

EAST AFRICAN COMMON MARKET Scorecard 2016

Tracking EAC Compliance in the
Movement of Capital, Services
and Goods



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FOREWORD

Achieving regional integration is not easy, but has a significant pay-off. The objective of establishing the Common Market is the realization of accelerated economic growth and development. Enhancing the movement of services and capital, eliminating barriers to movement of goods and bolstering the rights of establishment and residence will bring the region closer to achieving its dream. Eliminating internal barriers to trade and investment can also help EAC businesses achieve economies of scale and bolster their competitiveness, helping the region move closer towards a single investment destination. The Common Market can expand opportunities for the private sector and uplift the living standards of its citizens in a way that no Partner State can do on its own.

Two years ago, in 2014, we launched the first East African Common Market Scorecard. This initiative signaled Partner States' commitment to achieving regional integration and to doing so in a transparent way. This second publication of the Scorecard is evidence that this commitment holds strong.

The East African Common Market Scorecard initiative contributes to the implementation of the Common Market by allowing Partner States to track their progress in fulfilling their commitments to liberalization under the Common Market Protocol. The Scorecard examines selected commitments made

by Partner States, outlines progress in removing East African legislative and regulatory restrictions to complying with the Protocol, and recommends reform measures. In doing so, it allows Partner States to identify key areas for improvement and, along with the EAC Secretariat and development partners, chart a path to eliminate remaining barriers to a fuller regional market.

Since 2014, Partner States have eliminated some key restrictions to further trade and investment and have become more efficient at doing so. Much remains to be done, however, before the gains of integration can be realized. A key component of the 2016 Scorecard work was the robust and energetic input of the private sector. We hope to build upon this role and, working with the private and public sectors side by side, move towards greater implementation, with future Scorecards capturing the key barriers on the ground and moving to quickly facilitate intra-EAC trade and investment.

We expect that the Scorecard will continue to contribute to better compliance of commitments under the Protocol, helping boost firm competitiveness and spur gains for all East Africans. This publication is an important part of that journey and we are pleased to be associated with the East African Common Market Scorecard 2016.

Amb. Libérat Mfumukeko
Secretary General
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International Finance Corporation



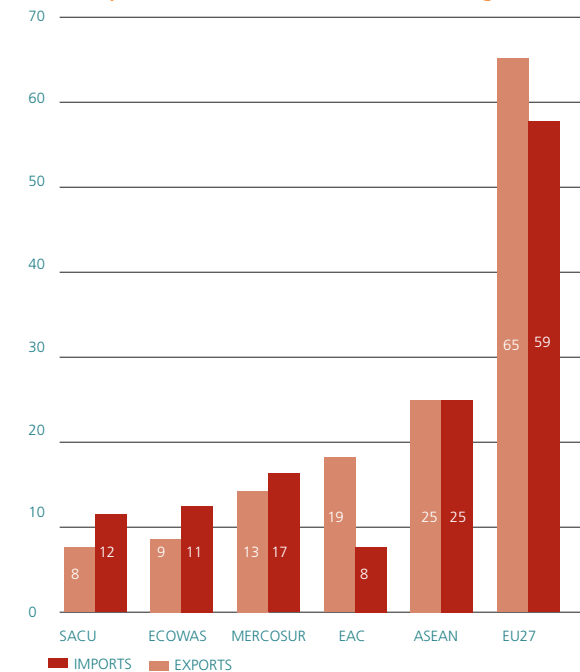
EXECUTIVE SUMMARY

Introduction

The East Africa Community (EAC) is already the most integrated regional bloc in Africa. While intra-African trade as a percentage of total trade is not as high as high as the dynamic ASEAN bloc, the EAC's nearly 25 percent intra-EAC export is impressive when compared to other developing regional blocs (See Figure 1). Since establishing the EAC Customs Union in 2005, EAC Partner States have worked to harness their joint economic potential by eliminating barriers to intra-EAC trade and investment through implementation of the EAC Common Market Protocol (CMP) on the establishment of the common market, which came into force in July 2010. Partner States - Burundi, Kenya, Rwanda, Tanzania, and Uganda – have adopted the Common Market Scorecard (CMS) as a monitoring tool for the implementation of the CMP. The CMS is a tool that measures legal compliance with commitments undertaken under the CMP. The CMS aims to further EAC integration with a view to increasing its

economic potential and realizing much-needed improvements in the investment climate. Since the publication of the first CMS in 2014, the EAC expanded its membership, welcoming South Sudan as a sixth member in 2016 (See Box 1).

Figure 1. Intra-regional trade in goods and services as a percent of total trade, (2005-2014 averages)



A 2016 article on African integration in the Economist bemoans the implementation record of most trade deals in the region, but sets the EAC as an exception, in part due to the fact that “EAC members keep good data, and a public Scorecard holds them accountable for non-tariff barriers.”¹ Launched in 2014, the CMS sets out a framework for Partner States to track their progress towards integration and for the EAC to assess regional implementation gaps.²

This second Common Market Scorecard (CMS 2016) measures progress made since the publication of the CMS 2014 regarding the legal instruments and measures of the CMP. In so doing, it aims to facilitate policy dialogue by tracking reforms, sharing success stories, and enabling research and analysis on the links between reforms in measured areas and desired outcomes. The CMS 2016 will bring to light, in respect of the CMS 2014 recommendations, reforms undertaken by each Partner State as well as any new restrictions or nonconforming measures. This Scorecard’s objective is to help Partner States comply with their obligations and enable the EAC to attract more investment, expand trade, and take full advantage of its integration potential. The CMS 2016 will be used to take informed implementation and/or policy actions in the areas that require further progress. However, the next generation of the Scorecard will need to not only track the legal compliance of implementation of the CMP but also to measure timely implementation of measures, completion of commitments within target deadlines and outcomes.

The EAC Partner States’ commitment to enhance their regional integration by tracking their individual and collective progress sends a signal of serious commitment to their regional integration initiative. Monitoring regional integration can contribute to the development of regional trade and investment and promotion of economic growth. It also raises compelling questions about regional integration that could be constructive for other regional integration initiatives. As EAC Partner States, along with counterparts from the Common Market for Eastern and Southern Africa (COMESA)

and the Southern African Development Community (SADC), begin to implement the Tripartite Free Trade Area (FTA) and to further negotiations of a 54-nation Continental Free Trade Area (CFTA) linking economies across Africa, the EAC’s experience can provide good lessons in best practice as well as lessons learned.

¹ *The Economist*, “Tear down these walls: Africa’s internal trade deals look good on paper. A pity they are rarely followed,” February 27, 2016. <http://www.economist.com/news/21693562-africas-internal-trade-deals-look-good-paper-pity-they-are-rarely>.

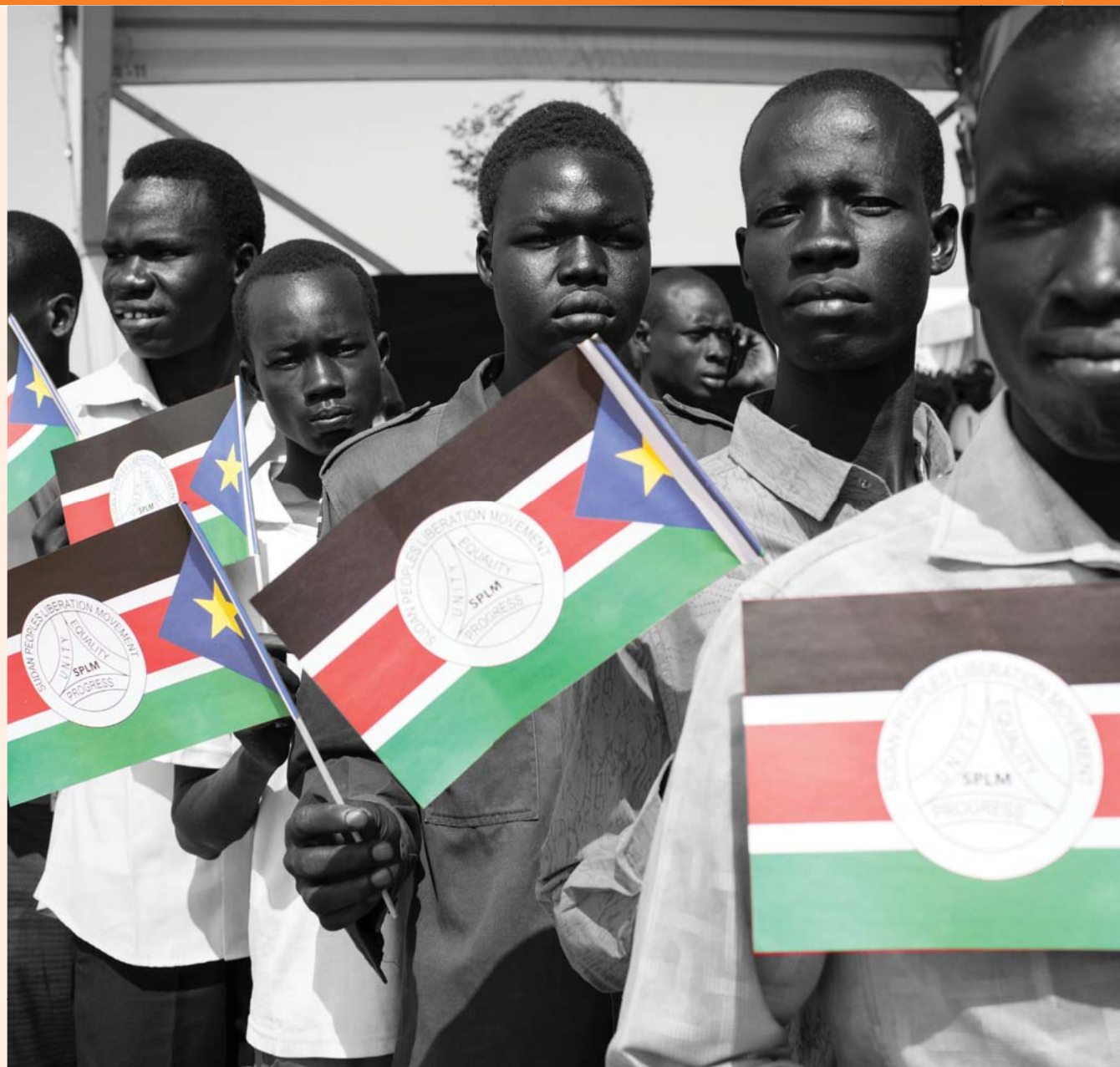
² *The CMS* is mentioned again in a later *Economist* article, “Worth Celebrating: Regional co-operation has been good for at least part of the continent,” June 11, 2016. Accessed June 10, 2016. <http://www.economist.com/news/middle-east-and-africa/21700398-regional-co-operation-has-been-good-least-part-continent-worth>.

Box 1 South Sudan joins the EAC

South Sudan, which applied for EAC membership upon gaining independence in 2011, officially became the sixth member of the East African Community after signing an accession treaty on April 15, 2016. EAC Heads of State approved South Sudan's membership at a regional meeting in Dar es Salaam, Tanzania. As a member of the EAC, South Sudan will be expected to adhere to a set of principles of a market economy, good governance, democracy, the rule of law, observance of human rights, and social justice and gender equality, as set out in Article 6 of the Treaty Establishing the East African Community.

The accession of South Sudan adds nearly 12 million people to the EAC, with an estimated per capita GDP of \$1,111 (World Bank Country Overview). Nearly 10 percent of EAC exports go to the South Sudanese market, predominantly from Uganda, which sends over a fifth of its EAC exports to South Sudan. Imports from the new Partner State are negligible: South Sudan is heavily dependent on oil, which makes up nearly all of its exports (99.8 percent in 2014), the bulk of which are oriented to China (98 percent in 2014) and India (1.5 percent).

