



Implemented by
giz Technische Dienstleistungen
für internationale
Entwicklungsprojekte



ANALYTICAL STUDY ON THE IMPACT OF TRANSIT BONDS IN KENYA

TABLE OF CONTENTS

TABLES OF FIGURES	iv
LIST OF TABLES	vi
ABBREVIATIONS AND ACRONYMS	vii
ACKNOWLEDGEMENTS	x
OPERATIONAL DEFINITION OF TERMS	xi
EXECUTIVE SUMMARY	xii
1.0 INTRODUCTION	1
1.1 Background and Context.....	1
1.1.1 Contextual Analysis of Relevant Domestic laws, International Agreements and Standards on Transit Guarantees.....	3
1.2 Statement of the problem.....	7
1.3 Objectives of the study.....	9
1.3.1 General Objective	9
1.3.2 Specific Objectives	9
2.0 LITERATURE REVIEW	11
2.1 Stylized Facts on Transit Bond	11
3.0 METHODOLOGY	13
3.1 Introduction	13
3.1.1 Study Implementation	13
3.2 Research Design.....	13
3.3 Data Collection.....	16
3.4 Data Analysis	16
4.0 STUDY FINDINGS	18
4.1 Introduction	18
4.2 Penalty-to-bond environment.....	19
4.3 Objective 1: Implications of KRA’s enforcement of transit bond penalties on the profitability and competitiveness of customs agents, freight forwarders, and businesses engaged in cross-border trade	24
4.3.1 Effects of the enforcement of transit bond penalties on the profitability and competitiveness of businesses engaged in cross-border trade.....	25
4.3.2 Factors driving withdrawal of Customs agents from transit cargo business in Kenya.....	30
4.3.3 Measuring change in costs for compliance with transit bond regulations	32

4.4	Objective 2: To analyze and quantify the financial burden imposed on operators due to the payment of penalties and the associated costs, such as legal fees, administrative expenses, and potential penalties for non-compliance	35
4.4.1	Prevalence of breach of EAC Customs laws and non-compliance leading to transit bond penalties.....	37
4.4.2	Impact of transit bond penalties and associated costs on the overall business operations of customs agents and freight forwarders	38
4.4.3	Challenges customs agents and freight forwarders face in minimizing transit bond penalties and associated costs	44
4.4.4	Role of technological advancements in streamlining operations and enhancing compliance.....	45
4.5	Objective 3: To examine the operational challenges experienced by customs agents and freight forwarders because of KRA's penalty enforcement	47
4.5.1	Operational challenges that customs agents and freight forwarders experience due to the enforcement of transit bond penalties by the KRA.....	48
4.5.2	Genuine reasons for delays in transit cargo	49
4.5.3	Penalty assessment and perceived shortcomings in the existing penalty imposition mechanism	57
4.5.4	Perceived impact of the transit bond penalty enforcement on the operational efficiency of cross-border trade	59
4.5.5	Enforcement practices related to transit bond penalties	60
4.5.6	Training programs to enhance compliance and avoid transit bond penalties	63
4.6	Objective 5: To establish the amount of time spent by Customs Agents and Freight Forwarders in resolving penalties on Transit Bonds disputes	65
4.6.1	Time spent resolving disputes on transit bond penalties	66
4.6.2	Challenges encountered during the resolution of penalties on transit bond disputes	69
4.6.3	Stakeholder experiences on the subject matter of Penalties on Transit Bonds.	70
	Conclusions	69
	Recommendations	70
	REFERENCES	74
	APPENDICES.....	79
	APPENDIX 1: INTRODUCTION LETTER	79
	APPENDIX 2: SURVEY GUIDE: CLEARING AGENTS, FREIGHT FORWARDERS, WAREHOUSE OPERATORS, OTHER LOGISTICS OPERATORS.....	80
	APPENDIX 3: IN-DEPTH INTERVIEW GUIDE: IMPORTERS	89

APPENDIX 4: IN-DEPTH INTERVIEW GUIDE: INDUSTRY ASSOCIATIONS AND BODIES (FEAFFA, KIFWA, Kenya Association of Manufacturers (KAM), Kenya Transporters Association (KTA), KENTRADE, Trademark East Africa (TMEA), National Chamber of Commerce, Northern Corridor Transit and Transport Coordination Authority (NTFCA), EAC Secretariat)..... 91

APPENDIX 5: IN-DEPTH INTERVIEW GUIDE: KENYA REVENUE AUTHORITY (KRA) 93

APPENDIX 6: IN-DEPTH INTERVIEW GUIDE: TRANSIT CARGO TRANSPORTERS 95

TABLES OF FIGURES

Figure 1: How the enforcement of transit bond penalties has impacted the revenue and profit margins of surveyed customs agents and freight forwarders (n=27)	25
Figure 2: Reasons why customs agents and freight forwarders are no longer involved in the cross-border trade (n=24)	31
Figure 3: Change in compliance costs for transit bond regulations incurred by surveyed businesses over the last THREE years? (n=27)	32
Figure 4: Strategies adopted by customs agents and freight forwarders to address the strain in relationships resulting from transit bond penalties (n=27).....	33
Figure 5: How the transit bond penalties and associated costs have impacted companies' overall business operations (n=27)	42
Figure 6: Specific challenges faced by study respondents in minimizing transit bond penalties and associated costs (n=27)	45
Figure 7: Operational challenges experienced by customs agents and freight forwarders due to the enforcement of transit bond penalties by the Kenya Revenue Authority (KRA) (n=27)	48
Figure 8: Perceived genuine reasons surveyed customs agents and freight forwarders cited contributing to delays in transit cargo (n=27)	50
Figure 9: Operational challenges experienced by customs agents and freight forwarders due to the enforcement of transit bond penalties by the Kenya Revenue Authority (KRA) (n=27)	56
Figure 10: Perceived methods that KRA uses to assess transit bond penalties (n=27)	57
Figure 11: Perceived challenges or shortcomings surveyed customs agents and freight forwarders face in the current system of imposing transit bond penalties (n=24).....	59
Figure 12: Proportion of customs agents and freight forwarders rating the overall impact of transit bond penalty enforcement on the operational efficiency of cross-border trade (n=27)	60
Figure 13: Proportion of customs agents and freight forwarders reporting encountering inconsistencies in the enforcement practices related to transit bond penalties (n=27).....	61
Figure 14: Recommendations on the specific topics or areas that should be addressed in training programs to enhance compliance and avoid transit bond penalties (n=27).....	63
Figure 15: Amount of time customs agents and freight forwarders spend per month on resolving Transit Bonds disputes (n=27).....	67
Figure 16: Procedural complexities contributing to delays in resolving penalties on Transit Bonds disputes (n=27)	69

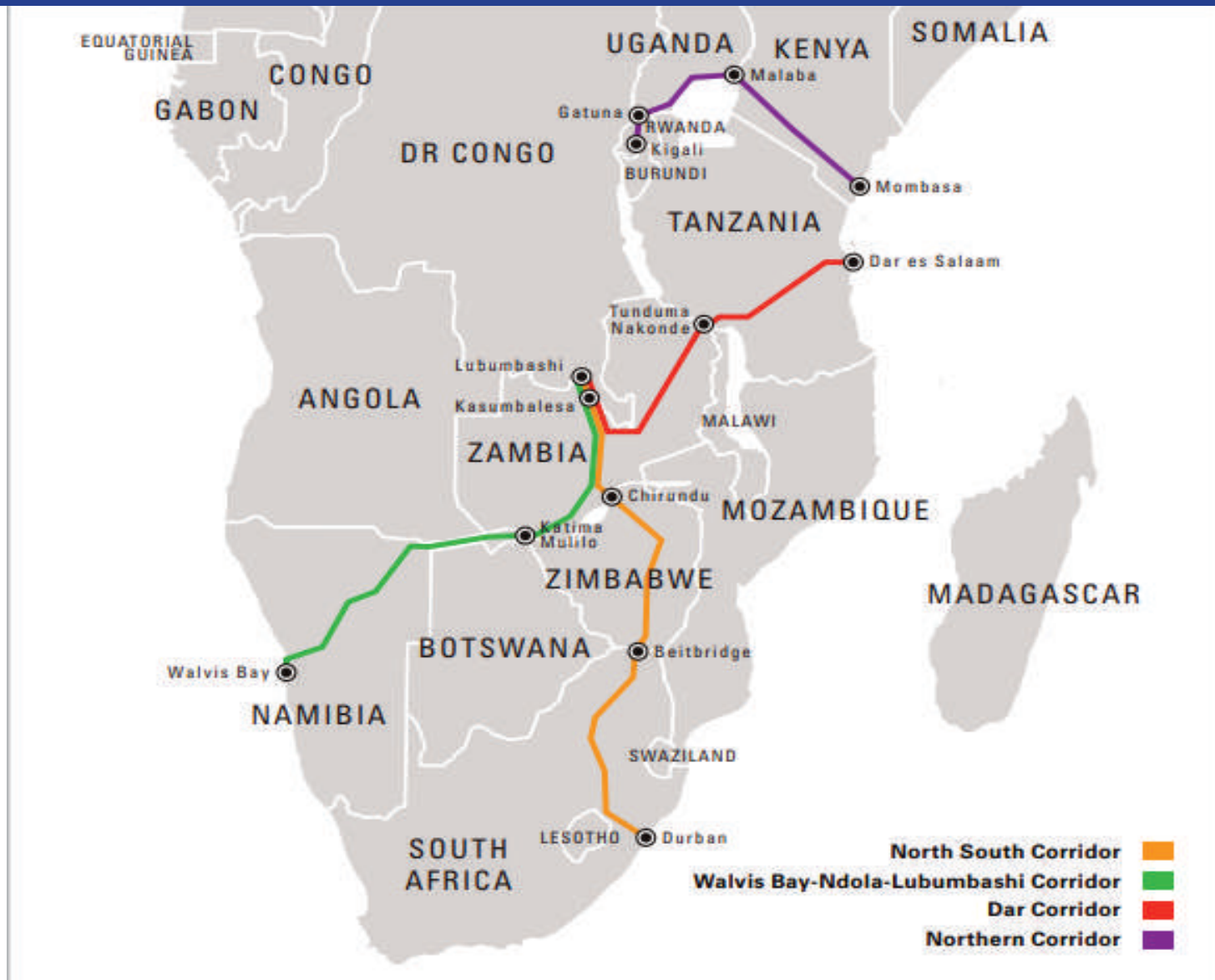
Figure 17: *Illustration of the interconnectedness of the study observations of the KRA's penalty enforcement practices, transparency, and stakeholders' perception of compliance with transit bond regulations..... 68*

LIST OF TABLES

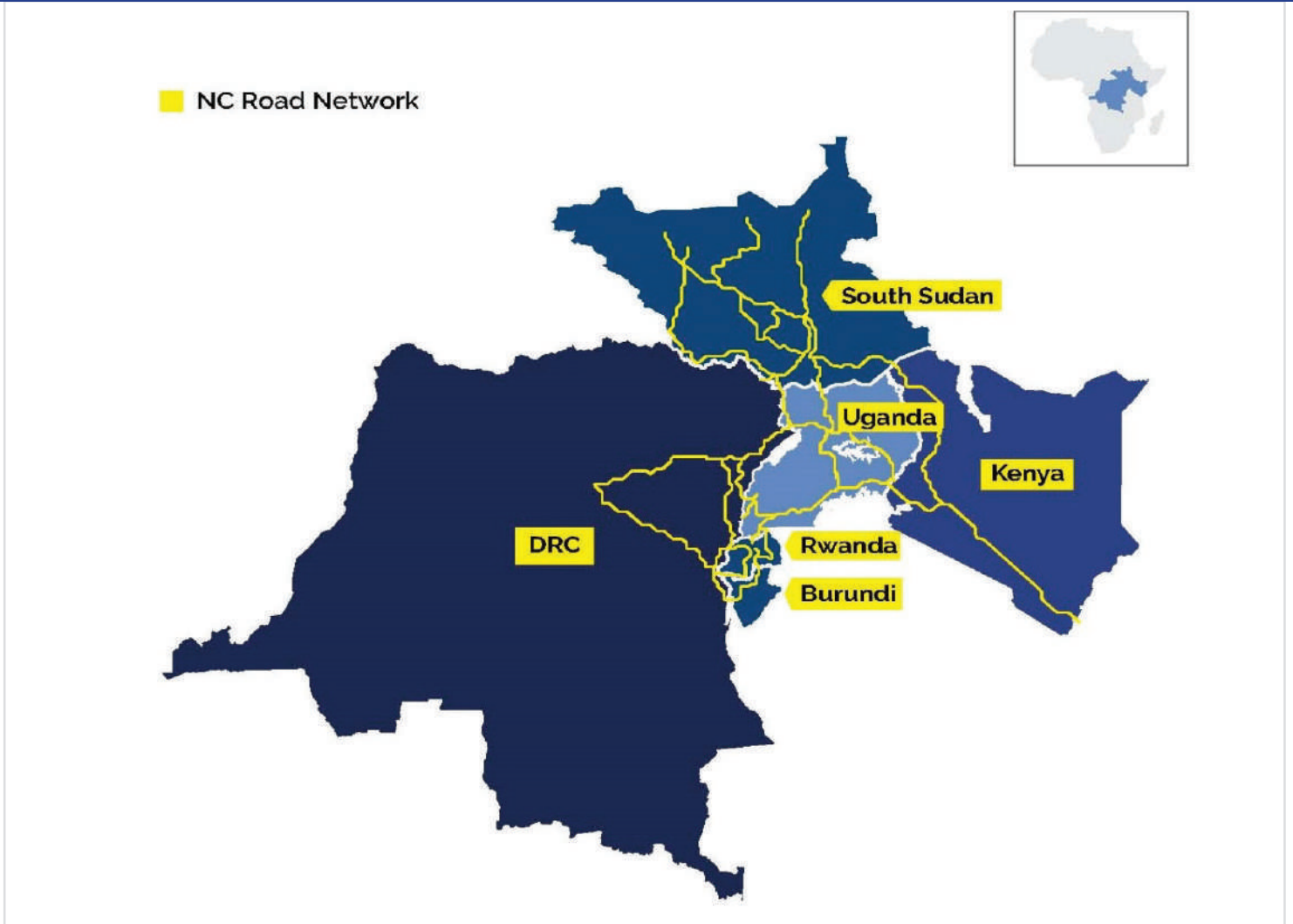
Table 1: <i>Correlation between understanding of transit bond penalty rules and the frequency of incurring penalties</i>	37
Table 2: <i>Correlation between technological level and challenges customs agents and freight face in minimizing transit bond penalties and associated costs</i>	45
Table 3: <i>Proposed specific improvements or changes in the enforcement practices to promote fairness and consistency for transit bond penalties (n=27)</i>	61

ABBREVIATIONS AND ACRONYMS

AATGS	African Collaborative Transit Guarantee Scheme
AfCFTA	African Continental Free Trade Area
AFREXIMBANK	African Export Import Bank
COMESA	Common Market for Eastern and Southern Africa
EAC	East Africa Community
EU	European Union
FEAFFA	Federation of East African Freight Forwarders Association
GIZ	The Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH
MPCC	The Mombasa Port & Northern Corridor Community Charter
KIFWA	Kenya International Freight & Warehousing Association
KRA	Kenya Revenue Authority
NCTTA	The Northern Corridor Transit and Transport Agreement
RCTG	Regional Customs Transit Guarantee (RCTG)
RKC	Revised Kyoto Convention
SADC	Southern Africa Development Community
TFA	Trade Facilitation Agreement
TIR	Transports Internationaux Routiers / International Road Transport
TMA	Trademark Africa (formerly Trademark East Africa)
UNCTAD	United Nations Conference on Trade and Development
WCO	World Customs Organization
WTO	World Trade Organization



Map of the four major transit corridors in Africa (Source: Transit costs in East & Southern Africa (IRU, Switzerland))



Map of the Northern Transit Corridor (Source: The Mombasa Port and Northern Corridor Community Charter | 2018 - 2024)

ACKNOWLEDGEMENTS

This report on the analytical study on the impact of transit bonds penalties on the operations of customs agents and freight forwarders in Kenya is a culmination of collaborative efforts between GIZ Alliances for Trade Facilitation (A4TF) Programme and various stakeholders involved in trade facilitation. As a service provider in the field of international cooperation for sustainable development and international education work, the GIZ supports government institutions and the private sector in the implementation of trade facilitation reforms.

GIZ is grateful to all the government agencies and private sector players that have made immense contribution to this study. GIZ would like to thank the Federation of East African Freight Forwarders Associations (FEAFFA) and the Kenya International Freight & Warehousing Association (KIFWA) for identifying the operational challenges of transit bonds penalties faced by customs agents and freight forwarders affecting transit of goods.

GIZ would also like to express deepest gratitude to the Kenya Revenue Authority (KRA), Kenya Ports Authority (KPA), Northern Corridor Transit and Transport Coordination Authority (NCTTCA) and the Shippers Council of Eastern Africa (SCEA) for availing the well informed and experienced respondents. GIZ would also like to thank all KIFWA members who actively participated in the study.

GIZ further appreciates the quality work output from the consulting team led by Mr. Toby Odhiambo and Mr. Felix Nicholas Bukachi. It is evident from the quality of work exhibited in the report that a lot of time and effort was spent in ensuring that the study addresses the required deliverables.

This study would not have been possible if not for the coordination GIZ received from Mr. Elias Baluku (Ag. Executive Director, FEAFFA), Mr. Wycliffe Wanda (Executive Officer, KIFWA Nairobi Branch), Mr. Andrew Ochieng (Executive Officer, KIFWA Mombasa Branch) and Mrs. Josephine Nyebaza (Program Officer -Training & Professionalism FEAFFA).

OPERATIONAL DEFINITION OF TERMS

Bond	An undertaking in due legal form, by which a person binds himself to the Customs to do or not to do some specified act. It is a legal contract executed under a seal whereby the person or persons entering into it bind themselves to pay a specified amount of money if any of conditions of the contract are not satisfied.
Bank guarantee	This is a requirement for payment under dispute where the principal decides to execute a bond of the amount in dispute instead of paying in cash.
Cargo	Includes all goods imported or exported in any aircraft, vehicle or vessel other than such goods as are required as stores for consumption or use by or for the aircraft, vehicle or vessel, its crew and passengers, and the bona fide personal baggage of such crew and passengers
Transit shed	Any building, appointed by the Commissioner of Customs in writing for the deposit of goods subject to Customs control
Custom Security Bond	Contract executed under seal whereby the party or parties entering into it bind themselves to pay to the Commissioner of Customs a specified sum of money, referred to as the penalty to the bond, if any of the conditions of the bond are not satisfied
Customs Transit	A Customs procedure under which goods are transported under Customs control from one Customs office to another
Penalty to bond	The amount of money specified in the bond as payable if the conditions of the bond are not met or are contravened. Penalty to bond is also the Bond in Force (BIF) that is enforceable in case the conditions of the bond are contravened
Principal	The person or party that undertakes to fulfill the conditions of the bond and also to pay the penalty to the bond. This is either an importer or his/her appointed clearing agent
Surety/guarantor	The person who undertakes to pay the bond if the principal fails not only to fulfill the conditions but also to pay the penalty to bond. These are normally the insurance companies or banking institutions
Transit	The movement of goods imported from a foreign place through the territory of one or more of the EAC partner states to a foreign destination
Transit Inwards	The movement of imported transit goods from a foreign place into a Partner State(s) to a foreign country

EXECUTIVE SUMMARY

This report presents the findings of an analytical study undertaken to investigate the impact of transit bond penalties on the operations of Customs agents and Freight forwarders in Kenya. The study's addressed five specific objectives as follows; implications of Kenya Revenue Authority's (KRA) enforcement of penalties on transit bonds on the profitability and competitiveness of customs agents, freight forwarders, and businesses engaged in cross-border trade; analyze and quantifying the financial burden imposed on operators due to penalty payments and associated costs; examine operational challenges experienced by customs agents and freight forwarders because of KRA's penalty enforcement; document experiences of Kenya Revenue Authority (KRA), customs agents, and freight forwarders at border posts regarding penalties on transit bonds; and determine the time spent by customs agents and freight forwarders in resolving transit bonds penalty disputes.

To obtain holistic answers to the study objectives, the research adopted a cross-sectional research design involving a mixed-methods approach integrating qualitative and quantitative data collection methods and desk review. The population of the study comprised of various stakeholders in the transit environment including clearing agents and freight forwarders, representatives from Kenya Revenue Authority (KRA), Kenya Ports Authority (KPA), Northern Corridor Transit and Transport Coordination Authority (NCTTCA) and the Shippers Council of Eastern Africa (SCEA). In terms of the geographical scope, the study focused on the Northern Corridor. The study report was informed by analysis of primary data collected by use of surveys, focus groups discussions (FGDs) and key informant interviews (KIIs).

Study Findings

The study findings revealed that enforcement of transit bond penalties significantly escalates the operational costs of Customs agents, freight forwarders, and businesses engaged in cross-border trade in Kenya reducing their profitability and competitiveness. Seven in ten (70%) of the surveyed respondents reported decreased revenues and profit margins directly attributable to the enforcement of transit bond penalties. An array of direct and indirect operational costs was cited by the respondents in the FGDs. The direct costs were those incurred immediately due to the penalty, such as the transit bond penalty amount, Customs warehouse rent, additional duties on damaged or short-landed while indirect costs were the ancillary expenses that arose from managing the transit bond penalty. They included administrative expenses such as travel, calls, and accommodation expenses for trips to KRA offices, increased bond premiums from insurance companies after incurring penalties, and costs related to litigation and dispute resolution.

Approximately 63% of surveyed customs agents and freight forwarders reported being compelled to allocate more resources to navigate perceived complex regulatory frameworks, diverting attention and funds from core business activities. This heightened administrative load not only strained operational efficiency but also escalates overall business costs. The Customs agents cited that they often face referrals to the Border Management Unit (BMU) in Nairobi for transit bond penalty issues such as locked entries arising at border posts like Malaba or Busia necessitating travels which compound their operating expenses. The study findings further revealed that while the desire to maintain competitiveness or preserve customer relationships may have driven a considerable portion of businesses (67%) to choose to absorb the costs

internally, 74% opted to pass on the cost associated with transit bond penalty to consumers resulting in strained business relationships, reputational damage and loss of clients.

The findings also revealed that 52% of the surveyed agents that reported adjusting their agency fees in response to penalties on transit bonds, approximately 64% of them still experienced a negative impact on their overall operations. Further, approximately 75% of the minority of Customs agents that sought legal recourse (15%) to challenge the penalties imposed on transit bonds reported a surge in their operational expenses. Operation wise, the agents reported that once penalized by KRA, they are subjected to higher premiums by Guarantors / Surety exacerbating the cost of obtaining bonds. Notably in the FGDs, the Customs agents reported that the financial burden of the transit bond penalty enforcement is more along the Northern Corridor, making them less competitive compared to their counterparts in the Central Corridor with 55% citing that it leads to trade disruptions. The study results further revealed that one out of four customs agents and freight forwarders have quit the transit cargo business due to perceived complex transit environment. To quantify the financial burden of transit bond penalty and the associated costs, the Customs agents for instance cited Customs warehouse rent based on cubic metre per day reaching up to Kes 700,000.

In regard to the operational challenges experienced by the Customs agents because of the penalty on transit bond enforcement, among the key issues cited in the KIIs and FGDs included technological gaps with respect to KRA's Integrated Customs Management System (iCMS). Nearly nine out of ten respondents (89%) attributed the transit delays to factors linked to prolonged iCMS system downtimes, delayed Customs inspections and delayed bond cancellations. In the FGDs and KIIs, the respondents cited the absence of automatic bond cancellation feature in iCMS compared to other EAC partner states systems like ASYCUDA world creates significant operational inefficiencies. In the FGDs, the Customs agents also cited the absence of automated countdown system feature in iCMS that tracks and sends notifications alerts of days lapsed for transit cargo exit. Regionally, the Customs agents also reported the lack of Integration of the EAC Customs and port systems. Notably, the Customs agents reported that manifests generated and approved by KRA in the iCMS system are not transmitted on time to the EAC partner states leading to increased port charges.

In the FGDs, the Customs agents reported that in some cases, Exit note or T1s generated by EAC revenue authorities are not mapped in the Customs systems of other EAC partner states delaying the collection and movement of transit cargo from the port. Failure or delay in data transmission related to the exit note / T1, impedes the Revenue authority of entry not be able to produce the movement document (C2) resulting in the transit inward cargo not exiting the port of entry. In the context of EAC, the Exit note or T1 is a document prepared by the Clearing and forwarding agent in the partner state of entry and approved/validated by Customs Officer in the Revenue Authority of the partner state of entry that allows the owner of goods to collect transit goods from the port. The movement document(C2) on the other hand is a document produced by officers of revenue authority of the Partner State of entry and handed to the transporter. It allows the transporter to move cargo from the port or customs office to border of the adjoining partner state along the gazetted transit route. This document is usually validated at the destination border. In the FGDs the Customs agents reported that technological gaps in iCMS also result in manual data transfer and approval processes create further inefficiencies and delays, increasing the time and cost of clearing goods.

The other operational challenges highlighted by the respondents is the inconsistent application of transit regulations governing transit bond penalty enforcement as cited by six out of ten study participants. Notably, the Customs agents reported that lack of awareness of transit regulations and procedures on their part and to some extent on the part of KRAs Custom border personnel as a challenge that triggers penalty on transit bond. Among the surveyed Customs agents and freight forwarders, 78% reported encountering inconsistencies in penalty on bond enforcement practices including assessment. Specifically, nine out of ten surveyed customs agents and freight forwarders (90%) reported that KRA typically assesses transit bond penalties based on the duration of transit delays. A further four out of ten respondents indicated that the penalty amount may be influenced by the nature and value of the cargo (37%), reflecting a consideration of risk factors associated with different types of goods. Other minority respondents (4%) outlined a unique method for penalty calculation, where penalties are triggered when lodgments of bond cancellation are made after expiry of the stipulated transit period. As demonstrated, the variability in responses underscores a possible lack of standardized practices in penalty assessment within the industry.

Approximately five out of ten study participants cited cumbersome transit documentation procedures, and poor communication channels between KRA Customs officers and Customs agents and freight forwarders. Notably, the respondents reported in the FGDs that KRA often perceive them as Customs offenders as opposed to key stakeholders in trade facilitation. Bureaucratic processes involving multiple agencies in transit goods inspection and insufficient KRA staffing at key border posts such as Busia and Malaba were also cited as contributing to transit delays. Other challenges reported by the study participants include errors in documentation and bond insufficiencies that necessitate detailed inspections and audits, increasing operational costs and penalties. Additionally, the Customs agents reported of other ancillary causes of transit delay such as multiple weighbridges, road closures, poor road conditions and inadequate maintenance of transit vehicles leads to frequent mechanical breakdowns of trucks, further delaying cargo movements. The EAC Customs laws including the transit provisions under the East African Community Customs Management Regulations (EACCMR) 2010 does not empower the Commissioner to waive transit bond penalties, exacerbating financial strain and operational complexity for customs agents and freight forwarders.

In regard to the amount of time spent by Customs agents and Freight forwarders in resolving penalties on Transit Bonds disputes, the study findings revealed that resolution of transit bond penalty disputes varies greatly in time, ranging from a few hours to several years with 44% of customs agents having reported spending more than 10 hours on disputes, while 56% spent less. This variability is influenced by case complexity and operational factors. Additionally, nearly 80% of respondents cited the extensive documentation review as a major time consumer, with 74% indicating that unclear or inefficient communication channels with authorities further delayed resolutions. The findings of the KIIs revealed that there exists a gap in the tracking of the specific time spent on resolving transit bond disputes obscuring the full extent of resources expended.

Conclusion

The study concluded that, the 3% penalty on transit bonds enforced by KRA significantly exerts a heavy financial burden on the operations of Customs agents and freight forwarders and

businesses engaged in cross-border trade, placing them at a competitive disadvantage compared to regional counterparts. The financial burden is in the form of direct and indirect costs already highlighted.

The study further concluded that Kenyan customs agents, freight forwarders and businesses engaged in cross border trade are subjected to significant inefficiencies and technological shortcomings including: slow bond cancellation procedures; lack of interoperability between iCMS and regional systems like ASYCUDA World resulting in manual data transfer and approval processes; EAC Customs and ports systems integration challenges; legislative constraints and insufficient staffing at key border posts. The frequent downtimes of the ICMS including its lack of automated system countdown further exacerbate these challenges while numerous physical inspections further complicate the transit timelines.

In regard to the amount of time spent by Customs agents and Freight forwarders in resolving penalties on Transit Bonds disputes, the study findings revealed that resolution of transit bond penalty disputes varies greatly in time, ranging from a few hours to several years.

Recommendations

A. Conduct a comprehensive review of the 3% transit bond penalty enforced by the Kenya Revenue Authority (KRA).

FEAFFA/ KIFWA should champion the establishment of a task force to evaluate the financial impact of the penalty on transit bond on in the Northern Corridor and compare it with other corridors such as Central corridor;

FEAFFA / KIFWA and the relevant industry associations to initiate discussions with EAC Secretariat, EALA legislators and responsible government ministries to lobby East Africa Legislative Assembly (EALA) to reduce the penalty on transit bond rate or introduce a tiered penalty system based on risk assessment;

KRA should engage all stakeholders in the Northern Corridor, including Customs agents, freight forwarders, and business associations, to gather feedback and ensure any proposed transit reforms align with industry needs;

FEAFFA/ KIFWA should champion the implementation of a pilot program to test the impact of the proposed reduced transit bond penalties on the competitiveness and operational costs of Customs agents and freight forwarders and other logistics service providers (LSPs).

B. Invest in technological solutions to streamline customs operations and reduce compliance costs.

KRA should upgrade the Integrated Customs Management System (iCMS) incorporate automatic bond cancellation feature as well as automated countdown system feature that tracks and sends notifications alerts of days lapsed for transit cargo exit. An upgrade should also be done to reduce prolonged iCMS system downtimes;

KRA should procure more electronic seals to smoothen transit flows;

EAC Revenue Authorities should work in collaboration with the EAC Port Authorities to set clear timelines and milestones for the integration of their respective Customs and Port systems;

KRA should upgrade iCMS to improve interoperability with regional systems like ASYCUDA world. According to UNCTAD, ASYCUDA system is perfectly able to communicate through extensible Markup Language (XML) messages with all systems that are compatible with the WCO data model;

KRA should conduct regular training sessions for Customs officers including the Rapid Response Unit (RRU) to respond well to transit queries;

EAC Revenue and Port Authorities should develop a comprehensive IT infrastructure plan to address current gaps and future needs.

C. Advocate for legislative amendments to the transit provisions under the East African Community Customs Management Regulation (EACCMR) 2010 to be in tandem with the provisions of the WTO TFA and WCO RKC which Kenya and EAC partner states are signatories.

KRA / FEAFFA should champion the drafting of policy briefs and position papers highlighting the financial and operational burdens of the current legislative framework;

KRA, FEAFFA / KIFWA, NCTTCA and relevant industry associations to initiate discussions with EAC Secretariat, East Africa Legislative Assembly (EALA) legislators and responsible government ministries to lobby for amendments to the EAC Customs transit laws that hinder smooth transit flows and are against the principle of trade facilitation. Proposed amendments should focus on regulations 104 (12), 104 (13), 104 (16), 104 (17) of the EACCMR 2010 to be in tandem with the provisions of the article 6.1, article 6.3 and article 11 of the WTO TFA and Standard 3 of the RKC Specific Annex E Chapter 1, Standard 5.6 of the RKC, Standard 5.7 of the RKC General Annex and Standard 24 of the RKC Specific Annex E Chapter 1.

KRA, FEAFFA / KIFWA and relevant industry associations to initiate discussions with EAC Secretariat, EALA legislators and responsible government ministries to lobby to East Africa Legislative Assembly (EALA) to include provisions in the East African Community Customs Management Act 2004 (EACCMR) that grant the Commissioner of Customs the power to waive penalty on transit bond under specific conditions.

D. Streamline Customs procedures to reduce delays and operational costs.

KRA, KPA and partner government agencies (PGAs) should adhere to the contract of engagement and key performance indicators (KPIs) of the Mombasa Port & Northern Corridor Community Charter (MPCC). For instance, the average truck trip time as measured by the time the truck is out of the port gates to the time the truck lodges customs clearance documents at the Busia border are projected at 36 hours as at December 2024. In respect to optimized border clearance processes as measured by the Average Malaba border crossing time Kenya – Uganda is currently pegged at 3 hours while Average Busia border crossing time Kenya – Uganda is also pegged at 3 hours. The Customs one-stop centre time as measured by the average time between registration, passing and issuance of release order on a customs entry is currently pegged at 24 hours;

KRA should develop standard operating procedures (SOPs) for faster bond cancellation and dispute resolution;

KRA, KPA and PGAs should increase staffing at critical border posts to expedite customs inspections.

E. Enhance collaboration and capacity building among customs agents, freight forwarders, and regulatory authorities.

KRA, FEAFFA / KIFWA in partnership other industry associations should organize regular stakeholder forums to discuss challenges, share best practices, and develop collaborative solutions for efficient transit flows;

KRA, FEAFFA should provide training and capacity-building programs focused on understanding the legal and regulatory compliance of the EAC transit laws, technological adoption, and efficient transit management;

KRA, FEAFFA / KIFWA should spearhead the establishment clear and efficient communication channels between customs agents, freight forwarders, and KRA to improve transit dispute resolution processes;

KRA should develop a public awareness campaign to inform businesses about regulatory changes and available support mechanisms, fostering a more compliant and efficient transit environment.

1.0 INTRODUCTION

1.1 Background and Context

In the recent past, a functional transit system has emerged as an important subject in the world trading system. Transit corridors attract political and public attention because they essentially require positive engagements of governments. Customs administration and the entire transport sector plays a crucial role in functional transit system (Moïsé, et al., 2011).

UNCTAD (2011) cites a distinction between national and international Customs transit regime. A national Customs transit regime covers only transit in one Customs territory with the offices of entry and departure in the same Customs territory. On the other hand, multilateral transit regime be they bilateral, regional or international covers transit across several Customs territories. For instance, transit through a regional economic bloc such as European Union, or by adoption of Transports Internationaux Routiers (TIR) system that allows for uniform documentation and transit bond guarantee for the entire transit operation.

Transit regimes are one type of the wider concept of bonded Customs regimes in which duty is not paid upfront for imported cargo such as goods subject to transshipment; warehousing; goods for government projects; perishables; shipstores and temporary imports. Other examples of bonded Customs regimes include, inter alia, inward processing regimes, outward processing regimes, export processing zone (EPZ) regimes, manufacturing under bond (MUB) regimes (KRA,2024). As such transit regimes are normally covered by Customs security bonds, a common feature in international trade.

The essence of the Customs bond is to guarantee that Customs administration will collect all import duties, taxes, fines or penalties from the surety or guarantor, if they cannot collect them from the importer. A guarantor can either be an insurance or financial Institution (KRA, 2024). In the context of national transit regimes, transit bond guarantees are usually sold at the border of entry by the national insurance or financial institutions. In some countries, cash deposits are accepted. In the context of multilateral transit regime, the transit guarantee is often purchased in advance of the transit operation and will only be activated at the onset of a transit operation. The value of the guarantee is based on the highest rates of duties and taxes applicable to the goods after classification of the goods. (UNCTAD,2011).

