptions on tobacco and alcoholic beverages. On the other hand, Kenya applies the EAC CET tariff of between 0% and 35% on goods from the UAE. This will subsist until the UAE negotiates tariff schedules with all the EAC Partner States collectively.
76. Kenya Tea industry will benefit through expanding Tea exports for Kenyan tea to the UAE and Middle East. The agreement has refined measures to facilitate trade through a common understanding of customs procedures and trade facilitation measures, and also sanitary and phyto sanitary measures.
77. The agreement allows for expanded technical co-operation with which Kenya can benefit with respect to value Addition.
78. Possible negative effects include:
 - i. The Parties have agreed to negotiate market access (tariff liberalization) with all the EAC Partner States when ready. Removal of import duties from products once undertaken under this agreement may eventually lead to loss of government revenue over the agreed liberalization period; and,
 - ii. Local Tea industries are likely to face more competition over time from UAE zero rated products and the agreement may in turn favor UAE to be more of a Global Tea Re-export center as opposed to Kenya being renown as a Tea origin country. Brand visibility for Kenya tea may be camouflaged or eclipsed by the agreement

4.6 Eco-news Africa (ENA)

The Eco-news Africa (ENA) in their submissions stated that:

79. Kenya and the UAE are both Members of the World Trade Organization (WTO) and so the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) already applies to them. However, since the USA has blocked the appointment of Appellate Body (AB) members, there are none left, so the AB is no longer functioning. ('The US stance of blocking the appointments at the Appellate Body has now reached the six-year mark and there is little likelihood that it will be restored at all, said people familiar with the development.). This means that if Kenya does not comply with TRIPS (e.g. it does not grant patents (20 year monopolies) on relevant vaccines or medicines during a pandemic) and it is sued at the WTO and loses, it can appeal ('into the void') and since the appeal cannot be heard, the decision cannot become final and Kenya cannot be penalised at the WTO for failing to comply with TRIPS. Therefore, since the intellectual property (IP) chapter of this CEPA is enforceable (see below), even incorporating any TRIPS provisions into it is effectively TRIPS+ (i.e. stronger than TRIPS currently) since TRIPS is currently unenforceable at the WTO.

80. The intellectual property (IP) chapter of the CEPA has a number of TRIPS+ provisions in it that go substantively beyond the TRIPS obligations (even when they were enforceable) which have a range of implications including on the ability to access affordable generic medicines as soon as possible in Kenya. This submission will touch on some of the main TRIPS+ provisions affecting timely access to affordable medicines

81. The Kenya-UAE CEPA has:

- i. A hard obligation for *market exclusivity* for five years from the latest possible date for both the information in the dossier and the fact of the marketing approval.ⁱ This means that even if there is no patent on a medicine (e.g. because it is insulin which is vital for diabetics but is not a new invention (it is 100 years old and is extracted from pigs and cattle) so is not eligible for patents) generic versions still cannot be approved by the medicine regulator as safe and effective and so reach Kenyan patients for 5 years.

- ii. A hard linkage obligation that prevents compulsory licences from being effective and requires the Kenyan government to be the patent police when even the USA's Food and Drug Administration does not have the capacity to do so (and the EU refuses to implement linkage).
82. The exceptions in the CEPA do not apply to the IP chapter (e.g. the difficult-to-use health exception in Article 15.1), are irrelevant (e.g. security exception in Article 15.2 and taxation exception in Article 15.3) or insufficient (e.g. the purported exceptions in the IP chapter which are self-cancelling etc).
 83. The CEPA IP chapter is enforceable because the CEPA dispute settlement chapter applies to the IP chapter and if Kenya does not comply with the IP chapter and is sued by the UAE and loses, the UAE can suspend equivalent benefits until Kenya complies with this IP chapter. Kenya current does not have such data exclusivity or linkage, so this would be a significant change. Article 21(2) of the Constitution requires the State to implement laws and policies to achieve progressive realisation of the right to health. This right will be greatly undermined by these CEPA provisions as can be seen above. The UAE may be able to afford to comply with these TRIPS+ provisions on medicines since its GNI per capita is US\$49,020 (23 times larger than Kenya's),ⁱⁱ but Kenya cannot for the reasons outlined above.
 84. During the Trans-Pacific Partnership (TPP) negotiations with the USA, even developed countries such as Australiaⁱⁱⁱ and New Zealand opposed the TRIPS+ provisions on it since it did not suit them as net importers of intellectual property who needed to keep medicines affordable for their citizens. Even the original TPP did not have hard linkage (it only had soft linkage). Consequently, when the US refused to ratify the TPP, the remaining countries (including Australia and New Zealand) suspended most of the TRIPS+ provisions on medicines (including the market exclusivity provision on medicines which is similar to the one in the Kenya-UAE CEPA) in the renamed CPTPP.
 85. CEPA has TRIPS provisions on medicines since neither Kenya nor the UAE are the homes of big pharmaceutical companies who have long sought these provisions in order to expand and extend their monopoly profits. This means these provisions benefit the US, EU, UK, Swiss etc big pharmaceutical multinationals, at the expense of Kenyans who need affordable medicines (see above).

