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Analysis of East African Community (EAC) EPA

DRAFT

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Contents

Introduction

In Africa, three main regional EPAs have been under negotiations with the European Union:[1]

West Africa EPA
15 Member States belonging to the Economic Community of West African States (ECOWAS)[2] and Mauritania

EAC (East African Community) EPA.
The 6 Member States belonging to the East African Community [3]

SADC (Southern African Development Community) EPA
5 Member States belonging to Southern African Customs Union (SACU) and Mozambique

The negotiations of these regional Economic Partnership Agreements (EPAs) are in a final phase. They mainly cover trade in goods; nonetheless each EPA has an in-built agenda for further negotiations in services, intellectual property rights and other matters. Some observers are of the view that EPAs are 'doable' and provide sufficient policy space. However, many developmental problems continue to plague the EPAs which have not been corrected or addressed during the negotiations.

The EPAs will be subject to parliamentary scrutiny, at the European as well as the African side. In this context, it is important to evaluate the substance of the EPAs in light of African development aspirations and strategies. This study demonstrates that the EPAs remain problematic based on concrete qualitative and quantitative evidence. This should be taken into account by parliamentarians and other stakeholders when considering the EPAs.

Section I of this study provides a short state of play and overview of positions of positions of different stakeholders within the region. Section II provides some quantitative analysis of the risks of EPA market access commitments for EAC's domestic industries and governments. Section III highlights some problematic legal provisions of the EAC EPA. Section IV highlights possible implications of Brexit for EPAs. Section VI zooms in on the argument that all EAC Member States should sign (and

[1] The Eastern and Southern Africa (ESA) EPA and Central Africa EPA (ratified by Cameroon) are not considered here as negotiations have not progressed to the extent as the three mentioned regions. The last round of regional negotiations in the ESA EPA as well Central EPA region took place in 2011.
[2] ECOWAS Memberstates are Benin, Burkina Faso, Cape Verde, Cote d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.
[3] South Sudan recently became an EAC member state and has not been negotiating EPA. Nonetheless, it automatically became a party to EAC EPA upon accession to the Treaty establishing the EAC.

implement) the EPA together in order to project the region as a functional customs union. Finally, Section VI provides some possible ways forward.

I. EAC EPA: State of Play

a) EU push for ratification of EPAs before October 2016

In November 2007 the East African Community (Burundi, Kenya, Rwanda, Tanzania, and Uganda) agreed a region-to-region interim or 'framework' EPA with the EU. This agreement mainly covered trade in goods and fisheries. A commitment was taken by both parties, to continue negotiations on agriculture, rules of origin, Sanitary and Phytosanitary Standards (SPS), Technical Barriers to Trade (TBT), customs and trade facilitation (C&TF) and to postpone the discussion on other trade-related rules and trade in services until a later stage.[4]

Since 2008, countries negotiating Economic Partnership Agreements could export under Market Access Regulation 1528/2007 which provides for (almost) equivalent market access as the Cotonou Agreement. The continuance of this market access is particularly important for non-Least Developed Countries (i.e. Kenya in the EAC region) as LDCs can export duty free quota free under EU's Everything But Arms (EBA) scheme.

All the provisions of the Framework EPA (FEPA) concluded in 2007 together with the new chapters were consolidated into a single text, termed the 'comprehensive' or 'full' EPA. However, in June 2010, a Ministerial meeting held in Dar Es Salaam noted that EAC was not ready to sign this text.

In May 2013, the EU decided to remove most countries negotiating EPA from Annex I of the Market Access Regulation 1528/2007, applicable from 1 October 2014.[5]. In other words, non-LDCs in EAC, SADC and West Africa would lose duty free market access to the EU by 1 October 2014. This threat led to the conclusions of the negotiations in 2014, after which the non-LDCs were re-instated.

The negotiations for the EAC EPA were concluded on 16 October 2014. On 11 September 2015, the Parties completed the legal scrubbing of the initialled EPA text. On 11 February 2016, the European Commission submitted to the Council a proposal for a Council Decision on the signing and provisional application of the EAC EPA.[6]

On 20 June 2016, the EU Council of Ministers adopted the proposal. EU trade agreements are only applied provisionally after all Parties have signed the agreement. The EAC EPA is not applied

[4] Fact sheet on the Economic Partnership Agreements The Eastern African Community (EAC), European Commission, February 2014,
http://eeas.europa.eu/delegations/tanzania/documents/press_corner/20140306_01_en.pdf

[5] Nigeria, Gabon and Congo have been under EU Generalised System of Preferences (GSP) regime since 2008.

[6] Proposal for a Council Decision on the signing and provisional application of the Economic Partnership Agreement between the East African Community Partner States, of the one part, and the European Union and its Member States, of the other part, COM(2016) 63 final, 11 February 2016, http://eur-lex.europa.eu/resource.html?uri=cellar:8dfafac9-d181-11e5-a4b5-01aa75ed71a1.0006.02/DOC_1&format=PDF

provisionally by the EU as not all EAC Member States have signed. The agreement would enter into after ratification by at all EAC Member States and all EU Member States.

The European Commission is pushing for signature of the three regional EPAs (EAC, SADC, West Africa) and consent from the European Parliament by October 2016. On 8 July 2016, the European Commission proposed to remove six non-LDCs (Cote d'Ivoire, Ghana, Kenya, Botswana, Namibia, Swaziland) from the Market Access Regulation 1528/2007 by 1 October 2016. [7]

The stated reason for removal of Kenya from MAR 1528/2007 is its non-ratification of the regional EPA. This puts pressure on Kenya (and the other EAC Memberstates) to ratify the regional EPA.

On 8 July 2016, Tanzania announced that it is not ready to sign the EPA. The Permanent Secretary (PS) in the Ministry of Foreign Affairs, East Africa, Regional and International Cooperation, Dr Aziz Mlima, told reporters that safeguarding the economy of the country was the core reason.
"We think it is not the right time for us to sign the agreement. There are still contentious issues which need to be settled to ensure Tanzania is not turned into a source of raw materials and markets for European goods," Mr Mlima noted. He said that the way the agreement was crafted did not meet the country's objective in becoming an industrialised nation. Furthermore, Tanzania said that the departure of Britain from the EU has implications for the EPA that need to be taken into account.[8]

The European Commission proposal to remove the 6 countries from Annex I of MAR 1528/2007 is a so-called 'delegated act': MAR 1528/2007 itself gives authority to the European Commission to propose amendments to Annex I. Delegated acts enter into force within a period of 2 months, if no objection has been expressed either by the European Parliament or the Council. The period of 2 months can be extended by four months at the initiative of the European Parliament or of the Council.

On 31 August 2016, the European Parliament's Committee on Internal Trade (INTA) proposed to extend the date of entry into force of the European Commission proposal with 4 months.[9] In other words, Kenya will continue to have duty free access to the European market until 1 February 2017 on the basis of MAR 1528/2007.

On 1 September 2016, the trade ministers of Kenya and Rwanda signed the EAC-EU EPA agreement in Brussels.[10]

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[7] MAR 1528/2007 has been succeeded by Regulation 1076/2016, a recast of MAR 1528/2007. It became applicable on 28 July 2016, 20 days after publication in the Official Journal on 8 July 2016. The text of Regulation 1076/2016 is essentially the same as MAR 1528/2007. Ghana and Cote d'Ivoire figure in Annex I of Regulation 1076/2016. If Ghana and Cote d'Ivoire were to be to be removed from MAR 1528/2007, they would continue to be listed in Regulation 1076/2016 and technically continue to benefit from non-reciprocal market access to the EU.

[8] 'Dar May Not Sign EPA Protocol', Tanzania Daily News (Dar es Salaam), 9 July 2016, http://allafrica.com/stories/201607110875.html

[9] See also the Draft agenda and meeting documents of the INTA meeting of 31 Augustus and 1 September 2016, http://www.emeeting.europarl.europa.eu/committees/agenda/201608/INTA/INTA(2016)0831_1/sitt-3054134

[10] 'Kenya, Rwanda sign East Africa trade deal with Europe', The East African, 1 September 2016, http://www.theeastafrican.co.ke/news/Kenya-and-Rwanda-sign-EPA-deal-with-Europe/2558-3365428-9s4hdv/index.html

b) Overview of positions of stakeholders in the EAC region[11]

Kenya, as the only non-LDC in the EAC configuration is under the most pressure to sign the EPA. In Kenya, it is mostly the flower industry that has been pushing for the EPA in order to maintain their preferences to the EU market. Nevertheless, there are also strong voices in Kenya, including from within the government, warning that the overall costs of an EPA would far outweigh the benefits to the flower sector.

Among the LDCs in the EAC region, Tanzania has been most cautious. The country has raised concerns about the EPA market access offer, the impact on employment, productive capacities as well as the tariff revenue losses.

EAC government representatives from Geneva missions have raised questions about whether the EPAs are compatible with the World Trade Organization (WTO) – considering for example that the WTO's Doha Round recognises the importance of tariffs for LDCs and thus LDCs have not been required to take on any tariff cuts in agriculture or industrial products in the Doha Round. Even Kenya is recognised as a small and vulnerable economy and enjoy flexibilities in the Doha Round negotiations. The EPAs would significantly undermine the flexibilities and efforts of LDCs and Kenya at the WTO.

The private sector in the EAC has been divided on the EPA market access offer. Those in the East African Business Council (EABC) consider that the product exclusions are adequate. On the other hand, small-scale farmers are strongly opposed to the tariff concessions that would be made effective under the EPA.

Across the board, the private sector would like to see domestic supports and export subsidies offered by the EU to its agricultural sector disciplined by the EPA, because they distort the market and lead to dumping. However, the EU has insisted that this issue can only be addressed at the WTO. (The reality is that these issues are not being effectively addressed at the WTO). EAC's private sector also posits that the customs union clause (implying commencing FTA negotiations also with Turkey) should not be included in the EPA. The EPA should extend assistance to the establishment of capacities in the area of food safety and SPS compliance. According to the private sector, Rules of Origin should be simple, flexible and asymmetrical. Most of the issues raised by the private sector are also brought forward by EAC governments in the EPA negotiations.

All the various stakeholders want the EAC member states to maintain the flexibility to levy export taxes, which is an important tool for industrialisation. In EABC's view, EAC states should be allowed to impose export taxes for industrialization purposes, and only be required to notify the European Commission.

The EPA negotiations have been extensively debated in the East African Legislative Assembly (EALA) as well as Kenya's National Assembly. The EALA has proposed an alternative to EPA,

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[11] Some information of this subsection is taken from the European Parliament publication 'African, Caribbean and Pacific (ACP) countries' position on Economic Partnership Agreements (EPAs)', a study requested by European Parliament's Committee on Development and authored by South Centre staff, http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/433843/EXPO-DEVE_ET(2014)433843_EN.pdf,

requesting the EU to extend EBA treatment to Kenya, in line with the African Union's trade preferences proposal adopted by African Trade Ministers in 2011. Other stakeholders, such as Kenya Human Right Commission and some officials in EAC LDC member states have suggested that GSP+ or an enhanced GSP mechanism could be better than the EPA.

In July 2013, deputy Speaker Joyce Laboso introduced a motion in Kenya's National Assembly (House of Parliament) to abandon the EPA. Dr. Laboso, who co-chaired the ACP-EU Joint Parliamentary Assembly until November 2013, stated that 'the rejection of EPAs in their current form is informed by the potential harm on the Kenyan economy'. 'Nowhere will the dangers of an all-out liberalisation of trade with EU be felt more than in the dominant agricultural and the nascent manufacturing sector.' The motion was seconded by Ugenya's MP David Ochieng, who called upon the EAC to restart the negotiations with European Commission (EC) on new and favourable terms to the region. [12] The Kenyan parliament has resolved that the government does not sign the Economic Partnership Agreements in their current form until all outstanding issues especially the Most Favoured Nation, Export Taxes and Development clauses are conclusively addressed (text of adopted motion presented in Box below).