A comprehensive guarantee such as the Transports Internationaux Routiers (TIR) Carnets is also extensively used to cover international transit transactions. It covers several transit operations carried out by the same operator up to a given reference amount fixed by Customs.

The reference amount for a comprehensive guarantee is usually calculated on the basis of the total amount of duties and taxes that an operator may incur for the estimated number of transit operations that he would carry out during a specified period. For instance, the TIR system, operate with a flat rate guarantee amount per transit operation equal to US\$ 50,000 per TIR transit (UNCTAD,2011). To date, TIR has 78 Contracting parties, in Europe, Northern Africa, the Middle East and Central Asia.

From an African perspective of transit bonds, the Common Market for Eastern and Southern Africa (COMESA) introduced Regional Customs Transit Guarantee scheme, popularly known as RCTG Carnet or COMESA Carnet. RCTG Carnet is the second guarantee system of its kind after the TIR Carnet, that facilitate the movement of goods under Customs seals in the COMESA region. The COMESA Transit Management System (TMS) is completely based on the TIR Carnet (SAIIA, 2014).

In the context of the Southern Africa Development Community (SADC), there is a slight difference in terms of the issued bonds when compared to COMESA. Whereas in COMESA TMS RCTG Carnet represents the regional single bond, claimable from a local institution in any country as long as it is part of a regional financial pool. On the other hand, the bond in the SADC Transit Management System is claimable only from the local institution where the bondholder buys the bond, resides, or from a designated representative of the bond holder (SAIIA, 2014). Likewise, in SADC, transporters involved in transit operations have to buy a Customs bond equivalent to the duty payable on the cargo for each border crossed. Typically, customs clearing and forwarding agents or insurance companies sell these bonds, which act as a guarantee or insurance should the cargo be diverted illegally for domestic use.

The African Export–Import Bank (Afreximbank) recently issued the Afreximbank African Collaborative Transit Guarantee Scheme (AATGS), a first-ever multi-border transit bond meant to facilitate intra-African trade under the African Continental Free Trade Agreement (AfCFTA). The US\$1 billion Collaborative Guarantee Scheme is expected to accelerate cross-border trade and save the African continent about US\$300 million annually in transit costs (Afreximbank,2023). To roll the transit guarantee scheme, the Afreximbank issued a multi-border transit bond worth US\$10 million in favour of Innovate General Insurance (IGI) of Zambia. The facility is meant to boost IGI capacity to provide counter affordable transit bonds to clearing and forwarding whom most of them are categorized as small and medium enterprises. The facility is expected to facilitate the transportation of goods across 5,700 km of borders with its eight neighbouring countries, is a realization of the broader partnership between Afreximbank and COMESA Council of Regional Customs Transit Guarantee (RCTG-Council). Being one of the AfCFTA-flagship initiatives, the Collaborative Guarantee Scheme

is being implemented in partnership with the AfCFTA Secretariat as well as Regional Economic Communities (Afreximbank,2023)

From a local perspective of transit bonds, the EAC recently launched regional bond is expected to serve as a substitute and not a replacement of the COMESA RCTG which is currently being used. It is meant to promote a larger pool of liquidity in a the EAC market (TMA,2024). The EAC regional bond intends to reduce the costs of bonds, guarantees, and collaterals charged by sureties, as well as the costs of bonds and guarantees charged by insurance and customs clearing agents. The system will also be interfaced with the National Customs System to provide a timely update on transit entry declarations (TMA,2024).

Other features of the bond that have been introduced in the EAC include a Common Customs bond, which guarantees uniform import duties and taxes across all partner states. Before the introduction of the Common Customs bond, the value of Customs bonds varied from country to country because of the application of different duty rates, valuation and sensitivity of goods. Kenya requires importers of transit goods to secure a Customs bond issued by an insurance company, while delicate or sensitive cargo requires a bank or cash guarantee. In Uganda and Rwanda, the Customs bond is issued by an insurance company with rates based on the taxes charged by the destination country. The common Customs bond is expected to reduce the cost of doing business and goods turnaround time (TMA,2020).

1.1.1 Contextual Analysis of Relevant Domestic laws, International Agreements and Standards on Transit Guarantees

The WTO Trade Facilitation Agreement (TFA)

The WTO TFA contains provisions for expediting the movement, release and clearance of goods, including goods in transit. In relation to fees and charges, article 6.1 of the WTO TFA provides that when determining the amount of penalty to be assessed, Customs is required to take into account the facts and circumstances of the individual case, and the degree and severity of the breach. Article 6.3 of the WTO TFA further provides where a person voluntarily discloses to Customs the circumstances of the breach before it is discovered by the Customs, the WTO Members should consider that disclosure as a mitigating factor in determining the amount of the penalty if any to be imposed on that person for that breach.

Likewise, article 10.1 of the WTO TFA underscores the importance of ensuring that importers are aware of their compliance obligations, encouraging voluntary compliance to allow importers to self-correct without penalty in appropriate circumstances, and applying compliance measures to initiate stronger measures for non-compliant traders. Article 11 of the WTO TFA further prohibits WTO Members from collecting fees and charges on transit traffic,

other than other than charges for transportation or fees and charges that are commensurate with administrative expenses entailed by transit or with cost of service rendered. Members are urged to provide treatment to transit goods no less favorable than goods transported directly and to cooperate in enhancing transit operations.

In regard to international / regional guarantee systems, article 11 of the WTO TFA provides that where a member requires a guarantee in the form of a surety, deposit or other appropriate monetary or non-monetary instrument for traffic in transit, such guarantee shall be limited to ensuring that requirements arising from such traffic in transit are fulfilled. In regard to discharge of guarantee, article 11 WTO TFA provides that once the member has determined that its transit requirements have been satisfied, the guarantee shall be discharged without delay.

The WCO Revised Kyoto Convention (RKC)

The Revised Kyoto Convention (RKC) adopted by World Customs Organization (WCO), contains provisions for expediting the movement of transit cargo. It provides technical details on how to implement Customs transit procedures, supplemented by a large portfolio of supporting tools including RKC Guidelines and Customs Transit Compendium (WCO, 2008). In regard to fees and charges for Customs transit, Standard 3 of the RKC Specific Annex E, Chapter 1 provides that goods being carried under Customs transit shall not be subject to the payment of duties and taxes, provided the conditions laid down by the Customs are complied with and that any security required has been furnished. Standard 5.6 of the RKC further provides that where security is required, the amount of security to be provided shall be as low as possible and, in respect of the payment of duties and taxes, shall not exceed the amount potentially chargeable.

In regard to discharge of guarantee, Standard 5.7 of the RKC General Annex provides that where security has been furnished, it shall be discharged as soon as possible after the Customs are satisfied that the obligations under which the security was required have been duly fulfilled. Standard 24 of the RKC Specific Annex E, Chapter 1 further provides that as soon as the goods are under Customs control, the office of destination shall arrange without delay for the termination of the Customs transit operation after having satisfied itself that all conditions have been met

Single Customs Territory (SCT) Procedures in relation to Transit

The Single Customs Territory (SCT) can be described as the stage towards full attainment of the Customs Union attainable by the removal of duties and other restrictive regulations and/or minimization of internal border Customs controls on goods moving between Partner States

(EAC,2022). The EAC Single Customs Territory is premised on the four pillars namely Free circulation of goods; Revenue management systems; Port management systems; and Regional legal and institutional framework (EAC,2022). The East Africa Community commenced operationalization of the SCT in 2014. The scope of free circulation of goods within EAC covers treatment of imported goods in the EAC, intra-EAC transfer of goods, export of goods from Partner States to markets outside the EAC, Port and Border Operations and trade facilitation.

One of the objectives of SCT is to reduce the cost of clearing cargo through harmonizing the clearance processes and eliminating duplication of processes and documentation (EAC,2022). To achieve this, Partner States adopted a model where Customs documentation is done in one Partner State and shared electronically with other Partner States. Under the SCT, all customs procedures, including inspections, documentation, and revenue collection, are carried out at the point of entry into the SCT, making the process more efficient and reducing the time and costs of doing business. The adoption of the SCT framework is based on the destination model principle where goods are cleared upon arrival at the first point of entry and released from the same first point of entry. Assessment and collection of taxes is completed in the destination Member State prior to removal of goods from the first port of entry into the Region or from the Intra loading points. This approach eliminates the need for goods to be cleared at each country's border, which previously led to delays, duplication of paperwork, and increased costs. For imports and intra-trade, the documentation is done in the Partner State of destination. It is done in the Partner State of export for exports, and in the Partner State of first entry for transiting goods.

The guiding principles under SCT include Mutual recognition, Single clearance document and collaborative approach to Customs clearance and trade facilitation (EAC,2022). Mutual recognition entails that Customs agents licensed in any of the Partner States are recognized in all the other Partner States. In addition, there is mutual recognition of Customs officers across the region implying that officers in one Partner State will recognize the interventions of Officers in other Partner States for instance in the case of verification of goods (EAC,2022). To remove duplication, reduce clearance costs and ensure uniformity of trade data across the region, clearance documents are lodged once in any of the Partner States and the data shared electronically with other Partner States. This applies to Customs clearance documents, and agencies such as bureaus of standards. In addition, a single Customs guarantee/bond is applied to cover goods moving across the region. This removes the need to execute new security guarantees while moving through different Partner States (EAC,2022).

EAC Customs Laws

Article 39 of the EAC Customs union protocol provides that the Customs laws of the EAC includes the acts of the partner states and of the Community relating to Customs, relevant provisions of the EAC Treaty, the EAC Customs union protocol, regulations and directives made by the Council and relevant principles of international law. Section 85-87 of the East African Community Customs Management Act 2004 read together with regulation 104 of the subsidiary East African Community Customs Management Regulation 2010 provide the legal framework for the treatment of goods in transit. For instance, regulation 104 (13) of the EACCMR 2010 provides that where the quantity of goods in transit is found to be less than that specified in the entry or where the transit period allowed expires before any part of the goods is exported, then the owner of the goods shall immediately pay to Customs the penalty to bond, except that in the case of discrepancy, the penalty payable shall be calculated proportionately to the discrepancy unless the discrepancy is accounted for to the satisfaction of the proper officer (EACCMR, 2010).

Regulation 104(16) further provides that where no application is submitted within thirty days from the date of exportation, the goods shall be deemed to have been imported for home consumption and shall be liable to any import duty chargeable on similar goods imported for home consumption at the rate in force at the time the goods are entered for home consumption, and the duty shall be paid immediately by the owner of the goods. Subsequently, regulation 104 (17) of the EACCMR 2010 provides that where the evidence of exportation is furnished after the expiry of the transit period, the owner of the goods shall pay a penalty to the bond at a rate of three per cent per month or at the equivalent rate where the period is less than a month.

The Mombasa Port & Northern Corridor Community Charter (MPCC)

Established in 2014 and signed by 25 signatories from the public sector, special interest partners and private sector players, the charter as a contract of engagement between key stakeholders in trade facilitation. The charter consists of the key performance indicators (KPIs) in addition to the Implementation Monitoring Log Frame geared towards transforming Mombasa port and Northern Corridor into an efficient, effective, reliable and globally competitive port and corridor. In respect to transit flow, the Charter's KPI of the Average truck trip time as measured by the time the truck is out of the port gates to the time the truck lodges customs clearance documents at the Busia border is projected at 36 hours. In respect to optimized border clearance processes as measured by the Average Malaba border crossing time Kenya – Uganda is currently pegged at 3 hours while Average Busia border crossing time

Kenya – Uganda is also pegged at 3 hours. The Customs one-stop centre time as measured by the average time between registration, passing and issuance of release order on a customs entry is currently pegged at 24 hours.

The Convention on International Transport of Goods under cover of TIR Carnets (TIR Convention)

The Transports Internationaux Routiers (TIR) Convention provides for the only universal Customs transit system that allows goods to transit several countries in a sealed container bearing a single carnet as transit bond for all borders. It originated in Europe in 1949, was elaborated on in the TIR Convention under the United Nations Economic Commission for Europe in 1954. The TIR Convention was concluded in Geneva on 14th November 1975 to simplify and harmonize the administrative procedures of international road transport.

Annex 1 of the TIR Convention describes the TIR Carnet, an international Customs document which constitutes the administrative backbone of the TIR system. In regard to fees and charges, article 46 of the TIR Convention provides that no charge shall be made for Customs attendance in connection with the TIR Customs operations save where it is provided on days or at times or places other than those normally appointed for such operations. It satisfies the dual purpose of transit management system through suspension of duties and taxes for transit goods while protecting customs revenue by exercising an international guarantee system. In regard to discharge of guarantee, article 10 of the TIR Convention provides that the discharge of a TIR operation has to take place without delay.

1.2 Statement of the problem

A transit bond serves as a financial guarantee in international trade, particularly when goods traverse multiple countries en route to their final destination. In the East African Community (EAC) region, the East African Community Customs Management Act 2004 provides guidelines regarding transit bonds, stipulating stringent requirements such as specific timeframes for cargo to cross national borders. Failure to adhere to these timeframes results in a 3% penalty on transit bond.

Particularly, Regulation 104 (13) of the EACCMR 2010 provides that where the quantity of goods in transit is found to be less than that specified in the entry or where the transit period allowed expires before any part of the goods is exported, then the owner of the goods shall immediately pay to Customs the penalty to bond, except that in the case of discrepancy, the penalty payable shall be calculated proportionately to the discrepancy unless the discrepancy is accounted for to the satisfaction of the proper officer (EACCMR, 2010). Regulation 104(16)

further provides that where no application is submitted within thirty days from the date of exportation, the goods shall be deemed to have been imported for home consumption and shall be liable to any import duty chargeable on similar goods imported for home consumption at the rate in force at the time the goods are entered for home consumption, and the duty shall be paid immediately by the owner of the goods. Subsequently, regulation 104 (17) of the EACCMR 2010 provides that where the evidence of exportation is furnished after the expiry of the transit period, the owner of the goods shall pay a penalty to the bond at a rate of three per cent per month or at the equivalent rate where the period is less than a month.

However, the clearing industry stakeholders argue that the Kenya Revenue Authority (KRA), despite being aware of potential delays caused by factors like road accidents or theft, routinely imposes penalties on transit bond in addition to duties for damaged transit goods without considering such circumstances. They argue that these enforcement approach in the Northern Corridor is retrogressive and differs with the approach adopted by other regional Customs authorities in the Central Corridor. They posit that this stringent approach goes against the principles of trade facilitation as put forth by the WTO TFA, WCO RKC as well as the framework of the Mombasa Port & Northern Corridor Community Charter (MPCC).

Article 6.3 of the WTO TFA provides that when determining the amount of penalty to be assessed, Customs is required to take into account the facts and circumstances of the individual case, and the degree and severity of the breach. Article 6.3 of the WTO TFA further provides where a person voluntarily discloses to Customs the circumstances of the breach before it is discovered by the Customs, the TFA encourages WTO Members to consider that disclosure as a mitigating factor in determining the amount of the penalty if any to be imposed on that person for that breach. Further, article 11 of the WTO TFA further prohibits WTO Members from collecting fees and charges on transit traffic, other than other than charges for transportation or fees and charges that are commensurate with administrative expenses entailed by transit or with cost of service rendered.

In regard to international / regional guarantee systems, article 11 of the WTO TFA provides that where a member requires a guarantee in the form of a surety, deposit or other appropriate monetary or non-monetary instrument for traffic in transit, such guarantee shall be limited to ensuring that requirements arising from such traffic in transit are fulfilled. In regard to discharge of guarantee, article 11 WTO TFA provides that once the member has determined that its transit requirements have been satisfied, the guarantee shall be discharged without delay.

These provisions of the WTO TFA are in tandem with standards prescribed by the WCO RKC that are geared towards trade facilitation and are binding to members including Kenya. For

instance, standard 3 of specific annex E of RKC Chapter 1 provides that goods being carried under Customs transit shall not be subject to the payment of duties and taxes, provided the conditions laid down by the Customs are complied with and that any security required has been furnished. Standard 5.6 of the RKC further provides that where security is required, the amount of security to be provided shall be as low as possible and, in respect of the payment of duties and taxes, shall not exceed the amount potentially chargeable.

In regard to discharge of guarantee, Standard 5.7 of the RKC General Annex provides that where security has been furnished, it shall be discharged as soon as possible after the Customs are satisfied that the obligations under which the security was required have been duly fulfilled. Standard 24 of the RKC Specific Annex E, Chapter 1 further provides that as soon as the goods are under Customs control, the office of destination shall arrange without delay for the termination of the Customs transit operation after having satisfied itself that all conditions have been met.

In the context of transit cargo clearance, penalty on transit bond and associated costs contributes to the transit transaction costs (Verwaal & Donkers, 2003). Based on the foregoing, this study sought to examine the impact of the three percent penalty on transit bonds on the operations of customs agents and freight forwarders in Kenya with the aim of developing recommendations.

1.3 Objectives of the study

1.3.1 General Objective

The main objective of the study was to determine the impact of transit bonds penalties on the operations of customs agents and freight forwarders in Kenya.

1.3.2 Specific Objectives

The study was guided by the following specific objectives:

- i. To evaluate the implications of KRA's enforcement of transit bond penalties on the profitability and competitiveness of customs agents, freight forwarders, and businesses engaged in cross-border trade
- ii. To analyze and quantify the financial burden imposed on operators due to the payment of penalties and the associated costs, such as legal fees, administrative expenses, and potential penalties for non-compliance.

- iii. To examine the operational challenges experienced by customs agents and freight forwarders because of KRA's penalty enforcement.
- iv. To document experiences by Kenya Revenue Authority, Customs Agents and Freight Forwarders on the subject matter of Penalties on Transit Bonds in the following border posts: Busia, Malaba, Namanga, Mombasa and Lunga Lunga.
- v. To establish the amount of time spent by Customs Agents and Freight Forwarders in resolving penalties on Transit Bonds disputes.
- vi. To develop an analytical report outlining the study findings alongside recommendations to address the challenges emanating from penalties on Transit Bonds. Document findings as observed in each of the following border posts - Busia, Malaba, Namanga, Mombasa and Lunga Lunga.

2.0 LITERATURE REVIEW

2.1 Stylized Facts on Transit Bond

A Customs transit is a Customs procedure under which goods are transported under Customs control from one Customs office to another (RKC, 1999). The three types of Customs transit are outbound transit, through transit and inbound transit. A Customs security bond is required in a transit transaction to protect revenue and ensure due compliance. The obligation in all Customs security bonds is joint and several. The Principal and Guarantor are key parties in a Customs bond execution procedure with the Principal being the person or party that undertakes to fulfill the conditions of the bond and also to pay the penalty to the bond. This is either an importer or his/her appointed clearing agent (Arvis, 2011; Yasui, 2011).

The Guarantor is the person or party that undertakes to pay penalty to bond if the principal fails to fulfill the conditions of the bond. This is either an insurance company or banking institution. In the EAC, there are two classes of bonds namely; Particular Bonds and General Bonds. Particular bonds cover only single specified transactions and are valid for a period ranging from 48 hours to twelve months and have no provisions for further extensions while General bonds cover many transactions and are valid for duration of three years. It is executed either as a Regional Customs Transit Guarantee (RCTG) for COMESA or for a General Customs Security Bond (GCSB) for sensitive goods and non-COMESA countries (KRA, 2024)

The three main procedures in a Customs transit bond transaction include bond execution, bond cancellation and bond enforcement. Bond execution is the processing of the security bond through the filling of the bond form; signing; sealing; witnessing; approval and capture in the Customs system for use in Customs transactions. Bond cancellation is the process of bond termination upon completion of the specified Customs transaction within the stipulated time limits. Bond enforcement is the process of recovery of revenue on the bond in force once the Principal flouts any of the conditions of the bond (KRA, 2024).

A T1 bond, also known as a T1 transit bond, is a financial instrument used in international trade and Customs procedures. The bond amount for a T1 bond is determined by the Customs authorities and is typically equivalent to the potential customs duties and taxes applicable to the goods in transit. Based on the findings of a survey conducted by WCO (2016), only 15% of members do not limit the form of the guarantee or its provider unless the national legislation conditions are met. The survey also revealed a positive trend in the use of the international and regional guarantees with about 75% of respondents confirming their use. The survey also revealed that Guarantee waivers and other simplifications for reliable operators are applied by

only half of respondents. The survey further revealed that strict security measures such as Customs convoys or escorts are applied in about 40% of WCO member countries.

In light of transit and trade facilitation, Badjonat and Ramtohul (2014), study on Transit Management System: An Ideal Model for East and Southern Africa (ESA) examined and reviewed theoretical approaches, global trade facilitation initiatives and new trends of transit management case studies from within and outside the ESA region. The objective of the study was to determine valuable lessons and useful best practices suitably adapted, to the implementation of a functional transit management system. This study revealed that adequate infrastructure, optimal use of transit corridors, public and private sector partnership, maximum use of information technology and implementation of the WTO TFA are key factors to the implementation of an ideal Transit Management System for the ESA region.

3.0 METHODOLOGY

3.1 Introduction

This section presents materials and methods that were used to conduct the study. It comprises of research design, population, sampling techniques, data collection and data analysis. The Consultant's methodological framework combined rigorous research methodologies, stakeholder engagement, and data analysis to ensure a thorough examination of the subject matter. A key anticipated outcome included actionable recommendations to enhance the efficiency of transit bond systems and mitigate the negative effects on customs agents and freight forwarders.

3.1.1 Study Implementation

The study fostered a collaborative environment, ensuring stakeholder involvement at every stage of the research. To ensure effective coordination and successful implementation, the study adopted a comprehensive approach and well-defined procedures, including:

- a) **Holding Regular Project Meetings:** The study scheduled regular project meetings to maintain ongoing communication and coordination among project team members, facilitating the sharing of progress, challenges, and insights.
- b) **Incorporating Feedback Loops:** To enhance the study's relevance, the study integrated an iterative feedback loop into research activities at various stages, enabling stakeholders to provide input on study design, data collection tools, and findings.

So far, the success of the study has depended on the synergy between the consultants, project team and relevant actors in the customs and logistics sectors. Thus, the study has emphasized the dynamic and collaborative process of the research study, highlighting stakeholder engagement, data collection methodologies and interactive feedback mechanisms.

3.2 Research Design

This study adopted a mixed-methods research design, an approach to inquiry that combines or associates both qualitative and quantitative forms. It involves philosophical assumptions, using qualitative and quantitative approaches, and mixing both approaches in a study. Thus, it is more than simply collecting and analyzing both kinds of data; it also involves using both approaches in tandem so that the overall strength of a study is greater than either qualitative or quantitative research (Creswell & Plano Clark, 2007).

The study adopted a quantitative approach through surveys targeting customs agents and freight forwarders to collect quantitative data for statistical analysis aimed at discerning

patterns, relationships, and trends. Due to the limitation of customs agents and freight forwarders who engage in transit clearance, the study adopted a census approach.

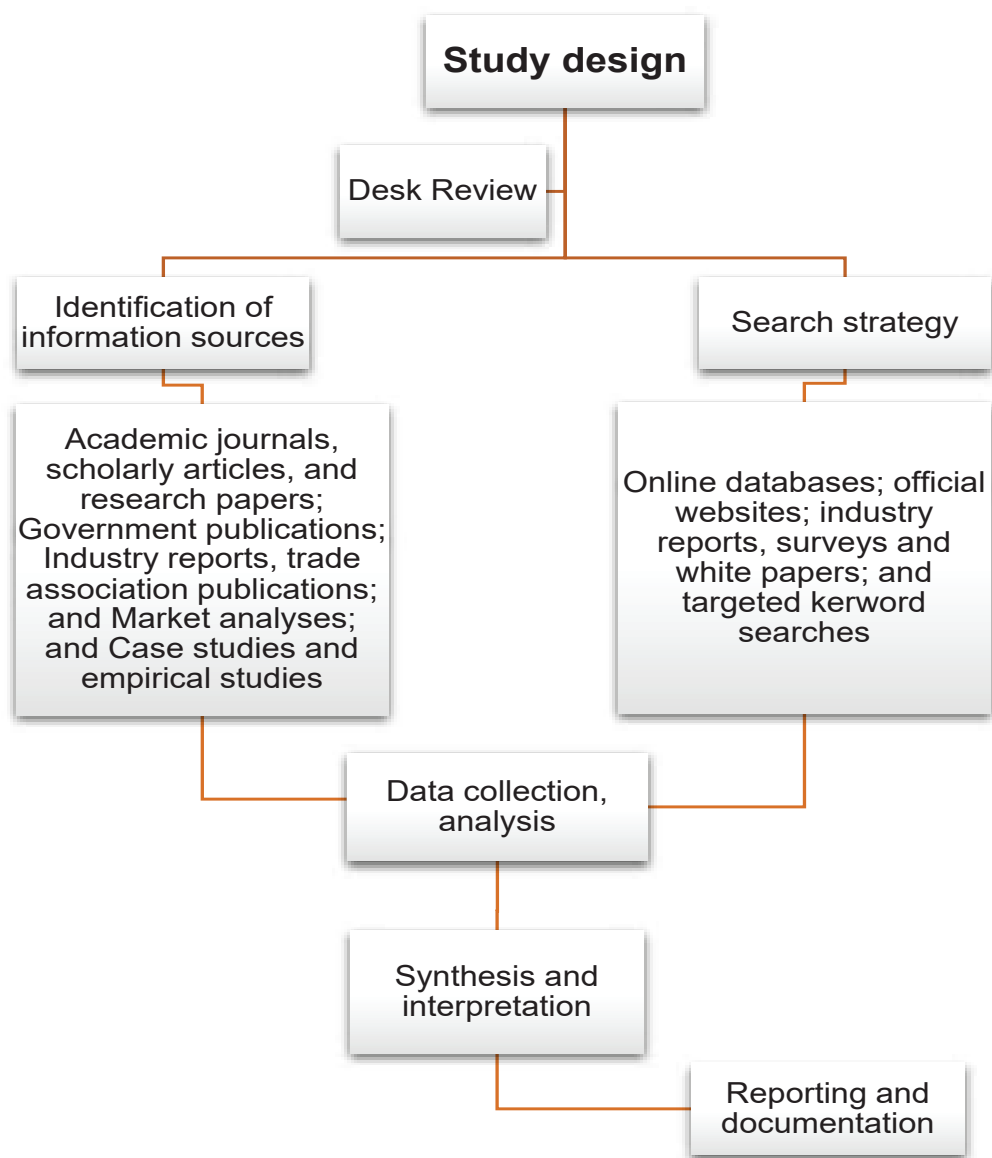
The study targeted 200 custom agents and freight forwarders through various channels, including direct outreach via emails and phone calls and through the support of FEAFFA. Of the 200 customs agents and freight forwarders the study targeted for participation, 123 customs agents and freight forwarders contributed. While this represents a participation rate of 61%, only 29 interviews from customs agents and freight forwarders who handled transit bond penalties were the main focus of the study. Thus, the survey analysis and reporting utilized the 29 interviews of customs agents and freight forwarders who had handled transit bond penalties.

Additionally, the study utilized in-depth interviews as the qualitative data collection technique to explore participants' experiences, perceptions, and perspectives in-depth in penalties on transit bond. Thus, the study identified the target IDI participants through purposive sampling, a technique widely used in qualitative research for selecting information-rich cases. (Patton, 2002) This method involves deliberately selecting participants based on specific criteria to gather the most relevant data. In this study, purposive sampling was employed to ensure that the selected participants had expertise and experience relevant to the study objectives.

Specifically, the study targeted 10 in-depth interviews with key informants, including customs officials, industry stakeholders, and representatives from relevant regulatory bodies. The sample size justified the study's need for detailed and nuanced insights from individuals with in-depth knowledge of the transit bond system, its implementation, and the broader regulatory environment. However, the study only completed four interviews with the Kenya Revenue Authority (KRA) and the Northern Corridor Transit and Transport Coordination Authority (NCTTCA), Kenya Ports Authority (KPA) and Shippers Council.

Key informant	Target number of interviews	Achieved Interviews
EAC Secretariat	1 officer	-
Kenya Transporters Association (KTA)	1 officer	-
KENTRADE	1 officer	-
Shippers Council	1 officer	1 officer
Kenya Ports Authority (KPA)	1 officer	1 officer
Kenya Association of Manufacturers (KAM)	1 officer	-
National Chamber of Commerce	1 officer	-
KRA (Customs Bonds Officer and Bonds Enforcement Officer)	1 officer	1 officer
Northern Corridor Transit & Transport Coordination Authority (NCTTCA)	1 officer	1 officer
Kenya Railways (KR)	1 officer	-
Total	10	4

Thus, as part of a larger mixed methodological framework involving surveys with custom agents and freight forwarders and in-depth interviews with industry stakeholders, this study



also adopted a desk review approach to provide a theoretical foundation for the study, substantiate the presence of the research problem and validate the methods and approaches employed for the study (Hart, 1998; Levy & Ellis, 2006).

The desk review followed a systematic process, involving defining the research question or objectives, identifying relevant sources, extracting and synthesizing information, and critically analyzing findings (Grant & Booth, 2009)¹. Besides allowing

for a comprehensive exploration of the study topic by drawing on a wide range of literature sources, this structured approach ensured rigor and reliability in the review process, enabling the study to draw valid conclusions and recommendations (Hart, 1998)². Further, the synthesis of study findings through literature review enabled the study to show evidence on a meta-level and to uncover areas in which more research is needed, which is a critical component of creating theoretical frameworks and building conceptual models. (Snyder, 2019).

The desk review consulted literature from agreements, conventions, and treaties on transit trade at the global and regional level, Customs and Border Management, Trade Facilitation and Transit Bonds, Economic Integration and Regional Cooperation, Institutional and

¹ M.J. Grant, A. Booth: A typology of reviews: An analysis of 14 review types and associated methodologies

² Literature review as a research methodology: An overview and guidelines.

<https://www.sciencedirect.com/science/article/pii/S0148296319304564>

Organizational Analysis, Supply Chain Management, and Legal Frameworks and Policies covering the transit bond system.

3.3 Data Collection

Data collection is the process of gathering quantitative and qualitative information on specific variables with the aim of evaluating outcomes. The study employed a mixed methodology approach in ensuring the study realizes the set objectives. These included both quantitative and qualitative approach. The study employed focus group discussions, in depth Interviews, audio and video recordings to collect qualitative data characterized by open ended questions. Likewise, quantitative data was collected by use of survey questionnaire characterized mainly by closed ended structured questions. As such, the survey questionnaire was employed to collect quantitative data from Customs agents, freight forwarders, warehouse operators and other logistic operators. On the other hand, in-depth Interviews tool was employed to collect qualitative data from government agencies and regulators and industry associations while Focus groups discussions were conducted to collect to qualitative data from Customs agents, freight forwarders, warehouse operators and other logistic operators.

3.3.1 Data Validity

Validity is defined as the extent to which a concept is accurately measured in a quantitative study. Validity evaluates the soundness of research, especially the research design and methods (Taherdoost, 2016). Several ways may be used to estimate the validity including content validity, face validity, construct validity, and criterion-related validity. This study employed content validity whereby the study tools were reviewed by independent experts. On the basis of their evaluation, their comments were incorporated in the study tools.

3.4 Data Analysis

In the context of this study, the collected data was cleaned, sorted, demarcated into segments and then coded. The coded data was keyed into Statistical Package for the Social Sciences (SPSS) and subjected to descriptive statistical analysis techniques. SPSS software will be employed to generate descriptive statistics such as means, percentages standard deviations to describe the respondent's opinions as prescribed by the data collection tools. The findings were presented in form of graphs, charts and tables.

The survey data was analysed using IBM Statistical Package for the Social Sciences (SPSS) Statistics Version 25. Sample proportions of key attributes were computed and descriptive statistics generated.

The qualitative data underwent analysis through grouping collected information by themes to facilitate content analysis. This entailed first identifying the common themes guided by the study indicators around which the analysis should be carried out. Exploratory analysis of the qualitative data was then carried out and this entailed structural coding and partitioning of data in line with the identified themes. Finally, extraction of the data for further analysis was carried out to ensure that each thematic area was comprehensively addressed.

4.0 STUDY FINDINGS

4.1 Introduction

The movement of goods across international borders is a critical component of global trade, significantly impacting the economies of transit countries like Kenya. The Kenya Revenue Authority (KRA) plays a crucial role in this process by implementing Customs laws and regulation designed to facilitate trade, collect trade statistics, ensure compliance and revenue collection. One such regulation is the enforcement of a 3% penalty on transit bonds, which has profound implications for customs agents, freight forwarders, and businesses engaged in cross-border trade.

The study aimed to examine the impact of the 3% penalty on transit bonds on the operations of customs agents and freight forwarders in Kenya. The primary objectives were:

- a) **Profitability and competitiveness:** To investigate the implications of KRA's enforcement of transit bond penalties on the profitability and competitiveness of customs agents, freight forwarders, and businesses involved in cross-border trade. This includes an assessment of how these penalties affect their financial health and market positioning.
- b) **Financial burden:** To analyze and quantify the financial burden imposed on operators due to the payment of penalties and the associated costs. This involves evaluating direct costs such as penalties, legal fees, and administrative expenses, as well as indirect costs like potential penalties for non-compliance and operational disruptions.
- c) **Operational challenges:** To examine the operational challenges faced by customs agents and freight forwarders as a result of KRA's penalty enforcement. This includes identifying specific issues that hinder their efficiency and effectiveness in managing transit flows.
- d) **Stakeholder experiences:** To document the experiences of the Kenya Revenue Authority, customs agents, and freight forwarders regarding penalties on transit bonds at key border posts, including Busia, Malaba, Namanga, Mombasa, and Lunga Lunga
- e) **Time spent on disputes:** To establish the amount of time spent by customs agents and freight forwarders in resolving penalties on transit bonds disputes. This objective seeks to highlight the time-consuming nature of compliance and dispute resolution processes and their impact on overall operations.

Additionally, the study explored the overall environment surrounding the penalty on transit bonds, including the regulatory framework and the rationale behind KRA's enforcement practices.

The study targeted key stakeholders involved in cross-border trade, including customs agents, freight forwarders, the Kenya Revenue Authority (KRA), Kenya Ports Authority (KPA), Northern Corridor Transit and Transport Coordination Authority (NCTTCA), Shippers Council of Eastern Africa (SCEA) and other relevant entities.

4.2 Penalty-to-bond environment

Introduction

The penalty-to-bond environment within the context of transit bond penalties in Kenya holds significant implications for the operations of customs agents and freight forwarders. The imposition of penalties serves as both a deterrent for delays and a means to ensure compliance with transit regulations. However, the efficacy of this system hinges on its fairness and responsiveness to the cross-border trade environment.

Understanding the penalty-to-bond environment is pivotal in contextualizing penalty assessment. Thus, this study delved into understanding the penalty assessment mechanisms, examining their alignment with industry realities and perceptions of fairness. The study also sought to identify perceived shortcomings in the penalty imposition mechanism.