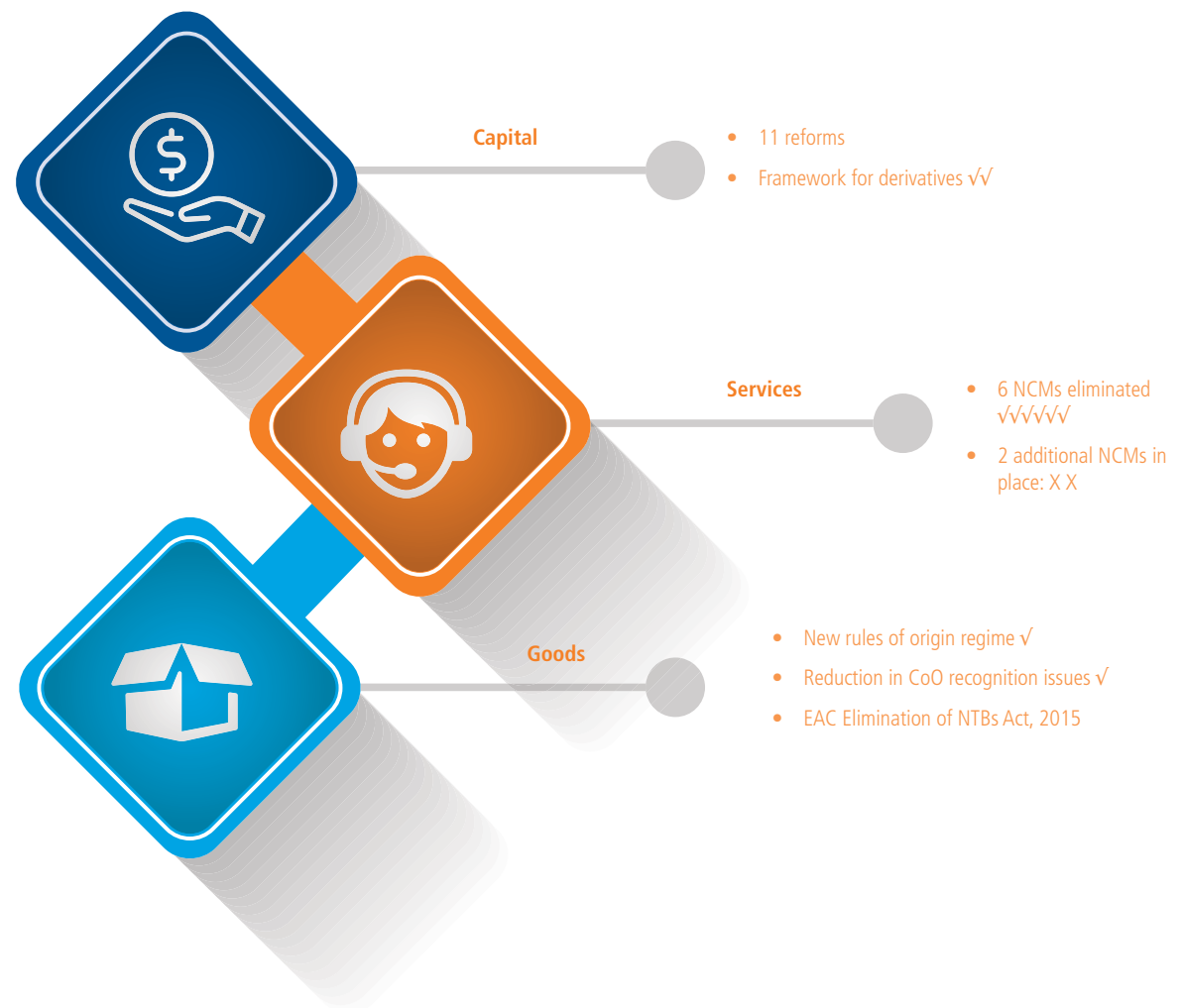
South Sudan, as well as Burundi, are categorized by the World Bank as fragile and conflict-affected states (FCS). Such States can benefit from regional integration, gaining valuable access to markets and lowering the risk of doing business. Recent research finds evidence that bolstering trade and enhancing trade policy can have a significant impact on the risk and intensity of conflict. A recent study by the International Growth Center (2016) finds that intra-EAC trade has helped make the region richer and more peaceful.



What are the Reform Results since CMS 2014?

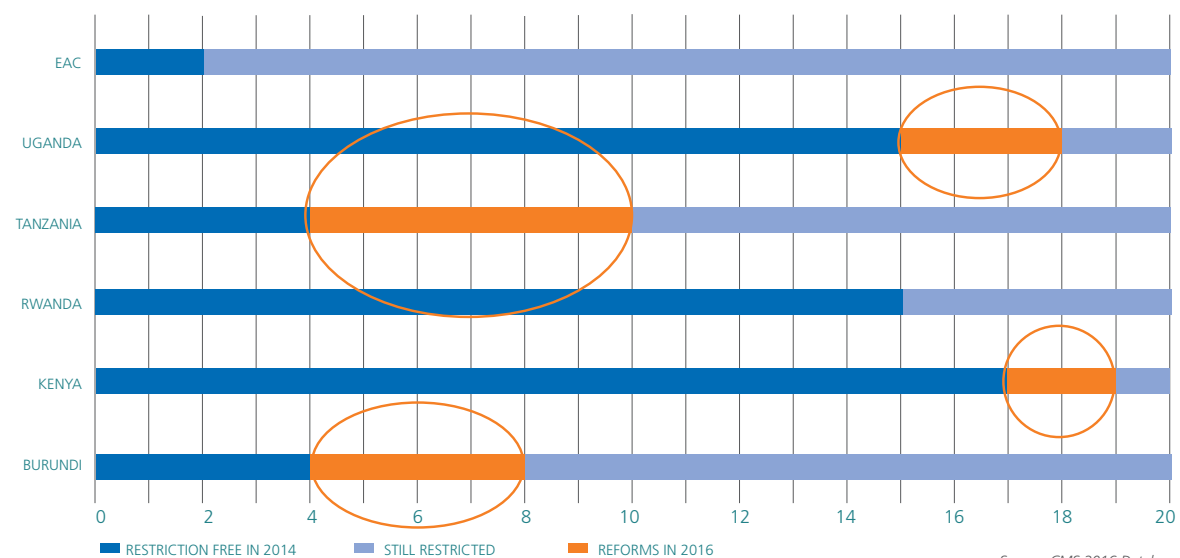
Results from the Scorecard exercise have been mixed. On the positive side, Partner States have undertaken a number of reforms in each of the areas covered by the Scorecard – Capital, Services, and Goods. Cause for concern remains, however, as numerous barriers remain in all three areas. Even more worrying is the fact that new measures have been introduced that hinder regional trade and investment.

Figure 2: Summary of CMS 2016 reforms



With respect to the freedom of movement of capital, three Partner States have undertaken a total of eleven reforms. Kenya has effected two reforms for sale of issue of derivative products locally and sale or issue of derivative products abroad by residents. Uganda has effected two reforms for sale or issue of derivative products abroad and one additional reform harmonising the withholding tax rate for interest payments on government securities of 20% for both resident and non resident investors. These reforms are a plus for securities operations since the derivatives markets offer opportunities for hedging among others, while the reform regarding the withholding tax on government securities in Uganda makes the market more attractive to non resident investors. While these reforms are positive developments, 18 of the 20 capital markets operations continue to have a restriction in at least one Partner State. Kenya now has 19 of 20 unrestricted operations, while Burundi continues to restrict 12 of the 20 operations and Tanzania continues to restrict 10 of the 20 operations. This is depicted in Figure 3.

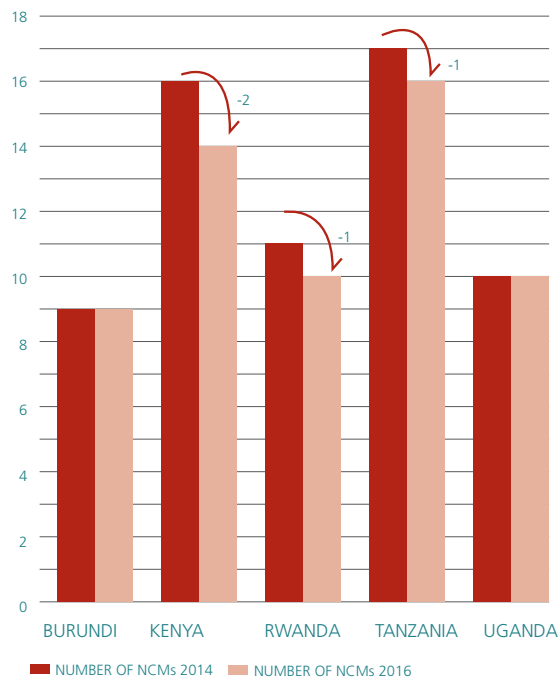
Figure 3: Reforms in freedom of movement of capital, and remaining restrictions



Source: CMS 2016 Database

In services, Kenya undertook three reforms but added one restriction, while Tanzania and Rwanda each eliminated one NCM (see Figure 4). Uganda also carried out one reform, but added a restriction, showing a net reform count of zero.

Figure 4: Reforms in freedom of movement of services: Number of NCMs by Partner State (2014 and 2016)

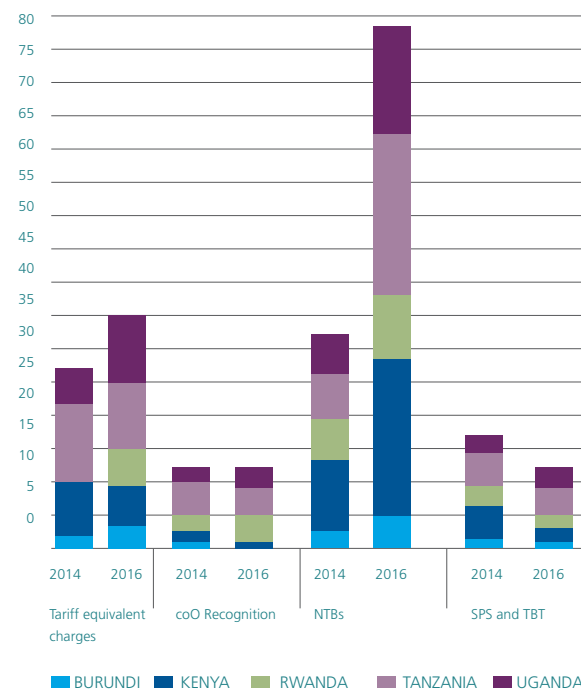


Source: CMS 2016 Database

With respect to the free movement of goods, Partner States have all implemented the EAC tariff schedule, eliminating tariffs on each other's goods, and have adopted the revised EAC Rules of Origin (RoO). This legal compliance, however, is consistent with the prediction that eliminating tariffs often results in the rise of non-tariff protectionist measures. As was the case in CMS 2014, Partner States continued to apply tariff equivalent measures. The lack of recognition of EAC rules of origin certificates among EAC Partner States also continued to be a significant barrier to trade.

Figure 5 portrays the growth in the use of NTBs, particularly Sanitary and Phytosanitary (SPS) and Technical Barriers to Trade (TBT) measures, from 2014 to 2016. The 2016 figures include measures identified but unresolved from CMS 2014, including a number of measures that require a regional approach for resolution.

