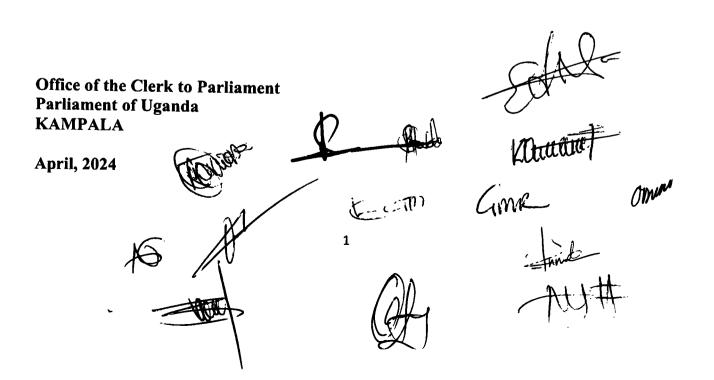


## **REPORT OF THE SECTORAL COMMITTEE ON TOURISM, TRADE AND INDUSTRY ON THE FREE ZONES (AMENDMENT) BILL, 2024.**



#### 1.0 **INTRODUCTION**

Rt. Hon. Speaker and Hon. Members.

The Free Zones (Amendment) Bill, 2024 was read for the First Time on Thursday, 4 April 2024; and in accordance with Rule 129(1) of the Rules of Procedure of the 11th Parliament of the Republic of Uganda, was referred to the Sectoral Committee on Tourism, Trade and Industry for scrutiny.

The Committee scrutinized the Bill in accordance with Rule 129(2) of the Rules of Procedure and hereby reports to this House in accordance with Rule 130(2) of the same Rules.

#### 2.0 BACKGROUND TO **RATIONALISATION** OF **GOVERNMENT** AGENCIES AND PUBLIC **EXPENDITURE:** THE FREE ZONES (AMENDMENT) BILL, 2024.

On 22<sup>nd</sup> February, 2021, Cabinet took a decision to merge, mainstream and rationalize Government Agencies and Public Expenditure, to facilitate efficient and effective service delivery. This decision followed the 2018 Report by the Ministry of Public Service that detailed findings and recommendations of the review of Government Agencies and Authorities. The primary goals of Rationalization of Government Agencies was to establish their operational relevance; determine their current operational costs; eliminate embedded duplications and overlaps; identify wasteful expenditures; and establish the resultant short term and long term savings, which would be optimally utilized for sustainable socio-economic and political development of the country.

In the early 2,000s Government of Uganda witnessed an increase in the number of selfaccounting government institutions: commissions, authorities and agencies that were

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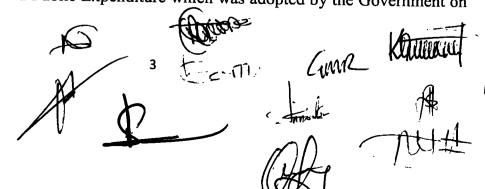
created through parliament's key function of legislation. The creation of these selfautonomous government institutions through Acts of Parliament bestowed on policy/governance and management structures specified in such Acts, key responsibilities of formulation of strategic policies and direction as well as implementation of policies. The Acts of Parliament that created self-autonomous government institutions make specific provisions for cost drivers of such institutions, being Boards, accounting officers and their staff; and further make specific provisions relating to their sources of funds being through parliamentary appropriation, and fees and monies charged by such institutions for goods sold or services rendered. The funds allocated to self-accounting institutions through parliamentary appropriation to finance their activities suggested an annual charge on the Consolidated Fund.

Whereas the Acts of Parliament that created self-autonomous government institutions mandated Ministers to have direct control and oversight over their strategic policy direction through appointment of Boards and the accounting officers, most self-accounting government institutions executed their mandate independent of their Ministry Headquarters.

This Report will primarily focus findings, observations and recommendations on proposed amendment of the Free Zones Act, 2014, to enable the merging of the Uganda Free Zones Authority and the Uganda Export Promotions Board into one entity called 'Uganda Free Zones and Export Promotions Authority' under the supervision of the Ministry responsible for trade.

#### 2.0 POLICY AND PRINCIPLES OF THE BILL

The policy behind the Bill is to give effect to the Government Policy for Rationalisation of Government Agencies and Public Expenditure which was adopted by the Government on 22<sup>nd</sup> February, 2021.