Summary of findings

- 1. Financial Burden and Competitive Disadvantage:** The Kenya Revenue Authority (KRA) enforces a 3% penalty on transit bonds, significantly increasing operational costs for customs agents and freight forwarders. This stringent penalty system, unlike more friendly regional transit corridors, places Kenyan businesses at a competitive disadvantage, raising the cost of compliance and affecting their profitability in the cross-border trade market.
- 2. Operational Inefficiencies and Technological Gaps:** Technical glitches including lack of full integration of the EAC Customs and port systems, system downtime failures, connectivity problems and software application challenges impede efficiency in customs transit operations. The lack of electronic seals and absence of automatic bond cancellation feature in iCMS compared to other EAC partner states systems like ASYCUDA creates significant operational inefficiencies. Other technological gaps that iCMS lacks include automated countdown system feature that tracks and sends notifications alerts of days lapsed for transit cargo exit. In other instances, manifests generated and approved by KRA in the iCMS system are not transmitted on time to the EAC partner states leading to increased port charges. In some cases, Exit Note or T1s generated by EAC revenue authorities are not mapped in the Customs systems of other EAC partner states delaying the collection and movement of transit cargo from the port. Failure or delay in data transmission related to the exit note / T1, impedes the Revenue Authority of entry not be able to produce the movement document (C2) resulting in the transit inward cargo not exit the port of entry. In the context of EAC, the Exit Note or T1 is a document prepared by the Clearing and forwarding agent in the partner state of entry and approved/validated by Customs Officer in the Revenue Authority of the partner state of entry that allows the owner of goods to collect transit goods from the port. The movement document(C2) on the other hand is a document produced by officers of revenue authority of the Partner State of entry

and handed to the transporter. It allows the transporter to move cargo from the port or customs office to border of the adjoining partner state along the gazetted transit route. This document is usually validated at the destination border. Technological gaps in iCMS also result in manual data transfer and approval processes create further inefficiencies and delays, increasing the time and cost of clearing goods. These technological gaps affect compliance, resulting in increased administrative costs, system errors, and delays.

- 3. Legal and Procedural Challenges:** The East African Community Customs Management Act (EACCOMA) 2004 does not grant the Commissioner the power to waive transit bond penalties, leaving customs agents and freight forwarders with no recourse but to pay penalties in full. This legislative limitation complicates their operations and adds financial strain, highlighting the need for potential legal amendments or interventions to be advocated by representative bodies like the Kenya International Freight & Warehousing Association (KIFWA). There is also need for KRA, FEAFWA/KIFWA and other relevant industry associations to initiate discussions and come up with draft proposed amendments to the EAC Customs laws on transit that are contrary to the principles of trade facilitation.
- 4. Interoperability Issues and System Integration:** The study identified the lack of interoperability between the KRA's Integrated Customs Management System (iCMS) and regional systems like ASYCUDA as a critical hindrance to efficient customs processing. The absence of automatic bond cancellation feature in iCMS compared to regional systems like ASYCUDA creates significant operational inefficiencies. Manual data transfer and approval processes create inefficiencies and delays, increasing the time and cost of clearing goods. Enhancing system integration would facilitate smoother and faster customs operations, improving overall efficiency and competitiveness in the region's cross-border trade.

The East African Community (EAC) region, currently encompassing seven partner states with interlinked economies, adheres to the East African Community Customs laws as provided by the article 39 of the EAC Customs union protocol. Within this framework, specific provisions address the management of transit bonds, a crucial component for customs agents and freight forwarders operating within Kenya and the broader EAC.

Transit bonds serve as a financial guarantee ensuring that goods in transit across national borders adhere to specified customs regulations, including timeframes for crossing these borders. The EACCOMR 2010 stipulates stringent requirements for transit bonds, emphasizing the timely exportation of goods. Regulation 104 (13) of the EACCOMR 2010, provides that any discrepancy in the quantity of goods or failure to export within the allowed transit period incurs an immediate penalty. This penalty, set at 3% of the bond per month, aims to enforce compliance but also imposes significant financial burdens on businesses.

"We had a meeting with the Kenya Revenue Authority (KRA) and we also had a meeting with the Uganda Revenue Authority. Actually, apart from Kenya Revenue Authority (KRA), it appears the other revenue authorities have not implemented this very stringent transit bond penalty. Our findings from the Kenya Revenue Authority (KRA), is that the cost of managing compliance of transit within Kenya is very high and because of that it affects the Kenya Revenue Authority more than the other revenue authorities. The risk, according to the KRA is that the likelihood that there will be a diversion of transit goods is higher in Kenya than in the other countries and therefore the need for the KRA to come up with very firm measures to manage the movement of transit goods in Kenya. This is the response that we got from Kenya Revenue Authority. So, they were weighing the risk. The KRA even had statistics to back it up, to show that the risk is indeed very high, meaning that there are very many attempts to divert transit goods or even for a truck that is carrying transit goods, that's been involved in an accident, and some of the goods have been lost."

**KII
Official, NCTTCA**

Study data shows that the Kenya Revenue Authority's (KRA) enforcement of the 3% transit bond penalty is a response to specific challenges and risks associated with the movement of transit goods within Kenya. According to one of the interviewed officials, the KRA has implemented a stringent transit bond penalty system in contrast to other revenue authorities in the region. This distinction underscores a critical point: the cost of managing compliance for transit within Kenya is notably high. This elevated cost directly impacts the KRA, necessitating the imposition of firm measures to oversee the transit of goods.

The official noted that the KRA's position regarding the strict penalty enforcement is supported by statistical data illustrating frequent attempts to divert transit goods and incidents involving trucks carrying these goods, such as accidents leading to the loss of goods. The likelihood of such diversions of transit goods within Kenya, as presented by the KRA, is significantly higher compared to regional countries. Thus, this elevated risk necessitates KRA's rigorous compliance measures.

Notably, the disparity in enforcement practices between the KRA and other regional revenue authorities, such as the Uganda Revenue Authority, introduces an additional layer of complexity. While the KRA's stringent measures are aimed at mitigating high risks, study data shows that the measures place Kenyan customs agents and freight forwarders at a competitive disadvantage compared to their counterparts in countries with more lenient regulations.

"And of course, we now also have the Central corridor apart from the Northern corridor. And when you compare the two corridors, you realize that the issue of transit bond penalties only affects the Northern corridor. So, in terms of competitiveness, the businesses in the Northern corridor become less competitive because of bottlenecks in the trade, such as the punitive transit bond penalties."

**KII
Official, NCTTCA**

A discussion with a customs authority official highlight the frustration of customs agents and freight forwarders who perceive the 3% penalty as unfair. According to the study participant, customs agents and freight forwarders often resist paying the imposed transit bond penalties, perceiving them as unfair. This resistance stems from a belief that the penalties are excessive or unjust, leading to frequent requests for waivers from the KRA.

"Most of the time, customs agents and freight forwarders do not want to pay the imposed transit bond penalties or want to pay less penalties since they believe that the penalty is unfair. When they are penalized by the KRA, most of the time they normally ask if the commissioner can waive the penalties. But that's a conundrum because the East African Community Customs Management Act 2004 (EACCMA) does not give the commissioner the rights to wave transit bond penalties. However, the law allows the Commissioner the right to waive other forms of penalties. And now, unless the Kenya International Freight & Warehousing Association (KIFWA), the representative of all Customs Agents & Freight Forwarders in Kenya, writes to government entities such as the Ministry of Treasury or use East Africa Legislative Assembly (EALA) to legally seek a waiver of transit bond penalties."

KII

Official, Kenya Revenue Authority (KRA)

However, the East African Community Customs Management Act 2004 (EACCMA) presents a significant hurdle. In its current form, this legislation does not grant the Commissioner the authority to waive transit bond penalties despite having the power to waive other penalties. This legal limitation adds complexity to the situation, leaving customs agents and freight forwarders in a problematic position when faced with penalties imposed by the KRA. With no possibility of a waiver, agents and forwarders are often compelled to pay the

penalties in full, even when they consider them unjust.

According to the official, one potential avenue for redress is through the Kenya International Freight & Warehousing Association (KIFWA), the representative body for customs agents and freight forwarders in Kenya. He indicated that KIFWA can petition government entities such as the National Treasury and Planning Ministry or seek intervention from the East African Legislative Assembly (EALA) to pursue legal amendments on waiver regarding the transit bond penalties.

Additionally, the interviewed KRA official attributed the lack of electronic seals and an automated countdown system to the significant challenges KRA faces in enforcing transit bond penalties. Specifically, the absence of electronic seals results in a lack of transparency regarding the exact location and condition of transit goods, increased administrative burden due to reliance on paper-based documentation and periodic physical inspections, which are prone to errors and delays, and limited tracking and security due to the inability to monitor the movement of transit goods in real-time. Thus, according to the official, the electronic seals reduce the risk of diversion and unauthorized access to transit cargo.

"Potential technical adjustments that could streamline the process and enhance cooperation between all stakeholders is the adoption of electronic seals. Or stakeholders can create a system that does an automatic countdown, counting the days that have elapsed or gives an alert that the transit days are just about to elapse."

KII

Official, Kenya Revenue Authority (KRA)

The official further indicated that the absence of an automated countdown system and, therefore, a lack of timely and automatic notifications results in an error-prone manual tracking of the number of days elapsed during transit, increased operational inefficiencies due to the use of significant resources for manual monitoring of transit timelines, and heightened compliance costs due to adoption of strategies such as expediting shipments at higher costs.

Further, the study identified lack of interoperability of customs administration systems as a critical factor hindering the smooth processing of customs declarations and other relevant information across different systems.

Customs administration systems are vital for the efficient management of cross-border trade. The Kenya Revenue Authority (KRA) has implemented the Integrated Customs Management System (iCMS) to streamline the clearance process and improve revenue collection. The iCMS consolidates various functions into a unified platform, enhancing the transparency and efficiency of customs operations in Kenya.

While the KRA's iCMS is designed to streamline and automate customs processes within Kenya, the study noted that it operates independently from regional systems like ASYCUDA. The lack of direct system integration between iCMS and ASYCUDA poses significant operational challenges, particularly when it comes to managing transit bonds and RCTG carnets. According to the interviewed KRA official, manual intervention is currently required to transfer data between the two systems. For example, when KRA needs to execute a bond, clients must manually request the linking of their bonds to ASYCUDA, which involves a cumbersome process of writing mails to station managers for approval. This lack of automatic linkage between iCMS and ASYCUDA creates inefficiencies and delays, complicates the work of customs agents and freight forwarders and increases the time and cost of clearing goods.

Thus, the effective integration of iCMS with ASYCUDA and transit schemes like RCTGs could significantly enhance operational efficiency. It would enable seamless exchange of customs declaration information, reduce manual interventions, and mitigate delays associated with bond execution and carnet cancellations. The current disjointed approach highlights the need for a more interconnected system that facilitates smoother and faster customs operations, ultimately benefiting the entire supply chain in the region.

Study findings show that these technological gaps lead to inefficiencies, increased costs, and operational challenges for customs agents and freight forwarders. As noted earlier, the resulting unpredictability and lack of transparency in penalty imposition undermine stakeholder trust and competitiveness in the cross-border trade sector.

4.3 Objective 1: Implications of KRA's enforcement of transit bond penalties on the profitability and competitiveness of customs agents, freight forwarders, and businesses engaged in cross-border trade

Introduction

Customs agents and freight forwarders are pivotal in facilitating cross-border trade, serving as intermediaries between businesses and regulatory authorities. Their ability to navigate regulatory frameworks, manage compliance obligations, and ensure seamless logistics directly impacts the efficiency and cost-effectiveness of cross-border trade operations. Consequently, any disruptions or burdens imposed by transit bond penalties have far-reaching implications, not only on individual businesses but also on the broader cross-border trade. This study aimed to establish how the enforcement of transit bond penalties influences the financial viability and competitive landscape of customs agents, freight forwarders, and cross-border businesses. By scrutinizing the operational realities faced by these entities, the research seeks to provide insights into the challenges posed by the regulatory measures and their impact on bottom lines and market positioning.

The study findings shed light on the factors driving withdrawal from the transit cargo business, the effects of penalty enforcement on financial performance, changes in compliance costs over time, and strategies adopted to mitigate the strain on relationships resulting from penalties.

Summary of findings

- 1. Increased costs and competitive disadvantages:** The enforcement of transit bond penalties by the Kenya Revenue Authority (KRA) has led to a significant increase in the cost of doing business for customs agents, freight forwarders, and businesses engaged in cross-border trade, with approximately seven in ten respondents reporting decreased revenues and profit margins. This financial burden particularly impacts those operating along the Northern Corridor, making them less competitive compared to counterparts on other trade corridors, such as the Central Corridor.
- 2. Operational inefficiencies and delays:** Procedural inefficiencies within the KRA, particularly delays in bond cancellation processes, cause significant operational hold-ups for customs agents and freight forwarders. These delays lead to increased costs due to penalties and extended delivery times, which directly affect the reliability and profitability of businesses in this sector.
- 3. Reputational damage and client dissatisfaction:** Penalties and delays adversely impact the reputation of customs agents and freight forwarders, as clients often perceive them as unreliable. This misperception can damage long-standing relationships, reduce client trust, and lead to significant loss of business, as clients may opt to work with more reliable service providers.
- 4. Strained relationships and financial losses:** The enforcement of transit bond penalties fosters strained relationships between customs agents and KRA officers, leading to an adversarial rather than cooperative environment. Additionally, agents face compounded financial losses due to penalties from multiple sources, such as delays by customs

authorities and additional charges from shipping lines, further eroding their competitiveness and profitability in the cross-border trade market.

5. Approximately one out of four customs agents and freight forwarders have quit the transit cargo business: As noted above, the study reveals that customs agents and freight forwarders in Kenya face numerous challenges, including logistical complexities, regulatory burdens, and intensified competition, which collectively jeopardize the sustainability of transit cargo operations. Approximately one in four industry players has disengaged from the transit cargo business due to these challenges, highlighting the severity of the situation and the need for interventions to support the industry.

4.3.1 Effects of the enforcement of transit bond penalties on the profitability and competitiveness of businesses engaged in cross-border trade

According to study findings (Figure 1), more than 60% of surveyed customs agents and freight forwarders reported adverse effects of the enforcement of transit bond penalties on their revenue streams and profit margins. The findings suggest that the enforcement of transit bond penalties in Kenya has predominantly resulted in decreased revenue and profit margins for customs agents and freight forwarders. While a minority reported no change or even increased profits, the majority experienced adverse effects on their financial performance.

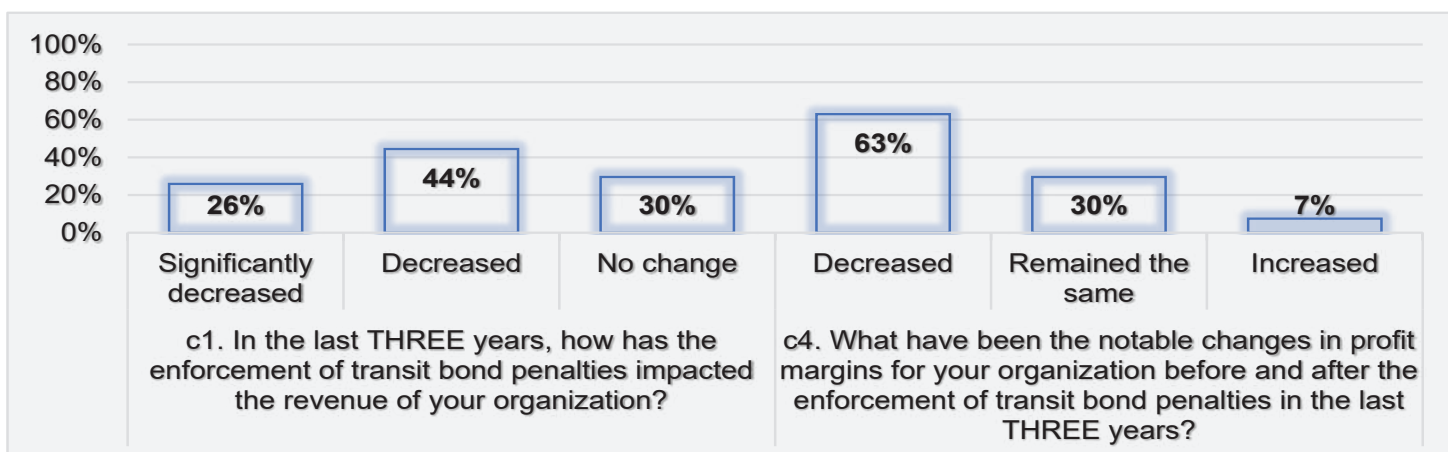


Figure 1: How the enforcement of transit bond penalties has impacted the revenue and profit margins of surveyed customs agents and freight forwarders (n=27)

Loss of clients emerged as a primary concern, with nearly two-thirds of respondents (63%) citing it as a major factor. The imposition of penalties likely dissuaded clients from continuing business relationships, leading to revenue loss and a dent in market reputation. Furthermore, the study underscored the burden of increased administrative tasks and compliance costs. With penalties in place, approximately 63% of surveyed customs agents and freight forwarders reported being compelled to allocate more resources to navigate perceived complex regulatory frameworks, diverting attention and funds from core business activities. This heightened administrative load not only strained operational efficiency but also escalated overall business costs.

The decrease in cross-border transactions as cited by 58% of surveyed customs agents compounded the challenges faced by industry players. As penalties deterred trade activities, agents and forwarders experienced a slump in business volume, translating to reduced revenue streams. This decline was exacerbated by shifts in customer demand (42%), increased competition (37%), and shipping delays (32%), further eroding profitability and market competitiveness.

According to an NCTCCA official, penalties invariably lead to an increase in the cost of doing business - this is particularly pertinent in the context of transit cargo transportation, where any additional financial burden directly affects the overall cost structure of businesses operating in this sector. The official noted that multiple trade corridors in the region further complicate the competitive landscape of cross-border trade. Unlike the Central Corridor, which does not regularly face similar penalties, the Northern Corridor is primarily affected by the transit bond penalties.

"In the logistics industry, whenever there is anything to do with penalties, the implication is one. It increases the cost of doing business. So that makes the transport of transit cargo and the cost of doing transit business along the corridor very expensive. And of course, we now also have the Central corridor apart from the Northern corridor. And when you compare the two corridors, you realize that the issue of transit bond penalties only affects the Northern corridor. So, in terms of competitiveness, the businesses in the Northern corridor become less competitive because of bottlenecks in the trade, such as the punitive transit bond penalties."

**KII
Official, NCTTCA**

The official noted that the discrepancy makes businesses operating along the Northern corridor less competitive. He asserted that the additional costs associated with the transit bond penalties act as a significant bottleneck, hindering the smooth flow of trade and increasing the overall expense of conducting business.

Group discussions with customs agents and freight forwarders corroborate the above challenges and implications that undermine the profitability and competitiveness of businesses engaged in cross-border trade in Kenya. According to the group participants, the enforcement of transit bond penalties by the Kenya Revenue Authority (KRA) has several negative consequences on their operations including causing procedural delays, unanticipated financial burdens, reputational damage, strained relationships with customs officers, and compounded financial losses due to penalties from multiple sources.

Firstly, a critical issue highlighted by customs agents is the delay in bond cancellation due to perceived procedural inefficiencies at the KRA. According to the respondents, the bond cancellation hinges on the issuance of a certificate of export by the customs authority,

"Mine is about the bond cancellation. You find that a truck cannot load or you cannot upload a document unless the previous bond for that truck has been cancelled. But then you find that due to the incompetence of customs authority officer that processed the transit cargo documents, the agent has not been issued with a certificate of export. So many jobs are delayed mostly at the port since the truck cannot be released without KRA issuing a certificate of export that allows for the previous bond to be cancelled. So, you find that on our part as agents we are losing jobs because of our perceived incompetence by our employers."

**FGD
Customs agents and freight forwarders,
Busia border post**

signifying that the cargo has exited the country as required. However, due to perceived inefficiency of customs authority officers in processing these documents, significant delays occur. This inefficiency results in trucks being held up at ports, which directly impacts the operational efficiency of customs agents and freight forwarders. The enforcement of the 3% penalty on transit bonds exacerbates these issues. When bonds are not cancelled in a

timely manner, customs agents and freight forwarders are subjected to penalties, further straining their financial resources.

Additionally, efficiency and reliability are key differentiators in a competitive market. The study noted that customs agents and freight forwarders who are consistently subject to bond cancellation delays and penalties are at a disadvantage compared to those who manage to navigate these challenges more effectively. This dynamic can lead to a concentration of business among a few firms perceived to be more reliable, further squeezing out smaller or less well-connected operators.

The custom agent's frustration with being perceived as incompetent due to delays caused by customs authorities highlights a significant impact on the competitiveness of customs agents and freight forwarders. The enforcement of transit bond penalties adversely affects the

"Then there is reputational damage. For example, I have agreed with my client that I'm going to take two days, but due to issues around bond, I take 10 days because of the challenges that normally come with resolving transit bond issues. Definitely that client may not come back. The client goes out there and says negative things about my company, such as we don't work within agreed timelines etc. And because we get some of the jobs through online sources, most likely the aggrieved client will comment online reaching a larger audience negatively impacting on our reputation."

**FGD
Customs agents and freight forwarders,
Busia border post**

reputation of customs agents and freight forwarders. Delays caused by bond issues can extend delivery times significantly beyond agreed timelines, leading to client dissatisfaction. The study noted that clients and employers may not always distinguish between delays caused by the customs authority and those attributable to the agent's own operations. This misperception can damage

the trust and reliability clients place in their service providers, reducing their competitive edge.

Additionally, the study recorded the strained relationship between customs agents and KRA officers. Customs agents play a crucial role in facilitating cross-border trade, acting as intermediaries between businesses and regulatory authorities. Given their role, interviewed agents reported that they often find themselves in situations where they must address and

"You find that as an agent you represent the company and will therefore work to ensure that you do your work including ensuring that you raise your voice when dissatisfied with the KRA customs officer's work. Unfortunately, this creates enmity with the KRA customs officers because they feel like you are condescending to them regarding how they carry out their work. They feel like you are directing them on how to do their work."

FGD
Customs agents and freight forwarders,
Busia border post

rectify issues related to the processing of transit cargo documents by KRA customs officers. They indicated that they are always compelled to voice their concerns to protect their clients' interests and uphold their company's reputation when they are dissatisfied with the work of KRA officers—such as delays, inefficiencies, or perceived errors. However, KRA officers

often perceive their attempts to ensure efficiency and compliance as condescending or as undue interference in their duties. This perception leads to strained relationships, fostering an environment of enmity rather than cooperation. This adversarial relationship between the KRA officers and the agents complicate the resolution of bond-related issues and negatively impact the efficiency of the operations of the customs agents and freight forwarders.

The study further highlighted the interplay between different stakeholders involved in cross-border trade, including customs agents, shipping lines, and regulatory authorities. According to the group discussion data, customs agents, when taking up jobs from clients, often enter

"Also when I take up a job from a client, there are other agencies that I get into contract with such as the shipping line, and you see the shipping line will give you a delivery order with a maximum number of periods. So along the way you encounter challenges such as when you get to the border, the customs officer charges you for late arrival. The shipping line as well, by the time you are taking back the interchange, you have exceeded the number of periods given by the shipping line for you to transit and return the container. So you find that you are losing at the border because KRA charged you for late transit exit, and the shipping line will charge you for the delay in returning the container."

FGD
Customs agents and freight forwarders,
Busia border post

into contracts with various other agencies, such as shipping lines, which stipulate strict delivery timelines. These contracts include delivery orders with a specified maximum period within which the cargo must be delivered and the freight container returned. If the agent fails to return the freight container within the agreed-upon period due to these delays, the shipping line imposes additional charges for the delay. This double jeopardy—penalties from

both the KRA and the shipping line—significantly erodes the agent's profitability. The cumulative effect of these penalties reduces the agent's overall competitiveness.

Moreover, the ability to attract and retain clients is crucial for maintaining competitiveness in the cross-border trade market. Study findings show that agents and freight forwarders who consistently face delays and penalties due to procedural inefficiencies and delays beyond their control, lead to strained client relationships, financial losses, and reduced competitiveness.

This competitive disadvantage is compounded by the negative perceptions clients form when they experience repeated delays and penalties.

Survey data shows that approximately eight in every ten surveyed customs agents and freight forwarders reported experiencing strain in relationships with clients, partners, or stakeholders due to the enforcement of transit bond penalties. FGD discussions with custom agents and freight forwarders highlighted the negative impact of the enforcement of penalties on their reliability and trustworthiness, long-standing relationships built on mutual trust and cooperation, and reputation. These challenges often result in strained client relationships, financial losses and reduced competitiveness in the cross-border trade.

"There are specific instances whereby these penalties have significantly influenced my ability to attract and retain clients. This is because immediately you are encounter the transit challenges leading to penalties, your client will not work with you again even if you have other pending bills of lading pending with the client. That is, you work with the client once and that is how you have lost subsequent pending jobs with the aggrieved client because of the unforeseen challenges including inefficiencies by the KRA officers handling your cargo. Cargo clearing is actually about time delivery and if you fail to meet the timelines, you will not get any job from clients."

FGD
Customs agents and freight forwarders,
Busia border post

Thus, the study noted that customs agents and freight forwarders are often judged by their ability to ensure timely delivery and seamless operations. As reported by one of the agents, when the KRA imposes penalties due to delays or other issues beyond the agent's control, such as inefficiencies by customs officers, clients perceive the agents as unreliable. As a result, once a penalty impacts a job, the respondents indicated that the client may choose not to work with that agent again, leading to a significant loss of business.

"For the past three days, I had a truck detained at the Busia border weighbridge because it exceeded the allowed weight by 1.5 tons - so we were ordered to do a redistribution. So, I applied for the redistribution. However, the authority to carry out the redistribution rests with the Kisumu unit who were called to carry out the exercise, a process that took three days for the truck to be released! The client was so furious blaming me for incompetence yet it was the inefficiencies of the KRA officer at the Busia Border Post. Why would KRA use the Kisumu station to carry out the transfer or redistribution for a truck at the Busia border? The client would never understand this and will definitely blame the agent for the delays and penalties."

FGD
Customs agents and freight forwarders,
Busia border post

Furthermore, study data shows that bureaucratic inefficiencies and procedural delays can significantly impact client satisfaction. Clients often blame the agents for delays, even when these are due to the inefficiencies of the customs authorities. One of the agents in the group discussions highlighted a scenario where a truck was held at the Busia border weighbridge for exceeding the allowed weight, necessitating a redistribution. The authority for redistribution

rested with the Kisumu unit, which took three days to carry out the process. The client, not understanding the bureaucratic intricacies, blamed the agent, resulting in a strained relationship and potential loss of future business.

The group discussions also revealed that penalties can also arise from other issues such as accusations of fraud involving the transit cargo. Some of the group discussants reported cases of agents accused of complicity in transit cargo fraud having their bond issuance capability frozen by the KRA. This prevents the agent from handling further consignments, leading to immediate revenue loss and a damaged market reputation, making it difficult to attract new clients.

"In the case of fraud involving transit cargo, we are normally accused by KRA of being complicit in the loss of transit cargo. When KRA freezes your ability to issue bonds because of fraud, definitely you will lose your clients because you will be unable to handle further consignments from the client. Thus, the negative perception by the KRA leading to freezing of my ability to issue bonds strains my relationship with my clients which will cost me any subsequent or future jobs from this client."

FGD
Customs agents and freight forwarders,
Busia border post

Thus, study findings show that the ability to attract and retain clients is crucial for maintaining competitiveness in the cross-border trade market. Agents and freight forwarders who consistently face delays and penalties due to external inefficiencies find it challenging to compete with those who can ensure smoother operations. This competitive disadvantage is compounded by the negative perceptions clients form when they experience repeated delays and penalties.

4.3.2 Factors driving withdrawal of Customs agents from transit cargo business in Kenya



Study results (Figure 2) highlight the myriad challenges undermining the sustainability of transit cargo operations for customs agents and freight forwarders in Kenya. According to the surveyed customs agents and freight forwarders, logistical complexities, competition, and regulatory burdens including non-compliance risks and punitive penalties collectively contribute to an inhospitable operating environment.

The culmination of these factors has prompted approximately one in every four surveyed customs agents and freight forwarders involved in transit trade to disengage from the transit cargo business.

Specifically, logistical challenges such as infrastructure constraints,

border delays, and security concerns emerged as a significant deterrent, with 46% of respondents citing impracticality due to such hurdles. The complexity of managing transit bond requirements was identified as a significant barrier by 33% of respondents, indicating that the administrative burden associated with compliance was a deterrent to continued involvement in the business.

Compounding these regulatory issues were frequent non-compliance incidents and high transit bond penalties, reflecting concerns about the financial implications of non-compliance, resulting in financial losses for more than a quarter of respondents. Moreover, the sector faced intensified competition, impacting profitability for 29% of those surveyed. Overall, approximately 44% of affected customs agents and freight forwarders cited regulatory issues as critical factors influencing their decision to discontinue transit cargo operations.

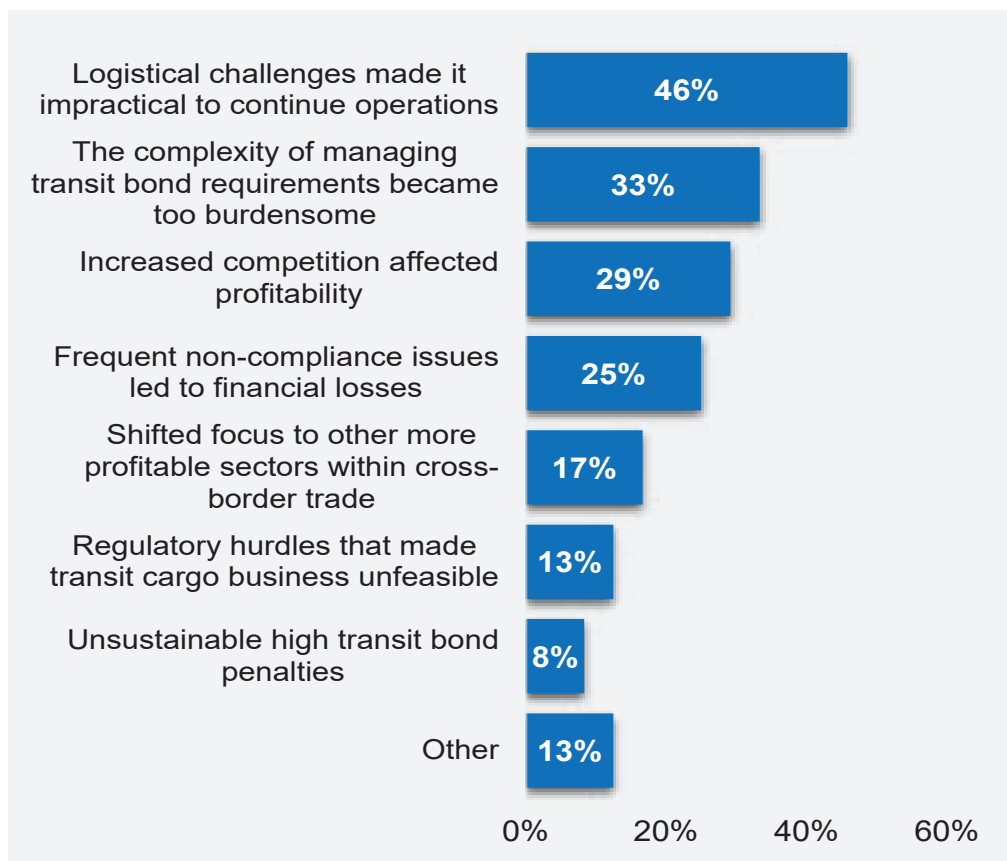


Figure 2: Reasons why customs agents and freight forwarders are no longer involved in the cross-border trade (n=24)

4.3.3 Measuring change in costs for compliance with transit bond regulations

The study (Figure 3) further investigated the change in costs for compliance with transit bond regulations changed over the last THREE years. While a significant portion of surveyed businesses have seen a reduction in compliance costs (48%), a sizable minority (33%) experienced an increase.

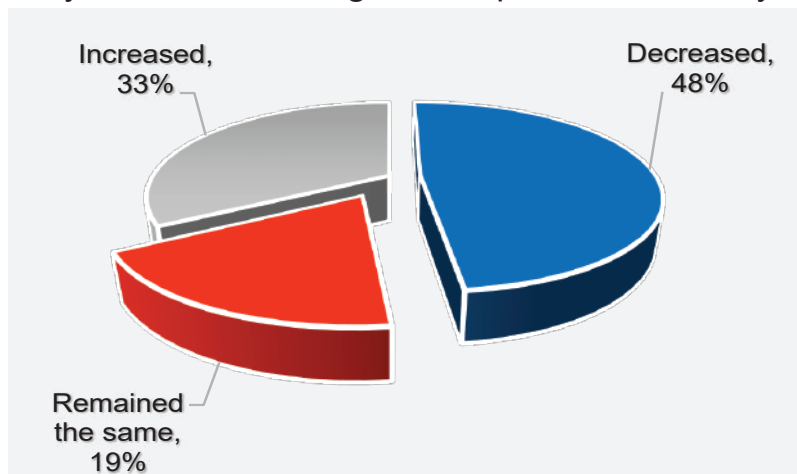


Figure 3: Change in compliance costs for transit bond regulations incurred by surveyed businesses over the last THREE years? (n=27)

For the 48% of respondents who successfully managed to decrease compliance costs, three main strategies emerged. One successful strategy was the adoption of efficient and streamlined compliance processes. These companies invested strategically in technology, optimizing their processes and automated routine tasks, reducing errors, and expediting clearance procedures. This technological leverage significantly enhanced their efficiency, leading to substantial cost savings.

Another successful strategy was the emphasis on staff training in compliance measures. The respondents cited the pivotal role of personnel competence in regulatory compliance, indicating that well-trained staff were better equipped to navigate compliance procedures accurately and efficiently, thereby minimizing the risk of penalties.

Furthermore, building constructive relationships with the Kenya Revenue Authority (KRA) enabled the study respondents to stay informed about regulatory changes, seek clarification, and proactively address compliance issues. They cited specific methods, such as regular meetings, establishing dedicated communication channels, and active participation in regulatory forums, which facilitated smoother operations and reduced the likelihood of costly penalties.

Study results show that the 33% of respondents who experienced an increase in compliance costs mainly invested in staff training on compliance measures (89%), renegotiation of contracts with clients/suppliers (67%) and enhancing communication with regulatory authorities (67%) to counteract these rising expenses.

