

THE EAST AFRICAN COMMUNITY

THE EAST AFRICAN COMMUNITY PROHIBITION OF MANUFACTURING, IMPORTATION, USE AND SALE OF SINGLE USE PLASTICS BILL, 2023

MEMORANDUM

The Treaty for the Establishment of the East African Community sets out one of the objectives of the Community as the promotion of sustainable utilisation of the natural resources of the Partner States and the taking of measures that would effectively protect the natural environment of the Partner States. Further, Chapter 19 of the Treaty provides for the co-operation of the Partner States on environment and natural resources management which includes undertaking, through environmental management strategies, to co-operate and co-ordinate their policies and actions for the protection and conservation of natural resources and environment against all forms of degradation and pollution arising from developmental activities.

The Partner States of the East African Community have individually and jointly made great strides towards addressing plastic bags pollution in their respective jurisdictions. A great step was made through the passing of the East African Community Polythene Materials Control Bill at the East Africa Legislative Assembly level which focuses on polythene materials and specifically provides for the elimination of polythene bags in all the Partner States. However, there remains a pressing need for further legislative action with respect to addressing the impact that the manufacture, importation, use and sale of single-use plastics has had in each Partner State and to the East African Community as a whole.

Significant steps are being taken globally to address the pollution caused by single-use plastics through the implementation of legislation on both a national and regional level. The tide continues to swell with discarded single-use plastics in East Africa, partly as a result of shifting consumer habits in the region, partly as a result of the ocean tides bringing pollutants from Asia and partly as a result of the increased use of personal protective equipment in response to the global COVID-19 pandemic. There is a pressing need for further affirmative action to be taken by East African policymakers in order to preserve the health of its economy, environment and persons.

The object of this Bill, therefore, is to provide a legal framework for the preservation of a clean and healthy environment, through the prohibition of the manufacturing, importation, use and sale of certain specified single-use plastic products.

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A Bill for an Act

ENTITLED

**THE EAST AFRICAN COMMUNITY PROHIBITION OF MANUFACTURING, IMPORTATION, USE AND
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An Act of the Community to provide for the ban, control and regulation of the manufacturing, importation, use and sale of single-use plastic products and for other related matters.

ENACTED by the East African Community and assented to by the Heads of State.

PART 1 – PRELIMINARY PROVISIONS

Short Title

1. This Act may be cited as the East African Community Prohibition of Manufacturing, Importation, Use and Sale of Single-Use Plastics Bill, 2023.

Commencement

2. (1) This Act shall come into force on such date as the Council may, by notice published in the Gazette, appoint.

(2) For avoidance of any doubt, the elimination of the single-use plastics shall be complete in all the Partner States within three (3) years from the coming into force of this Act.

Interpretation

3. In this Act, unless the context otherwise requires –

“Assembly” means the East African Legislative Assembly established by Article 9 of the Treaty;

“bio-degradable” means a material or item that has the ability to break down or which can decompose back into the natural environment without causing harm;

“Community” means the East African Community established under Article 2 of the Treaty;

“compliance notice” means a notice prohibiting a person from carrying on an activity specified in the notice until the person has taken the steps specified in the notice;

“Council” means the Council of Ministers of the East African Community established by Article 9 of the Treaty;

“East African Community Development Fund” means the East African Community Development Fund to be established under the East African Community Development Fund Act;

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“Gazette” means the Official Gazette of the Community;

“import” means to bring or cause to be brought into the territories of the Partner States, any single-use plastic products from a foreign country;

“manufacture” means the transformation of raw material into finished goods for sale, or other use, including the intermediate processes involving production or finishing of semi manufactured goods;

“medical purposes” means the purposes of preventative medicine, medical diagnosis, medical research and the provision of medical care and treatment;

“Partner State” means the Republic of Burundi, the Republic of Kenya, the Republic of Rwanda, the Republic of Uganda, the United Republic of Tanzania, the Democratic Republic of Congo and any other country granted membership to the Community under Article 3 of the Treaty;