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#### 3.0 **DEFECTS IN EXISTING LAWS.**

The Constitution establishes a definite number of Government agencies, including constitutional commissions, authorities, boards, local councils and other statutory bodies. These were established to perform certain specified constitutional functions. Over the years, however, there has been a proliferation of agencies established by Acts of Parliament, Executive Orders and administrative arrangements. Whereas most of the agencies are necessary due to the critical nature of the functions they perform, Government has established that a certain limited number of agencies were established without consideration to the aspects of institutional harmony, functional duplications, overlaps and affordability. Government has also established that some agencies have served the purpose for which they were established. The mandate of a few other agencies has been overtaken by events. Such events need to be rationalized.

More importantly, the proliferation of agencies has created mandate overlaps and jurisdictional ambiguities among the agencies. Additionally, the high cost of administering the agencies has drained the national treasury at the expense of effective service delivery. This has overstretched the capacity of Government to sustain them. Government has also established that the generous salary structures of the agencies has created salary disparities between employees of the agencies and public officers in the traditional civil service leading to demotivation of human resources in the mainstream public service.

#### 4.0 **OBJECT OF THE BILL.**

The Bill intends to amend the Free Zones Act, 2014 to: -

- Ale enable the merging of the Uganda Free Zones Authority and the Uganda Export (a) Promotions Board into one entity called 'Uganda Free Zones and Export Promotions Authority' under the supervision of the Ministry responsible for trade, among others, relieving the Government of the financial drain on its resources and the

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burden of wasteful administration and expenditure of maintaining two agencies yet one Agency may perform all the functions of the two Agencies;

- (b) facilitate efficient and effective service delivery and functions of the Uganda Free Zones and Export Promotions Authority, thereby avoiding duplication of mandates and functions;
- (c) promote coordinated administrative arrangements, policies and procedures for:
  - (i) ensuring the efficient and successful management, financial accounting and budgetary discipline of government agencies and departments;
  - (ii) enabling the Government to play its role more efficiently; and
  - (iii) enforcing accountability;
- (d) to restructure and reorganize the Uganda Free Zones Authority by eliminating functional ambiguities in the Authority to enable the merger with the Uganda Export Promotions Board.

#### 5.0 METHODOLOGY

During the process of considering the Bill, the Committee:

- (a) met and held discussions with the following stakeholders:
  - (i) The Hon. Minister of Trade, Industry and Cooperatives;
  - (ii) The Hon. Minister of Public Service
  - (iii) The Executive Director and Staff of Uganda Export Promotion Board
  - (iv) The Executive Director and Staff of Uganda Free Zones Authority
- (b) conducted documentary review of the following literature:
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  - (i) The Constitution of the Republic of Uganda, 1995 (as amended)



- (ii) The 2018 Report of the Ministry of Public Service on the Review and Rationalisation of Government Agencies and Public Expenditures;
- (iii) The Free Zones Act, 2014
- (iv) The Uganda Export Promotions Board Act, Cap 102
- (v) The East African Community Customs Management Act, 2004;
- (vi) The East African Customs Union Protocol; and
- (vii) The East African Customs Management Regulations, 2004.

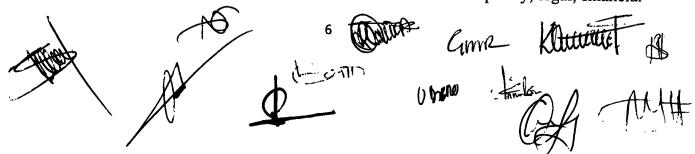
#### 6.0 FINDINGS/OBSERVATION AND RECOMMENDATIONS.

#### 6.1 The Uganda Free Zones Authority (UFZA)

The Uganda Free Zones Authority (UFZA) is a Regulatory Agency established in line with the East African Community (EAC) partner states' commitment to develop Free Zones for purposes of accelerating development through creating an enabling environment for the production of export competitive goods as envisaged under Articles 75 and 76 of the Treaty, and Articles 29, 31 and 32 of the EAC Customs Union Protocol; and Regulations thereof (EPZ and FP Ops), Part XIV of the EAC Customs Management Act, 2004.

