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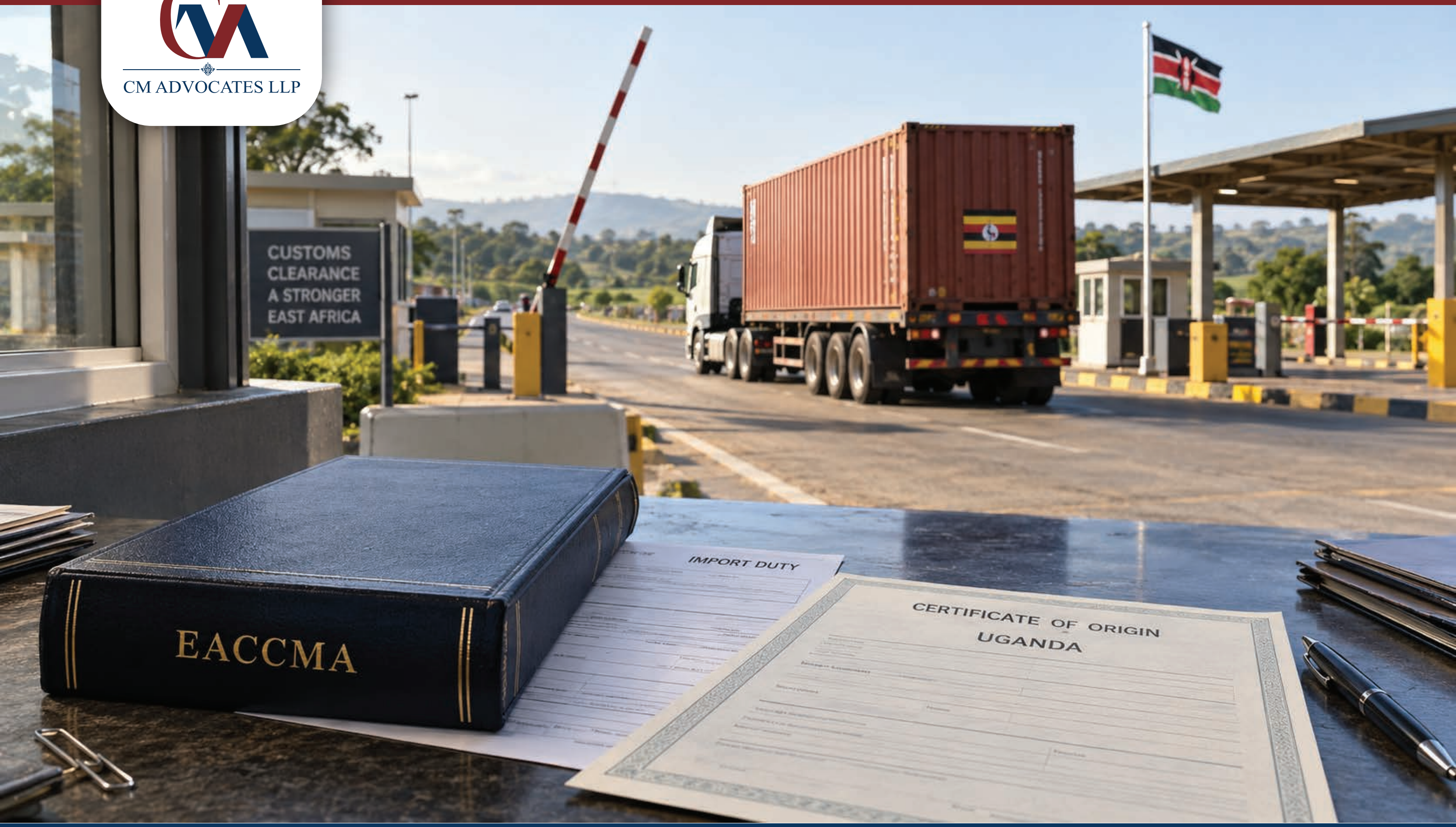

NO IMPORT DUTY WITHOUT STATUTE:

How the EACCMA and Rules of Origin Defeated KRA's Import Duty Demand on Uganda-Origin Goods

A decision of the Tax Appeals Tribunal, delivered in June 2026, provides important guidance for businesses engaged in cross-border trade between Uganda and Kenya. The Tribunal affirmed that KRA cannot levy import duty on goods that are proven to originate in a Partner State and therefore qualify for treatment as Community goods under the East African Community Customs Union framework. Import duty must have a basis in law. Where the applicable legislation does not impose duty on the goods in question, KRA cannot create that liability through administrative discretion or by relying on a breach of transit obligations.