Box - Motion adopted by Kenya's National Assembly 9 July 2013[13]

THAT, aware that since the signing of the Cotonou Agreement in the year two thousand, the government has been negotiating Economic Partnership Agreements (EPAs) with the European Union (EU) together with other member states of the Eastern African Region;

further aware of the concerns raised by the Eastern African Region on the contentious aspects of the EPAs, including offering undue advantage to products from other markets at the expense of growth of local and regional industries;

further taking cognizance of the adverse effects that the EPAs are projected to have on Kenya's economy particularly on agriculture and manufacturing sectors;

aware of an amendment to the European Union's Market Access Regulations (1528 of 2007), whose effect is that the 18 countries which have not signed or ratified the full EPAs, most of which are from Sub-Sahara Africa, Kenya included, will henceforth be removed from duty -free, quota-free access to the EU Markets;

further aware that once removed, Kenyan products will, from, October 2014, cease to enjoy the duty free, quota free tariffs in the EU market and that the national economy is estimated to lose more than Kshs. 10 billion in that year alone;

<u>this House resolves that the Government does not sign the Economic Partnership Agreements in their current form until all outstanding issues, especially the Most Favoured Nation, Export Taxes and Development clauses as raised by the East African Community and Kenya in particular, are conclusively addressed and that the Government continues to explore more beneficial trade negotiations with the European Union.</u>

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12 Kenya National Assembly Official Report, Wednesday, 3rd July, 2013, Parliamentary Debates, http://www.parliament.go.ke/plone/national-assembly/business/hansard/wednesday-3rd-july-2013-morning/at_multi_download/item_files?name=Wednesday,%203rd%20July,%202013%20%20Morning.pdf

13 Kenya National Assembly, Orders of the day, Tuesday 9th July 2013 at 02.30pm, http://www.parliament.go.ke/plone/national-assembly/business/order-paper/tuesday-july-09-2013-at-2.30/at_multi_download/item_files?name=TUESDAY,%20JULY%2009,%202013%20AT%202.30%20PM.pdf

Some Kenyan MPs said EAC should only grant unfettered access to EU products only if European countries agree to compensate them for customs revenue losses and pay adjustment costs to local firms. “The standards set by EU for access to its market is so high implying investment that only a few firms can afford”, said Kabete’s MP George Muchai, adding EPAs would end up denying many Kenyans job opportunities.“ [14]

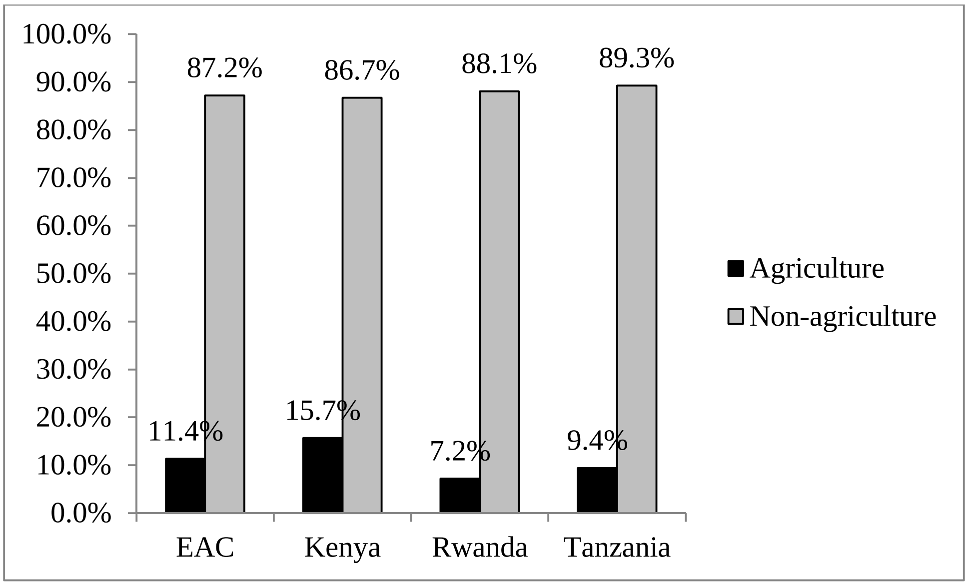
[14] Omondi, G., ‘Parliament halts talks with Europe on trade treaties’, Business Daily, July 3 2013, http://www.businessdailyafrica.com/Parliament-halts-talks-with-Europe-on-trade-treaties-/-/539546/1903822/-/cno56b/-/index.html

II. The EPA market access schedule - risks for EAC domestic industries and governments

a) Level of liberalisation – 'sacrifice' industry to 'save' agriculture?

In terms of tariff lines, the EAC EPA liberalizes 74.7% of tariff lines and around 82.6% imports from the EU by value. However, the level of liberalisation is much more pronounced for non-agricultural products compared to agricultural products – in the EPA, EAC as a whole commits itself to liberalise 87.2% of non-agricultural products and 11.4% of agricultural products (measured in value). These figures are similar across EAC member states:

Graph 1: EAC EPA - level of liberalisation (in terms of value)



Data sources: Calculations based on data from ITC TradeMap and EAC market access schedule
Note: Agriculture as defined by the WTO (Annex 1 of the Agreement on Agriculture). Does not include fisheries and forestry products (considered non-agriculture in the WTO).

This high level of liberalisation of non-agricultural products seems to be at odds with the drive of EAC Member States to jumpstart industrialisation processes.

b) Tariff revenue losses

Various estimates exist on the amount of tariff revenue losses that EAC Member States would have to incur as a result of duty reduction and elimination under the EPA. More recent studies usually come up with higher estimates, simply because tariff revenue losses are calculated on the level of trade in the most recent years and imports show a steady increase.

Besides tariff revenue loss, reduction and elimination of duties also reduces the Value Added Tax (VAT) collected on imports, as EAC Member States levy VAT on the import price inclusive of duties. Kenya applies a rate of 16% whereas Rwanda, Burundi and Tanzania apply a rate of 18%. Furthermore, duty reduction/elimination will lead to trade diversion, i.e. increased imports of EU to the detriment of non-EU sources which lead to tariff revenue losses otherwise collected from non-EU sources.

Berthelot (2016) estimates, on the based on EU export data from Eurostat, that the total annual tariff revenue losses of all EAC Member states would rise from €78.3 million in the 7th year after entry into force of the EPA (T+7) to €194.3 million in T+15 and 276.7 million at the end of the implementation period (T+25). Total cumulative tariff revenue losses would amount to €3.6 billion in at the end of implementation period (T+25).[15] He takes into account losses in VAT as well as trade diversion.

This study projects similar tariff revenue losses as Berthelot (2016). For the EAC as a whole, without EPA, revenue from tariffs and VAT on imports would gradually rise from USD 455 million to USD 577 million at the end of the implementation period. With EPA, tariff revenue would decline to USD 317 million at the end of the implementation period (i.e. a tariff revenue loss of USD 260 million in year 25). Cumulative tariff losses in the first 25 years of the EPA would amount to USD 3 billion.

Annex I provides tariff revenue graphs (with and without EPA) for each EAC Memberstate (excluding South Sudan).

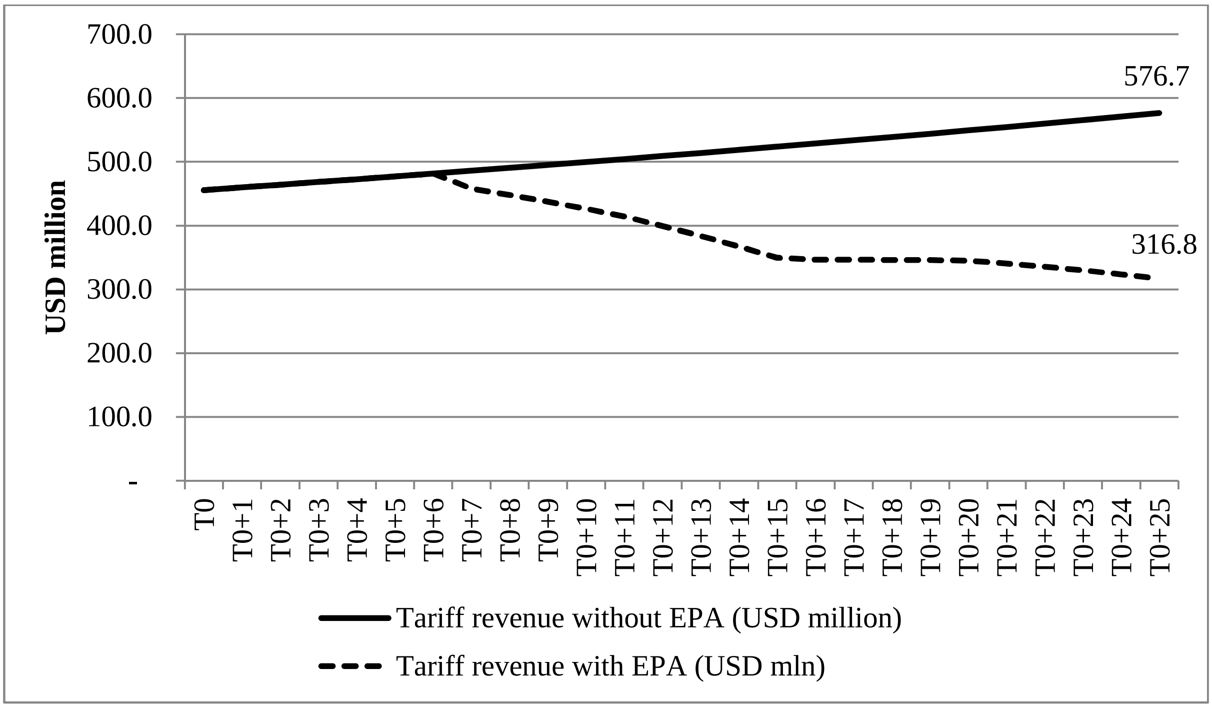
EAC Tariff Revenue Losses

Figures in USD million

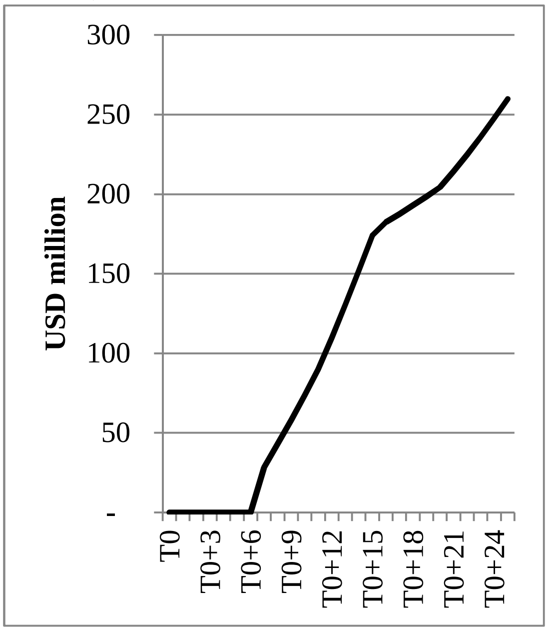
EAC Member State	Tariff revenue loss in year 25	Cumulative tariff revenue loss - first 25 years of EPA implementation
Burundi	5.7	71.5
Rwanda	18.4	225.5
Uganda	37.3	437.5
Tanzania	72.6	865.3
Kenya	125.8	1,406.6
EAC (excluding South Sudan)	259.9	3,006.3

[15] 'EAC duties losses on imports from EU28-UK from 2015 to 2040 if the EPA is signed', Jacques Berthelot, 20 July 2016

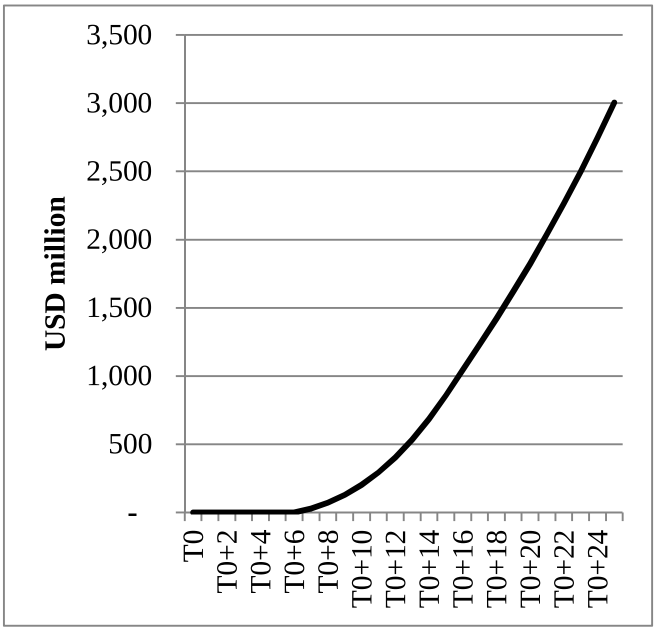
Graph 2: EAC EPA: Tariff revenue with and without EPA



Graph 3: Annual tariff revenue loss during EPA implementation period (USD million)



Graph 4: Cumulative tariff revenue loss during the EPA implementation period(USD million)



Assumptions:

- 100% collection ratio – including the non-existence of duty exemptions
- Value Added Tax (VAT) is levied on the import price inclusive of duties at a level of 16% for all EAC imports. Reduction of duties reduces VAT collected on imports. Kenya applies a rate of 16% whereas Rwanda, Burundi and Tanzania apply a rate of 18%. Several exemptions exist.

- Year on year growth of imports from the EU in case of the customs duties on EU imports does not change is fixed at 0.93%. This has been the average year-on-year growth between 2008 and 2013. Choice of different years would lead to different growth figures. (a conservative growth figure has been selected).
- Trade diversion: the price elasticity of duty reduction has been assumed to be -1 for all products. I.e. if a duty reduces with 1%, imports will increase with an additional 1% the following year. This price elasticity is based on a background paper for a World Bank World Development Report which found that the aggregate price elasticities of import from EU 25 for Kenya, Uganda and Tanzania is around -1 (Uganda -0.967, Tanzania -0.815, Kenya -1.063) [16] Trade diversion is probably underestimated as a duty elimination could cause a greater shift to EU imports than what aggregate price elasticities would suggest.
- Trade data used –EAC Imports from EU28, average for the years 2013-2014, from ITC TradeMap.

The graphs above show that greatest decline in tariff revenue collection would occur between the 7th and 15th year of the EPA. After 15 years, the collection of customs duties and VAT from EU imports is likely to remain relatively stable due to normal increase of imports of EU goods excluded from liberalisation (Group D) as well as increase in the growth of imports of products in the last tranche of liberalisation (Group C) which continue to fetch some duties during the implementation period. Clearly, the market access schedule has been designed in a way too 'smooth out' tariff revenue losses as it appears there are no large declines in tariff revenue on EU imports after the 15th year of EPA implementation.