The UFZA was established by the Free Zones Act of 2014 (Section 6) to enable, facilitate and regulate the establishment, development, management, marketing, maintenance, supervision and control of Free Zones/Special Economic Zones; and to provide for other related matters with the aim of creating opportunities for export development and job creation. Section 13(2) of the Free Zones Act, 2014 mandates the UFZA to carry out the following functions:

- (a) to oversee, coordinate and administer the provisions of the Free Zones Act, 2014;
- (b) to advise the Government on all matters relating to free zones and on its own initiative, to make recommendations to the Government on policy, legal, financial



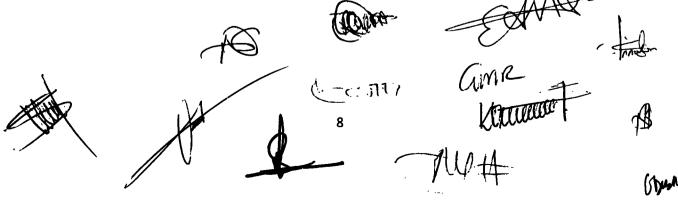
and other issues that may affect the work of the Authority; and the performance of free zones and to advise on best practices for implementation of free zones in Uganda;

- (c) to recommend to the Minister the declaration, extension and termination of a free zone;
- (d) to identify and map areas to be declared as free zones;
- (e) to act as a body having national responsibility for the drafting and implementation of policies and actions relating to free zones including the establishment, development, promotion, management, control, operation, supervision and monitoring of free zones;
- (f) to provide, construct, develop, alter, adapt, maintain and administer free zones;
- (g) to ensure that all required measures to facilitate business activities in a free zone are identified, including, but not limited to, requirements for physical amenities, infrastructure, manpower and training and to devise measures that will encourage the provision of those requirements;
- (h) to foster sustainable development through establishment or causing to be established free zones in such numbers and locations and for such period of time as it considers necessary while taking into account other concerns including development needs and environmental impact;
- to design and propose to the Government schemes and incentives and how the schemes and incentives should be administered and to approve the development and site plans in free zones in accordance with the Physical Planning Act, 2010;



- (j) to advise and assist persons undertaking development or management of free zones;
- (k) to examine and process applications for designation of free zones and issue free zone developer licenses;
- (1) to examine and process applications and issue licenses for free zone managers and users;
- (m) to generate public understating of the necessity for a strong private sector involvement in the establishment and operations of free zones;
- (n) to act as a trustee as well as a nominee shareholder on behalf of the Government in any business relating to free zones;
- (o) to promote and coordinate investment, mobilisation of resources for developing the free zones and the formulation of market strategies;
- (p) to coordinate research and development activities and sharing of information with other competent authorities;
- (q) to enforce compliance with requirements for preventing the unauthorized use of free zones and business enterprises in the free zones;

(r) to perform any other functions incident or conducive to the attainment of the objectives of this Act or the performance of the functions of the Authority under the Act.



## Budget Performance (Financial and Physical Performance) of Uganda Free Zones Authority for the Financial Years 2017/18-2023/24

<b>Financial Year</b>	Budgeted in UGX (bn)	Budget Received in UGX (bn)	Budget Spent in UGX (bn)
2017/18	11.954	11.914	11.914
2018/19	11.964	11.964	11.946
2019/20	8.964	7.910	7.910
2020/21	8.964	8.964	8.964
2021/22	13.964	12.232	12,018
2022/23	28.357	27.792	27.499
Total			

Source: Uganda Free Zones Authority

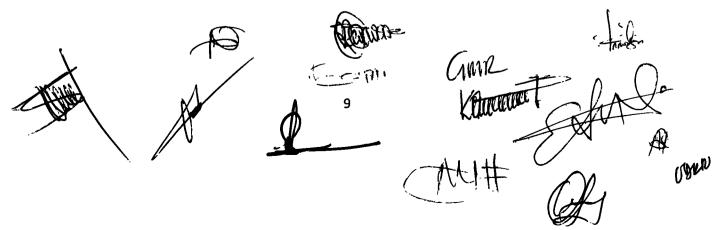
An analysis of the budget performance of the Uganda Free Zones Authority for the period spanning financial years 2017/18 – 2023/24 suggests close to 100% budget absorption.

