TAX APPEALS TRIBUNAL

Justice in Taxation

THE REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA

TAT APPLICATION NO. 276 OF 2025

KANSAI PLASCON UGANDA LIMITED.....APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

BEFORE: HON. CRYSTAL KABAJWARA, HON. WILLY NANGOSYAH, HON. KABAKUMBA MASIKO

RULING

I. Introduction

1. The Applicant challenges a tax assessment of Shs. 4,888,082,915 arising from the Respondent's reclassification of the Applicant's imported styrene acrylic emulsions and polymers used in paint manufacturing. The Respondent contends that the products were wrongly declared under HS Code 3903.90.00, which attracts a 0% import duty, rather than HS Code 3906.90.00, which attracts a 10% import duty, resulting in additional tax liabilities and penalties.

II. Background Facts

2. The Applicant is a manufacturer of paints. The Respondent conducted a comprehensive customs audit on the Applicant for the period January 2019 to December 2024 with a view to establishing the following:

   (i) If the Applicant's imports were appropriately valued at the time of customs

clearance and if all the imported goods and services were declared to the Respondent;

(ii) Whether the Applicant appropriately applied the conditional Customs Procedure Codes (C Cs);

(iii) Whether the Applicant applied the correct Customs classification at the time of importation;

(iv) Whether the appropriate taxes were assessed and paid on imports made by the Applicant during the period under review; and

(v) The Applicant was gazetted to import the acrylic emulsions and polymers under duty remission using CPC 450, paying import duty at 0%.

3. Pursuant to the audit findings, the Respondent assessed taxes totalling Shs. 4,904,767,529, which comprised VAT of Shs. 16,684,614 relating to imported services, and Shs. 4,888,082,915 for imported goods.

The Applicant's affidavit in support

4. The Applicant filed an affidavit deponed to by Mr. Francis Jabwor, the Applicant's Shipping Executive, sworn on 10 March 2026. He recounted the audit's history and the Respondent's findings. He stated that the dispute primarily revolves around the following:

(i) The customs classification of Revacryl, which the Applicant classified under heading 3903.90, but the Respondent reclassified under 3906.90. He stated that Revacryl is dominated by styrene monomer, not acrylic monomer, as alleged by the Respondent. Furthermore, the product manufacturer classified and exported the product under heading 3903.90, which was accepted by the UAE customs authority.

(ii) Similarly, the parties disagreed on the classification of another product, C-Eagle, manufactured in Egypt. The Applicant classified it as a styrene emulsion under heading 3903.90, which the Respondent opposed. Other contested products in this category include Prokil from Tunisia, Bondex and Orgawhite.

5. The Applicant also contends that certain imported acrylic emulsions classified under heading 3906.90 as other acrylic polymers in primary forms were entitled to benefit from the Duty Remission Scheme. However, the Respondent alleged that the products exceeded quantities approved under the scheme and consequently assessed Shs. 2,851,118,291.

6. In addition, the Respondent assessed the Applicant penalties of USD 2,000 per quarter for 19 quarters for failure to file quarterly returns.

7. The Applicant objected to the findings and the Respondent upheld its position. However, the Respondent conceded that some goods originating from Egypt and granted preferential treatment had been wrongly included in the duty remission assessment. The adjusted liability of Shs. 1,791,307,592 was assessed as follows:
   a) Prokil – Shs. 588,860,611;
   b) Revacryl AE 4620 JA – Shs. 417,938,577;
   c) C-Eagle – Shs. 206,285,845
   d) Bondex – Shs. 205,540,714; and
   e) Orgawhite – Shs. 36,219,120.

8. The Applicant's additional imports of pure acrylic emulsions, which should have qualified for duty remission, were assessed an additional liability of Shs. 336,462,725. The Respondent also maintained penalties of Shs. 140,000,000 for failure to file quarterly returns and Shs. 43,295,832 for misclassification.

The Respondent's affidavit in reply

9. The Respondent filed affidavits in support of the taxation decision, deponed by Ms. Dennize Mugenyi and Mr. Elijah Bweemi and sworn on 10 April 2026 and 16 April 2026, respectively. They explained the reasons for their objection decision, which are summarised below.

a) Misclassification of styrene acrylic emulsions

10. The Respondent established that the Applicant's emulsions are a mixture of two

polymers, Styrene and Acrylics. However, the Applicant did not provide product formulae from its suppliers to demonstrate the ingredients' weight compositions in these products. Consequently, the Respondent classified the products under heading 3906.90 as acrylic polymers in accordance with GIR 3 (c).

11. The Respondent also imposed a penalty of USD 100 for each of the 120 misclassified consignments, in accordance with Section 203 of the EACCMA. The Applicant requested an offset of the additional taxes from the Excise Duty paid on goods declared under heading 3903.90.00, but the Respondent declined the request because the tax was not paid in error, as claimed by the Applicant.

b) Importation of larger quantities under the duty Remission than granted and gazetted

12. The Respondent established that the Applicant had imported more quantities under the scheme than allocated to it. The Respondent therefore computed tax on the acrylic products that were not approved and gazetted, and raised a tax assessment of Shs. 1,791,307,592.

c) Penalty for failure to file quarterly returns

13. The Respondent imposed a penalty of USD38,000 for failure to file quarterly returns as required by the East African Community Customs Management (Duty Remission) Regulations, 2008.

III. Issues to be determined

14. The issue to be determined is whether the Applicant is liable to pay the tax assessed.

IV. Representation

15. The Applicant was represented by Mr. Bruno Kalibala, Mr. Bruno Edwin Amanya, Mr. Ankit Jangla, Mr. Jabwor Francis, the Shipping Executive of the Applicant and Mr. Neel Patel the Technical Manager, while the Respondent was represented by Ms. Christine Mpumwire.

V. Submissions of the Applicant

16. The Applicant contended that it is not liable to pay the tax assessed because:
    a) The styrene acrylic emulsions imported by the Applicant are other polymers of styrene in primary form and therefore attract import duty at 0% under HSC 3903.90.
    b) the liability in respect of Prokil and C Eagle is illegal because the items were imported from Tunisia and Egypt, respectively, both of which are members of COMESA.
    c) The penalties raised by the Respondent are unlawful and therefore should be set aside.

Classification of styrene acrylic emulsions

17. The Applicant submitted that the classification process is a structured exercise. In the South African case of ***IBM SA (ptv) Ltd v CSARS 1985 (4) SA 852***, the Court held:

> *"Classification as between headings is a three-stage process: first, interpretation-the ascertainment of the meaning of the words used in the headings (and relative Section and Chapter Notes) which may be relevant to the classification of the goods concerned; second, consideration of the nature and characteristics of those goods; and third, the selection of the heading which is most appropriate to such goods."*

Stage One: Interpretation of the headings

18. The Applicant submitted that whereas the Respondent relies on GIR 3, the Applicant submits that GIR 1 should be considered first. In ***URA V TATA Uganda Limited HCCA 57 OF 2021, Ochaya J*** held that the GIRs are applied sequentially. Therefore, the Respondent ought to have first applied GIR 1, which states:

> *"...for legal purposes, classification shall be determined according to the terms of the headings and any relative Section....".*

19. The Applicant contended that the provisions of **GIR 1** imply that for purposes of determining classification of goods, the terms of headings and any relative Section or Chapter Notes are paramount and are the first consideration. It is an agreed fact that the imports fall within Chapter 39. The dispute is on the applicable HS Code.