86. In practice when countries implement these TRIPS+ provisions, they implement them with respect to applicants from the whole world. E.g. pharmaceutical companies from the US, EU, Switzerland, UK etc would also benefit from the exclusivity and linkage provisions above. This means they can free ride and Kenya loses a potentially important bargaining chip in its upcoming built-in rendezvous clause negotiations with the EU on intellectual property and with the USA to remove its imminent reported additional tariffs. (The US government under President Trump is planning to introduce a reciprocal tariff later today (2 April 2025) which takes into account 'nontariff barriers' which is defined to include lack of intellectual property protection which will reportedly apply to all countries in the world, including Kenya in order to get concessions in return for removing these new US tariffs (that violate WTO rules)).
87. Kenya is not even getting any goods market access to the UAE in this CEPA in return for agreeing to these TRIPS+ provisions and the goods chapter is where developing countries such as Kenya can usually benefit from an FTA (e.g. in the removal or reduction of the UAE's tariffs on Kenyan products).
88. India-UAE Comprehensive Economic Partnership Agreement (CEPA) which was signed in 2022 does not have the TRIPS+ provisions on medicines above (exclusivity and linkage) even though India's GNI per capita is higher than Kenya's. the stakeholder submitted comparative data with other Free Trade Agreements signed by the UAE as follows-

FTA provision						
UAE FTA	Goods chapter: Does the UAE reduce/remove its tariffs on exports from the other country?	Intellectual property chapter: Does it have TRIPS+ provisions on medicines?	Exceptions chapter	Dispute settlement chapter: are any IP provisions enforceable?	Date signed	GNI/capita (US\$)
Kenya	No	Yes including: market exclusivity (ME) on medicines for 5 years and hard patent linkage	Difficult-to-use GATT & GATS health and environment exceptions which do not apply to IP chapter	Yes	14/1/2025	2,110
Cambodia	Yes, has goods market access	Has IP chapter but no ME or linkage	Difficult-to-use GATT & GATS health and environment exceptions which do not apply to IP chapter	Yes	8/6/2023	2,390
Costa Rica	Yes: 98% of Costa Rica exports to UAE benefited from immediate tariff elimination or	Has IP chapter but no ME or linkage	Difficult-to-use GATT & GATS health and environment exceptions which do not apply to IP chapter	Yes	17/4/2024	14,260

FTA provision						
UAE FTA	Goods chapter: Does the UAE reduce/remove its tariffs on exports from the other country?	Intellectual property chapter: Does it have TRIPS+ provisions on medicines?	Exceptions chapter	Dispute settlement chapter: are any IP provisions enforceable?	Date signed	GNI/capita (US\$)
	gradual tariff elimination over a 10 year-period. Specifically, 95.99% of Costa Rica exports to UAE will benefit from immediate tariff elimination.					
Georgia	Yes: UAE immediately removes tariffs on 90.8% of Georgian products	Has IP chapter which has 6 years ME and linkage	Difficult-to-use GATT & GATS health and environment exceptions which do not apply to IP chapter	Yes	10/10/2023	6,710
India	Yes: when the FTA came into force, the UAE removed	No ME or linkage	Difficult-to-use GATT & GATS health and environment exceptions	Yes	18/2/2022	2,540

FTA provision						
UAE FTA	Goods chapter: Does the UAE reduce/remove its tariffs on exports from the other country?	Intellectual property chapter: Does it have TRIPS+ provisions on medicines?	Exceptions chapter	Dispute settlement chapter: are any IP provisions enforceable?	Date signed	GNI/capita (US\$)
	tariffs on 62.6% of Indian products and by 2031 removes tariffs on 99% of Indian products		which do not apply to IP chapter			
Indonesia	Yes, has goods market access	Has IP chapter but no ME or linkage	Difficult-to-use GATT & GATS health and environment exceptions which do not apply to IP chapter	Yes	1/7/2022	4,810
Israel^{iv}	Yes, has goods market access	Has IP chapter but no ME or linkage	Difficult-to-use GATT health and environment exception does apply to IP chapter	Yes	31/5/2022	54,650
Jordan	Text only seems to be available in Arabic					

FTA provision						
UAE FTA	Goods chapter: Does the UAE reduce/remove its tariffs on exports from the other country?	Intellectual property chapter: Does it have TRIPS+ provisions on medicines?	Exceptions chapter	Dispute settlement chapter: are any IP provisions enforceable?	Date signed	GNI/capita (US\$)
Mauritius	Yes: 'Over 97% of UAE imports from Mauritius will benefit from immediate tariff elimination or gradual tariff reduction over a maximum of 5 years.	Has IP chapter but no ME or linkage	Difficult-to-use GATT & GATS health and environment exceptions which do not apply to IP chapter	Yes	22/7/2024	11,590
Morocco	Yes: UAE removed tariffs on 98% of Moroccan products entering the UAE	No IP chapter. Just 1 vague article on IP that is not TRIPS+ so does not require ME or linkage	Seems to have a health, environment, religion etc exception	No	25/6/2001	3,760
Serbia	Yes: 'More than 96% of UAE imports from	Has IP chapter but no ME or linkage	Difficult-to-use GATT & GATS health and environment exceptions	Yes	5/10/2024	10,760

FTA provision						
UAE FTA	Goods chapter: Does the UAE reduce/remove its tariffs on exports from the other country?	Intellectual property chapter: Does it have TRIPS+ provisions on medicines?	Exceptions chapter	Dispute settlement chapter: are any IP provisions enforceable?	Date signed	GNI/capita (US\$)
	Serbia will benefit from immediate tariff elimination.		which do not apply to IP chapter			
Türkiye	Yes: has goods market access	Has IP chapter but it does not have ME or linkage	Difficult-to-use GATT & GATS health and environment exceptions apply 'wherever applicable' in the whole FTA	Yes	3/3/2023	11,730

89. The stakeholders concluded that, Parliament should not to ratify this CEPA in its current form because of the serious and unnecessary ways it will undermine access to affordable medicines in Kenya. An alternative is to use the revised Parliamentary Standing Orders on the ratification of treaties under 170A (4) (c) and (5) and approve the treaty with reservations on TRIPS Plus provisions.