### Performance of Non Tax Revenue of Uganda Free Zones Authority for the Financial Years 2018/19 - 2023/24.

Financial Years	Nontax revenue generated (NTR) (UGX)
2017/18	176,970,364
2018/19	64,825,588
2019/20	46,901,174
2020/21	60,651,029
2021/22	121,504,955
2022/23	159,613,908
2023/24 (up to December 2023)	130,118,788
Total Source: Uganda Free Zones Auth	760.585.806

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The table above illustrates that for the Financial Years 2017/18 - 2023/24 (up to December 2023), Uganda Free Zones Authority generated a total of UGX 760,585,806 as a nontax revenue and deposited the same with the Consolidated Fund.



#### **Cost Benefit Analysis**

	FY 2024/25	FY 2025/26	
Category	UGX (Billion)	UGX (Billion)	
Costs	0.913	0	
Staff to be laid off	16	0	
o/w Terminal benefits	0.913	0	
Savings	10.446	10.446	
o/w Wage	0.261	0.261	
o/w Board expenses	0.285	0.285	
o/w Nonwage	4.49	4.49	
o/w Development	5.41	5.41	
Net savings	9.533	10.446	

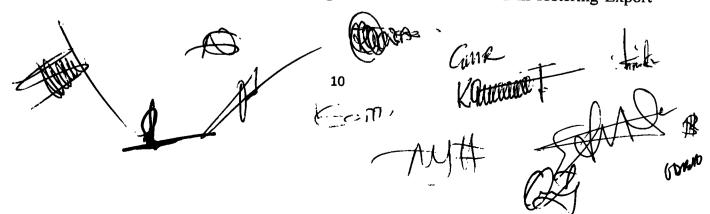
Source: Certificate of Financial Implications on the Free Zones (Amendment) Bill, 2024

From the aforegoing table, the Committee notes that the total cost implication of the merger of Uganda Free Zones Authority and the Uganda Export Promotions Board, Government would make a net saving of up to UGX 9.533 billion during the Financial Year 2024/25; and net savings expected to increase to UGX 10.446 billion in the FY 2025/26.

#### **Observations of the Committee**

The proposal by Government to merge Uganda Free Zones Authority (UFZA) and Uganda Export Promotions Board (UEPB) into a single entity called the Uganda Free Zones and Export Promotions Authority under the supervision of the Ministry responsible for trade is a positive move towards addressing the mischief of duplication of roles.

The Committee now observes that the mandates and functions of the two Agencies are complementary in nature. That the two Agencies are both involved in fostering Export



Development and Promotion, and their reorganization would improve response time, coordination and cohesion.

#### **Implications of the merger: Staff structure**

The Committee observes that 16 staff of Uganda Free Zones Authority would be laid off, and this would therefore attract UGX 0.913 billion as one-off payments as terminal benefits in FY 2024/25. The allocation of UGX 0.913 billion is an indication that Government is willing and ready to gracefully terminate the services of 16 staff of Uganda Free Zones Authority, and this would limit unnecessary litigation on the same matter.

## ISSUES RAISED BY UGANDA FREE ZONES AUTHORITY IN OBJECTION TO THE MERGER; AND THE OBSERVATIONS OF THE COMMITTEE.

1. That Uganda Free Zones Authority is a regulatory agency anchored in the Treaty for the establishment of the East African Protocol

The Committee analyzed the Treaty for the establishment of the East African Community and found that it does not list the Free Zones Authority, or any such other organisation as an Organ or Institution of the Community.

However, the Committee notes that Article 29 and 31 of the Protocol on the Establishment of the East African Customs Union empowers each Partner State to establish Export Processing Zones (EPZ) and Special Economic Zones (SEZ).

EPZ and SEZ across the Partner States focus on contributing to building strong export-led economic development <u>through industrialization</u>. EPZ and SEZ provide a number of specific incentives for investors operating within them, which include fiscal and non-fiscal incentives, including corporate tax holidays, duty and VAT exemptions.

The EPZ and SEZ are governed under the East African Community Customs Union (Export Processing Zones) Regulations wherein Regulation 6 empowers Member States of

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the EAC to establish a competent authority to develop, coordinate and oversee operations within the export processing zones.