However, the base for comparison should NOT be the amount of decline compared with a previous year, but the amount of duties (and VAT) that would be collected without EPA (the black, uninterrupted line in Graph 2). The annual tariff revenue loss is the difference between the amount that would have been collected without the EPA and the amount that would be collected with the EPA. Using this correct comparison, the graphs shows that the annual tariff revenue losses actually increase from the 15th year, from USD 174 million in T+15 to USD 260 million in T+25.

EPA provisions on compensation of tariff revenue losses are inadequate

In the EAC EPA, '*Parties recognise that the elimination and /or substantial reduction of tariffs as set out in this Agreement will be a challenge for the EAC Partner States. The Parties agree that this specific challenge shall be addressed through the creation of a compensatory framework*' (Article 99.1 EAC EPA).

More specifically, Article 100.1 of the EAC EPA states that:
1. With regard to revenue losses linked to the reduction of tariffs, the EU shall:
(a) engage in an enhanced dialogue on fiscal adaptation measures and reforms;
(b) establish cooperation modalities to support fiscal reform;
(c) provide financial resources to cover transitionally the agreed losses of government revenue arising from elimination and or substantial reduction in customs tariffs.

[16] EU-ACP Economic Partnership Agreements – Empirical evidence for Sub-Saharan Africa, Background paper World Development Report ('Reshaping Economic Geography'), http://siteresources.worldbank.org/INTWDRS/Resources/477365-1327525347307/8392086-1327527757537/epa_v1.pdf.

The mechanism under (c) looks good on paper, but the challenge would be how to make it operational. The 'agreed losses' would also need an agreement by EU. As such, the onus will be on EAC Member States to calculate the 'losses of government revenue linked to the reduction/elimination of tariffs'. There appears to be a lack of EAC government-initiated studies on tariff revenue losses available to parliaments or other stakeholders. Ministries of Finance and/or Planning should be able to know the impact of EPA on the government budget for the medium term and possible implications for the implementation of development strategies (e.g. Rwanda Vision 2020, Tanzania Development Vision 2025).

Even if tariff revenue loss estimates were available and agreed, Article 100.1(c) of the EPA would only cover some losses for a transitional period. Also direct budget support might come with a host of conditionalities that could be less or more onerous than the conditionalities and procedures under other delivery mechanisms such as the European Development Fund.

In the West Africa EPA, 'the European Union undertakes to provide funding to cover the fiscal impact agreed by the Parties for the period of tariff dismantling', but such funding is conditional on West Africa undertaking 'tax reforms as part of the change in taxation resulting from liberalisation'. (Article 60 – Taxation adjustment).

African countries have good grounds to be worried about the implications for government revenue as many currently utilise tariffs as an easily obtainable and convenient form of revenue collection. It is also worth noting that tariffs are a less regressive form of taxation compared to Value Added Tax (VAT). Imported goods are proportionately consumed by richer consumers, while other forms of taxation such as value added taxes shift the burden to the entire population – shifting from import tariffs to VAT, or increasing existing VAT rates to compensate for a decline in tariff revenue, could increase poverty levels.

Moreover, the ability of other forms of taxes to replace the revenue of those gained from tariffs is also questionable. According to IMF economists, if low income countries cut their tariffs they are at best likely to recover 30% or less of this lost tariff revenue from other taxation sources.[17]

c) *Cost-benefit analysis*

One way of looking at the EPA is to look at the costs of EPA and compare that with the benefits of EPA.

One main benefit of the EPA is that additional duties on exports to the EU would be avoided – this only applies to Kenya as it cannot trade under EBA and would have to revert back to EU GSP or GSP+ in the absence of EPA. A main cost of the EPA would be tariff revenue losses.

With the exception of Kenya, the main benefit of the EPA (avoiding additional duties on exports) is lower than the main cost of the EPA (tariff revenue loss). The EAC LDCs would not face additional duties, but would experience tariff revenue losses.

[17] 'Tax Revenue and (or?) Trade Liberalization', Baunsgaard and Keen, June 2005, IMF Working Paper, WP/05/112, http://www.imf.org/external/pubs/ft/wp/2005/wp05112.pdf

If Kenya would be under the EU GSP+ scheme, the additional benefit of EPA would be marginal. While Kenya's flowers would not receive preferential market access under GSP because these products are 'graduated' from EU GSP for Kenya (due to concentration of exports)[18], such graduation does not apply in the case of GSP+. In other words, flowers would have duty free access under EU's GSP+.

In fact, all Kenya's Top-30 exports to the EU, representing around 90% of Kenya's exports to the EU, would be duty free under GSP+ (see Annex II)

This analysis has the following implications:

- Kenya has a self-interest in signing and ratifying the EAC EPA. For Kenya, the benefits of EPA (avoidance of duties) would be immediate while the costs of the EPA (tariff revenue loss) would only be felt 7 years later.
- If Kenya would be trading under GSP+, the benefit of EPA would be marginal. GSP+ is a suitable alternative market access arrangement to safeguard market access

d) East Africa's domestic industries at risk

Locking in current Common External Tariff – loss of policy space for industrial policy

Some observers have said that the EAC Common External Tariff already has applied tariffs of 0% for many imports, especially for non-agricultural products. By putting imports of capital goods at zero duty, policy makers can give a push to industries by facilitating cheap imports of much needed capital goods in order to lower the production cost. Nonetheless, this can be done unilaterally at any time which does not require an EPA.

Tariff and trade policy should be dynamic and based on economic structure and needs of the country/region. EAC and Africa's exports are currently dominated by commodities but during the years to come, EAC Members will continue their industrialization processes and be able to export manufactured goods including the currently imported capital goods at zero duty. No country industrialised without using tariffs to nurture and develop infant industries, except Hong Kong.[19]

The problem under EPAs is that EAC countries are binding those tariffs at zero and will not be able to protect infant industries which will permanently face competition from EU exports and will never grow up. As EAC Geneva Ambassadors put it in their letter to EAC Trade Ministers, dated 1 June 2010, "*binding most of tariffs at zero will deny us the use of dynamic trade policy space, and could mean that we remain largely exporters of primary commodities*". Some observers think EPAs shall strongly undermine the dreamed industrialization of Africa.

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[18] Commission Implementing Regulation (EU) 2016/330 of 8 March 2016 suspending the tariff preferences for certain GSP beneficiary countries in respect of certain GSP sections in accordance with Regulation (EU) No 978/2012 applying a scheme of generalised tariff preferences for the period of 2017-2019

[19] Is Industrial Policy Relevant in the 21st Century?, Mehdi Shafaeddin, TWN Trade & Development Series 36, http://www.twn.my/title2/t&d/tnd36.pdf

The EAC EPA market access schedule will always be based on the EAC CET as of 2016. However, Rwanda proposed a comprehensive review of the Common External Tariff (CET) in the beginning of this year. The May 2016 meeting of the Sectoral Council on Trade, Industry, Finance and Investment decided that the EAC Secretariat should finalize the comprehensive review of the CET by December 2016, for implementation from 1st July 2017. This implies that the CET in 2017 will be different from today's CET.

The EPA will eliminate most duties for imports from EU. It also locks in the current CET in the trade with EU from the day it enters into force, through the so-called 'standstill clause'. This represents a huge loss of policy space for future industrial policies that EAC Member States might want to implement.

Product at risk and regional trade at risk analysis

I. **Drastic liberalization (82% of trade with EU) and the impact on current and future EAC industrial development.** Due to the huge disparity in competitiveness between EU and EAC industries, domestic EAC producers and existing industries will be threatened. There will also be future industries that may never be able to flourish due to the liberalized markets of the EAC.

Analysis shows that between 60-70% of existing EAC local production[20] could be jeopardised when the EPA liberalisation is implemented. This is because only a portion of tariff lines could be protected in the sensitive list. Tariffs on other products not in the sensitive list will have to be eliminated.

Current Local Production at Risk

Product at risk	Local production (no. of tariff lines)	Tariffs eliminated under EPA (no. of tariff lines)	% of local production at risk under EPA
Kenya	1,620	998	62%
Tanzania	1,014	697	69%
Uganda	870	529	61%
Rwanda	201	122	61%
Burundi	83	62	75%

Source : Calculations based on trade data for 2013 – 2015 from ITC TradeMap

Some of the products currently produced by EAC countries which could be put in jeopardy resulting from the EPA include some agricultural products (animal feed, some cereals), pharmaceutical goods such as vaccines and other medicines, chemicals products such as insecticides and herbicides, processed oil products (eg. motor oil), industrial products, parts of machines, the vehicle industry products etc. A non-exhaustive list per country is provided in Annex III.

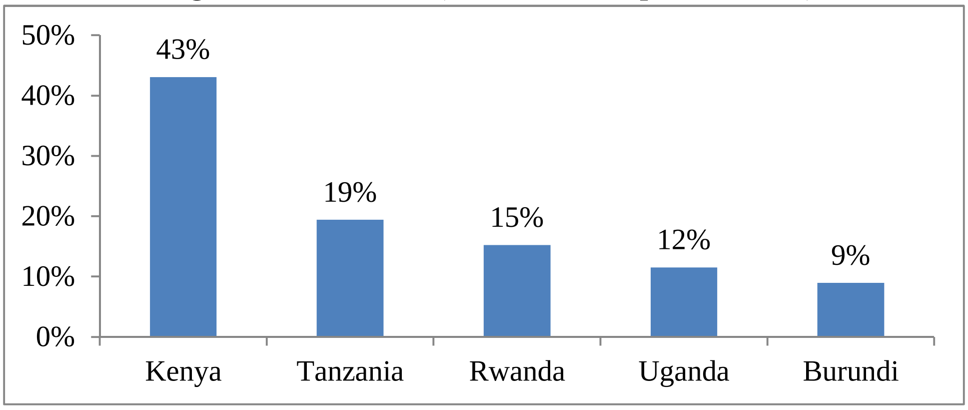
[20] Local production is defined as those products where EAC countries export more than US$50,000.

The EPA will also dampen the capacity for new industries to rise up since these would have to out-compete the EU in the domestic market from day one. For Tanzania for example, this future production at risk numbers nearly 3,000 tariff lines (out of a total universe of 5,205 tariff lines).

II. Threat to regional integration and regional industrial development: The core objective of regional integration is regional development - having a bigger regional market that can encourage the growth of more home-grown EAC industries. Opening up the regional market to the EU is likely to displace EAC producers and put in jeopardy the core goals of EAC integration.

This effect appears to be most pronounced for Kenya. 43% of its exports to the region (measured in value) are products that will be liberalized under the EPA and where the EU is more competitive than Kenya.[21]

Regional trade at risk (as % of total exports to EAC)



Source : Calculations based on trade data for 2013 – 2015 from ITC TradeMap

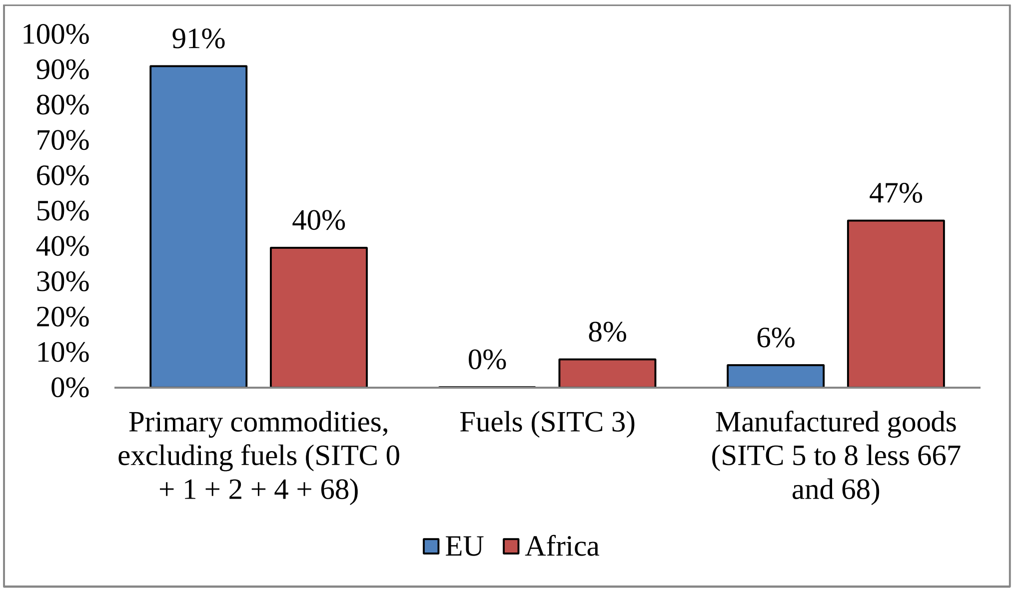
There is also the issue of the lost opportunity for regional industrial development. 60% of intra-EAC trade and 50% of EAC exports to Africa are manufactured products. In contrast, only 6% of EAC exports to the EU are manufactured goods. The loss of the regional market, and the concentration on exports to the EU in the future will not support the industrial growth of EAC Members.

This 6% figure also shows that the EAC manufacturing sector, despite duty-free access, has not been able to compete with EU industries in the EU market thus far. They have simply not been competitive.