4.6 The Micro and Small Enterprises Authority

The MSEA submitted that;

90. The Micro and Small Enterprises Authority (MSEA) welcomes the inclusion of **Chapter 12: Small and Medium Enterprises** in the Kenya-UAE Comprehensive Economic Partnership Agreement (CEPA). This chapter aligns with MSEA's objectives to foster cooperation, enhance trade opportunities, and support SMEs, including women and youth-owned enterprises, as key drivers of economic growth. This submission analyzes CEPA's provisions for SMEs, identifies potential gaps, and provides actionable recommendations that benefit Kenyan SMEs, particularly microenterprises.

91. While CEPA aligns with their stated objectives, there are areas where practical implementation or specificity could be improved on. These are opportunities to ensure the Agreement delivers tangible benefits for Kenyan SMESs:

i. **Lack of Specific Funding Mechanisms**

92. Gap: CEPA does not mention specific financial commitments or mechanisms (e.g., grants, loans, or credit guarantees) to support SMESs, particularly in accessing capital and credit (mentioned in Article 12.2(c)).

93. Recommendation: Propose the establishment of a bilateral SME Development Fund or a credit facility with UAE partners to provide direct financial support to Kenyan SMESs, especially micro-enterprises, which often lack collateral.

ii. **Limited Detail on Capacity Building Programs**

94. Gap: While capacity building is mentioned (Article 12.4(e)), there's no detail on the scope, frequency, or funding of these programs.

95. Recommendation: Suggest a detailed action plan for capacity building, including timelines, target sectors (e.g., agriculture, ICT), and collaboration with Kenyan institutions like the Micro and Small Enterprises Authority to tailor programs to local needs.
- iii. No Specific Targets or Metrics for Success**
96. Gap: The Agreement lacks measurable targets (e.g., percentage increase in SME exports, number of SMEs integrated into supply chains) to evaluate the success of SME initiatives.
97. Recommendation: Advocate for the SME Subcommittee to set quantifiable goals (e.g., 20% increase in Kenyan SME exports to UAE by 2030) and report progress annually to ensure accountability.
- iv. Exclusion of Market Access Commitments**
98. Gap: CEPA excludes tariff liberalization (market access) for now, deferring it to future negotiations with the East African Community (EAC) (Article 2.19). This limits immediate trade benefits for SMESs exporting to the UAE.
99. Recommendation: Push for an interim bilateral tariff reduction schedule for key Kenyan SMES exports (e.g., tea, horticulture) to provide immediate market access advantages pending EAC-wide negotiations.
- v. Insufficient Focus on Micro Enterprises**
100. Gap: CEPA uses "SMEs" broadly without specific provisions for micro-enterprises, which dominate Kenya's SMES sector and face unique challenges (e.g., informality, limited digital access).
101. Recommendation: Request an amendment or side letter to explicitly address micro-enterprises, including simplified certification processes and targeted digital literacy programs.
- vi. Potential Competition from UAE SMEs**
102. Gap: The Memorandum notes possible negative effects, such as competition from UAE zero-rated products (page 8). This could disproportionately affect Kenyan micro and small enterprises without protective measures.

103. Recommendation: Propose safeguards (e.g., temporary quotas or anti-dumping measures) to protect vulnerable Kenyan SMESs during the initial implementation phase.

ADDITIONAL RECOMMENDATIONS ON SPECIFIC SUB-CLAUSES

A. SMESs IN DIGITAL TRADE

CEPA's digital trade provisions (Chapter 10) offer significant opportunities for SMESs:

- i. Article 10.2 (Objectives): Fosters an environment for digital trade and reduces barriers, enabling SMESs to leverage ecommerce globally.
- ii. Article 10.4 (Customs Duties): Moratorium on duties for electronic transmissions eliminates costs for SMESs selling digital products.
- iii. Article 10.5 (Non-Discriminatory Treatment): Ensures equal treatment of SMES digital products, fostering fair competition.
- iv. Article 10.7 (Authentication): Interoperable authentication reduces transaction costs for SMESs.
- v. Article 10.8 (Paperless Trading): Streamlines export processes via electronic documents, benefiting resource limited SMESs.
- vi. Article 10.9 (Online Consumer Protection): Builds trust in SMES ecommerce ventures.
- vii. Article 10.10 (Personal Data Protection): Enhances consumer confidence in SMES digital platforms.
- viii. Article 10.12 (Cross Border Flow of Information): Supports SMESs in accessing global data for market outreach.
- ix. Article 10.15 (Digital Invoicing): Reduces costs through interoperable invoicing systems.
- x. Article 10.16 (Digital Payments): Enables seamless payment systems critical for SMES cash flow.

B. SMES IN GOODS TRADE

Key concerns in Chapter 2: Trade in Goods:

- i. Compliance Burdens in Customs Procedures: Issue: High fees and complex licensing for SMEs

Recommendation: set a minimum value threshold (KES 500,000) below which imported goods would be exempt from certain customs duties and taxes.

