THE EAST AFRICAN COMMUNITY CUSTOMS UNION (DISPUTE SETTLEMENT MECHANISM) REGULATIONS
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SCHEDULE
THE EAST AFRICAN COMMUNITY CUSTOMS UNION (DISPUTE SETTLEMENT MECHANISM) REGULATIONS

REGULATIONS 1
Citation

These Regulations may be cited as the East African Community Customs Union (Dispute Settlement Mechanism) Regulations.

REGULATION 2
Purpose of the Regulations

The purpose of these Regulations is to implement the provisions of Article 41 of the Protocol and to ensure uniformity among Partner States in the implementation of the provisions on dispute settlement and to ensure to the extent possible, that the process is transparent, accountable, fair, predictable and consistent with the provisions of the Protocol.

REGULATION 3
Interpretation

In these Regulations, unless the context otherwise requires:

"Committee" means the East African Community Committee on Trade Remedies established under Article 24 of the Protocol;

"Council" means the Council of Ministers established under Article 9 of the Treaty;

"Court" means that East African Court of Justice established under Article 9 of the Treaty;

"interested party" means a Partner State with a substantial trade interest in a dispute;

"panel" means a dispute settlement panel established under Regulation 5;
"Partner States" means the Republic of Uganda, the Republic of Kenya and the United Republic of Tanzania and any other country granted membership to the Community under Article 3 of the Treaty;

"party to a dispute" means a Partner State which is a party to a dispute under these Regulations;

"Protocol" means the Protocol on the Establishment of the East African Community Customs Union;

"Secretariat" means the Secretariat of the Community established by Article 9 of the Treaty;

"Secretary General" means the Secretary General of the East African Community appointed under Article 67 of the Treaty;

"third party" means any state that is not a Partner State interested in a dispute under these Regulations;

"Treaty" means the Treaty for the establishment of the East African Community;

"WTO Dispute Settlement Understanding" for purposes of these Regulations means the Understanding on Rules and Procedures Governing the Settlement of Disputes, Annex 2 of the General Agreement on Tariffs and Trade, 1994.

REGULATION 4
Application of the Regulations

1. These Regulations shall apply to Partner States in the implementation of the provisions of Article 41 of the Protocol.

2. Subject to any special or additional regulations on dispute settlement, these Regulations shall apply to dispute resolution in respect of:

   (a) anti-dumping measures;
(b) subsidies and countervailing duties;

(c) safeguard measures;

(d) rules of origin; and

(e) any other matter under the Protocol.

3. Where a dispute is initiated by one Partner State against another Partner State, these Regulations shall apply.

4. Where a dispute arises between a Partner State and a foreign country or countries, the WTO Dispute Settlement Understanding shall apply.

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REGULATION 5
Establishment of Dispute Settlement Mechanism

1. Where a dispute arises between or among the Partner States, recourse shall in the first instance be had to consultations with a view to finding an amicable resolution to the dispute including, but not limited to, the use of good offices, conciliation and mediation.

2. Where an amicable resolution is not achieved, any party to the dispute shall after notifying the other parties, refer the matter to the Committee, through the Secretary General, requesting for the establishment of a dispute settlement panel, (hereinafter referred to as the “panel”) for purposes of settling the dispute.

3. A panel shall set in motion the process of formal resolution of the dispute as provided in these Regulations and the parties to the dispute shall in good faith observe in timely fashion any directions, rulings and stipulations that may be given to them by the panel in relation to procedural matters and shall make their submissions, arguments and rebuttals in a format prescribed by the panel.

4. After the parties make their submissions, arguments and rebuttals to the panel, the panel shall issue to the parties, a descriptive report containing a statements of the facts and arguments. The parties shall be required to make comments on the report to the panel.
5. The panel shall later issue an interim report to the parties containing both
the facts of the case and conclusions of the panel and the parties shall be entitled
to make their comments on the interim report.

6. The panel shall make reference to the comments of the parties on the
interim report in its final report and upon completion of its work, make
recommendations to the Committee. The recommendations shall be based on an
impartial assessment of the facts, arguments, evidence and any other submissions
made by the parties and an objective application of the facts of the law governing
the dispute.

7. The Committee shall make its determinations on the matter and its
decision shall be final and binding on the parties, except where a party contends
the decision on grounds of fraud, lack of jurisdiction or other illegality, in which
case such party may refer the matter to Court for review in accordance with
Article 28(2) of the Treaty and any other enabling provision of the Treaty.

