① Recommended & forwarded 03/10/19

REPUBLIC OF KENYA

PAPERS LAID	
DATE	9/10/19
TABLED BY	Chair
COMMITTEE	Trade
CLERK AT THE TABLE	Daw

HARAMBEE

Rt. Hon. Speaker

You may approve for tabling.

03/10/19

TWELFTH PARLIAMENT

THE SENATE

THE STANDING COMMITTEE ON TOURISM, TRADE AND INDUSTRIALIZATION

REPORT ON THE PETITION ON THE DISRUPTION OF LOCAL TRADE BY GOVERNMENT ACTION AND SANCTIONS BY MR. VINCENT OMBAKA A RESIDENT OF NAIROBI COUNTY

NAIROBI

SEPTEMBER 2019

TABLE OF CONTENTS

LIST OF ABBREVIATIONS

AFA – Agriculture and Food Authority

COC – Certificate of Compliance

COG – Council of Governors

COMESA – Common Market for East and Southern Africa

EAC – East Africa Community

F&B – Food and Beverages

ICDN – Inland Container Depot Nairobi

KDB – Kenya Dairy Board

KeBS – Kenya Bureau of Standard

KEPSA – Kenya Private Sector Alliance

KMA – Kenya Association of Manufacturers

KNBS – Kenya National Bureau of Statistic

KNCCI – Kenya National Chamber of Commerce and Industry

KRA – Kenya Revenue Authority

MAC – Multi-Agency Committee

MT – Metric Tonnes

NGO – Non-Governmental Organization

PVoC – Pre-Verification of Conformity

SGR – Standard Gauge Railway

SOP – Standard Operating Procedure

EXECUTIVE SUMMARY

This report contains the Senate Standing Committee's on Tourism, Trade and Industrialization proceedings during the hearing of the Public Petition from the Mr. Vincent Ombaka to the Senate on the disruption of local trade by Government action and sanctions. The petition was conveyed to the House by the Speaker of the Senate and committed to the Committee on Tourism, Trade and Industrialization.

The petitioner sought indulgence and intervention of the Senate on the following grounds:

i) That, the Fast Moving Consumer Products Wholesale and Retail Traders are significant contributors to economic growth in the Country;

ii) That, Regulation of Trade, including fair trade practices, is a County function and any action that significantly affects trade, affects the operation of the County Government and persons within their jurisdictions;

iii) That, the importation of duty free sugar allowed by Gazette Notice No. 4536 of 2017 was in contravention of the East African Community Customs Management Act 2004;

iv) That, the Cabinet Secretary for the National Treasury published Gazette Notice No. 4536 that allowed importation of Duty Free Sugar under the Natural Disaster Management provisions of the East African Community Customs Management Act 2004;

v) That, Paragraph 20 of Schedule 5 of the East African Community Customs Management Act 2004 provides the exemption of duty due to Natural Disaster on the following terms:

   a. The exemption should define the quantities and period for the exemption;

   b. The exemption should be granted to the Government, Government Agencies/Agent; Non-Governmental Organization; or Relief Agency;

   c. The goods are to be used where the Natural Disaster occurred.

vi) That, all these provisions of the East African Community Customs Management Act 2004 were flouted and that the duty-free sugar was not imported as a Natural Disaster relief measure by the relevant persons but as a commodity by various business persons;

vii) That, in any case Sugar is not a basic commodity that should be accorded priority in relief circumstances and the import of Duty Free Sugar led to unfair trade practices in the market;

viii) That, the Duty Free Sugar was way cheaper than locally processed sugar and the sugar the Wholesale and Retail Traders had earlier imported and paid duty. thus Wholesale and Retail Traders were exposed to dead stock and significant losses;

ix) That, the Kenya Bureau of Standards is being discredited by the law enforcement agencies therefore Wholesale and Retail Traders have no way of determining safety standards, and are at the mercy of rogue Police Officers who are demanding bribes; and

x) That, the Cabinet Secretary for the Ministry of Internal Security and Coordination of National Government has not given any clear directives on which imported sugar or sugar factories should be avoided thus throwing the country into confusion.

In considering the petition, the Committee invited the petitioner. The Committee also received submissions from the National Treasury; the Principal Secretary Ministry of Agriculture; and the Kenya Association of Manufacturers. The views of the petitioner and those of the agencies invited were incorporated while compiling this report.

The Committee considered all the submissions and endeavoured to respond adequately to the prayers of the Petitioners. The observations and recommendations of the Committee are contained in this report.

PREFACE

Establishment of the Committee

The Standing Committee on Tourism, Trade and Industrialization is established pursuant to standing order 218 of the Senate Standing Orders and mandated to consider all matters relating to trade, industrialization, tourism, cooperatives, investment and divestiture policies.

Membership of the Committee

The Committee is comprised of the following Members-

1. Sen. Kibiru Charles Reubenson **-Chairperson**
2. Sen. Anuar Loitiptip **-Vice Chairperson**
3. Sen. Mwangi Paul Githiomi -Member
4. Sen. (Dr.) Langat Christopher Andrew -Member
5. Sen. Wario Golich Juma -Member
6. Sen. Mwaruma Johnes -Member
7. Sen. (Dr.) Agnes Zani -Member
8. Sen. Masitsa Naomi Shiyonga -Member
9. Sen. Mercy Chebeni -Member

Mr Speaker Sir,

I am pleased to present and table the report on the disruption of local trade by Government action and sanctions by Mr. Vincent Ombaka a resident of Nairobi County to the Senate. This report contains the prayers of the petitioner and the recommendations of the Committee.

The petitioner submitted his prayers, pursuant to Articles 37 and 119 of the Constitution and in line with the provisions of the Petition to Parliament (Procedure) Act and the Senate Standing Orders.

The Petition

Pursuant to the Senate Standing Orders No. 220 (1) and 224(b), the Speaker of the Senate reported to the House a petition presented through the Clerk of the Senate by Temporary Speaker Sen. (Prof.) Margret Kamar, Senator for Mr. Vincent Omabaka. Following the tabling of the petition and in line with the Standing Order No. 224 (1), the Speaker directed the Standing Committee on Trade, Tourism and Industrialization to investigate the matter and table the report in the House within 60 days.

The Petitioners drew the attention of the Senate to the following issues:

a) That, the Fast Moving Consumer Products Wholesale and Retail Traders are significant contributors to economic growth in the Country;

b) That, Regulation of Trade, including fair trade practices, is a County function and any action that significantly affects trade, affects the operation of the County Government and persons within their jurisdictions;

c) That, the importation of duty free sugar allowed by Gazette Notice No. 4536 of 2017 was in contravention of the East African Community Customs Management Act 2004.

d) That, the Cabinet Secretary for the National Treasury published Gazette Notice No. 4536 that allowed importation of Duty Free Sugar under the Natural Disaster Management provisions of the East African Community Customs Management Act 2004 ;

e) That, Paragraph 20 of Schedule 5 of the East African Community Customs Management Act 2004 provides the exemption of duty due to Natural Disaster on the following terms:

   i. The exemption should define the quantities and period for the exemption;
   ii. The exemption should be granted to the Government, Government Agencies/Agent; Non-Governmental Organization; or Relief Agency;
   iii. The goods are to be used where the Natural Disaster occurred.

f) That, all these provisions of the East African Community Customs Management Act 2004 were flouted and that the duty-free sugar was not imported as a Natural Disaster relief measure by the relevant persons but as a commodity by various business persons;

g) That, in any case Sugar is not a basic commodity that should be accorded priority in relief circumstances and the import of Duty Free Sugar led to unfair trade practices in the market;

h) That, the Duty Free Sugar was way cheaper than locally processed sugar and the Wholesale and Retail Traders had earlier imported and paid duty, thus Wholesale and Retail Traders were exposed to dead stock and significant losses;

i) That, the Kenya Bureau of Standards is being discredited by the law enforcement agencies therefore Wholesale and Retail Traders have no way of determining safety standards, and are at the mercy of rogue Police Officers who are demanding bribes; and

j) That, the Cabinet Secretary for the Ministry of Internal Security and Coordination of National Government has not given any clear directives on which imported sugar or sugar factories should be avoided thus throwing the country into confusion.

In presenting the petition to the Senate, the petitioners clarified the following facts:

1. That, the Senate refer this matter to the relevant committees and invite the relevant government agencies to respond to the issues raised; and
2. That, the Senate recommends to the President the establishment of a Task Force to examine key issues on regulation of sugar importation.

Mr. Speaker Sir,

The Petitioner prayed that the Senate addresses the issues of disruption of local trade by Government action and sanctions in order to successfully solve the issues of sugar problem in the country.

The Committee considered the prayers of the petitioner and convened a series of hearings involving different stakeholders including the petitioner. The Committee also invited witness to adduce evidence and reviewed documents presented. The evidence obtained from these exercises informed the determination of the prayers of the petitioner by the Committee.

Consideration of the Petition

In consideration of the Petition, the Committee invited the petitioner, the Principal Secretary Ministry of Agriculture; the sugar traders and the Kenya Association of Manufacturers. The objective of the Committee was to respond to the prayers of the petitioners conclusively and make observations and recommendations on all matters relating to the petition from a well-informed position.

ACKNOWLEDGMENT

The Committee wishes to acknowledge the time and considerable effort made by all the agencies that appeared before the committee to respond to the concerns of the petitioners. I also wish to express my gratitude to the Members of the Committee for their thoughtful and considerate contributions to the matter. Further the Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to it during the meetings.

Mr Speaker Sir,

It is now my pleasant duty, pursuant to Standing Order 230, to present a Report of the Standing Committee on Senate Standing Committee on Tourism, Trade and Industrialization on the petition report on the disruption of local trade by Government action and sanctions by Mr. Vincent Ombaka a resident of Nairobi County

Signed: ________________ **Date** 2nd/october/2019

SEN. KIBIRU CHARLES REUBENSON, MP

CHAIRPERSON

SENATE STANDING COMMITTEE ON TRADE, TOURISM AND INDUSTRIALIZATION

CHAPTER ONE

1.0 Introduction

The right of Kenyan citizens to petition public authorities and Parliament is conferred by the Constitution under Articles 37 and Article 119 and by the Petition to Parliament (Procedure) Act as well as the Standing Orders of Senate. The right to petition is an essential citizen participatory tool, as it provides an avenue for the Members of Parliament and citizens to interact with the issues that concern citizens, and also demonstrates that Parliament is prepared to directly intervene on the issues of concern in order to promote and protect the rights of the citizens.

1.1 Background to the Petition

Pursuant to Senate standing Order 226 (1), the petition was presented by Temporary Speaker Sen. (Prof.) Margret Kamar, Senator for Mr. Vincent Omabaka for consideration and determination by the Committee.