Ironically, EAC regional integration efforts could likely better serve EU's commercial interests than those of the EAC, offering the EU one integrated EAC market.

[21] It is assumed that the EU is more competitive than Kenya for products where currently Kenya has a negative trade balance with EU.

Composition of EAC exports to EU and Africa (2013 – 2015 trade data)



Source: Calculations based on trade data of 2013-2015 from UNCTADSTAT
Note: The Standard International Trade Classification (SITC) is a goods classification system maintained by the United Nations.

Kenya's eligibility for GSP+

Kenya could have applied for GSP+. Countries are eligible if they ratify and effectively implement 27 international conventions. Armenia, Bolivia, Cape Verde, Costa Rica, Ecuador, Georgia, Mongolia, Paraguay, Pakistan and Peru are among those that benefit from EU GSP+.[22]

Kenya has ratified 25 out of 27 conventions, but did not ratify ILO convention No. 87 (ILO 87) and the Genocide Convention. ILO 87 is about trade unions and freedom of association. Nonetheless, the most recent Constitution of Kenya, enacted in 2010, states that every worker has the right to form, join or participate in the activities and programmes of a trade union (Article 41.2.c).

All other EAC member states have ratified ILO Convention no.87:

EAC member state	**Date of accession**
Rwanda	8 November 1988
Tanzania	18 April 2000
Burundi	25 June 1993
Uganda	2 June 2005

Kenya National Assembly Official Record (Hansard) 18 Nov 1998 – "Kenya intends to accede to the Genocide Convention soon. In this regard, the necessary procedures have already been initiated by the Government."[23] All other EAC member states have acceded to the Genocide Convention.

[22] '10 countries to benefit from EU preferential trade scheme GSP+ as of 1 January 2014', European Commission news article, 30 December 2013, http://trade.ec.europa.eu/doclib/press/index.cfm?id=1006
[23] Kenya National Assembly Official Record (Hansard) ,18 November 1998, https://books.google.co.tz/books?id=G1oanNPesxYC&pg=PT4&lpg=PT4&dq=kenya+genocide+convention&source=bl&ots=NRoAK2_gvj&sig=xCH5IWU8aDobmW0Z0A1utXJ4JeM&hl=en&sa=X&redir_esc=y#v=onepage&q=kenya%20genocide%20convention&f=false

Parties to the Genocide Convention:[24]

Signed and ratified   Acceded or succeeded

One drawback to GSP+ could be its limited permanency (as opposed to EBA). The current GSP+ will expire by 31 December 2023, followed by a renewed scheme after that. Also, countries would be subject to scrutiny in a monitoring mechanism to check whether the international conventions are effectively implemented.

Nonetheless, if the main trigger for Kenya to sign the EPA would be to avoid duties at the EU border, in particular for the flower sector, signing on to 2 international conventions does not seem to be a high cost. In particular, these 2 international conventions are already ratified by all the other EAC Member States, and the freedom of association is enshrined in Kenya's 2010 constitution.

e) LDCs do not need to open up – they can continue to export under EU's Everything But Arms (EBA) scheme

The EAC is highly dominated by countries classified by the United Nations as 'Least Developed Countries'- five out of six EAC Member States: Burundi, South Sudan, Rwanda, Tanzania, Uganda Members are LDCs. The LDCs in EAC already have duty free quota free access under EU's Everything But Arms scheme (EBA) and this arrangement will continue to be in place, whether or not they sign the EPA.

Questions have been raised, including whether EAC LDCs are likely to graduate in the short term (i.e. become a 'non-LDC') and about the likelihood of the EU withdrawing EBA in the future. Graduation and EBA withdrawal would necessitate an alternative market access arrangement with the EU which could include an EPA; however, assessment and available evidence shows that this is very unlikely to happen in the short to medium term.

[24] Picture is courtesy from Wikipedia Commons, https://upload.wikimedia.org/wikipedia/commons/6/6a/Genocide_Convention_Participation.svg

Are EAC LDCs likely to graduate in the short term?

The criteria for LDC status include the following three components:

- Gross National Income (GNI) per capita;
- Human Asset Index (HAI); and,
- Economic Vulnerability index (EVI).

Additionally, since 1991, countries with a population higher than 75 million cannot be considered for inclusion into the LDC category.

The HAI and EVI are composed of several underlying variables (see table below)

LDC criteria

Gross national income (GNI) per capita;	
Human Asset Index (HAI)	Comprises 2 health-related and 2 education-related variables: (1) Health and Nutrition: percentage of population that is undernourished, ‘under 5 mortality’ ; (2) Education: gross secondary school enrolment ratio, adult literacy rate (ALR).
Economic Vulnerability Index (EVI)	Comprises two sub-indices – ‘exposure index’ and shock index’. Exposure index includes population, remoteness, merchandise export concentration, share of agriculture, forestry and fisheries, share of population in low elevated coastal zones. Shock index includes instability of exports of goods and services, victims of natural disasters, instability of agricultural production

Source: ‘The likelihood of 24 Least Developed Countries graduating from the LDC category by 2020: an achievable goal?’, CDP Background Paper No. 20, ST/ESA/2014/CDP/20, July 2014

An LDC is eligible for graduation from the LDC category if it meets the graduation thresholds of any two of the three criteria (GNI per capita, HAI and EVI), or if its GNI per capita is at least twice as high as the income-graduation threshold irrespective of levels of the other two indices.

Countries are assessed every three years by the UN Committee for Development Policy (CDP), the last triennial review took place in 2015. Usually when a country is recommended for graduation two times consecutively and progress is considered sustainable, the country would be graduated by the next triennial review. In other words, the shortest lead-time between the first recommendation for graduation and actual graduation is around 6 years (e.g. Angola was first recommended for graduation in 2012, and likely to graduate by 2018).

The Istanbul Programme of Action has a goal of halving the number of LDCs by 2020[25]:

[25] ,UN document A/CONF.219/7, Report of the Fourth United Nations Conference on the Least Developed Countries Istanbul, Turkey, 9-13 May 2011 paragraph 28, http://unohrlls.org/UserFiles/File/A-CONF_219-7%20report%20of%20the%20conference.pdf

Guided by the overarching goal, national policies of least developed countries and international support measures during the decade will focus on the following specific objectives with the aim of enabling half the number of least developed countries to meet the criteria for graduation by 2020

The UN Department of Economic and Social Affairs (UNDESA) commissioned a study on the feasibility of achieving the goal of halving the number of LDCs. It concluded that "based on two different sets of graduation criteria established by the Committee for Development Policy (CDP) and current trends in socio-economic indicators of LDCs, the paper concludes that the goal is unlikely to be met even under an optimistic scenario."

In the case of all EAC LDCs[26], the paper projects that none of the EAC LDCs will be recommended for graduation by the 2021 triennial review. [27] This would imply that EAC LDCs would be able to export duty free quota free under EBA until at least 2030. (if a country would be recommended for graduation in the 2024 as well 2027 triennial reviews).

Several LDCs in the EAC region have national development plans with the goal of becoming a (lower) middle income country by 2020 (Rwanda Vision 2020) or raising the average GDP per capita to USD 1,500 (nominal) by 2020/2021[28] and to USD 3,000 (nominal) by 2025 (Tanzania Development Vision 2025). Implicitly, these strategies aim to break away from LDC status around 2020-2025. However, reaching middle income status does not automatically mean that a country would be recommended for graduation. In fact, the 2015 triennial review found that 17 LDCs are lower middle income countries and yet they remain in the LDC category.[29]

There are several reasons why countries with middle income status remain in the LDC category:

(i) A country should reach a slightly higher level of GNI per capita than the level required to reach (lower) middle income status, In 2015, (lower) middle income status was reached with USD 1,035 GNI per capita while the graduation threshold was set 20% higher at USD 1,242 GNI per capita.

(ii) A country should also have good scores on its Human Asset Index (health and education) and/or Economic Vulnerability Index. These indicators are often better in capturing the real living conditions of people as opposed to GNI per capita.

(iii) Once recommended for graduation, the country should be recommended again in the consecutive triennial review. The actual departure from LDC category happens 6 or more years after the first recommendation to graduate from LDC status.

The key point is that LDCs would need to start thinking about alternative market access arrangements with the EU once they have been recommended for graduation by the UN CDP for the first time.

[26] South Sudan was not considered in this study.

[27] UN Department of Economic & Social Affairs (DESA),
The likelihood of 24 Least Developed Countries graduating from the LDC category by 2020: an achievable goal?, Hiroshi Kawamura CDP Background Paper No. 20 , ST/ESA/2014/CDP/20, http://www.un.org/en/development/desa/policy/cdp/cdp_background_papers/bp2014_20.pdf

[28] National Five Year Development Plan 2016/17 – 2020/21, United Republic of Tanzania, June 2016, http://www.mof.go.tz/mofdocs/msemaji/Five%202016_17_2020_21.pdf

[29] Angola, Bhutan, Djibouti, Equatorial Guinea, Kiribati, Lao People's Democratic Republic, Lesotho, Mauritania, Myanmar, Sao Tome and Principe, Solomon Islands, Sudan, Timor-Leste, Tuvalu, Vanuatu, Yemen, Zambia.

Permanency of EBA

EBA is part of the EU's Generalized System of Preferences (GSP) scheme, contained in Regulation 978/2012. While the EU GSP scheme for developing countries expires by 31 December 2023, this expiry date does not apply to EBA for LDCs – it applies without any expiry date:

EU Regulation 978/2012 – Everything But Arms does not have any expiry date

- Recital (6): "… the scheme should continue to apply for a period of 10 years from the date of application of the preferences provided for in this Regulation, except for the special arrangement for the least-developed countries, which should **continue to be applied without any expiry date**"
- Article 43.3: "3. The scheme shall apply until 31 December 2023. However, **the expiry date shall neither apply to the special arrangement for the least-developed countries, nor, to the extent that they are applied in conjunction with that arrangement, to any other provisions of this Regulation**."

III. Some problematic provisions of the EAC EPA

a) The ability of individual EAC States to apply infant industry measures or export taxes

Article 132 on Definition of the Parties and fulfilment of obligations defines 'EAC Partner States' as all Contracting Parties to The Treaty establishing the East African Community. Thus, if the EPA states 'EAC Partner States' it means all six EAC Member States acting together. The EAC Treaty and subsequent regulations stipulate in which areas and what way EAC Member States are acting collectively or individually. For instance, EAC Member States generally apply the same external common external tariffs but there are exceptions. In the area of export taxes, EAC Member States are allowed to set nationally determined rates. Unfortunately, the Article on definition of Parties does not factor this in.

Antidumping and countervailing measures

As currently worded, individual EAC Member States can take and continue to use WTO-consistent anti-dumping and countervailing measures: Article 48 on 'Anti-dumping and countervailing measures' states that '1. *Subject to the provisions of this Article, nothing in this Agreement shall prevent the EU or the EAC Partner States, **whether individually or collectively**, from adopting anti-dumping or countervailing measures in accordance with the relevant WTO agreement*'

Bilateral safeguard

The phrase 'whether individually or collectively' does not appear with respect to bilateral safeguard or infant industry measures (both located in Article 50 of the EPA). Article 50 does not say that EAC Partner States can take safeguard measures, 'whether individually or collectively'. However, it explicitly allows for EAC Partner States to take 'surveillance of safeguard measures limited to their territory'. This would imply that individual EAC Member States are allowed by the EPA to take safeguard measures on EU imports (if EAC Member States so decide).

At the same time, it is not entirely clear whether the existence of 'injury' to domestic industries should occur in all EAC Partner States or rather in the individual EAC Partner State(s) taking the surveillance/safeguard measure:

*5. (a) Without prejudice to paragraphs 1 to 3 where any product originating in the EU is being imported in such increased quantities and under such conditions as to cause or threaten to cause one of the situations referred to under paragraph 2 **to EAC Partner States**, **the EAC Partner States may take surveillance or safeguard measures limited to their territory i**n accordance with the procedures laid down in paragraphs 6 to 9.*

Infant industry measures

There is no language that would permit individual EAC Member States to apply infant industry measures limited to their territory. Article 50.5(b) simply says that '*(b) **EAC Partner States** may take safeguard measures, in accordance with the procedures laid down in paragraphs 6 to 9, where a* *product originating in the EU as a result of the reduction of duties is being imported into their territory in such increased quantities and under such conditions as to cause or threaten to cause disturbances to an infant industry.* The absence of language such as 'whether individually or collectively' (like in the case of WTO-consistent anti-dumping and countervailing measures), or a provision that allows EAC Partner States to take infant industry measures limited to their territory (and by implication not to the entire East African Customs Union) means that individual EAC Member States cannot apply infant industry measures.

One could argue that the EAC is a customs union where individual EAC Memberstates should never apply divergent duties to imports from third parties. Nonetheless, it is unclear why the EPA allows individual EAC Memberstates to apply anti-dumping and countervailing measures, but does not allow this in case of infant industry protection.

Export taxes

There is also a question whether an EAC state could act individually with respect to export taxes. Article 14.2 states that '… ***the EAC Partner States*** *can impose, after notifying the EU, a temporary duty or tax in connection with the exportation of goods under the following circumstances*: (..)

In conclusion, the inconsistency, or difference, in word use between Article 48 (WTO –consistent anti-dumping and countervailing measures) and the other Articles has serious implications, especially for the ability of individual EAC Member States to take infant industry measures and apply export taxes.

b) Usefulness of bilateral safeguards unclear

Bilateral safeguard

How useful would the bilateral safeguard be?