Figure 5: Freedom of movement of Goods: Tariff-equivalent charges, recognition of CoO, NTBs, and SPS/TBT measures as growing obstacles to goods



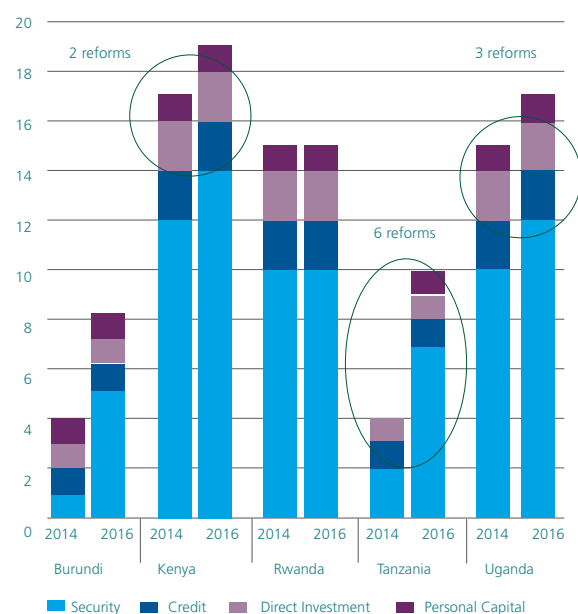
Source: CMS 2016 Database

Kenya and Tanzania have the greatest reduction in the number of tariff equivalent charges, and of non-recognition of the Certificate of Origin (CoO). However, Kenya's use of NTBs doubled, from 10 to 23, and Tanzania's more than tripled, from 7 to 24. No country improved in terms of NTBs or use of SPS measures, pointing to a significant impediment to regional integration.

Freedom of Movement of Capital

Partner States committed, under the CMP, to liberalize 20 capital market operations. At the end of December 2015, the reference period for CMS 2016, only 2 of these 20 operations were free in all Partner States showing no improvement since CMS 2014. Five reforms have been undertaken since the publication of CMS 2014, all in the securities area. The status of each country with respect to the assessed operations is illustrated in Figure 6.

Figure 6: Number of restriction-free capital transactions by country and measure (2014 and 2016)



Source: CMS 2016 Database

Table 1 details each country's status with regard to the number of restriction-free operations, capital in each category in 2014 and in 2016.

Table 1: Number of restriction-free capital operations and number of reforms 2014 to 2016, by country and category

	Burundi	Kenya	Rwanda	Tanzania	Uganda
Measures 1 to 14 related to restrictions -free securities operations					
2014	1	12	10	2	10
2016	5	14	10	7	13
Number of reforms from 2014 to 2016	4	2	0	5	3
Measures 15 to 16 related to restrictions -free credit operations					
2014	1	2	2	1	2
2016	1	2	2	1	2
Number of reforms from 2014 to 2016	0	0	0	0	0
Measures 17 to 19 related to restrictions -free direct investment operations					
2014	1	2	2	1	2
2016	1	2	2	1	2
Number of reforms from 2014 to 2016	0	0	0	0	0
Measure 20 related to restrictions -free personal capital operations					
2014	1	1	1	0	1
2016	1	1	1	1	1
Number of reforms from 2014 to 2016	0	0	0	1	0
Total number of restriction-free measures					
2014	4	17	15	4	15
2016	8	19	15	10	18
Number of reforms from 2014 to 2016	4	2	0	6	3

Source: CMS 2016 Database

Since the publication of the 2014 CMS, both Kenya and Uganda adopted a regulatory framework for derivatives and thus removed two of the restrictions recorded in 2014. In the CMS 2016 results, Kenya has met the threshold of no restrictions on the 14 operations measures relating to securities. Uganda also enacted reforms affecting two of the operations but continues to have residency restrictions on the local purchase of shares or other securities and of bonds and other debt instruments. by charging non residents withholding tax rate of 15 % on dividends from listed companies while residents are charged 10%.

In terms of credit operations, Kenya, Rwanda, and Uganda continue to be open to both borrowing and lending abroad by residents. Burundi and Tanzania both restricted lending abroad by residents in 2014 and continue to do so. No reforms were recorded with respect to these measures.

The Common Market Protocol covers three operations relating to direct investment: inward direct investment, outward direct investment, and repatriation of profits from sale of assets. No EAC Partner State imposes restrictions on repatriation of proceeds from asset sales within the region. However, all impose restrictions on inward direct investment. Burundi and Tanzania also maintain restrictions on outward direct investment.

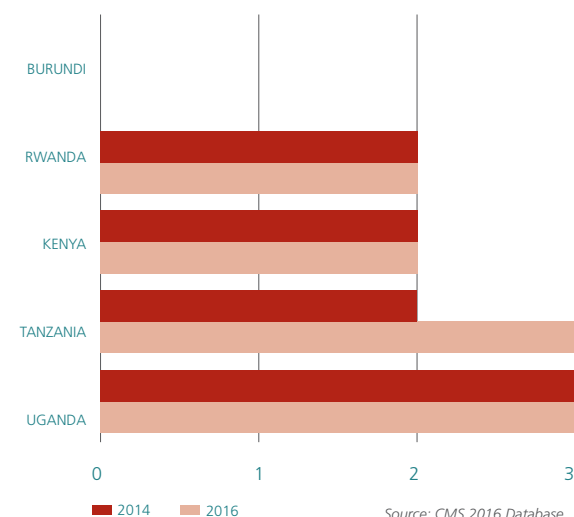
On personal capital operations, all EAC Partner States—except Tanzania—require that all amounts above \$10,000 should be declared on exit or entry. However, they do not restrict the operation. Tanzania places a \$10,000 limit for residents travelling abroad with foreign currency, including to other EAC Partner States. Tanzania also provides that funds due from assurance policies taken

outside Tanzania may only be transferred into or from Tanzania if servicing of such policies is done using externally generated funds.

In addition to countries enacting very few reforms in this area, there is a concern about transparency. Article 25 (1) of the CMP allows Partner States to restrict freedom of movement of capital for reasons of prudential supervision, public policy, money laundering, and financial sanctions agreed to by Partner States. Partner States that do so are required under Article 25 (2) to notify the EAC Secretariat and other Partner States and furnish proof that a restriction is reasonable and justified.

A concern that EAC Partner States were not complying with these notification requirements was raised in the CMS 2014. In the CMS 2016 it was found that not only have Partner States increased their use of such exemptions, from 9 to 10 (see Figure 7), they are still not complying with the notification requirement.

Figure 7: Number of general exceptions pursuant to Article 25 (1) 2014 vs. 2016



In summary, only 3 out of the 20 capital operations are free in all Partner States. These are foreign sale by residents of shares or other securities of a participating nature, external borrowing by residents and repatriation of proceeds from sale of assets. All other 18 operations have at least one Partner State restricting the operation. Since CMS 2014, most EAC Partner States except Burundi have maintained restrictions that affect inward investment from other EAC economies. This remains an impediment to attracting region-wide foreign direct investment (FDI) and to the region's ability to fully participate in global value chains. To fully comply with the CMP, EAC Partner States need to repeal provisions in at least 27 laws and regulations. Rwanda has the most provisions (9), while Burundi has the least (3). The greatest restriction on the movement of capital across the EAC are capital controls, which affect the majority of transactions covered under the CMP.

Services

EAC Partner States have committed to liberalization in a number of services sectors. Partner States followed a positive list approach, scheduling only those sub-sectors they were willing to open up. As such, different Partner States committed to liberalize different sub-sectors across the modes of supply by December 31, 2015, the reference period. As shown in Table 2, Burundi scheduled 73 commitments, Kenya 63, Rwanda 101, Tanzania 59, and Uganda 98. Article 16 (5) commits Partner States to refrain from introducing any new restrictions on the provision of services. The CMS analysis assesses liberalization in a sample of these, as explained in the methodology section.

Many of the barriers that existed prior to the CMP coming into force remain, constraining the movement of services within the region. A number of reforms have been undertaken since the 2014 CMS. These have brought the total number of non-conforming measures (NCMs) down from 63 in 2014 to 59 in 2016. While this shows progress, it should be noted that all EAC Partner States remain largely non-compliant in their services trade liberalization commitments.

The CMS exercise measures liberalization in terms of legal compliance with commitments under the CMP. As such, countries are assessed on whether they meet their obligations in the sectors in which they have made commitments – but are not penalized for having failed to commit to liberalization, even in sectors that contain many restrictions. Assessing current restrictions and

Table 2: Number of services sub-sectors committed by EAC Partner States in the CMP

Services sub-sectors	Burundi	Kenya	Rwanda	Tanzania	Uganda
Business	31	15	32	7	33
Communication	6	17	21	17	21
Distribution	3	3	4	2	4
Education	4	4	5	4	5
Financial	9	12	15	16	11
Tourism and Travel	4	3	4	4	4
Transport	17	9	20	9	20
Total sub-sectors committed	74	63	101	59	98

Source: EAC Common Market Protocol

subsequently measuring where countries commit to and undertake efforts to liberalize would provide a more realistic picture of regional liberalization, but this was beyond the scope of this current exercise, as was assessing the state of implementation of such commitments.

Table 3 lists the number of reforms by country and Figure 8 illustrates country progress from CMS 2014 to CMS 2016. In aggregate, Kenya undertook the most reforms, eliminating three non-conforming measures in professional services but adding one in telecommunications, for an aggregate of 2 reforms; Tanzania and

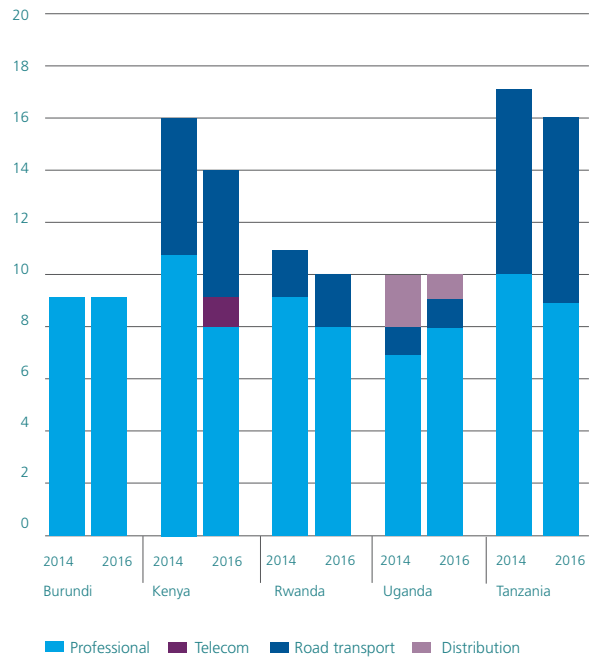
Rwanda each eliminated one, both in professional services. Uganda also had one reform, removing a non-conforming measure in distribution services, but added a NCM in professional services.

Table 3: Reforms and new NCMs since CMS 2014

	Burundi	Kenya	Rwanda	Tanzania	Uganda
Number of reforms	0	3	1	1	2
Number of new NCMs	0	1	0	0	1

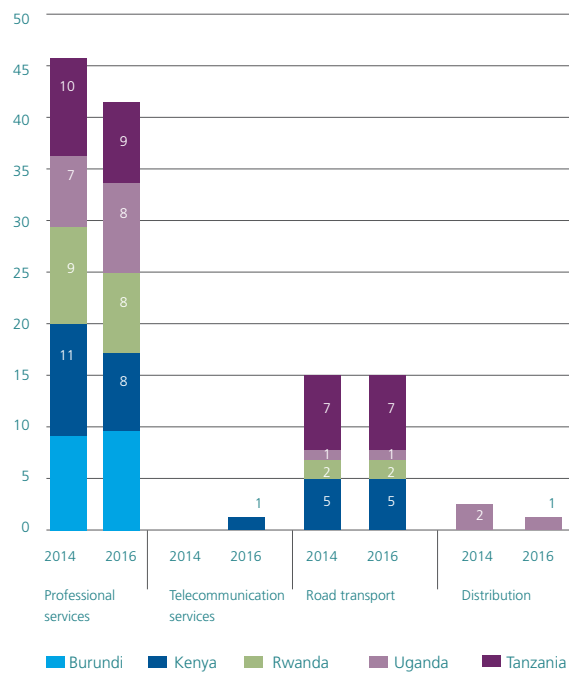
Source: CMS 2016 Database

Figure 8: NCM distribution by country 2014 and 2016



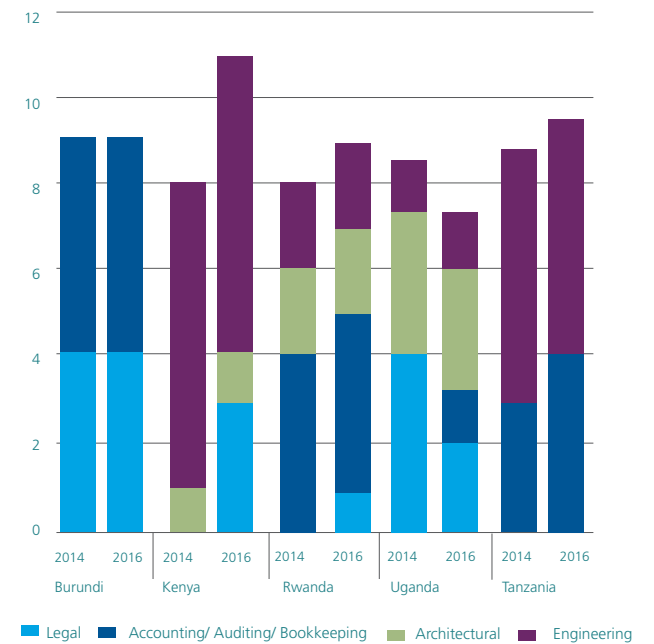
Source: CMS 2016 Database

Figure 9: Sectoral Distribution of NCMS 2014 vs 2016



Source: CMS 2016 Database

Figure 10: Number of NCMs in professional services per sector and per country, 2016 vs. 2014



Source: CMS 2016 Database

Looking at Figures 8 and 9 it is evident that there have been some changes. NCMs have increased in the telecommunications sector – largely because telecommunications commitments did not take effect until 2015, so all countries were rated as having zero NCMs.