1.2 Issues for Determination from the Prayers of the Petitioners

To respond to the petitioner's prayers the Committee analysed the petition to determine whether:

a. The Fast Moving Consumer Products Wholesale and Retail Traders are significant contributors to economic growth in the Country;

b. The Regulation of Trade, including fair trade practices, is a County function and any action that significantly affects trade, affects the operation of the County Government and persons within their jurisdictions;

c. The importation of duty free sugar allowed by Gazette Notice No. 4536 of 2017 was in contravention of the East African Community Customs Management Act 2004;

d. The Cabinet Secretary for the National Treasury published Gazette Notice No. 4536 that allowed importation of Duty Free Sugar under the Natural Disaster Management provisions of the East African Community Customs Management Act 2004 ;

e. The Paragraph 20 of Schedule 5 of the East African Community Customs Management Act 2004 provides the exemption of duty due to Natural Disaster on the following terms:

   i. The exemption should define the quantities and period for the exemption;
   ii. The exemption should be granted to the Government, Government Agencies/Agent; Non-Governmental Organization; or Relief Agency;
   iii. The goods are to be used where the Natural Disaster occurred.

f. All the provisions of the East African Community Customs Management Act 2004 were flouted and that the duty-free sugar was not imported as a Natural Disaster relief measure by the relevant persons but as a commodity by various business persons;

g. The Sugar is not a basic commodity that should be accorded priority in relief circumstances and the import of Duty Free Sugar led to unfair trade practices in the market;

h. The Duty Free Sugar was way cheaper than locally processed sugar and the sugar the Wholesale and Retail Traders had earlier imported and paid duty, thus Wholesale and Retail Traders were exposed to dead stock and significant losses;

i. The Kenya Bureau of Standards is being discredited by the law enforcement agencies therefore Wholesale and Retail Traders have no way of determining safety standards, and are at the mercy of rogue Police Officers who are demanding bribes;

j. The Cabinet Secretary for the Ministry of Internal Security and Coordination of National Government has not given any clear directives on which imported sugar or sugar factories should be avoided thus throwing the country into confusion.

CHAPTER TWO

2.0 Submissions to the Committee

This section contains the summaries of the submissions made to the Committee during the sessions and other documents submitted by various stakeholders.

2.1 Submission by the Petitioners

2.1.1 Defining Local Trade

The Fourth schedule of the Constitution of Kenya lists regulation of trade including unfair trade practices, as a county function. Fast Moving Consumer Products (FMCG) wholesale traders sell sugar as a major commodity. Wholesale traders contribute significantly to county revenue through health certificates, annual business permits, fire permits, parking fees and loading bays and disrupting local trade disrupts county revenue.

1. **Facts on Wholesale and Retail Trade**

   i. **Economic growth** - Wholesale and retail trade is identified as one of the 6 key sectors that can deliver 10% economic growth in Kenya Sensational paper on Vision 2030 at pp63.

   ii. **4th GDP contributor** - Wholesale and retail trade has been the 4th largest GDP producers in Kenya for the last 4 years. Kenya National Bureau of Statistics (2017).

   iii. **Manufacturing and transport** - Wholesale and retail trade is directly connected to the manufacturing and transport sectors and directly impacts their performance.

2. **Gazette Notice No.4536 of 12th May 2017**

   i. The Cabinet Secretary in charge for the National Treasury allowed for importation of duty free non –COMESA sugar. The gazette notice was issued pursuant to section 114 (2) of the East African Community Customs Management Act, 2004.The reason for the exemption was given as;

   ii. ***The declaration by the President and the Commander in Chief of the Kenya Defence forces through executive order no 1 of 2017 that the drought and famine in parts of Kenya is a national disaster.***

   iii. Section 114 (2) of the East African Community Customs Management Act, 2004 applies to exemption of tax under special conditions in part of the 5th schedule to the act.

3. ***Gazette Notice No.9801 of 4th October 2017***

   i. This was an extension of the previous gazette notice. This gazette notice provided that:

ii. ***Duty shall not be payable on the sugar which will have been loaded into a vessel between 1st September ,2017 and 31st December 2017, destined to a port and consigned to a local sugar miller .***

iii. It was meant to give more time for 'sugar barons' to cash in on sugar that was locked out while in high seas.

4. The Illegality of the Gazette Notice

i. Breach of COMESA regulations and Kenya obligations to the Treaty safeguarded by importing non – COMESA sugar. COMESA: CS/TCM/TTF-SC/3/6(a), august 2018.

ii. Breach of section 114(2) of the East African Community Customs Management act, 2004 schedule 5 part B paragraph 20:

- Limits importation for disaster management to specific government agencies and relief NGOs
- Limited to basic relief products, of which sugar is not
- This move was targeted to benefit few individual sugar traders- sugar barons

5. The Impact of the Exemptions

A number of traders had already imported COMESA sugar stocks and had paid import duty and taxes. The imported sugar led to losses for traders with old stocks and disruption of value chain. The local sugar industry was rendered useless, unable to match prices Traders were forced to rely on 'sugar barons' who had duty free sugar.

6. Poisonous Sugar Aftermath

The duty free sugar was termed 'poisonous' by the Cabinet Secretary for the ministry for Internal Security in June 2018. Amorphous directives were given to the Kenya Police Service to investigate sugar wholesalers and distributors and impound 'poisonous' sugar. Sugar that had been certified by the Kenya Bureau of Standard (KeBS) was declared unsafe and trader were subjected to inspection under the food, Drugs and Chemical substances Act (CAP 254).

Traders were being forced to dispose sugar without due process by signing fraudulent forms (samples supplied). Police who stalled transportation and sale harassed traders. Discrediting KeBS through the media led to mass hysteria and confusion on market standards of safety.

7. The Need for a Taskforce

A number of issues require a proper examination in order to ensure sustainability of the sugar industry in Kenya beyond the 2 year COMESA safeguard extension (2020).

i. The prudence of repealing the sugar act 2001

ii. The viability of privatization as a blanket solution to the inefficiency in the sugar industry in Kenya (lessons from the privatization of Mumias sugar)

iii. The real impact of duty free sugar and concrete rules for sugar deficit imports monitored by:

- The trade ministry (COMESA obligations)
- The finance ministry (duties and taxes)
- The agriculture ministry (protection of the sugar industry)

iv. Traders in the sugar industry should not be subjected to trade losses and police harassment in this nature as a tradition.

2.1.2 List of Recommendations from the Petitioner

1. Formation of Task Force

The formation of a Presidential Task Force to comprehensively address the issues affecting the sugar industry is one the key prayers made by the Petitioner. The issues raised by the Petitioner are multifaceted and would require intensive and informed deliberations and representations from various stakeholders.

This task force should comprise the following persons:

i. The Cabinet Secretary in Charge of Agriculture or a representative;

ii. The Cabinet Secretary in Charge of Finance or a representative;

iii. The Cabinet Secretary in Charge of Trade or a representative;

iv. The Commissioner in Charge of Customs and Duties at the Kenya Revenue Authority, or a representative;

v. The Managing Director of the Kenya Bureau of Standards or a representative;

vi. The Director of the Sugar Directorate of the Agriculture and Food Authority or a representative;

vii. A representative from the Council of Governors;

viii. A representative from the Kenya National Chamber of Commerce;

ix. A representative from the Kenya Association of Manufacturers;

x. A representative from the Kenya Private Sector Alliance;

xi. The Petitioner to represent the interest of small scale traders.

This task force should look at the key issues that have been raised in this petition, and other issues that would be relevant in ensuring a thriving sugar sector. The task force should deliver a comprehensive report of administrative and legislative reforms that should be undertaken in the sugar sector in Kenya in the growing and development of sugar cane, manufacturing and processing and trade in sugar in Kenya. One of the ministries should provide a secretariat to support this task force.

2. Terms of Reference for the Task Force

The key issues that the Task Force should address itself on should include:-

a) A comprehensive status report of the Sugar industry in Kenya including:-

   i. A list of active private and public sugar milling establishments in Kenya and respective geographic locations;

   ii. A list of official distributors and service providers contracted by publicly owned sugar millers;

   iii. A list of Debts owed and Debt management strategies in publicly owned sugar millers;

   iv. Assets held by publicly owned sugar millers;

   v. Financial statements and books of accounts of publicly owned sugar millers;

   vi. Sugar consumption and market trends in Kenya

b) A detailed analysis on the actual impact of the duty-free sugar imported in Kenya in the 2017 period, including its impact on Kenya's obligation under COMESA and impact on local trade in sugar.

c) The practicality of privatization of publicly owned sugar millers, and an analysis of how public owned millers are operating in the COMESA regions.

d) Evaluation of Kenya's COMESA commitments with regard to the sugar sector, and impact of the COMESA deadlines.

e) Recommendations on mechanization of processes in sugar cane production, and foreseeable practicalities and challenges of mechanization.

f) The state of technology adopted by publicly owned sugar millers and the need, if any, to adopt new technologies that would be cost effective in sugar processing.

g) The management of sugar import permits and sugar import trends, and related concerns.

h) The impact of the repeal of the Sugar Act 2001 on the operation of the sugar sector in Kenya.

i) The administration of the Sugar sector in light of Agriculture being a shared function between the National and County Governments.

j) Addressing quality issues and public health issues arising from production and trade in sugar.

3. Task Force Report

The Task Force should deliver a report within 12 months from the date of its constitution. This report should be presented to the President and Committee for appropriate action.

4. Task Force Deliverables

The Task Force should have the following deliverables:

- A report on the state of the Sugar industry at present
- A report on the actual impact of duty free sugar import in 2017
- Sugar Sector Policy Reform Recommendations
- Legislative Recommendations

2.2 Submission by the National Treasury

The key highlights from the submissions made by Cabinet Assistant Secretary for National Treasury, Hon. Nelson Gaichuhie were as follows:

i. Responding on issue of sugar importation and in its contravention of the EAC Customs regulations, the Cabinet Assistant Secretary (CAS) Hon. Nelson Gaichuhie, stated that on the 10^{th} Feb 2017, the President declared drought as a national disaster. Therefore importation was done under the Customs Management Act as per the declaration of a national disaster;

ii. That, the maize and sugar are essentials commodities and on 5^{th} May 2017 a meeting was convened at Harambee House, chaired by Head of Public Service Mr. Kinyua and resolved to end the high prices of milk by importing the sugar and milk for purposes of lowering the market prices although they did not ventilate on issue of quantities;

iii. That, the importation of duty free sugar was in line with East Africa Customs Management Act 5^{th} Schedule Part B and the issue of importation of the sugar has been resolved with the assistance of KRA;

iv. That, the positive impact of importation of duty free sugar was captured and approved by the Agriculture, Fisheries and Food Authority (AFFA). The report of AFFA recommended that the sugar companies facing deficits should be aided by the importation of sugar duty free; and

v. That, the Treasury dealt with figures from the authorities and in particular AFFA on the 114 metric tonnes expected to fill the deficit in 2017. The Committee learnt that, a special request was made for sugar millers to be allowed to import sugar.