The Regulation does not direct a Partner State on the nature of the authority to be established. The discretion is given to the partner state to determine how best these EPZ and SEZ are established, managed and run. In Uganda, these areas are referred to as Free Zones while in Kenya, Tanzania, Burundi, it is called a Special Economic Zones.

Therefore, the determination of the nature of the entity that manages and runs EPZ and SEZ is left to the discretion of Member states.

This means that the Government is free to establish any entity it deems that will operate and manage the SEZ and EPZ as it deems fit and therefore finds no merit in the above justification not to merge Uganda Free Zones Authority with Uganda Export Promotions Board.

- 2. That FREE ZONES should belong to the sector that deals with fiscal matters and not trade as proposed in the Bill.
- 3. That the substitution of the Minister of Finance for, or with Minister of Trade in Clause 45 (c) will transfer to the Minister of Trade fiscal responsibilities.

The Committee summarizes this argument moved against the merger to mean that Uganda Free Zones Authority cannot be transferred from Ministry of Finance, Planning and Economic Development to the Ministry of Trade, Industry and Cooperatives.

The establishment and functioning of Government Agencies is the preserve of the Executive, whose mandate is prescribed in Article 111 (2) of the Constitution as follows-

"The functions of the Cabinet shall be to determine, formulate and implement the **policy** of <u>the Government</u> and to perform such other functions as may be conferred by this Constitution or any other law"



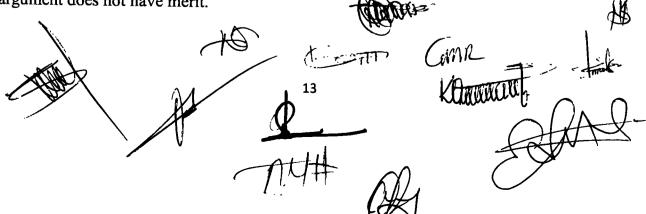
The transfer of Uganda Free Zones Authority is therefore an exercise of the executive functions of Government.

Furthermore, the Committee has examined the purpose for and the functions of the Uganda Free Zones Authority as established in Article 29 and 31 of the Protocol on the Establishment of the East African Customs Union, the East African Community Customs Union (Export Processing Zones) Regulations and the East African Customs Management Act, and is of the considered opinion that EPZ and SEZ are not a fiscal tool as alleged, but an industrialization and export promotion measure aimed at building strong export-led economic development through industrialization.

The East African Community Customs Union (Export Processing Zones) Regulations guide on the functions of EPZ in Regulation 7 to include, among others, the promotion of forward and backward linkages of <u>industries in the export processing zones</u> of the Partner States.

The functions of the Uganda Free Zones Authority fall within the arm bit of industrialization, a matter that is managed by the Ministry responsible for Trade and Industry. The Committee also had the benefit of perusing similar laws in the EAC and is of the considered opinion that similar bodies in Member states of the EAC are not supervised by Ministry of Finance, but the Ministry responsible for industrialization. For instance in Kenya, the Special Economic Zones are supervised by the means the Cabinet Secretary for the time being responsible for matters relating to industrialization, in Tanzania, the Export Processing Zones Authority Special Economic Zones Act is also supervised by the Ministry responsible for Industry. In Rwanda, the Special Economic Zones are regulated by the Ministry of Trade and Industry.

The Committee has examined the arguments of Uganda Free Zones Authority not to be merged with Uganda Export Promotions Board, and is of the considered opinion that this argument does not have merit.



# 4. That the merger would vary the functions of the competent authority in disregard of Article 39 (2) of the Customs Union Protocol which states that 'custom laws shall apply equally.'

The Committee has examined the issue above and is of the considered opinion that this also does not have merit. It seems that the argument is that Clause 49 which proposes to amend Section 13 of the Free Zones Act to increase the functions of the Uganda Free Zones and Export Promotions Authority will infringe article 39 of the Customs Union.

The argument is premised on the view that the Free Zones Act is a fiscal legislation which is supposed to apply to all the EAC countries uniformly.

The Committee notes that Article 39 (1) of the Customs Union Protocol as stated by Free zones authority outlines the customs laws of the Union to include-

- (a) The relevant provisions of the EAC Treaty;
- (b) The Customs Union Protocol;
- (c) Regulations and directives made by the Council;
- (d) Applicable decisions made by the Court;
- (e) Acts of the Community enacted by the Legislative Assembly; and
- (f) Relevant principles of international law.