20. Whereas the Applicant submitted that the styrene acrylic-based emulsions fall under the HS Code 3903.90.00 as *"other polymers of styrene in primary form,"* the Respondent alleged that they fall under HS Code 3906.90 as *"other Acrylic polymers in primary form."*

21. The Applicant submitted that according to Chapter Note 4, and subheading note 1(4) of Chapter 39, polymers are to be classified in the subheading, covering polymers of that monomer unit which predominates by weight over every other single comonomer unit. The determination of which HS Code the imports fall under is dependent on which monomer unit, styrene or acrylic monomer, predominates by weight.

Consideration of the nature and characteristics of the goods

22. The Applicant submitted that the imported products are styrene-acrylic polymers, supplied as aqueous dispersions, and comprising two principal monomer units: Styrene and Acrylic (or acrylic ester) monomers. In the Applicant's case, the technical documentation confirms that styrene predominates by weight over the acrylic monomer component.

23. The imported products are as follows:

    (i) Revacryl AE 4620 JA

    The Applicant imported Revacryl, an aqueous dispersion of a styrene-acrylic ester copolymer, a raw material used in the manufacture of interior paints. As per the technical data sheets, the polymer's total solids account for 50% of its weight, with styrene monomer at 36% and acrylic

monomer at 16%. Therefore, excluding water, Styrene's composition is 72%. This was further corroborated by the manufacturer's export declaration, which listed it under HS Code 3903.90, confirming that styrene is the predominant monomer (Paragraph (d) of the Applicant's affidavit).

(ii) C-Eagle (SA72/50)

The Applicant also imported C-Eagle, which is an aqueous copolymer emulsion based on styrene-acrylic acid ester. The evidence indicates that the total solids composition is 50%, comprising 25.3% Styrene by weight, compared with 17% for the acrylic monomer. The Manufacturer also corroborated that styrene is the predominant monomer by declaring the product under HS Code 3903.90 (per Paragraph 4.2 (c) of the Applicant's affidavit).

(iii) Prokil

The Applicant imported Prokil, an aqueous, APEO-free dispersion based on a copolymer of styrene and butyl acrylate, and a universal binder for all kinds of paints. The product is procured from MPCPROKIM Industries, a manufacturer based in Tunisia. The manufacturer not only exported the product under HS Code 3903.90 but also issued a confirmation on 5th September 2025 stating that the product's composition is predominantly styrene, which is an essential and predominant component (per Paragraphs 4.3(c)-(d) of the Applicant's affidavit).

(iv) *Bondex*

The Applicant imported Bondex from Jesons Techno Polymers LLP, an India-based manufacturer. This manufacturer also exported the product under HS Chapter 39, heading 3903.90. The Manufacturer issued a confirmation of the composition of the different strands of the product, which are predominantly styrene, thereby recommending HS Code 3903.90.

(v) Orgal Orgawhite 2000

The Applicant contended that, according to the technical data sheet, Orgawhite is a water-based styrene-acrylic copolymer. The Manufacturer confirms that Styrene is the predominant monomer and recommends that it fall under HS Code 3903.90.

(vi) Other reclassified items

As a result of the above items being reclassified, the Applicant artificially exceeded the amounts gazetted for duty remission, resulting in a liability on the alleged excess quantities of Shs. 336,462,725 instead of qualifying for the approved duty-remission quantities. The Applicant submitted that the above imports are all styrene-acrylic emulsions, with styrene as the predominant monomer.

Selection of the most appropriate tariff heading and subheading

24. The Applicant submitted that the imports qualify under *other polymers of styrene in primary form*. This is because the predominant monomer by weight is styrene.

Imports from COMESA

25. The Applicant submitted that whereas the Respondent, in their objection decision, conceded that goods originating from Egypt were erroneously considered and vacated from the computations, the Applicant noted that the revised liability of Shs. 1,791,307,592 included amounts assessed on Prokil Shs. 588,860,611 imported from Tunisia and C-Eagle Shs. 206,285,845 imported from Egypt.

26. The Applicant submitted that Section 112 of the EACCMA states that preferential tariff treatment shall be applied to goods imported under the COMESA arrangement. In the case of ***Kansai Plascon Uganda Limited v Uganda Revenue Authority TAT No 124 of 2021***, this Tribunal held:

"For one to be accorded preferential treatment under the COMESA treaty, goods

must originate from the partner states, and treatment shall be in accordance with the rules of origin provided under the Protocol...."

27. The Applicant submitted that, according to Article 1.4C of the Procedures Manual on the Implementation of the Protocol on the Rules of Origin for Products to be Traded Between the Member States of the Common Market for Eastern and Southern Africa, Egypt and Tunisia are member states of COMESA.

28. Rule 10 of the Protocol on the Rules of Origin for Products to be Traded Between the Member States of the Common Market for Eastern and Southern Africa states:

"The claim that goods shall be accepted as originating from a Member State in accordance with the provisions of this Protocol shall be supported by a certificate given by the exporter or his authorised representative in the form prescribed in Appendix I of this Protocol. The certificate shall be authenticated by an authority designated for that purpose by each Member State".

29. The Applicant submitted that Article 3.3.2 of the Procedures Manual on the Implementation of the Protocol states that goods that have been accepted as meeting all the requirements of the Rules of Origin are entitled to a COMESA Certificate of Origin. Additionally, the certificate of origin should be attached to the import goods declaration to enable the Customs authorities of the importing member State to grant preferential tariff treatment to the shipment.

30. The Applicant submitted that during the import declaration, valid COMESA certificates of Origin were submitted. However, the Respondent only focused on the classification issue and neglected the entitlement to preferential treatment. The Applicant submitted that the tax liabilities in relation to Prokil of Shs. 588,860,611 and C-Eagle of Shs. 206,285,845, to the extent the items were imported from a COMESA member state with proper supporting certificates of origin, were illegal and erroneous and should be set aside.

Penalties for non-filing of quarterly returns and misclassification

31. The Applicant submitted that the penalty fines issued by the Respondent of Shs. 140,167,940 and Shs. 43,295,832, for non-filing of quarterly returns and misclassification, were erroneous and procedurally improper. Under Regulation 7(1) of the East African Community Customs Management (Duty Remission) Regulation, 2008, a manufacturer of goods for export shall submit quarterly returns to the Commissioner, providing the relevant information as the Commissioner requires.