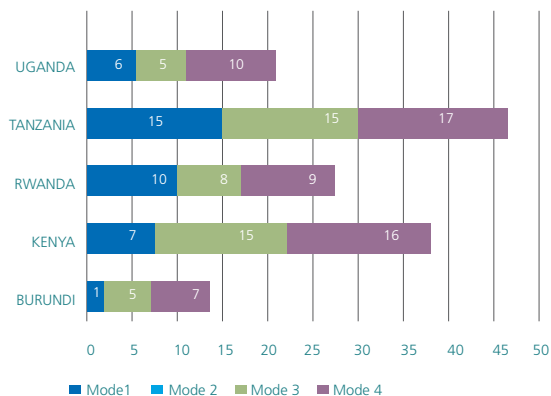
The vast majority – about two thirds -- of NCMs are in professional services (see Figure 9 for an illustration of the sectoral distribution of NCMs).

In professional services, the figure is somewhat misleading, as Tanzania made no commitments in architectural or legal services, therefore absence of NCMs is not an indication of restrictions. Engineering has the most NCMs (38 percent), followed by accounting (29 percent), legal services (19 percent), and architecture services (14 percent). This is illustrated in Figure 10.

After professional services, the sector with the greatest number of NCMs is road transport (25 percent),³ followed by telecommunications and the distribution sector, both with 2 percent.

The large majority – nearly 80 percent- of the violations concern national treatment (NT), a principle essential to foreign investment. NCMs are mainly found in laws (68 percent of all NCMs), with only 15 percent being in regulations, and 17 percent in administrative measures. Nearly all NCMs violate multiple modes of service supply, with most affecting movement of service providers (97 percent) and commercial presence (76 percent). In terms of modes of supply, mode 3, commercial presence, and mode 4, movement of natural persons, were the most affected (Figure 11).

Figure 11: Modes of supply affected by EAC NCMs, CMS 2016



Source: CMS 2016 Database

Goods

Partner States made four key commitments under Article 5(2) (a) to facilitate the free movement of goods through elimination of tariffs, non-tariff barriers (NTBs) and Technical Barriers to Trade (TBT); establishing a common external tariff and harmonizing and mutually recognizing Sanitary and Phytosanitary Standards (SPS).

The CMS analysis assesses legal compliance insofar as whether Partner States have taken all, or at least the minimum necessary steps to comply with the key commitments undertaken such as complying with the derived instruments of the Customs Union Protocol and other regional instruments, and examining for each of those commitments whether necessary steps have been taken to implement them. In order to establish whether there is *de jure* compliance by the Partner States *de facto* information in the form of EAC Time Bound Program Reports on elimination of NTBs, is reviewed to give effect to or enquire on the implementation of the commitments. The reports demonstrate the extent to which the Partner States have deviated from the above commitments through applying tariff equivalent measures; subjecting intra-regional trade to NTBs and use of SPS and standards as technical barriers to trade.

While barriers to the movement of goods persist in CMS 2016, there are some notable reforms that have been undertaken since the publication of CMS 2014. The East Africa Legislative Assembly (EALA) passed the East African Community Elimination of Non-Tariff Barriers Act in February 2015. The Act establishes a mechanism for identifying and monitoring removal of NTBs and inter alia provides for a classification of NTBs. The Act is currently undergoing assent process in the Partner States. Another notable reform is the Revised EAC Rules of Origin (RoO) which came into effect by Gazette Notice No. EAC/3/2015. The revised RoO helped to clarify origin criteria

³ A separate review of air transport legislation found a large number of NCMs (29 in number), but, in line with decisions made for the 2014 CMS, the air transport sector has been excluded from the aggregate analysis given that it is typically regulated primarily on a bilateral level.

for some products, which had been a subject of NTBs for example motor vehicles and also include provisions that address false claims with respect to origin.

Just like in CMS 2014, to assess progress towards compliance with the obligation to eliminate tariffs on intraregional trade, reviews of legal compliance and *de facto* implementation using the EAC Time Bound Program Reports were combined and the weights are further explained in the methodology chapter of this Scorecard. As was the case in the CMS 2014, all Partner States have officially eliminated tariffs on goods originating from within the EAC. All Partner States score full marks in CMS 2016 for compliance with RoO following the adoption of the revised RoO.

Despite this legal compliance, the CMS 2016 results point to the continued use of tariff equivalent measures primarily arising from the non-recognition of RoO certificates among EAC Partner States, thus triggering application of tariffs on goods that would have otherwise not attracted import duties and the application of charges of tariff equivalence. Table 4 illustrates progress made in the scores on goods from CMS 2014 to CMS 2016.

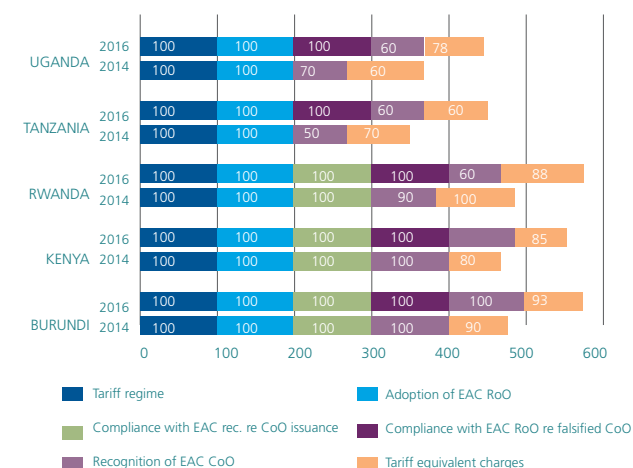
In CMS 2016, three countries, Burundi, Rwanda and Kenya score above 90 points, indicating a positive trend towards elimination of tariffs on intraregional trade, as evidenced by the fewer number of reported problems related to non-recognition of RoO certificates and application of tariff equivalent charges. As was the case in 2014, Tanzania scored the lowest. Tanzania also shows the largest improvement, up 13 points from 69 in 2014. The main issue is the use of tariff equivalent charges – here Tanzania scores 28, and Uganda 31 out of 40. Tanzania, Uganda, and Rwanda also score low on recognition of certificates of origin from exporters from other Partner States. As per December 2015 data cutoff date, Tanzania and Uganda's failure to have certificates of origin issued by the recommended authority makes them score zero points in this category.

Tariff Elimination

Table 4: Progress on elimination of tariffs by EAC Partner States on intra-regional trade

	Burundi		Kenya		Rwanda		Tanzania		Uganda	
	2014	2016	2014	2016	2014	2016	2014	2016	2014	2016
Legal Implementation										
Compliance with EAC Tariff schedule	20	20	20	20	20	20	20	20	20	20
Adoption of EAC RoO	20	20	20	20	20	20	20	20	20	20
Compliance with EAC rec. re issuance of CoO by customs authorities	7	5	7	5	7	5	0	0	0	0
Compliance with EAC Rules of Origin about falsified CoO	0	15	0	5	0	5	0	5	0	5
De jure implementation										
Use of charges of tariff -equivalent effects	27	37	24	34	30	35	21	28	18	31
Recognition of Certificate of Origin (CoO)	16	10	14.4	9	14.4	6	8	6	11.2	6
CMS Score	90	97	85.4	93	91.4	91	69	79	69.2	82
Change in CMS 2014 to CMS 2016	+7		+8		0		+10		+13	

Figure 12: Converted Scored by element by country, 2014 and 2016



Source: CMS 2016 Database

Figure 12 examines the elements that make up the goods score set out in Table 4, taking into account the different weights employed in CMS 2014 and CMS 2016. All countries have applied the EAC tariff regime and adopted its rules of origin. As was the case in CMS 2014, Tanzania and Uganda have yet to comply with the EAC directive that customs authorities must issue the certificate of origin. Since CMS 2014, all countries have adopted the directive regarding falsified CoO. Implementation of this directive is not measured in this iteration of the Scorecard. In terms of recognition of CoO, an

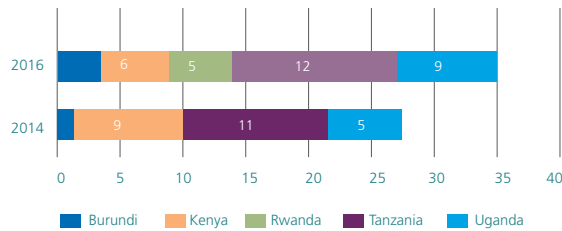
issue repeatedly identified as a significant non-tariff barrier (NTB), Burundi continues to earn full points and Kenya continues to score 90 percent. Tanzania's recognition of CoO has improved from 50 to 60 percent; Rwanda and Uganda's scores have both declined, indicating a worsening performance in terms of recognizing CoO of other EAC countries. Most countries improved their score on applying tariff equivalent charges, though such charges persist as barriers to intra-EAC trade.

Source: CMS 2016 Database

Tariff equivalent charges

As seen in Figure 13, countries continue to apply charges on each other's goods that are equivalent to the tariffs that were removed to facilitate free movement of goods. These charges include charges levied on imports by various government agencies and local authorities or county governments, road user charges, charges associated with all cases of non-recognition of COO. In total, there were 35 such charges, 28 new charges which were imposed in the CMS 2016 review period and 7 charges carried from the CMS 2014.

Figure 13: Number of charges equivalent to tariffs by country, 2014 and 2016



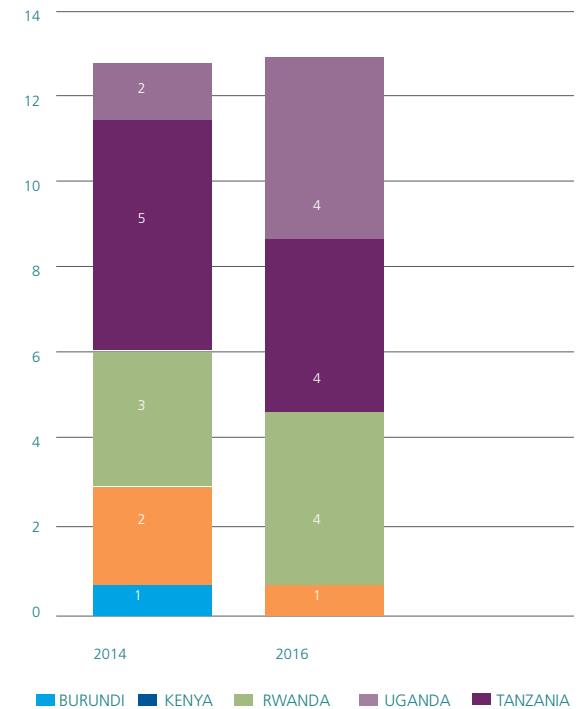
Source: EAC Time Bound Tables

Kenya is the only country that applied fewer tariff equivalent charges in 2016 than in 2014, reducing the number of new charges from 9 to 5. All others increased, with Rwanda making the largest jump, from 0 to 4. The analysis found that in 2016, 46 percent of tariff equivalent charges applied across the board, affecting all products. The remaining charges were product specific, applied to dairy, tea, tobacco, chemical products, shoe polish, and scrapping rolls.