In terms of remedies, the bilateral safeguard is worse than what is possible under the WTO Agreement on Safeguards. In the EPA, customs duties can be raised to the applied MFN duty, which is often below the maximum rate allowed at the WTO. As comparison, the WTO Agreement on Safeguards allow for remedies to go beyond the WTO bound rate.

WTO safeguards are not often used by developing countries, due to the various complicated procedural requirements. Likewise, the EPA bilateral safeguard prescribes conditions and procedural requirements that will make it difficult to use it:

- Before taking a safeguard measure, the Party shall supply the Committee of Senior Officials with '*all relevant information required for a thorough examination of the situation*,' (Art. 50.7c)
  - All safeguard measures will be subject to *periodic consultations* within the Committee of Senior Officials *in particular with a view to their termination as soon as the conditions for their application no longer exist*. ' (Art. 50.5c).

The most significant issue vis-à-vis the bilateral safeguard (including the infant industry clause) has to do with the 'thorough examination' that is required to be carried out by the Committee of Senior Officials. The criteria to be used in this 'thorough examination' are not spelt out. This ambiguity can be positive or negative. The EU within the Committee of Senior Officials may choose to err on the side of being more flexible, or it could be exacting. The criteria used could be different for different countries, or the standards used could even shift with time.

Ultimately, unless a measure has been approved by the Committee of Senior Officials, it is likely that it would be difficult for EAC Memberstates to implement a bilateral safeguard or infant industry measure.

Special EU safeguard on sugar

The EAC EPA contains a specific safeguard for the EU on sugar **(**paragraph 3 of Annex I of EPA), which interprets the meaning of the words 'disruptions in the market' for sugar contained in the Bilateral Safeguard Measures (Article 50):

"As of 1 October 2015, for the purpose of the application of the provisions of Article 50, disturbances in the markets of products of tariff heading 1701 may be deemed to arise in situations where the EU market price of white sugar falls during two consecutive months below 80 per cent of the EU market price for white sugar prevailing during the previous marketing year."

This safeguard can only be used by the EU, not by EAC. If the price of sugar falls by 20% during two consecutive months compared with previous year, the EU can automatically use the bilateral safeguard. It does not require proof of injury to EU producers or proof that EAC is the cause of import surges or the low price of sugar on the EU market.

c) Export taxes

Export taxes are allowed in WTO to the extent they do not constitute an export ban. The EAC EPA prohibits the introduction of new export taxes.

The EAC Partner States can impose, after notifying the EU, a temporary duty or tax in connection with the exportation of goods. Such taxes should be enforced on a limited number of products for a limited period of time and shall be reviewed by the EPA Council for renewal after 48 months.

Export taxes can be a useful element of a national (or regional) sectoral development strategy. The WTO Trade Policy Review 2012 reports that, according to Kenyan authorities, the "export tax policy on raw hides and skins has been successful in boosting Kenya's leather export; and almost all skins produced are semi-processed to wet blue or finished leather. The number of cottage industries and tanneries has also risen, resulting in noticeable jobs creation".[30]

The current Article on export taxes leaves some flexibility for EAC Member States to apply export taxes:

- It allows the introduction of export taxes for a period of at least 4 years, which requires a 'notification' to the EU (Article 14.2 of EAC EPA). The main demand of the East African Business Council (EABC) has been a change from the requirement of 'consultation' to 'notification', a demand that is reflected in the current EAC EPA text.

[30] WTO Trade Policy Review 2012, Kenya report

- Existing export duties can be maintained. In contrast to the West Africa EPA or SADC EPA, there is no explicit provision stating that existing export duties cannot be increased. While the EU could argue that such increase is a ‘new duty or tax in connection with the exportation of goods to the other Party^’ (Article 14.1 EPA), the absence of explicit language prohibiting the increase of existent export duties (which exists in the other EPAs) implies that it is allowed.

Nonetheless this Article limits the policy space of EAC Member States. For instance, if another EAC Member States would like to emulate Kenya in the leather sector it would be barred from doing so (except via Article 14.2 of EAC EPA).

Moreover, export taxes could potentially be used for a range of new products especially in the mineral sector. Rwanda, for instance exports tungsten and tantalum ore to the EU. These minerals are designated as ‘critical’ by the EU because they display ‘a particularly high risk of supply shortage in the next 10 years and are particularly important for the value chain[31]. At present, Rwanda does not apply export taxes to these ‘critical raw materials’. The EU’s ‘Raw Material Diplomacy’ is aimed at maintaining and improving affordability, security and availability of these raw materials to EU industries which *inter* alia includes the prohibition of export taxes. [32]

d) MFN Clause

The Most Favoured Nation (MFN) clause provide for the extension to the EU the more favourable treatment granted to certain other countries with free trade agreements (FTAs) with the EAC. The EU pushed for inclusion of MFN clauses in EPAs because it wants to maintain and increase its foothold in the face of other emerging countries especially China and India. With an MFN Clause, if better tariff preferences are provided to ‘major trading economies’ such as China and India, the EU should in principle (see analysis below) also benefit from this. It is a tool to ensure that the EU has the best preferential access into ACP countries.

MFN clauses in goods FTAs in are not so common. In the Trade in Goods Chapters of other EU FTAs like those with Central American and North African countries, an MFN Clause does not exist.

The scope of preferences is broad

The scope of the MFN Clause in terms of trade policies is much broader compared to other EPAs: “With respect to the goods covered by this Part, the EAC Partner States shall accord to the EU any more favourable treatment …. “ Part II (trade in goods) of the EAC EPA includes the following issues:

- Customs Duties
- Fees and Charges
- Movement of Goods
- Export Duties
- Administrative Cooperation

[31] The EU raw materials policy and mining in Rwanda - Policy Coherence for Development in practice, Jasper van Teeffelen, February 2012, http://www.fairpolitics.nl/doc/Impact%20Study%20FINAL.pdf

[32] See also http://ec.europa.eu/growth/sectors/raw-materials/specific-interest/international-aspects_en

- Customs Valuation
- Good Governance in the Tax area
- Rules of Origin
- Customs cooperation and mutual administrative assistance
- Facilitation of transit movements
- Customs Legislation and Procedures

In other EPAs, the types of measures covered by the MFN Clause have been restricted or 'ring-fenced.' E.g. the SADC EPA – "With respect to customs duties as defined in Articles 23(1) and 26(1) and fees and other charges as defined in Article 27, the SADC EPA States shall, upon request of the EU, extend to the EU any more favourable treatment…"

A broader scope of MFN Clause acts as a two-edged sword. If the EAC were to give tariff preferences to another Party on a good excluded from liberalisation in the EAC or more liberal rules of origin, the EAC would have to extend 'any more favourable treatment' to the EU. On the other hand, for instance, if the EU has better customs cooperation agreements with third countries, EAC can demand the same treatment.

However, it should be noted that 'any more favourable treatment' should be 'the result of the EU/EAC becoming a party to a free trade agreement with a Third Party after the signature of this Agreement". In the case of EU, many preferences are extended outside the scope of free trade agreements (e.g. customs cooperation agreements). Furthermore, the EU already has FTAs with many third parties (e.g. this would suggest that any preferences provided to Mexico in the revision of the EU-Mexico FTA would not trigger the MFN Clause for the EU).

Obligation to automatically extend preferences to the EU

The current language in Article 15.2 EPA is problematic. The first sentence sets out the main rule: a hard obligation to automatically give any better treatment extended to major trading economies also to EU ('shall accord') whereas the second sentence provides for a process when the EU can demonstrate that is treated worse:

Provided that the EU can demonstrate that it has been given less favourable treatment than that offered by the EAC Partner States to any other major trading economy, the Parties shall to the extent possible, consult and jointly decide on how best to implement the provisions of this paragraph on a case by case basis.

At first glance, this provision seems quite favourable for EAC. Extension of preferences by EAC to EU is not automatic and on a case-by-case basis. A closer reading reveals a different story – this non-automaticity and implementation on a case-by-case basis is (i) not a hard obligation 'shall to the extent possible', and (ii) it is subject to the EU demonstrating it has been treated worse than other major trading economies

Logically, this implies that if the EU cannot demonstrate worse treatment, the first sentence applies fully: *With respect to the goods covered by this Part, the EAC Partner States shall accord to the EU any more favourable treatment applicable as a result of the EAC Partner States becoming parties to a free trade agreement with any major trading economy after the signature of this Agreement.*

Definition of major trading economy – include countries with which EAC countries want to improve trade ties

The MFN Clause applies to a "major trading economy", defined in the EAC EPA as "any developed country, or any country accounting for a share of world merchandise exports above 1 percent in the year before the entry into force of the free trade agreement referred to in Article 15, or any group of countries acting individually, collectively or through a free trade agreement accounting collectively for a share of world merchandise exports above 1.5 percent in the year before the entry into force of the free trade agreement referred to in Article 15". Africa and ACP countries are excluded from the MFN Clause.

According to the WTO's International Trade Statistics 2015 (most recent version), the following countries have a world export share > 1%: China, US, Japan, Korea, Russia, Canada, Singapore, Mexico, UAE, Saudi Arabia, India, Chinese Taipei, Switzerland, Australia, Malaysia, Thailand, Brazil, Indonesia and Turkey. [33]

The definition of 'major trading economy' in West Africa in EPA captures fewer countries, due to

(i) Higher threshold percentages for countries (1.5% instead 1 % of world trade) and country groups (2% instead of 1.5% of world trade)

(ii) The addition of a criterion related to industrialisation. Countries with a ratio of manufacturing value added to GDP of 10 per cent or less are not covered by the West Africa EPA clause

(iii) Developed countries are not automatically covered by the West Africa EPA clause, but they are under the EAC EPA's MFN Clause

Countries most likely covered by the EAC EPA MFN Clause but not by the West Africa EPA clause include UAE, Saudi Arabia Brazil, Indonesia, Turkey, Australia, New Zealand. The Gulf Customs Cooperation Council (GCC) as a region would also be excluded in the West Africa EPA (due to their low rate of industrialisation).

These are important differences. For instance, Tanzania wants to increase cooperation with GCC countries including in the area of trade: "Tanzania has called on ambassadors representing Middle East countries to consider going beyond their recently-introduced regular meetings and explore ways of working as a team. Ambassador Al-Najem said this was Dr Mahiga's first meeting since his appointment as foreign minister in November last year. It turned out to be a working forum at which Tanzania's relations with other countries were discussed in terms of creating a better investment climate, enhancing trade and addressing tax on goods and services. He said the occasion, which brought together 18 ambassadors, could lead to creation of a task force for identifying areas of political and economic cooperation."[34]

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[33] Table I.8 - Leading exporters and importers in world merchandise trade (excluding intra-EU (28) trade), 2014, https://www.wto.org/english/res_e/statis_e/its2015_e/section1_e/i08.xls. Hong Kong would likely not be covered as most of its exports are re-exports rather than domestic exports (0.1% of world exports).

[34] GCC countries - Tanzania Calls for Enhanced Ties With Middle East Nations, Tanzania Daily News (Dar es Salaam), 8 June 2016 , http://allafrica.com/stories/201606080136.html

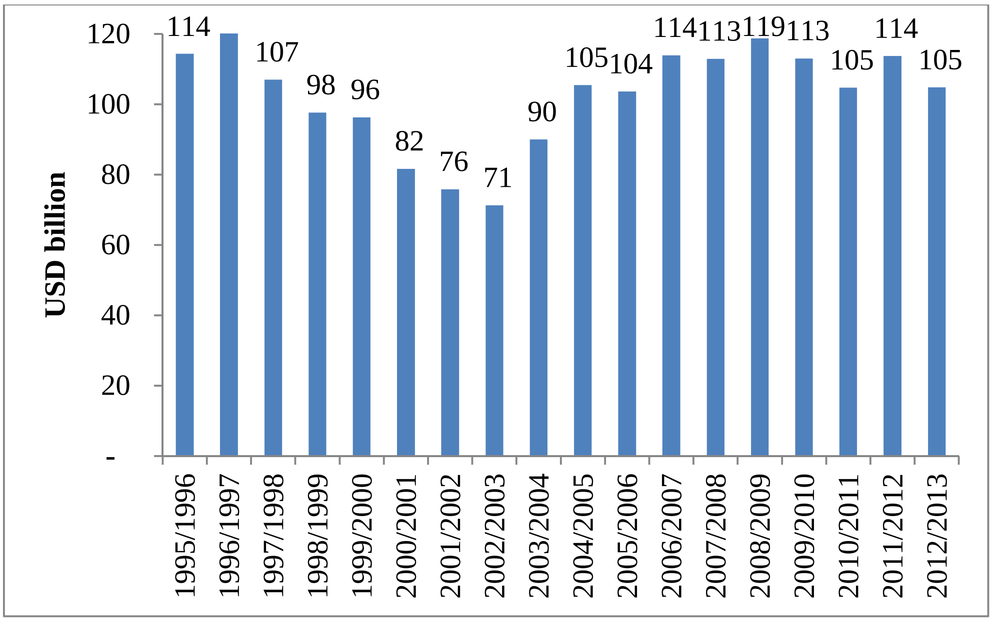
The MFN Clause is currently drafted in a lopsided-way against the EAC and is asymmetrical in favour of the EU, since the EU is already a party of FTAs with most countries in the world. No matter how a MFN Clause would be redrafted, the EU would have achieved its main goal – the undertaking that if better tariff preferences are provided to major trading economies such as United States, China or India, the EU is to benefit from this. At same time, non-African and non-ACP countries would be less likely to conclude a free trade agreement with EAC, or at least the negotiation position of EAC would be compromised due to the obligation to extend any more favourable treatment also to the EU.