Sub regulation 4 then imposes the fine for non-compliance, stating that:

> *"A person who fails to submit returns as required under this regulation commits an offence and shall be liable **on conviction** to a fine of two thousand dollars."*

32. The Applicant submitted that Section 203 of the East African Community Customs Management Act Cap 187(EACCMA) on misclassification states that any person who makes an entry that is false or incorrect in any particular

> *"commits an offence and shall be liable **on conviction** to imprisonment for a term not exceeding three years or to a fine not exceeding ten thousand dollars."*

33. The Applicant submitted that the above provisions clearly provide that the respective fines arise only upon conviction. The Respondent, therefore, lacks the statutory authority to administratively impose such a penalty without prosecution before a competent Court or Tribunal. The Applicant submitted that the Respondent issued the fines of Shs. 140,167,940 and Shs. 43,295,832 based on offences that are committed on conviction, without affording the Applicant a fair trial before an independent Tribunal/Court. This makes these fines illegal, unconstitutional, and improper, and thus should be set aside.

34. Alternatively, and without prejudice to the above, should the Tribunal, find that the fine for the offense of non-filing of quarterly returns is payable, the Applicant also submits that the Respondent's action of issuing the USD 2000 fine for the

19 quarters that the Applicant was alleged not to have filed the returns, was erroneous and contrary to the law because the law does not specify the penalty to be per quarter.

35. The Applicant submitted that Regulation 7(4) of the East African Community Customs Management (Duty Remission) Regulation, 2008, imposes a single fine of USD 2000 for non-filing of the quarterly returns. This means that only one fine can be issued for the offence, regardless of the number of quarters the return is not filed for. Therefore, only one fine of USD 2,000 should be issued for the offence. The Applicant submitted that the tax liabilities issued by the Respondent were erroneous and should therefore be set aside. The Applicant prayed that the Application be allowed and that the assessed liability for each item, including the penalties imposed by the Respondent, be set aside. The Applicant further prayed that the Respondent be ordered to refund the 30% deposit made by the Applicant and that costs be awarded to the Applicant.

VI. The Submissions of the Respondent

36. The Respondent submitted that the Applicant is liable to pay the tax assessed for the following reasons:

Misclassification of Styrene Acrylic Emulsions

37. The Respondent submitted that these emulsions are a mixture of two polymers, that is Styrene and Acrylics. These two polymers fall under two HS codes: Styrene Polymers are classified under HS Code 3903.90.00, and Acrylic Polymers fall under HS Code 3906.90.00.

38. The Respondent claimed that it requested the Applicant to provide product formulae from its suppliers to demonstrate the composition by weight of the ingredients in these products but the same was not provided. The Applicant declared some Styrene Acrylic Emulsions under HS Code 3906.90.00 and others under 3903.90.00 yet they are all used in making budget paints.

39. The Respondent also contended that the Applicant used the same HS Code 3906.90.00 to classify the same products when applying for EAC Duty Remission Consideration. *(REX 10 & 11 at pages 21 & 22 of the Respondent's Trial Bundle.)*

40. The Respondent submitted that the General Interpretative Rules (GIRs) are six internationally binding rules governing the classification of goods under the Harmonised System (HS), which are supposed to be applied sequentially (Rules 1-6). The Respondent submitted that **GIR 2(b)** refers to mixtures of materials. If a good consists of more than one material, it is classified based on Rule 3. The Respondent submitted that the next rule is considered like in this particular case, where the product to be classified, that is styrene acrylic emulsions, comprised of a mixture of products, GIR 2(b) allows resort to Rule 3.

41. The Respondent followed the GIR in classifying the Applicant's imported product and followed all the stages. Rule 3 of the General Interpretative Rules guides that if two or more HS Codes merit consideration, the mixture shall be classified in either the HS Code of the component that is predominant by weight of the total composition, in the HS Code that gives the product its essential Character in the event that the weights are not determinable or in the HS Code that appears last in numerical order of the headings that merit consideration.

42. The Respondent submitted that in the case of ***SHP Sons (U) Ltd v URA TAT No.207 of 2024***, the Tribunal ruled that:

> *"Without supporting evidence, we are unable to determine the composition of products imported. The documents do not indicate whether the products were predominantly Acrylic or styrene."*

43. The Respondent argued that the Applicant in this case failed to provide product formulae from its suppliers to demonstrate the composition by weight of the ingredients in these products as requested, and the Respondent resolved to use GIR(3c) to classify the Styrene Acrylic Emulsions; (that is, where two HS Codes merit consideration (3903.90.00 for Styrene Polymers and 3906.90.00 for Acrylic

Polymers), and classify the emulsions under the HS Code that appears last in numerical order, which is 3906.90.00 as Acrylic Emulsions in accordance with Rule 3 of the General Interpretative Rules.

44. The Respondent further submitted that it is important to note that when the East African Community Council granted the Applicant importation under duty remission, it classified the same items under HS Code 3906.90.00 and the Applicant did not object to this HS Code then, the Applicant's objection to these HS Codes at the point of Assessment was an afterthought intended to evade taxes as the Respondent correctly classified the items in issue in accordance with the proper tariff headings

45. It was the Respondent's submission that the manufacturer of the products issued, classified them under heading 3906.90.00, and all the other paint manufacturers have been importing the same products under the heading 3906.90.00 *(see REX.18 at pages 34-35 and REX19 at pages 36-50 of the Respondent's Trial Bundle.)* The Respondent maintains that the Applicant's Styrene Acrylic Emulsions were rightly classified under 3906.90.00 and the Applicant is liable to pay the resultant tax as assessed by the Respondent.

Misclassification of Revacryl and other acrylic emulsions and polymers

46. The Respondent submitted that the Applicant misclassified acrylic emulsions and polymers (C - Eagle (SA72/50) 50%, Ropaque, Orgawhite, Acronal S 790, Bondex AMCAS 46-2) under heading 3903.90.00 (Other Polymers of Styrene, in Primary Forms) that attracts import duty at a rate of 0% as opposed to heading 3906.90.00 (Other Acrylic Polymers Prepared in Primary Forms) where an import duty rate of 10% applies.

The Applicant imported more raw materials than the quotas allocated in the EAC gazettes

47. The Respondent submitted that for the period January 2019 – June 2024, the

Applicant was gazetted to import the acrylic emulsions and polymers under duty remission using CPC 450, paying import duty at 0%. Regulation 6 (2) of the East African Community Customs Management (Duty Remission) Regulation, 2008 allows the Applicant to apply for a grant of remission on further quantity of goods to be imported by the manufacturer, but the Applicant imported more than was gazetted without authorization. The Respondent referred the Tribunal to the management letter communicating the objection decision dated 7th August 2025 at pages 2 to 3, Exhibited as REX 20 at pages 51-54, REX13 at Page 29, REX.14 at page 30, REX.15 at page 31, REX.16 at page 32 and REX.17 at page 33 of the Respondent's Trial Bundle.