Recognition of Certificates of Origin

Figure 14 shows that Partner States continue to face difficulties in exporting products originating from their territories on duty free basis due to non-recognition of the EAC CoO. Traders expecting to sell their wares in the EAC region report being denied this preference when customs officials at the border fail to recognize the CoO. This significantly denies the businesses the duty free market access into the EAC region that is guaranteed under the customs union.

Figure 14: Non-recognition of certificates of origin by Partner State, 2014 and 2016



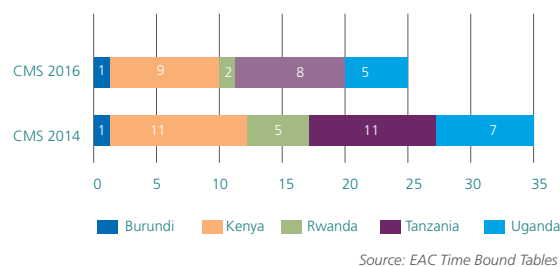
Source: EAC Time Bound Tables

Non-tariff barriers (NTBs)

Just like in CMS 2014, the legal analysis of NTBs is premised on the EAC Time Bound Program Reports and only *de jure* NTBs reported were analyzed. The detailed methodology can be found in the methodology chapter of this Scorecard. A total of *de jure* 78 NTBs were reported, comprising 32 carried forward from CMS 2014 and 46 introduced during CMS 2016 review period. The good news is that Partner States have resolved some of the NTBs identified as barriers to regional integration in CMS 2014. The EAC average of resolution of new NTBs for the 2016 period was about 54 percent, better than the 38 percent rate for CMS 2014. Figure 15 illustrates the number of NTBs resolved per country per period. With regard to the new NTBs, Kenya performed best, resolving 70 percent of the new NTBs reported against it, while the rest of the Partner States, the rate of resolution was at about half of the new NTBs reported against them. While CMS 2016 notes this trend in rate of resolution, the highlight is not to complement Partner States that have resolved more NTBs - Partner States should be mindful of Article 13 of the Customs Union Protocol to remove with immediate effect, all existing NTBs and thereafter not to impose any new NTBs.

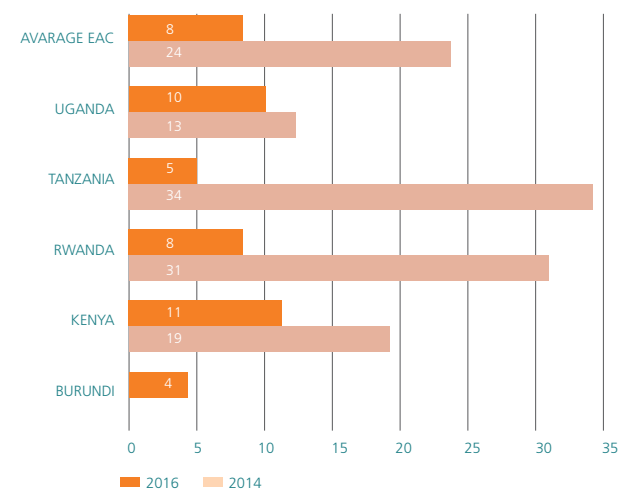
It is important to point out that analysis on resolved NTBs is gathered from the EAC Time Bound Program Reports indicating resolved and unresolved NTBs. This information may not be indicative of the actual time taken by individual government agencies in resolving each NTB, but is an official benchmark acknowledged by all Partner States.

Figure 15: Resolved NTBs per reference period and per country



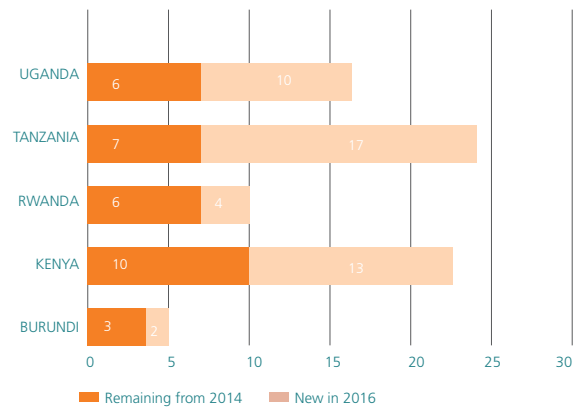
Another positive development was a significant decline in the number of months it took to resolve NTBs. The EAC average time declined from 24 to 8 months from CMS 2014 to CMS 2016, with Tanzania cutting its resolution time from 34 to 5 months. This is illustrated in Figure 16.

Figure 16: Average time (in months) to resolve NTBs



Two elements paint a less positive picture, however. First is the number of unresolved NTBs in CMS 2016 which stood at 40 compared 21 during the CMS 2014. This is despite the commitment under Article 13 of the Customs Union Protocol for immediate removal of existing NTBs and non-introduction of new NTBs. Second is the significant increase in new NTBs applied during the CMS period. Tanzania is by far the most prolific, adding 17 new NTBs. Kenya and Uganda both follow with 13 and 10 new NTBs, respectively. This is depicted in Figure 17.

Figure 17: CMS 2016 NTBs: New measures and measures carried over from CMS 2014



Source: EAC Time Bound Tables

Four persistent unresolved NTBs were common to all EAC Partner States. These included:

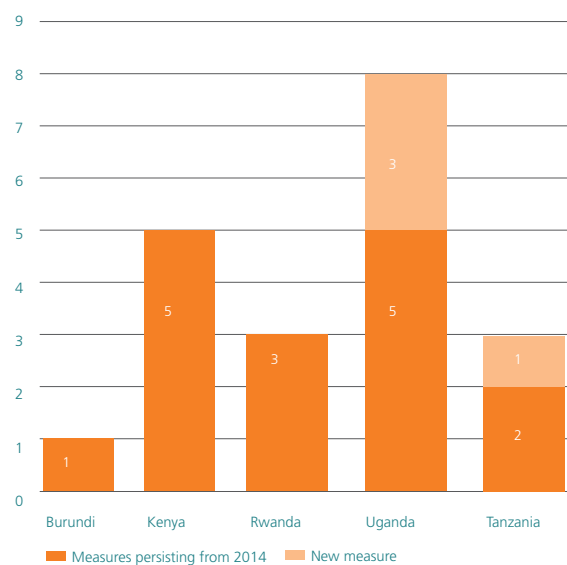
- i. The lack of harmonization of the working hours for customs authorities
- ii. Lack of coordination among institutions involved in testing goods
- iii. Lack of harmonization of road user charges/ road tolls
- iv. Numerous monetary charges required by various agencies in the EAC Partner States for exports of milk

Partner States are recommended to adopt a regional approach to resolving these persistent issues.

Sanitary and Phytosanitary (SPS) and Technical Barriers to Trade (TBT) measures

The CMS 2014 analysis revealed that despite legal compliance with the SQMT (2001) and Act (2007), and approval of the SPS Protocol (2013), SPS and TBT issues were subject to implementation problems. Those reported in the EAC NTB Time Bound Program Reports are captured in Figure 18.

Figure 18: SPS and TBT measures, new and carried over from 2014



Source: EAC Time Bound Tables

At the end of December 2015, 11 SPS/TBT NTBs had been reported. Of these, four new measures were reported during the CMS period and seven (or 64 percent) were unresolved SPS/ TBT measures reported during the CMS 2014 period. Tanzania and Uganda accounted for the highest number of SPS/TBT measures. Goods affected by SPS and TBT measures included dairy and agro-processed products, particularly beef and beef products, rice, salt and spices, some of which are on the list of EAC sensitive items.

Box 2: Sensitive goods

EAC Partner States have designated 58 goods as sensitive, meaning that they are eligible for tariffs above the CET ceiling. Sensitive products are those that Partner States perceive have the potential for sufficient produced regionally to meet EAC Partner States demand. Partner States have periodically submitted requests to waive the application of these higher rates in order to be able to import sensitive products when regional supply has not been able to fulfill regional demand.

As detailed in the CMS 2016 analysis, sensitive products are also subject to non-tariff barriers that limit trade within the EAC. Such barriers have limited exploitation of the regional market potential for sensitive items, which continues to be dominated by extra-regional imports of the same products at the expense of regionally produced products. The repeated waiver of CET rates for these products have put the sensitive items in direct competition with extra-regionally sourced products. Therefore, besides working towards eliminating

NTBs on sensitive products, the EAC should consider deeper sectoral and a cost-benefit analysis of this policy to establish the necessity of the high CET rates vis a vis regional production potential to meet regional demand. The opportunity for EAC to address this is the ongoing exercise of the CET review as directed by the EAC Council.



Source: East African Community, EAC Common External Tariff

Reforms undertaken since the publication of the CMS 2014

The East Africa Community (EAC) Legislative Assembly passed the EAC Elimination of Non-Tariff Barriers (NTBs) Act, 2015 which establishes a mechanism for identification and monitoring removal of NTBs. Another notable reform is the Revised EAC Rules of Origin (RoO), 2015 which helped to clarify origin criteria for some products that had been subject of NTBs, and contains provisions that address false claims with respect to origin.

EAC Harmonized Standards now stand at 1,142 comprising 366 standards developed through EAC Standards Technical Committees and 782 International Standards adopted from International Standards Setting bodies (International Standardization Organization (ISO), FAO/WHO Codex Alimentarius Commission (CAC)) through National Standards Bureau membership in these organizations.

Other ongoing Initiatives made towards implementation of the EAC Customs Union

Single Customs Territory

The Single Customs Territory (SCT) is a step towards a full customs union. The EAC Partner States launched the SCT in October 2013 with the aim of ensuring free circulation of goods through the removal of restrictive regulations or the minimization of internal border controls. Notable achievements since the establishment of the SCT include:

- Clearance of goods under Home Consumption and Warehousing regime at the first port of entry (Mombasa and Dar es Salaam);
- Interfacing of Revenue Authorities Systems of the three Partner States (Rwanda, Uganda and Kenya);
- Integration of Regional Customs Bond with Revenue Authorities Systems;
- Reduction of multiple customs bonds to a single bond;
- Reduction of multiple cargo declarations to a single declaration;
- Tremendous reduction in the duration that was spent along the northern corridor from 18 days to 4 days from Mombasa to Kampala and from 21 days to 6 days from Mombasa to Kigali due to the reduction of weighbridges and elimination of road blocks.

One Stop Border Posts

In a bid to ease cross border trading and eliminate delays experienced at the borders, the EAC Legislative Assembly passed the EAC One Stop Border Post Act 2016, which was assented to in December 2015. The Act provides legal framework to the operationalization and the running of the One Stop Border Posts (OSBPs). Operationalization of OSBPs will resolve a number of NTBs that have remained unresolved since 2008 due to structural and administrative constraints that required a regional solution.

According to the Sectoral Council of Trade, Industry Finance and Investment Report of November 2015 there were 15 OSBP Projects at various levels of development on internal borders; 7 OSBPs had been completed: Nemba/Gasinye, Ruhwa, Rusumo, Kagitumba/Mirama hills, Isabania/ Sirari, LungaLunga/ Hororo and TavetayHolili. 4 OSBPs Mutukula, Malaba, Busia and Namanga were scheduled for completion by 31 December 2015; while two OSBPs (Kobero and Gatuna/Katuna) Rwanda/Uganda were under construction.