In other words, the MFN clause is burdensome for EAC to the benefit of EU and will put undue future pressure on EAC. At the same time, in other EU FTAs like those with Central American and North African countries, an MFN Clause does not exist.

e) Agricultural subsidies

Each year, the EU gives more than USD 100 billion in agricultural subsidies to its domestic producers making it difficult for third countries to access the EU market. This issue has been under negotiation in the WTO's Doha Round but no agreement has been reached until now. In fact, EU agricultural subsidies have increased since the start of the Doha Round in 2001. The EPA does not contain any commitment from the EU's side to curtail these massive subsidies; with the EU arguing that this issue should be addressed at the WTO.

EU agricultural subsidies to domestic producers 1995/1996 – 2012/2013 (USD billion)



Source: EU's WTO notifications on Domestic Support. EU notifies per marketing year in EUR; EUR converted into USD using annual nominal exchange rate from the USDA Agricultural Exchange Rate Data Set (http://www.ers.usda.gov/data-products/agricultural-exchange-rate-data-set.aspx)
Note: does not include export subsidies

These subsidies also support EU exports to developing countries, negatively impacting domestic farmers and processors of agricultural products. They also contribute to and/or exacerbate price dips.

The International Assessment of Agricultural Knowledge, Science and Technology for Development (IAASTD) concluded that the current global system is distorted and pits small-scale, largely subsistence farmers against farmers of developed countries who during the past century have been heavily assisted to increasingly capture economies of scale.[35]

Studies suggest that substantial reduction of direct payments in particular decoupled income payments would improve terms of trade, GDP and household consumption as well as poverty indicators of African countries. [36] In a case study on Uganda, policy simulation results show that eliminating EU agricultural support would have positive impacts on the Ugandan economy and its poverty indicators. The author concludes that 'from the perspective of the EU's commitment to policy coherence for development, this supports the view that further reducing EU agricultural support would be positive for development.[37]

The EAC EPA includes a commitment by EU to eliminate export subsidies:
"2 The EU shall not grant export subsidies for all agricultural products to EAC Parrtner States, as from the entry into force of this Agreement. This prohibition shall be reviewed by the EPA Council after 48 months" (Article 68.2 of EAC EPA).[38]

The commitment to eliminate export subsidies does not appear to be a definitive commitment of EU, as reference is made to a review by the EPA Council. Given the Nairobi Decision on Export Competition of December 2015 where WTO Members agreed to eliminate export subsidies, there is no need to review the prohibition of export subsidies. Effectively, the second sentence of this should be deleted.

f) Development cooperation – the EU is committed to fund 0.005% of the EAC EPA Development Matrix

Annex III of the EAC EPA contains the EPA Development Matrix (11 September 2015) with a list of economic development projects. The price tag of implementing this Development Matrix is $69.8 billion. In the EAC EPA, 'Parties agree that cooperation shall be based on the Economic and Development Cooperation Part and the EPA Development Matrix,' 'The Matrix and corresponding baseline benchmarks, indicators and targets reflecting the needs identified by the EAC Partner States at the time of the signature are hereto attached as Annex III(a) and Annex III(b). These shall be reviewed every five (5) years. The cooperation shall take the form of financial and non financial support to the EAC Partner States.' (Article 75.1 of EAC EPA)-

[35] IAASTD Synthesis Report 2009, http://apps.unep.org/publications/pmtdocuments/-Agriculture%20at%20a%20crossroads%20-%20Synthesis%20report-2009Agriculture_at_Crossroads_Synthesis_Report.pdf

[36] See for example 'Impact of Green Box Subsidies on Agricultural Productivity, Production and International Trade', Rashmi Banga, June 2014, http://unctad.org/en/PublicationsLibrary/ecidc2014misc1_bp10.pdf

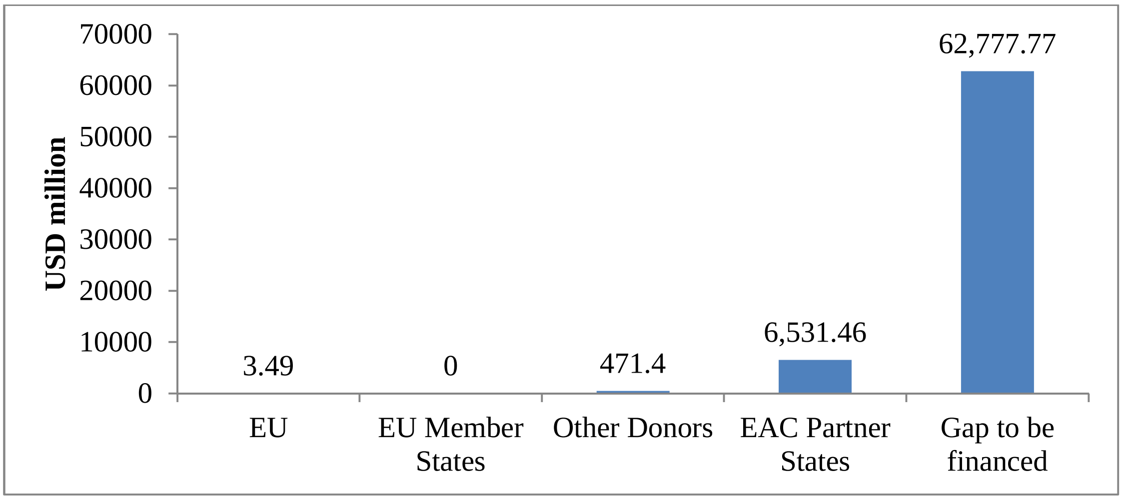
[37] 'Impact of EU agricultural policy on developing countries: A Uganda case study, Boysen and Jensen, Matthews, July 2014, https://www.gtap.agecon.purdue.edu/resources/download/7200.pdf

[38] The double 'r' in 'EAC Parrtner States' is part of the final text of EAC EPA published by European Commission (i.e. after legal scrubbing).

For the time-being, the EU has pledged to contribute a paltry $3.49 million, which translates into 0.005% of the total required funds! This is also a far cry from the tariff revenue losses the region would face - US$260 million a year. EAC Partner States themselves have committed to allocate USD 6.5 billion to the projects listed in the Development Matrix.

At any rate, the EPA itself does not pledge additional resources. The EPA explicitly states that any development cooperation or support to the EPA Development Matrix will be delivered and implemented through EU existing mechanisms, in particular the European Development Fund (EDF) and within the framework of the successive relevant instruments financed by the General Budget of the EU (Article 75.4 of EAC EPA).

EPA Development Matrix – expected contribution



Source: Annex III of the EAC EPA

g) South Sudan

On 15 April 2016, South Sudan signed the Treaty of Accession of the Republic of South Sudan into the EAC, subsequently ratified by Parliament on 24 May 2016.

By virtue of Article 132 of the EAC EPA (Definition of Parties and fulfilment of obligation), South Sudan is a Contracting Party to the EAC EPA as Contracting Party to the EAC Treaty.[39]

South Sudan is new country devastated by civil war and political strife. It seems rather premature to expect from South Sudan to implement the EPA including the market access obligations. In the case of Angola, the country emerged from civil war in 2002 and experienced robust economic growth driven by natural resources. Even so, Angola decided not to become part of SADC EPA. However, South Sudan has no option – the EPA forces South Sudan to become a Party to the EPA and implement all its obligations.

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[39] Communique: Signing ceremony of the Treaty of Accession of the Republic of South Sudan into the East African Community, EAC secretariat, 15 April 2016, http://www.eac.int/news-and-media/statements/20160415/communique-signing-ceremony-treaty-accession-republic-south-sudan-east-african-community

IV. Possible implications of Brexit for EPAs

Brexit adds a dimension of uncertainty and another layer of risk to the EPA. Pronouncements by the United Kingdom (UK) indicate that the country intends to embark on an expansive bilateral FTA programme and to break out of existing EU FTA negotiations (e.g. Australia, United States, India). It is also far from certain that the UK, once outside the EU, will be bound by (all) EU FTAs that it was part of when it was inside the EU.

Also, UK's stance on its commitments on development aid is unclear. For instance, allocations to the European Development Fund (EDF) are based on an intergovernmental treaty between EU countries (the 'Internal Agreement').[40]. Only EU Member States contribute to the EDF. It is unclear whether UK would (wish to) be bound to this agreement if it exits the EU. It is also unclear whether this Agreement would be binding pursuant to UK law. The Internal Aid agreement has been classified as a 'Community Treaty' by UK parliament, meaning it has direct effect and is binding on the UK, as per the 1972 European Communities Act. If UK is outside the EU, it would have to repeal the European Communities Act and it is unclear whether the treaties that were declared 'Community Treaty' under the 1972 European Communities Act', among which the CARIFORUM EPA, European human right conventions as well as the Internal Aid agreement, would be continue to be binding under UK law.

The United States expects to conclude a separate trade deal with UK, given that leaving the EU will remove UK from EU's trade agreement umbrella. United States Trade Representative Froman said the removal of UK from the EU side in the negotiations over the Transatlantic Trade and Investment Partnership (TTIP) could shift the balance in the talks:. "One issue that we are wrestling with is that the UK is a very significant part of the EU, and is a very significant part of what makes TTIP attractive." "We're going to have to think through what that means, in terms of what we offer and what we require of the EU, because at the end of the day we need a balanced agreement."[41]

Nineteen (19%) of US exports to the EU end up in UK, a "very significant part of the EU" and a reason to rebalance the deal with the EU. In other words, United States would be willing to offer less to the EU in TTIP because UK is not part of the EU anymore (in the future).

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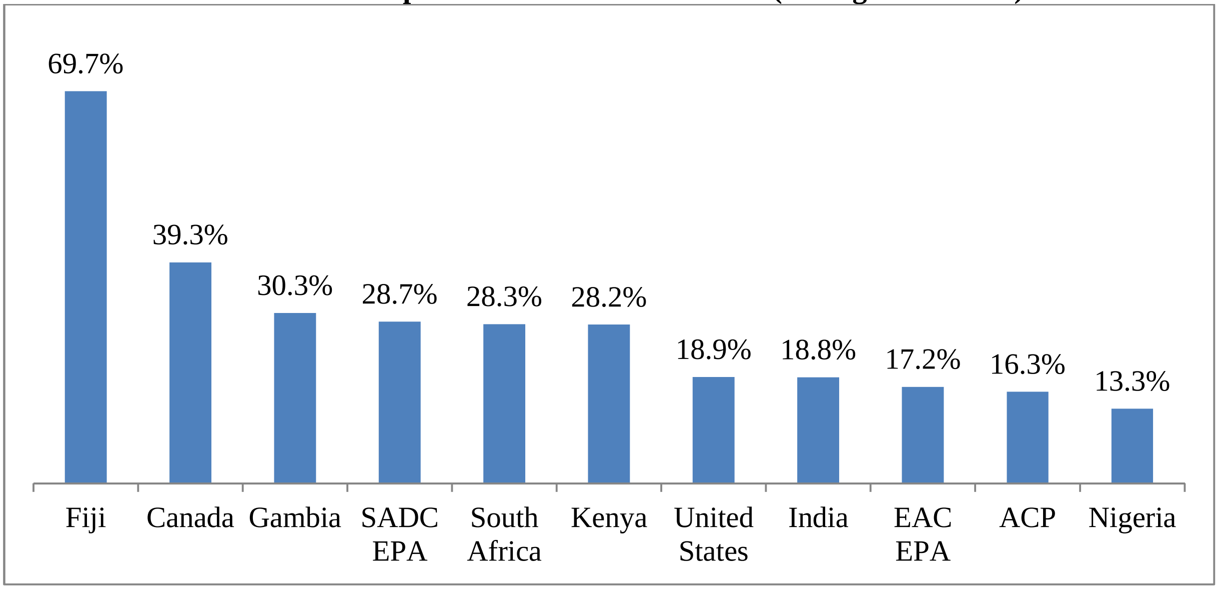
[40] Internal agreement between the Representatives of the Governments of the Member States of the European Union, meeting within the Council, on the financing of European Union aid under the multiannual financial framework for the period 2014 to 2020, in accordance with the ACP-EU Partnership Agreement, and on the allocation of financial assistance for the overseas countries and territories to which part four of the Treaty on the Functioning of the European Union applies, https://ec.europa.eu/europeaid/node/62750

[41] Washington Trade Daily, 14 July 2016

UK share in EU28 imports from selected countries (average 2012-2015)



Source: ITC TradeMap, author's calculations

For several African countries involved in EPA negotiations, UK accounts for a significant share in total EU exports, even more than the United States. Around 28% of Kenyan and South African exports to the EU are destined for the EU, and more than 30% in the case of Gambia. If US wants to rebalance their EU FTA because close to 19% of their EU exports are for UK, the same applies even more for countries where the UK share is higher.