“person” means an individual, a group of individuals, a company, an organisation or a cooperative with legal personality;

“plastic” means a material derived from petrochemicals that are lightweight, soft and non-compostable;

“plastic alternatives” means biodegradable plastics or bioplastics that biodegrade in the natural environment or can be composted at the end life of the plastic;

“plastic drink stirrer” means an implement made partly or wholly of plastic designed and intended for stirring drinks;

“plastic stemmed cotton bud” means an item that consists of a rod made wholly or partly of plastic with cotton wrapped around one or both ends and that is not designed or intended to be re-used;

“plastic straw” means a straw that is made wholly or partly from plastic and that is not designed or intended to be re-used;

“problematic plastics” means plastic packaging items, components, or materials where consumption could be avoided through elimination, reuse or replacement and items that, post consumption, commonly do not enter the recycling and/or composting systems, or where they do, are detrimental to the recycling or composting system due to their format, composition, or size;

“recidivism” means a habitual relapse into a similar offence;

“recycling” the process of collecting and processing plastic materials that would otherwise be thrown away as trash and turning them into new products;

“relevant environment authority” means a government body designated by a Partner State to deal with environmental protection, management and compliance;

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“relevant enforcement officer” means staff of the government body designated by a Partner State to deal with environmental protection, management and compliance or any other office authorised by any other law;

“scientific purposes” means diagnostic, educational or research purposes;

‘single-use plastic product’ means a disposable plastic item that is made wholly or partly from plastic designed to be used once before it is discarded or recycled;

“Treaty” means the Treaty for the establishment of the East African Community; and

“undertaking” means any business activity intended to be carried on, or carried on, for gain or reward by a person, a partnership or a trust.

Scope

4. This Act applies to all types of single-use plastic materials and products.

Objectives

5. The objectives of this Act are to –
 - (a) establish a legal framework for the control of the manufacture, importation, use and sale of single-use plastic products in the Community;
 - (b) promote the use of sustainable and non-toxic re-usable products and re-use systems in place of single-use plastic products, aiming first and foremost to reduce the quantity of waste generated in the Community;
 - (c) preserve and promote a clean and healthy environment, for all human beings and animals, and sustainable land use management for sustainable development;
 - (d) prevent any type of pollution, waste or litter caused by single-use plastic products in all freshwater and saltwater bodies including lakes, rivers and oceans;
 - (e) protect infrastructure including drainage systems, biodiversity and livestock;
 - (f) promote recycling; and
 - (g) brand the East African Community as green and clean standard setter.

PART 2 – REGULATION OF SINGLE-USE PLASTICS AND EXEMPTIONS

Prohibition of manufacture, import, sale or use

6. (1) No person shall produce, manufacture, distribute, import, sell, use or offer to manufacture, export or sell any single-use plastic product set out under the First Schedule, in any Partner State.

(2) No person shall pile or dispose of any single-use plastic product in any public place in any Partner State.

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(3) No Partner State shall allow transboundary movement of any single-use plastic product set out under the First Schedule including any waste generated from such single-use plastic products.

(4) Each Partner State shall prevent and eliminate illegal trade in single-use plastic products and the illegal trade in waste arising from single-use plastic products.

Exemptions

7. Section 6(1) shall not apply to the production, manufacture, distribution, import, sale, export or use of any single-use plastic listed under the First Schedule for any of the purposes set out under the Second Schedule.
8. The list of exempted uses of the prohibited single-use plastics may be updated from time to time as the Assembly deems necessary.

Collection of single-use plastics

9. Every manufacturer, wholesaler or retailer of any single-use plastic products shall put in place mechanisms for collection, segregation and recycling of its used plastic single-use plastic products.
10. Each Partner State shall ensure that the manufacturers, wholesalers and retailers of any single-use plastic products comply with the requirements of section 9 of this Act.