- ii. Limited Market Access for SME Products: Issue: No specific tariff provisions for SME sectors.

Recommendation: Fast-track tariff elimination for 20 SME priority products (e.g., textiles, handicrafts, agriculture).

- iii. Infrastructure Gaps: Issue: Lack of SME-friendly customs and warehousing.

Recommendation: Establish CEPA-SME Trade Hubs for certification, packaging, and training.

- iv. Information Asymmetry Issue: Limited SME access to trade data.

Recommendation: Link SME Help Desks to the CEPA trade information portal.

104. Whereas the Micro and Small Enterprises Authority commends the inclusion of Chapter 12 in the Kenya-UAE CEPA, which comprehensively addresses the promotion and support of SMEs as a driver of economic growth. The Agreement aligns with our objectives to foster cooperation, enhance trade opportunities, and support women and youth-owned enterprises. However, to maximize benefits for Kenyan SMESs, particularly micro-enterprises, we identify the following gaps and recommendations for consideration during the submission process:

- i. Establish a Bilateral SME Development Fund: The CEPA lacks specific financial mechanisms to support SMESs. We propose a joint Kenya-UAE fund to provide grants, loans, and credit guarantees, ensuring micro-enterprises can access capital to leverage trade opportunities.
- ii. Detail Capacity Building Programs: While capacity building is noted, we recommend a concrete action plan with timelines and sector-specific initiatives, coordinated with Kenyan institutions, to enhance SMES competitiveness.
- iii. Set Measurable Targets: To ensure accountability, the SME Subcommittee should establish quantifiable goals (e.g., 20% export growth for Kenyan SMEs by 2030) and report progress annually.
- iv. Secure Interim Market Access: Given the exclusion of tariff liberalization, we urge an interim bilateral tariff reduction for key SMES exports (e.g., tea, horticulture) to provide immediate benefits pending EAC negotiations.

- v. Address Micro-Enterprises Explicitly: The Agreement should include tailored provisions for micro-enterprises, such as simplified certification and digital literacy programs, reflecting their dominance in Kenya’s economy.
- vi. Mitigate Competition Risks: To protect Kenyan SMESs from potential UAE competition, we suggest temporary safeguards like quotas or anti-dumping measures during the initial phase.

4.7 The Kenya Institute for Public Policy Research and Analysis

The Kenya Institute for Public Policy Research and Analysis (KIPPRA) outlined the following regarding the CEPA Agreement:

- 105. The agreement excludes tariff liberalization for now, which means Kenya will negotiate market access under the East African Community (EAC) framework at a later stage.
- 106. CEPA’s Rendezvous Clause (Article 2.19) commits both parties to negotiate tariff access as part of a broader EAC-wide deal, providing Kenya with a pathway for eventual tariff-free access to UAE markets.
- 107. Future review could consider provisions on environment and climate change action—
- 108. This will support greening of trade between the two countries;
- 109. Support sustainable development and actualization of Kenya’s Nationally Determined Contributions (NDCs). The agreement provides for review of the agreement after every five years. It is important to add “...or when need arises” in future review of the agreement.
- 110. The Memorandum provides sufficient legal, policy, and strategic justification to support the ratification of the Comprehensive Economic Partnership Agreement (CEPA);

Parliament is advised to:

- i. Approve ratification in accordance with Section 7 of the Treaty Making and Ratification Act.
- ii. Request supplementary submissions from the Ministry of Trade on:
 - a. East African Community (EAC) coordination plan for market access.

- b. Micro, Small and Medium Enterprises (MSME) support mechanisms and capacity-building.
 - c. Environmental and gender safeguards.
 - d. Sector-specific investment and export readiness strategies.
- iii. Mandate regular reporting every 12 months on Comprehensive Economic Partnerships' (CEPA's) progress and impact.

4.8 Institute of Economic Affairs

The Institute of Economic Affairs submitted that;

111. The agreement provides access for Kenyan products to the UAE and Middle Eastern markets but does not provide the UAE with access to Kenyan markets. The elimination of tariff and non-tariff barriers is to be progressive while development and promotion of value chains, and opportunities for trade diversification and industrialization.
112. The agreement also restricts subsidization of traded products. Although the principle of supporting industrialization and product and market diversification is useful, the elimination of trade barriers need not have been progressive. Intermediate goods will not be penalized for non-originating materials. This is a good principle. Finally, the length of the agreement implies that the agreement will have a high processing cost. It would be cheaper to liberalize markets unilaterally.
113. The objective of trade liberalization is to exploit comparative advantages in trade, to allow the free flow of factors of production, factor returns, people, and goods and services across borders. This is the feature of global economic integration. As it can be pursued unilaterally, trade liberalization need not be accompanied by institutional integration. Customs need not exist. Tariffs need not be harmonized. They can be abandoned all together. As the UAE is an important hub for intermediate goods, and, by extension, a burgeoning manufacturing hub, a free trade agreement with the country can offer Kenyan entrepreneurs with an opportunity to integrate themselves into global value and supply chains.
114. One important feature of a physical trade hub is that it lowers costs of aggregation and transportation through scale while offering a high level of connectivity to those firms that have access to it. Not only should Kenya pursue this free trade agreement with the UAE, that nation should pursue similar agreements with other global

shipping hubs like Singapore. In order to reduce the costs of negotiation, and to pursue a policy that places faith in economic principles, Kenya should unilaterally liberalize its trade with the world.