In the case of Kenya, products where the UK constitute an important market include black tea, beans, cut roses, carnations and other plants and various vegetables::

Important Kenyan exports to UK

Product code	Description	EU import from Kenya (avg 2012-2015) USD '000	UK import from Kenya (avg 2012-2015) USD '000	Share UK in EU imports from Kenya
TOTAL	All products	1,518,696	428,332	28.2%
090240	Black fermented tea and partly fermented tea	188,498	150,753	80.0%
070820	Fresh or chilled beans	135,679	76,404	56.3%
060311	Fresh cut roses and buds	389,302	65,332	16.8%
070999	Fresh or chilled vegetables	24,137	19,235	79.7%
060312	Fresh cut carnations and buds	24,230	11,691	48.2%
121190	Plants, parts of plants	18,376	11,350	61.8%
070410	Fresh or chilled cauliflowers and headed broccoli	10,916	10,509	96.3%

Source: ITC TradeMap, author's calculations

V. Projecting the region as a functional Customs Union

The meeting of the Sectoral Council on Trade, Industry, Finance and Investment (TIFI) of 23-27 May 2016 held extensive discussion over the possible implications of non-signature of one or more EAC Member States. Views expressed were that there is need for "the EAC Partner States to sign the EAC-EU-EPA on the same date in order to project the region as a functional Customs Union".

In the EAC customs union, duties are paid at point of destination, not at the first point of entry into the customs territory (there is no pooling or sharing of revenue). I.e. whether or not an EAC Member State is part of EPA, consignments coming from Kenya have to be checked for customs duty collection purposes.

In the case Kenya implements the EPA and the rest of EAC does not, there is a possibility that unofficial trade might increase. For instance, some fear that Kenya would become a main import point for goods coming into Tanzania, in case of a non-signature by Tanzania. Nonetheless, this is only likely to happen if the tariff preference would make it more profitable to smuggle goods from Kenya into Tanzania rather than importing such goods through formal means. However smuggling implies breaking up a big consignment in smaller consignments which is more costly than importing a big consignment at once. I.e. smuggling makes the final price for consumers higher and acts as a tariff in itself. It is noted that many goods, especially non-agricultural goods, are less susceptible to smuggling and that a large share of 'smuggling'/unofficial trade concern goods produced in the region rather than imports from outside the EAC customs union.

In conclusion, the fear of 'breaking down' the customs union by LDCs not signing the EPA seems to be excessively exaggerated.

VI. Conclusions and Possible Ways Forward

The costs are clearly higher than the 'benefits'. EAC countries should not put in jeopardy their long-term interests (industrialisation and regional development) for short-term goals or for assuaging immediate pain (e.g. duties charged to the Kenyan flower industry). The EPA if agreed upon will have an indefinite duration and exist into the long-term. The development aspirations of the region are much bigger than the immediate and narrow interests of a few industries.

There are alternative ways to move forward :

Short-term solutions:

A. GSP+.

Kenya can apply for the EU's GSP+ scheme. Under the GSP+ scheme, all of Kenya's top 30 exports to the EU will have duty-free treatment (see Annex II). Application can be submitted at any time. The process takes about six months.[42] The key conditionality is that Kenya has to ratify 27 international conventions. It has already ratified 25 of them. The outstanding Conventions are ILO convention No. 87 (ILO 87) and the Genocide Convention.

ILO 87 is about trade unions and freedom of association. The most recent Constitution of Kenya, enacted in 2010, states that every worker has the right to form, join or participate in the activities and programmes of a trade union (Article 41.2.c). All other EAC member states have ratified ILO Convention no.87:

EAC member state	Date of accession
Rwanda	8 November 1988
Tanzania	18 April 2000
Burundi	25 June 1993
Uganda	2 June 2005

Regarding the Genocide Convention, the Kenya National Assembly Official Record (Hansard) 18 Nov 1998 states that "Kenya intends to accede to the Genocide Convention soon. In this regard, the necessary procedures have already been initiated by the Government." All other EAC member states have acceded to the Genocide Convention.

[42] In the case of Kyrgyz Republic, the European Commission received a GSP+ request from the Kyrgyz Republic on 25 May 2015. On 25 November 2015, it proposed to add the country to the list GSP+ beneficiaries (Annex III of the EU GSP Regulation), http://ec.europa.eu/transparency/regdoc/rep/3/2015/EN/3-2015-8213-EN-F1-1.PDF. After consideration by the Council and the European Parliament, the EU Regulation granting GSP+ to Kyrgyzstan was published in the Official Journal of the EU on 26 January 2016, and came into effect on 27 January 2016.

B. Temporary Support to the Flower Industry

Kenya is already a competitive flower exporter. The industry may well be able to weather the 10% average duty that it will face at the EU border (US$50 million based on today's export levels). If the industry runs into difficulties, the state could look at ways to provide some supports to it, for example, through income from tariff revenue in the short to medium term or through other benefits (tax reduction over a period of adjustment).

Medium to longer term solution:

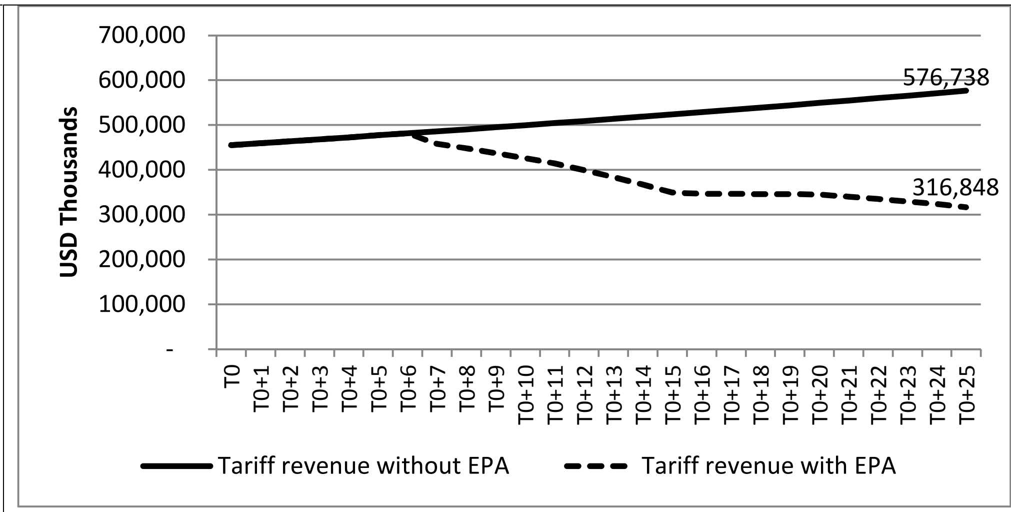
C. Diversify Kenyan Exports from its High Concentration on Flowers

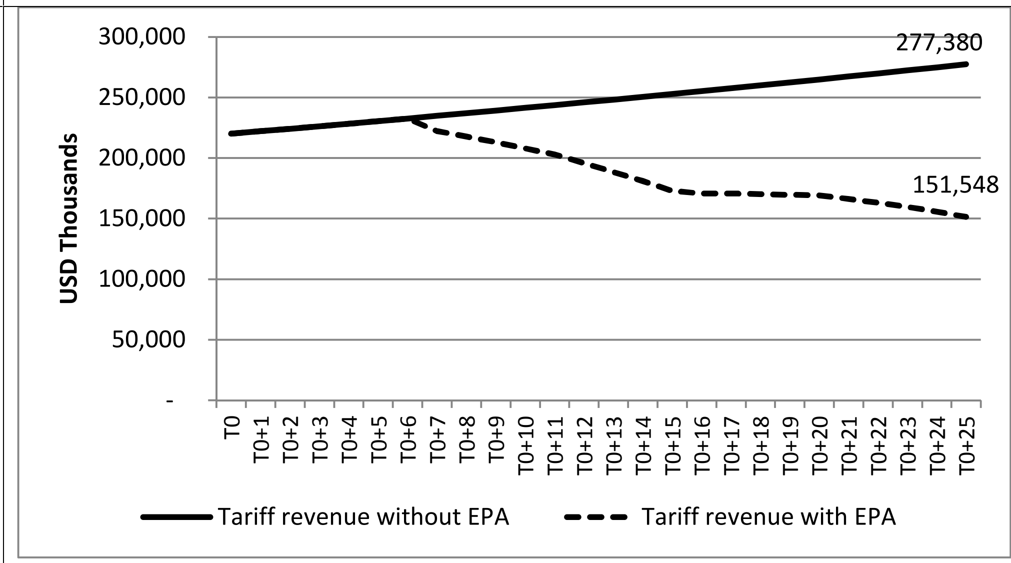
Without the EPA and with continued national and regional industrial development, diversification will naturally take place. Nevertheless, Kenya and the EAC can come together to also strategically identify existing or new sectors where industrial growth and development can take place and where exports can also grow. Support structures could be put in place to encourage these new strategic sectors so that in time to come, the importance of flower exports in terms of its income and employment effects can be diminished or made a smaller portion of Kenya's overall exports.

Annex I - Tariff Revenue Loss on imports from EU – EAC and EAC Memberstates

From year T0 (entry into force of EAC EPA) to T0+25 (end of transition period)

<table>
<tr><td>EAC (excluding South Sudan)

Tariff Revenue Loss under EPA
USD 259.9 million</td><td>
</td></tr>
<tr><td>Kenya

Tariff Revenue Loss under EPA
USD 125.8 million</td><td>
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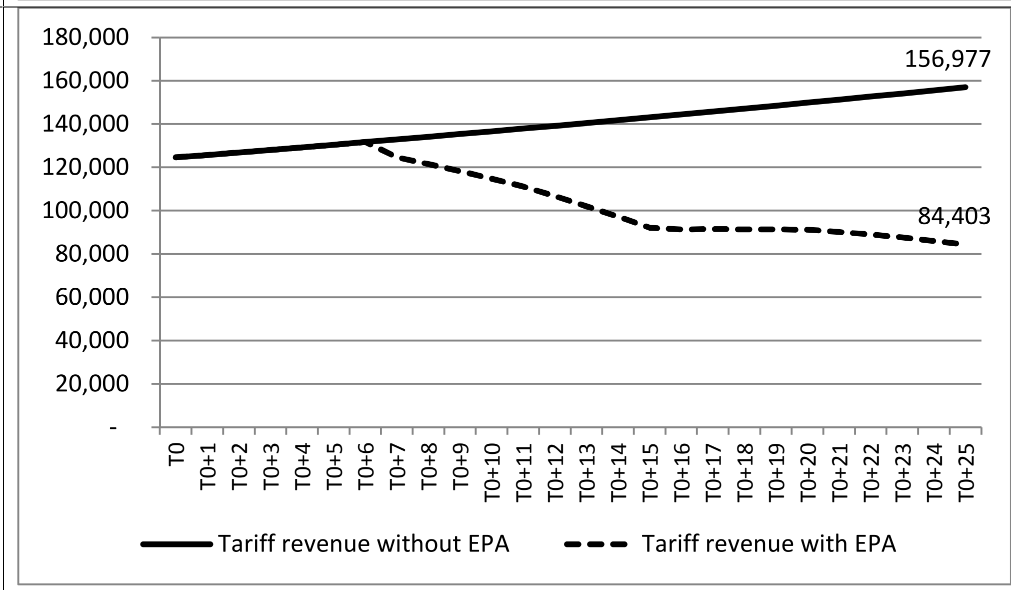
<tr><td>Tanzania