8. Without prejudice to the provisions of this Regulation, where the parties to
a dispute consider it expedient to take recourse to arbitration as the first dispute
settlement avenue, the parties may proceed with arbitration as provided in these
Regulations. Resort to arbitration shall be subject to mutual agreement of the
parties and the parties shall agree to abide by the arbitral award.

REGULATION 6
Consultations

1. Requests for consultations shall be notified to the Committee through the
Secretary General in writing, giving the reasons for the request, including
identification of the issues and an indication of the legal basis for the complaint.
2. Where a request for consultations is made pursuant to these Regulations, the Partner State to which the request is made shall, unless otherwise mutually agreed, reply to the request within ten days after the date of its receipt and shall enter into consultations in good faith within a period not exceeding thirty days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution.

3. Where a Partner State does not respond within ten days after the date of receipt of the request, or does not enter into consultations within a period of thirty days, or a period otherwise mutually agreed, after the date of receipt of the request, the Partner State that requested the consultations may refer the matter to the Committee.

4. In the course of consultations and before resorting to further action under these Regulations, Partner States shall attempt to obtain satisfactory settlement of the dispute.

5. Consultations shall be:

   (a) confidential; and

   (b) without prejudice to the rights of any Partner State in any further proceedings.

6. Where parties fail to settle a dispute through consultations within sixty days after the date of receipt of the request for consultations, the complaining party may refer the matter to the Committee. A complaining party may also refer the matter to the Committee during the sixty-day period where the consulting parties jointly determine that they have failed to settle the dispute through consultations.

7. (1) In cases of urgency, including cases of perishable goods, the Partner States shall within ten days after the date of a request enter into consultations.

   (2) In cases of urgency, including cases of perishable goods, where the parties fail to settle the dispute through consultations within twenty
days after the date of receipt of the request, the complaining party may refer the matter to the Committee.

(3) In cases of urgency, including cases of perishable goods, the parties to the dispute, the Committee and the panel shall make every effort to expedite the proceedings to the greatest extent possible.

8. Where a Partner State that is not a party to a dispute considers that it has substantial trade interest in any consultations, that Partner State may, within ten days of the circulation of the request for consultations, request the disputing Partner States to be joined in the consultations and the disputing Partner State shall be so joined where the parties to a dispute agree that the claim of substantial interest is well founded.

REGULATION 7
Good Offices, Conciliation and Mediation

1. Good offices, conciliation and mediation may be undertaken voluntarily where the parties to the dispute agree.

2. Proceedings involving good offices, conciliation and mediation, and in particular positions taken by the parties to the dispute during these proceedings, shall be confidential and without prejudice to the rights of either party in any further proceedings under these Regulations.

3. A party to a dispute may request for good offices, conciliation or mediation at any time. The proceedings may begin and be terminated at any time. Where proceedings for good offices, conciliation or mediation are terminated, a complaining party may request for the establishment of a panel.

4. Where good offices, conciliation or mediation are entered into within sixty days after the date of receipt of a request for consultations, the complaining party shall allow a period of sixty days after the date of receipt of the request for consultations before requesting for the establishment of a panel. The complaining party may request for the establishment of a panel during the sixty-day period where the parties to the dispute jointly consider that the good offices, conciliation or mediation process has failed to settle the dispute.
5. Where the parties to a dispute agree, proceedings for good offices, conciliation or mediation may continue.

6. The parties to a dispute may request the Chairperson of the Council, the Secretary General or any other person the parties to a dispute deem fit to offer good offices or to conciliate or mediate between or among them with a view to achieving an amicable settlement of the dispute.

REGULATION 8
Dispute Settlement Panels

1. Where amicable resolution is not achieved through consultations, the complaining party shall, in writing refer the matter to the Committee requesting for the establishment of a panel. The complaining party may in any case request the establishment of a panel at any time where it is of the view that the consultations are not productive.

2. The request referred to in paragraph 1 of this Regulation shall indicate whether the consultations were held, identify the specific measures at issue and provide a summary of the legal basis of the complaint sufficient to present the problem clearly. The request may include a proposed text of any special terms of reference that a party wishes the panel to discharge.

3. A meeting of the Committee shall be convened within fifteen days of the request to establish a panel, provided that at least ten days’ advance notice of the meeting is given.

4. A panel shall be constituted within seven days of the meeting of the Committee referred to in paragraph 3 of this Regulation.

5. A panel shall be composed of experts from the public and private sectors who are well qualified and experienced in the subject matter of the dispute and shall be of a number to be determined by the Committee on a case by case basis.