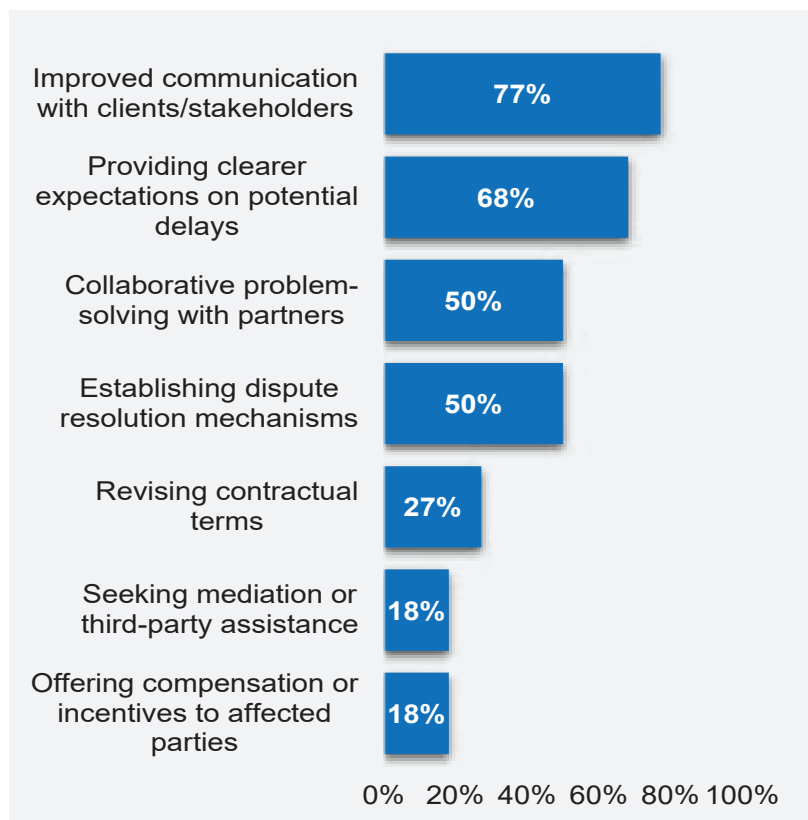
However, these strategies have yet to reduce costs for all companies universally. Surveyed customs agents and freight forwarders reported that the complexity of the transit bond regulations requires ongoing training and updates, which often strains their meagre resources and increases costs over time. Additionally, the respondents indicated that despite efforts to distribute compliance costs among stakeholders, clients often resisted bearing additional expenses, leading to stalemates or loss of business. The respondents further highlighted their efforts to enhance communication with KRA, which is critical for navigating compliance requirements effectively. However, they indicated that bureaucratic inefficiencies or inconsistencies in enforcement affected the efficacy of this strategy since, with improved

communication channels notwithstanding, delays or misunderstandings in regulatory processes can lead to increased costs and penalties.

Based on study findings, the varying success rates of these strategies among surveyed respondents suggest that the effectiveness of cost-reduction measures is not a one-size-fits-all solution. It is contingent upon the unique dynamics of each company, the specific factors within the industry they operate, and the regulatory environments they are subject to. While some companies may benefit from staff training and improved communication, others may struggle to achieve meaningful cost reductions due to external pressures and constraints.

Customs agents and freight forwarders have adopted improved communication, more explicit expectations, dispute resolution mechanisms, and collaborative problem-solving to address

the strain in relationships resulting from transit bond penalties (Figure 4). Specifically, approximately eight in ten of the surveyed customs agents and freight forwarders reported focusing on enhancing communication channels and providing regular updates to clients and stakeholders to manage expectations and maintain trust amidst challenges.



Respondents, demonstrating a proactive approach, have taken significant steps to mitigate frustrations caused by delays associated with transit bond penalties. A notable 68% of them have implemented measures such as [holding regular meetings, sending out weekly progress reports, and conducting site visits] to inform clients and stakeholders about potential delays in advance. They noted that this proactive stance not only sets realistic expectations but also helps to minimize misunderstandings and dissatisfaction,

Figure 4: Strategies adopted by customs agents and freight forwarders to address the strain in relationships resulting from transit bond penalties (n=27)

reassuring the industry's commitment to resolving issues.

Moreover, half of the respondents reported the need for effective dispute resolution mechanisms to address conflicts arising from transit bond penalties. They emphasized that establishing clear procedures for resolving disputes has helped them resolve issues promptly and amicably and preserved relationships, instilling confidence in the effectiveness of these strategies.

Other critical strategies adopted by the affected customs agents and freight forwarders to address the strain in relationships resulting from transit bond penalties include collaborative problem-solving with Partners (50%) to jointly address challenges related to transit bond penalties and foster cooperation and strengthen relationships, revising contractual terms with

clients and partners to accommodate changes resulting from transit bond penalties, thus, ensuring clarity and fairness for all parties involved (27%), and offering compensation or incentives to mitigate the impact of transit bond penalties on affected parties, thus maintaining goodwill and loyalty (18%).



4.4 **Objective 2: To analyze and quantify the financial burden imposed on operators due to the payment of penalties and the associated costs, such as legal fees, administrative expenses, and potential penalties for non-compliance**

Introduction

Transit bonds serve as vital financial mechanisms ensuring adherence to customs regulations during the transportation of goods through Kenya. However, non-compliance with these regulations triggers penalties, including a significant 3% penalty on transit bonds. This study delved into the prevalence of regulatory non-compliance leading to transit bond penalties and its impact on customs agents and freight forwarders in Kenya. Specifically, it examined the financial burden imposed on operators due to penalties and associated costs, such as legal fees, administrative expenses, and potential penalties for non-compliance.

The study findings shed light on the correlation between understanding transit bond penalty rules and the frequency of incurring penalties, the impact of penalties on business operations, strategies employed to mitigate financial burdens, challenges faced in minimizing penalties and associated costs, and the role of technological advancements in enhancing compliance.

Summary of findings

1. **Prevalence of non-compliance and understanding of penalty rules:** The study reveals that penalties related to regulatory non-compliance or violations are common among customs agents and freight forwarders in Kenya. Specifically, 59% have encountered such penalties, with varying frequencies - 26% occasionally and 15% frequently. Importantly, comprehension of transit bond penalty rules correlates with penalty incidence; 73% of customs agents and freight forwarders who rarely incur penalties have a “good understanding” of the rules and procedures related to transit bond penalties, contrasting with 42% with only an average understanding.
2. **Direct costs on the overall business operations of customs agents and freight forwarders:** The 3% penalty on transit bonds imposes significant direct costs on customs agents and freight forwarders in Kenya. These costs include the immediate financial burden of the penalty amounts, substantial legal fees incurred in managing and disputing penalties, and customs warehouse rent calculated by the Kenya Revenue Authority (KRA) based on the duration in days of trucks involved in transit offenses, which can reach up to \$5,000. Additionally, operators face additional duties and taxes for goods damaged or short-landed during transit, further increasing direct costs.
3. **Indirect costs on the overall business operations of customs agents and freight forwarders:** Indirect costs also significantly impact business operations, including administrative expenses related to managing transit bond penalties, such as travel, calls, and accommodation expenses for trips to KRA offices. These activities consume valuable time and resources, leading to operational delays and disruptions that affect the efficiency and cost of operations. Further financial burdens arise from warehouse rent for damaged consignments, increased bond premiums from insurance companies after incurring penalties, and costs related to litigation and dispute resolution. The reputational damage caused by delays and additional costs can result in loss of clients and reduced business. Operators may also face duplicating payments for goods destined for neighboring

countries and high administrative costs for referrals to the Border Management Unit (BMU) in Nairobi, exacerbating the overall financial strain.

4. **Operational Disruptions:** The process of dealing with transit bond penalties is time-consuming and leads to significant delays in operations. This disruption affects immediate transactions and hampers overall business efficiency, resulting in increased costs and reduced operational effectiveness for customs agents and freight forwarders.
5. **Penalties and Business Suspensions:** Penalties can result in the suspension of customs agent's license, disrupting their ability to conduct business and affecting the operations of traders and transporters reliant on their services. This suspension underscores the cascading negative impact of penalties across the supply chain.
6. **Indirect Costs and Increased Premiums:** Indirect costs such as customs warehouse rent for damaged consignments, increased bond premiums, and additional duties for damaged goods compound the financial burden on operators. These expenses go against the principles of trade facilitation and exacerbate the overall cost of doing business.
7. **Impact on Reputation and Client Relationships:** Penalties and delays damage the reputation and perceived reliability of customs agents and freight forwarders. Clients often misattribute delays and additional costs to inefficiency on the part of the agents, leading to strained relationships and potential loss of business.
8. **Technological and administrative Challenges:** The lack of electronic seals, automated countdown systems, and interoperability between the KRA's Integrated Customs Management System (iCMS) and regional systems like ASYCUDA creates significant operational inefficiencies. These technological gaps affect compliance and result in increased administrative costs, system errors, and delays, further complicating the business environment for customs agents and freight forwarders.
9. **Role of technological advancements:** Technological advancements offer promising avenues for enhancing compliance and streamlining operations. Businesses with robust technological infrastructure face challenges, primarily due to regulatory ambiguity (19%). Conversely, those lacking technological support encounter amplified hurdles, emphasizing the need for targeted interventions to bolster technology adoption and regulatory literacy.
10. **Negative impact on business operations:** Transit bond penalties predominantly impact business operations negatively, as reported by 51% of surveyed customs agents and freight forwarders, while only 11% cite a positive impact. As earlier noted, financial strain, operational disruption, and erosion of reputation were identified as primary factors contributing to this negative perception, indicating penalties' detrimental effects on profitability and trust.
11. **Mitigation strategies and limitations:** Businesses adopt various strategies to mitigate the financial burden of transit bond penalties, including passing costs to consumers, absorbing them internally, adjusting agency fees, and seeking legal recourse. However, despite these efforts, a significant proportion of businesses (e.g., 60% passing costs to consumers) still experience negative impacts, suggesting the limitations of these strategies in fully offsetting the penalties' consequences.

12. Challenges in minimizing penalties: Customs agents and freight forwarders face multifaceted challenges in minimizing transit bond penalties and associated costs. These include regulatory ambiguity, inadequate internal processes/documentation, poor communication, lack of robust tracking systems, and insufficient staff training, highlighting systemic issues hindering compliance efforts.

13. Interplay between technology and compliance: The interplay between technology, regulatory compliance, and operational efficiency is evident. While advanced technology does not fully compensate for regulatory ambiguities, it underscores the importance of comprehensive frameworks and continuous staff training. Businesses lacking technological infrastructure face exacerbated challenges, necessitating urgent interventions for technology adoption and regulatory literacy enhancement.

4.4.1 Prevalence of breach of EAC Customs laws and non-compliance leading to transit bond penalties

The imposition of a 3% penalty on transit bonds for non-compliance in Kenya is a significant regulatory measure aimed at incentivizing compliance with customs laws regulations, deterring violations, and ensuring the integrity of the transit process.

The study findings (Table 1), based on a survey of customs agents and freight forwarders, shed light on the prevalence of penalties related to transit non-compliance or other violations among surveyed customs agents and freight forwarders. The findings also provide insight on the correlation between understanding of transit bond penalty rules and the frequency of incurring penalties.

Table 1: Correlation between understanding of transit bond penalty rules and the frequency of incurring penalties

Survey question	Categories	b1. How well does your company understand the rules and procedures related to transit bond penalties?			
		Poor (n=0)	Average (n=12)	Good (n=15)	Total (n=27)
d1. For the last THREE YEARS of operation, how frequently has your organization incurred penalties related to regulatory non-compliance or other violations?	Rarely	0%	42%	73%	59%
	Occasionally	0%	33%	20%	26%
	Frequently	0%	25%	7%	15%
	Total	0%	100%	100%	100%

As shown in Table 1, many customs agents and freight forwarders have encountered penalties related to regulatory non-compliance or other violations, with 59% experiencing them rarely, 26% occasionally, and 15% frequently. This distribution suggests that while penalties are not uncommon, they are not necessarily pervasive across the industry.

Notably, a higher proportion of customs agents and freight forwarders who rarely incurred penalties (73%) reported having a 'good understanding' of the rules and procedures related to transit bond penalties. In contrast, a smaller proportion of customs agents and freight forwarders who rarely incurred penalties (42%) reported having an 'average understanding' of

these rules and procedures. This discrepancy suggests a potential link between comprehension of penalty regulations and the likelihood of violating them.

Moreover, the data highlights a trend regarding companies with only an 'average understanding' of transit bond penalty rules. A quarter of respondents from such companies reported frequent penalties, compared to only 7% from companies with a good understanding. This stark contrast underscores the importance of knowledge and comprehension in regulatory compliance, suggesting that an inadequate understanding of penalty regulations may lead to increased violations and subsequent penalties.

4.4.2 Impact of transit bond penalties and associated costs on the overall business operations of customs agents and freight forwarders

Study data from in-depth interviews with stakeholders shows that the 3% penalty on transit bonds imposes a significant financial burden on Kenya's customs agents and freight forwarders. The associated costs for managing the penalties, including legal fees, administrative expenses, and the time spent, increase the overall cost of doing business. According to the interviewed stakeholders, these penalties disrupt operations, lead to delays, and go against the principles of trade facilitation.

It's important to note that while stakeholders acknowledged the lack of a specific study to quantify the exact costs associated with transit bond penalties in Kenya, they were clear that

"About the exact associated costs with respect to the legal fees, administrative expenses, and other costs related to settlement of transit bond penalties, we have not done a survey to quantify the costs, specifically. However, we understand that we know the costs that's involved, because first of all, it is time-consuming."

**KII
Official, NCTTCA**

the nature of these expenses is well understood. The financial burden, they explained, is a combination of direct and indirect costs. Direct costs are those incurred immediately due to the penalty, such as the

penalty amount and legal fees. Indirect costs are the ancillary expenses that arise from managing the penalty, including administrative expenses, transportation to the Kenya Revenue Authority (KRA) offices, and the time spent in the settlement process.

The time-consuming nature of dealing with transit bond penalties is a significant concern, as one official aptly put it, *"All this time you take moving into this office, you move to that office, you go and pay penalty, all that leads to wastage of time, it leads to delays, and at the end of the day, it increases the cost of doing business."* Time is a critical resource in business operations, and the processes involved in settling penalties lead to delays. These delays not only affect the immediate transactions but also disrupt the overall efficiency of business operations.

Moreover, the interviewed stakeholders highlighted the substantial financial implications of these delays and the related administrative burden. Managing offences related to transit bond penalties requires additional resources, such as transport and personnel, which add to the operational costs. These expenses go against the principles of trade facilitation, which aim to

"And then, of course, in terms of financial, you are going to incur some costs, because already, incurring a transit bond penalty is like an offense. And you will have to incur the cost of managing this offense, whether it is transport to move to the Kenya Revenue Authority (KRA) office, and the settlement takes also time. All this leads to increment of the cost of doing business, because all this time you take moving into this office, you move to that office, you go and pay penalty, all that leads to wastage of time, it leads to delays, and at the end of the day, it increases the cost of doing business. In a nutshell, of course, this cost basically goes against the principles of trade facilitation. And also, at the end of the day, it will affect the clearing agent, because in some cases there is even suspension of the agent license to enforce a settlement of the offense as a result of incurring transit bond penalty. So, it will affect the clearing agent, the trader, and the transporter as well."

**KII
Official, NCTTCA**

streamline processes and reduce the cost and complexity of cross-border trade.

Study data also shows that the impact of the penalties extends beyond just the financial burden. According to the study participants, the penalties can also lead to the suspension of customs agent's license. This suspension affects the agents' ability to conduct business and disrupts the operations of traders and transporters who rely on their

services. One of the officials pointed out that "in some cases, there is even suspension of the agent license to enforce a settlement of the offence as a result of incurring transit bond penalty." This cascading effect highlights how a single penalty can have far-reaching consequences across the supply chain.

Group discussions with customs agents and freight forwarders confirmed that operators incur significant financial burdens due to the indirect costs that arise from managing the penalty, such as demurrage costs and detention, warehouse rent for damaged consignments, and increased bond premiums from insurance companies, administrative costs including travel,

"There's customs warehouse rent and detention fees. When KRA establishes that there was an offense, number one thing, they'll detain your truck. Once they have detained it, definitely, they will count the number of days that they have detained your truck, the truck volume in cubic meters, and use this to compute your customs warehouse rent, which you'll pay on top of the penalties. At some point we paid \$5,000. But normally, they threaten us with the costs. There's a time they told us that we are going to pay like 1 million Kenya shillings – we ended paying approximately KES80,000. But you know, it was not that we paid that KES80,000 right away. It was after a long battle back and forth, consulting here and there, talking to somebody around. So there's no standard fee that is paid on that."

**FGD
Customs agents and freight forwarders,
Busia border post**

calls and accommodation expenses, additional duties and taxes for damaged goods, litigation expenses and penalties for short-landed goods during transit.

According to the FGD data, the KRA detains trucks involved in transit offenses. The KRA calculates the duration of detention to determine the customs warehouse rent, which are additional costs that customs agents must bear. For instance, one agent reported paying up to \$5,000 in demurrage fees. This

cost, however, is often threatened to be much higher initially, creating a significant financial strain. The process of negotiating these fees involves prolonged back-and-forth consultations, highlighting the lack of standardization in fee assessment and the uncertainty it brings to operators.

In addition, respondents reported that delays and accidents during transit, such as the Sachangwan incident where a tanker burst into flames, result in immediate penalties from KRA for short-landed goods. Despite the catastrophic nature of such events, KRA imposes penalties without considering the circumstances, further burdening customs agents and freight forwarders. Additionally, agents may incur costs for administrative activities like paying police officers to secure the accident site, adding to the overall financial strain.

"We normally have some challenges during transit which cause a delay in meeting the transit time. For example, if a truck gets an accident, say for the case of Sachangwan where we had some tankers which were destined to Rwanda and the Congo via Malaba, then the truck burst into flames and the whole cargo was lost including the driver. Sometimes KRA is very harsh - immediately they realize that there are some goods which have been short-landed - they call it short landed despite the nature of the calamity, they will switch off the company immediately until when the penalty is sorted out. Despite that, you may pay for some few cartons that may have been stolen by the people who may have tried to rescue the driver and probably call some nearby police officers to come and cordon the area to avoid looting. You have to pay the police officers, that's part part of administrative costs."

FGD
Customs agents and freight forwarders,
Malaba border post

In cases where consignments are damaged, such as due to accidents, study respondents indicated that the KRA issues a deposit note immediately. Despite the cargo not being in a customs bonded warehouse, KRA begins calculating customs warehouse rent from the time

"The cost that I think we may overlook is the additional duties and taxes. For goods in transit to Uganda, if there will be damages in Kenya while on transit, KRA will automatically penalize you to pay duties and taxes for these same products that are damaged for short-landing. So those are additional duties and taxes . For example, we once paid an additional tax of 117,000 Kenya shillings to KRA for a transit cargo of Sodium saccharide that we couldn't account for due to damage and looting."

FGD
Customs agents and freight forwarders,
Malaba border post

of the accident. The respondents indicated that practice imposes additional financial burdens on operators who must pay for the security of their cargo and the unexpected customs warehouse rent, even though the cargo is not under KRA's direct care. In instances of damaged goods during transit, operators are penalized with additional duties and taxes. This is especially burdensome for goods destined for neighbouring countries like Uganda. For example, one

operator had to pay an additional 117,000 Kenya shillings in duties for a damaged consignment of Sodium saccharide. This additional duty underscores the financial strain imposed by the transit penalty system.

Study group findings also show that customs agents often face referrals to the Border Management Unit (BMU) in Nairobi for issues arising at border posts like Malaba or Busia.

"You find that maybe you have an issue in Malaba or Busia borders, and then you find that Malaba or Busia customs officer refers you to the BMU in Nairobi at Time towers or Samia Park. You leave the truck at the border and head to Nairobi where you find that that customs officer is rarely in the office, always engaged in meetings. And because you don't have a house in Nairobi, you are renting and eating, you incur administrative costs upwards of 10,000 Kenya shillings on accommodation, meals and transport."

FGD
Customs agents and freight forwarders,
Busia border post

This necessitates travel to Nairobi, where agents incur high administrative costs for accommodation, meals, and transport, often amounting to over 10,000 Kenya shillings for a single trip. The perceived inefficiency and inaccessibility of customs officers in Nairobi further compound these expenses, as agents may spend extended periods waiting for resolutions. System errors in the

Integrated Customs Management System (ICMS) lead to additional administrative costs for customs agents. Errors such as locked entries require agents to make numerous calls and send officers to resolve the issues. These administrative activities increase the cost of doing business, as agents must dedicate time and resources to ensure compliance and rectify system-generated errors.

Furthermore, study results show that penalties from KRA lead to increased bond premiums from insurance companies. Once penalized, operators face higher premiums, which can rise

"The other cost is increased bond premium. Once you've been penalized by the KRA, the next thing when you go to the insurance companies, they normally increase the premiums. You will not get it at normal rate, say 1%. They'll never give you at that cost again. They will take advantage of the situation and increase it to a higher percentage."

FGD
Customs agents and freight forwarders,
Busia border post

significantly from the normal rate. They indicated that insurance companies take advantage of the penalized status of operators, exacerbating the financial pressure on them by increasing the cost of obtaining bonds.

Thus, the 3% penalty on transit bonds significantly impacts the operations of customs agents and freight forwarders in Kenya. The financial burdens are numerous, including demurrage costs, increased bond premiums, additional duties and taxes, administrative expenses, legal expenses and costs arising from system errors and penalties for short-landed goods. These cumulative costs create a challenging financial environment for operators, highlighting the need for more standardized and transparent processes to mitigate the financial impact on customs agents and freight forwarders.

Study data from surveys with customs agents and freight forwarders (Figure 5) corroborate the above findings. Transit bond penalties predominantly impact business operations negatively. Approximately one half of the surveyed customs agents and freight forwarders (51%) reported a negative impact on their companies' overall business operations due to transit bond penalties while only 11% reported a positive impact. This finding suggests that the transit bond penalties are predominantly viewed as detrimental rather than beneficial to business operations.

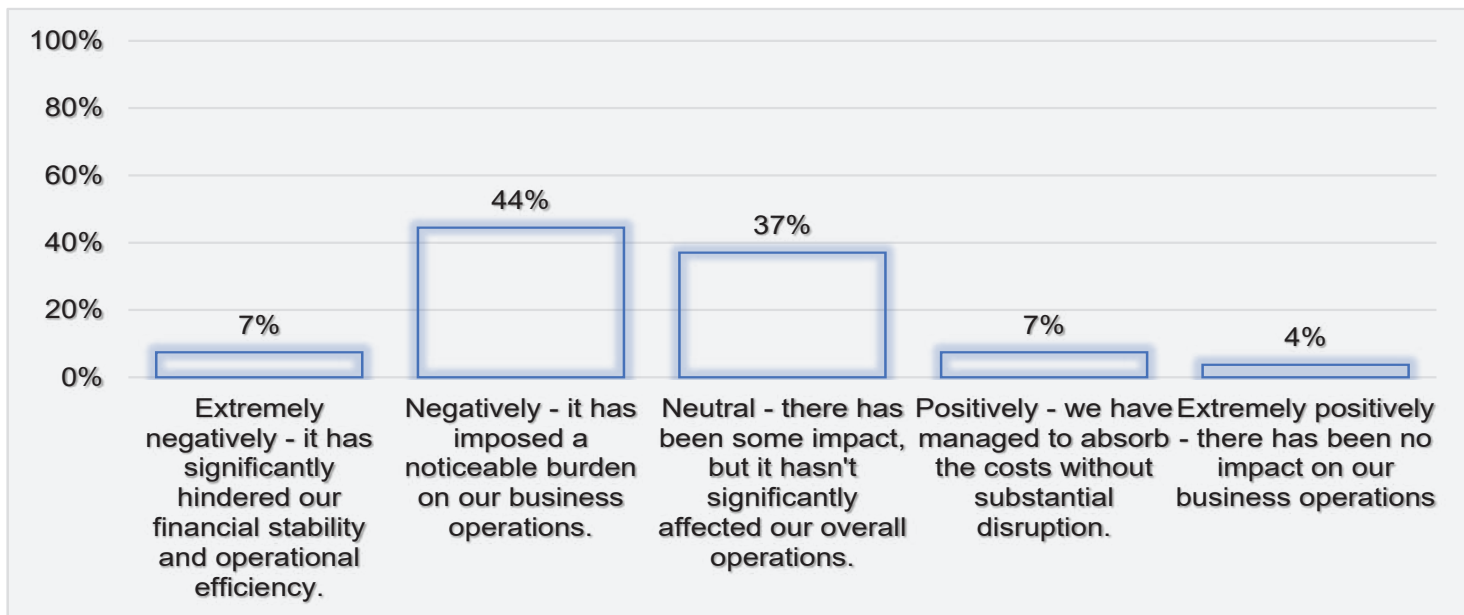


Figure 5: How the transit bond penalties and associated costs have impacted companies' overall business operations (n=27)

As reported earlier, study respondents attributed this negative perception to three critical factors: financial strain that represent additional expenses that directly affect the profitability of businesses in the logistics sector; operational disruption such as delayed shipments or increased administrative tasks related to penalty resolution impeding the smooth flow of goods and services; and erosion of reputation and trust due to a perception of unreliability or incompetence leading to loss of business.

A detailed examination of the above survey finding through focus group discussions (FGDs) reveals the specific ways in which these penalties and associated costs adversely affect businesses. One customs agent provided her experience from 2016, illustrating how the transition by the Kenya Revenue Authority (KRA) to the new Integrated Customs Management System (ICMS) exacerbated existing problems. During this transition, their password was suspended, resulting in a five-day delay in resolving the issue. This delay had immediate and severe consequences, as the agent had 10 clients whose shipments were held up.

The financial implications of such delays are significant. For example, the respondent reported narrated that once a container enters storage at a Container Freight Station (CFS), an initial cost of \$165 is automatically charged. Additionally, storage costs accrue daily, further increasing the financial burden. In this particular case, the respondent indicated that some clients refused to pay these additional costs, leaving the customs agent to bear the financial loss. The delays and associated costs not only affected the immediate transaction but also had long-term repercussions. Clients, often unaware of the complexities and bureaucratic challenges involved, often attribute the delays and additional costs to inefficiency or incompetence on the part of the customs agents. According to the respondent, some of the clients, having missed their target market due to the delays, did not return to her, potentially

"There are additional costs that we haven't mentioned, and I believe they need to be included. For instance, clients might leave us due to various issues. Let me illustrate with a case from 2016, which we resolved last month because we were forced to transition to the new ICMS system.

During the transition by the Kenya Revenue Authority (KRA) to the ICMS system, our password was suspended. At that time, I had about 10 clients whose shipments had arrived, and it took us five days to resolve the issue. Unfortunately, the clients refused to pay certain costs, such as storage fees at the Container Freight Station (CFS). Once a container enters storage, there is an initial cost of \$165 that is automatically charged. Additionally, storage days accrue costs, which some clients also refuse to pay.

As a result, by the time we hand over the goods to the client, it's a complete loss for us as customs agents. Furthermore, the client, who missed their target market due to these delays, might not return to us. They might blame us for the delayed clearance, unaware of the actual reasons behind it. We cannot explain these complexities to the client, as they do not relate to them directly. However, these issues significantly impact our clients' business operations."

**FGD
Customs agents and freight forwarders,
Mombasa Border post**

leading to loss of business. This misperception can damage the reputation of customs agents and freight forwarders, making it harder for them to retain existing clients and attract new ones.

The above scenario underscores the broader impact of transit bond penalties on business operations. Delays in resolving disputes and the suspension of necessary operational tools, such as passwords, disrupt the smooth flow of goods and create financial strain. The inability to pass on these unforeseen costs to clients exacerbates the issue,

leading to direct financial losses for customs agents and freight forwarders. Moreover, the damage to client relationships and trust can have lasting effects, as clients may seek more reliable service providers, further eroding the business base of the affected companies.

The study also highlights how businesses respond to the financial burden imposed by transit bond penalties. The four main strategies reported by surveyed customs agents and freight forwarders include passing on the cost to consumers, absorbing the cost internally, adjusting agency fees and seeking legal recourse. However, the fact that a significant proportion of businesses still experienced negative impacts on their overall operations despite employing these strategies suggests that none of them provide a comprehensive solution to the challenges posed by transit bond penalties.

For example, approximately three out of the businesses (74%) that opted to pass on the cost to consumers revealed a common strategy to alleviate the financial burden stemming from the penalties. However, 60% of them still recorded negative impacts on their operations. This

indicates that consumers may be resistant to price increases, leading to reduced demand or competitive disadvantages for businesses implementing this strategy. Similarly, the strategies of absorbing costs internally (67%), seeking legal recourse (15%), and adjusting agency fees (52%) also demonstrate attempts to mitigate the impact of transit bond penalties.

While the desire to maintain competitiveness or preserve customer relationships may have driven a considerable portion of businesses (67%) to choose to absorb the costs internally, approximately 44% of these businesses reported a negative impact on their overall operations. This indicates that absorbing costs may strain business resources and affect profitability, thereby undermining operational efficiency.

Of the businesses that reported adjusting their agency fees in response to penalties on transit bonds (52%) approximately 64% of them still experienced a negative impact on their overall operations. Thus, while revising agency fees may help to offset some of the financial burden, they may not fully address the underlying challenges faced by businesses in dealing with penalties on transit bonds. Further, approximately 75% of the minority of businesses that sought legal recourse (15%) to challenge the penalties imposed on transit bonds still reported a negative impact on their overall operations. This indicates that legal recourse, while potentially offering a means of relief, may be time-consuming, costly, and uncertain in its outcomes.

Thus, the above study findings indicate the limitations of these strategies in fully offsetting the financial consequences of transit bond penalties. The persisting negative impacts despite employing these strategies could be the cumulative effect of penalties over time. Even if businesses absorb costs internally or adjust pricing strategies initially, continued penalties may erode profitability and sustainability in the long run.

4.4.3 Challenges customs agents and freight forwarders face in minimizing transit bond penalties and associated costs

The study further highlights the multifaceted challenges faced by customs agents and freight forwarders in minimizing transit bond penalties and associated costs (Figure 6). One of the predominant issues highlighted by the respondents is the lack of regulatory clarity, cited by six out of ten study participants.

As earlier reported, this perception of ambiguity amongst study respondents manifests in various forms, such as unclear regulatory guidelines or inconsistent application of regulations by authorities. Consequently, respondents linked the lack of clear directives to confusion, increasing the risk of unintended non-compliance.

Approximately five out of ten study participants cited inadequate internal processes, documentation procedures, and poor communication channels. They reported that these factors hindered the smooth execution of transit procedures, leaving customs agents and freight forwarders vulnerable to penalties resulting from errors or delays in the transit process.

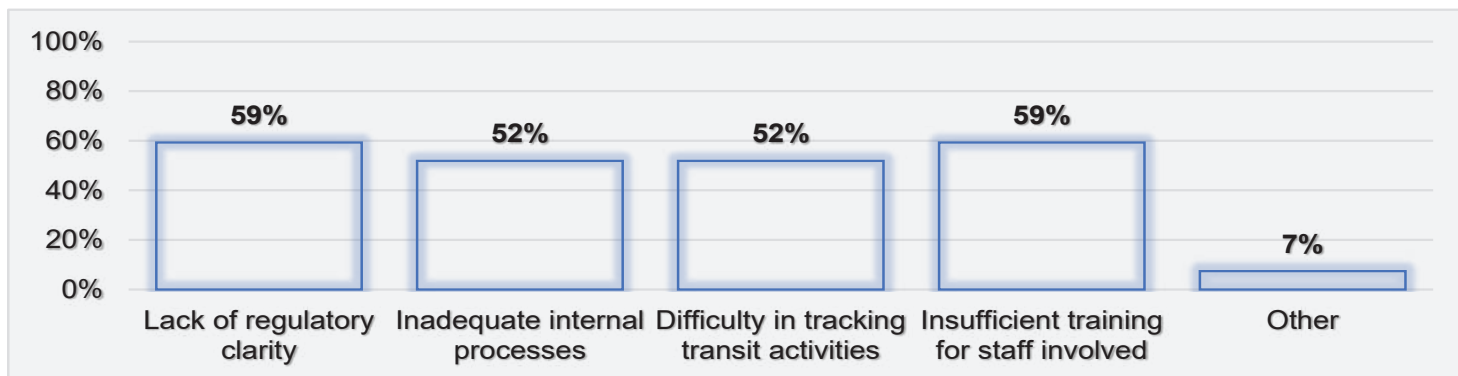


Figure 6: Specific challenges faced by study respondents in minimizing transit bond penalties and associated costs (n=27)

Furthermore, 52% of study respondents underscored the lack of robust tracking systems as a significant hurdle. They indicated that this deficiency made it challenging to monitor shipments accurately and identify and rectify potential issues that could lead to penalties.

Additionally, approximately 59% of participants identified insufficient staff training as a key challenge. Customs agents and freight forwarders who highlighted this challenge stressed the importance of specialized knowledge and skills in the transportation and logistics sector. They emphasized that these are necessary to navigate regulatory requirements, manage transit processes efficiently, and mitigate risks effectively. According to them, inadequate training of their personnel has also resulted in errors and non-compliance, leading to penalties for transit bond violations.

Other challenges cited by the study respondents included the lack of awareness among other stakeholders in cross-border trade, such as transporters disregarding transit bond regulations and procedures, unintentionally leading to errors or delays that trigger penalties and the delay in generating reports and certificates of exports by KRA staff at the border, thus disrupting transit schedules, leading to potential non-compliance and penalties for customs agents and freight forwarders.

4.4.4 Role of technological advancements in streamlining operations and enhancing compliance

Study findings reveal the potential role of technological advancements in offering promising avenues for streamlining operations and enhancing compliance. This, in turn, reduces penalties and optimizes efficiency in transit activities. A cross-analysis of the technological level of the surveyed businesses and the challenges they face in minimizing transit bond penalties and associated costs (Table 2) underscores the power of technology-driven solutions. These solutions could offer a pathway towards minimizing penalties, optimizing operational efficiency, and fostering competitiveness in the logistics sector.

Table 2: Correlation between technological level and challenges customs agents and freight face in minimizing transit bond penalties and associated costs

Survey question	Technology level	d10. What specific challenges do you face in minimizing transit bond penalties and associated costs?				
		Lack of regulatory clarity	Inadequate internal processes	Difficulty in tracking transit activities	Insufficient training for staff involved	Total
e7. How well is your organization equipped with technology to handle KRA requirements on the transit bond penalties?	Less equipped	50%	36%	57%	50%	48%
	Averagely equipped	31%	50%	29%	31%	37%
	Well equipped	19%	14%	14%	19%	15%
	Total	100%	100%	100%	100%	100%

Among the surveyed businesses, approximately 15% claimed to possess robust technological infrastructure for managing KRA requirements related to transit bond penalties. Despite being well-equipped technologically, this subset of respondents still faced challenges. Notably, 19% of these businesses cited a lack of regulatory clarity, indicating that even advanced technology cannot fully compensate for ambiguities in regulatory frameworks. Inadequate internal processes (14%), difficulty tracking transit activities (14%), and insufficient staff training (19%) further compounded their struggles.

On the other hand, 48% of businesses admitted to having less technological infrastructure for their KRA requirements. Of note, this group encountered a higher frequency of similar challenges. The most prevalent concern was the lack of regulatory clarity, affecting 50% of businesses. This disparity suggests that technological deficiencies could aggravate the impact of regulatory ambiguities. Other significant issues include: inadequate internal processes (36%), potentially leading to delays and errors in transit activities, thus increasing the risk of penalties; difficulty in tracking transit activities (57%) due to inadequate technology for real-time monitoring, thereby increasing the likelihood of non-compliance and subsequent penalties; and insufficient staff training (50%) to effectively navigate regulatory frameworks and utilize technological tools. The prevalence of these challenges underscores the potential vulnerability of businesses operating without adequate technological support.