Tariff Revenue Loss under EPA
USD 72.6 million</td><td>
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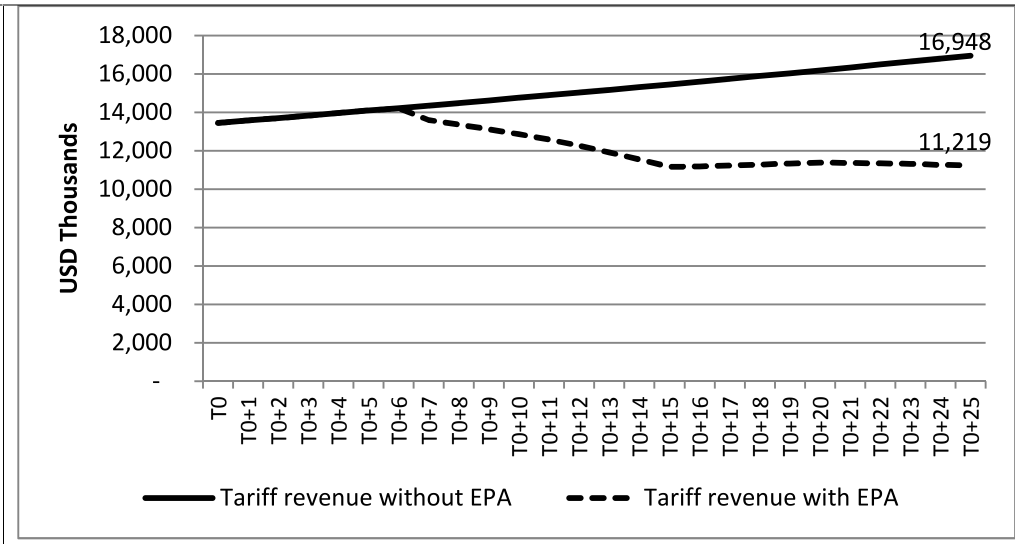
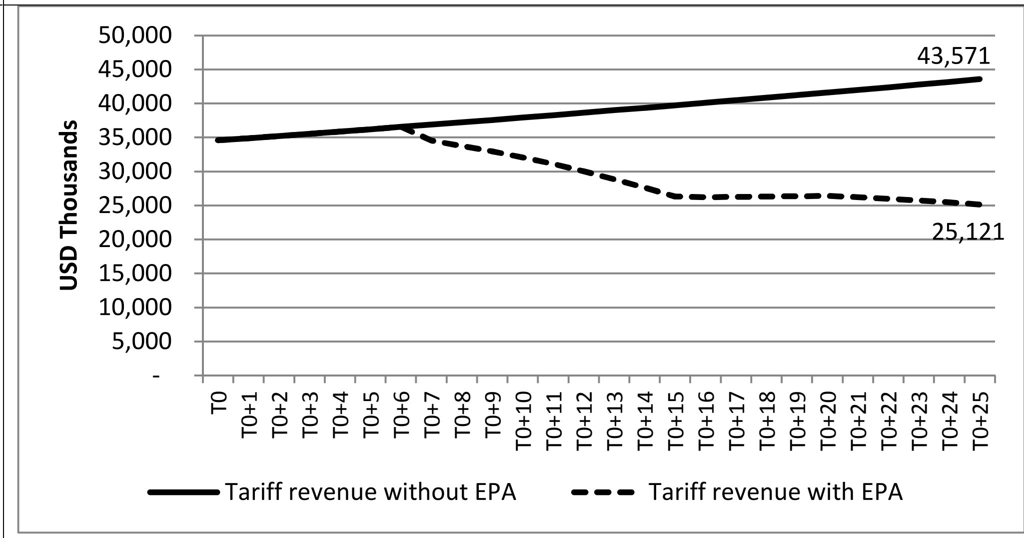
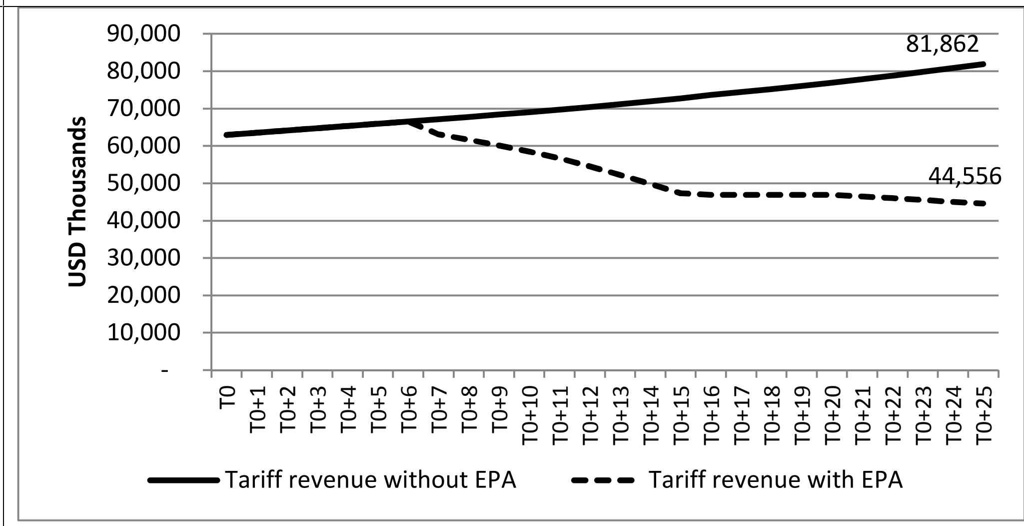
Burundi Tariff Revenue Loss under EPA USD 5.7 million	
Rwanda Tariff Revenue Loss under EPA USD 18.5 million	
Uganda Tariff Revenue Loss under EPA USD 37.3 million	
Sources: Calculations based on EAC EPA market access schedule and trade data from ITC TradeMap *Main assumptions*: Year on year growth of EU imports: 0.93% for each product in scenario without EPA and for Category A (products with 0% MFN tariff) and Category D products excluded from liberalisation) in scenario with EPA. Elasticity of import assumed to be -1, i.e. decrease in import tariff of 1% increases imports from EU by 1% in the year tariff reduction takes place. Takes into account reduction in VAT collected from imports, 16% for Kenya and 18% for other EAC Member states.	

Annex II - Duties faced by Kenyan exports at EU border– MFN, GSP, GSP+

HS6	Description of product	Average EU imports from Kenya (average 2013-2015, USD '000)	EU MFN tariff (%)	EU GSP tariff (%)	EU GSP+ tariff (%)	Tariffs under MFN (%)	Tariffs under GSP (%)	Tariffs under GSP+ (%)
A	B	C	D	E	F	CxD	CxE	CxF
060311	Fresh cut roses and buds, of a kind suitable for bouquets or for ornamental purposes	399,847	10.0	10.0	0	39,818	39,818	0
090240	Black fermented tea and partly fermented tea	180,810	-	-	0	-	-	0
070820	Fresh or chilled beans "Vigna spp., Phaseolus spp.", shelled or unshelled	129,949	11.2	7.7	0	14,554	10,006	0
090111	Coffee (excluding roasted and decaffeinated)	121,472	-	-	0	-	-	0
200820	Pineapples, prepared or preserved	70,859	25.6	22.1	0	18,140	15,660	0
060319	Fresh cut flowers and buds, of a kind suitable for bouquets or for ornamental purposes	54,733	10.0	10.0	0	5,450	5,450	0
060210	Unrooted cuttings and slips	46,862	4.0	4.0	0	1,874	1,874	0
410411	Full grains, unsplit and grain splits, in the wet state "incl. wet-blue", of hides	37,255	-	-	0	-	-	0
200559	Unshelled beans	36,297	19.2	15.7	0	6,969	5,699	0
080440	Fresh or dried avocados	34,830	4.6	0.4	0	1,585	139	0
070810	Fresh or chilled peas	27,857	9.4	5.9	0	2,619	1,644	0
070999	Fresh or chilled vegetables n.e.s.	23,628	12.8	9.3	0	3,024	2,197	0
160414	Prepared or preserved tunas, skipjack and Atlantic bonito, whole or in pieces (excluding minced)	23,121	24.0	20.5	0	5,549	4,740	0
060312	Fresh cut carnations and buds, of a kind suitable for bouquets or for ornamental purposes	22,569	10.0	10.0	0	2,248	2,248	0
252922	Fluorspar containing by weight > 97% calcium fluoride	15,901	-	-	0	-	-	0
121190	Plants, parts of plants	15,356	-	-	0	-	-	0

HS6	Description of product	Average EU imports from Kenya (average 2013-2015, USD ‘000)	EU MFN tariff (%)	EU GSP tariff (%)	EU GSP+ tariff (%)	Tariffs under MFN (%)	Tariffs under GSP (%)	Tariffs under GSP+ (%)
A	**B**	**C**	**D**	**E**	**F**	**CxD**	**CxE**	**CxF**
070410	Fresh or chilled cauliflowers and headed broccoli	13,238	12.1	8.6	0	1,602	1,138	0
080262	Fresh or dried macadamia nuts, shelled	12,396	2.0	-	0	248	-	0
030433	Fresh or chilled fillets of Nile perch	11,626	9.0	5.5	0	1,046	639	0
200949	Pineapple juice, unfermented, Brix value > 20 at 20°C,	10,951	15.2	11.7	0	1,665	1,281	0
240120	Tobacco, partly or wholly stemmed or stripped, otherwise unmanufactured	10,632	11.2	7.7	0	1,191	819	0
060390	Dried, dyed, bleached, impregnated or otherwise prepared cut flowers and buds,	7,875	10.0	10.0	0	788	788	0
410621	Hides and skins of goats or kids, in the wet state "	7,438	-	-	0	-	-	0
060290	Live plants, incl. their roots, and mushroom spawn	6,513	6.5	6.5	0	423	423	0
950490	Tables for casino games, automatic bowling alley equipment, and other funfair, table or parlour games,	6,480	-	-	0	-	-	0
070960	Fresh or chilled fruits of the genus Capsicum or Pimenta	4,920	6.4	2.9	0	315	143	0
410419	Hides and skins of bovine "incl. buffalo" or equine animals, in the wet state	4,879	-	-	0	-	-	0
261510	Zirconium ores and concentrates	4,472	-	-	0	-	-	0
070930	Fresh or chilled aubergines "eggplants"	4,166	12.8	9.3	0	533	387	0
070390	Leeks and other alliaceous vegetables,	3,725	10.4	6.9	0	387	257	0
TOP30		1,350,659				110,028	95,351	0
TOTAL	All products	1,513,265						

Sources: Tariff information from Commission Implementing Regulation (EU) 2015/1754 of 6 October 2015 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff; Council Regulation (EU) 2015/2449 of 14 December 2015 amending Regulation (EU) No 1387/2013 suspending the autonomous Common Customs Tariff duties on certain agricultural and industrial products; Regulation (EU) 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008. Trade data from ITC TradeMap.

Annex III - Industries at Risk for Each of the EAC Members

Non-exhaustive list of products where tariffs will be eliminated on imports from the EU, and the EU is currently more competitive:

Kenya

- Agriculture: Barley, Animal feed preparations
- Pharmaceutical goods: Vaccines- human use, Penicillins, Antibiotics, Hormones, Medicaments in dosage, Contraceptive preparations
- Chemical industries: Synthetic organic pigments and preparations based thereon, Lubricating preparations, Insecticides, Fungicides, Herbicides, Composite diagnostic or laboratory reagents, Chemical/allied industry preparation, Polymers of ethylene, in primary forms, Polypropylene, Acrylic polymers
- Paper products: Cartons, boxes and cases of non-corrugated paper or paperboard
- Steel products: Hot rolled iron/steel (coils), Bars & rods, Tubes, pipe & hollow profiles, Non-threaded articles of iron or steel, Articles of iron or steel, Wire of refined copper, aluminium foil.
- Industrial products: Refrigerating or freezing display counters, cabinets, show-cases, Machinery for liquefying air or gas, Filtering or purifying machinery and apparatus for water, Parts of boring or sinking machinery, Parts of cranes, work-trucks, shovels, and other construction machinery, Parts of machines for sorting/screening/mixing/crushing/grinding/washing, Static converters, control panels, diodes.
- Vehicles : Tractors, buses with a seating capacity of more than nine persons, Automobiles (1500 cc to 3000 cc), Diesel powered trucks, Motor vehicle parts, Trailers for the transport of goods

Tanzania

- Agriculture: Swine cuts, Seed potatoes, Cereals – durum wheat, barley, Soybean oil & oilcake, Sunflower seeds
- Frozen tunas
- Marble
- Light petroleum oils and preparations, Other petroleum oils and preparations
- Chemical products, e.g. mineral waxes, rare gases, calcium carbonate, titanium oxides, Insecticides, Prepared additives for ceramics, mortars, concretes, Chemical/allied industry preparations, Polyethylene, Polypropylene, Propylene copolymers
- Fertilizers: Ammonium sulphate, rea/ammonium nitrate, Potassium sulphate, Fertilizers containing nitrogen, phosphorus & potassium
- Pharmaceutical goods: Vaccines, veterinary use, Antibiotics, formulated, in bulk, Hormones, Medicaments in dosage
- Steel industry : Hot rolled steel (coils), Cold rolled iron/steel, coils, Bars & rods, Angles, shapes etc. of iron, Wire of iron or non-alloy steel, zinc plated/coated, Tubes and pipes, wire of refined copper
- Prefabricated buildings
- Vehicle industry

Uganda

- Agriculture: Swine cuts, Durum wheat, Vegetable seeds for sowing, Soya-bean oil , Animal feed preparations
- Oil and gas industry: Other petroleum oils and preparations
- Chemical industry : Mineral waxes , Sodium hydroxide (caustic soda), Isocyanates, Ammonium nitrate, Essential oils, Mixtures of odoriferous substances for the food or drink industries, Insecticides, Organic composite solvents & thinners, prepared additives for ceramics, mortars, concretes, Chemical/allied industry preparations, Polyethylene, Polymers of ethylene, Polyethers, Cellulose ethers

- Pharmaceutical industry: Antisera and other blood fractions, Vaccines, human use, Medicaments, Penicillins, Antibiotics, Hormones, Vitamins
- Paper products: Uncoated paper and paperboard, Paper sheets, Fine paper ,
- Steel industry: Hot rolled iron/steel, Angles, shapes and sections, Line pipe of a kind used for oil or gas pipelines, Tubes and pipes and hollow profiles, welded, of square or rectangular
- Vehicle industry: Parts and accessories of bodies for motor vehicles, Motor vehicle parts, Parts and accessories of motorcycles, trailers and semi-trailers

Burundi
- Cereal bran
- Pneumatic tires new of rubber for motorcycles
- Hides and skins: Whole raw hides and skins of bovine "incl. buffalo" or equine animals, Leather further prepared after tanning or crusting
- Bars & rods of iron/non-alloyed steel, forged

Rwanda
- Medicaments
- Polymers of ethylene in primary forms
- Casings, tubing, drill pipe, for oil drilling use
- Mechanical appliances (whether or not hand-operated) for projecting/dispraying/spraying liquid or powders
- Parts of lifting, handling, loading or unloading machinery

Source: Calculations based on trade data for 2013 – 2015 from ITC TradeMap