Waste Management

11. Each Partner State shall ensure that any single-use plastic waste is managed in a safe and environmentally sound manner throughout its different stages, including handling, collection, transportation, storage, recycling and final disposal.
12. Each Partner State shall meet the requirements, including where relevant through a sectoral approach, taking into account relevant provisions, guidance and guidelines in other international agreements, including those developed under the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.
13. Each Partner State shall prohibit waste management practices that may lead to the emissions and releases of hazardous substances, and shall regulate the other allowed waste management practices that may lead to the emissions and releases of hazardous substances.
14. Each Party shall take the necessary measures to prevent dumping in freshwater and saltwater bodies such as, pools, ponds, lakes, streams, rivers, wetlands, seas, oceans, littering and open burning of single-use plastic products.
15. Each Partner State shall take additional measures to:
 - (a) invest in waste management systems and infrastructure that enable environmentally sound management of plastic waste;

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- (b) promote investment and mobilize resources from all sources to cover financing gaps for waste management systems and infrastructure that enable environmentally sound management of plastic waste and enhance waste management capacity, in light of current and expected waste generation levels; and
 - (c) incentivize behavioural changes throughout the value chain and raise consumer awareness on sustainable consumption.
16. Each Partner State shall submit quarterly reports to the Council detailing the steps and measures taken by the Partner State to fulfil its obligations under sections 11, 12, 13, 14 and 15 of this Act.

Restrictions and Conditions

17. Each Partner State shall ensure that the single-use plastics set out under the First Schedule and the Third Schedule bear a clearly visible and legible marking on its packaging or on the product itself informing consumers of the following:
- (a) appropriate waste management options for the product or waste disposal means to be avoided for that product; and
 - (b) the presence of plastics in the product and the resulting negative impact of littering or other inappropriate means of waste disposal of the product on the environment.

Transitional provisions and disposal of existing stock

18. Each Partner State shall promote and facilitate a fair, equitable and inclusive transition for affected populations and businesses, with special consideration for women and vulnerable groups, including children and youth, in the implementation of this Act including:
- (a) Enabling policies and conditions to improve income, opportunities and livelihoods for impacted communities, including workforce training, development and social programmes, according to their needs and priorities;
 - (b) Incentivizing the development of skills and job opportunities across the single-use plastics value chain, including for the development of reuse, repair, recycling, waste collection and sorting;
 - (c) Promoting the use of affordable plastic alternatives to single-use plastics, including by ensuring and incentivising the manufacturing of affordable plastic alternatives and promoting educational and development programs for the uptake of the affordable alternatives within the impacted communities and businesses;
 - (d) Promoting a clean, healthy and sustainable environment for communities and workers across the value chain, including workers in the waste management sector;
 - (e) Improving working conditions for workers in the waste management sector;
 - (f) Integrating workers in informal and cooperative settings into a safe plastics value chain, including by requiring plastic product producers, recycling and waste

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management companies to integrate plastics collected and sorted by them into their operation schemes; and

- (g) Requiring a portion of the fees collected through extended producer responsibility schemes to be used to improve infrastructure and improve the livelihoods and opportunities for, and develop the skills of, workers in the waste sector, including waste workers in informal and cooperative settings.

19. The sale, use or offer to sell of any single-use plastic product set out under the First Schedule, is not an offence under section 6(1) if –

- (a) the sale, use or offer to sell is made within the period of twelve (12) months after the coming into force of this Act; and
- (b) the person selling or offering to sell the product obtained the product on or before the coming into force of this Act.

20. Each Partner State shall take the necessary measures to align its national laws with the provisions of this Act within the period of twelve (12) months of coming into force of this Act.

Authorisation

21. (1) Any person who wishes to manufacture, import, sell or use any single-use plastic listed under the First Schedule for any purpose set out under the Second Schedule shall apply for a written authorisation from the relevant environment authority and shall provide the following information –

- (a) the reasons for the application;
- (b) the quantities required and estimated period of use; and
- (c) how the applicant intends to manage or dispose of the single-use plastic waste arising from their use.

(2) the relevant environment authority shall, within a period not exceeding thirty (30) working days determine the application under subsection (1) and inform the applicant accordingly.

(3) In the event that the applicant is not satisfied with the decision of the relevant environment authority, such applicant may seek redress from the appropriate appellate authority in its Partner State for redress.