Observations and recommendations from the National Treasury

i. That, sugar cannot be classified as food to mitigate on emergency during drought for starving population;

ii. That, the petition raised serious issues that needed closer scrutiny since the issue of sugar in Kenya was a thorny matter.

2.3 Submission by Kenya Association of Manufacturers

2.3.1 Brief on Kenya Association of Manufacturers (KAM)

Kenya Association of Manufacturers (KAM) is the umbrella body for manufacturing value addition industries in Kenya. Established in 1959, the organization has over the years, prided itself as the premier business membership organization in policy analysis and advocacy, with a growing membership, now with over 1000 members in the value add industries.

2.3.2 Manufacturing Sector Performance

The Association comprises of members who include sugar millers and industrial sugar users. An analysis of the Manufacturing sector performance is as follows;

Kenya Vision 2030's overall goal for the manufacturing sector is to increase its contribution to Gross Domestic Product (GDP) by at least 10% per annum and propel Kenya towards becoming Africa's industrial hub. The manufacturing contribution to the GDP has been on the decline for the last few years. In 2017, the sector contribution to GDP stood at 8.4% down from 9.2% in 2016. The manufacturing sector under the Big 4 agenda, is expected to contribute 15% of GDP by 2022 from 8.4% in 2017. The real growth in 2017 was 0.2%.To achieve the 15% contribution to GDP by 2022, manufacturing sector is expected to grow at least 33% Year on Year. The sector's formal employment rose to 303.3 thousand persons in 2017 from 300.9 thousand persons in 2016 - accounted for 11.4 per cent of the total formal employment. Producer prices increased by 4.60% in 2017, which the Government attributes mainly, to increase in overall prices of manufactured food products.

2.3.3 Sugar production, consumption and regulation in Kenya

Sugar in the country is classified under two categories:

- White Refined Industrial Sugar
- Brown Sugar (Commonly referred to as table sugar)

In the period 2016 and 2017 the sugar industry reported sugar production of 639,742 and 377,818 tons respectively. This was decline of 41% over the period. According to Agriculture and Food Authority (AFA), the reduction was attributed to drought and reduced sugar cane availability.

In the period January-June 2018, the sugar industry reported production of 259,826 tons which is still a decline over the 2016 output of approximately 23.00%. Precise countrywide consumption statistics are difficult to determine accurately due to import data not comprehensively being available, porous borders, which are widely acknowledged to contribute to additional and unmeasured, supply and unknown stock balances (particularly after exceptional imports) remain unavailable.

In their estimates, with a population of 48.50 million and a conservative per capita consumption figure of 21.50kgs per annum, the total consumption figure could stand at 1.042 million tons (of which approximately 180,000 tons is delivered as industrial sugar for the Food and Beverage (F&B) sectors. This provides an estimate comparative consumption figure of approximately 863,000 tons, which is comparable to the Government estimates.

Kenya is a deficit producer of sugar both for brown and white refined sugar. In 2017 alone the deficit was about 654,944 metric tonnes (MT). The National deficit given current production estimates for direct consumption or table sugar is approximately 350,000 tons, the deficit are still growing.

1. Sources of Sugar Imports

Kenya's production is almost entirely consumed in Kenya and the shortfall or 'gap' has been traditionally filled through imports from COMESA member states due to preferential (zero duty) access. White refined industrial sugar or high spec white sugar is not locally produced. The importation of refined sugar only as a raw material is particularly regulated under the east Africa Community Duty remission scheme or if originating from a COMESA member state, by the sugar directorate.

The importation of refined sugar is overseen nationally by Government agencies that include the Ministry of Finance and Planning, Ministry of Agriculture and the Kenya Revenue Authority (KRA). The quantities of sugar utilised by industrial sugar users are publicly published in the East African Community Gazette.

There are currently thirty six (36) Kenyan companies that are gazetted to import 170,820 metric tons of refined sugar during the period 2016/2017. Each gazetted Kenyan manufacturer is required to apply and is subjected to stringent investigations and audit by AFFA, KRA and KEBS before being granted a quota under the gazetted. These investigations include audits to demonstrate capacity, utilisation, record keeping and factory processes, much which is required to ensure that no industrial sugar is diverted from industry to the market place. Sugar for industrial use originates from traditional and quality approved refineries under world market and the Common Market for Eastern and Southern Africa (COMESA) regimes.

2. Regulation and Process for Industrial Sugar Users

There exists legal frameworks at the National and EAC level regulating sugar importation which are as follows:-

- The East African Community Customs (Duty Remission) Regulations, 2004.
- The Sugar (Imports, Exports and By-Products) regulations, 2008 –subject to review.

All industrial sugar imports arrive in compliance with the Standards Act and the Pre-Export Verification of Conformity (PVOC) protocols governed by KEBS. This means that all refined sugars for industrial use have been tested by KEBS' appointed and certified surveyors & laboratories before the sugar arrives in Kenya. Compliance to the Standards will result in the issuance, on behalf of KEBS, of a Certificate of Compliance (CoC).

All manufacturers' finished products are subjected to KEBS Standardization compliance testing and the fixing of 'stamps' on all finished product that is made available for sale. All manufacturers must deliver detailed reconciliations of sugar usage to the Authorities to demonstrate zero disposals into the direct consumption market.

3. Impact of the 2017 Sugar Legal Notices on Importation of Sugar by the Ministry of Finance and Planning

Legal Gazette Notices on Sugar Importation into Kenya and the Effect of the Legal Notices

The Government published the following legal notices on sugar, which allowed for the importation of over one million tons of sugar into Kenya.

i. ***Gazette Notice No. 4536 of 12th: May 2017. Importation of Sugar and Milk Powder Duty Free***

Provision of the law relied on:

Section 114 (2) of the East African Community Customs Management Act, 2004, and the declaration by the President and Commander in Chief of the Kenya Defence Forces through Executive Order No. 1 of 2017 that the drought and famine in parts of Kenya is a national disaster.

Provisions:

Duty shall not be payable for the following items:-

Sugar imported by any person, with effect from the date of this Notice to the 31st August, 2017; and Nine thousand tonnes of milk powder imported by milk processors, with the authority of the Kenya Dairy Board, with effect from the date of this Notice to the 31st July, 2017.

ii. ***Gazette Notice No. 9801 of 4th October 2017: The East African Community Customs Management Act, 2004, Importation of Sugar Duty Free.***

Provision of the law relied on:

Section 114 (2) of the East African Community Customs Management Act, 2004, and the declaration by the President and Commander in Chief of the Kenya Defence Forces through Executive Order No. 1 of 2017 that the drought and famine in parts of Kenya is a national disaster.

Provisions:

Duty shall not be payable on the sugar which will have been loaded into a vessel between 1st September, 2017 and 31st December, 2017, destined to a port in Kenya and consigned to a local sugar miller.

iii. ***Gazette Notice No. 9801 of 4th October 2017: The East African Community Customs Management Act, 2004, Importation of Sugar and milk powder Duty Free amendment.***

Provisions:

An item (a), by deleting the word 'imported' and substituting therefore the words "loaded into a vessel destined to a port in Kenya". Deleting item (b) and substituting therefore a new item (b) as follows:- nine thousands metric tonnes of milk powder which will have been loaded into a vessel between 12th May, 2017 and 30th November, 2017 destined to a port in Kenya and consigned to a milk processor with prior authority from Kenya Dairy Board for the importation.

The 'duty window' as per gazette notice 4536 of 12th May 2017 did not extend to the importation of refined sugar for industrial use. This further distinguished refined sugar from table sugar.

It has been widely acknowledged that the gazette notices resulted in widespread disruption in Kenya. Kenya Manufacturers in the food and beverage sector along many of Kenyan sugar millers have expressed a number of their concerns and registered their frustrations with KAM, as follows:-

1. **Kenya's exports to Uganda and Tanzania are blocked due to;**

   a) **The lack of clarification on the extent of the sugar legal notice, limiting it to brown sugar commonly known as table sugar:** This has caused challenges in Kenya and at the EAC leading to Kenyan exports being effectively blocked. Following the legal gazette notices, the EAC Countries imposed 25% duty on products containing sugar based on the reasoning that any product manufactured in Kenya contained sugar that was tax free, created an undue advantage over other products in the region subject to the full tax of 25% under the EAC Common External Tariff (CET) rates. The manufacturing sectors mainly affected include food and beverage sector.

   b) **The delays in addressing the impasse between Kenya and other EAC Countries such as Tanzania and Uganda were prolonged:** The period lasted for more than five months, commencing in March 2018. The process involved verification in June 2018 and for other countries in July 2018.

At the end of the process, the EAC acknowledged that Kenyan manufacturers who use industrial sugar did not benefit from the tax free sugar directive as they adhered to the EAC Duty Remission requirements and national laws on the same. Despite the EAC recommendation to lift any restriction of imposing of tax on goods manufactured in Kenya, Tanzania has still not implemented the same to date.

2. Effect on Trade Facilitation

a) **Massive delays in clearance of standardized and pre-verified cargo in Mombasa and ICDN:** Due to the allegations of sub-standard sugar in Kenya (caused entirely by the opinion and governance of raw sugar imports in 2017), the clearance time for refined sugar has now moved from eight (8) days to an average of fifty (55) days. The consequences have been as follows:

i. Causing massive and unnecessary congestion in Mombasa and at Inland Container Deport Nairobi (ICDN).

ii. Cut off raw material supplies resulting in many factory closures.

iii. The suspension of supplies of refined sugar caused the costs of all other downstream inputs and suppliers to be increased.

iv. Kenya's Food and Beverage Sector have reported non-tariff costs (penalty storage, port charges and demurrage), for the period July to October of in excess of Ksh 300 million.

v. Collapse in tax revenues to the Exchequer from the manufacturing sector.

vi. Increased competition from imported finished goods.

vii. Direct threat to employment and employment initiatives though increasing costs and inefficiencies imposed through poor policy & consultation.

viii. Threat to new investment and development in line with Big Four Agenda as policy and administration is now noticeably more hostile and less enabling.

ix. It has exposed logistics challenges such as capacity and efficiencies with the Standard Gauge Railway (SGR) and Inland Container Depot Nairobi (ICDN) framework.

x. The appearance of new policy controls that are imposed on the legitimate sectors of the economy but are meant to be targeting the illicit trade, only encourages the trade in sub-standard, undeclared and counterfeit goods.

xi. A complete breakdown in public - private sector cooperation required to create a conducive environment for trade and investment. This has affected H.E the Presidents '4 Pillar' Agenda especially on manufacturing.

xii. The rampant and uncontrolled 'sampling' of legitimate goods by police, health, council, standards and other agencies. This 'sampling' is extreme and unnecessary and it is often conducted under very aggressive and intimidating conditions.