The contrasting results for customs agents and freight forwarders with varying technological capabilities shed light on the possible interplay between technology, regulatory compliance, and operational efficiency. For businesses well-equipped with technology, the presence of challenges despite technological sophistication underscores the need for comprehensive regulatory frameworks and continuous staff training. Conversely, businesses lacking technological infrastructure face amplified hurdles, emphasizing the urgency of targeted interventions, such as providing financial incentives for technology adoption or offering specialized training programs to bolster technological adoption and regulatory literacy.

4.5 Objective 3: To examine the operational challenges experienced by customs agents and freight forwarders because of KRA's penalty enforcement

Introduction

Cross-border trade for transit cargo is a complex process that involves the movement of goods through one or more countries en route to their final destination. This trade is essential for global supply chains, ensuring products can reach markets efficiently and cost-effectively. However, it poses significant operational challenges for customs agents and freight forwarders, who must navigate a maze of regulations, compliance requirements, and logistical hurdles.

The primary objective of examining the operational challenges customs agents and freight forwarders face due to the Kenya Revenue Authority's (KRA) penalty enforcement is to identify and analyze the specific difficulties these stakeholders encounter within the transit bond penalty framework. The study findings highlight how stringent or inconsistently applied penalties can disrupt the logistical processes, leading to delays, increased operational costs, and strained client relationships. Thus, this study seeks to uncover the root causes of inefficiencies and bottlenecks in the transit system attributable to the current penalty enforcement practices.

Summary of findings

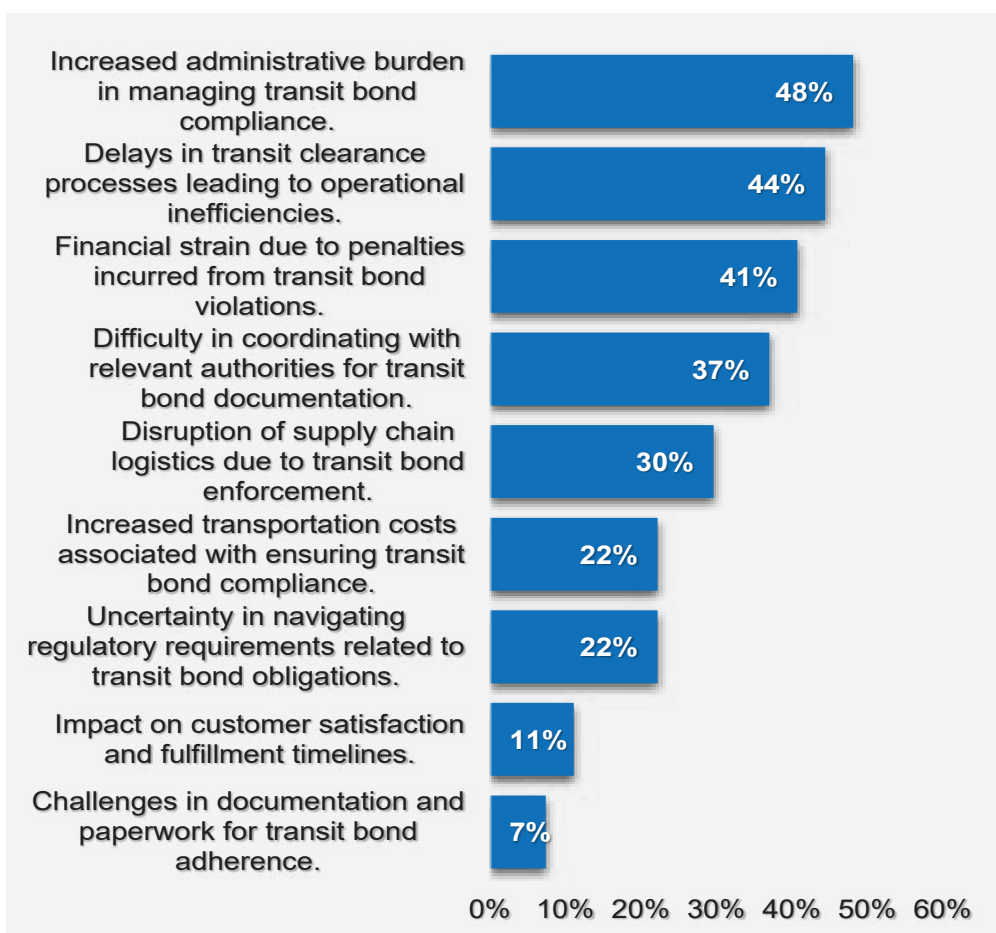
- 1. Key Factors Causing Delays:** The study revealed that delays in transit cargo are predominantly due to factors linked to the Kenya Revenue Authority (KRA) and other agencies, such as delayed customs verifications, delayed bond cancellations, poor IT infrastructure, regional infrastructure challenges, and documentation errors, all of which significantly hinder the operations of customs agents and freight forwarders, resulting in extended transit times and financial penalties.
- 2. Systemic Challenges with ICMS:** The KRA's Integrated Customs Management System (ICMS) faces reliability issues, with frequent downtimes causing significant disruptions in customs clearance processes. The study respondents expressed a preference for the ASYCUDA system, citing fewer interfacing challenges, automatic bond cancellation and more robust performance.
- 3. Operational Inefficiencies:** System downtimes prevent timely customs inspections and bond cancellations, leading to extended transit times, additional storage costs, and financial penalties for customs agents and freight forwarders. These inefficiencies are exacerbated by the reliance on manual processes and poor IT infrastructure.
- 4. Bureaucratic and Staffing Issues:** Customs inspections are delayed due to bureaucratic processes involving multiple agencies. Additionally, insufficient staffing at border posts like Busia and Malaba during peak times leads to long queues and further delays, impacting transit times and resulting in penalties.
- 5. Infrastructure Challenges:** Poor Road conditions and inadequate maintenance contribute to frequent mechanical breakdowns of trucks, leading to delays and increased operational costs. Additionally, port congestion and road closures further disrupt cargo

movements, adding to the logistical challenges faced by customs agents and freight forwarders.

- Documentation and Bond Issues:** Under valuation of transit goods caused by incorrect tariff classifications leads to insufficiency in bonds resulting in transit delays and increased administrative workload. These issues lead to detailed verification of transit goods, post clearance audits, and higher operational costs due to penalties, significantly affecting the profitability and efficiency of customs agents and freight forwarders.

4.5.1 Operational challenges that customs agents and freight forwarders experience due to the enforcement of transit bond penalties by the KRA

Analysis of study data (Figure 7) shows that enforcing the 3% penalty on transit bonds by the Kenya Revenue Authority has resulted in various operational challenges for customs agents and freight forwarders in Kenya.



Firstly, nearly half of the surveyed customs agents and freight forwarders cited increased administrative burden in managing transit bond compliance as a significant issue. They indicated that the regulatory requirements associated with transit bond compliance always involve extensive paperwork, communication with multiple stakeholders, and ensuring adherence to specific timelines and procedures. According to them, these activities divert resources from core operational activities and hinder overall efficiency and competitiveness.

Figure 7: Operational challenges experienced by customs agents and freight forwarders due to the enforcement of transit bond penalties by the Kenya Revenue Authority (KRA) (n=27)

Secondly, 44% of respondents identified delays in transit clearance processes as another prominent challenge. They noted that delays in transit clearance caused cascading effects on supply chain operations, leading to disruptions, increased costs, and dissatisfaction among

clients. They attributed the delays to various factors, including bureaucratic bottlenecks, inadequate infrastructure, and inconsistencies in enforcement practices.

Thirdly, four out of ten respondents cited financial strain resulting from penalties incurred due to transit bond violations imposing significant financial burdens on their businesses, eroding profit margins and jeopardizing sustainability of their businesses. They further indicated that the unpredictability of penalties introduces additional risk to business operations, making it challenging for customs agents and freight forwarders to forecast and manage their finances effectively.

Study findings also reveal that difficulty in coordinating with relevant authorities for transit bond documentation has a tangible impact on the operations of customs agents and freight forwarders. Approximately 37% of study respondents reported often grappling with a lack of timely responses, unclear communication channels, and inconsistent requirements, which significantly increased their administrative burdens, contributed to delays and heightened the risk of compliance errors.

Other key operational challenges stemming from the enforcement of transit bond penalties include disruption of supply chain logistics ranging from delays in delivery schedules to increased transportation costs (30%), a lack of clarity or understanding of the regulatory framework, leading to compliance challenges (22%), downstream effects on customer relationships due to delays or disruptions in transit clearance processes (11%).

Thus, the enforcement of the 3% penalty on transit bonds by the Kenya Revenue Authority has imposed several significant operational challenges on customs agents and freight forwarders in Kenya. As noted in the above discussion, key issues include increased administrative burdens, delays in transit clearance, financial strain from penalties, and difficulties in coordinating with relevant authorities. These challenges disrupt supply chain logistics, increase costs, and impact customer relationships, ultimately threatening the efficiency and sustainability of businesses within the sector.

4.5.2 Genuine reasons for delays in transit cargo

To further examine the operational challenges that customs agents and freight forwarders experience due to the enforcement of transit bond penalties by the Kenya Revenue Authority (KRA), the study sought to understand the common genuine reasons for delays in transit cargo.

According to the study findings (Figure 8), delays in transit cargo can occur due to various factors, some of which are beyond the control of customs agents and freight forwarders. These

delays can significantly affect the efficiency and effectiveness of transit operations, leading to potential financial penalties and disruptions in supply chains.

The study identified several key factors contributing to delays in transit cargo, which ultimately result in penalties. Approximately nine out of ten respondents attributed the transit delays to factors linked to the Kenya Revenue Authority (KRA) and other agencies, such as delayed customs inspections, delayed bond cancellations, and poor IT infrastructure causing prolonged system downtimes. These issues collectively contribute to the inefficiencies that result in extended transit times and subsequent penalties, which

significantly affect the operations of customs agents and freight forwarders.

During the focus group discussions (FGDs) and Key Informant Interviews (KIIs), respondents provided detailed accounts of these operational challenges. A common concern highlighted was the performance and reliability of KRA's Integrated Customs Management System (ICMS). One participant questioned why Kenya does not use ASYCUDA instead of the ICMS, noting that KRA insists the two systems can interface, despite persistent mapping challenges during interfacing. This indicates a preference among users for an alternative system that might offer better reliability and fewer issues with interfacing. Despite some positive aspects of the ICMS, such as its risk-profiling capabilities, the main challenge identified was system downtime.

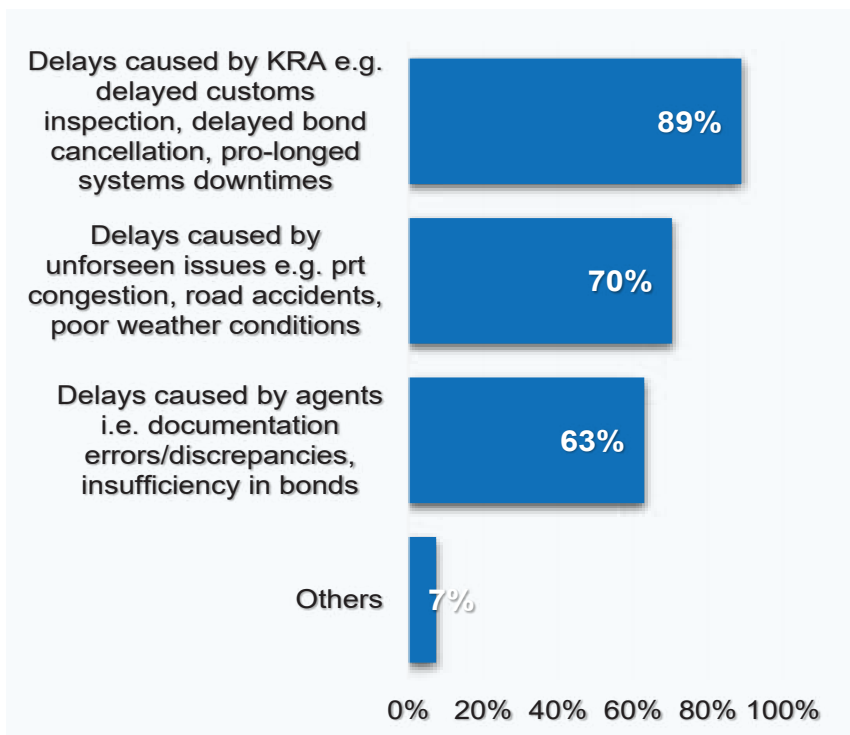


Figure 8: Perceived genuine reasons surveyed customs agents and freight forwarders cited contributing to delays in transit cargo (n=27)

According to the study respondent, when the ICMS is down, customs agents and freight forwarders face significant disruptions. In group discussions with customs agents and freight forwarders, they indicated that these technical issues often halt the entire clearance process,

"One of the questions that I've never known how to answer is, and maybe it's a Kenyan problem, why don't we use ASYCUDA Plus or ASYCUDA as opposed to KRA's Integrated Customs Management System (ICMS)? You understand? But KRA always say that's not the problem, that the two can be interface, that they're able to interface, but the interfacing also has mapping challenges. But we are happy with how ICMS has done away with the Document Processing Centre (DPC). The system also has a risk-profiling aspect in it, so there are good aspects of the ICMS. The only challenge for ICMS is the systems down time. When the systems are down you are just finished."

KII

Official, Shippers Council of Eastern Africa (SCEA)

as customs agents are unable to access the necessary documentation and approval systems.

These downtimes prevent timely customs inspections and bond cancellations, directly contributing to the inefficiencies noted in the survey. Customs agents and freight forwarders indicated that they are forced to wait until the systems are back online, during which time they incur additional storage and demurrage costs.

These delays also mean that the cargo remains in transit longer than allowed, resulting in penalties and financial losses for customs agents and freight forwarders, who are held accountable despite the root cause being system-related issues outside their control.

Additionally, the IT infrastructure's inadequacy, as highlighted by the poor interfacing and frequent system failures, compounds the problem. For example, a customs agent might have all documents ready for processing, but if the ICMS is down, they cannot proceed. This leads to a backlog of cargo, missed delivery deadlines, and strained client relationships. The resulting penalties and operational inefficiencies create a significant burden on the businesses of the agents and freight forwarders.

Customs inspections are a critical step in the transit process, ensuring that goods comply with EAC Customs regulations on transit. However, study findings from group discussions with customs agents and freight forwarders shows that delays in this process significantly impact transit times. Respondents indicated they often encounter significant delays due to the bureaucratic nature of customs verifications – a process involving multiple layers of approvals and paperwork, which slow down the clearance of goods.

For example, in a situation where a consignment is flagged for inspection, respondents indicated that the verification process by anti-counterfeit agencies can take several days to complete. Such a consignment flagged for verification may require input from health, safety, and anti-counterfeit agencies. According to the respondents, coordinating these inspections can take up to four days, during which the cargo is held up, extending the transit period. Such hold-ups due to multi-agency verification processes further delay the clearance and transit of goods. Moreover, they indicated that even a one-day delay can have significant repercussions.

This situation creates a challenging environment where delays lead to financial and operational penalties, straining the resources of those involved in the logistics chain.

"Under normal circumstances, after registering entry, we expect to exit the port within three to four days, with all processes completed. However, if there is an issue, the time frame can vary. For instance, if there is a hold by anti-counterfeit agency, the timeline becomes uncertain. They need to verify the goods, and this verification process involves multiple agencies and won't be completed in a day. It generally takes three to four days to arrange and conduct the verification. Additionally, they might require a certificate of origin from the supplier, which can take additional time as the supplier needs to understand the requirements and provide the necessary documents. At the border, long queues and bureaucratic processes can cause further hold-ups. Even a one-day delay can result in a letter of demand from customs for the delay."

FGD

**Customs agents and freight forwarders,
Mombasa border post**

The cumulative effect of these delays significantly increases the operational costs for customs agents and freight forwarders, impacting their profitability and efficiency.

At border posts such as Busia and Malaba, study respondents reported that the number of customs officers is often insufficient to handle the high volume of cargo efficiently. For example, during peak times, when there is a surge in the volume of goods being

imported and exported, respondents indicated that the officers on call are normally overwhelmed, leading to significant delays. The insufficient staffing results in long queues and extended hold-ups at the border. This delay directly affects the transit time of goods, thus exceeding the permissible period and attracting penalties. The financial burden of these penalties adds to the operational costs of customs agents and freight forwarders, making the logistics process more expensive and less predictable.

Additionally, interviewed customs agents and freight forwarders highlighted the delay in cancellation of transit bonds once the transit goods have reached the border. They indicated that the bond cancellation process can take weeks, tying up their financial resources. Thus, delayed bond cancellations limit the liquidity of customs agents and freight forwarders, affecting their ability to undertake new business. This delay not only incurs additional financial costs due to the penalties but also hinders their operational efficiency. The inability to promptly recover bond amounts exacerbates the financial strain on these operators.

A key informant interview (KII) with a stakeholder further illustrates these challenges. The respondent pointed out that KRA's reliance on manual methods for custom bond cancellation is a major issue.

For example, the respondent reported that customs officials often tell agents to proceed and promise to reconcile later, but this leads to significant issues when the time for reconciliation arrives. Agents are often forced to physically visit the KRA offices to sort out any discrepancies, which is time-consuming and inefficient. This manual process not only delays operations but also increases the likelihood of errors and additional penalties.

Despite KRA's attempts to address this through phased implementation, the respondent indicated that the process is hampered by challenges with auditors of the Certificate of Export (CoE), indicating that full resolution is still pending. The respondent indicated that the system configuration problem lies at the heart of these delays, hinting at the need for more robust technological solutions.

"The thing about KRA using manual method for custom bond cancellation - I think it's just a system configuration problem, and the KRA is doing in phases. But now that they have had challenges with the auditors of the Certificate of Export (CoE), I think its something they are going to embed appropriately. We engage KRA on a quarterly basis, and that's one of the issues we have put across for automatic bond cancellation. Yes. It's something we have put on the tables of KRA. I think something we need to, we are having a meeting with them next week, I think on the second, on the first thereabout, because we actually have quarterly meetings to present issues. The manual approach is very problematic, because the customs officials tell you, let it go we will reconcile later. That's the end of it. So, when the time comes for reconciliation, you have to go to KRA physically."

KII

Official, Shippers Council of Eastern Africa (SCEA)

Further, infrastructure issues emerged as a significant factor contributing to delays in transit cargo. These factors not only increase operational costs for customs agents and freight forwarders but also lead to penalties and potential contractual breaches.

According to the survey findings, 70% of customs agents and freight forwarders cited the region's infrastructure challenges, such as inadequate maintenance and capacity constraints, as major contributors to these delays. Additionally, port congestion, accidents, and road closures frequently disrupt cargo movements, leading to increased costs and complications for those involved in the transit process.

The discussion with customs agents and freight forwarders during focus group discussions (FGDs) provides deeper insights into these challenges. One significant issue mentioned is the

"The other significant issue, apart from accidents, is the mechanical breakdown of trucks due to the condition of the roads they travel on to reach their destination. For example, a truck may leave Mombasa in good condition but develop a mechanical problem along the way. This often requires a mechanic to come from a city like Nairobi, Mombasa, or any other major town, depending on where the truck has broken down. This situation is challenging, especially since transporters usually cite the poor road conditions as a contributing factor."

Within a year, we have experienced several incidents, the most recent being just yesterday. This involved transit cargo coming from Uganda meant for export. Due to bad weather and rain, six trucks got stuck along the way. Unfortunately, two of these trucks missed their target vessel. This leads to additional costs and complications, as the consignee might refuse to accept the cargo due to a breach of contract."

FGD

**Customs agents and freight forwarders,
Mombasa border post**

mechanical breakdown of trucks, which is often exacerbated by poor road conditions. For instance, a truck might leave Mombasa in optimal condition but encounter mechanical problems en route, necessitating the arrival of a mechanic from a major city like Nairobi or Mombasa. This situation is particularly challenging due to the poor state of the roads, which are frequently blamed for such breakdowns.

An illustrative example was provided in the FGD, where within a year, there were multiple incidents of mechanical

breakdowns, the most recent occurring just the previous day. Six trucks transporting transit cargo from Uganda were affected by bad weather and rain, leading to some trucks getting stuck and subsequently missing their target vessel. This not only resulted in additional costs but also created complications with the consignee who refused to accept the cargo due to a perceived breach of contract.

Moreover, the FGD data highlighted specific cases where the logistics of addressing mechanical breakdowns become complex and costly. One truck from Kenya broke down in Nairobi, requiring a mechanic from Mombasa to travel to Nairobi to fix the issue. Similarly, a truck from Kampala got stuck in Eldoret, necessitating a mechanic from Uganda to travel to Eldoret for repairs. Such scenarios underscore the logistical and financial burdens faced by

"Considering the costs, sending mechanics to these locations incurs significant expenses. Additionally, the necessary spare parts must be purchased. Moreover, delays in reaching Mombasa port result in penalties, with a late acceptance fee of one hundred dollars per container.

If you are granted late acceptance, there are still additional costs to consider. If the truck misses the vessel, you will have to pay for rollover fees and amend the vessel details. The worst-case scenario is that the consignee, the client on the receiving end, may refuse to accept the goods due to partial shipment.

Furthermore, missing a vessel incurs additional charges from the shipping line. They impose a fee of two hundred dollars for the unused space, which they consider a loss."

FGD
Customs agents and freight forwarders,
Mombasa border post

transport companies, including the costs associated with sending mechanics and purchasing necessary spare parts.

The delays in reaching the Mombasa port have additional repercussions, including late acceptance fees of one hundred dollars per container and potential costs for rollover fees and amending vessel details if the truck misses the vessel. The most severe consequence is when the

consignee refuses to accept the goods due to partial shipment, leading to further financial losses. Shipping lines also impose a fee of two hundred dollars for unused space if a vessel is missed, considering it a loss.

Approximately 63% of study respondents also identified documentation errors and discrepancies and insufficiency in bonds as crucial reasons for transit cargo delays. Specifically, the respondents reported that documentation errors, such as incorrect tariff classifications and missing or incomplete information, result in delays and increased administrative workload as customs agents must reclassify goods and verify critical details, leading to penalties and longer clearance times. Additionally, discrepancies in the quantity or value of goods and errors in bond documentation necessitate detailed inspections and audits, causing further delays, supply chain disruptions, and higher operational costs due to penalties for insufficient bonds. As earlier reported by a KRA official, the over-reliance on paper-based documentation is prone to errors and delays.

For example, the incorrect Harmonized System (HS) code classifications, inefficient verification processes, time-consuming rectification procedures, and the resulting operational disruptions and increased costs collectively create a challenging environment for these businesses. According to the respondents, a major challenge they face is the incorrect classification of goods using Harmonized System (HS) codes. Despite adhering to the correct HS codes, the interviewed customs agents reported that the National Targeting Center (NTC) often disputes the declarations they make. The Head Verification Officer (HVO) at the KRA is

"You'll find that we are using the correct Harmonized System (HS) codes, but the National Targeting Center (NTC), disputes our declaration. The Head Verification Officer (HVO) is supposed to seek for verification and provide recommendation to solve that problem. Last time while clearing a consignment for Forever Living, I was given a wrong HS code. The officer at Nairobi recommended that I should use a HS code for beverages, which was the wrong classification. So, the issue was that the HVO was supposed to do 100% verification and take a picture of the product, then recommend the product classification appropriately. But instead, the officer classified the product as alcohol, a huge error in the classification of the product which ballooned the cost to 1.2 million Shillings. So, it took time for me to sort out this mess, talking to different officers, a process that took over 2 days and eating into the transit time and making us incur penalties."

**FGD
Customs agents and freight forwarders,
Busia border post**

responsible for verifying these declarations and providing accurate recommendations to resolve any discrepancies. However, lapses in this verification process were reported, leading to significant operational disruptions.

In a case involving the clearance of a consignment, the customs agent was erroneously instructed by an officer in Nairobi to use an HS code meant for beverages, which was inappropriate for the product in question. This incorrect

classification of the product resulted in a substantial increase in costs, ballooning to 1.2 million Kenya Shillings. According to the respondent, the HVO was supposed to conduct a thorough verification, including taking a picture of the product and ensuring its proper classification. However, the failure to do so led to a significant error, underscoring a critical flaw in the verification process. The affected customs agent faced a complex bureaucratic process to rectify the error, involving multiple discussions with officers over two days. This significantly cut into the transit time, incurred penalties, disrupted the immediate transaction, and increased operational costs and strain.

The respondents also noted that insufficiency in bonds presented significant operational challenges for their businesses. They highlighted situations where the secured bonds covered less than the value of the goods being transported and instances where bonds expired because the transit period exceeded the stipulated 30 days. The study respondents reported that failure to secure adequate bonds can lead to non-compliance with customs regulations, resulting in delays in clearing goods through customs, incurring fines and penalties. Additionally, insufficient bonds mean customs agents and freight forwarders may have to allocate more funds than anticipated to cover potential penalties, reducing their available capital for other operational needs.

Further analysis of study data corroborates the above findings. When the study explicitly asked respondents if they could directly attribute their experiences regarding disruptions and delays

in cross-border trade operations and deteriorations in transit times to the enforcement of transit bond penalties (Figure 9), a considerable proportion (55%) responded in the affirmative.

Specifically, approximately 37% of surveyed customs agents and freight forwarders reported experiencing disruptions in cross-border trade operations directly linked to enforcing transit bond penalties. This finding highlights the tangible challenges businesses face, ranging from administrative hurdles to logistical delays, which significantly impact the smooth flow of goods



across borders. Furthermore, 55% of surveyed stakeholders highlighted that the enforcement of transit bond penalties contributed to delays in cross-border trade operations, leading to increased costs and inefficiencies. As earlier reported, they indicated that the delays impede the timely delivery of goods and incur additional costs for businesses, such as demurrage charges and inventory holding costs. Additionally, 29% of surveyed customs agents and freight forwarders observed a deterioration in transit times for goods since the enforcement of transit bond penalties. This finding underscores the tangible impact of penalty enforcement on the efficiency of transit processes, potentially

Figure 9: Operational challenges experienced by customs agents and freight forwarders due to the enforcement of transit bond penalties by the Kenya Revenue Authority (KRA) (n=27)

disrupting supply chains and hampering business operations.

While only 7% of surveyed customs agents and freight forwarders identified documentation and paperwork for transit bond adherence as a critical operational challenge, 41% reported that customs documentation procedures for goods subject to transit bond penalties were complex.

The specific examples of challenges faced by customs agents and freight forwarders in Kenya concerning documentation procedures related to transit bonds include: inconsistencies in documentation requirements across various customs processes (56%); issues with cross-border documentation coordination (56%); frequent changes in documentation requirements without sufficient notice (52%); challenges in obtaining and verifying supporting documents

(41%); limited training resources for customs agents on proper documentation procedures (41%); and inadequate communication channels for clarification on documentation issues (37%).

The perception of ineffective communication between KRA and customs agents and freight forwarders regarding transit bond penalty enforcement (37%) indicates potential areas for improvement in information dissemination, feedback mechanisms, or clarity in communication channels. As noted in previous discussions about operational challenges that customs agents face, the study respondents reported that ineffective communication often leads to misunderstandings, delays in resolving issues, and increased compliance burdens on customs agents and freight forwarders.

Similarly, dissatisfaction with the level of collaboration between customs agents, freight forwarders, and KRA in addressing operational challenges related to transit bond penalty enforcement (37%) highlights inter-agency cooperation and coordination deficiencies. However, this also presents a significant opportunity for improvement. The surveyed customs agents and freight forwarders noted collaboration's pivotal role in identifying and resolving operational challenges promptly, streamlining processes, and ensuring compliance with regulatory requirements.

4.5.3 Penalty assessment and perceived shortcomings in the existing penalty imposition mechanism

According to the study findings (Figure 10), the calculation of transit bond penalties typically involves several factors, reflecting a combination of temporal, cargo-related, reason-based, and procedural factors.

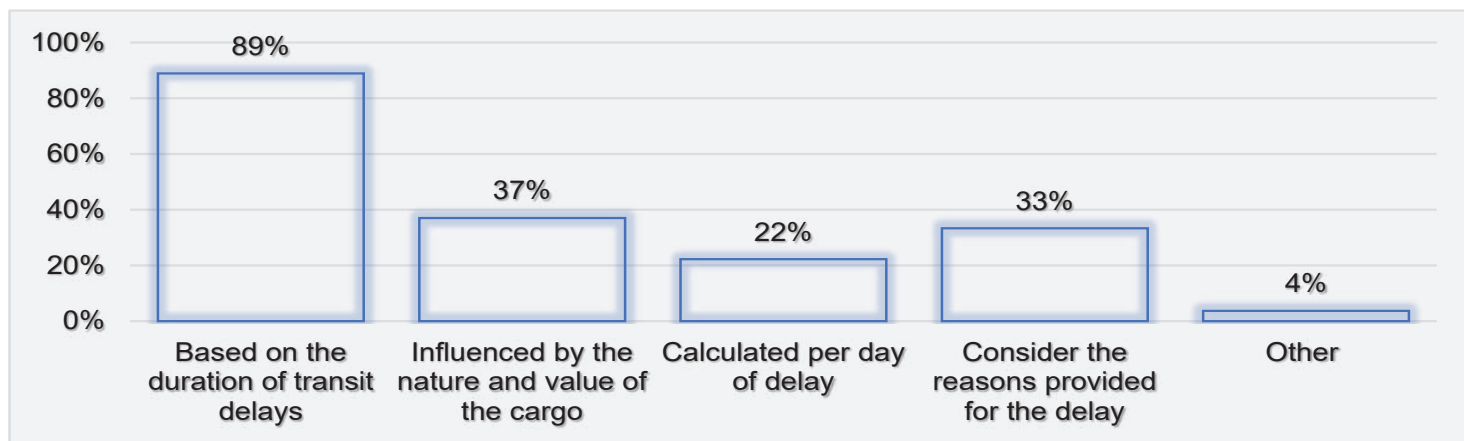


Figure 10: Perceived methods that KRA uses to assess transit bond penalties (n=27)

Specifically, nine out of ten surveyed customs agents and freight forwarders reported that KRA typically assesses transit bond penalties based on the duration of transit delays. This finding suggests that the time-based penalty assessment method is prevalent in the Kenyan context. A further four out of ten respondents indicated that the penalty amount may be influenced by the nature and value of the cargo (37%), reflecting a consideration of risk factors associated with different types of goods. Thus, based on these two most reported methods that KRA uses to assess transit bond penalties, the customs authority mainly ties bond assessments to temporal considerations and the nature and value of goods in transit.

Further, approximately 22% of respondents stated that transit bond penalties are often calculated per day of delay, suggesting a systematic approach to quantifying the cost of delays. Moreover, considering reasons for the delay in penalty assessment, as stated by 33% of study participants, highlights the possible utilization of procedural fairness and accountability in regulatory enforcement. Other minority respondents (4%) outlined a unique method for penalty calculation, where penalties are triggered when lodgements of cancellation vouchers exceed a stipulated period after the exit of the cargo.

As demonstrated, the variability in responses underscores a possible lack of standardized practices in penalty assessment within the industry. Further analysis of study data reinforces this observation. Surveyed customs agents and freight forwarders linked the challenges or shortcomings they perceive in the current system of imposing transit bond penalties to how KRA assesses the penalties.

The study findings show significant dissatisfaction among most surveyed customs agents and freight forwarders, with 63% reporting shortcomings in the existing penalty imposition mechanism. The study identified a central issue among customs agents and freight forwarders: the confusion regarding the computation of the transit bond penalty. According to a KRA official, many agents and forwarders are often unaware of the exact methodology used by the KRA to determine the penalties imposed on them. This lack of understanding often leads to significant frustration and disapproval of the penalty amounts, as the affected customs agents and freight forwarders feel they have been unfairly or arbitrarily penalized.

The KRA official noted that the authority always endeavours to clarify these issues by demonstrating how they calculate the penalties and supporting these calculations with the relevant regulations. By referring to the specific regulation that grants the Commissioner the authority to determine the penalty, the KRA seeks to assure customs agents and freight forwarders that the penalties are not arbitrary but are instead grounded in established legal frameworks.

Despite these efforts, the recurring confusion indicates that underlying issues remain in how the KRA communicates the calculations and the related relevant regulations to the stakeholders. Study findings show that the gap in understanding of the penalty computation methods among the affected agents leads to perceptions of lack of clarity, unfairness, inconsistency, and unpredictability in penalty impositions.

For example, according to seven out of ten study respondents, the current transit bond penalty regime lacks flexibility. They indicated that KRA's rigid regulations or bureaucratic procedures fail to accommodate legitimate reasons for delays, such as unforeseen circumstances or logistical challenges beyond their control, including adverse weather conditions or transportation accidents. A further six out of ten respondents perceived KRA as having insufficient mechanisms to appeal or contest penalty assessments, suggesting a lack of

"There is always confusion among customs agents and freight forwarders regarding the computation of the transit bond penalty. They are usually not aware of how the KRA arrives at the penalty imposed on them and are usually do not approve of the amount of the penalty. But we as KRA usually show them how the penalty is calculated, and support it with the relevant regulation that gives the Commissioner the power to determine the penalty."

KII
Official, Kenya Revenue Authority (KRA)

transparency and fairness in the penalty imposition process. Other challenges that respondents cited include difficulty in accurately determining responsibility for delays (53%) and limited communication and coordination among stakeholders (41%), hindering effective and timely problem-solving and collaborative efforts to resolve transit issues.

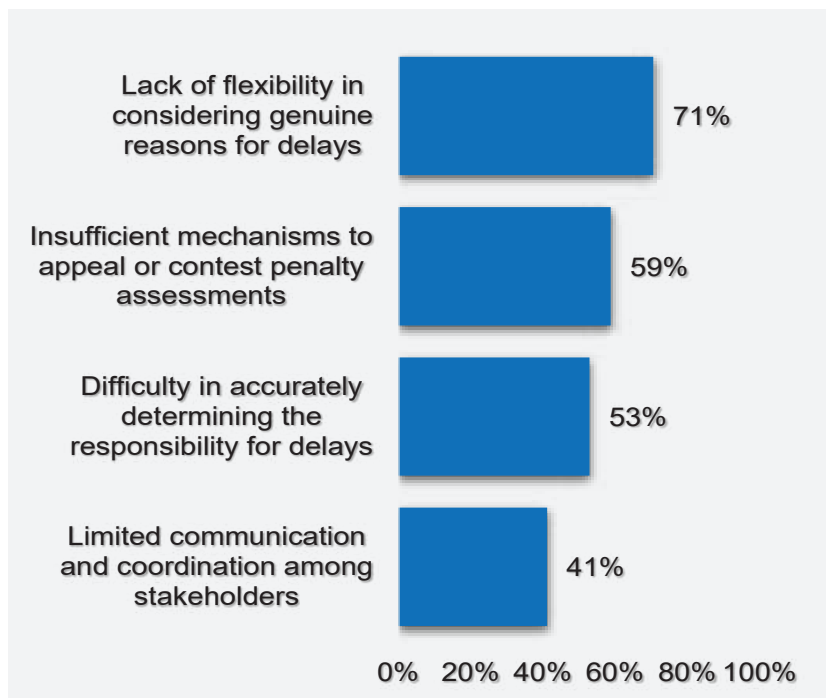


Figure 11: Perceived challenges or shortcomings surveyed customs agents and freight forwarders face in the current system of imposing transit bond penalties (n=21)

Thus, the survey findings (Figure 11) reveal a significant disconnect between the prevailing method of assessing transit bond penalties and the challenges faced by customs agents and freight forwarders in Kenya. The predominant view among 89% of respondents suggests that KRA primarily ties transit bond penalties to the duration of transit delays. This approach implies that KRA assesses penalties based on when cargo remains in transit beyond the stipulated timeframe.