6. The members of a panel shall be selected with a view to ensuring their independence and integrity and shall have a sufficiently diverse background and a wide spectrum of experience in the subject matter of the dispute.
7. The Secretariat shall maintain an indicative list of individuals with the qualifications mentioned in paragraphs 5 and 6 of this Regulation, from which members of the panel may be drawn. Each Partner State shall annually propose not more than twelve names for inclusion on the indicative list and provide relevant information on the proposed individuals’ knowledge of international trade and the sector or subject matter of the Customs Union. The proposed names shall be added to the list upon approval by the Council. Nothing in this paragraph shall preclude a Partner State from nominating as a member of a panel a person with the necessary qualifications, who is not included in the indicative list or who is not a citizen of a Partner State.

8. The Partner States undertake to permit their officials to serve as members of a panel.

9. Members of a panel shall serve in their individual capacities and not as government representatives, nor as representatives of any organization and the Partner States shall not give the members of a panel instructions or seek to influence the members of a panel as individuals with regard to matters before a panel.

REGULATION 9
Terms of Reference of Panels

1. Panels shall have the following terms of reference unless the parties to a dispute agree otherwise:

(a) to examine the relevant provisions of any Regulation cited by the parties to a dispute;

(b) to examine a matter referred to the panel; and

(c) to make findings to assist the Committee in making recommendations to the parties to a dispute or in giving a ruling on a matter.
2. Subject to the provisions of paragraph 1 of this Regulation, the Committee may authorize the Chairperson of the Panel to draw up special and additional terms of reference for the panel, in consultation with the parties to a dispute.

3. A party to a dispute with specific requirements for terms of reference different from the standard terms of reference set out in paragraph 1 of this Regulation shall provide to the Committee a text of the preferred terms of reference and where the Committee is satisfied that the exigencies of the case warrant such special terms of reference, the Committee shall approve the special and additional terms of reference.

REGULATION 10
Functions of a Panel

1. The principle function of a panel is to assist the Committee in discharging its responsibilities under the Protocol. In performing this function, a panel shall make an objective assessment of the matter before it, facts of the case and the applicability of and conformity with the relevant regulations and make findings to assist the Committee in making recommendations and rulings.

2. Panels shall consult widely and regularly with the parties to a dispute and give the parties to a dispute adequate opportunity to develop a mutually satisfactory solution.

REGULATION 11
Interested and Third Parties

1. The interests of all parties to a dispute including interested and third parties shall be taken into account during the assessment of a matter by a panel.

2. An interested party shall after notification of its interests in a dispute to the panel, through the Committee, have an opportunity to be heard by the panel and to make written submissions. Copies of the submissions shall be served on the parties to the dispute and shall be reflected in the report of the panel.

3. A third party shall after notification of its interests to the panel through the Committee, have an opportunity to be heard and to make written submissions to
the panel. Copies of the submissions shall be served on the parties to the dispute and shall be reflected in the report of the panel.

4. Third parties shall receive the submissions of the parties to a dispute at the first meeting of the panel.

REGULATION 12
Procedures for a Panel

1. The procedures of a panel shall provide sufficient flexibility to ensure effective and timely resolution of disputes by the panels.

2. After consulting the parties to a dispute, the members of a panel shall, within seven days after the constitution of the panel and the determination of its terms and reference, fix the timetable for the procedures of the panel.

3. In determining the timetable for the procedures of a panel, the panel shall provide sufficient time to the parties to the dispute to prepare their submissions.

4. A panel shall set precise time limits for written submissions by the parties to a dispute and the parties shall comply to the set time limits.

5. The period in which the panel shall conduct its business, from the date of composition of the panel to the date of issuance of the final report to the parties to a dispute, shall not exceed three months and in cases of urgency, including cases of perishable goods, the period shall not exceed one and a half months.

6. Where a panel determines that it cannot issue its report within three months, or within one and a half months in the case of urgency, the panel shall immediately inform the Committee in writing the reasons for the delay together with an estimate of the period within which the panel shall issue its report.

7. Where a panel cannot issue a report within the period specified in paragraph 5 of this Regulation, the panel shall issue the report within four months from the date of its composition.

8. Where a panel fails to achieve a mutually satisfactory solution, the panel shall submit its findings to the Committee in the form of a report setting out the
facts of the matter, the relevant provisions of the law applied, the reasons for the findings and any recommendations it may make.

9. Where a panel settles a matter before it, the report of the panel shall be a brief description of the case and shall state that a settlement has been reached.

10. The reports of the panel shall be drafted in the absence of the parties to the dispute and shall be based on information and evidence provided by the parties and any other person or institution in accordance with these Regulations.