3. Effect on Institutional structures to ensure compliance of imports and exports

The number of separate agencies inspecting goods, legitimately or otherwise, at the Ports is estimated at 45 out of which 22 are Government agencies that include Kenya Bureau of Standards (KEBs), Kenya Ports Authority (KPA)/ICD, Kenya Revenue Authority (KRA) and Port Health among others.

Creation of Multi Agency Committee (MAC) in addition, which has further complicated the clearance processes at the port.

4. Multi Agency Committee (MAC)

The Multi Agency Committee (MAC), appointed in June 2018 to combat counterfeits and sub-standard goods in Kenya launched a countrywide campaign to investigate the 2017 sugar imports.

MAC instructed that all imports of sugar including white refined sugar were to be detained in warehouses and at the Ports and re-tested for compliance by KEBS before being released back to the importers. This exercise is widely recognized to be an exercise carefully orchestrated to distract from the facts and actions of various influential parties who were involved in the importation of sub-standard sugars.

Kenya's manufacturers, who are not involved in the importation of duty free brown sugar, were 'caught up' in the supposed search for sub-standards goods and subjected to unreasonable and illogical intervention. All refined sugar for industrial use has been pre-verified for compliance to the Standards under PVoC and prior to arrival in Kenya.

There is no evidence of a Standard Operating Procedure (SOP) or a service delivery charter from the Multi Agency Authority which has resulted in inexplicable delays in performance, a failure in communication between the public and private sectors and a collapse in business confidence within the manufacturing community.

5. KEBS and the Pre Verification of Conformity (PVOC) Programme

The Kenyan Bureau of Standards (KEBS) has in place the Pre-Export Verification of Conformity (PVOC) to Standards Program to ensure the quality of products imported into Kenya meet the interests of the Kenyan consumers. These standards are set to address health, safety, environmental and quality challenges and non-compliant goods will be denied entry to Kenya.

The intervention by MAC was authorized without consultation and therefore consideration of the potential impact on Kenya's manufacturing sector where engagement in the PVOC programme could have addressed the sector and the Government's concerns comprehensively.

Recommendations from the Kenya Association of Manufacturers (KAM)

1. **Policy recommendation**

Reduction of delays to manufacturers

- Release of the import of all pre-verified white refined sugar for industrial use being imported by recognized and registered manufacturers, subject to full Customs clearance & compliance, without intervention or further delay.
- State agencies including the Multi Agency Committee to adhere to the directive issued by the Cabinet Secretary Trade, Industry and Cooperatives on harmonization of all efforts under the PVOC programme under KEBS. This will ensure reduction of the clearance time for consignments for raw material and inputs from manufacturers to promote trade facilitation.

2. **Institutional and governance recommendation**

Strengthen Institutional Frameworks

i. All Government agencies to accept the declarations contained in Certificates of Conformity issued by KEBS approved agencies but retain their rights to undertake random sampling of imports and continuous governance of the quality standards of all Kenyan manufactured goods

ii. Strengthen the Kenya Bureau of Standards (KEBS) by, identifying mitigation areas on challenges affecting KEBS and ensuring sufficient budgetary allocations to KEBS as this is a function beyond the capability and mandate of the Multi Agency.

iii. Undertake wide consultations between the Multi Agency Committee and various stakeholder groups to address National concerns, operational capacity, objectives and process; in advance of implementations.

3. **Legal Recommendation**

FastTrack development of Draft 2018 Regulations on Sugar

Set timelines to support fast tracking of the enactment of Regulations on sugar developed by Ministry of Agriculture and adoption of industry proposals submitted to the Ministry. The Regulations are; The

Sugar (Imports, Exports and By-products) Regulations, 2008 and The Crops (Sugar) (General) Regulations, 2018.

4. **General Recommendation**

Compensation to Manufacturers for additional costs incurred and losses

i. The National Treasury to compensate all importers of approved goods in the full amount of port storage, Customs warehouse rent, removal and demurrage costs for the period from 1st July 2018 until unwarranted interventions are withdrawn. Moving a container from Mombasa to Nairobi under implementation of SGR has gone up regardless of the implementation of the promotional freight rates by the government through Kenya Railway is which comes to end 31st December, 2018. Before introduction of SGR freight services, the cost of moving a container from Mombasa to Nairobi on average was USD 800 and USD 1000 for 20ft and 40ft respectively. However, this now by about 70% and 93% for 20FT and 40ft respectively.

ii. Imposition of storage charges to commence only after all State agencies clear the goods. This will ensure manufacturers do not bear the cost of inefficiencies. This is especially since demurrage has now been considered an income to the Government.

2.4 Submission by Ministry of Agriculture

Hon. Mwangi Kiunjuri the Cabinet Secretary Ministry of Agriculture appeared before the committee and responded to the concerns by the petitioner as follows:-

i) That, Fast Moving Consumer Products Wholesale and Retail Traders are significant contributors to economic growth in the Country

Response: The issue should be redirected to State Department for Trade.

ii) That, Regulation of Trade, including fair trade practices is a County function and any action that significantly affects trade, affects the operation of the County Government and persons within their jurisdictions.

Response: To be redirected to the State Department for Trade and the Council of Governors

iii) That importation of duty free sugar allowed by Gazette Notice No.4536 of 2017 was in contravention of the East African Community Customs Management Act 2004

Response: To be redirected to the National Treasury

- Industrial sugar is imported into the country strictly by industrial manufacturers under a duty remission scheme.
- Importation is also capped at individual manufacture's capacity which is determined annually through verification by AFA and another team constituted by the Duty Remission Committee.

xii) That Wholesale and Retail Traders are being subjected to demands for testing and approval of both local and imported sugar that is in their possession , with no clearly defined process and no forthcoming results

Response: To be redirected to KEBS

xiii) That the purge by the Cabinet Secretary for Internal Security and coordination of National Government is exposing Wholesale and Retail Traders to police harassment and paralyzing business

Response: To be redirected to the Ministry of Interior and Coordination of National Government.

xiv) That Wholesale and Retail Traders are being subjected to mass suspicion and unwarranted threats by police officers who claim that they are selling poison.

Response: To be redirected to the Ministry of Interior and coordination of National Government

xv) That the vehicles and workers of Wholesale and Retail Traders are being subjected to arbitrary arrests on the pretext of faulting the provisions of the Food, Drugs and Chemical Substances Act and being coerced to surrender sugar in their possession to the law enforcement agencies.

Response: To be redirected to the Ministry of Interior and Coordination of National Government, Public Health and KEBS.

CHAPTER THREE

3.0 COMMITTEE'S OBSERVATIONS

The committee observed as follows:-

1. The Government published the following legal notices on sugar, which allowed for the importation of over one million tons of sugar into Kenya;
   i. ***Gazette Notice No. 4536 of 12th: May 2017. Importation of Sugar and Milk Powder Duty Free, Gazette Notice No. 9801 of 4th October 2017;***
   ii. ***The East African Community Customs Management Act, 2004, Importation of Sugar Duty Free, Gazette Notice No. 9801 of 4th October 2017;***
   iii. ***The East African Community Customs Management Act, 2004, Importation of Sugar and milk powder Duty Free amendment.***
2. Industrial sugar is imported into the country strictly by industrial manufacturers under a duty remission scheme. Importation is also capped at individual manufacture's capacity which is determined annually through verification by AFA and another team constituted by the Duty Remission Committee. However, the Duty Free Window led to importation of Industrial Sugar by persons who were not manufacturers.
3. Sugar cannot be classified as food to mitigate on emergency during drought for starving population and determination of the acute shortage of milk and sugar as reported was suspicious since there wasn't an outcry about the lack of sugar. This was in contravention of the East African Community Customs Management Act 2004
4. There were massive delays in clearance of standardized and pre-verified cargo in Mombasa and ICDN. The number of separate agencies inspecting goods, legitimately or otherwise, at the Ports is estimated at 45 out of which 22 are Government agencies that include Kenya Bureau of Standards (KEBs), Kenya Ports Authority (KPA)/ICD, Kenya Revenue Authority (KRA) and Port Health among others. Creation of Multi Agency Committee (MAC) has further complicated the clearance processes at the port. This led to losses to the manufactures due to the storage charges incurred.
5. The duty free sugar was cheaper than locally produced sugar and the sugar that the wholesale and retail traders had earlier imported and paid duty, thus Wholesale and Retail Traders were exposed to dead stock and significant losses.

CHAPTER FOUR

4.0 COMMITTEE'S RECOMMENDATIONS

The committee recommends as follows:-

1. Public Participation should be mandatory before any gazette notice is issued on importation of duty free sugar in line with the Constitution of Kenya 2010.
2. The ministry of Agriculture should differentiate between the industrial sugar and the table sugar. Further, only recognized and registered manufacturers should be allowed to import industrial sugar;
3. The relevant bodies to evaluate and report back on the Kenya's COMESA commitments with regard to the sugar sector, and impact of the COMESA deadlines;
4. The responsible agencies to expedite clearance of standardized and pre-verified cargo in Mombasa and ICDN. Further, imposition of storage charges to commence only after all State agencies clear the goods. This will ensure manufacturers do not bear the cost of inefficiencies of government and other Agencies;
5. Where the government imports sugar cheaper than the local sugar, the government should ensure it compensates the local sugar manufacturers, the wholesale and retail traders to the extent of the difference;
6. There is need for mechanization of processes in sugar cane production and adopting new technologies with an aim of increasing the quantity and quality produced. This will revamp sugar companies and discourage the overdependence on imports by the government;
7. There is need for a comprehensive financial audit and debt management strategies for publicly owned sugar millers;
8. There is need for enactment of Regulations on sugar developed by Ministry of Agriculture and adoption of industry proposals submitted to the Ministry. The Regulations are; The Sugar (Imports, Exports and By-products) Regulations, 2008 and The Crops (Sugar) (General) Regulations, 2018;

ANNEX 1: ADOPTION LIST

ADOPTION OF THE REPORT OF THE PETITION ON THE DISRUPTION OF LOCAL TRADE BY GOVERNMENT ACTION AND SANCTIONS BY MR. VINCENT OMBAKA A RESIDENT OF NAIROBI COUNTY

We, the undersigned Members of the Tourism Trade and Industrialization Committee of the Senate, do hereby append our signatures to adopt the Report-

Sen. Kibiru Charles, MP	Chairperson	....
Sen. Anuar Loitítip, MP	Vice-Chairperson	....
Sen. Mwangi Githiomi, MP	Member	....
Sen. Andrew Langat, MP	Member	....
Sen. Wario Golich, MP	Member	....
Sen. (Dr.) Agnes Zani., MP	Member	....
Sen. Mwaruma Johnes, MP	Member	....
Sen. Masitsa Naomi, MP	Member	....
Sen. Mercy Chebeni, MP	Member	....