The KRA’s emphasis on the duration of transit delays or the value of cargo as the basis for penalty assessment may contribute to the challenges highlighted by the surveyed participants, particularly the lack of

flexibility in considering genuine reasons for delays. The combination of these factors—penalties based on delay duration and potential influence of cargo characteristics—contributes to the perceived challenge of inflexibility in the current system of imposing transit bond penalties. The rigidity of the penalty assessment criteria leaves little room for customs agents and freight forwarders to mitigate penalties or appeal against perceived unfair assessments, especially when faced with genuine reasons for delays beyond their control.

4.5.4 Perceived impact of the transit bond penalty enforcement on the operational efficiency of cross-border trade

Study results (Figure 12) reveal divergent perspectives on the complexities inherent in regulatory enforcement within the context of cross-border trade. Approximately 30% of customs agents and freight forwarders expressed a negative view regarding the overall impact of transit bond penalty enforcement on the operational efficiency of cross-border trade. Conversely, around 44% of respondents held a positive outlook, thus providing a ray of optimism amidst the complexities of regulatory enforcement.

Thus, the study findings reveal a disparity in perceptions, reflecting the industry’s complex and diverse experiences and perspectives. While some study respondents view penalty enforcement as burdensome, others consider it necessary to ensure compliance and streamline operations.

The segment of respondents who perceived the impact of transit bond penalty enforcement negatively cited several reasons for their stance. Foremost among these reasons is the financial burden imposed by the penalty. Study respondents indicated that the additional 3% penalty escalated their operational costs, thus adversely affecting their bottom line. Moreover,

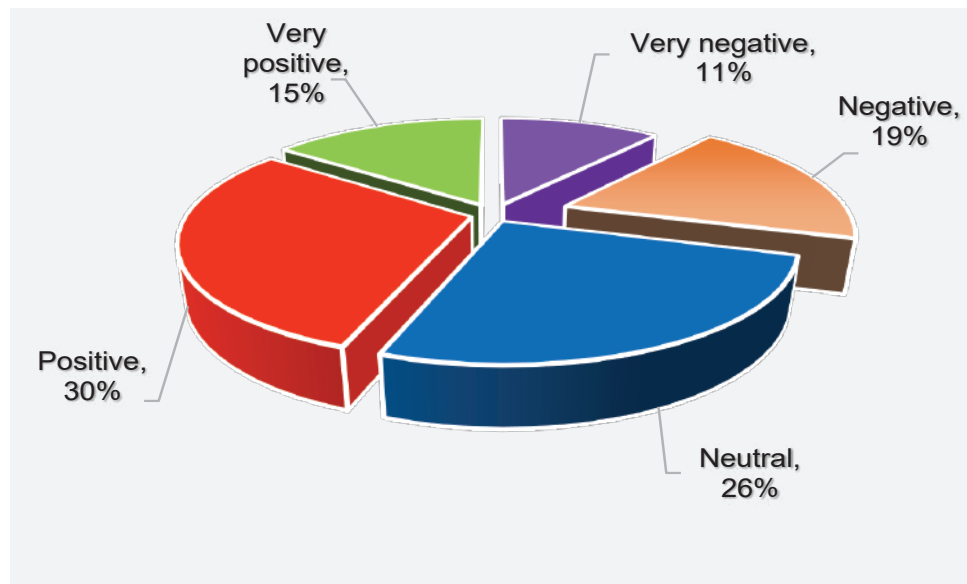


Figure 12: Proportion of customs agents and freight forwarders rating the overall impact of transit bond penalty enforcement on the operational efficiency of cross-border trade (n=27)

they reported that the penalty increased transit delays, leading to supply chain disruptions and hampering the timely delivery of goods. Thus, they indicated that the delays impeded operational efficiency and incurred additional costs for businesses, such as demurrage charges and loss of business opportunities.

Conversely, the cohort of respondents who viewed the impact of transit bond penalty enforcement

positively offered contrasting insights. Chief among these is the belief by the surveyed customs agents and freight forwarders that the penalty serves as a crucial deterrent against non-compliance. They indicated that imposing financial repercussions for violations incentivized industry players to adhere rigorously to transit bond regulations, thus promoting greater regulatory compliance and fostering a culture of accountability and professionalism within the industry. They further stressed that enforcing transit bond penalties ensured fair competition and market integrity, thus streamlining processes and enhancing operational efficiency.

4.5.5 Enforcement practices related to transit bond penalties

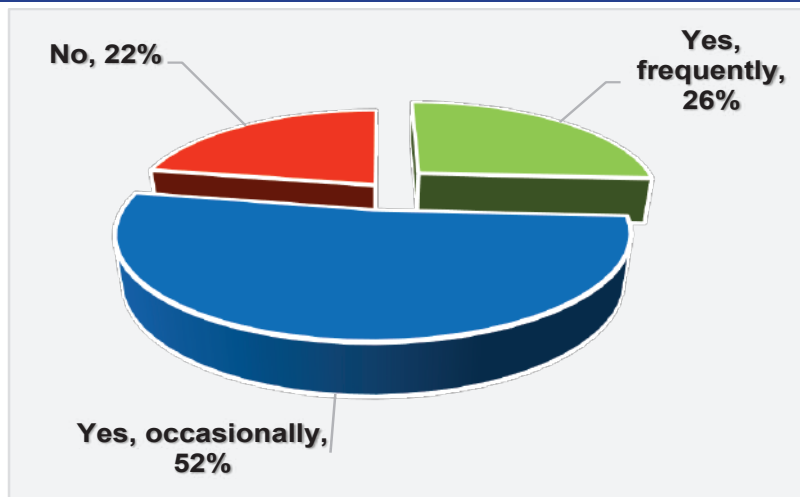


Figure 13: Proportion of customs agents and freight forwarders reporting encountering inconsistencies in the enforcement practices related to transit bond penalties (n=27)

Study findings (Figure 13) show that approximately eight out of ten surveyed customs agents and freight forwarders reported encountering inconsistencies in enforcement practices. According to the study respondents, inadequacies in communication, guidance, training for enforcement officers, and procedural clarity impede compliance efforts, undermine enforcement effectiveness, and create burdens for customs agents and freight forwarders.

Approximately seven out of ten study respondents cited specific types of inconsistencies in communication from KRA (71%), such as delayed responses, contradictory information, and unclear instructions. This points to deficiencies in information dissemination and clarity in communication channels between the KRA and stakeholders. The respondents stated that such inconsistent communication from the KRA often causes confusion amongst stakeholders, misinterpretation of regulations, and inconsistent application of penalty enforcement practices across different customs offices or regions.

The lack of updated and clear enforcement guidelines, as reported by 67% of study respondents, adds to the challenges customs agents and freight forwarders face in understanding and complying with enforcement procedures. According to the surveyed customs agents and freight forwarders, they always find themselves struggling to navigate regulatory requirements, leading to compliance errors and inconsistencies in enforcement practices.

Similarly, approximately 62% of study respondents indicated that the ambiguity in penalty regulations leaves room for interpretation and discretion in penalty enforcement, thus resulting in inconsistent application of penalties and uncertainty for businesses operating in customs clearance. Further, 48% of study respondents perceive enforcement officers as having not received adequate training, thus resulting in reported inconsistent and biased application of enforcement procedures and decisions.

When the study asked sampled customs agents and freight forwarders to suggest improvements or changes in the enforcement practices to promote fairness and consistency for transit bond penalties (Table 3), a common theme woven throughout their top three recommendations was the emphasis on transparency, accountability, and standardization.

Table 3: Proposed specific improvements or changes in the enforcement practices to promote fairness and consistency for transit bond penalties (n=27)

Suggested improvement	%
Clearer communication of penalty calculation methods	78%
Increased transparency in penalty assessment procedures	74%
Standardized penalty criteria for different violations	74%

Enhanced collaboration between customs agents and KRA in penalty resolution	63%
Implementation of an appeals process for penalty decisions	63%
Timely and consistent feedback on penalty disputes	59%
Improved communication on changes to penalty regulations	59%
Regular training for customs agents on penalty enforcement policies	52%
Review and update of penalty guidelines based on industry feedback	52%
Periodic audits of enforcement practices to ensure adherence to guidelines	52%
Establishing a dedicated hotline or communication channel for penalty-related queries	41%

The high percentage of respondents advocating for more transparent communication of penalty calculation methods (78%) underscores the importance of transparency and understanding in penalty enforcement processes. Study respondents stated that transparent communication of how KRA calculates penalties will help them better comprehend the rationale behind penalty assessments, enabling them to anticipate potential penalties and take appropriate actions to mitigate non-compliance risks.

Similarly, the call for increased transparency in penalty assessment procedures (74%) highlights the need for openness and accountability in the enforcement process. Study respondents perceive the application of penalties as lacking consistency and fairness. Moreover, they reported that transparency will foster trust between customs authorities and stakeholders, thus enhancing compliance levels and promoting a level playing field for businesses in cross-border trade.

Approximately 74% of surveyed customs agents and freight forwarders recommended standardized penalty criteria for different violations to address uniformity in applying penalties. They indicated that the standardized criteria would help ensure uniformity in penalty enforcement across different customs offices or regions, minimizing disparities in penalty assessments and enhancing predictability for stakeholders. Thus, they will promote fairness, reduce ambiguity, and facilitate compliance with regulatory requirements.

Other recommendations to address the challenges encountered in penalty enforcement include enhanced collaboration between customs agents and the Kenya Revenue Authority (KRA) in penalty resolution, implementation of an appeals process for penalty decisions, timely and consistent feedback on penalty disputes, improved communication on changes to penalty regulations, regular training for customs agents on penalty enforcement policies, review and update of penalty guidelines based on industry feedback, periodic audits of enforcement practices to ensure adherence to guidelines, and establishing a dedicated hotline or communication channel for penalty-related queries.

4.5.6 Training programs to enhance compliance and avoid transit bond penalties

Training programs represent a proactive approach to addressing compliance challenges associated with transit bond penalties that customs agents and freight forwarders face. By

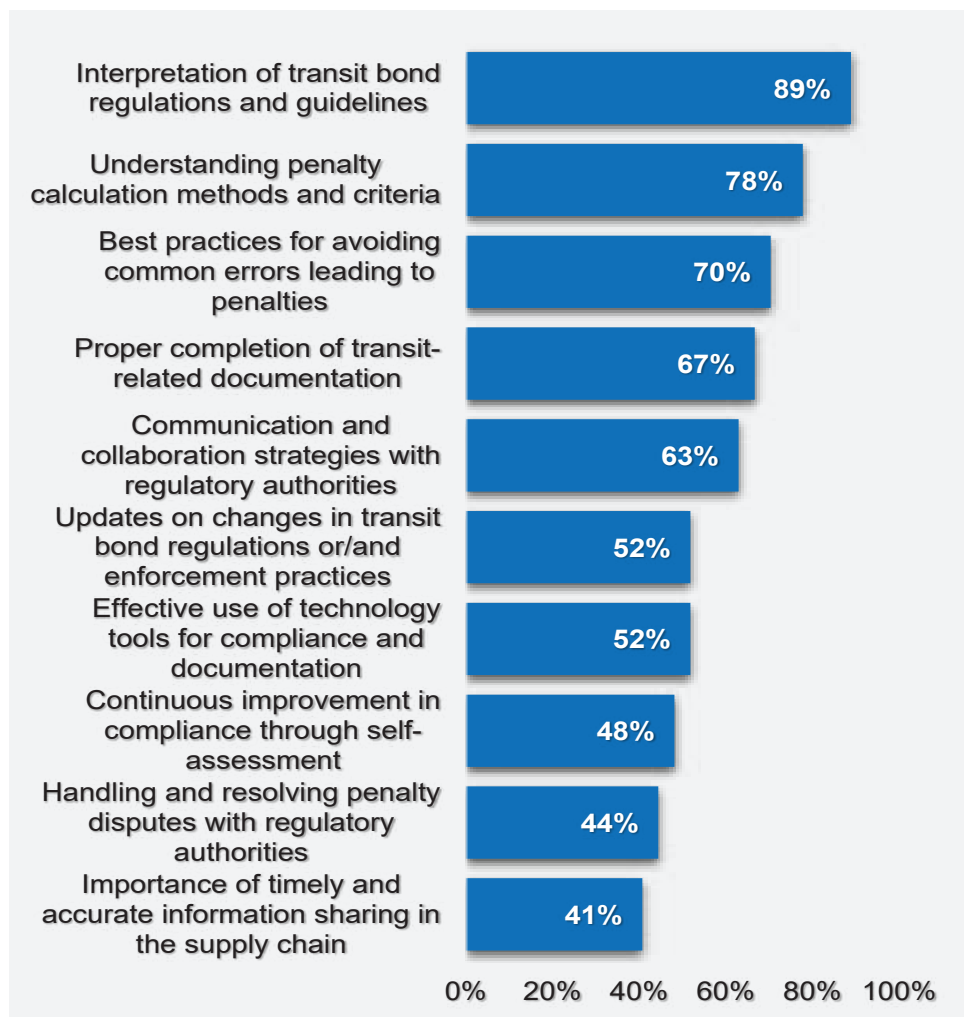


Figure 14: Recommendations on the specific topics or areas that should be addressed in training programs to enhance compliance and avoid transit bond penalties (n=27)

equipping customs agents and freight forwarders with critical knowledge, skills, and resources to navigate regulatory requirements effectively, training programs have the potential to enhance compliance, minimize financial risks, and promote integrity in the cross-border business. Study findings (Figure 14) reveal training needs in five critical areas: the interpretation of transit bond regulations and guidelines; understanding penalty calculation methods and criteria; best practices for avoiding common errors leading to penalties; proper completion of transit-related documentation; and communication and collaboration strategies with regulatory authorities.

As reported earlier, one of the predominant issues highlighted by the respondents as a crucial challenge in minimizing transit bond penalties and associated costs was the lack of regulatory clarity, cited by six out of ten study participants. Respondents linked unclear regulatory guidelines or inconsistent application of regulations by authorities to confusion, increasing the risk of unintended non-compliance.

Aligned with the above finding, approximately 89% of surveyed customs agents and freight forwarders recommended that the training programs should focus on equipping them with a comprehensive understanding of transit bond laws and regulations and guidelines, mainly on educating them about the legal framework governing transit bonds, key provisions, requirements, and compliance obligations. They indicated that enhancing their interpretation skills will ensure they comply with regulatory requirements and avoid penalties resulting from misinterpretation or misunderstanding of transit bond regulations.

Approximately 78% of the respondents further stated that the training programs should provide in-depth insights into penalty assessment methods and criteria. They believe that this knowledge will not only enhance their understanding of how KRA calculates penalties, the factors that influence penalty assessments, and the criteria used by regulatory authorities to determine penalties for non-compliance, but also prepare them to anticipate potential penalties, assess compliance risks, and take proactive measures to avoid penalties through adherence to regulations and best practices.

A further seven out of ten respondents emphasized the need for training programs to cover best practices in transit bond operations. These practices include identifying and addressing common compliance pitfalls, understanding regulatory requirements, and implementing robust internal controls. A further 67% of respondents highlighted the importance of proper completion and management of transit-related documentation. They noted that adherence to specific documentation requirements for transit bonds, including completion procedures, document verification processes, and record-keeping practices, will ensure transparency, accuracy, and traceability in transit operations, thereby reducing the likelihood of penalties.

The surveyed customs agents and freight forwarders also emphasized the crucial need to understand how to interact with regulatory authorities, seek clarification on regulatory issues, and address compliance concerns effectively. They believe that fostering effective communication and collaboration strategies with the KRA would not only foster positive relationships with regulatory authorities but also demonstrate their respect for the regulatory process, facilitate compliance, and minimize penalties.

4.6 Objective 5: To establish the amount of time spent by Customs Agents and Freight Forwarders in resolving penalties on Transit Bonds disputes

Introduction

Resolving penalties on transit bond disputes is a time-consuming and resource-intensive process for customs agents and freight forwarders. When a customs authority imposes penalties, agents must engage in extensive administrative work to gather the necessary documentation and evidence to contest the fines or negotiate settlements. This work often involves detailed communication with customs authorities, legal consultation, and sometimes engaging in lengthy appeals processes. The time spent on these activities can significantly detract from other operational responsibilities, leading to delays in the movement of goods and increased operational costs.

One key study objective in investigating the impact of transit bond penalties on the operations of customs agents and freight forwarders in Kenya is to establish the amount of time spent by these stakeholders in resolving penalties on transit bond disputes. This objective seeks to quantify the time and resources dedicated by customs agents and freight forwarders to navigate the intricate processes involved in disputing or negotiating penalties imposed on transit bonds. By systematically assessing the duration and complexity of these dispute resolution procedures, the study aims to shed light on the operational burdens imposed on these stakeholders and identify opportunities for streamlining penalty resolution mechanisms.

Summary of findings

- 1. Time Variability in Dispute Resolution:** The study found significant variability in the time spent resolving transit bond penalty disputes, ranging from a few hours to several years. 44% of customs agents and freight forwarders spent more than 10 hours on these disputes, while 56% spent less than 10 hours. The duration depended on case complexity and operational factors, with some cases, such as those requiring stringent scrutiny by the Kenya Revenue Authority (KRA), taking up to eight years to resolve.
- 2. Lack of Specific Tracking:** Insights from the Northern Corridor Transit and Transport Coordination Authority (NCTTCA) highlighted a gap in data collection. While delays are recorded, the specific time spent resolving transit bond penalty disputes is not explicitly tracked. Offenses related to penalties are managed internally and not documented as discrete data points, obscuring the true extent of time and resources expended on these issues.
- 3. Documentation and Communication Challenges:** The majority of the time spent on resolving disputes involved reviewing extensive documentation and communicating with authorities. Nearly 80% of surveyed customs agents and freight forwarders cited the complexity and volume of paperwork as major time consumers. Additionally, 74% reported delays due to unclear or inefficient communication channels with customs authorities.
- 4. Underlying Operational Challenges:** Inefficiencies in cross-border trade were attributed to several underlying issues: inadequate documentation, inefficient communication, inconsistent regulatory enforcement, and limited resources. These factors collectively

prolonged the resolution of transit bond penalty disputes, highlighting significant operational hurdles for customs agents and freight forwarders.

4.6.1 Time spent resolving disputes on transit bond penalties

Examining the amount of time customs agents and freight forwarders spend resolving penalties on transit bond disputes offers an opportunity for the study to investigate further the operational challenges and impacts of regulatory frameworks on trade facilitation and logistics management.

As noted earlier in other sections of this report, transit bonds are critical to guarantee compliance with customs laws and regulations that mitigate the risk of revenue loss or illicit trade activities while transporting goods through a country. However, its implementation can lead to challenges for industry stakeholders, including increased administrative burdens, financial implications, and operational disruptions. One of the primary consequences of the 3% penalty is the escalation of disputes between customs agents, freight forwarders, and customs authorities regarding bond compliance and penalty assessments. Resolving these disputes requires considerable time and resources, involving extensive documentation, communication with relevant authorities, and potentially legal proceedings.

An interview with a Northern Corridor Transit and Transport Coordination Authority (NCTTCA) official provided significant insights into the complexities of managing transit bonds and the associated penalties for customs agents and freight forwarders in Kenya.

The official highlighted the role of the NCTTCA in collecting trade statistics, including the movement times of transit cargo. However, the respondent reported that the observatory does not specifically track the time spent by agents on resolving transit bond penalty disputes. This gap in the data collection process means that while delays are recorded, the underlying causes, such as penalties or offenses, are not directly documented in the system.

"As Northern corridor, we have a transport observatory which picks out information on these trade statistics including the time of movement of transit cargo, but it does not specifically pick out the time spent by agents to resolve incurred transit bond penalties. They don't document offenses, since offenses are usually internal management of, let's say, a border station or a particular KRA office. So, the offenses do not reflect specifically in the system. They reflect generally as a delay, that is by how many days the transit period has expired beyond the stipulated 30 days as per East African Community Customs Management Regulation, 2010. It picks out all the delays, then it is the revenue authority's duty to explain to us what was the cause of the delay."

**KII
Official, NCTTCA**

The official further noted that customs offenses related to transit bond penalties are typically managed internally within border stations or Kenya Revenue Authority (KRA) offices. Consequently, these offenses do not appear as discrete data points in the system but rather manifest as general delays. According to the East African Community Customs Management Regulation, 2010, the stipulated transit period is 30 days. Any delays beyond this period are recorded, and it is up to the revenue authority to explain the causes of these delays. The study noted that this indirect method of capturing delays does not provide a clear picture of the specific time spent on handling penalties.

Additionally, the NCTTCA official discussed the relevance of Service Level Agreements (SLAs) between revenue authorities and their clients. According to him, the SLAs typically stipulate a two-day period for managing transit bond penalty offenses. Therefore, in the context of the SLAs, the expectation is that resolving penalties should not exceed two days, suggesting a benchmark for evaluating the efficiency of penalty management.

"But the issue that relates to penalties, is more of what has got to do with the Service Level Agreement (SLAs) of revenue authorities - what is the Service Level Agreement, what is the client proposition. For example, we know that most of the SLAs talk of two days for transit bond penalty offense management - so it is the common thing that anything more than two days is abnormal based on the SLA. So, in this case I will take two days for management that relates to transit penalties."

**KII
Official, NCTTCA**

From this discussion, it is evident that the actual time spent by customs agents and freight forwarders in resolving transit bond penalties is not explicitly tracked or documented in the current system. Instead, it is inferred

from the general delays recorded and the expectations set by SLAs.

Overall, the findings from the survey and the FGD demonstrate that while the 3% penalty on transit bonds poses a considerable burden, the impact is not uniform. The time spent resolving

disputes ranges from a few hours to several years, influenced by the specifics of each case and the operational context. As shown in Figure 15, a considerable proportion of customs agents and freight forwarders (44%) of surveyed customs agents and freight forwarders reported spending more than 10 hours resolving these disputes while 56% spent less than 10 hours.

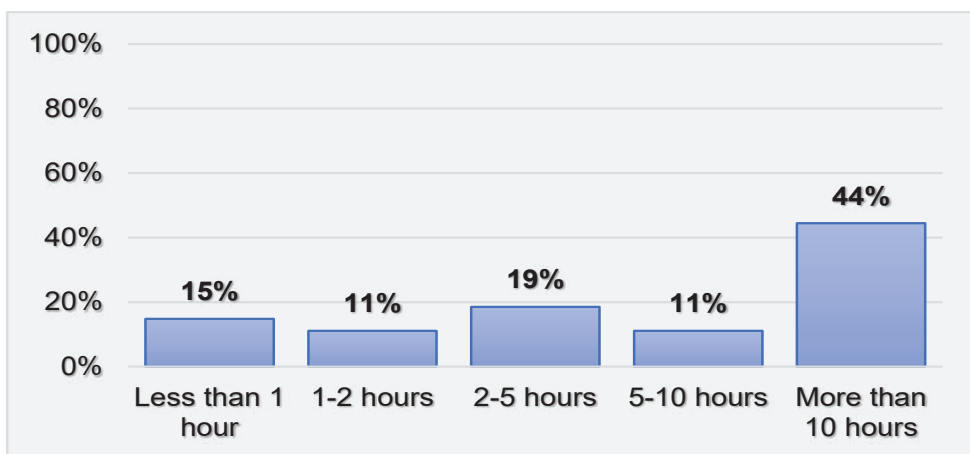


Figure 15: Amount of time customs agents and freight forwarders spend per month on resolving Transit Bonds disputes (n=27)

A focus group discussion (FGD) with customs agents and freight forwarders further illuminates the variability in resolving these issues. One of the customs agents highlighted the variability in the time required to resolve penalties on transit bond disputes, indicating that the duration is heavily dependent on the complexity and specifics of each case.

For example, one particularly complex case took eight years to resolve. The respondent attributed the prolonged duration to the complexity and severity of the case, as well as the stringent scrutiny by the KRA. The case required constant follow-up, including tasks such as renewing passwords and issuing licenses, all of which had to be methodically managed to ensure compliance. The time-intensive nature of such cases not only hampers the efficiency of customs agents and freight forwarders but also highlights the bureaucratic and procedural challenges they face.

However, not all disputes are as time-consuming. According to the respondents, some disputes can be resolved within a much shorter timeframe, such as a week or even a single day. They indicated that the efficiency of the resolution depends largely on factors such as the

"The amount of time customs agents and freight forwarders spend resolving penalties on transit bond disputes varies significantly. It depends on the specific case being handled by the KRA. For instance, one particular case we resolved this year, although under duress, took eight years to finalize. This lengthy period was due to the complexity and severity of the case, with officers often indicating that such cases could result in severe consequences, such as someone losing their job.

The time customs agents and freight forwarders spend resolving penalties on transit bond disputes can vary widely. In one instance, resolving the issue took eight years. This was due to the need to renew passwords and issue licenses, all while ensuring the matter was followed up diligently. The process was completed under duress, as there was no alternative for shifting to ICMS without resolving the issue.

Some cases, however, can be resolved much more quickly. For example, some disputes may be settled within a week, depending on the promptness of document submission and communication. Delays can occur when emails are not answered in a timely manner, or if key personnel are unavailable. In other cases, resolutions might take a month or even just a day. The duration ultimately depends on the specifics of each case and the circumstances at the time."

**FGD
Customs agents and freight forwarders,
Lunga lunga Border post**

promptness of document submission, timely responses to emails and the availability of key personnel. Delays often arise when there is a lack of timely communication, such as unanswered emails or the unavailability of essential staff. Thus, delays occur due to lapses in communication or the unavailability of necessary staff, extending the resolution.

These contrasting examples underscore the significant variability in the time required to resolve penalties on transit bond disputes. While some cases may drag on for

years due to their complexity, others can be swiftly settled, highlighting the diverse operational challenges faced by customs agents and freight forwarders. This variability can have substantial implications on the efficiency and effectiveness of their operations, often consuming considerable resources and time.

Furthermore, approximately 30% of study respondents perceive the procedures for handling transit bond disputes as highly complex. As corroborated in other sections of this report, procedural complexities include a lack of clarity in procedures, inconsistencies in regulations, lengthy documentation requirements, and complex communication channels.

Specifically, approximately 63% of surveyed customs agents and freight forwarders cited a lack of clarity in procedures as a primary hurdle in resolving penalty disputes, underscoring the ambiguity surrounding the regulatory framework governing transit bonds. The respondents indicated that the lack of clarity led to confusion and inefficiencies, impeding timely dispute resolution and prolonging operational disruptions for industry stakeholders.

Furthermore, inconsistencies in regulations emerged as a pervasive issue, with 59% of study respondents citing this as a significant procedural complexity. The surveyed customs agents and freight forwarders indicated that the inconsistencies often introduced uncertainties and ambiguities when seeking to resolve penalty disputes, fuelling disputes and hindering compliance efforts.

According to 56% of the study respondents, lengthy documentation requirements posed a crucial barrier. They reported that the paperwork for resolving transit bond disputes consumed valuable time and resources and added complexity to the process.

A further 52% of the study respondents attributed delays in resolving penalties on transit bonds disputes to complex communication channels. They indicated that communication channels between customs authorities and industry stakeholders impeded the timely exchange of information and hindered effective collaboration, thus increasing dispute resolution delays, perpetuating operational disruptions, and eroding trust between stakeholders.

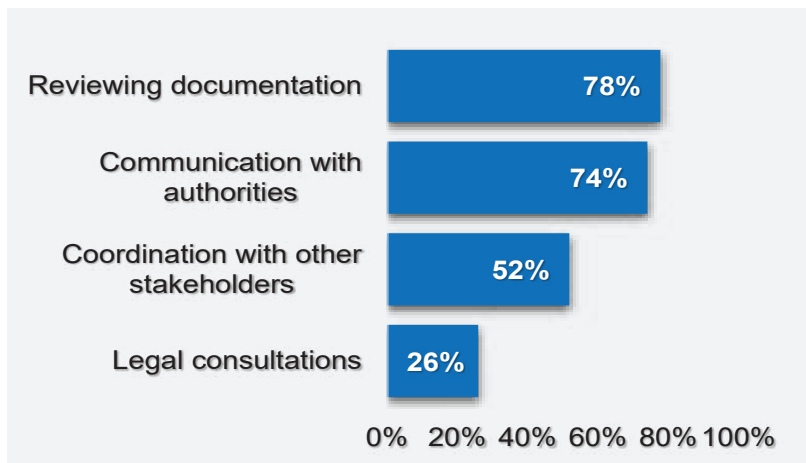


Figure 16: Procedural complexities contributing to delays in resolving penalties on Transit Bonds disputes (n=27)

As shown in Figure 16, nearly eight out of ten surveyed customs agents and freight forwarders attributed the majority of time spent on resolving penalty disputes to reviewing documentation. This indicates the complexity and voluminous nature of the paperwork involved in customs processes. Customs agents and freight forwarders reported meticulously scrutinizing various documents during dispute resolution to identify discrepancies or errors that may have led to the imposition of penalties. A significant

portion of time was also spent on communicating with authorities regarding disputes on transit bond penalties. According to 74% of the respondents, lack of clarity or transparency in the communication channels between stakeholders and customs authorities leading to delays in responses or unclear instructions, prolong the resolution process.

A further one half of the respondents reported that they also spent time coordinating with other stakeholders to resolve penalty disputes. According to the respondents, delays or inefficiencies in coordinating activities with other stakeholders, such as transporters or regulatory agencies, impeded the timely resolution of disputes.

While legal consultations were cited by a smaller proportion of respondents (26%), they remain a notable aspect of resolving disputes related to transit bond penalties. Customs agents and freight forwarders reported having sought expert legal advice to navigate through the elaborate regulatory requirements. However, they indicated that they prioritized other avenues for dispute resolution before resorting to legal intervention.

4.6.2 Challenges encountered during the resolution of penalties on transit bond disputes

The study also aimed to shed light on the underlying issues hindering the efficiency of cross-border trade in Kenya by scrutinizing the prevalent challenges encountered during the resolution of penalties on transit bond disputes. Study results show that the most common challenge was the inadequacy of information or documentation, as reported by 63% of surveyed customs agents and freight forwarders, which accounted for a substantial amount of the time spent on dispute resolution. The lack of complete or accurate documentation, often

due to inconsistencies in information provided by shippers, data entry errors, or deficiencies in the documentation management systems, led to prolonged dispute resolution processes.

The study's findings underscore the impact of inefficient communication channels on the time spent on dispute resolution. Approximately 59% of the study respondents identified this as a key challenge. The lack of clarity, timeliness, or accessibility in communication between customs authorities and stakeholders, often due to poor communication methods and bureaucratic bottlenecks, significantly prolonged the dispute resolution processes.

The study further revealed significant challenges arising from discrepancies in regulations, which frequently impede the resolution of penalties on transit bond disputes. According to 63% of surveyed customs agents and freight forwarders, perceived inconsistent interpretation or enforcement of regulations by customs authorities often leads to confusion and delays in compliance.

Notably, one out of three respondents highlighted limited resources encompassing constraints related to human resources, financial capabilities, and technological infrastructure necessary for effectively and efficiently managing transit bond disputes as a notable challenge faced by customs agents and freight forwarders.

4.6.3 Stakeholder experiences on the subject matter of Penalties on Transit Bonds

Study findings show that eight out of ten surveyed customs agents and freight forwarders had observed discrepancies between the well-established penalty enforcement procedures and their actual implementation. This finding highlights a substantial gap in the applications of Customs laws relating to transit, potentially leading to confusion, inefficiencies, and disputes in penalty enforcement processes. Study respondents attributed the observed discrepancies to the inadequate training of Customs officials, institutional bottlenecks, or procedural ambiguities. Notably, the discrepancies between established procedures and their implementation highlight systemic issues within the regulatory framework that further complicate compliance and enforcement efforts.

The transparency of penalty enforcement practices plays a crucial role in shaping stakeholders' perceptions of regulatory compliance. If customs agents and freight forwarders perceive enforcement practices as not transparent, it can exacerbate existing challenges and undermine trust in regulatory authorities. Accordingly, 45% of study respondents perceived the enforcement practices employed by the KRA in imposing transit bond penalties as not transparent. The customs agents and freight forwarders expressing concerns regarding the transparency and fairness of penalty enforcement processes cited a lack of clarity in penalty assessment criteria, inconsistent application of penalties, and limited avenues appeal as the critical factors contributing to the perceptions of opacity in enforcement practices.

Due to observed discrepancies between the established procedures for penalty enforcement and the application, study results show that 26% of surveyed customs agents and freight forwarders perceive complying with transit bond regulations as difficult. The respondents highlighted the complexity of regulatory frameworks, inconsistencies in enforcement practices, and the adequacy of support mechanisms for compliance as the chief reasons for compliance difficulty. The perception of compliance difficulty directly influences stakeholders' attitudes towards regulatory enforcement practices. When customs agents and freight forwarders

perceive complying with transit bond regulations as difficult, it can breed scepticism and mistrust towards enforcement authorities. Consequently, stakeholders may be more inclined to question the fairness and transparency of KRA penalty enforcement practices.

As depicted in Figure 17, the above study findings reveal an interconnected relationship. Perceptions of compliance difficulty influence attitudes towards enforcement practices, which in turn affect stakeholders' trust and cooperation in regulatory compliance efforts. This underscores the need for a comprehensive and holistic approach that addresses regulatory clarity, transparency, accountability, and capacity-building initiatives.

