KEPSA MEMORANDUM TO THE MINISTRY OF INVESTMENTS TRADE AND INDUSTRY ON THE POLICY AND LEGISLATIVE MEASURES TO ENHANCE BUSINESS GROWTH AND COMPETITIVENESS

S/NO.	DESCRIPTION OF ISSUE	PROPOSED SOLUTIONS TO ADDRESS THESE ISSUES	RATIONALE FOR THE PROPOSED SOLUTIONS INCLUDING BEST PRACTICES IN OTHER JURISDICTIONS
STATE DEPARTMENT OF INVESTMENT PROMOTION PROPOSALS			
1.	• Non-rationalization of issuance of various permits and licensing requirements at the National level and across the county governments causing increased operational costs to businesses.	• Undertake simplification and automation of procedures, to benchmark regional and international best practices. A maximum of 18 steps completed over a maximum of 3 days should be the goal to align with the EAC's region aspirations in the medium term. • The simplification and automation of procedures will rationalize the issuance of various permits and licensing requirements to eliminate those that are not necessary. • Enhance the National Trade Portal to incorporate all the counties to have trade information at a centralized point. • Fast Track the development of regulations to implement the County	• To boost investor confidence there is need for sustainable and transparent practices to facilitate the MITI's aspirations to grow investments from current USD 500M to USD 10B by December 2025. • A case for the retail sector where supermarkets are required to go through between 10 to 22 procedures to operate. Retailers dealing with seeds have to be certified by the KEPHIS, the ones that deal with the distribution and sale of pest products have to be inspected and certified by the Pests Control Board, the ones that operate cafes and Delis have to be licensed by Tourism Board and Health officials from National and county governments, this is besides the normal and occasional inspections by KEBs and Anti Counterfeit Agencies.

		Government (Uniform Licensing Procedures) Act 2024. • Ensure finance bills across counties are made accessible and implemented within the stipulated time according to the PFM Act.	• Depending on the county operation the retailers pay different distribution fees and different weights and measures fees arising from county inspection, investigation, and prosecution of fair trade practices.
2.	• High costs and limited freight capacity to cater to horticulture exports from Kenya.	• Engagement of private agents (e.g., freight clearing agents) in policy formulations on trade logistics helps increase ownership and ease implementation of first and last-mile decongestion strategies. • Reform air freight charges and refresh and remind the personnel from the transport stakeholders on trade logistic regulations requirements and the International Commercial Terms (INCOTERMS) to be at par while operating along the Regional Value Chains and Global Value Chains.	• Noting that freight costs cover over 40% of production costs. Kenyan horticultural exporters pay 2.8 dollars per kilo compared to Ethiopian firms that pay 1.9 dollars per kilo. The high costs lead to increased operational costs thus decreasing the competitiveness of Kenyan exports.
3.	• Pending Bills by National and County governments	• Government to fast track the over Ksh. 156 billion pending bills to the private sector.	• Economic Strain on Businesses: Pending bills lead to decreased liquidity for businesses. This lack of cash flow can result in increased bankruptcy rates and a decline in profits,

		• Support the re-introduction and the fast-tracking of the Prompt Payment Bill.	which has led to the closure of some small and medium-sized enterprises (SMEs)
4.	• KEBS Standards Levy Increase:	• Kenya Bureau of Standards (KEBS) issued a gazette notice proposing an increase in the standards levy from Ksh 400,000 to Ksh 6 million.	• KEBS in the spirit of trade facilitation should ensure that the services offered are commensurate to the fee. • The steep increase should be staggered after the cost of services is determined to ensure businesses are compliant and plan for the cost in their operations.
5.	• An inefficient Ardhisasa platform inhibits business transactions and adversely affects the collection of tax revenue.	• MITI to collaborate with the Ministry of Lands to expedite issues on Ardhi-sasa.	• Over 2,000 transactions in Nairobi county are only worth over Ksh. 120 Billion have been delayed due to Ardhisasa challenges.
6.	• Alignment of the definition of local content in Finance Act 2024 Sect. 26 (b) (iv) (ii) with the National Automotive Policy	• The amendment should take into consideration the definitions and incentives in the National Automotive Policy that take into account the different assembly levels.	• Due to the lack of assembly volume currently, this incentive is not achievable by any vehicle assembly industry player. • The incentives are based on the different assembly levels (1,2 &3) because of the investment involved. Level 3 is the highest level of assembly with the most investment.
7.	• Instability in the taxation regime in the Gaming sector.	• MITI to work with the National Treasury to revert the definition of winnings in the Income-tax Act to 'payouts by the licensee but does not	• The courts put this definition in the following decisions: Tax Appeal No. 304 of 2019 Pevans East Africa Limited vs The Commissioner of Domestic Taxes and Others, and Tax Appeal