(4) The authorisation granted under section 19(1) may be revoked by the relevant authority if the relevant environmental authority confirms that it was obtained illegally, if the authority granted has been abused or because of any other reason to be specified by the relevant environmental authority.

PART 3 – CONSUMPTION REDUCTION OF SINGLE-USE PLASTIC PRODUCTS AND PROBLEMATIC PLASTICS

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22. (1) Each Partner State shall take the necessary measures to ensure a sustained reduction in the consumption of all single-use plastic products and problematic plastics in its territory. Those measures shall achieve a measurable and progressive quantitative reduction, to be determined by the Council.
- (2) The Council shall adopt regulations laying down the methodology for the calculation and verification of the measurable quantitative reduction measures taken.
- (3) Every fiscal year, each Partner State shall prepare a report of the volume of single-use plastic products and problematic plastic produced, manufactured or imported into the Partner State and measures which they have adopted pursuant to section 21(1) and (2). The report shall include an assessment of the effectiveness of those measures in meeting the objectives of this Act and the challenges faced in implementing the measures.
- (4) Each Partner State shall submit the report to the Council and make it publicly available.
- (6) The measures may include –
- (a) Nationally determined consumption reduction targets;
 - (b) measures ensuring that re-usable alternatives to the single-use plastic products listed in the First Schedule are made available at the point of sale to the final consumer; and
 - (c) marketing restrictions.

PART 4 – AWARENESS RAISING MEASURES AND INCENTIVES

Awareness Raising Measures

23. Each Partner State shall, during the transitional period, take measures to inform and incentivise consumers, producers, retailers, manufacturers, and suppliers about the following–
- (a) the effects of plastic pollution on the environment and the health risks plastic pollution poses;
 - (b) the availability of re-usable alternatives, re-use systems and waste management options;
 - (c) the impact of littering and other inappropriate waste disposal of single-use plastic products on the environment, and in particular on the marine environment; and
 - (d) the impact of inappropriate means of waste disposal of those single-use plastic products on the sewer network.

Incentives

24. Any activity aimed at controlling pollution caused by single-use plastics waste or any person investing in re-usable alternatives or bio-degradable materials may –
- (a) receive support from any global or regional fund that supports environmental initiatives;
- or

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(b) receive support from the government of a Partner State in the form of economic instruments such as subsidies, grants or tax regimes as such Partner State may determine.

25. Partner States are encouraged to use regulatory and economic instruments as a form of incentives to promote the use of environmentally sound and sustainable non-plastic substitutes.

26. Within six (6) months of coming into force of this Act, each Partner State shall submit to the Council a detailed outline of the incentives it intends to put in place to promote the use of environmentally sound and sustainable non-plastic substitutes and the timelines for implementation of the incentives.

PART 5 – SANCTIONS AND ENFORCEMENT

Enforcement

27. The relevant environmental authority in each Partner State shall be responsible for enforcing this Act.

28. The environmental authorities in the Partner States shall co-operate in the transboundary enforcement of this Act and shall develop joint assistance programs for the effective co-ordination of their efforts in enforcing this Act.

Sanctions

29. In relation to an offence under this Act, the relevant environmental authority may, by notice, impose—

(a) a requirement to pay a monetary penalty to the regulator of such amount as the regulator may determine (“an administrative fine”) in accordance with the provisions of this Act; or

(b) a requirement to take such steps as the relevant environmental authority may specify, within such period as it may specify, to secure that the offence does not continue or recur (“a compliance notice”).

30. The non issuance of a compliance notice by a relevant environmental authority shall not be a defence to an enforcement action or sanction.

Penal Provisions

31. (1) Any person who contravenes the provisions of section 6(1) commits an offence and shall be liable to an administrative fine not exceeding forty thousand United States Dollars (USD 40,000) or to imprisonment for a term not exceeding twelve months, or both and in the case of an undertaking, up to ten percent of its annual turnover of the preceding financial year.