Standards, Quality, Metrology and Testing (SQMT) Protocol and Act, 2006

During the CMS 2016 period, the EAC initiated a number of measures aimed at addressing the TBT related NTBs in support of the implementation of Single Customs Territory and full implementation of free movement of goods in accordance to the provisions of the Common Market Protocol. The EAC Council of Ministers whose primary goal was to operationalize the EAC SQMT Act, 2006 and implement the Common Market Protocol on free movement of goods:

- a. The SQMT (Product Certification Schemes in Partner States) Regulations, 2013
- b. The SQMT (Enforcement of Technical Regulations in Partner States) Regulations, 2013
- c. The SQMT (Designation of Testing Laboratories in Partner States) Regulations, 2013
- d. The EAC SQMT (Weighing and Measuring) Regulations, 2014
- e. The SQMT (Spirits Measuring) Regulations, 2014;
- f. The EAC SQMT (Pattern Approval) Regulations, 2014
- g. The EAC SQMT (Sale and Labeling of Goods), Regulations, 2014;
- h. The SQMT (Measure of Capacity) Regulations, 2014
- i. The SQMT (Leather Measuring) Regulations, 2014;
- j. The EAC SQMT (Inspection) Regulations, 2014
- k. The EAC SQMT (Fabric Measuring Instruments) Regulations, 2014;
- l. The EAC SQMT (Dry Measure of Capacity) Regulations, 2014
- m. The EAC SQMT (Dispensing Pumps) Regulations, 2014; and
- n. The EAC SQMT (Bulk Meters) Regulations, 2014.

The task ahead therefore is to ensure Partner States implement the Regulations.

The EAC's experience with goods liberalization under a common tariff regime may offer lessons to Partner States and other regional partners as they move forward in their regional integration efforts.

The need to manage non-tariff barriers: One key message is the need to monitor NTBs. Data from CMS 2014 and CMS 2016 shows that even as tariff commitments are implemented, non-tariff barriers have arisen, and, as seen in Box 2, these are often correlated with goods identified as sensitive.

The complexities of a customs union: A couple of the barriers to full compliance that are raised in the CMS 2016 arise from the customs union structure. The EAC has implemented a common external tariff (CET) with three bands, applied on the basis of the level of processing: 0 percent for raw materials, 10 percent for intermediate goods, and 25 percent for finished goods. A list of sensitive goods (see Box 2) is allowed higher tariffs. All Partner States have formally adopted the CET and the EAC rules of origin. The EAC employs rules of origin to facilitate intra-regional duty free trade for products that originate from the EAC region. All non-originating products are subjected to the CET tariffs. The Customs Union Protocol, however, recognizes the dual membership of EAC Partner States in other Regional Economic Communities (RECs) and allows the Partner States to apply preferential tariffs on products coming from these RECs in accordance to their commitments in those RECs' Free Trade Area Protocols. Therefore, Burundi, Kenya, Rwanda and Uganda extend preferential tariffs on goods originating from the Common Market for Eastern and Southern Africa (COMESA), where they are members. Tanzania on the other hand extends preferential tariffs on goods originating African Development Community (SADC), where she is a member. So far dual membership has not featured as a challenge to the implementation of the Customs Union due to the robust customs instruments under the EAC Customs Management Act that are being used to safeguard any of the EAC Partner States from imports originating in a REC that it does not belong.

Top down versus bottom up approach to regional integration:

Finally, the question arises whether the CMS 2016, in focusing on *de jure* and *de facto* implementation of commitments, is capturing enough information to truly assess the state of regional integration. While the legal framework is the backbone of the regional integration process, true integration is fleshed out on the ground, in how commitments are implemented. Traders often complain of charges that shouldn't be allowed under the common market or of practical impediments to trade, such as different opening border posts, non-recognition of certificates of origin, technical barriers to trade in form of SPS measures, among others. The root cause and tendency for persistence of such NTBs may not be found by assessing the laws and regulations, but by looking at how the laws and regulations are implemented and enforced.

A key message from the assessment of the evolution of barriers to intra-EAC trade is the increasing importance of *de facto* over *de jure* barriers. Several cases highlight the fact that even if a law is well written and well implemented, other non-legal factors may emerge as obstacles to trade. One compelling example is the telecommunications sector, which, when viewed from the perspective of legal restrictions, seems to be one of the most liberal services analyzed in this exercise. While none of the Partner States maintain NCMs in this sector, it has been found that telecommunication service providers from other EAC Partner States are, *de facto*, treated like foreigners. In the goods chapter, the CMS 2016 process has examined *de facto* measures to a certain extent. Many of the NTBs reported to the Time Bound Program are effectively *de facto* measures. Issues such as different time schedules for border posts are not ingrained in law but have a tremendous impact on the movement of goods across borders.

For this, the essential role of the private sector must be recognized. The best source of information on the state of integration is the

private sector – those who are actually trying to move goods and services in and out of Partner States, trying to set up an investment in neighboring countries, or working to use the regional machinery to attract foreign investment. This will not only prioritize problems, allowing for more efficient use of scarce resources to tackle the most important problems, but it may also lead to more innovative solutions. In some areas, the private sector is moving even faster than governments to craft a regional market; those professional organizations pursuing mutual recognition agreements (MRAs) with a view to facilitating exchanges of professionals in particular sectors are a case in point. Future CMS updates should make full use of private sector identification of barriers.

The CMS 2014 and CMS 2016 measured Partner States' implementation of legal instruments that were essential to the establishment of regional integration frameworks. In this methodology, instruments were chosen based on what Partner States had promised to do in order to complete the EAC legal framework. This is important in order to develop and strengthen the institutions that guide regional cooperation and to implement the basic ecosystem of open trade and investment. In order to move forward with regional integration and to introduce life to that ecosystem, the focus should be shifted to include the barriers on the ground.

Empirical studies support this shift in focus. A 2008 paper by Alberto Portugal-Perez and John S. Wilson shows that non-tariff trade costs can severely limit the gains from trade and can lessen the poverty reduction effect of export opportunities for African countries. A recent World Bank study indicates that trade costs are a more significant barrier to trade than legal barriers such as tariffs. The paper suggests that tackling trade facilitation, non-tariff barriers, and the cost of business services can have a significant impact on poverty alleviation and on creating shared prosperity.

Key observations

During the process of developing the 2016 Scorecard, it became apparent that the pace of implementation of the 2014 Scorecard recommendations has been rather slow. A number of common constraints preventing Partner States from undertaking the reforms necessary to fully implement their CMP commitments were identified. These include a lengthy legislative processes, a crowded legislative agenda, need for capacity building of key personnel, and inadequate resources. More specifically, the following were observed across all the five Partner States:

- There is a need for greater information sharing regarding the Treaty and CMP provisions. Some members of the private sector, including private sector apex bodies, were unfamiliar with the CMP or with the commitments affecting their operations. There is a strong need to engage and inform the private sector on the implications of these reforms on their day-to-day operations across the region and to develop private sector reform champions who could help monitor and follow-up implementation.
- Most Partner States have maintained restrictions in the area of inward direct investments, reserving preferential treatment for their nationals in their respective investment laws/codes. At the same time, across the EAC, the private sector is keen to access capital for investment and to expand across borders to take advantage of opportunities presented by regional integration. Access to long-term finance to facilitate growth and expansion of businesses, including small and medium size enterprises, is essential to foster growth, development, and the creation of employment opportunities.
- Partner States may require capacity building for personnel in relevant line ministries, including the draftspersons responsible for the legislation and what exactly the reforms are expected to address. In some of the Partner States, reforms were reported which on further scrutiny revealed existing restrictions. Active participation in the negotiation process will strengthen and fast-track their contribution.

Recommendations

The CMS 2016 sets out a number of recommendations for Partner States and the EAC Secretariat as they advance their regional integration efforts. Many of these are repeat recommendations made in CMS 2014, which have not yet been implemented.

Several recommendations cover multiple sectors. These include:

- Prioritize the implementation of Partner States' commitments. In cases where legal restrictions to liberalization continue to exist, these should be addressed as soon as possible.
- Partner States must be transparent in enacting restrictions or using exemptions.
- The private sector should be involved. Importers, exporters, and investors should be consulted on what the main barriers they face are, with a view to prioritizing elimination of those pose the greatest difficulties to regional trade and investments.
- Development partners should provide technical assistance and capacity building to Partner States and the Secretariat in addressing the barriers to integration.

Recommendations specific to Capital, Services, and Goods liberalization can be found in each of the respective chapters.



4.88	0.22	4.88	4.9	34.3
84.5	0.5	84.5	84.75	4.77
1.82	0.01	1.82	1.83	84.41
29.5	0.25	29.5	29.75	1.82
0.65	-0.01	0.65	0.66	29.57
0.78	-0.01	0.78	0.79	0.65
3.56	0.25	3.56	3.55	0.65
14.95	0	14.95	14.95	0.65

CAPITAL

Article 24 of the EAC Common Market CMP (CMP) requires Partner States to eliminate restrictions on the free movement of capital. These include restrictions based on nationality, place of residence, current payments, and investment destination. Such restrictions undermine the realization of the common market. Annex VI of the CMP identifies 20 operations that should be free from legal and regulatory encumbrances:

- **Securities operations (operations 1 to 14):** These include quoted and unquoted securities, some collective investment schemes, money market instruments, corporate bonds, and government securities and derivatives.
- **Credit operations (operations 15 and 16):** These cover external borrowing and lending by residents.
- **Direct investment operations (operations 17 to 19):** These facilitate direct international acquisitions, greenfield investments, establishment of branches of enterprises, re-investment of profits in enterprises, outward direct investment, and repatriation of profits from asset sales.
- **Personal capital operations (operation 20):** These include transfers and payments relating to investment flows.

Box 1: Changes brought about by CMS 2016

In addition to tracking reforms made since September 2013 and the cut off date for collection of 2014 CMS, the CMS 2016 also analyses subsequent changes to each Partner State's regulatory framework that may negatively impact the freedom of movement of capital as enshrined in the CMP.

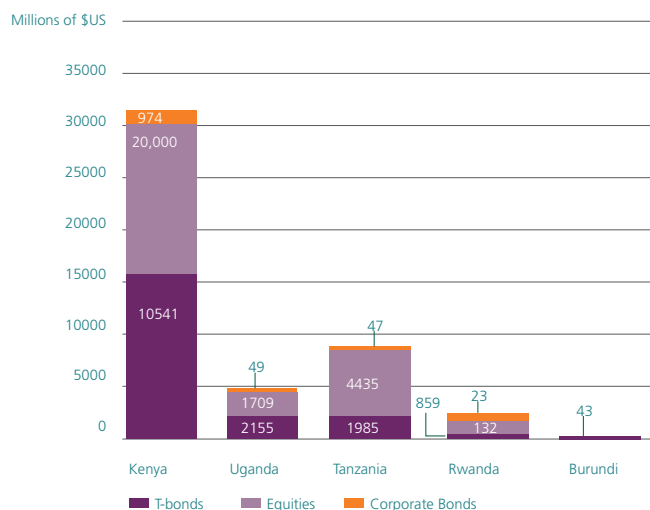
This chapter follows the methodology developed for the CMS 2014, which includes gathering information from commercial and investment banks, brokerage houses, stock exchanges, central banks, capital market authorities, and World Bank Group staff to assess compliance with the CMP commitments. The team also conducted desk research and developed reform trackers in consultation with each of the EAC Partner States. The CMS 2016 reviews any new legislation passed subsequent to the publication of the CMS 2014 up to December 31, 2015, which is the end of the CMS 2016 reference period.

East African Community financial sector integration

The financial sector is a key vehicle for the efficient allocation of savings and investment. Main actors in this sector are institutional investors (insurance companies, pension funds, mutual funds) and retail investors, and intermediaries (brokers, banks). These actors use the market infrastructure (stock exchanges, payments, clearing and settlement systems) and various financial products and instruments (stocks, fixed income securities, derivatives), all of which are overseen by regulators (capital markets, insurance and pensions regulators). All these components work together to meet the various needs of borrowers and lenders of capital.