Published by:
The Clerk of the Senate/Secretary, PSC
Parliament Buildings
NAIROBI

MINUTES OF THE 67TH MEETING OF THE STANDING COMMITTEE ON TOURISM, TRADE & INDUSTRIALIZATION HELD ON TUESDAY, 26TH SEPTEMBER, 2019 IN RED CROSS BUILDING, FIRST FLOOR BOARDROOM, FROM 12.00 P.M.

MEMBERS PRESENT

1. Sen. Kibiru Charles Reubenson - Chairperson
2. Sen. Mwaruma Johnes - Member
3. Sen. Mercy Chebeni - Member
4. Sen. Langat Christopher Andrew - Member
5. Sen. Mwangi Paul Githiomi - Member

MEMBERS ABSENT

1. Sen. Anuar Loitiitip - Vice-Chairperson
2. Sen. Wario Golich Juma - Member
3. Sen. (Dr.) Agnes Zani - Member
4. Sen. Masitsa Naomi Shiyonga - Member

SENATE SECRETARIAT

1. Mr. Ibrahim Ali Leruk - Clerk Assistant
2. Ms. Winnie Kulei -Researcher
3. Ms. Lucy Nyasuna -Intern

PRAYERS

The meeting was called to order at 11.25 p.m. by the Chairperson Sen. Kibiru Charles Reubenson followed by a word of prayer.

MINUTE.SEN/DCS/SCTTI/2019: ADOPTION OF AGENDA

The agenda of the meeting was adopted after, it was proposed by Sen. Mwaruma Johnnes and seconded by Sen. Mercy Chebeni as follows;

PRAYERS

1. Adoption of the Agenda;
2. Housekeeping - Adoption of Petition Reports
    i. Report on Petition by Vincent Ombaka - On The Disruption Of Local Trade By Government Action And Sanctions
    ii. Report On Petition By Kevin Ndoho Macharia - The Reviews Of Laws Relating To Business Premises
3. Any Other Business & Adjournment.

MINUTE.SEN/DCS/SCTTI/2019: ADOPTION OF THE REPORT ON PETITION BY VINCENT OMBAKA - ON THE DISRUPTION OF LOCAL TRADE BY GOVERNMENT ACTION AND SANCTIONS

The Committee adopted the report for tabling.

MINUTE.SEN/DCS/SCTTI/2019: ADOPTION OF THE REPORT ON PETITION BY KEVIN NDOHO MACHARIA - THE REVIEWS OF LAWS RELATING TO BUSINESS PREMISES

The Committee adopted the report for tabling.

MINUTE.SEN/DCS/SCTTI/2019: ANY OTHER BUSINESS AND ADJOURNMENRT

There being no other business, the meeting was adjourned at 12:33 p.m.

SIGNATURE...

(CHAIRPERSON: SEN. KIBIRU CHARLES REUBENSON)

DATE 2nd/october/2019

MINUTES OF THE 37TH MEETING OF THE STANDING COMMITTEE ON TOURISM, TRADE & INDUSTRIALIZATION HELD ON WEDNESDAY, 28TH NOVEMBER, 2018 IN RED CROSS BUILDING, FIRST FLOOR BOARDROOM, FROM 9.30 A.M.

MEMBERS PRESENT

1. Sen. Kibiru Charles Reubenson - Chairperson
2. Sen. Langat Christopher Andrew - Member
3. Sen. Masitsa Naomi Shiyonga - Member
4. Sen. Mwangi Paul Githiomi - Member

MEMBERS ABSENT

1. Sen. Anuar Loititip - Vice-Chairperson
2. Sen. Mwaruma Johnes - Member
3. Sen. Wario Golich Juma - Member
4. Sen. (Dr.) Agnes Zani - Member
5. Sen. Mercy Chebeni - Member

SENATE SECRETARIAT

1. Mr. Ibrahim Ali Leruk - Clerk Assistant
2. Mr. Leonard Koech -Legal Counsel
3. Ms. Lucy Nyasuna -Intern
4. Mr. Abdigani -Audio Officer

IN ATTENDANCE

1. Ms. Phyllis Wakiaga – CEO KAM
2. Mr. Job Wanjohi -Head Polcy KAM
3. Mr. Eric Kiniti -EABL
4. Joss Taylor -Czarnikos
5. Mr. Bharat Shah -KAM
6. Jacqueline Ntabari -Almasi Beverages
7. Ms. Miriam Boinett - Legal Counsel KAM

PRAYERS

The meeting was called to order at 9.30 a.m. by the Chairperson followed by a word of prayer.

MINUTE.SEN/DCS/SCTTI/2018/156: ADOPTION OF AGENDA

The agenda of the meeting was adopted after, it was proposed by Sen. Christopher Langat and seconded by Sen. Naomi Shinyoga as follows;

PRAYERS

1. Adoption of the Agenda;
2. Confirmation of Minutes
3. **Meeting the Kenya Association of Manufacturers on Laws relating to Business Premises; and**
4. Any Other Business & Adjournment.

MINUTE.SEN/DCS/SCTTI/2018/157: CONFIRMATION OF MINUTES

The Minutes of the 29th, 30th, 31st, 32nd, 33rd, 34th 35th and 36th Sittings was differed to the next sitting:

MINUTE.SEN/DCS/SCTTI/2018/158: MEETING KENYA ASSOCIATION OF MANUFACTURERS CONCERNING REVIEWS OF LAWS RELATING TO BUSINESS PREMISES

The Chief Executive Officer Kenya Association of Manufacturers made the following submission:

i. *That, the Association comprises of members who include sugar millers and industrial sugar users.*

ii. *That, an analysis of the Manufacturing sector performance is as follows;*
   - *Kenya Vision 2030 overall goal for the manufacturing sector is to increase its contribution to Gross Domestic Product (GDP) by at least 10% per annum and propel Kenya towards becoming Africa's industrial hub.*
   - *The manufacturing contribution to the GDP has been decline for the last few years. In 2017, the sector contribution to GDP stood at 8.4% down from 9.2% in 2016*

- *The manufacturing sector under the Big 4 agenda is expected to contribute 15% of GDP by 2022 from 8.4% in 2017.*
- *The real growth in 2017 was 0.2%. To achieve the 15% contribution to GDP by 2022, manufacturing sector is expected to grow at least 33% Year on Year.*
- *The sector's formal employment rose to 303.3 thousand persons in 2017 from 300.9 thousand persons in 2016 - accounted for 11.4 per cent of the total formal employment.*
- *Producer prices increased by 4.60% in 2017, which the Government attributes mainly, to increase in overall prices of manufactured food products.*

iii. *That, the Sugar in the country is classified under two categories;*

   a. ***Brown Sugar*** *(Commonly referred to as table sugar)*

   b. *White Refined Industrial Sugar*

iv. *That, In the period 2016 and 2017 the sugar industry reported sugar production of 639,742 and 377,818 tons respectively. This was decline of 41% over the period. According to Agriculture and Food Authority (AFA), the reduction was attributed to drought and reduced sugar cane availability and nn the period January-June 2018, the sugar industry reported production of 259,826 tons which is still a decline over the 2016 output of approximately 23.00%.*

v. *That, Precise countrywide consumption statistics are difficult to determine. accurately due to, import data not comprehensively being available, porous borders, which are widely acknowledged to contribute to additional and unmeasured, supply and unknown stock balances (particularly after exceptional imports) remain unavailable.*

vi. *That, the estimates, with a population of 48.50 million and a conservative per capita consumption figure of 21.50kgs per annum,* ***the total consumption figure could stand at 1.042 million tons*** *(of which approximately 180,000 tons is delivered as industrial sugar for the food and beverage (F&B) sectors. This provides as estimate comparative consumption figure of approximately 863,000 tons which is comparable to the Government estimates*

vii. *That, Kenya is a deficit producer of sugar both for brown sugar and white refined* *sugar. In 2017 alone we had a deficit of about 654,944 metric tonnes (MT). The National deficit given current production estimates for direct consumption or table sugar is approximately 350,000 tons. The deficit is still growing.*

viii. *That, Kenya's production is almost entirely consumed in Kenya and the shortfall or 'gap' has been traditionally filled through imports from COMESA member states due to preferential (zero duty) access. (See table below on source of imports.)*

ix. ***That, the** White refined industrial sugar or high spec white sugar is not locally produced, the importation of refined sugar only as a raw material is particularly regulated under;*

a. *The East Africa Community Duty Remission Scheme or,*

b. *If originating from a COMESA member state, by the Sugar Directorate.*

x. *That, the importation of refined sugar is overseen nationally by Government agencies that include the **Ministry of Finance and Planning, Ministry of Agriculture and the Kenya Revenue Authority** (KRA). The quantities of the sugar utilized by industrial sugar users are publicly published in the East African Community Gazette. There are currently **thirty-six** (36) Kenyan companies that are gazette to import 170,820 metric tons of refined sugar during the period **2016/2017**.*

xi. *That, each gazetted Kenyan manufacturer is required to apply and is subjected to stringent investigation and audit by **AFA, KRA and KEBS** before being granted a quota under the gazette. These investigations include **audits to demonstrate capacity, utilization, record keeping and factory processes**, much of which is required to ensure that no industrial sugar is diverted from industry to the marketplace.*

xii. *That, Sugar for industrial use originates from traditional and quality approved (by the Kenyan manufacturers) refineries under **world market** and **The Common Market for Eastern and Southern Africa (COMESA)** regimes. These origins include, but are not limited to, India, Saudi Arabia, Egypt, the European Union, Thailand, South Africa, Egypt and Mauritius.*

xiii. *That, there exist legal frameworks at the National and EAC level regulating sugar importation which are as follows:*

a. *The East African Community Customs (Duty Remission) Regulations,* *2004.*

b. *The Sugar (Imports, Exports and By-products) Regulations, 2008 – subject to review.*

xiv. *That, all industrial sugar imports arrive in compliance with the Standards Act and the PVOC protocols governed by KEBS. This means that all refined sugars for industrial use have been tested by KEBS' appointed and certified surveyors & laboratories before the sugar arrives in Kenya. Compliance to The Standards will result in the issuance, on behalf of KEBS, of a Certificate of Compliance (CoC).*

xv. *That, all manufacturer's finished products are subjected to KEBS Standardization compliance testing and the fixing of 'stamps' on all finished product that is made available for sale. All manufacturers must deliver detailed reconciliations of sugar usage to the Authorities to demonstrate zero disposals into the direct consumption market.*

xvi. *That, the Government published the following legal notices on sugar, which allowed for the importation of over one million tons of sugar into Kenya:*

a. *Gazette Notice No. 4536 of 12th May 2017:* ***Importation of Sugar and Milk Powder Duty Free***

The provisions are:

- *Section 114 (2) of the East African Community Customs Management Act, 2004, and the declaration by the President and Commander in Chief of the Kenya Defense Forces through Executive Order No. 1 of 2017 that the drought and famine in parts of Kenya is a national disaster.*

Duty shall not be payable for the following items:

1) *Sugar imported by any person, with effect from the date of this Notice to the 31st August, 2017; and*
2) *Nine thousand tons of milk powder imported by milk processors, with the authority of the Kenya Dairy Board, with effect from the date of this Notice to the 31st July, 2017.*

b. *Gazette Notice No. 9801 of 4th October 2017(The East African Community Customs Management Act, 2004):* ***Importation of Sugar Duty Free.***

The provisions are:

- *Duty shall not be payable on the sugar which will have been loaded into a vessel between 1st September, 2017 and 31st December, 2017, destined to a port in Kenya and consigned to a local sugar miller.*

c. *Gazette Notice No. 9802 of 4th October 2017 (The East African Community Customs Management Act, 2004):* ***Importation of Sugar and Milk Powder Duty Free-amendment.***

The provisions are:

- *In item (a), by deleting the word "imported" and substituting therefor the words "loaded into a vessel destined to a port in Kenya".*
- *Deleting item (b) and substituting therefore a new item (b) as follows – (b) nine thousands metric tonnes of milk powder which will have been loaded into a vessel between 12th May, 2017 and 30th November, 2017, destined to a port in Kenya and consigned to a milk processor with prior authority from Kenya Dairy Board for the importation.*

xvii. *That, the 'duty window' as per Gazette Notice 4536 of 12th May 2017 did not extend to the importation of refined sugar for industrial use. This further distinguished refined sugar from 'table sugar'*

xviii. *That, It has been widely acknowledged that, the Gazette notices (above) resulted in widespread disruption in Kenya. Kenyan manufacturers in the Food and Beverage sector alongside many of Kenyan sugar millers have expressed a number of their concerns and registered their frustrations with KAM, there are summarized as follows:*

A. *Kenya's exports to Uganda and Tanzania are blocked due to;*

a) ***The lack of clarification on the extent of the sugar legal notice, limiting it to brown sugar commonly known as table sugar:***

This has caused challenges in Kenya and at the EAC level leading to Kenyan exports being effectively blocked. Following the legal gazette notices, the EAC Countries imposed 25% duty on products containing sugar based on the reasoning that any product manufactured in Kenya contained sugar that was tax free, therefore created an undue advantage over other products in the region and subject to the full tax of 25% under the EAC Common External Tariff (CET) rates. The manufacturing sectors mainly affected include food and beverage sector.

b) ***The delays in addressing the impasse between Kenya and other EAC Countries such as Tanzania and Uganda were prolonged:***

The period lasted for more than five months, commencing in March 2018. The process involved a verification in June 2018 and for other countries in July 2018.

At the end of the process, the EAC acknowledged that Kenyan manufacturers who use industrial sugar did not benefit from the tax-free sugar directive adhered to the EAC Duty Remission requirements and national laws on the same. ***(Enclosed as Annex 1 is an EAC Verification report documenting the concerns and outcome).***

Despite the EAC recommendation to lift any restriction of imposing of tax on goods manufactured in Kenya, Tanzania has still not implemented the same to date.

B. *Effect on Trade Facilitation*

a) ***Massive delays in clearance of standardized and pre-verified cargo in Mombasa and ICDN:***

Due to the allegations of sub-standard sugar in Kenya (caused entirely by the opinion and governance of raw sugar imports in 2017), the clearance time for refined sugar *has now moved from* ***eight (8) days to an average of fifty (55) days.*** *The consequences have been as follows:*

1. *Causing massive and unnecessary congestion in Mombasa and at ICDN.*
2. *Cut off raw material supplies resulting in many factory closures.*
3. *The suspension of supplies of refined sugar caused the costs of all other downstream inputs and suppliers to be increased.*
4. *Kenya's Food and Beverage Sector have reported non-tariff costs (penalty storage, port charges and demurrage), for the period July to October* ***of in excess of Ksh 300 million.***
5. *Collapse in tax revenues to the Exchequer from the manufacturing sector.*
6. *Increased competition from imported finished goods.*
7. *Direct threat to employment and employment initiatives though increasing costs and inefficiencies imposed through poor policy & consultation.*
8. *Threat to new investment and development in line with Big Four Agenda as policy and administration is now noticeably more hostile and less enabling.*
9. *It has exposed logistics challenges such as capacity and efficiencies with the standard gauge railway (SGR) and Inland Container Depot Nairobi (ICDN) framework.*
10. *The appearance of new policy controls that are imposed on the legitimate sectors of the economy but are meant to be targeting the illicit trade, only encourages the trade in sub-standard, undeclared and counterfeit goods.*
11. *A complete breakdown in public - private sector cooperation required to create a conducive environment for trade and investment. This has affected H.E the Presidents '4 Pillar' Agenda especially on manufacturing.*
12. *The rampant and uncontrolled 'sampling' of legitimate goods by police, health, council, standards and other agencies. This 'sampling' is extreme and unnecessary and it is often conducted under very aggressive and intimidating conditions.*

C. *Effect on Institutional structures to ensure compliance of imports and exports*

- *The number of separate agencies inspecting goods, legitimately or otherwise, at the Ports is estimated at* **45** *out of which 22 are Government agencies that include Kenya Bureau of Standards (KEBs), Kenya Ports Authority (KPA)/ICD, Kenya Revenue Authority (KRA) and Port Health among others.*
- *Creation of Multi Agency Committee (MAC) is addition which has further complicated the clearance processes at the port.*

D. *Multi Agency Committee (MAC)*

- *The Multi Agency Committee (MAC), appointed in June 2018 to combat counterfeits and sub-standard goods in Kenya launched a countrywide campaign to investigate the 2017 sugar imports;*
- *MAC instructed that all imports of sugar including white refined sugar were to be detained in warehouses and at the Ports and re-tested for compliance by KEBS before being released back to the importers. This exercise is widely recognized to be an exercise carefully orchestrated to distract from the facts and actions of various influential parties who were involved in the importation of sub-standard sugars;*
- *Kenya's manufacturers, who are not involved in the importation of duty free brown sugar, were 'caught up' in the supposed search for sub-standards goods and subjected to unreasonable and illogical intervention. All refined sugar for industrial use has been pre-verified for compliance to the Standards under PVOC and prior to arrival in Kenya; and*
- *There is no evidence of a Standard Operating Procedure (SOP) or a service delivery charter from the Multi Agency Authority, which has resulted in inexplicable delays in performance, a failure in communication between the public and private sectors and a collapse in business confidence within the manufacturing community.*

E. KEBS and the Pre-Verification of Conformity (PVOC) Programme

i. *The Kenyan Bureau of Standards (KEBS) has in place the* ***Pre-Export Verification of Conformity (PVOC)*** *to Standards Program to ensure the quality of products imported into Kenya meet the interests of the Kenyan consumers.*

ii. *These standards are set to address health, safety, environmental and quality challenges and non-compliant goods will be denied entry into Kenya.*

iii. *The intervention by MAC was authorized without consultation and therefore consideration of the potential impact on Kenya's manufacturing sector where engagement in the PVOC programme could have addressed the sector and the Government's concerns comprehensively.*

RECOMMENDATIONS:

1. *POLICY RECOMMENDATIONS*
   - *Reduction of delays to manufacturers – release to the importers all pre-verified white sugar for industrial use being imported by recognized registered manufacturers, subject to full custom clearance and compliance*
   - *State Agencies including the Multi Agency Committee to conform to the directives issued by the Cabinet Secretary Trade, Industry and Cooperatives on harmonization of all efforts under the PVOC programme under he KEBs. This will ensure reduction of clearance time for consignments for raw material and inputs from manufacturers to promote trade facilitation*

2. *INSTITUTIONAL AND GOVERVANCE RECOMMENDATIONS*

Strengthening Institutional frameworks:

- *All Government agencies to accept the declarations contained in certificates of conformity issued by KEBs approved agencies but retain their rights to* *undertake random sampling of imports and continuous governance of the quality standards of all Kenyan manufactured goods.*

- *Strengthening the Kenya Bureau of Standards KEBs, by identifying mitigation areas on challenges affecting KEBS and ensuring sufficient budgetary allocations to KEBs at this function beyond the capability of KEBs as this is a function beyond the capability and mandate of Multi Agency*
- *Undertake wide consultation between the Multi Agency Committee and various stakeholders groups to address National concerns, operational capacity, objectives and process in advance of implementations*

3. *LEGAL RECOMMENDATIONS*

- *Fast track development of draft 2018 regulations on sugar*
- *Set timelines to support fast tracking of enactment of Regulations on sugar developed by Ministry of Agriculture and adoption of Industry proposals submitted to the Ministry.*

The Regulations are:

- *The Sugar (Imports, Exports and By Products) Regulations, 2008; and*
- *The crops (Sugar) General Regulations 2018.*

4. *GENERAL RECOMMENDATIONS*

Compensations to manufacturers for additional cost incurred and losses:

- *The Ministry of Finance to compensate all imports of approved goods in full amount of port storage, customs warehouse rent, removal and demurrage cost for the period from 1st July 2-18 until unwarranted interventions are withdrawn.*
- *Moving a container from Mombasa to Nairobi under implementation of promotional freights rates by the government through Kenya Railway, which comes to end on 31st December 2018. Before introduction of SGR freight services, the cost of moving a container from Mombasa to Nairobi*

on average was USD 800 and USD 1000 for 20ft and 40ft respectively. However this now has increased by about 70% and 93% for 20ft and 40ft respectively.

- *Imposition of storage charges to commence, only after all state agencies clear the goods. This will ensure manufacturers do not bear the cost of inefficiencies. This is especially since demurrage has now been considered an income to the Government.*

MINUTE.SEN/DCS/SCTTI/2018/159: ANY OTHER BUSINESS AND ADJOURNMENRT

There being no other business, the meeting was adjourned at 10.35 p.m.

SIGNATURE..

(CHAIRPERSON: SEN. KIBIRU CHARLES REUBENSON)

DATE..14th/August/2019..........................

MINUTES OF THE 33RD MEETING OF THE STANDING COMMITTEE ON TOURISM, TRADE & INDUSTRIALIZATION HELD ON TUESDAY, 6TH NOVEMBER, 2018 IN RED CROSS BUILDING, FIRST FLOOR BOARDROOM, FROM 11.00 A.M.

MEMBERS PRESENT

1. Sen. Kibiru Charles Reubenson - Chairperson
2. Sen. (Dr.) Agnes Zani - Member
3. Sen. Langat Christopher Andrew - Member
4. Sen. Mwaruma Johnes - Member
5. Sen. Mwangi Paul Githiomi - Member
6. Sen. Mercy Chebeni - Member

MEMBERS ABSENT

1. Sen. Anuar Loititip - Vice-Chairperson
2. Sen. Wario Golich Juma - Member
3. Sen. Masitsa Naomi Shiyonga - Member

SENATE SECRETARIAT

1. Mr. Ibrahim Ali Leruk - Clerk Assistant
2. Mr. Malcom Ngugi - Legal Counsel

IN ATTENDANCE

1. Prof. Hamadi Boga - Principal Secretary
2. Mr. Solomon Odera - Min. Of Agriculture
3. Mr. Milton Munyialo - Min. Of Agriculture
4. Ms. Grace Agili - Min. Of Agriculture

PRAYERS

The meeting was called to order at 11.05 a.m. by the Chairperson followed by a word of prayer.