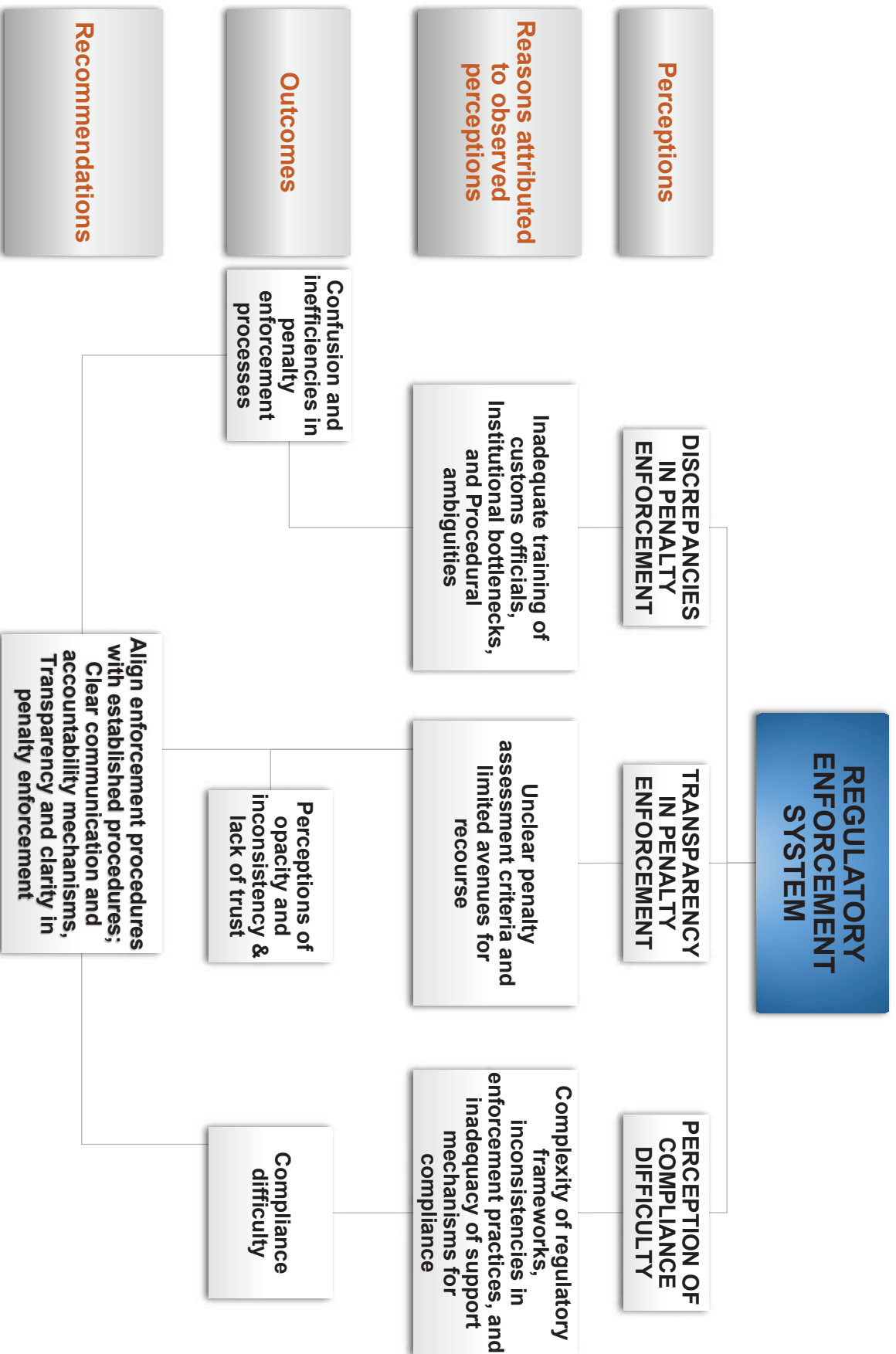


Figure 17: Illustration of the interconnectedness of the study observations of the KRA's penalty enforcement practices, transparency, and stakeholders' perception of compliance with transit bond regulations

This section herein presents the conclusions of the study.

- A. **Regulatory impact and need for reform:** The stringent 3% penalty on transit bonds enforced by the Kenya Revenue Authority (KRA) significantly escalates operational costs for customs agents and freight forwarders, placing Kenyan businesses at a competitive disadvantage compared to regional counterparts enjoying a more friendly transit corridor. This increased cost of compliance directly affects profitability and hampers the ability of Kenyan businesses to compete effectively in the cross-border trade market. There is a critical need for regulatory review and potential reforms to level the playing field and reduce the financial burden on Kenyan customs agents, freight forwarders and businesses engaged in cross border trade.
- B. **Operational inefficiencies and technological gaps:** Kenyan customs agents, freight forwarders and businesses engaged in cross border trade are subjected to significant inefficiencies and technological shortcomings, such as the lack of electronic seals, automated countdown systems and EAC systems integration challenges. These gaps lead to substantial administrative burdens, delays, and higher compliance costs. The manual tracking and periodic physical inspections of transit goods increase the risk of errors and complicate the management of transit timelines. Technological advancements and system upgrades are urgently needed to streamline customs processes, reduce administrative loads, and enhance overall operational efficiency.
- C. **Legislative constraints and system interoperability:** The EAC Customs laws including the transit provisions under the East African Community Customs Management Regulations (EACCMR) 2010 does not empower the Commissioner to waive transit bond penalties, exacerbating financial strain and operational complexity for customs agents and freight forwarders. Additionally, the lack of interoperability between KRA's Integrated Customs Management System (iCMS) and regional systems like ASYCUDA hinders efficient customs processing, resulting in manual data transfer and approval processes that create further inefficiencies and delays. Legislative amendments and enhanced system integration are necessary to improve customs operations and reduce financial and operational burdens on businesses.
- D. **Financial and reputational impacts:** Transit bond penalties and procedural inefficiencies within the KRA significantly increase the cost of doing business, directly affecting the reliability and profitability of customs agents and freight forwarders. These challenges lead to operational hold-ups, increased penalties, and extended delivery times, resulting in

strained client relationships and potential business loss. The compounded effects of these financial and operational challenges underscore the need for effective penalty management, compliance strategies, and systemic improvements to support the sustainability and competitiveness of the industry.

- E. **Infrastructural and procedural reforms:** Multiple factors, including delayed customs inspections, slow bond cancellations, inadequate IT infrastructure, and regional infrastructural challenges, cause significant delays in transit cargo. The frequent downtimes of the ICMS and lack of adequate infrastructure further exacerbate these delays. Bureaucratic processes and insufficient staffing at key border posts, along with poor road conditions and documentation errors, contribute to disruptions of transit flows.

Recommendations

Based on the comprehensive analysis and findings derived from this study, the following actionable recommendations are proposed.

A. Regulatory review and reform of transit bond penalties

Recommendation: Conduct a comprehensive review of the 3% transit bond penalty enforced by the Kenya Revenue Authority (KRA).

Actions:

- a) FEAFFA/ KIFWA should champion the establishment of a task force to evaluate the financial impact of the penalty on transit bond on in the Northern Corridor and compare it with other corridors such as Central corridor;
- b) FEAFFA / KIFWA and the relevant industry associations to initiate discussions with EAC Secretariat, EALA legislators and responsible government ministries to lobby East Africa Legislative Assembly (EALA) to reduce the penalty on transit bond rate or introduce a tiered penalty system based on risk assessment;
- c) KRA should engage all stakeholders in the Northern Corridor, including Customs agents, freight forwarders, and business associations, to gather feedback and ensure any proposed transit reforms align with industry needs;
- d) FEAFFA/ KIFWA should champion the implementation of a pilot program to test the impact of the proposed reduced transit bond penalties on the competitiveness and operational costs of Customs agents and freight forwarders and other logistics service providers (LSP).

B. Technological advancements and system upgrades

Recommendation: Invest in technological solutions to streamline customs operations and reduce compliance costs.

Actions:

- a) KRA should upgrade the Integrated Customs Management System (iCMS) incorporate automatic bond cancellation feature as well as automated countdown system feature that tracks and sends notifications alerts of days lapsed for transit cargo exit. The upgrade should also be done to reduce prolonged iCMS system downtimes;
- b) KRA should procure more electronic seals to smoothen transit flows;
- c) EAC Revenue Authorities should work in collaboration with the EAC Port Authorities to set clear timelines and milestones for the integration of their respective Customs and Port systems;
- d) KRA should upgrade iCMS to improve interoperability with regional systems like ASYCUDA world. According to UNCTAD, ASYCUDA system is perfectly able to communicate through extensible Markup Language (XML) messages with all systems that are compatible with the WCO data model;
- e) KRA should conduct regular training sessions for Customs officers including the Rapid Response Unit (RRU) to respond well to transit queries;
- f) EAC Revenue and Port Authorities should develop a comprehensive IT infrastructure plan to address current gaps and future needs.

C. Legislative amendments to the EAC Customs laws on transit

Recommendation: Advocate for legislative amendments to the transit legal provisions under the East African Community Customs Management Regulation (EACCMR) 2010 as well as other EAC Customs laws.

Actions:

- a) KRA/FEAFFA should champion the drafting of policy briefs and position papers highlighting the financial and operational burdens of the current legislative framework;
- b) KRA, FEAFFA / KIFWA, NCTTCA and relevant industry associations should initiate discussions with EAC Secretariat, East Africa Legislative Assembly (EALA) legislators and responsible government ministries to lobby for amendments to the EAC Customs transit laws that hinder smooth transit flows and are against the principle of trade facilitation. Proposed amendments should focus on regulations 104 (12), 104 (13), 104 (16), 104 (17) of the EACCMR 2010 to be in tandem with the provisions of the article

6.1, article 6.3 and article 11 of the WTO TFA and Standard 3 of the RKC Specific Annex E Chapter 1, Standard 5.6 of the RKC, Standard 5.7 of the RKC General Annex and Standard 24 of the RKC Specific Annex E Chapter 1.

- c) KRA, FEAFFA / KIFWA and relevant industry associations should initiate discussions with EAC Secretariat, EALA legislators and responsible government ministries to lobby to East Africa Legislative Assembly (EALA) to include provisions in the East African Community Customs Management Act 2004 (EACCMA) that grant the Commissioner the power to waive penalty on transit bond under specific conditions.

D. Process optimization and efficiency improvements

Recommendation: Streamline customs procedures to reduce delays and operational costs.

Actions:

- a) KRA, KPA, and partner government agencies (PGAs) should adhere to the deliberations of the Mombasa Port & Northern Corridor Community Charter (MPCC) geared towards transforming the Northern Corridor into an efficient, effective, reliable and globally competitive transit corridor.
- b) KRA should implement standard operating procedures (SOPs) for faster bond cancellation and dispute resolution.
- c) KRA, KPA and PGAs should increase staffing at critical border posts to expedite customs inspections.

E. Stakeholder engagement and capacity building

Recommendation: Enhance collaboration and capacity building among customs agents, freight forwarders, and regulatory authorities.

Actions:

- a) KRA, FEAFFA / KIFWA and other industry associations should organize regular stakeholder forums to discuss challenges, share best practices, and develop collaborative solutions for efficient transit flows;
- b) KRA should provide training and capacity-building programs ocused on understanding the legal and regulatory compliance of the EAC transit laws, technological adoption, and efficient customs management;

- c) KRA, FEAFFA / KIFWA should spearhead the establishment clear and efficient communication channels between customs agents, freight forwarders, and KRA to improve dispute resolution processes;
- d) KRA should develop a public awareness campaign to inform businesses about regulatory changes and available support mechanisms, fostering a more compliant and efficient transit environment.



REFERENCES

- Afreximbank (2023). Afreximbank announces historic issuance of the first-ever multi-border transit bond in Zambia under the Afreximbank African Collaborative Transit Guarantee Scheme (AATGS). African Export Import Bank. Retrieved from <https://www.afreximbank.com/afreximbank-announces-historic-issuance-of-the-first-ever-multi-border-transit-bond-in-zambia-under-the-afreximbank-african-collaborative-transit-guarantee-scheme-aatgs-%EF%BF%BC/>
- Arvis, Jean-Francois (2011), "Transit regimes", Chapter 17, p.279-296, *Border Management Modernization*, edited by Gerard McLinden; Enrique Fanta; David Widdowson; and Tom Doyle, January 2011 Washington D.C. available at: http://publications.worldbank.org/index.php?main_page=product_info&products_id=23919
- Chibira, E. (2021, August 24). Improving Customs Efficiency: What are the Gains and For Whom? *Trade Law Centre researchers and Associates (Tralac) Blog at AGOA.Info*. Retrieved March 10, 2024, from <https://www.tralac.org/blog/article/15329-improving-customs-efficiency-what-are-the-gains-and-for-whom.html>
- Collis, J & Hussey, R. (2013). *Business Research*. England: Palgrave Macmillan
- COMESA. (2020, September 14). News. *COMESA launches Regional Customs Transit Guarantee Scheme mobile app*. Retrieved March 10, 2024, from <https://www.tralac.org/news/article/14912-comesa-launches-regional-customs-transit-guarantee-scheme-mobile-app.html>
- COMESA. (n.d.). Programme Activities: Trade Facilitation. Retrieved March 10, 2024, from <https://www.comesa.int/programme-activities-trade-facilitation/>
- Creswell, J., & Plano Clark, V. (2007). *Designing and Conducting Mixed Methods Research*. Thousand Oaks, CA: Sage
- Djankov S, Freud C and Pham CC (2005). Trading on time. Research paper 3909. World Bank. Washington DC.
- FIATA (2019), *FIATA Updates Model Rules on Freight Forwarding Services*
- Halldórsson, A., Hsuan, J., Kotzab, H., 2015. Complementary theories to supply chain management revisited - from borrowing theories to theorizing. *Supply Chain Management: An International Journal*, 20(6), 574-586.
- Frederic, D., Huang, H., & Mao, C. (2021, January). The Challenges Faced on Transit Transport Corridors by Landlocked Countries in Central Africa: Literature Review. *Open Journal of Applied Sciences*, 11(11), 1200-1211. doi:<https://doi.org/10.4236/ojapps.2021.1111090>
- EAC (2004), *EAC Customs Union Protocol*. Retrieved from <https://www.eac.int/documents/category/eac-customs-union-protocol> East African Community.
- EAC (2024), *EAC at A Glance* Retrieved from <https://www.eac.int/>, East African Community.

- EACCMA (2004), East African Community Customs Management Act. East African Community.
- EACCMR (2010), East African Community Customs Management Regulation. East African Community.
- Fernandes, A., Hillberry, R., & Alcantara, A. (2015). *Trade Effects of Customs Reform: Evidence from Albania*. Washington DC: World Bank Group
- Freeman, R. E. (1994). The politics of stakeholder theory: Some future directions. *Business ethics quarterly*, 409-421.
- Frederic, D., Huang, H., & Mao, C. (2021, January). The Challenges Faced on Transit Transport Corridors by Landlocked Countries in Central Africa: Literature Review. *Open Journal of Applied Sciences*, 11(11), 1200-1211. doi:<https://doi.org/10.4236/ojapps.2021.1111090>
- Grainger, A. (2011), Trade Facilitation: a Conceptual Review, *Journal of World Trade* 45(1): 36-62.
- Yasui, T. (2011), Case Studies on Systematic Exchange of Commercial Information between Customs Administrations in Bilateral and Regional Arrangements, WCO Research Paper No.11, February 2011, Brussels, available at: www.wcoomd.org/home_research_researchseries.htm
- ICA (2007). Annual Report. Infrastructure Consortium for Africa
- KRA (2024), Bonds Procedures Retrieved Retrieved March 25, 2024 from <https://www.kra.go.ke/individual/importing/learn-about-importation/customs-bonds>. Kenya Revenue Authority.
- Kraft, E., H. Park, and D.D. Gransberg, "Performance Bond: Cost Benefit, and Paradox for Public Highway Agencies," *Transportation Research Record*, No. 2408, *Journal of the Transportation Research Board*, National Academies, 2014, pp. 3-9.
- Mitroff, I. I. (1983). *Stakeholders of the organizational mind*. Jossey-Bass Inc Pub
- Moïsé, Evdokia; Orliac, Thomas; and Minor, Peter (2011), Trade Facilitation Indicators, the Impact on Trade Costs, OECD Trade Policy Papers No.118, November 2011, Paris, available at: www.oecd-ilibrary.org/trade/trade-facilitationindicators_5kg6nk654hmr-en
- Monczka, R. M., Trent, R. J., & Handfield, R. B. (2005). *Purchasing and supply chain management*. Cincinnati, OH: Southwestern College Publishing.
- MPCC (2014) The Mombasa Port & Northern Corridor Community Charter, 2018 - 2024
- Nathan Associates Inc. (2011). Corridor diagnostic study of the Northern and Central Corridors of East Africa. Action plan. Volume 1. Main report. Available at <http://www.eastafricancorridors.org/updates/actionplan>
- Patton, M. (2002). *Qualitative research and evaluation methods*. Thousand Oaks, California, US: Sage Publications. Retrieved March 10, 2022

- Rice, J. B., & Caniato, F. (2003). Building a secure and resilient supply network. *Supply chain management review*, 22-30.
- SAIIA (2014). Regional Transit Bonds. South African Institute of International Affairs. Retrieved from https://saiia.org.za/wp-content/uploads/2014/10/141125_EDIP_GIZreport_pg61-68_CS6.pdf
- Shao, J., Sun, Y., & Noche, B. (2015). *Optimization of Integrated Supply Chain Planning under Multiple Uncertainty*. New York: Springer.
- Snyder, H. (2019). Literature review as a research methodology: An overview and guidelines. *Journal of Business Research*, 104, 333-339. Retrieved March 10, 2024, from <https://doi.org/10.1016/j.jbusres.2019.07.039>
- Tadashi, Y. (2013). Transit Facilitation for Regional Economic Integration and Competitiveness. WCO Research Paper No. 28.
- TMEA (2020), Common Customs bond in East Africa will reduce costs. Retrieved from <https://www.trademarkafrica.com/news/common-customs-bond-in-east-africa-will-reduce-costs-committee/> / Trademark East Africa.
- TMA (2024), East African Community to launch regional bond for goods <https://www.trademarkafrica.com/news/east-african-community-to-launch-regional-bond-for-goods/> Trademark East Africa.
- UNCTAD (2011), UNCTAD Trust Fund for Trade Facilitation Negotiations Technical Note 17. Retrieved from https://unctad.org/system/files/official-document/TN17_BondedTransportRegimes.pdf, United Nations Conference on Trade and Development.
- UNCTAD (2013). The Way to the ocean. Transit corridors servicing the trade of landlocked developing countries. United Nations Conference on Trade and Development.
- UNCTAD (2018). *East African Community Regional Integration: Trade and Gender Implications*. United Nations. Retrieved March 10, 2024, from https://unctad.org/system/files/official-document/ditc2017d2_en.pdf
- UNECE. (2018). TIR Handbook (11 ed.). Retrieved March 10, 2024, from <https://unece.org/DAM/tir/handbook/english/newtirhand/TIR-6Rev11e.pdf>
- UNECE (2024), TIR, Retrieved from <https://unece.org/transport/tir>, United Nations Economic Commission for Europe.
- USITC (2012), Trade Facilitation in the East African Community: Recent Developments and Potential Benefits, Investigation No. 332-530, Publication No. 4335, July 2012, Washington D.C., available at: www.usitc.gov/publications/332/pub4335.pdf
- Verwaal, E., & Donkers, B. (2003). Customs Related Transaction Costs, Firm Size and International Trade Intensity. *Small Business Economics*.
- Williamson, O. E. 1985. The economic institution of capitalism. New York: Free Press.
Williamson, O. E. 1991. Comparative economic organization: The analysis of discrete structural alternatives. *Administrative Science Quarterly*, 36, 269–296.

- Williamson, O. E. 1991. Comparative economic organization: The analysis of discrete structural alternatives. *Administrative Science Quarterly*, 36, 269–296.
- WCO (2011), Revised Kyoto Convention. World Customs Organization.
- WCO (2018), Glossary of International Customs Terms. World Customs Organization.
- WTO (2014), Annex to the Protocol Amending the Marrakesh Agreement establishing the World Trade Organization Agreement on Trade Facilitation. World Trade Organization.
- WTO (2017), Trade Facilitation Agreement. World Trade Organization
- WTO (2024), Trade Topics. Retrieved March 10, 2024, from World Trade Organization: https://www.wto.org/english/tratop_e/tradfa_e/tradfa_introduction_e.htm
- WTO (2015). World Trade Report: Speeding up trade - Benefits and challenges of implementing the WTO Trade Facilitation Agreement. World Trade Organization (WTO). Retrieved March 10, 2024, from https://www.wto.org/english/res_e/booksp_e/world_trade_report15_e.pdf
- SADC Transit Management System Traders Manual. Available from: <http://www.manica-africa.com/UserFiles/File/01a%20-%20TMS%20Traders%20Manual.pdf>.
- Akhmedov, D., Yeryomin, D., Zhaxygulova, D., & Trepashko, S. (2019) Simulation Model of Transport Traceability System for Transit Customs Goods within the Eurasian Economic Union (EEU). *Transport and Telecommunication*, 2019, volume 20, no. 2, 133–141
- Badjonat, J., & Ramtohum, R. (2014), Transit Management System: An Ideal Model for East and Southern Africa





APPENDICES

APPENDIX 1: INTRODUCTION LETTER



FEDERATION OF EAST AFRICAN FREIGHT FORWARDERS ASSOCIATIONS

Hillcrest Court, Slip Road, Waiyaki Way, Westlands, P.O. Box 22694 - 00400, NAIROBI KENYA
Telephone: +254 738 150 673 / +254 738 165 318
Email: info@feaffa.com, Website: www.feaffa.com

February 9, 2024

Dr. Lillian Nyawanda
Commissioner, Customs & Border Control
Kenya Revenue Authority (KRA)

Dear Commissioner,

REF: ANALYTICAL STUDY ON THE IMPACT OF PENALTIES ON TRANSIT BONDS IN KENYA

Greetings from the FEAFFA Secretariat

The Federation of East African Freight Forwarders Associations (FEAFFA) is a regional private sector apex body of the Customs Agents and Freight Forwarders (CFAs) in East Africa.

FEAFFA and the Kenya International Freight and Warehousing Association (KIFWA), with support from The GIZ Alliances for Trade Facilitation (A4TF) Programme, have commissioned a study to **analyze the impact of penalties on transit bonds for Customs Agents and Freight Forwarders in February and March 2024.**

The purpose of the study is to examine the multifaceted impact of the 3% penalty on transit bonds on the operations of customs agents and freight forwarders in Kenya. The study not only focuses on economic implications but also aims to understand the operational, administrative, and logistical challenges faced by customs agents and freight forwarders in Kenya. The ultimate goal is to propose practical and sustainable strategies to mitigate the adverse effects of the 3% penalty on transit cargo delays.

As part of our study, we are reaching out to request a meeting with you or any senior KRA officials in the Bonds team and two (2) Customs Bonds or Bonds Enforcement Officers at each boarder post for a brief engagement with the study consultants (Mr. Tobias Odhiambo and Mr. Felix Bukachi).

For any questions that may need clarification please reach out to Mr. Manaseh Otieno via manaseh.oiro@giz.de or Ms. Njeri Kenyaggia via njeri@feaffa.com.

We sincerely appreciate your consideration of our request and look forward to the opportunity to collaborate on this important research initiative.

Thank you for your continued support.

Yours Sincerely

Elias Baluku
Ag Executive Director

An advocate of freight logistics profession

APPENDIX 2: SURVEY GUIDE: CLEARING AGENTS, FREIGHT FORWARDERS, WAREHOUSE OPERATORS, OTHER LOGISTICS OPERATORS

INTRODUCTION					
Hello. My name is On behalf of the Federation of East African Freight Forwarders Associations (FEAFFA) and Kenya International Freight and Warehousing Association (KIFWA) in partnership with the Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH (GIZ), we are currently conducting a study on aiming to examine the impact of the 3% penalty on transit bonds on the operations of customs agents and freight forwarders in Kenya. This questionnaire is meant to obtain your opinions on the subject matter. Whatever information you may provide us with will be kept strictly confidential and will not be shared with anyone other than for the purposes of this study. You are free to ask any question and not to respond to any question you feel uncomfortable with. The interview will take approximately 35 minutes to complete and your participation is voluntary. We hope you will participate in this study since your views are very important with regard addressing the effects of the 3% penalty on transit bonds. At this point in time, do you want to ask me anything about the survey?					
Would you like to participate in this study?		Yes	1 (Thank Respondent and Continue)		
		No	2 (Thank Respondent and Terminate)		
RESPONDENT DETAILS					
Name			Time & Date		
Interviewer's Name:			Date: ____/02/2024		
Contacts:			Start time:	End time:	
DEMOGRAPHIC DETAILS					
Post	Name of Institution	Sex of Respondent	Highest level of education	Position/ Designation	Contacts
1. Busia		1. Male	1. Primary school		
2. Malaba		2. Female	2. Secondary school		
3. Namanga		99. Other	3. College diploma		
4. Mombasa			4. University degree		
5. Lunga lunga					
6. ICD Nairobi					
No.	Question				
A. INTRODUCTION					
1.	How many employees do you have in your Company?	Less than 10 employees 10 – 49 employees 50 – 99 employees 100+ employees			1 2 3
2.	What's the annual revenue of your company?	Less than KES 1 million KES 1 million – KES 10 million KES 11 million – KES 50 million More than KES 50 million			1 2 3 4
3.	Which geographical regions are you primarily involved in the cross-border trade?				
4.	What is your role in the cross-border trade process?	Custom Agent Freight forwarder Business owner Other (Please specify)			1 2 3 99
5.	How many years of experience do you have in the cross-border trade industry?	Less than 1 year 1 – 5 years 6 – 10 years More than 10 years			1 2 3 4

6.	Are you a member of any industry associations related to customs and cross-border trade?	Yes No	1 2
B. TRANSIT BOND PENALTY			
<p>A transit bond, also known as a customs transit bond, is a financial guarantee required by customs authorities to ensure the payment of customs duties, taxes, and other charges that may be applicable when goods are in transit through a country or customs territory. In the EAC region the East African Community Customs Management Regulation 2010 (EACCMR 2010) offers guidance on customs transit bonds including a stringent requirement that cargo must cross national borders within specified timeframes, and failure to do so incurs a 3% penalty.</p>			
7.	Are you aware of the transit bond penalties enforced by the Kenya Revenue Authority (KRA)?	Yes No	1 2
8.	How well does your company understand the rules and procedures related to transit bond penalties?	Not at all Not well Neutral Somewhat well Very well	1 2 3 4 5
9.	In your experience, how are transit bond penalties currently assessed?	1. Penalties are typically assessed based on the duration of transit delays 2. The penalty amount may be influenced by the nature and value of the cargo 3. Transit bond penalties are often calculated per day of delay 4. The assessment may consider the reasons provided for the delay 99. Other (Please specify)	
10.	Have you encountered any shortcomings in the current system of imposing transit bond penalties?	Yes No	1 2
11.	Can you describe any challenges or shortcomings you perceive in the current system of imposing transit bond penalties?	1. Lack of flexibility in considering genuine reasons for delays 2. Difficulty in accurately determining the responsibility for delays 3. Limited communication and coordination among stakeholders 4. Insufficient mechanisms to appeal or contest penalty assessments 99. Other (Please specify)	
12.	Have you or your organization experienced the enforcement of transit bond penalties by the Kenya Revenue Authority (KRA)?	Yes No	1 2
13.	How many violations or non-compliance incidents has your company experienced since the enforcement of transit bond penalties?	None 1-5 incidents 6-10 incidents More than 10 incidents	1 2 3 4
14.	What, in your opinion, are the most common genuine reasons for delays in transit cargo?	1. Unforeseen weather conditions affecting transportation. 2. Customs inspection delays. 3. Infrastructure issues such as road closures/accidents or port congestion. 4. Documentation errors and discrepancies 5. Insufficiency in the bonds 6. Lack of promptness in the cancellation of the bonds 99. Other (Please specify)	
15.	In what ways do you believe these genuine reasons for delays should be considered	1. Establishing a transparent and standardized process for reviewing delays.	

	when determining transit bond penalties?	<ol style="list-style-type: none"> 2. Creating a system for documenting and verifying genuine reasons 3. Allowing for exemptions or reduced penalties in certain justified cases 4. Encouraging collaboration and communication among stakeholders 99. Other (Please specify)
16.	Can you propose specific alternative mechanisms or solutions to address the imposition of transit bond penalties on cargo facing genuine delays?	<ol style="list-style-type: none"> 1. Implement a risk-based approach to penalty assessment 2. Introduce a system for pre-approval of potential delay causes 3. Provide a grace period for delays caused by unforeseen events 4. Develop a mediation or dispute resolution mechanism for penalty disputes 99. Other (Please specify)
17.	In what ways do you foresee the implementation of the alternative solutions that you have proposed impacting the efficiency and fairness of the transit cargo process?	<ol style="list-style-type: none"> 1. Increased fairness by acknowledging and addressing genuine delays 2. Improved efficiency through streamlined processes and reduced disputes 3. Enhanced collaboration among stakeholders leading to smoother transit 4. Potential for overall cost savings for the industry 99. Other (Please specify)
18.	Are there specific regulatory changes or updates you would recommend to improve the handling of transit bond penalties?	<ol style="list-style-type: none"> 1. Review and revise penalty calculation methodologies 2. Enhance communication channels among customs, freight forwarders, and revenue authorities 3. Establish clear guidelines for documenting and verifying delay causes 4. Regularly update regulations to adapt to changing industry dynamics 99. Other (Please specify)

Objective 1: Evaluate the implications of KRA's enforcement of transit bond penalties on the profitability and competitiveness of customs agents, freight forwarders, and businesses engaged in cross-border trade.

19.	In the past year, how has the enforcement of transit bond penalties impacted the revenue of your organization?	Significantly decreased Decreased No change Increased Significantly increased	1 2 3 4 5
20.	Can you provide an estimate of change in revenue as a result of the enforcement of transit bond penalties?	KES.....	
21.	Which specific factors as a result of the enforcement of transit bond penalties by KRA have you identified as contributing to your revenue changes?	<ol style="list-style-type: none"> 1. Increased shipping delays 2. Elevated compliance costs 3. Loss of clients due to penalties 4. Decreased volume of cross-border transactions 	<ol style="list-style-type: none"> 5. Increased competition 6. Strained relationships with suppliers 7. Increased administrative burden 8. Changes in customer demand 99. Other (please specify)
22.	What have been the notable changes in profit margins for your organization before and after the enforcement of transit bond penalties?	Profit margins decreased Profit margins remained the same Profit margins increased	1 2 3
23.	If there has been a change in profit margins, please specify the percentage change%	

**ANALYTICAL STUDY ON THE IMPACT OF TRANSIT BONDS PENALTIES ON THE OPERATIONS OF CUSTOMS AGENTS
AND FREIGHT FORWARDERS IN KENYA**

24.	What is the estimated cost incurred by your company for compliance with transit bond regulations in the past year? (RECORD IN KENYA SHILLINGS)		
25.	How have these compliance costs changed over the past year?	Decreased Remained the same Increased	1 2 3
26.	Which specific strategies have you implemented as a company to mitigate financial losses resulting from transit bond penalty enforcement by KRA?	<ol style="list-style-type: none"> 1. Diversification of services/products 2. Renegotiation of contracts with clients/suppliers 3. Investment in technology for process optimization 4. Staff training on compliance measures 5. Collaboration with other industry players 	<ol style="list-style-type: none"> 6. Efficient and streamlined compliance processes 7. Seeking legal counsel 8. Enhancing communication with regulatory authorities 9. Exploring alternative transit bond options 99. Other (please specify)
27.	Have you observed any changes in the volume of business due to the enforcement of transit bond penalties?	Decreased Remained the same Increased	1 2 3
28.	If there has been a change in the volume of business, please provide an estimate of the percentage change.%	
29.	Have there been any new entrants or exits from the market in response to the enforcement of transit bond penalties?	Increased exits No change Increased new entrants I don't know	1 2 3 98
30.	How have your pricing strategies changed in response to the enforcement of transit bond penalties?	Decreased prices Maintained existing prices Increased prices	1 2 3
31.	How do you perceive the competitiveness of your organization in the current market environment compared to before the enforcement of transit bond penalties?	Less competitive Same level of competitiveness More competitive	1 2 3
32.	Have you experienced any strain in relationships with clients, partners, or stakeholders due to the enforcement of transit bond penalties?	Yes No	1 2
33.	How have you addressed the strain in relationships with clients, partners, or stakeholders due to the enforcement of transit bond penalties by KRA?	<ol style="list-style-type: none"> 1. Improved communication with clients/stakeholders 2. Offering compensation or incentives to affected parties 3. Establishing dispute resolution mechanisms 4. Collaborative problem-solving with partners 	<ol style="list-style-type: none"> 5. Revising contractual terms 6. Providing clearer expectations on potential delays 7. Seeking mediation or third-party assistance 99. Other (Please specify)
34.	In what ways have you adapted in your operational practices in response to KRA's enforcement of the transit bond penalty?	Enhanced compliance measures Adjusted supply chain logistics Changed sourcing strategies Invested in technology solutions Other (Please specify)	1 2 3 4 99
35.	Which strategies have you planned or implemented to address the impact of the transit bond penalty on your business in the cross-border trade?	Shifted focus to domestic markets Sought alternative trade routes Increased investment in risk management Modified partnerships and collaborations Other (Please specify)	1 2 3 4 99
C. IMPACT OF TRANSIT BOND PENALTIES ON OPERATIONAL EFFICIENCY			

**ANALYTICAL STUDY ON THE IMPACT OF TRANSIT BONDS PENALTIES ON THE OPERATIONS OF CUSTOMS AGENTS
AND FREIGHT FORWARDERS IN KENYA**

36.	To what extent have you experienced disruptions in cross-border trade operations directly attributed to the enforcement of transit bond penalties?	Never Rarely Occasionally Frequently Always	1 2 3 4
37.	To what extent has the enforcement of transit bond penalties contributed to delays in cross-border trade operations?	Not at all Slightly Moderately Significantly	1 2 3 4
38.	Have you observed a noticeable change in transit times for goods since the enforcement of transit bond penalties? There has been....	Significant deterioration Moderate deterioration No significant change Moderate improvement Significant improvement	1 2 3 4 5
39.	Overall, how would you rate the overall impact of transit bond penalty enforcement on the operational efficiency of cross-border trade?	Very negative Negative Neutral Positive Very positive	1 2 3 4 5
Objective 2: Analyze and quantify the financial burden imposed on operators due to the payment of penalties and the associated costs, such as legal fees, administrative expenses, and potential penalties for non-compliance.			
40.	As an organization, have you ever incurred penalties related to regulatory non-compliance or other violations?	Yes No	1 2
ORGANIZATION HAS INCURRED PENALTIES RELATED TO REGULATORY NON-COMPLIANCE OR OTHER VIOLATIONS			
41.	For the last THREE YEASRS, how frequently has your organization incurred penalties related to regulatory non-compliance or other violations?	Rarely Occasionally Frequently Always	1 2 3 4
42.	Please estimate the average amount of financial penalties related to transit bonds your organization pays to KRA in a typical year of operation?	Less than KES 500,000 KES 500,000 – 999,000 KES 1M – 3M More than KES 3M	1 2 3 4
43.	Please estimate your overall operating costs constituted by transit bond penalties.	KES.....	
44.	Please estimate the average amount of legal fees related to transit bond penalties your company pays in a typical year of operation?	None Less than KES 500,000 KES 500,000 – 999,000 KES 1M – 3M More than KES 3M	1 2 3 4 5
45.	Please estimate the average amount of administrative expenses related to transit bond penalties your company pays in a typical year of operation?	None Less than KES 500,000 KES 500,000 – 999,000 KES 1M – 3M More than KES 3M	1 2 3 4 5
46.	In your opinion, how transparent and understandable are the regulations or contractual terms that lead to the transit bond penalties in the cross-border trade?	Very transparent and understandable Somewhat transparent and understandable Not very transparent and understandable Not at all transparent and understandable	1 2 3 4
47.	How have the transit bond penalties and associated costs impacted your	<ol style="list-style-type: none"> Extremely negatively - <i>it has significantly hindered our financial stability and operational efficiency.</i> Negatively - <i>it has imposed a noticeable burden on our business operations.</i> 	