48. According to the Respondent, compared quantities of the re-classified goods, that is, Eagle (SA72/50) 50%, Ropaque, Orgawhite, Acronal S790 and Bondex AMCAS 46-2, and the correctly classified ones with the allocated quantities as per East African Community gazettes, with the aim of ascertaining if the imported quantities of raw materials were within the allocated and gazetted range.

49. The Respondent conducted a comparison of the allocated quantities of raw materials as detailed in the EAC gazettes with the quantities that were imported and established that during the period January 2019 to June 2024, the Applicant imported quantities of raw materials that were more than the allocated quotas as per EAC gazettes as stated below:

    a) For the period 2018 to 2019, the Applicant imported 59,670 quantities of other Acrylic polymers in excess of the approved quantities *(REX.13 at page 29 of the Respondent's Trial Bundle).*
    b) For the period 2019 to 2020, the Applicant imported 35,564 quantities of other Acrylic polymers in excess of the approved quantities *(REX.14 at page 30 of the Respondent's Trial Bundle).*
    c) For the period 2020 to 2021, the Applicant imported 37,000 quantities of other Acrylic polymers in excess of the approved quantities *(REX.15 at*

page 31 of the Respondent's Trial Bundle).

d) For the period 2022 to 2023, the Applicant imported 160,890 quantities of other Acrylic polymers in primary form in excess of the approved quantities *(REX.16 at page 32 of the Respondent's Trial Bundle).*

e) For the period 2023 to 2024, the Applicant imported 638,780 quantities of other Acrylic polymers in primary form in excess of the approved quantities, *REX.17 at page 33 of the Respondent's Trial Bundle.*

The Applicant was not gazetted to import under duty remission

50. The Respondent submitted that for the period July to November 2024, the Applicant was not gazetted to import the acrylic emulsions and polymers under duty remission, but the Applicant imported 1,952,800 quantities. Regulation 5(1) of the East African Community Customs Management (Duty Remission) Regulation, 2008 *provides that an Application for remission shall be made to the council through the commissioner in Form 1 in the schedule to the Regulations.*

51. For the period July to November 2024, the Applicant neither applied for duty remission nor was it gazetted to import under duty remission for that period and as such, the Respondent classified the acrylic emulsions under heading 3906.90.00 as already discussed and assessed additional tax of Shs. 1,270,319,611.

Penal assessment for misclassification

52. The Respondent submitted that, having established misclassification of imported goods (emulsions), the Respondent resolved to penalise the Applicant for misclassification in accordance with Section 203 of the EAC-CMA, 2004, pursuant to which, a penalty of USD 100 for each of the 120 consignments that were misclassified was raised, totalling USD 12,000. The penal assessment for misclassification was raised in accordance with the East African Community Customs Management Act, 2004, and the same is justified.

Penal assessment for failure to file returns on the usage of the imported raw materials under remission

53. The Respondent further contended that the Applicant did not file returns on the usage of the imported raw materials under remission as required by Regulation 7(1) (b) of the East African Community Customs Management (Duty Remission) Regulations, 2008, a fact which the Applicant does not dispute but rather challenges the lawfulness of raising the penalty. Regulation 7(3) of the EAC Customs Management (Duty Remission) Regulations, 2008, provides:

> *"Where a manufacturer is liable to pay duty under sub regulation 2(a), the manufacturer shall, in addition to paying the duty application, be liable to pay a penalty of ten per cent of the dutiable value."*

54. The Respondent submitted that the penalty assessment of USD 38,000 (Shs. 140,167,940 EXR 3,688.63) accounting for 19 quarters of January 2019 to June 2024 less July 2020 – March 2021 in accordance with Regulation 7(1)(b) and 7(3) of the EAC Customs Management (Duty Remission) Regulations, 2008 was rightly raised, is lawful and the penal tax is due and payable by the Applicant.

Preferential treatment for goods originating from Egypt

55. The Applicant and other importers who have imported similar raw materials have enjoyed preference as long as the Applicant presents the certificate of origin and declares the country of origin; the Respondent has always granted the preferential treatment.

56. During the audit, the Respondent established that in their earlier computation, goods originating from Egypt and granted Preferential Treatment were considered in the comparison, which was in error and resolved to charge tax on the Acrylics products that were not approved and gazetted and revised the assessed tax from Shs. 2,851,118,291 to Shs 1,791,307,592 to grant the preferential treatment for all the products that were declared and verified to originate from the COMESA region and charged tax on the variances whose origin was not verified. ***(REX21 at pages 55-79 of the Respondent's Trial***

Bundle.)

57. The Respondent submitted that the Applicant sought preferential treatment for their imports. Preferential tariff treatment under the COMESA Free Trade Area takes the form of a reduction in duty. It is only fair that, to obtain preferential tariff treatment, one MUST meet all the conditions attached to that preference. The COMESA Protocol on Rules of Origin lays down the requirements that should be met, short of which preference should then be denied or recalled where it is enjoyed irregularly, as is the case at hand. The Applicant in this matter obtained preferential tariff treatment on all the declared products and, as such, is liable to pay the outstanding tax liability.

58. The Respondent prayed that the Tribunal orders as follows:
    a) The application is dismissed.
    b) The applicant is liable to pay the tax liability of Shs. 1,791,307,592 as revised by the Respondent.
    c) Costs of this Application are awarded to the Respondent.

VII. The determination

59. Having considered the parties' pleadings, their evidence and submissions, this is the decision of the Tribunal.

60. The dispute concerns the classification of certain paint products that the Applicant imported. The Applicant argued that the imported products are predominantly styrene polymers properly classifiable under heading 3903.90.00, attracting a 0% rate. Furthermore, the Applicant argued that imports from Egypt and Tunisia qualified for COMESA preferential treatment. The Applicant also challenged the legality of the penalties imposed by the Respondent.

61. However, the Respondent contended that the imported products had been misclassified, particularly styrene acrylic emulsions and polymers, which the Respondent reclassified from HS Code 3903.90.00 to HS Code 3906.90.00, attracting import duty of 10%. The Respondent contended further that the Applicant had imported quantities exceeding the approved duty remission quotas,

imported some products without being gazetted for duty remission, and failed to file quarterly returns relating to remission imports. Consequently, the Respondent issued a management letter dated 25 June 2024 assessing taxes, levies, and penalties totalling Shs. 4,888,082,915.

62. Whereas the Respondent in their objection decision conceded that goods originating from Egypt were erroneously considered and vacated from the computations, the Applicant noted that the revised liability of Shs. 1,791,307,592 included amounts assessed on Prokil Shs. 588,860,611 imported from Tunisia and C-Eagle Shs. 206,285,845 imported from Egypt. The remaining liability was left for the Tribunal to determine.