In *Transpares Kenya Limited v Commissioner for Customs and Border Control (TATC/E1211/2025)*, the Tax Appeals Tribunal considered whether KRA could impose import duty on goods originating in a Partner State where the consignment was subsequently lost while in transit through Kenya. The decision offers instructive guidance for traders, importers and transporters dealing in coffee, agricultural produce and other goods originating in Uganda.

THE STATUTORY DEFINITION OF "IMPORT" UNDER THE EACCMA

The starting point is the statutory definition of "import" under section 2 of the East African Community Customs Management Act, 2004 ("EACCMA"). The EACCMA defines "import" as follows:

> *"to import means to bring or cause to be brought into the Partner States from a foreign country."*

The definition is clear. An import, for purposes of the EACCMA, must involve the movement of goods **from a foreign**

country into the Partner States. A Partner State is not a foreign country for purposes of the East African Community Customs Union. Accordingly, goods moving from one Partner State to another- for example, goods originating in Uganda and brought into Kenya- cannot, on the face of the statutory definition, be characterised as "imports" under the EACCMA. They are goods moving within the Community's customs territory and therefore fall to be dealt with under the legal framework governing intra-Community trade, including the applicable Rules of Origin.

This distinction is fundamental to the imposition of import duty. The statutory charge on imports cannot arise where the goods do not first fall within the statutory definition of an "import". Where goods are established to originate in a Partner State and qualify for Community treatment, their subsequent movement to a foreign country does not, by itself, alter their origin. The fact that the coffee was ultimately destined for Spain could not retrospectively change its established Ugandan origin or convert the movement of the goods from Uganda to Kenya into an import from a foreign country for purposes of the EACCMA.

THE FACTS: A COFFEE CONSIGNMENT GONE MISSING

Transpares Kenya Limited, a transport and logistics company, was contracted to move 334 bags of natural Uganda robusta coffee from Uganda to the Port of Mombasa for onward export to Spain. The consignment crossed the Malaba border and entered Kenya under customs transit control, tracked electronically through the Electronic Cargo Tracking System (ECTS).

While the consignment was in transit within Kenya, the Electronic Cargo Tracking System (ECTS) generated an alert indicating interference with the customs seal affixed to the container. Subsequent investigations traced the vehicle to Timboroa Police Station, where it was found abandoned and empty. The consignment had not reached the Port of Mombasa as declared. The Appellant's position was that the coffee had been stolen in transit.

The Kenya Revenue Authority (KRA) responded by issuing a demand for import duty, penalties and interest, treating the missing goods as an unaccounted-for transit consignment. Transpares disputed the demand on the basis that the coffee originated in Uganda, a fellow East African Community (EAC) Partner State, and was therefore not liable to import duty. In its view, the fact that the consignment was lost in transit could not, by itself, alter the character of the goods or create an import duty liability that did not otherwise arise under the law.

WHAT THE TRIBUNAL ACTUALLY DECIDED

i. *Origin has to be proven, not assumed.*

The Tribunal applied the EAC Customs Union (Rules of Origin) Rules, 2015. Under Rule 5(1)(b), plant products "harvested, gathered or picked" within a Partner State qualify as wholly produced in that Partner State. Coffee beans grown and harvested in Uganda therefore fall squarely within that provision. Transpares, however, had to establish that origin in the face of a challenge by KRA. KRA had rejected the initial Certificate of Origin on account of inconsistencies, prompting Transpares to obtain clarification from its exporter and subsequently submit a corrected Generalised System of Preference Certificate of Origin. The case therefore illustrates an important point: entitlement to Community treatment depends not only on the goods satisfying the applicable rules of origin, but also on the trader being able to substantiate that origin when it is challenged.