MINUTE.SEN/DCS/SCTTI/2018/140: ADOPTION OF AGENDA

The agenda of the meeting was adopted after, it was proposed by Sen. Agnes Zani and seconded by Sen. Naomi Shinyonga as follows;

PRAYERS

1. Adoption of the Agenda;
2. Confirmation of Minutes
3. **Meeting the Principal Secretary State Department of Agriculture and Research; and**
4. Any Other Business & Adjournment.

MINUTE.SEN/DCS/SCTTI/2018/141: CONFIRMATION OF MINUTES

The Minutes of the 29th, 30th, 31st and 32nd Sittings was differed to the next sitting:

MINUTE.SEN/DCS/SCTTI/2018/142: MEETING PRINCIPAL SECRETARY STATE DEPARTMENT OF AGRICULTURE ON THE PETITIONER BY MR. VINCENT OMBAKA CONCERNING DISRUPTION OF LOCAL TRADE BY GOVERNMENT ACTIONS AND SANCTIONS

Principal Secretary Prof. Hamadi Boga briefed the Committee as follows:

i. *The PS stated that they had provided a response to all the issues raised;*
ii. *Most of the issues raised were not relevant to the Ministry and these queries were directed to the relevant State Department;*
iii. *The PS stated that the 600,000 more tonnes of sugar was imported into the country during the said period;*
iv. *The Principal Secretary stated that the petitioner was misinformed in that, the imported industrial sugar supply was extremely low in 2017 as compared to 2016.*
v. *The PS stated that the importation was mostly of white sugar and explained that the use and importation of the industrial sugar was mostly imported from COMESA countries. He stated that the challenge was with the brown and industrial sugar which lay which was authorised by National Treasury.*
vi. *The PS stated that there is a problem of science in Kenyan agriculture since there were no high yielding varieties of sugarcane in Kenya, leading to losses hence the need to focus on this area of research;*

vii. *That, the Ministry of Agriculture had an MOU with Cuban government to improve on high quality variety for the purposes of bumper harvest to bridge the deficit.*

viii. *The PS also acknowledged that a lot of the Senators' concerns were about governance issues and that, the political economy was a hindrance to the proper governance of the sugar industry*

ix. *The publicly owned sugar companies also were poorly run therefore privatization of these companies was necessary*

x. *The PS stated that the main sugar exporting countries had superior scientific measures as compared to Kenya*

RESOLUTIONS

i. *Committee resolved to interrogate the contents of the submissions made by the Petitioner and the Cabinet Assistant Secretary, the Committee noted with concern National Treasury unsatisfactorily answers to petitioner prayers and therefore agreed to summon Cabinet Secretary to answer key issues raised in the petition;*

ii. *The Committee observed that, proper data collection of the ministries of agriculture and the meteorological department was poorly done. The Committee noted that, farmers might be discouraged from farming due to the losses incurred in sugar industry;*

iii. *The Committee was concerned on the little coordination in the ministries. The Committee wanted to know why there was sudden realization of this poor variety and asked whether there was any conspiracy to deliberately have shortages through the poor research and poor sugar yields so as to import;*

iv. *The Committee directed that, the PS should come up with recommendations to the Committee in terms of legislation in addressing the issues of poor research and funding to research institution. The Committee noted with concern the poor funding by Government to the agricultural research sector;*

v. *The Committee observed that, the main problem with the agriculture sector in Kenya was corruption and privatization of the loss making companies was not a panacea to the collapsing industry. The Committee suggested that, caution should be exercised in the privatization of companies in Kenya. The Committee advised that, the weak policies and regulatory enforcements could also mean that private companies ventures could collapse and layoffs of* *workers from tea factories was cited as an example of ailing economy caused by the adverse business environment;*

vi. *The Committee agreed to enforce strategies from the Government geared toward investing in Research and Development. Investment in the science sector was found to be crucial for modern day agriculture.*

MINUTE.SEN/DCS/SCTTI/2018/143: ANY OTHER BUSINESS AND ADJOURNMENRT

There being no other business, the meeting was adjourned at 10.35 p.m.

SIGNATURE……………………………………………………………………………

(CHAIRPERSON: SEN. KIBIRU CHARLES REUBENSON)

DATE……14th/August/2019……………………………………………………

MINUTES OF THE 32ND MEETING OF THE STANDING COMMITTEE ON TOURISM, TRADE & INDUSTRIALIZATION HELD ON TUESDAY, 6TH NOVEMBER, 2018 IN RED CROSS BUILDING, FIRST FLOOR BOARDROOM, FROM 9.15 P.M.

MEMBERS PRESENT

1. Sen. Kibiru Charles Reubenson - Chairperson
2. Sen. (Dr.) Agnes Zani - Member
3. Sen. Langat Christopher Andrew - Member
4. Sen. Mwaruma Johnes - Member
5. Sen. Mwangi Paul Githiomi - Member
6. Sen. Mercy Chebeni - Member

MEMBERS ABSENT

1. Sen. Anuar Loititip - Vice-Chairperson
2. Sen. Wario Golich Juma - Member
3. Sen. Masitsa Naomi Shiyonga - Member

SENATE SECRETARIAT

1. Mr. Ibrahim Ali Leruk - Clerk Assistant
2. Mr. Malcom Ngugi - Legal Counsel

IN ATTENDANCE

1. Hon. Nelson Gaichuhie - Cabinet Assistant Secretary
2. Mr. Mwambia Wanyambura - National Treasury

PRAYERS

The meeting was called to order at 12.20 p.m. by the Chairperson followed by a word of prayer.

MINUTE.SEN/DCS/SCTTI/2018/136: ADOPTION OF AGENDA

The agenda of the meeting was adopted after, it was proposed by Sen. Agnes Zani and seconded by Sen. Naomi Shinyonga as follows;

PRAYERS

1. Adoption of the Agenda;
2. Confirmation of Minutes
3. **Meeting the Cabinet Assistant Secretary – National Treasury**
4. Any Other Business & Adjournment.

MINUTE.SEN/DCS/SCTTI/2018/137: CONFIRMATION OF MINUTES

The Minutes of the 30th and 31st Sittings was differed to the next sitting:

MINUTE.SEN/DCS/SCTTI/2018/138: MEETING CABINET ASSISTANT SECRETARY NATIONAL TREASURY ON THE PETITIONER BY MR. VINCENT OMBAKA CONCERNING DISRUPTION OF LOCAL TRADE BY GOVERNMENT ACTIONS AND SANCTIONS

The Chairman briefed the meeting that, the key agenda of the meeting was on a petition by Mr Vincent Ombaka on the disruption of local trade by government action and sanctions.

The key highlights from the submissions made by Cabinet Assistant Secretary Hon. Nelson Gaichuhie National Treasury were as follows:

i. *Responding on issue of sugar importation and in its contravention of the EAC Customs regulations, the Cabinet Assistant Secretary (CAS) Hon. Nelson Gaichuhie, stated that on the 10th Feb 2017, the President declared drought as a national disaster. Therefore importation was done under the Customs Management Act as per the declaration of a national disaster;*

ii. *That, the maize and sugar are essentials commodities and on 5th May 2017 a meeting was convene at Harambee House, chaired by Head of Public Service Mr. Kinyua and resolved to end the high prices of milk by importing the sugar and milk for purposes of lowering the market prices although they did not ventilate on issue of quantities;*

iii. *That, the importation of duty free sugar was in line with EA Customs Management Act 5th Schedule Part B and the Issue of importation of the sugar has been resolved with the assistance of KRA;*

iv. *That, the positive impact of importation of duty free sugar was captured and approved by the AFFA. The report of AFFA recommended that the sugar companies facing deficits should be aided by the importation of sugar duty free; and*

v. *That, the Treasury dealt with figures from the authorities and in particular AFFA on the 114 metric tonnes expected to fill the deficit in 2017. The Committee learnt that, a special request was made for sugar millers to be allowed to import sugar*

Observations and recommendations

i. *That, sugar cannot be classified as food to mitigate on emergency during drought for starving population;*

ii. *That, the petition raised serious issues that needed closer scrutiny since the issue of sugar in Kenya was a thorny matter. The Committee agreed to limit itself to matters of policy;*

iii. *The Committee was concern as to why the sugar could not have been imported from the COMESA countries inline with COMESA regulation;*

iv. *The Committee noted with concern why the Government could have determined the acute shortage of milk and sugar as reported and why there wasn't an outcry about the lack of milk;*

v. *The Committee was informed that, over-importation of sugar was a key factor of the downfall of Kenya National Trading Corporation;*

vi. *The Committee raised concern on the failure to import of sugar from COMESA nations, which was not satisfactorily answered. The Committee noted that, the petition before the committee was as a result of serious issues on the ground.*

vii. *The Committee resolved that the matter should be taken seriously and the Cabinet Secretary should be invited to answer on the issues since he is responsible for Gazette Notice issued; and*

viii. *The Chair advised that the petition was not a waste of time and issues raised in the petition are pertinent.*

MINUTE.SEN/DCS/SCTTI/2018/139: ANY OTHER BUSINESS AND ADJOURNMENRT

There being no other business, the meeting was adjourned at 10.35 p.m.

SIGNATURE...

(CHAIRPERSON: SEN. KIBIRU CHARLES REUBENSON)

DATE..14th/August/2019...

MINUTES OF THE 31ST MEETING OF THE STANDING COMMITTEE ON TOURISM, TRADE & INDUSTRIALIZATION HELD ON WEDNESDAY, 24TH OCTOBER, 2018 IN RED CROSS BUILDING, FIRST FLOOR BOARDROOM, FROM 12.15 P.M.

MEMBERS PRESENT

1. Sen. Kibiru Charles Reubenson - Chairperson
2. Sen. Masitsa Naomi Shiyonga - Member
3. Sen. (Dr.) Agnes Zani - Member
4. Sen. Langat Christopher Andrew - Member

MEMBERS ABSENT

1. Sen. Anuar Loititip - Vice-Chairperson
2. Sen. Mercy Chebeni - Member
3. Sen. Wario Golich Juma - Member
4. Sen. Mwaruma Johnes - Member
5. Sen. Mwangi Paul Githiomi - Member

SENATE SECRETARIAT

1. Mr. Ibrahim Ali Leruk - Clerk Assistant
2. Mr. Malcom Ngugi - Legal Counsel

IN ATTENDANCE

1. Mr. Vincent Ombaka – Petitioner

PRAYERS

The meeting was called to order at 12.20 p.m. by the Chairperson followed by a word of prayer.