Efficient financial markets and institutions lower search and transaction costs in the economy. By providing an array of financial products with varying risk, pricing, and maturity structures, a well-developed financial system provides borrowers and lenders instruments that match their needs. Individuals, businesses, and governments in need of funds can easily access appropriate funding at an appropriate cost. In this way, financial markets direct the allocation of credit and equity throughout the economy and facilitate the production and consumption of goods and services.

Figure 1: EAC capital market size (US\$ millions), 2015



Source: ESMID Report-2015

The financial sectors of each of the EAC Partner States are relatively small and underdeveloped, as seen in Figure 1. Kenya has the most developed capital market in the EAC. As of 31 December 2015, the Nairobi Securities Exchange had a market capitalization of USD 20 billion; the figure for the Dar es Salaam Stock Exchange was USD 4 billion, the figure for the Uganda Securities Exchange was USD 1.7 billion, and the market capitalization of the Rwanda Stock Exchange was USD 859 million. The EAC securities markets lean heavily towards equity listings, with corporate bond listings

relatively small. Most entities borrow from banks instead of issuing corporate debt, mostly due to the disclosure regime imposed by the regulator and the time it can take to issue a bond. Table 1 sets out the time needed to approve a bond in each of the EAC countries. This time starts at the receipt by the regulator and stock exchange of a completed application. Should the application be returned for review, the process could be considerably longer.

Table 1: Length of time (in business days) to approve a bond in the EAC

	Burundi	Kenya	Rwanda	Tanzania	Uganda
Authority	N/A	7 days	15 days	20 days	15 days
Securities Exchange	N/A	15 days	15 days	20 days	15 days
Total	N/A	22 days	30 days	40 days	30 days

Source: Capital markets authorities and securities markets websites

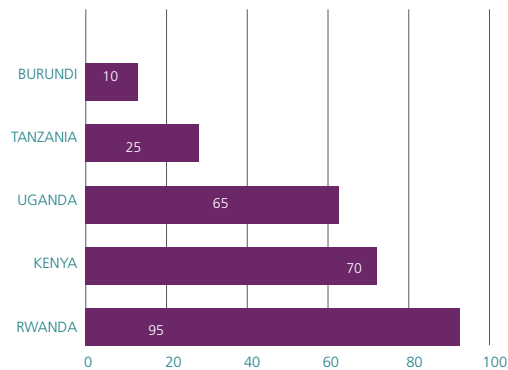
It is important to note that in all the EAC Partner States an application to issue a bond must first be lodged with the industry regulator. Following approval, the potential issuer must then apply to the securities markets to have the issuance listed. In the EAC, for both equities and debt issuances, the regulators adopt a merit-based approach rather than an information-based or disclosure-based approach to the approval of potential issuances. In the merit-based approach, the potential issuer must meet a set of criteria set out in the regulatory framework and the regulator judges the suitability for public issuance. The 2014 CMS recommended moving to an information-based approach to expedite the bond approval process. Under this approach, potential issuers are obligated to provide information about their operations and investors decide

whether or not to invest in the offer. This recommendation has not been implemented and is reiterated in the CMS 2016 recommendations.

A thin financial sector can limit investment in cases where national savings are not sufficient to facilitate the financing of large, sometimes lumpy investment projects. Regional financial integration can broaden and deepen national financial opportunities, expanding the scale of and opportunities for financial intermediation, reducing the cost of maintaining financial infrastructure such as payment systems, regulation, and supervisory regimes, and boosting business practices, laws, and institutions towards those prevailing in the most developed Partner State.

Figure 2 depicts EAC countries' distance from the frontier on the Doing Business indicators related to accessing credit. Rwanda, which ranks 2nd of 218 countries, represents the frontier. This indicator combines assessment of the strength of legal rights, depth of credit information and credit registry, and credit bureau coverage. Figure 2 illustrates the variety in credit robustness among countries in the EAC.

Figure 2: Getting credit: Distance to the frontier (scale 0 to 100), 2016



Source: Doing Business 2016 Database

Note: The distance to the frontier illustrates the gap between a particular economy's performance and the best performance of all economies measured during a particular year. It is reflected on a scale from 0 to 100, where 0 represents the lowest performance and 100 represents the frontier.

Regional financial integration can also provide stability and increased access to finance for companies in FCS countries, which desperately need financing to begin the process of rebuilding their country's private sector with a view to jumpstarting economic development (See Box 2).

Financial sector integration can play an important role in fostering economic development. To this end, the development partners; the Swedish International Development Cooperation Agency (Sida) and the World Bank Group (WBG) are supporting the goal of deepening the EAC regional financial market through the EAC Financial Sector Development and Regionalization Project (EAC FSDRP). This project seeks to establish a foundation for financial sector integration among Partner States through the establishment of a single market in financial services. The project addresses financial inclusion and strengthening of market participants; harmonization of financial laws and regulations against common standards; mutual recognition of supervisory agencies; integration of financial market infrastructures; development of a regional bond market; and capacity-building for the EAC Secretariat and financial sector regulators and market players.

Box 2: Freedom of movement of capital - Fragile and conflict affected states

Two EAC Partner States, Burundi and South Sudan, are considered fragile and conflict-affected states (FCS) by the World Bank Group. On top of challenges faced by developing countries, FCS suffer from weak national institutions, high levels of violence, limited economic and social growth, and extreme inequalities in income and opportunities. All these factors make it difficult for the private sector - the key driver of movement of capital - to operate and to play its role in contributing to economic growth and development. South Sudan is not examined in this edition because the cut-off date for analysis was December 31, 2015 and South Sudan joined the EAC in April 2016.

Despite the challenges, FCS' private sectors continue to operate, particularly in agribusiness, distribution, security services, banking, construction, manufacturing, and extractive industries. Individuals and enterprises in FCS have worked out a way of managing the attendant risks. However, the environment curtails other potential investors, both local and foreign, from operating because of the difficulty in raising financing among other reasons. Therefore, efforts to support such entities, including small and medium sized enterprises (SMEs), to access much-needed capital to finance their growth and expansion is key.

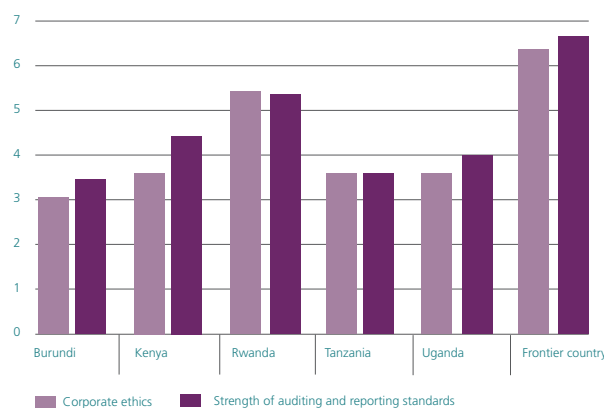
Participating in a regional economic integration effort can prove essential in bolstering the stability of EAC Partner States that are categorized as FCS. Undertaking joint EAC commitments and cooperating with the other Partner States will enable FCS to expand their market reach and provide information on investment opportunities to regional investors.

Corporate Governance and Movement of Capital

The significance of a sound governance structure for the effective flow of capital cannot be overstated. Twelve out of the 20 operations related to the freedom of movement of capital under the CMP are operations that take place on a securities exchange. To be able to issue securities, companies must demonstrate compliance with generally accepted corporate governance principles in their operations.

Corporate governance defines the structures, process, practices, and rules by which companies are controlled and directed. Aside from the ability to list on stock exchanges, evidence indicates that good corporate governance practices promote efficiency, facilitates access to cheap capital, mitigates risk, and curbs mismanagement.⁴ Such practices increase transparency, improves accountability, and gives companies tools to address stakeholder concerns and enhance investor confidence. As an OECD (2012) study asserts, a robust corporate governance framework is “essential for many developing and emerging markets where new generations of enterprises should be given the opportunity to access external capital, which will make it possible for them to realize their full potential and contribution to economic growth.” Improving corporate governance has also been shown to be important in attracting foreign direct investment. More transparency in corporate governance structures can help to mitigate risk perceptions, and investors increasingly demand accountability at both the firm and country levels.⁵

Figure 3: Corporate governance ranking of EAC Partner States, and comparison to frontier economy (index, 1-7, with 7 being best score)



Source: World Economic Forum, Global Competitiveness Index 2015-16 database

Figure 3 illustrates EAC Partner States’ ranking on two common corporate governance indicators, corporate ethics, and the strength of auditing and reporting standards, on a scale of 0 to 7. Rwanda, which ranks highest on the “getting credit” indicators, also ranks close to this standard. Other Partner States rank lower, particularly in the corporate ethics results.

⁴ See for example, Chong, Izquierdo, Micco, and Panizza (2003) who find that better corporate governance would reduce the sensitivity of capital flows to external shocks and yield better economic results; Mukherjee (2015 and 2013) finds that countries with weaker domestic institutions exhibit a higher concentration of corporate ownership, and poor corporate governance limits the investors ability to optimize firm value.

Companies that adhere to sound corporate governance principles are more likely to be sustainable in the long run and provide a reasonable assurance to investors on a return on their investment. Such companies, which have in place structures that act as checks and balances on the board of directors and executives and ultimately ensure that the enterprise is operated in a sustainable manner, are able to access cheaper capital to finance their long-term development and expansion⁶ (Christiansen and Koldertsoca 2008 and OECD 2012). Even if all the operations related to the freedom of movement of capital covered in this chapter are liberalized, it should be noted that well-governed companies will access capital at better terms than poorly governed ones and will thus be better able to take advantage of the gains of this freedom.

Poor governance practices affect not only the business owners but also other stakeholders such as customers, employees, and creditors. Poor corporate governance practices can impact an entire country – as was made clear with the infamous case of the collapse of Enron in the United States of America. The potential of poor corporate governance to collapse an otherwise thriving business has been well demonstrated in the cases of three Kenyan banks recently placed under receivership (see Box 3).

⁵ Adelopo, Omoteso, and Obalola (2009) found positive results from corporate governance improvements and FDI in Nigeria; Lien, Plesse, and Strange (2004) found that corporate governance matters with respect to investment decisions of non-financial firms listed in Taiwan, and Adeoye (2009) found positive and significant effects on FDI flows of macroeconomic corporate governance improvements.

⁶ See Christiansen and Koldertsoca. 2008. “The Role of Stock Exchanges in Corporate Governance.” *Financial Market Trends*. Paris: Organisation for Economic Cooperation and Development. and OECD. 2004. “Improving Business Behaviour: Why We Need Corporate Governance.” Paris: Organisation for Economic Cooperation and Development.

Box 3: Capital markets and corporate governance: Kenya's experience

In the past year, three Kenyan banks were placed under receivership as a result of financial mismanagement over the period of nine months.

- In August 2015, Dubai Bank of Kenya was placed under receivership for a period of 12 months due to several violations of banking laws and regulations. The bank was unable to pay its creditors and withdrawals were suspended to prevent a run. The Kenya Deposit Insurance Corporation (KDIC) was instructed to pay protected deposits of up to KES 100,000.
- The following month, the Imperial Bank of Kenya was cited for "irregularities and malpractices which exposed depositors, creditors, and the banking sector to financial risk" and placed under receivership. Withdrawals were suspended to prevent a bank run, with only loan repayments accepted. Subsequently, large depositors were paid KES 1 million. The subsidiary in Uganda was also suspended by the Bank of Uganda and eventually sold. The senior management and directors were sacked and it was recommended that they be prosecuted.
- Seven months later in April 2016, Chase Bank Kenya Limited was also placed under receivership after being unable to meet its financial obligations. Chase Bank was cited as having abused its fiduciary duties. Bank officials reportedly misreported their profit, and loans to employees and directors totaling KES 13.6 billion were subsequently discovered.