Styrene acrylic emulsions

63. The Applicant submitted that the imported products are styrene-acrylic polymers, supplied as aqueous dispersions, and comprising two principal monomer units: Styrene and Acrylic (or acrylic ester) monomers. The Applicant imported the following: Revacryl AE 4620 JA, C-Eagle (SA72/50), Prokil, Bondex, Orgal Orgawhite 2000, and other reclassified items. The Applicant submitted that the above imports are all styrene-acrylic emulsions, with styrene as the predominant monomer.

64. The Applicant submitted that these emulsions are a mixture of two polymers, that is, Styrene and Acrylics. These two polymers fall under two HS Codes: Styrene Polymers are classified under heading 3903.90.00, and Acrylic Polymers fall under heading 3906.90.00.

65. The Respondent claimed that it requested the Applicant to provide the product formulae from its suppliers to demonstrate the composition by weight of the ingredients in these products, but the same was not provided. The Applicant declared some Styrene Acrylic Emulsions under heading 3906.90.00 and others under heading 3903.90.00, yet they are all used to make budget paints.

66. The Respondent also contended that the Applicant used the same heading 3906.90.00 to classify the same products when applying for EAC Duty Remission Consideration. *(Ref is made to REX 10 & 11 at pages 21 & 22 of the Respondent's Trial Bundle).*

67. The Respondent argued that the Applicant in this case failed to provide product formulae from its suppliers to demonstrate the composition by weight of the ingredients in these products as requested, and the Respondent resolved to use GIR(3) (c) to classify the Styrene Acrylic Emulsions (that is, where two headings merit consideration (3903.90.00 for Styrene Polymers and 3906.90.00 for Acrylic Polymers), and classify the emulsions under the heading that appears last in numerical order, which is 3906.90.00 as Acrylic Emulsions in accordance with Rule 3 of the General Interpretative Rules.

68. In the case of ***SHP Sons Limited v URA, App No. In the case of Elgon Hydro Siti Limited v URA, App No. 125 of 2019***, the Tribunal highlighted 2 critical factors that must be considered in disputes concerning classification
    (i) The import documentation
    (ii) Interpretation must be guided by the General Rules of Interpretation.
    (iii) The rules must be applied in sequential order when determining the tariff classification of the imported goods. The GIR rules require that, where a product is a mixture, it be classified on the basis of the material or component that gives it its essential character.

69. The following are the general Rules of Interpretation:
    Article 3(a) of the ***International Convention on the Harmonised Commodity Description and Coding System*** provides:

    "1. Subject to the exceptions enumerated in Article 4:
    (a) Each Contracting Party undertakes, except as provided in subparagraph
    ....
    It thus undertakes that, in respect of its Customs tariff and statistical

nomenclatures:

(i) it shall use all the headings and subheadings of the Harmonised System without addition or modification, together with their related numerical codes;

(ii) it shall apply the General Rules for the interpretation of the Harmonised System and all the Section, Chapter and Subheading Notes, and shall not modify the scope of the Sections, Chapters, headings or subheadings of the Harmonised System; and

(ii) it shall follow the numerical sequence of the Harmonised System."

70. Furthermore, the East African Community Common External Tariff (EAC CET) provides for the General Interpretation Rules (GIR) as follows:

1. *The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:*
2. *(a) Any reference in a heading to an article shall be taken to include a reference to that article, incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article, complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled.*

   (b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.
3. *When, by application of Rule 2 (b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:*

a) *The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.*

b) *Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.*

c) *When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration."*

71. The Tribunal further relied on Chapter 39, Note 4, which provides:

> *"The expression copolymers covers all polymers in which no single monomer unit contributes 95% or more by weight to the total polymer content".*

72. The above provision sets out a clear test for determining whether the imported products fall under heading 39.03 or heading 39.06, depending on which monomer is greater in weight. If styrene is higher, the product falls under HS Code 3903 (styrene polymers) at 0% rate, and if acrylic is higher, it falls under HS Code 3906 (acrylic polymers) at 10% rate. This is a factual determination that requires review of the import documentation.

73. We now turn to the import documentation concerning the imported items.

Revacryl AE 4620 JA

74. The Applicant provided ASYCUDA documents, which are exhibited in annexure A1-5 of the Applicant's affidavit. The documents indicate the product was declared under HSC 3903.90.00. The documents also show that other styrene

polymers are present in primary form. However, we are unable to determine the composition, as the act requires that we characterise according to the highest monomer.

75. However, Annexture B2, the technical data sheet for the above product shows the following:

Function	Chemical identification	CAS No.	Parts by Weight
Polymer	Styrene Monomer	Proprietary	~36
Polymer	Butyl acrylate monomer	Proprietary	~14
Carrier	Water	7732-18-5	~50
PH Adjuster	Ammonia	1336-21-6	<0.2
Biocide			<0.005

76. The Applicant adduced evidence to the effect that Synthomer, the manufacturer of the products, indicated that styrene monomer constitutes ~36% and acrylic monomer ~14% of the polymer solids. Styrene predominates by weight as required by Note 4 of Chapter 39. The evidence clearly shows that styrene monomer constitutes approximately 36% of the product composition, while butyl acrylate monomer constitutes approximately 14%, with the remainder largely comprising water and trace additives. Consequently, styrene is the predominant monomer by weight within the polymer content.

77. The Tribunal accordingly holds that Revacryl AE 4620 JA was properly classifiable under HS Code 3903.90.00 as "other polymers of styrene in primary forms," attracting import duty at 0%, and not under HS Code 3906.90.00.

C-Eagle (SA72/50)

78. The Applicant provided ASYCUDA documents marked annexures "D1 to D2" of the affidavit deponed by Francis Jabwor, which described the product as Egyptian C-EAGLE (SA72/50) and other styrene polymers in primary forms. Furthermore, while the Applicant filed a COMESA certificate of origin, it does not indicate the

percentage composition of each monomer. However, annexure F2, a declaration from Eagle Chemicals, indicates that C-Eagle contains 25.3% styrene monomer and 17% butyl acrylate.

79. The Tribunal has considered the ASYCUDA import documents and annexure F2, which contains the manufacturer's declaration from Eagle Chemicals. The declaration indicates that C-Eagle (SA72/50) contains 25.3% styrene monomer and 17% butyl acrylate.

80. The Tribunal finds that styrene is the predominant monomer by weight within the product composition as required under Chapter 39 Note 4. Accordingly, C-Eagle (SA72/50) was properly classifiable under HS Code 3903.90.00 as other polymers of styrene in primary forms, and not under HS Code 3906.90.00.

Prokil

81. The Applicant filed ASYCUDA documents described as Prokil S330 AF STYRENE ACRYLIC Emulsion declared under heading 3903.9000. The Applicant filed a technical data sheet; however, it did not indicate the percentage composition of the respective monomers. Further, annexure L, which contains a form from the manufacturer, PROKIL S330, states that the product is a styrene-acrylic copolymer emulsion and that styrene constitutes a predominant emulsion. However, it does not show what percentage the said product represents.