ii. *Once the Taxpayer Produces Evidence, the Burden Shifts to KRA*

The Tribunal relied on the principle articulated in *Kenya Revenue Authority v Man Diesel & Turbo SE, Kenya [2021] KEHC 13347*: the taxpayer bears the initial burden of adducing evidence in support of its position. Once the taxpayer places credible and uncontroverted evidence before the Revenue Authority, the evidential burden shifts to KRA to rebut that evidence. At that stage, it is no longer sufficient for KRA merely to maintain that the taxpayer has failed to meet the applicable threshold; KRA must engage with the evidence and demonstrate why the taxpayer's position should not be accepted.

In this case, Transpares had produced a corrected Certificate of Origin to establish the Ugandan origin of the coffee. KRA did not substantively address that evidence. Instead, it asserted that the request for reconsideration did not meet the threshold under section 229 of the EACCMA, without explaining the basis for that conclusion or addressing the evidence placed before it. Having failed to rebut the taxpayer's evidence, KRA could not discharge the evidential burden that had shifted to it.

iii. *Destination Does Not Displace Origin-Based Treatment*

KRA argued that because the coffee was ultimately destined for Spain, rather than another EAC Partner State, the shipment did not constitute genuine "intra-Community trade" and should not qualify for preferential treatment. The Tribunal rejected that argument. Rule 16(1) of the 2015 Rules of Origin requires qualifying goods to be transported directly from one Partner State to another, in this case, from Uganda to Kenya, but does not prescribe the destination of the goods thereafter. The Tribunal declined to read into the Rules a condition that is not contained in their text, applying the established principle of tax law expressed in ***Cape Brandy Syndicate v IRC***: "Nothing is to be read in, nothing is to be implied." Where the law does not impose a particular condition for entitlement to relief, the Revenue Authority cannot introduce one by interpretation. The same approach is reflected in *Mount Kenya Bottlers Ltd v Attorney General [2019] KECA 500*, where the Court of Appeal affirmed that any ambiguity in a taxing provision should be resolved in favour of the taxpayer.

iv. *A transit breach cannot create an import duty liability that the statute does not impose*

KRA's fallback argument was that, regardless of the goods' origin, their loss while under customs bond independently triggered liability for duties and taxes under sections 85 and 87 of the EACCMA and Regulation 104 of the EACCMR. The Tribunal accepted that non-delivery of goods under customs control may, in principle, give rise to liability. However, it found that KRA had not demonstrated that the transit provisions could override the statutory treatment of the goods arising from their proven Ugandan origin. That distinction is central to the principle that taxation must have a basis in statute. KRA could not rely on a breach of the transit regime to create an import duty liability where the goods, by virtue of their established origin, did not otherwise constitute dutiable imports.

WHAT THE DECISION MEANS FOR TAXPAYERS

KRA cannot impose import duty where the law does not authorise it. Once goods are proven to originate in a Partner State in accordance with the EAC Rules of Origin, they qualify as Community goods and are not dutiable imports. KRA cannot displace that treatment through administrative discretion, by relying on a transit irregularity, or by asserting that the applicable threshold has not been met without addressing the evidence supporting the taxpayer's position. Where KRA raises a duty demand in respect of goods whose Partner State origin can be established, *Transpares* provides direct authority for challenging that demand on the basis that it lacks a statutory foundation.

HOW WE CAN SUPPORT YOU

Cross-border trade within the EAC can raise complex questions around customs valuation, tariff classification, rules of origin, preferential treatment and transit obligations. At CM Advocates LLP, we assist businesses in navigating these issues and managing their engagement with the Kenya Revenue Authority.

Our Tax & International Business Advisory (TIBA) Unit can assist with customs and tax audits, review of duty demands and assessments, advise on Rules of Origin and preferential treatment, and represent taxpayers in objections, appeals and other tax dispute resolution processes. We also provide tax compliance health checks and advisory to help businesses identify and address potential tax risks before they develop into disputes.

Whether you are dealing with a customs duty demand, a dispute over the origin of your goods, or simply want to ensure that your cross-border transactions are structured and documented appropriately, our team can provide the legal and tax support required to protect your position.

For More Information

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