11. Opinions expressed in a report of a panel by the individual members of the panel shall be anonymous.

12. Without prejudice to the provisions of this Regulation, a panel shall follow the working procedures specified in the Schedule to these Regulations.

**REGULATION 13**

**Right to Seek Information**

1. A panel shall have the right to seek information and technical advice from any persons or institution that it deems appropriate, after informing the relevant authorities of a Partner State.

2. A panel shall have the right to seek information and technical advice from any Partner State.

3. Where a panel seeks for information or technical advice from a Partner State, the Partner State shall within the time set by the panel, respond to the request for such information.

4. Confidential information that is provided shall not be revealed without formal authorisation from the authorities of the Partner States providing the information.

5. Where a party to a dispute raises a factual issue concerning a scientific or other technical matter, the panel may request for an advisory report in writing from an expert with relevant qualifications and experience on the issue.
6. A panel may seek information from any relevant source and may consult experts to obtain their opinion on any matter that may be brought before the panel.

**REGULATION 14**  
**Confidentiality**

1. The deliberations of the members of a panel on the submissions and other information relating to a dispute shall be confidential.

2. A party to a dispute shall treat as confidential any information submitted to a panel and designated as such, by another party to a dispute.

3. Where a breach of confidentiality and potential or actual loss arises out of disclosure of confidential information, remedial measures shall be undertaken in favour of the affected party to mitigate the actual or potential loss.

4. Nothing in these Regulations shall preclude a party to a dispute from disclosing statements of its own positions to the public.

**REGULATION 15**  
**Reports of a Panel**

1. A panel shall consider the rebuttal submissions and arguments of the parties to a dispute and issue a draft report containing descriptive sections of the facts and arguments of the dispute, to the parties and any interested parties.

2. The parties to a dispute shall submit their comments on the draft report in writing to the panel, within a period set by the panel.

3. Taking into account any comments received under paragraph 2 of this regulation, or on the expiration of the time set for the receipt of comments from the parties to a dispute, the panel shall issue an interim report to the parties, containing descriptive sections and the findings and conclusions of the panel.

4. Within a period set by a panel any party to a dispute may submit a written request for review of specific aspects of the interim report prior to the issuance and circulation of the final report to the parties to a dispute.
5. At the request of any party to a dispute or an interested party, a panel shall hold a meeting with the parties to a dispute on the review of specific aspects of the interim report.

6. Where no comments are received within the period set for the receipt of comments on the interim report, the interim report shall be deemed to be the final report of a panel and it shall be promptly circulated to the parties to a dispute and any interested parties and shall be forwarded to the Committee for consideration.

7. The final report of the panel shall include a discussion of the arguments made at the interim review stage.

REGULATION 16
Adoption of Reports of a Panel

1. In order to provide sufficient time for the parties to consider the reports of the panels, the reports shall not be brought up for consideration by the Committee before the expiration of 20 days from the date on which the Panel circulated the report.

2. Parties having objections to a panel report shall give written reasons to the Committee, explaining their objections. Such objections must be notified to the Committee within 10 days prior to a meeting of the Committee at which the panel report will be considered. The objecting party shall serve a copy of the objection with the other parties to the dispute and to the panel that made the report.

3. Parties shall have the right to participate fully in the consideration of the panel reports by the Committee, and their views shall be fully recorded.

4. Within 60 days from the date the final panel report is circulated to the parties and notified to the Committee, the report shall be considered, adopted and signed at a meeting of the Committee convened for that purpose. The decision of the Committee shall be final except as provided for in Regulation 18 of these Regulations.

5. The parties to the dispute shall be entitled to a signed copy of the adopted report within seven days of the adoption.
6. The Committee shall adopt its own working procedures as provided under Article 24(6) of the Protocol.

REGULATION 17
Remedial Measures

1. In making reports under Regulation 15, a panel shall determine the appropriate remedial measures including orders for compensation and administrative costs that a party to the dispute may be required to put in place to reverse the injury or remedy the wrong the subject of the dispute may have caused.

2. Without prejudice to the generality of the provisions in Sub-Regulation 1, and the duty of Partner States to implement fully the recommendations and rulings of the Committee, compensation and the suspension of concessions or other obligations are temporary measures available to the aggrieved party in the event that the accepted recommendations and rulings of the Committee are not implemented within a reasonable period of time. However, neither compensation nor the suspension of concessions or other obligations is preferred to full implementation of accepted recommendations.