		include the amount staked by the punter.'	No. 169 of 2020 Resort Kenya Limited vs Commissioner of Domestic Taxes. In the above decisions, the Tribunal determined the methodology used in calculating winnings by ruling that winnings refer to payouts by the licensee but do not include the amount staked by the punter. • Investments in the gaming sector continue to reduce as betting companies continue to close shop impacting negatively the jobs created and the sponsorships of sports in the country.
8.	• Increased cost of doing business for investors in the petroleum industry	• MITI to engage treasury to revert petroleum products VAT to 8%.	• Section 30 (a) of the Finance Act 2023 put petroleum products into the standard VAT category increasing the cost of fuel by 8%. In 2019 OMCs enjoyed margins of 0.1% with an investment of Ksh. 1 million. From July 2023, OMC margins will drop to 0.05% with an investment of Ksh. 2 million. This additional cashflow financing has reduced the OMC margins and profitability hence a reduction in corporate taxes paid to the Government.
9.	Imposed Export Duty on Magnetic Iron Ore. • The Finance Act, 2022 under Part VII, Section 50 (a) introduced an export	• Removal of Export Duty on Magnetic Iron Ore. • Industry advocates for the removal of export duties on magnetic iron ore to	• The proposal to remove export duties on magnetic iron ore aligns with best practices observed in other jurisdictions, where similar policies have been implemented to stimulate

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<td>levy under Tariff No. 2601 on iron Ores and Concentrates, including roasted iron pyrites at a rate of USD 175 per tonne restricting miners in Kenya from exporting their mineral stockpiles.

The Current iron ore prices are about USD 110 per tonne, in the global market. The net effect of this is that the export levy on iron ore is more than the price of the ore itself making it economically unviable to mine.
Given that there is currently no manufacturer of steel or cement, in Kenya, who has the equipment necessary to process magnetic iron ore at scale, mining magnetic iron ore has become counterproductive to Kenyan miners particularly those based in Taita Taveta, Kitui, Homa Bay among other counties.
This situation has resulted in substantial stockpiles of magnetic iron ore that cannot be exported or
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<td>facilitate the exportation of mineral stockpiles.

In 2022, Kenya exported $5.3M in Iron Ore, making it the 61st largest exporter of Iron Ore in the world. Estonia and South Africa are the largest export markets.
A review of the USD 175 per tonne (especially on the substantial stockpiles of magnetic iron ore already) would see an increase in the amount of iron ore exported and increase foreign exchange earnings for the country.
We also propose that royalties be paid at the export point, ensuring that the government still collects revenue from all exports.
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<td>economic activity and attract investment in the mining sector.

By adopting this approach, the government can harness the potential of magnetic iron ore deposits to drive economic growth, create employment opportunities, and improve the socio-economic well-being of affected communities.
Additionally, the government stands to benefit from increased foreign exchange earnings and enhanced revenue collection through various taxes and levies associated with mining activities, further supporting the argument for removing export duties.
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	utilized domestically, leading to the shutdown of mining operations.		
STATE DEPARTMENT OF TRADE PROPOSALS			
10.	Single Window downtime and fees not commensurate to service causing delays at the port.	• Rationalize the costs of the Single Window system to match the service offered. • Improve the single window system to do away with system downtimes that hinder competitiveness due to delays.	• Despite the recent extension of the free cargo clearance period at Kenyan ports from two to four days, only 40% of cargo at Mombasa Port is cleared within this timeframe, leading to increased costs for traders due to storage, remarshalling charges, single window, and demurrage. As the main port for Kenya and a crucial regional hub, inefficiencies at Mombasa Port are too costly for both local and regional traders, significantly reducing its competitiveness. With transit cargo handling projected to reach 35 million tonnes by the end of the year, it is imperative to enhance port efficiency.
11.	Sustained funding of the National Trade Facilitation Committee. (NTFC)	• Fund the NTFCs through the National Budget for sustainability.	• The National Trade Facilitation Committee (NTFC) operations are limited due to financial constraints. • NTFCs globally are supported by the National Budgets for sustainability as they are a platform for open forums to promote trade facilitation, encourage inter-agency

			coordination, and provide directives on major trade facilitation issues.
12.	Sustainability of the National implementation strategy for the AfCFTA and Tripartite Agreements.	• Inclusion of KEPSA in the AfCFTA and Tripartite Implementation Committee.	• KEPSA is the Umbrella Body of the Private Sector in Kenya with a constituent of of over 2 million businesses represented as corporates and via Business Member Organizations. • The two mentioned critical trade agreements for the realization of the 1.3 billion people market in Africa are important to the Kenyan private sector seeking market access opportunities. • The inclusion of KEPSA into the implementation organs of the agreements will facilitate partnership towards the complete implementation of the country's commitment to the agreements.
13.	Non- Tariff Barriers on priority products in the National Value chains. e.g. Juices, Edible oils Tobacco, dairy, meat products, confectionery in EAC & COMESA market.	• Address NTBs affecting external markets – e.g. Juices, Edible oils Tobacco, dairy, meat products, and confectionery in EAC & COMESA market. • Priority market development of value-added products to priority target markets e.g. coffee, tea, dairy, confectionery (DRC, Ethiopia, South	• Mutual recognition agreements with standardization bodies and Food and Drug Authorities in target markets to reduce lead times and market access challenges.