The Committee further notes that the above list does not include Free Zones Act of Uganda or any such legislation from the Member states of the EAC. This means that the Free Zones Act of Uganda is not envisaged to be among the custom laws of the EAC since it is not listed in Article 39 and nor does it prescribe any custom measure that apply to EAC. The Committee also finds that the Free Zones Act of Uganda does not have extra territorial jurisdiction and only applies in Uganda and not in any other country.

The Committee understands that there is an argument being made that increase of the functions of the Uganda Free Zones Authority as proposed in Clause 49 paragraph (b) is irregular, also holds no merit since Regulation 7 of the East African Community Customs

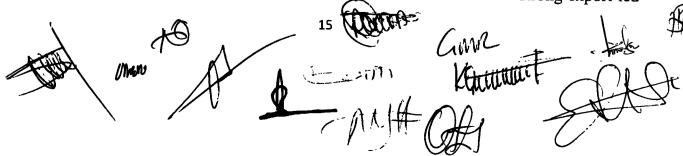
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Union (Export Processing Zones) Regulations only prescribes the principal functions of the competent authorities. This does not preclude the assignment of additional functions to the Authority. Indeed, regulation 7 (1) (h) allows the assignment of additional functions to the competent authority. The Regulation provides that the Authority may perform any other functions as may be incidental or conducive to the attainment of the objectives of the Customs Union or the exercise of their powers under these Regulations.

The Committee therefore finds that this provision allows Government to assign it additional functions as proposed in the Bill.

- 5. That the proposed merger between Uganda Free Zones Authority and Uganda Export Promotion Board will present challenges of practical implementation, leading to misalignment with the East African Community Treaty, Protocols, Policies, Laws and Regulations to which Uganda is a signatory.
- 6. That merging Uganda Free Zones Authority and Uganda Export Promotions Board will further disrupt Uganda's engagement in the regional, continental and global Special Economic Zones ecosystem as a result of inconsistencies in the institutional framework
- 7. That further still, it will lead to a creation of an institution which is convoluted with inadequate role clarity and an identity crisis because there exists significant differences as a result of legal commitments Uganda has made at the EAC level between the customs territory (Regular Domestic Economy) and gazetted customs areas outside the customs territory (Free Zones).

Firstly the Committee finds that Articles 29 and 31 of the Protocol on the Establishment of the East African Customs Union empowers each Partner State to establish Export Processing Zones (EPZ) and Special Economic Zones (SEZ). Uganda Free Zones Authority and Uganda Export Promotions Board can easily fall within the categories of bodies envisaged in Articles 29 and 31 since they are intended to build strong export-led

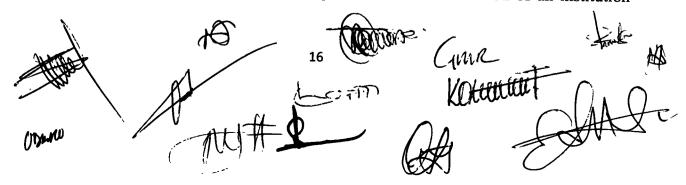


economic development through industrialization. The functions of the Uganda Export Promotions Board and Uganda Free Zones Authority are complementary. It should be noted that the objectives of the Uganda Export Promotions Board is to facilitate the development, promotion and coordination of all export-related activities that lead to export growth on a sustainable basis while the functions of the Uganda Free Zones Authority is to establish, manage, maintain, market, supervise and control of free zone. These activities are complementary in that the goods and service manufactured in a free zone are intended for export and cannot be introduced in the local economy without paying duty. See regulation 15 of the East African Community Customs Union (Export Processing Zones) Regulations

The Committee also notes that Article 25 of the Custom Union Protocol empowers partner states to design and support export promotion schemes in the Community for the purposes of accelerating development, promoting and facilitating export oriented investments, producing export competitive goods, developing an enabling environment for export promotion schemes and attracting foreign direct investment. This means that Uganda Export Promotions Board and Uganda Free Zones Authority are not mutually exclusive and can perform similar and complementary functions, hence the need to merge them into one body.