(2) Any person who contravenes the provisions of section 6(2) commits an offence and shall be liable to an administrative fine not exceeding twenty thousand United States Dollars (USD 20,000) or to imprisonment for a term not exceeding twelve months, or both and in the case of an undertaking, up to ten percent of its annual turnover of the preceding financial year, and shall be ordered to remove such waste and repair the damages caused.

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- (3) Any person who commits an offence under this Act for which no specific penalty is provided or who otherwise contravenes this Act shall, on conviction, be liable to a fine not exceeding five thousand United States Dollars (USD 5,000) or imprisonment for a term not exceeding six months, or to both, and in the case of an undertaking, up to five percent of its annual turnover of the preceding financial year.
- (4) Where an offence under this Act is committed by a body corporate, and it is proved to have been committed with the consent, connivance of, or to be attributable to any act default on the part of the director, manager, secretary or other similar officer of the body corporate or any other purporting person as well as the body corporate, shall be deemed to have committed the offence and shall be liable accordingly.
- (5) Where recidivism is established on any person under this section, the penalty against such a person shall be doubled.

Compliance Notice

- 32. (1) The relevant environmental authority may serve a compliance notice on any person or body corporate in a case falling within section 6(1) or section 6(2) of this Act.
- (2) A “compliance notice” is a notice prohibiting a person or body corporate from carrying on an activity specified in the notice until the person or body corporate has taken the steps specified in the notice.
- (3) A case falling within this sub-section is a case where the relevant environmental authority reasonably believes that—
 - (a) the person or body corporate is carrying on the activity;
 - (b) the activity as carried on by that person or body corporate is causing, or presents a significant risk of causing, serious harm to the environment (including the health of animals); and
 - (c) the activity as carried on by that person or body corporate involves or is likely to involve the commission of an offence under Sections 6(1) or 6(2) of this Act.
- (4) The steps referred to in sub-paragraph (2) shall be steps to remove or reduce the harm or risk of harm to the environment (including the health of animals).

Contents of a Compliance Notice

- 33. (1) A compliance notice shall include information as to—
 - (a) the grounds for serving the notice;
 - (b) the steps the person or body corporate must take to comply with the notice;
 - (c) rights of appeal; and
 - (d) the consequences of non-compliance.

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Appeals against compliance notices

34. The person on whom a compliance notice is served may appeal against the decision to serve it to the courts or tribunals of the relevant Partner States and in accordance with the applicable laws.
35. The grounds for appeal may include:
- (a) that the decision was based on an error of fact;
 - (b) that the decision was wrong in law;
 - (c) that the decision was unreasonable;
 - (d) that any step specified in the notice is unreasonable;
 - (e) that the person has not committed the offence and would not have committed it had the compliance notice not been served;
 - (f) that the person would not, by reason of any defence, have been liable to be convicted of the offence had the compliance notice not been served;
 - (g) any other reasonable ground.

Completion Certificate

36. (1) Where, after service of a compliance notice, the relevant environmental authority is satisfied that the person has taken the steps specified in the notice, the relevant environmental authority shall issue a completion certificate.
- (2) The compliance notice ceases to have effect on the issuance of a completion certificate.
- (3) The person on whom the compliance notice is served may at any time apply for a completion certificate.
- (4) The relevant environmental authority shall make a decision as to whether to issue a completion certificate, and give written notice of the decision to the applicant, within 14 days of such an application.

Appeals against decision not to issue a completion certificate

37. The person on whom the compliance notice was served may appeal against a decision not to issue a completion certificate on the grounds that the decision—
- (a) was based on an error of fact;
 - (b) was wrong in law;
 - (c) was unfair or unreasonable;
 - (d) was wrong for any other reason.

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Failure to comply with a compliance notice

38. (1) Where a person or body corporate on whom a compliance notice is served does not comply with it, the person or body corporate is guilty of an offence and liable to a fine not exceeding five thousand United States dollars (USD 5,000), or imprisonment for a term not exceeding twelve months, or both, and in the case of an undertaking, up to five percent of its annual turnover of the preceding financial year.