		Africa, Egypt, Nigeria, Ghana – EAC, COMESA & SADC) • Mutual recognition agreements with standardization bodies and Food and Drug Authorities in target markets to reduce lead times and market access challenges.	
14.	East Africa Community Vehicle Load Control Act, 2016 • The act provides for an Axle Load Limit as well as a Gross Vehicle Weight Limit for transporters within the East Africa Community. The axle load limit however within the act, does not give a leeway for transporters of liquid products such as petroleum products. Therefore, petroleum transporters experience a challenge in meeting the axle load requirements as their commodity is live and cannot be stabilized. Further, once the limit is exceeded, KENHA charges a fine of Ksh. 17,000 per weighing station which is an	• Review the East African Community (EAC) Vehicle Load Control (VLC) Enforcement Measures Regulations, 2018, with a view to wavering the axle load limit to provide priority treatment for trucks carrying perishable and petroleum goods.	• Tanzania has waivered the axle load limit requirement for petroleum transporters and thus has a competitive advantage over Kenyan transporters due to their reduced transportation costs.

	additional cost incurred by businesses. • Further, Kenyan transporters transport an underload of petroleum products of 42 T compared to the law's cap of 50T to comply with the axle load limit requirement. Tanzanian transporters, however, transport at the cap of 50T, giving them a competitive advantage over Kenyan Transporters.		
STATE DEPARTMENT OF INDUSTRY			
15.	Illicit Trade, Counterfeits, and grey Trade and diminished consumer protection.	• Establishment of a team to monitor counterfeit, grey goods, and illicit trade to inform policy around the administrative actions to mitigate the same. • Formulate and implement the illicit index across sectors to assist in data formulation towards protecting the Kenyan and EAC-grown industries. • MITI to assist in engagement with Parliament on Fast-tracking ratification of the amendment of	• Illicit trade undermines legitimate businesses: It undermines the economic gains from legitimate trade by crowding out lawful economic activities. This results in reduced profits for legitimate businesses, with firms in Kenya reportedly losing between 37.69% and 42.14% of their profits to illegal trade. • Consumer awareness and protection will improve the knowledge of consumers and reduce the utilization of illicit, grey, and counterfeited goods.

		Article 24(2) of the EAC Customs Union Protocol on the formation of the EAC Trade Remedies Committee. The Committee helps in trade remedies actions which will assist tackle illicit trade. • MITI coordinates the consumer protection agencies to ensure the consumer protection tools awareness limiting fraud, non-delivery, and mismatch of products especially in e-commerce.	
16.	Export Promotion Levy	• We propose to limit the levy to instances where the items sought to be imported can be sufficiently sourced locally.	• Clause 70 of the Finance Act 2023 amended The Miscellaneous Fees and Levies Act to introduce export and investment promotion levies. The East Africa Customs Control Management Act provides for import duty which addresses the intention of this new proposal. The introduction of additional levies puts Kenya at a disadvantage as a preferred location for investment, especially compared to EAC and COMESA. • Kenya imported 14,074 tonnes of corrugated paper and paperboard worth Ksh 1.2 billion, and 129,700 tonnes of uncoated kraft paper

			worth Ksh 10.7 billion in 2021. The proposed tax may harm Kenya's production of end products due to a lack of raw materials.
17.	Insufficient common user infrastructure to support smallholder farmers in the prioritized regional, national, and county value chains.	• Facilitate the development of common user infrastructure horticultural enabling export requirement services such as fumigation, among other standards. • Harmonization of agencies to lower administrative and financial burden on exporters of our local produce.	• Common user facilities and the coordination of agencies will reduce post-harvest losses from 40% to 20%. • Increased Compliance with SPS measures for smallholder farmers to promote exports.
18.	The spectrum license fees paid by telecommunication operators are currently not tax-deductible creating unfairness in the tax system.	We propose to amend the Income Tax Act to allow telecommunications network operators to deduct the spectrum licenses fees over a period of 10 years	• Spectrum fees are levied to manage and allocate frequency bands efficiently, avoid interference, and generate revenue for the government. The fees help ensure that the available spectrum is used in the most productive way.