82. Although the manufacturer stated that styrene constitutes the predominant component of the styrene-acrylic copolymer emulsion, no percentage composition was provided to demonstrate predominance by weight as required under Chapter 39 Note 4. In the absence of sufficient evidence establishing the actual monomer composition, the Tribunal is unable to conclusively determine that styrene predominates. Consequently, the Respondent was justified in applying GIR 3(c) and classifying the product under heading 3906.90.00.

Bondex

83. The Applicant filed annexure "O", a document from Jesons, the product manufacturer, which shows the different types of Bondex composition as shown below:

Product	Monomer	CAS No.	% Range
Bondex5299	-	-	-
BondexAA261P	-	-	-
BondexP711G	-	-	-
Bondex 5295D	Styrene	100-42-5	24-26
	Butyl Acrylate	141-32-2	21-23
Bondex AMCA S46-2	Styrene	100-42-5	15-25
	Butyl Acrylate	141-32-2	10-20
Bondex Opex 92	Styrene	100-42-5	23-26

84. The Tribunal finds that for the Bondex products with disclosed ranges, that is, Bondex 5295D, Bondex AMCA S46-2, where the styrene is equal to or higher than the corresponding acrylic component and therefore predominates by weight within the meaning of Chapter 39 Note 4, the products are properly classifiable under heading 3903.90.00 as other polymers of styrene in primary forms.

85. However, for Bondex 5299, Bondex AA261P, Bondex Opex92 and Bondex P711G in the ASYCUDA documents, the absence of compositional evidence means the products do not fall under heading 3903.90.00 as the Applicant has failed to discharge the burden of proof concerning these products.

Orgal Orgawhite 2000

86. The Applicant contended that, as per the technical data sheet, Orgawhite is a water-based styrene acrylic copolymer. The Manufacturer confirms that Styrene

is the predominant monomer and recommends that it fall under heading 3903.90.00. A statement of chemical composition from Organikkimya on the affidavit in support by Jabwor Francis, marked annexure "Q", indicates the following:

Product	Ingriedients	%
Orgal Orgawhite 2000	Styrene acrylic copolymer	30
	Water	70

87. The evidence shows that Orgawhite 2000 consists of approximately 30% styrene-acrylic copolymer and 70% water. Accordingly, styrene predominates within the polymer fraction, and the product is properly classifiable under heading 3903.90.00 as other polymers of styrene in primary forms.

88. The Tribunal further notes that although the Respondent challenged the Applicant's classification of the products, it did not adduce contrary technical evidence to disprove the composition data presented by the Applicant or to demonstrate that the products did not meet the stated monomer thresholds for classification. The Tribunal therefore relied on the uncontroverted technical evidence annexed to the affidavit of Mr. Francis Jabwor, the Applicant's Shipping Executive, as the basis for determining the composition and classification of the products.

89. The Tribunal notes the Respondent's deponent, Ms. Denneze Mugenyi, stated that the Applicant failed to provide product formulae from its suppliers to establish the composition by weight of the ingredients. He further testified that the Applicant classified similar products under both headings 3906.90.00 and 3903.90.00, despite their use in the manufacture of paint. On that basis, the Respondent concluded that the classification was inconsistent and therefore applied GIR 3 in determining the appropriate tariff heading.

90. In ***SHP (Supra),*** the Tribunal noted that:

> *"In this case, therefore, Note 4 sets out a clear test for determining whether the imported products fall under heading 39.03 or heading 39.06, depending on which monomer is greater in weight. If styrene is higher, the product falls under HS Code 3903 (styrene polymers) at 0% rate, and if acrylic is higher, it falls under HS Code 3906 (acrylic polymers) at 10% rate. This is a factual determination that requires review of the import documentation".*

91. Under Chapter 9 of the EAC CET, the headings are as follows:

Heading 39.03 provides:

"Polymers of styrene, in primary forms"

"3903.90.00	other	Kg	0%

Further, ***heading 39.06 provides:***

"Acrylic polymers in primary forms"

"3906.90.00	other	Kg	10%.

Therefore, having analysed the evidence presented by both parties, our findings are that;

92. From the evidence on record, the Tribunal finds that the following products were properly classifiable under heading 3903.90.00, as the documentation demonstrates that styrene predominates by weight:
    a) Revacryl AE 4620 JA
    b) C-Eagle (SA72/50)
    c) Bondex 5295D
    d) Bondex AMCA S46-2
93. The Tribunal further finds that there was no conclusive and reliable evidence to prove the dominant monomer in the following products.
    a) Prokil S330 AF Styrene Acrylic Emulsion
    b) Orgawhite 2000

c) Bondex variants without full composition data (e.g; Bondex 5299, Bondex AA261P, Bondex P711G and Bondex Opex92).

94. The Applicant only provided evidence for one monomer without demonstrating the comparative weight of the other, and the Tribunal was therefore unable to ascertain the predominant component as required under Chapter 39 Note. In the circumstances, the Respondent was justified in applying GIR 3(c) and classifying those products under heading 3906.90.00. Accordingly, the Respondent shall reassess the Applicant's tax liability in line with this decision and delete all duties, penalties, and interest attributable to products found to be correctly classifiable under HS Code 3903.90.00.

Whether the Applicant imported quantities beyond the gazetted duty remission quotas

95. The Respondent submitted that they compared quantities of the re-classified goods, that is, Eagle (SA72/50) 50%, Ropaque, Orgawhite, Acronal S790 and Bondex AMCAS 46-2 and the correctly classified ones with the allocated quantities as per East African Community gazettes, with the aim of ascertaining if the imported quantities of raw materials were within the allocated and gazetted range. The Respondent compared the allocated quantities of raw materials as detailed in the EAC gazettes with the quantities imported and established that, during the period January 2019 to June 2024, the Applicant imported quantities of raw materials exceeding the allocated quotas.

96. The Applicant submitted that whereas the Respondent, in their objection decision, conceded that goods originating from Egypt were erroneously considered and vacated from the computations, the Applicant noted that the revised liability of Shs. 1,791,307,592 included amounts assessed on Prokil Shs. 588,860,611 imported from Tunisia and C-Eagle Shs. 206,285,845 imported from Egypt.

97. According to the Applicant, as a result of the above items being reclassified, the

Applicant artificially exceeded the amounts gazetted for duty remission, resulting in a liability on the alleged excess quantities of Shs. 336,462,725 instead of qualifying for the approved duty-remission quantities. The Applicant submitted that the above imports are all styrene-acrylic emulsions, with styrene as the predominant monomer.

98. The Tribunal has already found that several products, including Revacryl AE 4620 JA, C-EAGLE (SA72/50), Bondex 5295D, and Bondex AMCA S46-2, were properly classified under heading 3903.90.00. Accordingly, any computation of excess imports based on the erroneous inclusion of those products as acrylic polymers under heading 3906.90.00 is fundamentally defective.