Power of seizure

39. Subject to the exemption set out under section 6(2), any single-use plastic product found in the possession of any person or body corporate in contravention of this Act shall be seized and taken to the appropriate stores established by the relevant environment authority for disposal.

Powers of entry and examination

40. The relevant enforcement officer may, at any reasonable time, inspect any premises or vehicles suspected to be in possession of single-use plastic products in contravention with this Act and may –
- (a) inspect and check the operation of any industry or factory and any associated premises or vehicle which he or she has reasonable cause to suspect is in possession of any prohibited single-use plastic products;
 - (b) examine and inspect any premises or vehicle which he or she has reasonable cause to suspect is in possession of any single-use plastic products;
 - (c) take such measurements and photographs and make such recordings as the relevant enforcement officer considers necessary for the purpose of any such examination or investigation;
 - (d) require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any documents which it is necessary for the relevant enforcement officer to see for the purposes of any such examination or investigation;
 - (e) direct that any premises or any part of them, or anything in them, be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of examination or investigation;
 - (f) take any samples, or cause samples to be taken, of any articles or substances found in or on any premises which a relevant enforcement officer has power to enter and to cause any such articles or substances to be analysed or tested; and
 - (g) seize any material, equipment or machine or information, where such seizure is necessary for an examination or investigation.
41. (1) Any person who obstructs, impedes, assaults or interferes with a relevant enforcement officer in the performance of his or her functions under this Act commits an offence and shall

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be liable to an administrative fine not exceeding five thousand United States dollars (USD 5,000) or imprisonment for a term not exceeding twelve months, or both, and in the case of an undertaking, up to five percent of its annual turnover of the preceding financial year.

(2) In exercising any of the powers of enforcement under this Act, a relevant enforcement officer shall on demand produce to the person against whom he or she is acting, evidence of identity as well as authority issued by the relevant environment authority to the relevant enforcement officer.

PART 6 – MISCELLANEOUS

42. This Act shall take precedence over other laws in the Partner States to which its provisions relate.
43. The Council may make regulations generally for giving effect to the provisions of this Act.

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FIRST SCHEDULE

LIST OF PROHIBITED SINGLE-USE PLASTIC PRODUCTS

- (1) Polythene and plastic bags
- (2) Cutlery (forks, knives, spoons, chopsticks);
- (3) Plates and bowls;
- (4) Plastic straws;
- (5) Beverage stirrers;
- (6) Balloons and sticks to be attached to and to support balloons;
- (7) Food containers made of expanded polystyrene;
- (8) Cups for beverages, including their covers and lids;
- (9) Beverage containers used for beer, wine, water, liquid refreshments, juices and nectars, instant beverages or milk, made of expanded polystyrene, including their caps and lids;
- (10) Polystyrene packaging materials;
- (11) Crisp packets, sweet and chocolate wrappers, bread bags and confectionary wrappers; and
- (12) Sanitary items such as dental floss and plastic cotton bud sticks.

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SECOND SCHEDULE

**EXEMPTIONS TO THE PROHIBITION ON MANUFACTURE, IMPORT, SALE AND OF PROHIBITED SINGLE-
USE PLASTICS**

The prohibited single-use plastics listed under the First Schedule may be used for any of the following purposes where relevant:

- (1) Medical purposes;
- (2) Forensic purposes;
- (3) Scientific purposes (i.e. diagnostic, educational or research purposes);
- (4) Industrial purposes;
- (5) Agriculture and forestry purposes;
- (6) Printing houses purposes; and
- (7) Construction industry purposes.

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THIRD SCHEDULE

LIST OF SINGLE USE PLASTICS WITH MARKING REQUIREMENTS

The following single-use plastics set out under this schedule shall bear a visible and legible marking on its packaging or on the product itself informing consumers of the information specified in section 11:

- (1) Tobacco products with filters and filters marketed for use in combination with tobacco products;
- (2) Wet wipes; i.e. pre-wetted personal care and domestic wipes; and
- (3) Sanitary towels (pads), tampons and tampon applicators.