3. The suspension of concessions or other obligations shall be temporary and shall only be applied in as far as it is consistent with these regulations and shall subsist until such a time as the inconsistency with these regulations or any other determined breach is removed, or that the Partner State implements recommendations or provides a solution to the injury caused or occasioned by the non-compliance or that a mutual satisfactory solution is reached.

4. Nothing in this Regulation shall operate to limit the scope of applicability of Article 22 of Annex 2 of General Agreement on Tariffs and Trade 1994 (the Dispute Settlement Understanding) in cases of disputes between a Partner State and foreign countries.
REGULATION 18
Reference to Court

Subject to any rules of procedure of the Court, any party to a dispute may refer the dispute arising from or out of paragraph 1 of Regulation 16 of these Regulations on grounds of fraud, lack of jurisdiction or other illegality, to the Court for determination in accordance with Article 28(2) of the Treaty.

REGULATION 19
Costs

1. The Council shall, from time to time determine the remuneration and expenses of the members of a panel and the experts.

2. The remuneration of the members of a panel and experts, their travel and lodging expenses shall be borne in equal parts by the parties to a dispute or in proportions determined by the Council.

3. A defaulting party to a dispute shall bear all other costs of the process as determined by the Committee.

4. Parties to the dispute shall be required to deposit their share of the members of the panels’ expenses with the Secretariat at the time of appointment or establishment of the panel.

REGULATION 20
Arbitration

1. Parties to a dispute shall resort to arbitration subject to their mutual agreement and shall agree on the procedures to be used in the arbitration proceedings. Agreement to resort to arbitration shall be notified to the Committee.

2. Interested parties may be enjoined to an arbitration proceeding only upon the agreement of the parties to the arbitration proceeding.
3. The parties to an arbitration proceeding shall abide by an arbitration award and the award shall be notified to the Committee.

4. Without prejudice to the provisions of paragraph 2 of this Regulation, the parties to an arbitration proceeding may opt to be governed by the rules of arbitration of the Court.

REGULATION 21
Compliance and Surveillance

1. A party to a dispute shall inform the Committee of its intentions in respect of the implementation of the recommendations and rulings of the Committee, at a meeting of a Committee which shall be held within thirty days after the date of adoption of the report by the panel.

2. Where a party to a dispute finds it impracticable to comply immediately with the recommendations and rulings of the Committee, the party to a dispute shall be granted a reasonable period in which to comply basing on the following:

   (a) a period proposed by the party concerned provided the Committee approves the proposal;

   (b) a period mutually agreed by the parties to a dispute within forty five days of the date of adoption of the report of the panel and the recommendations and rulings of the Committee; or

   (c) a period determined by an arbitral award, within ninety days of the date of the award.

3. The Committee shall keep the Council informed of the status of the decisions made under these Regulations.

4. The Council shall keep under surveillance the resolutions of the dispute and the implementation of adopted recommendations and rulings of the Committee under these Regulations and shall enforce compliance with the recommendations and rulings as appropriate.
REGULATIONS 22
Responsibilities of the Secretariat

1. The Secretariat shall facilitate the Committee and the panels in all matters dealt with under these Regulations.

2. The Secretariat shall undertake such other functions and duties as may be required under the Treaty and in support of these Regulations.
WORKING PROCEDURES

1. The panel proceedings shall be conducted in two parts, the first part shall be an open session at which the first substantive hearing shall be held, and the second part shall be a closed session at which the panel shall consider the submissions of the parties and generate its reports. During the closed session, the parties shall be present at the meetings only when invited by the panel to appear before it.

2. Before the first substantive meeting of a panel with the parties to a dispute, the panel shall ask the parties to a dispute to submit written submissions presenting the facts of the case and the arguments of the parties to a dispute.

3. At the first substantive meeting of the panel, the complaining party shall present her case and immediately after, the party against which the complaint is brought shall present his or her case.

4. Interested parties and third parties who notify their interest in a dispute to the Committee, shall be invited in writing to present their views at a session of the first substantive meeting set aside for the purpose and may be present during the entire session.

5. Formal rebuttals shall be made at a second substantive meeting of the panel. The party against which a complaint is brought shall have the right to be heard first. The parties to a dispute shall submit their written rebuttals to the panel prior to the second substantive meeting.

6. The panel may at anytime request the parties to a dispute for explanations, at a meeting, in which the parties to a dispute are present either in writing or orally.

7. In the interest of transparency, the presentations, rebuttals and statements including the submissions of the parties to a dispute shall be made available to the other party or parties to the dispute without undue delay.
8. Notwithstanding the provisions in paragraphs (1) to (7) of this Schedule, the Panel shall determine its own working procedures.