99. The Respondent's excess quantity computations were dependent on the reclassification exercise. However, for products such as Prokil, Orgal Orgawhite 2000, and any Bondex variants for which monomer predominance was not established, the Tribunal upheld classification under HS Chapter 3906.90.00 pursuant to GIR 3(c). Those products properly form part of the computations.

100. The Tribunal therefore finds that the Respondent was entitled to assess duty on quantities imported beyond the gazetted remission quotas only in relation to products properly classifiable under HS Code 3906.90.00. The Tribunal orders the Respondent to recompute the same to establish the quantities that are rightly taxable.

Whether the Applicant was entitled to duty remission for imports made between July and November 2024

101. The Respondent submitted that the Applicant was not gazetted for duty remission during the period July to November 2024, yet nevertheless imported 1,952,800 units of acrylic emulsions and polymers under remission. The Respondent argued that Regulation 5(1) of the Duty Remission Regulations requires a manufacturer to apply for remission through the Commissioner and that no such application or

gazettement existed for the period in question. The Applicant did not demonstrate that it had obtained gazettement or approval for duty remission during that period.

102. Section **140 of the EACCMA** provides that the Council of Ministers may grant remission of duty on:

a) Goods imported for use in the manufacture of goods for export, or

b) Goods imported for use in the manufacture of approved goods for home consumption, as determined by Gazette notice.

103. Regulation 5 of the Duty of the East African Community Customs Management (Duty Remission) Regulations, 2008, provides:

"(1) An application for remission of duty shall be made to the Council through the Commissioner in Form R 1 in the Schedule to these Regulations."

104. Regulation 6 provides:

"(1) Remission of duty granted under these Regulations shall be valid for a period of twelve months from the date of the publication of the grant in the Gazette.

(2) The Council may, on the application by a manufacturer, grant remission on such further quantity of goods to be imported by the manufacturer under these Regulations.

105. Regulation **15 of the EACCMA (Duty Remission) Regulations,** provides:

"The Council may, for reasons to be communicated to the applicant, revoke a grant of duty remission."

106. In the case of ***Yogi Steel Ltd v URA, App no. 224 Of 2024,*** this Tribunal stated:

"The import of this provision is that the EAC Council of Ministers has the discretion to revoke a grant of duty remission."

107. The Tribunal further stated:

"Regarding the substantive power to revoke, we note that Regulation 7 of the

EAC Customs Management (Duty Remission) Regulations, 2018 attaches certain conditions to duty remission which must be complied with. Further, the Respondent's letter to the Applicant dated 23 June 2024 laid down certain continuing obligations such as the requirement for the Applicant to file quarterly returns on the usage of the raw materials. The other condition was for the imported items to be used only for the manufacture of wire products."

108. This means that duty remission is a conditional benefit granted by the EAC Council of Ministers through a Gazette notice for a limited period and subject to compliance with stated conditions. The Council may revoke or deny the benefit where the importer fails to comply with the conditions or where the gazetted period expires without renewal or extension.
109. According to the Applicant's documents attached to their affidavit by Mr. Francis Jabwor marked as annexture A1-A5, the consignments have the following weights and dates:

			Gross Mass(Kgs)	**Date**
(i)	C19174	Revacryle AE 4620JA	22,000,000	12 April 2024
(ii)	C20025	Revacryle AE 4620JA	220,000,000	11 May 2023
(iii)	C43984	Revacryle AE 4620JA	22,000,000	12 August 2024
(iv)	C61165	Revacryle AE 4620JA	220,000,000	5 November 2024
(v)	C62772	Revacryle AE 4620JA	22,000,000	12 November 2024

110. The Respondent filed legal notices on pages 29-33, marked REX13, page 29 dated namely;
    (i) 23 August 2019, valid for 12 months,
    (ii) 1 July 2021, valid for 12 months,
    (iii) 15 April 2020, valid for 12 months,
    (iv) 7 July 2022, valid for 12 months and
    (v) 28 July 2023, valid for 12 months.
111. Upon examination of the import records, the Tribunal notes that consignments imported between July and November 2024 fell outside the approved duty remission gazette and were therefore not eligible for remission and were

accordingly assessed to duty under the applicable tariff classification.

112. According to pages 29-33 of the Respondent's trial bundle, the Council of Ministers lists the manufacturers and the products permitted for import. The Applicant is listed on legal notices dated;
    (i) 3 August 2019 allocated 3,000 tons for styrene acrylic emulsion,
    (ii) 1 July 2021 allocated 7,900 for other acrylic polymers in primary forms,
    (iii) 15 April 2020 with 3000 tons,
    (iv) 7 July 2022 with 3800 tons,
    (v) 28 July 2023 with 3,300 tons.

113. The Applicant did not file any legal notices for the scheme. However, we noted that since the legal notices cover 12 months, the legal notice dated 28 July 2023 would have to end 28 July 2024. This is one month into another period hence the Respondent should reconcile the same.

114. The Tribunal finds that the following consignments were imported within the period July to November 2024 and, in the absence of evidence of gazettement, renewal, extension, or approval under the Duty Remission Scheme, were not entitled to duty remission benefits:

    (i) C43984 – Revacryle AE 4620JA – 22,000,000 imported on 12 August 2024.
    (ii) C1165 – Revacryle AE 4620JA – 220,000,000 imported on 5 November 2024.
    (iii) C62772 – Revacryle AE 4620JA – 22,000,000 imported on 12 November 2024.

115. The Tribunal further finds that the following consignments were imported during periods covered by the applicable gazette notices:
    (i) C19174 – Revacryle AE 4620JA – 22,000,000 imported on 12 April 2024.
    (ii) C20025 – Revacryle AE 4620JA – 220,000,000 imported on 11 May 2023.

116. Accordingly, the Applicant could not lawfully enjoy remission benefits during that period. However, any duty payable must still be computed using the correct tariff classification determined in this decision and taking into account any applicable COMESA preferential treatment.

117. The Tribunal finds that the Applicant was not entitled to duty remission for imports made between July and November 2024 in the absence of gazettement or approval. The imports did not qualify for duty remission and were liable to normal customs duty under the applicable tariff classification.

Whether the Applicant was entitled to COMESA preferential treatment

118. The Applicant submitted that whereas the Respondent, in their objection decision, conceded that goods originating from Egypt were erroneously considered and vacated from the computations, the Applicant noted that the revised liability of Shs. 1,791,307,592 included amounts assessed on Prokil Shs. 588,860,611 imported from Tunisia and C-Eagle Shs. 206,285,845 imported from Egypt.