4.9 The Pharmacy and Poisons Board (PPB)

The Pharmacy and Poisons Board (PPB) submitted that;

115. The Board highlighted that the five-year *data exclusivity clause* under Article 13.33 of CEPA could restrict the approval of generic medicines, potentially delaying market entry and limiting access to affordable drugs. It emphasized that this exclusivity operates independently of patent protection and could undermine availability even after patent expiry.
116. While pricing studies fall outside its statutory mandate, the PPB noted that exclusivity would indirectly affect pricing and competition by constraining generic authorizations. To mitigate access risks, the Ministry, through the Board, plans to leverage *TRIPS flexibilities*, including parallel importation of affordable medicines, promotion of local manufacturing and technology transfer, and the use of *compulsory licensing* during public health emergencies.
117. The Board affirmed its legal authority to *fast-track approvals* through Emergency Use and Compassionate Use provisions under the Pharmacy and Poisons (Registration of Health Products and Technologies) Rules, 2022. These mechanisms were successfully applied during the COVID-19 pandemic and align with Kenya's obligations under TRIPS and the Doha Declaration on Public Health.
118. On *public health safeguards* (Article 13.6 CEPA), PPB noted that declarations of health emergencies fall within the Cabinet Secretary for Health's authority, while the Board operationalizes regulatory responses once such declarations are made.
119. Regarding *coordination with the Ministry of Trade*, PPB acknowledged the matter as a policy issue but stressed the need for coherence between CEPA obligations and the constitutional right to health under Article 43. It proposed reserving the clause on data exclusivity during CEPA implementation to preserve public health flexibility.
120. PPB outlined existing *monitoring and reporting mechanisms* under its post-market surveillance system and Pharmacovigilance Rules (2022), including online and mobile reporting, periodic re-evaluation of products, and the upcoming national Track and Trace system. These structures will support continuous assessment of CEPA's impact on access, quality, and safety of medicines.

121. Finally, the Board reaffirmed its commitment to *public consultation and stakeholder engagement*, citing existing frameworks such as quarterly forums with the Kenya Association of Pharmaceutical Industry and consultative meetings with other associations. These established mechanisms will facilitate transparent, participatory, and evidence-based CEPA implementation.

4.10 Pharmaceutical Society of Kenya (PSK)

The Pharmaceutical Society of Kenya submitted that;

122. The Pharmaceutical Society of Kenya (PSK) presented a detailed position on the implications of the Kenya–UAE Comprehensive Economic Partnership Agreement (CEPA), focusing particularly on the data exclusivity provision under Article 13.33, which grants a five-year market exclusivity for new pharmaceutical products. PSK warns that this clause could significantly undermine access to affordable medicines, compromise Kenya’s pharmaceutical sovereignty, and contradict constitutional guarantees under Article 43(1)(a) of the Constitution, which assures every Kenyan the right to the highest attainable standard of health.
123. PSK expresses deep concern that the data exclusivity clause will delay the entry of generic medicines, extend monopolies for multinational firms beyond the existing 20-year patent period, and erode the regulatory independence of the Pharmacy and Poisons Board (PPB). The Society notes that this would negatively affect the availability and affordability of medicines for chronic and life-threatening conditions such as HIV/AIDS, cancer, diabetes, and hypertension, thus threatening progress toward Universal Health Coverage (UHC).
124. From a policy standpoint, PSK identifies several conflicts between CEPA provisions and Kenya’s existing legal frameworks, including the Pharmacy and Poisons Act (Cap 244), Competition Act (2010), and the National Pharmaceutical Policy. The Society stresses that CEPA’s trade liberalization agenda could override national health safeguards, expose regulatory decisions to external scrutiny, and disadvantage local pharmaceutical manufacturers, contrary to Kenya’s Vision 2030 industrialization goals.
125. To mitigate these risks, PSK recommends:
- i. Exclusion of data exclusivity and patent linkage clauses from CEPA to preserve Kenya’s flexibility in generic approvals;

- ii. Safeguarding of TRIPS flexibilities, including compulsory licensing and parallel importation for public health needs;
- iii. Explicit prioritization of health protection in CEPA implementation, ensuring trade rules do not supersede national health laws;
- iv. Institutional strengthening of the PPB and alignment of trade agreements with Kenya's UHC agenda and local manufacturing policies;
- v. Transparency and stakeholder engagement, including publication of the full CEPA text for review before ratification; and
- vi. Zero rating of pharmaceutical products and inputs to reduce medicine costs.

4.11 Kenya Pharmaceutical Distributors Association (K.P.D.A.)

The Kenya Pharmaceutical Distributors Association submitted that;

126. The Association noted that while CEPA aims to promote trade liberalization, several provisions could adversely affect the pharmaceutical supply chain, drug quality assurance, and regulatory autonomy. K.P.D.A. emphasized the importance of aligning CEPA provisions with Kenya's existing pharmaceutical laws and trade frameworks to protect public health and ensure transparent, ethical distribution practices.