It should be noted that the definition of a Free Zone under the Free Zones Authority Act includes export processing zones. Section 2 of the Act defines a "free zone" to mean a designated area where goods introduced into the designated area are generally regarded, so far as import duties are concerned, as being outside the customs territory and includes an export processing zone or free port zone. There is therefore some aspects of the Free zones are export oriented, similar to the functions performed by Uganda Export Promotions Board.

The Committee has also considered the argument that the merger between the export promotion board and the free zones authority will lead to the creation of an institution



which is convoluted with inadequate role clarity and an identity crisis and is of the view that this is fictitious.

It should be noted Clause 49 expand the functions of the Uganda Free Zones Authority and Export Promotions Authority to include aspects currently performed by the Export Promotion Board. Furthermore, that currently the Uganda Free Zones Authority undertakes functions that are export oriented, under Section 2 on Export Processing Zones being part of the Free Zones; Section 4 considerations for declaring a free zone; Section 44 on goods that can be exported from a Free Zone; Section 47 on export of goods from a Free Zone. In all those instance, goods and services manufactured in a free zone are exempted from paying export duties when being exported, further lending credence that Free Zones and Export Promotions provide similar and complementary functions.

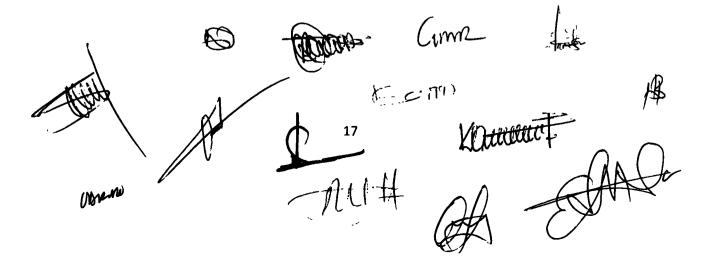
Therefore, the Committee finds merging the Export Promotion Board with the Free Zones Authority is permissible and the merger will not lead to the creation of an institution which is convoluted with inadequate role clarity and an identity crisis.

### 7.0 RECOMMENDATIONS OF THE COMMITTEE

The Committee therefore recommends that Uganda Free Zones Authority and the Uganda Export Promotions Board be merged into one entity called 'the Uganda Free Zones and Export Promotions Authority' under the supervision by the Ministry responsible for trade.

Rt. Hon. Speaker and Members,

I beg to submit





## REPORT OF THE COMMITTEE ON TOURISM, TRADE AND INDUSTRY ON THE FREE ZONES (AMENDMENT) BILL, 2024.

No	Member	Standard
1	Hon. Mwine Mpaka, Chairperson	Signature
2	Hon. Lamwaka Catherine, Vice Chairperson	At
3	Hon. Afidra Ronald Olema	Leon
4	Hon. Aleper Margaret Aachilla	
5	Hon. Alobo Joan Acom	
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10	Hon. Bright Tom Amooti	
11	Hon. Businge Harriet	
2	Hon. Byakatonda Abdulhu	
3	Hon. Dr. Apio Eunice Otuko	The p
4	Hon. Edakasi Alfred	RAA Os
5	Hon. Gafabusa Richard	I MD. L. R. L.
6	Hon. Gaffa Mbwatekamwa	
7	Hon. Isabirye David Aga	
3	Hon. Kaala Kevin Ojinga	

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	19 Hon. Kamugo Pamela	
2	20 Hon. Kato Mohammed	
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27	Hon. Kyebakutika Manjeri	Notelling
28	Hon Lukumuri Davi LK	
	Hon. Lukyamuzi David Kalwanga	
29	Hon. Lutaaya Geoffrey	
30	Hon. Masaba Karim	
31	Hon. Mushemeza Elijah	
32	Hon. Mwijukye Francis	
33	Hon. Namukuta Brenda	la A
34	Hon. Nayebale Sylvia	1 the second
35	Hon. Okello Geoffrey Charles	
36	Hon. Olobo James	·
37	Hon. Osoru Mourine	
38	Hon. Ssentaayi Muhammad	
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39	Hon. Ssimbwa Fred	Ø
40	Hon. Wakayima H. Musoke	
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41	Hon. Were Godfrey Odero	Auto
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