MINUTE.SEN/DCS/SCTTI/2018/132: ADOPTION OF AGENDA

The agenda of the meeting was adopted after, it was proposed by Sen. Agnes Zani and seconded by Sen. Naomi Shinyonga as follows;

PRAYERS

1. Adoption of the Agenda;
2. Confirmation of Minutes
3. **Meeting the Petitioner Mr. Vincent Ombaka; and**

4. Any Other Business & Adjournment.

MINUTE.SEN/DCS/SCTTI/2018/133: CONFIRMATION OF MINUTES

The Minutes of the 30th Sittings was differed to the next sitting:

MINUTE.SEN/DCS/SCTTI/2018/134: MEETING THE PETITIONER MR. VINCENT OMBAKA CONCERNING DISRUPTION OF LOCAL TRADE BY GOVERNMENT ACTIONS AND SANCTIONS

Mr Ombaka briefed the Committee on the gist of the petition as follows:

i. *That, he made the petition to the Senate being resident from the Sugar belt zones and a resident of the South Nyanza, in addition to his interest in the sugar sector;*

ii. *That, the poisonous sugar scandal problem began in 2017 and traders were not bringing out issues ailing the sector;*

iii. *That, trade was cited as one of the key sectors of the industrialization more so, wholesale & retail trade is linked to key sectors for rapid economic growth of Kenya;*

iv. *That, the Gazette Notice 9801 of October 2017 and 12/05/18 Gazette Notice 4536 of 2017, which was issued pursuant to the East African Community Customs Management Act, 2004 - 114(2) and was in contravention of the COMESA Agreement;*

v. *That, the petitioner stated that the Gazette Notice was deceptive, aimed at benefiting certain persons, he highlighted the fact that it was impossible to ship sugar within a period of 3 months on the Gazette Notice directives and against the provision of the COMESA Agreement. A provision is made in cases of sugar deficit in the Country, for sugar to be imported from COMESA nations, before venturing other markets. The May 2017 importation Gazette Notice meant that this rule was breached twice- against the local industry and COMESA requirements;*

vi. *That, Mumias Sugar was producing about 70% of the sugar in the country and the Government was misadvised on the importation of duty free sugar into the country since companies have distribution contracts within the country and they tend to pay money in advance;*

vii. *That, tax debts were cited as a problem in the sugar industry, the Committee was informed on need to safeguard the COMESA Imports Agreements bearing in mind that COMESA partners have cheaper sugar due to extensive technologies advancement applied on production;*

viii. *That, the impact of exemptions made a number of traders who had lawfully imported sugar within that period pay hefty import duty and taxes, this implied, that the imported sugar led to losses for traders with old stocks and disruption of value chain. The local sugar industry was rendered useless and unable to match prices, traders were forced to rely on sugar barons who had duty free sugar, The importation of the sugar under the Gazette Notice was done illegally;*

ix. *The Committee was also informed on the poisonous sugar scandal. The Duty Free sugar was termed as being poisonous by the Cabinet Secretary for Internal Security and later the amorphous directives were given to the Kenya Police Service to investigate sugar with the supply chain at wholesaler's distribution points. This directive led to agencies impounding sugar certified by the Kenya National Bureau of Standards (KNBS) and declared unsafe.*

x. *The Committee was also informed on the traders who were harassed by police stalling transportation and sale of local sugar, discrediting Kenya Bureau of Standard through media led to mass hysteria and confusion on market standards, safety and indiscriminately terming even the local sugar as unsafe;*

xi. *That, the petitioner informed Committee on the need to embrace technology, however the Committee learnt that, there was resistance from the causal workers for fear of loosing their job. This in turn led to an uncompetitive sugar sector impacting on the production;*

xii. *That, it is prudent to revive sugar farmers saccos and cooperatives and enhance better governance. The Committee noted the interference of private players was impediment to growth of sugar industry;*

xiii. *That, the Sugar Act was working well for the farmers but the introduction of the new AFA Act has halted progress and negatively impacted on the sector;*

xiv. *That, Uganda was supposedly supplying sugar despite lacking the capacity, the Committee was informed that, Brazilian sugar was being shipped to Uganda then repackaged and sold in Kenya; and*

xv. *That, the locals acquire 51% percent shareholding on the sugar companies to dispel that fallacy that, the government run institutions is not profitable.*

Observations and recommendations

i. *That there was need to invite the Cabinet Secretaries - State Department of Trade, Agriculture and Interior to explain the real impact of duty free sugar as sought by the petitioner;*

ii. *That, the Committee observed the need to acquire the statistical figure as a proof of issues raised in the petition to allow the Committee to probe the matter from an informed point of view with the relevant government institutions;*

iii. *That, there was need for the Government agencies to inspect goods under the Food, Drugs and Chemical Substances Act in order to make pronouncement on its safety;*

iv. *The Committee agreed to call the petitioner when need arise to elaborate on unresolved issues that may emanate from other stakeholders meeting;*

v. *The Committee noted the need for a taskforce to repeal the Sugar Act by the implementation of the AFA Act;*

vi. *The Committee observed that, there was no reason to Privatize sugar industry or funding Government owned Sugar Companies as it has failed severally on government bailouts, the Committee noted that, involving the local stakeholders may put it in more precarious position to rip off by outsiders;*

vii. *That, the fourth schedule of the constitution of Kenya lists regulation of trade, including unfair trade practices as a County function; and*

viii. *Wholesale traders contribute significantly to county revenue on Fast Moving Consumer Products (FMCG) and wholesale traders sell sugar as a major commodity*

MINUTE.SEN/DCS/SCTTI/2018/135: ANY OTHER BUSINESS AND ADJOURNMENRT

There being no other business, the meeting was adjourned at 1.15 p.m.

SIGNATURE...

(CHAIRPERSON: SEN. KIBIRU CHARLES REUBENSON)

DATE...14th /August/2019...

MINUTES OF THE 30TH MEETING OF THE STANDING COMMITTEE ON TOURISM, TRADE & INDUSTRIALIZATION HELD ON TUESDAY, 18TH SEPTEMBER, 2018 IN RED CROSS BUILDING, FIRST FLOOR BOARDROOM, FROM 12.10 P.M.

MEMBERS PRESENT

1. Sen. Kibiru Charles Reubenson - Chairperson
2. Sen. Mwangi Paul Githiomi - Member
3. Sen. Masitsa Naomi Shiyonga - Member

MEMBERS ABSENT

1. Sen. Anuar Loititip - Vice-Chairperson
2. Sen. Mercy Chebeni - Member
3. Sen. (Dr.) Agnes Zani - Member
4. Sen. Wario Golich Juma - Member
5. Sen. Langat Christopher Andrew - Member
6. Sen. Mwaruma Johnes - Member

SENATE SECRETARIAT

1. Mr. Ibrahim Ali Leruk - Clerk Assistant
2. Mr. Malcom Ngugi - Legal Counsel

PRAYERS

The meeting was called to order at 12.10 p.m. by the Chairperson followed by a word of prayer.

MINUTE.SEN/DCS/SCTTI/2018/126: ADOPTION OF AGENDA

The agenda of the meeting was adopted after, it was proposed by Sen. Mwangi Githiomi and seconded by Sen. Naomi Shinyonga as follows;

PRAYERS

1. Adoption of the Agenda;
2. Confirmation of Minutes

3. **Consideration and adoption of the Inquiry Report on Fall of Major Supermarkets;**
4. **Briefs on the Petition Concerning Disruption of Local Traders;**
5. **Briefs on the Petition Concerning Reviews of Laws Relating to Business Premises; and**
6. Any Other Business & Adjournment.

MINUTE.SEN/DCS/SCTTI/2018/127: CONFIRMATION OF MINUTES

The Minutes of the 29th Sitting was confirmed as true reflection of the Committee deliberations:

MINUTE.SEN/DCS/SCTTI/2018/128: CONSIDERATIONS OF REVISED REPORTS ON FALL OF MAJOR SUPERMARKERS, PETITION BY NAIROBI IMPORTERS AND COMMITTEE COUNTY VISIT

The Committee considered the amended Reports on Inquiry on the Fall of Major Supermarkets; Report on the Petition by Nairobi Importers and Traders; and Report on Taita Taveta, Isiolo and Samburu County Visits. The Committee directed the Secretariat to process all reports for tabling.
All the reports amended were initially adopted during the Report Writing Retreat in Kwale on Saturday 25th August 2018.

MINUTE.SEN/DCS/SCTTI/2018/129: BRIEFS ON THE PETITION CONCERNING DISRUPTION OF LOCAL TRADERS

The Committee was briefed on the Petition concerning the disruption of local traders.
The Committee resolved to invite the various stakeholders and report back to the Senate within the set timeliness.

MINUTE.SEN/DCS/SCTTI/2018/130: BRIEFS ON THE PETITION CONCERNING REVIEWS OF LAWS RELATING TO BUSINESS PREMISES

The Committee was briefed on the Petition concerning reviews of laws relating to business premises.

The Committee resolved to invite the various stakeholders and report back to the Senate within the set timeliness.

MINUTE.SEN/DCS/SCTTI/2018/131: ANY OTHER BUSINESS AND ADJOURNMENRT

The Committee was reminded on the Senate Sitting on Thursday 27th September 2018 to be held in Uasin Gishu and the Committee agreed on the proposed meeting with the County Executives in charge of Tourism, Trade and Industrialization in the region; and

The Chair advised the Secretariat to undertake thorough research on legal framework and proposal for legislations based on the recommendations of the Retail Inquiry Report.

There being no other business, the meeting was adjourned at 1.15 p.m.

SIGNATURE...

(CHAIRPERSON: SEN. KIBIRU CHARLES REUBENSON)

DATE....14th/August/2019..

ANNEX 1: ADOPTION LIST

ADOPTION OF THE REPORT OF THE PETITION ON THE DISRUPTION OF LOCAL TRADE BY GOVERNMENT ACTION AND SANCTIONS BY MR. VINCENT OMBAKA A RESIDENT OF NAIROBI COUNTY

We, the undersigned Members of the Tourism Trade and Industrialization Committee of the Senate, do hereby append our signatures to adopt the Report-

Sen. Kibiru Charles, MP	Chairperson	……………………………………
Sen. Anuar Loititip, MP	Vice-Chairperson	……………………………………
Sen. Mwangi Githiomi, MP	Member	……………………………………
Sen. Christopher Andrew Langat, MP	Member	……………………………………
Sen. Wario Golich, MP	Member	……………………………………
Sen. (Dr.) Agnes Zani., MP	Member	……………………………………
Sen. Mwaruma Johnes, MP	Member	……………………………………
Sen. Masitsa Naomi, MP	Member	……………………………………
Sen. Mercy Chebeni, MP	Member	……………………………………