119. The Applicant submitted that Section 112 of the EACCMA states that preferential tariff treatment shall be applied to goods imported under the COMESA arrangement. In the case of ***Kansai Plascon Uganda Limited v Uganda Revenue Authority TAT No 124 of 2021***, this Tribunal held:

> *"For one to be accorded preferential treatment under the COMESA treaty, goods must originate from the partner states, and treatment shall be in accordance with the rules of origin provided under the Protocol...."*

120. The Respondent submitted that they grant preferential treatment to imports when taxpayers present a certificate of origin and declare the country of origin. However, during the audit, the Respondent established that, in their earlier computation, goods originating from Egypt and granted Preferential Treatment were included in the comparison, which was in error. The Respondent resolved to charge tax on the Acrylic products that were not approved and gazetted, and

revised the assessed tax from Shs. 2,851,118,291 to Shs. 1,791,307,592 to grant the preferential treatment for all the products that were declared and verified as having originated from the COMESA region and charged tax on the variances whose origin was not verified.

121. The Respondent submitted that the Applicant sought preferential treatment for their imports. Preferential tariff treatment under the COMESA Free Trade Area takes the form of a reduction in duty. It is only fair that for one to obtain preferential tariff treatment, one must meet all the conditions attached to that preference. The COMESA Protocol on Rules of Origin lays down the requirements that should be met, short of which preference should then be denied or recalled where it is enjoyed irregularly, as is the case at hand. The Applicant in this matter obtained preferential tariff treatment on all the declared products and, as such, is liable to pay the outstanding tax liability.

122. The Applicant further argued that although the Respondent conceded in the objection decision that Egyptian-origin goods had been erroneously included in the computations, the revised assessment still retained, Shs. 588,860,611 relating to Prokil imported from Tunisia and Shs. 206,285,845 relating to C-EAGLE imported from Egypt.

123. Section 112 of the EACCMA and the COMESA Protocol on Rules of Origin provide that goods originating from COMESA member states are entitled to preferential tariff treatment upon submission of valid Certificates of Origin.
The Tribunal notes that:

(i) Egypt and Tunisia are COMESA member states;

(ii) the Applicant submitted Certificates of Origin at importation; and

(iii) The Respondent conceded that Egyptian-origin products had initially been wrongly included in the computations.

124. The Tribunal notes that the Applicant presented Certificates of Origin at the time of importation. The Respondent did not challenge the authenticity, validity, or procedural compliance of the said certificates, nor did it adduce evidence to disprove COMESA origin or demonstrate non-compliance with the applicable Rules of Origin.

125. In the absence of any rebuttal evidence impeaching the Certificates of Origin or establishing non-compliance with the COMESA Rules of Origin, the Tribunal finds that the Applicant satisfied the legal requirements for preferential tariff treatment in respect of the qualifying imports.

126. Once valid Certificates of Origin are presented and accepted, the importer is entitled to preferential treatment unless the customs authority demonstrates a legal basis for denial.

127. Accordingly, the Respondent erred in denying preferential treatment on Prokil imported from Tunisia, amounting to Shs. 588,860,611 and C-Eagle imported from Egypt of Shs. 206,285,845. The said assessments are hereby set aside.

Whether the penalties for misclassification were lawfully imposed

128. The Respondent imposed penalties totaling USD 12,000 pursuant to Section 203 of the EACCMA on the grounds that the Applicant misclassified 120 consignments. The Applicant argued that Section 203 creates a criminal offence punishable "upon conviction" and therefore the Respondent lacked authority to administratively impose the penalty without prosecution before a competent court or tribunal.

Regulation (4) provides:

> *"A person who fails to submit returns as required under this regulation commits an offence and shall be liable on conviction to a fine of two thousand dollars."*

129. Section 203 of the EACCMA expressly provides that a person who makes a false or incorrect declaration commits an offence and shall be liable "on conviction" to imprisonment or a fine not exceeding ten thousand dollars. In this case, the Respondent cannot impose a criminal fine without following due process. The Tribunal therefore finds that the penalty for misclassification was unlawfully imposed since there is no evidence of any conviction. The penalty assessment of USD 12,000 for alleged misclassification is unlawful and is hereby set aside.

Whether the penalties for failure to file quarterly returns were lawful

130. The Respondent imposed penalties totalling USD 38,000 for failure to file quarterly returns.

Regulation 7 of the East African Community Customs (Duty Remission) Regulations provides:

> *"(1) A manufacturer of goods for export shall –*
>
> *(a) pay duty on any imported goods that are not used in the manufacture of goods for export or where the goods so manufactured are not exported;*
>
> *(b) Submit returns quarterly to the Commissioner, giving relevant information as the Commissioner may require.*

Furthermore, regulation (4) of the same provides:

> *"A person who fails to submit returns as required under this regulation commits an offence and shall be liable on conviction to a fine of two thousand dollars."*

131. The Regulation does not expressly provide for cumulative penalties for every quarter of default. Furthermore, the Respondent lacks the authority to impose criminal penalties without a conviction. The penalty assessment of USD 38,000 for failure to file quarterly returns was unlawfully imposed and is hereby set aside.

Remedies

(i) The Applicant prayed that the assessed liability in respect of each item be set aside.

(ii) The Respondent is ordered to refund the 30% deposit.

(iii) Costs be awarded to the Applicant.

132. In light of the above, the Tribunal orders as follows:

(i) The Tribunal finds that the following products were properly classified under heading 3903.90.00

a) Revacryl AE 4620 JA

b) C-Eagle (SA72/50)

c) Bondex 5295D

d) Bondex AMCA S46-2

(ii) The following products lacked sufficient evidence of monomer predominance and were properly classified under heading 3906.90.00 (Acrylic polymers in primary forms at 10% import duty):

a) Prokil S330 AF

b) Orgawhite 2000

c) Bondex variants without complete composition data (including Bondex 5299, Bondex AA261P, Bondex Opex92 and Bondex P711G)

(iii) The Respondent is hereby directed to recompute the alleged excess quantities beyond and outside the duty remission notices.

(iv) The Applicant is entitled to COMESA preferential tariff treatment in respect of:

a) Prokil imported from Tunisia of Shs. 588,860,611

b) C-Eagle imported from Egypt of Shs. 206,285,845

The assessments in respect of the above products are therefore set aside.

(v) The penalty of USD 12,000 imposed for misclassification is hereby set aside in its entirety.

(vi) The penalty of USD 38,000 (Shs. 140,167,940) for failure to file quarterly returns is set aside.

(vii) The Respondent is directed to recompute the assessment of Shs. 1,791,307,592 to cater for imports properly classified, wrong classification and those under the COMESA preferential treatment.

(viii) The Respondent is directed to refund the 30% deposit or the part of it that exceeds the recomputed assessment.

(ix) The recomputation of the assessment should be concluded by 15 July 2026.

(x) 80% of the costs are hereby awarded to the Applicant.

Dated at Kampala this 28th day of May 2026.

HON. CRYSTAL KABAJWARA
CHAIRPERSON

HON. WILLY NANGOSYAH
MEMBER

HON. KABAKUMBA MASIKO
MEMBER