**ANALYTICAL STUDY ON THE IMPACT OF TRANSIT BONDS PENALTIES ON THE OPERATIONS OF CUSTOMS AGENTS
AND FREIGHT FORWARDERS IN KENYA**

	overall business operations?	<ol style="list-style-type: none"> 3. Neutral - <i>there has been some impact, but it hasn't significantly affected our overall operations.</i> 4. Positively - <i>we have managed to absorb the costs without substantial disruption.</i> 5. Extremely positively - <i>there has been no impact on our business operations.</i> 	
48.	How do you assess the effectiveness of your organization's current compliance and risk management strategies in reducing costs related to the transit bond penalties?	Very effective Somewhat effective Not very effective Not at all effective	1 2 3 4
49.	How do businesses typically respond to the financial burden imposed by penalties on transit bonds?	Pass on the cost to consumers Absorb the cost internally Seek legal recourse Adjust pricing strategies Other (Please specify)	1 2 3 4 99
50.	How would you rate the overall awareness and understanding of risks related to the transit bond penalties among your company's employees and stakeholders?	High Moderate Low	1 2 3
51.	What specific challenges do you face in minimizing transit bond penalties and associated costs?	Lack of regulatory clarity Inadequate internal processes Difficulty in tracking transit activities Insufficient training for staff involved Other (Please specify)	1 2 3 4 99
Objective 3: Examine the operational challenges experienced by customs agents and freight forwarders because of KRA's penalty enforcement.			
52.	How well do you understand the customs documentation requirements for goods subject to transit bond penalties?	Very poorly Poorly Adequately Well Very well	1 2 3 4 5
53.	How would you rate the overall complexity of customs documentation procedures for goods subject to transit bond penalties?	Very complex Complex Neutral Simple Very simple	1 2 3 4 5
54.	How satisfied are you with the documentation requirements set by KRA for penalty enforcement?	Very dissatisfied Dissatisfied Neutral Satisfied Very satisfied	1 2 3 4 5
55.	What challenges have you faced in the documentation process related to KRA's enforcement of transit bond penalties? (Select all that apply)	Complexity of forms Lack of clear guidelines Insufficient time for submission Inadequate communication channels Other (Please specify)	1 2 3 4 99
56.	What specific aspects of documentation procedures contribute to inefficiencies or complexities?	<ol style="list-style-type: none"> 1. Complex or ambiguous language in documentation requirements 2. Lengthy and time-consuming completion of required forms 3. Insufficient guidance on specific data elements required 4. Inconsistencies in documentation requirements across different customs processes 	<ol style="list-style-type: none"> 7. Challenges in obtaining and verifying supporting documents 8. Inadequate communication channels for clarification on documentation issues 9. Difficulty in accessing and understanding online submission platforms 10. Limited training resources for customs agents on proper documentation procedures

**ANALYTICAL STUDY ON THE IMPACT OF TRANSIT BONDS PENALTIES ON THE OPERATIONS OF CUSTOMS AGENTS
AND FREIGHT FORWARDERS IN KENYA**

		<ul style="list-style-type: none"> 5. Lack of standardization in document formats and submissions 6. Frequent changes in documentation requirements without adequate notice 	<ul style="list-style-type: none"> 11. Issues related to cross-border documentation coordination 99. Other (please specify)
57.	How effective is the communication between customs agents, freight forwarders, and KRA regarding the enforcement of transit bond penalties?	<ul style="list-style-type: none"> Very ineffective Ineffective Neutral Effective Very effective 	<ul style="list-style-type: none"> 1 2 3 4 5
58.	How well is your organization equipped with technology to handle KRA's requirements on the transit bond penalties?	<ul style="list-style-type: none"> Inadequately equipped Adequately equipped Well equipped Very well equipped 	<ul style="list-style-type: none"> 1 2 3 4
59.	How would you rate the user-friendliness of KRA's technological platforms for penalty enforcement?	<ul style="list-style-type: none"> Not at all user-friendly Not user-friendly Neutral User-friendly Very user-friendly 	<ul style="list-style-type: none"> 1 2 3 4 5
60.	How satisfied are you with the level of collaboration between customs agents, freight forwarders, and KRA in addressing operational challenges related to enforcement of transit bond penalties?	<ul style="list-style-type: none"> Very dissatisfied Dissatisfied Neutral Satisfied Very satisfied 	<ul style="list-style-type: none"> 1 2 3 4 5
61.	Have you encountered any challenges or inconsistencies in the enforcement practices related to transit bond penalties?	<ul style="list-style-type: none"> Yes, frequently Yes, occasionally No 	<ul style="list-style-type: none"> 1 2 3
62.	What challenges, if any, have you encountered in the consistent implementation of the transit bond penalty enforcement procedures?	<ul style="list-style-type: none"> 1. Ambiguity in penalty regulations 2. Lack of updated and clear enforcement guidelines 3. Insufficient training for enforcement officers 4. Inconsistencies in communication from KRA 5. Limited technological support for enforcement procedures 6. Resistance or non-compliance from stakeholders 	<ul style="list-style-type: none"> 7. Resource constraints (e.g., budget, manpower) 8. Procedural complexities 9. External factors affecting enforcement (e.g., political, economic) 10. Lack of coordination with other regulatory bodies 99. Other (please specify)
63.	What specific improvements or changes would you recommend in the enforcement practices to promote fairness and consistency for transit bond penalties?	<ul style="list-style-type: none"> 1. Increased transparency in penalty assessment procedures 2. Clearer communication of penalty calculation methods 3. Standardized penalty criteria for different violations 4. Enhanced collaboration between customs agents and KRA in penalty resolution 5. Timely and consistent feedback on penalty disputes 	<ul style="list-style-type: none"> 7. Regular training for customs agents on penalty enforcement policies 8. Review and update of penalty guidelines based on industry feedback 9. Establishing a dedicated hotline or communication channel for penalty-related queries 10. Periodic audits of enforcement practices to ensure adherence to guidelines 11. Improved communication on changes to penalty regulations 99. Other (please specify)

**ANALYTICAL STUDY ON THE IMPACT OF TRANSIT BONDS PENALTIES ON THE OPERATIONS OF CUSTOMS AGENTS
AND FREIGHT FORWARDERS IN KENYA**

		6. Implementation of an appeals process for penalty decisions	
64.	What changes or improvements would you suggest in the existing regulatory framework for transit bond penalties to enhance your operations?	<ol style="list-style-type: none"> 1. Simplification of documentation requirements 2. Clearer definition of transit bond penalty categories 3. Harmonization of transit bond regulations with international standards 4. Streamlined processes for penalty assessment and resolution 5. Introduction of flexibility in penalty application for genuine errors 6. Regular updates to the regulatory framework to reflect industry changes 	<ol style="list-style-type: none"> 7. Enhanced collaboration between regulatory authorities and industry stakeholders 8. Inclusion of performance metrics to evaluate the effectiveness of penalties 9. Review and adjustment of penalty amounts to align with industry realities 10. Establishment of a task force for ongoing regulatory framework evaluation 11. Introduction of incentives for compliance with transit bond regulations 99. Other (please specify)
65.	Have you participated in any training programs related to customs procedures and transit bond penalties?	Yes No	1 2
66.	How would you rate the adequacy of the existing training programs in preparing customs agents and freight forwarders for compliance with transit bond requirements?	Very inadequate Inadequate Neutral Adequate Very adequate	1 2 3 4 5
67.	What specific topics or areas should be addressed in training programs to enhance compliance and avoid transit bond penalties?	<ol style="list-style-type: none"> 1. Interpretation of transit bond regulations and guidelines 2. Proper completion of transit-related documentation 3. Understanding penalty calculation methods and criteria 4. Best practices for avoiding common errors leading to penalties 5. Effective use of technology tools for compliance and documentation 6. Communication and collaboration strategies with regulatory authorities 	<ol style="list-style-type: none"> 7. Updates on changes in transit bond regulations or/and enforcement practices 8. Handling and resolving penalty disputes with regulatory authorities 9. Continuous improvement in compliance through self-assessment 10. Importance of timely and accurate information sharing in the supply chain 99. Other (Please specify)
Objective 4: Document experiences by Kenya Revenue Authority, Customs Agents and Freight Forwarders on the subject matter of Penalties on Transit Bonds in the following border posts: Busia, Malaba, Namanga, Mombasa and Lunga Lunga.			
68.	How compliant do you believe customs agents, freight forwarders, and businesses are with transit bond regulations?	Very non-compliant Somewhat non-compliant Neutral Somewhat compliant Very compliant	1 2 3 4 5
69.	What percentage of customs agents and businesses in your industry do you estimate are currently complying with transit bond regulations?%	
70.	How would you describe the perceived ease or difficulty of complying with transit bond regulations?	Very difficult Somewhat difficult Neutral Somewhat easy Very easy	1 2 3 4 5

**ANALYTICAL STUDY ON THE IMPACT OF TRANSIT BONDS PENALTIES ON THE OPERATIONS OF CUSTOMS AGENTS
AND FREIGHT FORWARDERS IN KENYA**

71.	How would you rate the transparency of the enforcement practices employed by the KRA in imposing transit bond penalties?	Not at all transparent Not transparent Neutral Transparent Very transparent	1 2 3 4 5
72.	In your experience, how consistently are transit bond penalties enforced by the Kenya Revenue Authority (KRA)?	Never consistent Rarely consistent Occasionally consistent Often consistent Always consistent	1 2 3 4 5
73.	Have you observed any discrepancies between the well-established procedures for penalty enforcement and the actual implementation by KRA?	Yes, frequently Yes, occasionally No	1 2 3
74.	Which specific measures do you believe KRA could adopt to enhance the consistency and effectiveness of penalty enforcement practices?	<ol style="list-style-type: none"> 1. Improve clarity and specificity in penalty regulations 2. Enhance training programs for enforcement officers 3. Provide more comprehensive and regularly updated guidelines 4. Invest in advanced technology for enforcement procedures 5. Establish clearer communication channels with stakeholders 6. Strengthen cooperation with other regulatory bodies 7. Increase awareness through educational campaigns 8. Allocate additional resources for enforcement efforts 9. Simplify and streamline enforcement procedures 10. Foster a culture of compliance through incentives 99. Other (please specify) 	
Objective 5: Establish the amount of time spent by Customs Agents and Freight Forwarders in resolving penalties on Transit Bonds disputes.			
75.	How would you rate the complexity of the procedures for handling Transit Bonds disputes?	High Moderate Low	1 2 3
76.	How do procedural complexities contribute to delays in resolving penalties on Transit Bonds disputes?	Lack of clarity in procedures Lengthy documentation requirements Inconsistencies in regulations Complex communication channels Other (Please specify)	1 2 3 4 99
77.	On average, how much time do you spend per month on resolving Transit Bonds disputes?	Less than 1 hour 1-2 hours 2-5 hours 5-10 hours More than 10 hours	1 2 3 4 5
78.	Which specific primary activities contribute to the time spent on resolving disputes related to penalties on Transit Bonds?	Reviewing documentation Communication with authorities Legal consultations Coordination with other stakeholders Other (Please specify)	1 2 3 4 99
79.	What are the most common challenges you encounter when resolving penalties on Transit Bonds disputes?	Inadequate information or documentation Inefficient communication channels Discrepancies in regulations Limited resources Other (Please specify)	1 2 3 4 99

80.	In your opinion, what strategies or best practices could enhance the efficiency of the dispute resolution process for Transit Bonds?	Improved communication protocols	1
		Enhanced training for personnel	2
		Streamlined documentation processes	3
		Implementation of technology solutions	4
		Other (Please specify)	99
81.	Are there specific solutions or procedural changes that you believe could contribute to a more streamlined and time-effective resolution of penalties on Transit Bonds disputes?	Automated document verification systems	1
		Standardized dispute resolution protocols	2
		Enhanced collaboration between agencies	3
		Clearer and more consistent regulations	4
		Other (please specify)	99

THANK THE RESPONDENT AND END THE INTERVIEW

APPENDIX 3: IN-DEPTH INTERVIEW GUIDE: IMPORTERS

INTRODUCTION

Hello. My name is and on behalf of the Federation of East African Freight Forwarders Associations (FEAFFA) and Kenya International Freight and Warehousing Association (KIFWA) in partnership with the Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH (GIZ), we are currently conducting a study on aiming to examine the impact of the 3% penalty on transit bonds on the operations of customs agents and freight forwarders in Kenya. This questionnaire is meant to obtain your opinions on the subject matter, as an importer involved in the cross-border trade. Whatever information you may provide us with will be kept strictly confidential and will not be shared with anyone other than for the purposes of this study. You are free to ask any question and not to respond to any question you feel uncomfortable with. The interview will take approximately 30 **minutes** to complete and your participation is voluntary. We hope you will participate in this study since your views are very important with regard addressing the effects of the 3% penalty on transit bonds. At this point in time, do you want to ask me anything about the study?

Would you like to participate in this study?	Yes	1 (Thank Respondent and Continue)
	No	2 (Thank Respondent and Terminate)

INTERVIEWER DETAILS

Name	Time & Date
Interviewer's Name:	Date: ____/02/2024
Contacts:	Start time: _____ End time: _____

RESPONDENT DETAILS

Post	Name of Importer's Business	Sex of Respondent	Highest level of education	Position/Designation	Contacts
1. Busia		1. Male	1. Primary school		
2. Malaba		2. Female	2. Secondary school		
3. Namanga		3. Other	3. College diploma		
4. Mombasa			4. University degree		
5. Lunga lungu					
6. ICD Nairobi					

A transit bond, also known as a customs transit bond, is a financial guarantee required by customs authorities to ensure the payment of customs duties, taxes, and other charges that may be applicable when goods are in transit through a country or customs territory. In the EAC region the East African Community Customs Management Regulation 2010 (EACCMR 2010) offers guidance on customs transit bonds including a stringent requirement that cargo must cross national borders within specified timeframes, and failure to do so incurs a 3% penalty.

Objective 1: Evaluate the implications of KRA's enforcement of transit bond penalties on the profitability and competitiveness of customs agents, freight forwarders, and businesses engaged in cross-border trade.

A.	<ol style="list-style-type: none"> 1. Can you share your experiences and perspectives regarding the enforcement of transit bond penalties and how they impact your importation processes and costs? Specifically, how do these penalties affect the overall profitability and competitiveness of your business in the context of cross-border trade? 2. In your opinion, what measures could be implemented by the Kenya Revenue Authority (KRA) or other relevant stakeholders to alleviate the burden of transit bond penalties on importers like yourself? Additionally, how do you believe these penalties could be better balanced to ensure compliance while also supporting the efficiency and competitiveness of cross-border trade?
-----------	--

Objective 2: Analyze and quantify the financial burden imposed on operators due to the payment of penalties and the associated costs, such as legal fees, administrative expenses, and potential penalties for non-compliance.

B.	<ol style="list-style-type: none"> 1. As importers involved in transit goods, could you share your experiences and challenges regarding compliance with transit bond regulations? Specifically, what financial burdens have you encountered due to the payment of transit bond penalties, legal fees, administrative expenses, or other associated costs? Can you quantify these costs and provide insights into how they impact your operations and profitability? 2. In your interactions with KRA as a body responsible for enforcing transit bond penalties, what are the main areas of concern you've identified? Are there specific aspects of the penalty imposition process or compliance requirements that you believe could be improved to alleviate the financial burden on importers engaged in cross-border trade?
-----------	---

Objective 3: Examine the operational challenges experienced by customs agents and freight forwarders because of KRA's penalty enforcement.

C.	<ol style="list-style-type: none"> 1. From your perspective as an importer dealing with transit goods, what are the primary operational challenges you've encountered as a result of Kenya Revenue Authority's (KRA) enforcement of transit bond penalties? Can you provide specific examples or instances where these challenges have impacted your import processes or supply chain operations? 2. How do you perceive the effectiveness of the communication and coordination between customs agents, freight forwarders, and importers in navigating the requirements and regulations related to transit bond penalties enforced by the KRA? In your experience, what improvements or enhancements could be made to streamline processes and facilitate better collaboration among all stakeholders involved in cross-border trade?
-----------	---

Objective 5: Establish the amount of time spent by Customs Agents and Freight Forwarders in resolving penalties on Transit Bonds disputes.

D.	<ol style="list-style-type: none"> 1. As an importer involved in transit goods, can you share your experiences or insights regarding the process of resolving penalties on Transit Bonds disputes with Customs Agents and Freight Forwarders? Specifically, how much time and effort do you typically find yourself investing in resolving these disputes, and what are the key factors that contribute to the length or complexity of the resolution process from your perspective? 2. In your opinion, what are the most significant challenges or inefficiencies associated with the current system for resolving Transit Bond penalties disputes, particularly from the standpoint of importers like yourself? Are there any specific improvements or reforms you would recommend to expedite the resolution process and minimize the burden on importers, Customs Agents, and Freight Forwarders alike?
-----------	--

Alternative solutions and mechanisms for addressing the unfair imposition of transit bond penalties on transit cargo, identify practical and sustainable strategies for mitigating the adverse effects of the 3% penalty, and identify advocacy areas and potential policy reforms that can contribute to a more efficient and equitable transit bond system in Kenya.

E.	<ol style="list-style-type: none"> 1. From your perspective, what alternative solutions or mechanisms do you believe could effectively address the issues surrounding transit bond penalties and mitigate their adverse effects on transit cargo? Additionally, what practical and sustainable strategies do you suggest for reducing the impact of the 3% penalty on transit bonds?
-----------	---

APPENDIX 4: IN-DEPTH INTERVIEW GUIDE: INDUSTRY ASSOCIATIONS AND BODIES (FEAFFA, KIFWA, Kenya Association of Manufacturers (KAM), Kenya Transporters Association (KTA), KENTRADE, Trademark East Africa (TMEA), National Chamber of Commerce, Northern Corridor Transit and Transport Coordination Authority (NTFCA), EAC Secretariat)

INTRODUCTION					
Hello. My name is and on behalf of the Federation of East African Freight Forwarders Associations (FEAFFA) and Kenya International Freight and Warehousing Association (KIFWA) in partnership with the Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH (GIZ), we are currently conducting a study on aiming to examine the impact of the 3% penalty on transit bonds on the operations of customs agents and freight forwarders in Kenya. This questionnaire is meant to obtain your opinions on the subject matter, as a representative of your association/body. Whatever information you may provide us with will be kept strictly confidential and will not be shared with anyone other than for the purposes of this study. You are free to ask any question and not to respond to any question you feel uncomfortable with. The interview will take approximately 30 minutes to complete and your participation is voluntary. We hope you will participate in this study since your views are very important with regard addressing the effects of the 3% penalty on transit bonds. At this point in time, do you want to ask me anything about the study?					
Would you like to participate in this study?		Yes	1 (Thank Respondent and Continue)		
		No	2 (Thank Respondent and Terminate)		
INTERVIEWER DETAILS					
Name			Time & Date		
Interviewer's Name:			Date: ____/02/2024		
Contacts:			Start time:		End time:
RESPONDENT DETAILS					
Post	Name of Institution	Sex of Respondent	Highest level of education	Position/Designation	Contacts
1. Busia 2. Malaba 3. Namanga 4. Mombasa 5. Lunga lunga 6. ICD Nairobi		1. Male 2. Female 3. Other	1. Primary school 2. Secondary school 3. College diploma 4. University degree		
<p>A transit bond, also known as a customs transit bond, is a financial guarantee required by customs authorities to ensure the payment of customs duties, taxes, and other charges that may be applicable when goods are in transit through a country or customs territory. In the EAC region the East African Community Customs Management Regulation 2010 (EACCMR 2010) offers guidance on customs transit bonds including a stringent requirement that cargo must cross national borders within specified timeframes, and failure to do so incurs a 3% penalty.</p>					
<p>Objective 1: Evaluate the implications of KRA's enforcement of transit bond penalties on the profitability and competitiveness of customs agents, freight forwarders, and businesses engaged in cross-border trade.</p>					
A.	1. From the perspective of industry advocacy and policy bodies, what are the primary concerns or challenges raised by stakeholders involved in cross-border trade regarding the enforcement of transit bond penalties on customs agents, freight forwarders, and businesses engaged in cross-border trade? How do these penalties affect the profitability and competitiveness of these stakeholders?				
	2. How does your organization collaborate with relevant regulatory authorities and governmental bodies to address the concerns raised by stakeholders involved in cross-				

border trade regarding transit bond penalties? Are there specific policy recommendations or advocacy efforts aimed at mitigating the impact of these penalties on the operations and viability of customs agents, freight forwarders, and businesses involved in cross-border trade?

Objective 2: Analyze and quantify the financial burden imposed on operators due to the payment of penalties and the associated costs, such as legal fees, administrative expenses, and potential penalties for non-compliance.

- B.**
3. From the perspective of industry advocacy and policy, what are the primary challenges faced by operators engaged in cross-border trade regarding the payment of transit bond penalties and associated costs? Could you elaborate on any systemic issues or regulatory gaps that contribute to the financial burden experienced by operators in this context?
 4. How actively does the industry associations/bodies engage with regulatory authorities and governmental bodies to advocate for reforms or improvements in policies related to transit bond penalties and compliance requirements? Can you provide examples of successful advocacy efforts or proposed policy changes aimed at alleviating the financial burden on operators and enhancing the efficiency and fairness of cross-border trade regulations?

Objective 3: Examine the operational challenges experienced by customs agents and freight forwarders because of KRA's penalty enforcement.

- C.**
5. How does your organization perceive the impact of Kenya Revenue Authority's (KRA) enforcement of transit bond penalties on customs agents and freight forwarders? Can you provide insights into the specific operational challenges faced by these stakeholders as a result of this enforcement?
 6. What advocacy efforts or policy initiatives has your organization undertaken to address the operational challenges encountered by customs agents and freight forwarders due to the enforcement of transit bond penalties by the KRA? Additionally, how do you collaborate with relevant stakeholders, including government agencies like the KRA, to advocate for solutions that mitigate these challenges and promote smoother cross-border trade processes?

Objective 5: Establish the amount of time spent by Customs Agents and Freight Forwarders in resolving penalties on Transit Bonds disputes.

- D.**
7. From the perspective of your industry association/body, what are the primary challenges faced by Customs Agents and Freight Forwarders when it comes to resolving penalties on Transit Bonds disputes? How do these challenges impact the efficiency and competitiveness of cross-border trade, and what efforts has your association/body undertaken to address them?
 8. Can you discuss any advocacy efforts or policy recommendations your association/body has proposed to streamline the resolution process for transit bond penalties disputes? How do these recommendations aim to reduce the time and resources expended by Customs Agents and Freight Forwarders in resolving such disputes, and what level of engagement or cooperation have you experienced from relevant stakeholders, including government agencies and regulatory authorities?

Alternative solutions and mechanisms for addressing the unfair imposition of transit bond penalties on transit cargo, identify practical and sustainable strategies for mitigating the adverse effects of the 3% penalty, and identify advocacy areas and potential policy reforms that can contribute to a more efficient and equitable transit bond system in Kenya.

- E.**
9. In your opinion, what alternative solutions or mechanisms could be explored to address the unfair imposition of transit bond penalties and mitigate their adverse effects on transit cargo? Are there any innovative approaches or best practices from other jurisdictions that could be adapted or implemented in Kenya?
 10. From your perspective, what potential policy reforms or changes in enforcement practices could contribute to a more efficient and equitable transit bond system in Kenya? Are there any advocacy areas or stakeholder collaborations that could help advance these reforms and promote a more sustainable approach to transit bond enforcement?

APPENDIX 5: IN-DEPTH INTERVIEW GUIDE: KENYA REVENUE AUTHORITY (KRA)

INTRODUCTION					
Hello. My name is and on behalf of the Federation of East African Freight Forwarders Associations (FEAFFA) and Kenya International Freight and Warehousing Association (KIFWA) in partnership with the Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH (GIZ), we are currently conducting a study on aiming to examine the impact of the 3% penalty on transit bonds on the operations of customs agents and freight forwarders in Kenya. This questionnaire is meant to obtain your opinions on the subject matter, as a representative of KRA. Whatever information you may provide us with will be kept strictly confidential and will not be shared with anyone other than for the purposes of this study. You are free to ask any question and not to respond to any question you feel uncomfortable with. The interview will take approximately 30 minutes to complete and your participation is voluntary. We hope you will participate in this study since your views are very important with regard addressing the effects of the 3% penalty on transit bonds. At this point in time, do you want to ask me anything about the study?					
Would you like to participate in this study?		Yes	1 (Thank Respondent and Continue)		
		No	2 (Thank Respondent and Terminate)		
INTERVIEWER DETAILS					
Name			Time & Date		
Interviewer's Name:			Date: ____/02/2024		
Contacts:			Start time:		End time:
RESPONDENT DETAILS					
Post	Name of Institution	Sex of Respondent	Highest level of education	Position/Designation	Contacts
1. Busia 2. Malaba 3. Namanga 4. Mombasa 5. Lunga lunga 6. ICD Nairobi	KRA	1. Male 2. Female 3. Other	1. Primary school 2. Secondary school 3. College diploma 4. University degree		
<p>A transit bond, also known as a customs transit bond, is a financial guarantee required by customs authorities to ensure the payment of customs duties, taxes, and other charges that may be applicable when goods are in transit through a country or customs territory. In the EAC region the East African Community Customs Management Regulation 2010 (EACCMR 2010) offers guidance on customs transit bonds including a stringent requirement that cargo must cross national borders within specified timeframes, and failure to do so incurs a 3% penalty.</p>					
<p>Objective 1: Evaluate the implications of KRA's enforcement of transit bond penalties on the profitability and competitiveness of customs agents, freight forwarders, and businesses engaged in cross-border trade.</p>					
A.	<ol style="list-style-type: none"> Can you walk me through the process of how transit bond penalties are enforced, including the criteria for determining when penalties are imposed and the steps taken to collect these penalties from customs agents, freight forwarders, and businesses engaged in cross-border trade? What measures, if any, does the Revenue Authority employ to mitigate the potential adverse effects of transit bond penalties on the operations and viability of customs agents, freight forwarders, and businesses engaged in cross-border trade? How effective have these measures been in addressing concerns raised by stakeholders? Can you discuss any recent changes or developments in the enforcement of transit bond penalties, and how these changes are expected to influence the profitability and competitiveness of customs agents, freight forwarders, and businesses involved in cross-border trade? Additionally, how does the Revenue Authority ensure that these enforcement 				

measures strike an appropriate balance between compliance and facilitating efficient cross-border trade?

Objective 2: Analyze and quantify the financial burden imposed on operators due to the payment of penalties and the associated costs, such as legal fees, administrative expenses, and potential penalties for non-compliance.

- B.**
4. Can you provide insights into the process and criteria utilized by the Revenue Authority for determining transit bond penalties in cross-border trade scenarios? How are these penalties calculated, and what factors influence the severity of penalties imposed on operators?
 5. What mechanisms does the Revenue Authority have in place to monitor and ensure compliance with transit bond regulations? How frequently are audits or inspections conducted, and what measures are taken to address instances of non-compliance before resorting to penalty imposition?
 6. Can you outline the support or resources available to operators to navigate compliance requirements effectively and minimize the risk of incurring transit bond penalties? Are there initiatives, guidance materials, or training programs provided to assist operators in understanding and adhering to regulatory obligations?

Objective 3: Examine the operational challenges experienced by customs agents and freight forwarders because of KRA's penalty enforcement.

- C.**
7. What specific challenges do customs agents and freight forwarders encounter when navigating the requirements and regulations related to transit bond penalties enforced by the KRA? Could you elaborate on any common pain points or areas of confusion frequently encountered in this process?
 8. In your opinion, what recommendations or enhancements could be implemented within the KRA's enforcement approach to mitigate the operational challenges faced by customs agents and freight forwarders? Are there any potential policy adjustments, technological advancements, or procedural changes that could streamline processes and foster better cooperation between all stakeholders involved?

Objective 4: Document experiences by Kenya Revenue Authority, Customs Agents and Freight Forwarders on the subject matter of Penalties on Transit Bonds in the following border posts

- D.**
9. What challenges or obstacles do you encounter most frequently when dealing with transit bond penalties, and how does your Revenue Authority address or overcome these challenges?

Objective 5: Establish the amount of time spent by Customs Agents and Freight Forwarders in resolving penalties on Transit Bonds disputes.

- E.**
10. Can you walk me through the typical process that customs agents and freight forwarders undergo when resolving disputes related to penalties on transit bonds? What specific steps are involved, from the identification of a dispute to its resolution?
 11. Could you provide insights into the typical timeline involved in resolving transit bond penalty disputes from the initiation of the dispute to its resolution? What factors contribute to variations in this timeline, and are there any measures or strategies in place to expedite the resolution process?

Alternative solutions and mechanisms for addressing the unfair imposition of transit bond penalties on transit cargo, identify practical and sustainable strategies for mitigating the adverse effects of the 3% penalty, and identify advocacy areas and potential policy reforms that can contribute to a more efficient and equitable transit bond system in Kenya.

- F.**
12. In your opinion, what alternative solutions or mechanisms could be explored to address the unfair imposition of transit bond penalties and mitigate their adverse effects on transit cargo? Are there any innovative approaches or best practices from other jurisdictions that could be adapted or implemented in Kenya?
 13. From your perspective, what potential policy reforms or changes in enforcement practices could contribute to a more efficient and equitable transit bond system in Kenya? Are there any advocacy areas or stakeholder collaborations that could help advance these reforms and promote a more sustainable approach to transit bond enforcement?

APPENDIX 6: IN-DEPTH INTERVIEW GUIDE: TRANSIT CARGO TRANSPORTERS

INTRODUCTION					
<p>Hello. My name is and on behalf of the Federation of East African Freight Forwarders Associations (FEAFFA) and Kenya International Freight and Warehousing Association (KIFWA) in partnership with the Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH (GIZ), we are currently conducting a study on aiming to examine the impact of the 3% penalty on transit bonds on your operations as transit cargo transporters. This questionnaire is meant to obtain your opinions on the subject matter, as an importer involved in the cross-border trade. Whatever information you may provide us with will be kept strictly confidential and will not be shared with anyone other than for the purposes of this study. You are free to ask any question and not to respond to any question you feel uncomfortable with. The interview will take approximately 30 minutes to complete and your participation is voluntary. We hope you will participate in this study since your views are very important with regard addressing the effects of the 3% penalty on transit bonds. At this point in time, do you want to ask me anything about the study?</p>					
Would you like to participate in this study?		Yes No	1 (Thank Respondent and Continue) 2 (Thank Respondent and Terminate)		
INTERVIEWER DETAILS					
Name			Time & Date		
Interviewer's Name:			Date: ____/02/2024		
Contacts:			Start time:		End time:
RESPONDENT DETAILS					
Post	Name of Business	Sex of Respondent	Highest level of education	Position/Designation	Contacts
1. Busia 2. Malaba 3. Namanga 4. Mombasa 5. Lunga lunga 6. ICD Nairobi		1. Male 2. Female 3. Other	1. Primary school 2. Secondary school 3. College diploma 4. University degree		
<p>A transit bond, also known as a customs transit bond, is a financial guarantee required by customs authorities to ensure the payment of customs duties, taxes, and other charges that may be applicable when goods are in transit through a country or customs territory. In the EAC region the East African Community Customs Management Regulation 2010 (EACCMR 2010) offers guidance on customs transit bonds including a stringent requirement that cargo must cross national borders within specified timeframes, and failure to do so incurs a 3% penalty.</p>					
<p>Objective 1: Evaluate the implications of KRA's enforcement of transit bond penalties on the profitability and competitiveness of customs agents, freight forwarders, and businesses engaged in cross-border trade.</p>					
G.	14. Could you describe the typical challenges and obstacles encountered by transit cargo transporters in complying with transit bond requirements and avoiding penalties? How do these challenges impact your operational costs and overall profitability?				
	15. From your perspective, how do transit bond penalties imposed by the Kenya Revenue Authority (KRA) affect the competitiveness of your business in the market for cross-border transportation services? Are there specific instances or trends where these penalties have significantly influenced your ability to attract and retain clients?				

Objective 2: Analyze and quantify the financial burden imposed on operators due to the payment of penalties and the associated costs, such as legal fees, administrative expenses, and potential penalties for non-compliance.

- H.**
1. Can you describe the typical costs associated with ensuring compliance with transit bond regulations during the transportation of goods through international transit routes? Specifically, how do transit bond penalties, legal fees, administrative expenses, and potential penalties for non-compliance impact your operations and financial viability?
 2. From your perspective as transit cargo transporters, what are the key factors contributing to instances of non-compliance with transit bond regulations? Are there systemic issues within the regulatory framework or operational challenges that make it difficult for operators to adhere to these requirements effectively?
 3. In your experience, what support or resources do transit cargo transporters require to mitigate the financial burden imposed by transit bond penalties and associated costs?

Objective 3: Examine the operational challenges experienced by customs agents and freight forwarders because of KRA's penalty enforcement.

- I.**
1. As a transit cargo transporter facilitating international trade, what are the primary operational challenges you face due to Kenya Revenue Authority's (KRA) enforcement of transit bond penalties? Could you provide specific examples or scenarios where these challenges have significantly impacted your operations?
 2. How do you perceive the effectiveness of the communication and coordination between customs agents, freight forwarders, importers and transit cargo transporters in navigating the requirements and regulations related to transit bond penalties enforced by the KRA? In your experience, what improvements or enhancements could be made to streamline processes and facilitate better collaboration among all stakeholders involved in cross-border trade?

Objective 5: Establish the amount of time spent by Customs Agents and Freight Forwarders in resolving penalties on Transit Bonds disputes.

- J.**
3. Can you walk me through the typical process involved in transporting transit cargo through international routes, particularly regarding the handling of Transit Bonds and potential penalties? From your experience, what are the key checkpoints or stages where disputes related to Transit Bonds penalties commonly arise, and how do you navigate these challenges as a transporter?
 4. What are the primary factors that contribute to delays or complications in resolving penalties on Transit Bonds disputes from the perspective of transit cargo transporters? Are there any recurring issues or bottlenecks in the resolution process that significantly impact the efficiency and timeliness of cargo transport, and if so, how do you manage or mitigate these challenges?
 5. In your opinion, what are the most pressing needs or requirements for transit cargo transporters in terms of support or resources to expedite the resolution of Transit Bond penalties disputes?

Alternative solutions and mechanisms for addressing the unfair imposition of transit bond penalties on transit cargo, identify practical and sustainable strategies for mitigating the adverse effects of the 3% penalty, and identify advocacy areas and potential policy reforms that can contribute to a more efficient and equitable transit bond system in Kenya.

- K.**
2. From your perspective as a transit cargo transporter, what alternative solutions or mechanisms do you believe could effectively address the issues surrounding transit bond penalties and mitigate their adverse effects on transit cargo? Are there any specific changes in enforcement procedures, regulatory frameworks, or stakeholder collaborations that you would recommend to improve the current system?



Contact Us

Federation of East African Freight Forwarders Associations (FEAFFA)

Hillcrest Court, Waiyaki Way, Slip Road, Westlands
P.O. BOX 22694 - 00400, Nairobi, Kenya

Tel: +254 (0) 738 150673 **E:** info@feaffa.com **w:** www.feaffa.com

Kenya International Freight and Warehousing
Association (KIFWA)

Kenya Ports Authority (KPA) ICD (Embakasi), OFF Mombasa Road.

Agent's Block, Ground Floor.

P.O Box 57969-00200 Nairobi, Kenya

Tel: +254 791 440879 / +254 738 271219 / +254 20 2026188

E: info@kifwa.co.ke **w:** www.kifwa.co.ke