127. Key issues raised include:

- i. **Article 3:2(d)** – Enhanced cooperation in technical barriers to trade should be clearly defined to prevent ambiguity and ensure alignment with Kenyan pharmaceutical laws.
- ii. **Article 2:6** – Import and export restrictions must clearly specify the **country of origin** to prevent the transshipment of pharmaceuticals through third countries, especially the UAE, which could lead to counterfeit or substandard products entering the Kenyan market.
- iii. **Article 3.16** – The **principle of territoriality** should uphold Kenya's customs laws that require certificates of origin for all imported goods effective from October 2025.
- iv. **Article 3.22** – Provisions on **exemptions from proof of origin** must be reviewed to avoid loopholes that could facilitate illegal or parallel trade in medicines.
- v. **Article 2.8** – The **import licensing** section should not override Kenya's existing regulatory framework. The current text appears to vest full authority in CEPA, potentially disregarding national import control laws under the Pharmacy and Poisons Board and other agencies.

- vi. **Article 2.13** – The removal of **non-tariff measures (NTMs)** such as drug registration, import permits, and quality certification could lead to an **unfair playing field**, compromising Kenya’s ability to regulate safety and efficacy of imported medicines.

128. The K.P.D.A. stressed that such provisions, if unmodified, could weaken Kenya’s pharmaceutical oversight, expose the market to unverified imports, and undermine local distributors and manufacturers. The Association urged Parliament and the relevant ministries to retain Kenya’s right to regulate pharmaceutical trade, maintain robust import controls, and ensure CEPA clauses do not conflict with the Pharmacy and Poisons Act (Cap 244) or Kenya’s public health and safety obligations.

4.12 The Kenya Private Sector Alliance (KEPSA)

129. In its submission on the Comprehensive Economic Partnership Agreement (CEPA), KEPSA outlined the following recommendations:

No.	ARTICLE NUMBER AND CONTENT	PROPOSED AMENDMENT	RATIONALE AND JUSTIFICATION
1	<p>ARTICLE 3.34: Verification Visits</p> <p>Upon the issuance of the written determination referred to in paragraph 6 that the good qualifies as an originating good, the customs authority of the importing party shall immediately restore preferential benefits and promptly refund the duties paid in excess of the preferential duty or release guarantees obtained in accordance with the domestic legislation of the Parties</p>	<p>The article is reworded as follows:</p> <ul style="list-style-type: none"> Upon the issuance of the written determination referred to in paragraph 6 that the good qualifies as an originating good, the customs authority of the importing party shall immediately restore preferential benefits and within 90 days promptly refund the duties paid in excess of the preferential duty or release guarantee obtained in accordance with the domestic legislation of the parties. 	<ul style="list-style-type: none"> Introducing a definitive timeline enhances predictability within the business environment and supports more effective cash flow management. It also promotes transparency and fosters investor confidence by reducing uncertainty in trade operations.
2.	<p>ARTICLE 4.17: Subcommittee on Customs Procedures and Trade Facilitation</p> <p>The Parties agree to establish a Subcommittee</p>	<ul style="list-style-type: none"> The articles should include the comprehensive composition of the Subcommittees and the scope and roles 	<ul style="list-style-type: none"> A detailed definition of the subcommittee's composition, scope, and functions is essential for the effective implementation of the agreement.

	on Customs Procedures and Trade Facilitation		
	(CPTF Subcommittee) in accordance with Article 14.1.3 (Joint Committee) This applies to Article 6.11, Article 7.4.2, Article 8.3	of the sub-committee. An example could be Article 5.11	Referencing examples such as Article 5.11 will ensure clarity and consistency across the agreement supporting smooth coordination among parties.
3.	ARTICLE 7.1: Scope With respect to Kenya, this Chapter shall apply to investigations and measures that are taken under the authority of the Kenya Trade Remedies Agency or its successor, pursuant to Trade Remedies Act, 2017, including its subsequent amendments and replacements.	The article should be reworded to; <ul style="list-style-type: none"> With respect to Kenya this chapter shall apply to investigations and measures that are taken under the authority of Kenya Trade and Remedies Agency, EAC Committee on Trade Remedies or its successor, pursuant to Trade Remedies Act, 2017 and Article 24(2) of the EAC Customs Union Protocol including its subsequent amendments and replacements. 	Incorporating the EAC Committee on Trade Remedies ensures alignment with Kenya's obligations under the EAC Customs Union. This reflects Kenya's dual commitment to both national and regional trade remedy frameworks, fostering consistency, legal clarity, and comprehensive application of trade remedies.

5.0 COMMITTEE OBSERVATIONS

The Committee, having considered the Comprehensive Economic Partnership Agreement between Kenya, of the one part, and the United Arab Emirates, of the other part (the CEPA), and submissions from stakeholders, makes the following observations—

- i. **THAT** the main objective of the CEPA is to enhance trade, investment, and economic cooperation between Kenya and the United Arab Emirates. It aims to create a liberalised market for trade in goods and promote each Party's trade in goods through progressive elimination of tariffs, enhanced efficiency of customs procedures, enhanced cooperation in technical barriers to trade and Sanitary and Phytosanitary measures and development of value chains;
- ii. **THAT** the agreement excludes market access (tariff liberalization) as both Parties agreed to negotiate this with all the EAC Partner States when ready under the Rendezvous Clause in Article 2.19. The rationale is that the Republic of Kenya is a member of the EAC Customs Union Protocol, which establishes a Common External Tariff to be applied on goods imported into the EAC region from other foreign countries;
- iii. **THAT** Kenya and the UAE are required to set up a joint committee to steer the implementation of the CEPA alongside other subcommittees to be set up. The committee shall meet within one year of the coming into force of this Agreement. Thereafter, it shall meet every two years unless the Parties agree otherwise;
- iv. **THAT** in terms of policy and legislative consideration, the Government of Kenya has anchored the CEPA, along with all other trade agreements, in the National Trade Policy and the Integrated National Exports Development and Promotion Strategy but the CEPA requires ratification by the National Assembly in accordance with the Treaty Making and Ratification Act of 2012, revised in 2018;
- v. **THAT** the UAE is a key trading partner for Kenya, ranking as the country's sixth-largest export market for tea, meat, fruits, vegetables, and flowers, among others, and second-largest import source, with key imports from the UAE being petroleum oils,

oils obtained from bituminous minerals and polymers of propylene in primary forms, telephone sets, telephone sets, and cement clinker;

- vi. **THAT** over the past nine years, trade between the two nations has grown by 169.24%, reaching Ksh. 383.68 billion in 2022, of which in 2022 and 2023, Kenya's exports to UAE amounted to USD 373.6 million and USD 401.5 million while imports from the UAE were valued at USD 3.45 billion and USD 2.95 billion during the same period;
- vii. **THAT** the Agreement will benefit Kenya in that –
 - a) It will expand exports for Kenyan products given that the UAE is part of the Gulf Cooperation Council (GCC), which allows it preferential trade access to several Middle Eastern countries, and therefore, this agreement offers Kenya an opportunity to expand its trade footprint in the Middle Eastern Markets;
 - b) It provides a framework for cooperation in trade, investment;
 - c) Trade facilitation measures will improve customs procedures, making it easier for Kenyan businesses to trade with the UAE;
 - d) It is also expected to attract increased foreign investment in sectors such as ICT, healthcare, and agriculture while fostering technical cooperation and budget support from the UAE;
- viii. **THAT** the possible negative effects include, among others, the increased competition over time for local industries from UAE products;
- ix. **THAT** the following measures are proposed to mitigate any negative effects arising from the CEPA-
 - (a) Trade Remedies Provisions- these provide for safeguards, Countervailing Measures and Anti-dumping and thus safeguard against unfair trade practices which lead to market distortion;
 - (b) Amendment Clause - provides flexibility to the Parties to seek for amendments on any provisions when the need arises;
 - (c) Mandatory 5-Year Review Clause - provides for a comprehensive mandatory review of the entire agreement every 5 years;

- (d) Exit clause - provides for flexibility to the Parties to exit upon giving a one-year written notice;
- x. **THAT**, upon undertaking public participation, the Committee received numerous submissions from key stakeholders including the Ministry of Investments, Trade and Industry, Ministry of Foreign Affairs, Tea Board of Kenya, the Institute of Economic Affairs Kenya (IEA Kenya), the Kenya Revenue Authority, the Office of the Attorney General, ECONNEWS AFRICA, the Micro and Small Enterprises Authority, Council of Governors, the Kenya Institute of Public Policy Research and Analysis, the Kenya Accreditation Service, the National Treasury and Economic Planning and the Kenya Private Sector Alliance;
- xi. **THAT** stakeholders in full support of the Agreement took special note of the provisions in the Agreement, which consider Kenya's development needs. For instance, the Ministry of Investments, Trade and Industry observed that the CEPA provides the country with a unique opportunity for reciprocal bilateral trade in goods, services and development cooperation arrangements with one of the emerging global economic powerhouses. On the same vein, the IEA-Kenya observed that the UAE is an important hub for intermediate goods and, by extension, a burgeoning manufacturing hub, a free trade agreement with the country can offer Kenyan entrepreneurs an opportunity to integrate themselves into global value and supply chains. Other supporters were the National Treasury, the Office of the Attorney General and the Kenya Revenue Authority who supported ratification of the Kenya-UAE CEPA as it aligns with Kenya's Bottom-Up Economic Transformation Agenda (BETA) by unlocking new markets for priority value chains, attracting foreign direct investment, and promoting technology transfer to support livelihoods across the country;
- xii. **THAT** the Ministry of Foreign Affairs observed the great benefits that the Agreement offers such as expanding opportunities for services trade, since the agreement has created a common approach to services trade rules between the two countries as well as expanded technical cooperation and budget support among more benefits.

- xiii. **THAT** the Tea Board of Kenya supported the CEPA as it will benefit the tea industry through expanding tea exports to the UAE and Middle East although it observed that local tea industries will, over time, face more competition from UAE zero-rated products especially since UAE is a global tea re-exporter meaning likelihood of camouflage of brand visibility for Kenyan tea;
- xiv. **THAT** KIPPRA supported the ratification of the CEPA but raised concern on some issues, including the need to amend the review clause to allow for reviews on a need basis as opposed to every five years only offering flexibility for any emerging issues. It also observed that the Ministry provides supplementary submissions on EAC coordination plan for market access, environmental and gender safeguards, sector-specific investment and export readiness strategies, Micro, Small and Medium Enterprises (MSME) support mechanisms and capacity building and also mandate regular reporting on the progress and impact of the CEPA;
- xv. **THAT** MSEA commended the inclusion of Chapter 12 in the Kenya-UAE CEPA, which comprehensively addresses the promotion and support of SMEs as a driver of economic growth. The Agreement aligns with the objectives to foster cooperation, enhance trade opportunities, and support women and youth-owned enterprises. However, to maximize benefits for Kenyan SMESs, particularly micro-enterprises, MSEA proposed the establishment of a Bilateral SME Development Fund, detail capacity building programs, securing of interim market access pending EAC negotiations, addressing microenterprises explicitly and mitigation of competition risks;
- xvi. **THAT** KEPSA made proposals concerning amendments on Article 3.34 in verification visits so as to provide for a 90-day refund of duties that may be paid in excess of the preferential duty on the grounds that introducing a definitive timeline enhances predictability within the business environment and supports more effective cash flow management. It also promotes transparency and fosters investor confidence by reducing uncertainty in trade operations. Another proposal was to include the comprehensive composition of the subcommittees contemplated under Article 4.17, Article 14.13, Article 6.11, Article 7.4.2 and Article 8.3 as it was of the view that a detailed subcommittee's composition, scope, and functions is essential for the effective

implementation of the agreement. Finally, KEPISA did propose that Article 7.1 be reworded to incorporate the EAC Committee on Trade Remedies which ultimately ensures alignment with Kenya's obligations under the EAC Customs Union and reflects Kenya's dual commitment to both national and regional trade remedy frameworks, fostering consistency, legal clarity, and comprehensive application of trade remedies. In this regard the committee observed that once ratified, the proposed amendments may be considered during the review of the Agreement;

xvii. **THAT** the Council of Governors observed that while international trade agreements are negotiated at the national level, their successful implementation requires active involvement and cooperation of county governments since trade development and regulation is a devolved function under section 7 part 2 of the Fourth Schedule to the Constitution. It, therefore, drew awareness to the need for a coordinated implementation plan and approach for execution incorporating the national and county governments and the private sector. The COG gave several proposed amendments, such as inclusion of County Governments in the Joint committee, standing committee, ad hoc subcommittees, and any working groups established in the Agreement. The committee observed that once ratified, some of the proposed amendments may be considered during the review of the Agreement;

xviii. **THAT** Econews Africa, Pharmaceutical Society of Kenya and the Kenya Pharmaceutical Distributors Association observed that the CEPA should not be ratified as it undermines access to affordable medicines in Kenya or to ratify the treaty with reservations on TRIPS+ provisions. These stakeholders observed that the intellectual property chapter of the Agreement contains TRIPS+ provisions which go substantively beyond the TRIPS (Trade Related Aspects of Intellectual property) obligations. For instance, the linkage provisions and market exclusivity for five years from the latest possible date for both the information and the fact of the marketing approval. This means that even if there is no patent on medicine, generic versions still cannot be approved by the Pharmacy and Poisons Board as safe and effective and reach Kenyan patients for five (5) years. This therefore undermines the constitutional aspiration of achieving progressive realisation of the right to the health as the provisions hamper the ability to access generic medicines, especially at a time when there is need to provide timely access to affordable medicine to Kenyans. It is observed

that developing countries often oppose TRIPS+ rules because they can potentially increase the cost of medicines, limit access to knowledge and technology, and hurt innovation and small producers; and

- xix. The Committee observed that there are safeguard mechanisms provided for in the Agreement where either Kenya or the UAE seeks variation. The amendment clause provides flexibility to the parties to seek amendments on any provisions when the need arises while the mandatory five-year review clause provides for a mandatory comprehensive review of the entire agreement every five years.

6.0 FINDINGS

130. Upon analysis of the submissions and documents tabled, the Committee finds that the Comprehensive Economic Partnership Agreement between the Republic of Kenya, of the one part, and the United Arab Emirates, of the other part has a real risk of financial, legal and reputational damage for the country. Firstly, Kenya has not implemented TRIPS+ measures in its current laws, therefore, agreeing to them would require amendments to legislation. Secondly, even though Article 13.6 refers to the Doha Declaration on Public Health, it does not override these protections or offer clear and tangible interventions for Kenya to ignore them during a health emergency. Third, Kenya would be committing to stricter intellectual property protection than that required by WTO law, binding it in an international treaty. In view of the foregoing, the TRIPS plus provisions might consequently hurt public access to affordable medicine undermining Article 43(1)(a) of the Constitution which guarantees the right to the highest attainable standard of healthcare.

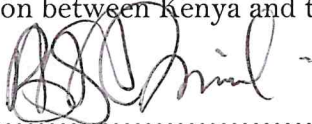
7.0 COMMITTEE RECOMMENDATION

The Committee recommends:


131. **THAT**, according to Section 8 of the Treaty Making and Ratification Act, the House **APPROVES the Ratification** of the Comprehensive Economic Partnership Agreement between the Republic of Kenya, of the one part, and the United Arab Emirates, of the other part **WITH RESERVATIONS on Article 13:33 on the Protection of Undisclosed Test or other Data for Pharmaceutical Products** pursuant to Section 8(4) of the Treaty Making and Ratification Act, Cap. 4D and Standing Order 170A(4)(c)(ii) of the National Assembly Standing Orders.

Justification

132. The Comprehensive Economic Partnership Agreement between the Republic of Kenya, of the one part, and the United Arab Emirates, of the other part, is expected to drive growth and expansion of exports and thus enhance investment and economic cooperation between Kenya and the United Arab Emirates.

SIGNED:  DATE: 13/11/2025

HON. BENARD MASAKA SHINALI, MP
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY AND COOPERATIVES

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 13 NOV 2025	
DAY: Tuesday	
TABLED BY:	Hon Manamkethany MP, VC, PC, Trade I & C
CLERK-AT THE-TABLE:	P Muga