These incidents point, among other factors, to widespread weak corporate governance. The depositors affected are largely small and often vulnerable stakeholders. Newspaper reports describe Imperial Bank's depositors largely as owners of small and medium-sized enterprises and describe Chase Bank's depositors as mainly consisting of women, small businesses, and young professionals. Small business holders are particularly vulnerable to financing gaps and could suffer serious losses, to the point of closing their businesses if funds are not available for daily operations. Such incidents can also increase the risk profile of a country's financial sector. Moody's investor services was widely quoted as warning that "... wider systematic implications of Imperial Bank's failure will be limited, although we do see a high likelihood of tougher funding conditions... This may include both deposit withdrawals and a hike in interbank rates while their ability to offer correspondent banking related services would be impaired." Such conditions can crowd out smaller banks and ultimately raise the cost of credit, to the detriment of private sector growth in the region.

Sources: Central Bank of Kenya Press releases in August, September, October, November, and December 2015, January, March, April, and June 2016; Financial Times, "Kenya's Chase Bank placed in receivership," April 7, 2016; BBC, "Kenya's Chase Bank placed under receivership by CBK," 7 April 2016; CNBC Africa, "Kenya's Imperial Bank in receivership after possible 'malpractices,'" October 13, 2015.

Recent developments in EAC financial markets

Box 4: 2014 CMS Key recommendation on the movement of Capital

Another key 2014 CMS recommendation was that the EAC should prioritize the rollback of laws, regulations, and investment codes that impede investment and prevent the region from fully enjoying the benefits of integration. The CMS 2014 noted several gaps in the development of a regional securities infrastructure, including numerous restrictions still embedded in Partner States' legislation and regulations, the absence of a framework for trading in derivatives, and the absence of a securities market in Burundi.

The Scorecard also recommended a stepped-up capacity building program aimed at facilitating effective financial integration, including the development of market intermediaries, stronger coordination of securities markets, and more investment in public awareness.

The CMS 2014 highlighted Burundi's lack of securities market and found that financial integration in the EAC could be particularly beneficial for FCS such as Burundi, which could draw on the broader EAC regional market to tap into issuers and investors. Burundian firms, with supporting regulation, can raise funds from the EAC capital market through listing in existing exchanges in the EAC. Burundi was recommended to continue efforts to develop its government securities market, as efficient government debt markets are essential to domestic policy and for establishing a framework for pricing domestic loans.

Common to all Partner States, was the lack of a framework for trading in derivatives. A derivative is a financial contract whose value depends on the value of one or more underlying reference assets, rates, or indices on a measure of economic value or on factual events.

Finally, the 2014 Scorecard found that greater regional integration could help EAC capital markets achieve economies of scale, expand the pool of investors, increase the number and diversity of issuers and products, and strengthen corporate governance. A number of initiatives, some with technical assistance from the WBG, have been undertaken to improve the functioning of EAC securities markets.

Enhancing financial regionalization:

The EAC Council of Ministers has set out several key directives towards increasing the regional scope of financial laws and regulations. Partner States need to give force by passing domestic legislation, a process known as transposition.⁷ At the time of compiling this report, none of the council directives had entered into force.

Even as countries wait to pass this legislation through domestic procedures, the private sector has moved ahead. The East African Securities Regulators Association, for example, has developed regulations to allow for simultaneous issuance of bonds in the EAC region. This offers potential issuers a wider basket of funds to meet their financing needs, while providing investment opportunities in fixed income products for all Partner States' citizens.

One essential element to ensure that capital markets function effectively and in keeping with Partner States' development goals is a clear and compatible system of tax laws. To this end, the EAC Secretariat, with support of WBG and the Research and Planning Sub-Committee of the Partner States, prepared a study on tax incentives and procedures. The study, provided an inventory and administration of tax incentives across the five Partner States. As a result, in August 2016 the Tax Policy and Tax Administration sub committee and committee on Fiscal Affairs approved a draft WAC policy on Harmonization of domestic taxes which when adopted will support the Council Directive for the harmonization of tax incentives. This Policy includes provisions on tax procedures, tax incentives and harmful tax competition and exchange of information among others

⁷The following EAC Council of Ministries Directives, which were approved on 29th April 2014, were gazetted on 29th May 2015; Collective Investment Schemes, Admission to Trading on a Secondary Exchange, Public Offers (Equity) in the Securities Markets, Public Offers (Debt) in the Securities Markets, Asset Backed Securities, Corporate Governance for Securities Market Intermediaries, and Regional Listings in the Securities Markets.

Integration of EAC trading platforms and securities depositories:

A major regionalization initiative is the capital markets infrastructure project to link EAC securities exchanges. The project involves the acquisition and installation of an information technology platform - the Smart Order Routing (SOR) System, to link the clearing and settlements systems of the region's stock markets. This USD 3.8 million software will allow investors across the region to more efficiently buy and sell shares listed in EAC. This efficiency can promote greater trade volumes of cross border transactions. This project aims to address the lack of liquidity on cross-listed counters arising from the lengthy period for cross-listed securities to complete the trading cycle. The aim is to electronically link the trading platforms of the EAC Partner States' exchanges, facilitating seamless trading of securities across the region.

Kenya, Rwanda, Tanzania, and Uganda have licensed 23, 9, 10, and 8 brokerage firms, respectively. The East African Securities Exchanges Association has attempted to work out modalities for brokers operating across borders. This has not gained much traction as brokers in the other Partner States find the high minimum capital requirements in the Kenyan market prohibitive. As a result, only Kenyan brokerage firms operate in the other EAC Partner States through subsidiaries

Development of a regional bond market:

EAC program entered into an agreement to implement the component on the development of regional bond markets. Under this initiative, a wide range of private sector and sub-national institutions have received support to come to market and succeeded in raising a combined USD 611 million as of December 2015.

Development of a securities market for Burundi:

The EAC FSDRP has contracted a consulting firm to develop the legal and regulatory framework for a securities market in Burundi. The consultants have so far developed a number of important draft laws. The work commenced in February 2015 and the draft laws were presented to the FSDRP and the Burundian Government in October 2015. The draft laws and regulations currently await progression through Burundi's legislative process.

Regionalization of the EAC institutional investor base:

Institutional investors include insurance companies, pension funds, commercial banks, mutual funds, hedge funds, and endowment funds. Pension funds and insurance funds collectively boast of an asset base of USD 22 billion for the East African region according to ESMID estimates. Despite their importance, insurance and pension sectors were not part of the CMS 2014 analysis and therefore were not included.

Article 85 of the EAC Treaty specifically identifies capital markets and the banking sector but omits the insurance and pension sector. Article 28 of the CMP defines capital and related payments and transfers. Article 31 of the CMP provides that "for the proper functioning of the common market, the Partner States undertake to co-ordinate and harmonize their financial sector policies and regulatory frameworks to ensure the efficiency and stability of their

financial systems as well as the smooth operation for the payment systems." As the pension and insurance sectors were not specifically mentioned, provisions in the respective regulatory frameworks that restrict freedom of movement of capital for these sectors could not be flagged in the CMS. This omission is serious, as the capital markets ecosystem cannot thrive without institutional investors.

Several EAC national regulatory frameworks include barriers to investment by these entities in securities markets outside national borders, as seen in Table 2. This can restrict the freedom of movement of capital.

Table 2: Examples of restrictive capital regulations

Country	Restrictive regulation
Tanzania	S. 44 (3) of the Tanzania Insurance Act, 2009 provides that except with the prior consent in writing of the Commissioner , no insurer shall invest or otherwise lend insurance fund moneys outside Tanzania.
Uganda	Regulations 7 and 8 of the Uganda Insurance Regulations, 2008 (Investment of Paid Up Capital and Insurance Funds) restrict investment of insurance funds and paid up capital to Uganda, while Regulation 13 provides that retained earnings may be invested off shore with the approval of the commissioner .
Kenya	S. 48 (1) of the Insurance Act provided that "...the assets of an insurer shall, with sufficient regard to considerations of security, liquidity and income, be invested in Kenya in such manner as the insurer thinks fits." Subsection (2) went on to provide that "the Commissioner with the prior approval of the Minister may, if he deems it appropriate and subject to sufficient considerations of security, liquidity income and diversification and to such further conditions as he considers necessary, authorize the assets of an insurer to be invested outside Kenya". This provision made it difficult for Kenyan insurers to invest outside Kenya owing to the requirement to seek the prior approval of the minister. This provision was removed through an amendment in September 2015.

Source Partner States laws and regulations

All the laws displayed in the table above require approval by a government official. Given the highly time sensitive nature of investment opportunities, particularly in the capital markets, such a requirement could be a significant barrier to investment.

Kenya amended its restrictive legislation in September 2015. Section 29 of the Finance Act, No. 14 of 2015 repeals S. 48 of the Insurance Act and replaces it with the following new section, "...the assets of an insurer, shall with sufficient regard to considerations of security, liquidity and income be invested in accordance with the provisions of such investment guidelines as may be issued by the Authority." This provision enables the Insurance Regulatory Authority to develop investment guidelines that take into account the changing investment environment locally and regionally. The key point to note is that under the new regime, insurers are not required to seek

the leave of the Minister before taking advantage of investment opportunities in other EAC Partner States. It allows for establishment of guidelines by the Authority.

Investment guidelines developed by each of the insurance regulatory agencies in the region are generally very conservative. In addition, the insurance sectors are at different stages of development with differing structures and regulatory requirements. These differences present a large number of practices that should be harmonized across the EAC in line with the regionalization aspirations. Harmonization can be achieved by involving the East African Insurance Regulators Association in the reform agenda.

To further its EAC bond market development initiatives, ESMID has contracted a consultant to support EAC insurance and pension regulators to develop modernized insurance investment guidelines/regulations suitable to the solvency and risk-based supervisory approach being adopted in the region. Developing these guidelines would also allow more flexible investment by insurance managers in broader asset classes. It could also lead to greater portfolio diversification by managers; facilitate implementation of multiple portfolios and member choice in insurance fund investment; and facilitate investment within the EAC by insurance funds. The ultimate goal of this exercise is to achieve a set of investment guidelines that would ease the investment of insurance funds across the EAC region.

Banking sector integration in the East African Community:

The EAC has also received support from various development partners towards integration of the region's banking sector. Key among these is a grant from the African Development Bank for the establishment of the EAC Payment and Settlement Systems Integration Project (EAC-PSSIP). Part of the agreed amount under this grant will be applied to payments under the contract for audit services for the EAC-PSSIP. The EAC-PSSIP is an integral component of the EAC Financial Sector Development and Regionalization Project's (FSDRP) higher objective of broadening and deepening the financial sector, and is aimed at complementing the integration of the regional financial market infrastructure to facilitate the undertaking of cross border funds transfer in support of the economies of the region.

In addition to these institutional developments, the private sector has also played a major role in propelling regional financial integration in East Africa. Several banks that have operations in more than one Partner State have, to some degree, adopted a regional business model motivated by a range of factors including client-demand, their own corporate structures, and / or opportunities perceived along regional trade corridors. These banks display a fair degree of operational integration not just within EAC markets but all the way along the trade corridors to Southern Sudan and the Democratic Republic of Congo.

About 11 multinational and Kenyan owned banks use Kenya as a hub for their operations in the EAC region. There are four Kenyan banks with branches within the region. These include Kenya Commercial Bank, Equity Bank, Fina Bank, and Commercial Bank of Africa. These banks have a total of 63 branches outside Kenya (16 in Tanzania, 31 in Uganda, and 16 in Rwanda). Tanzania's CRDB Bank commenced operations in Burundi in 2012, while Uganda's Crane Bank commenced operations in Rwanda in 2014. Banks from the

other EAC Partner States have not been able to make inroads into Kenya due to its high core capital requirements.

Financial integration is sometimes preceded by monetary integration; in other words, when a set of countries has a common currency, those countries also would tend to have more extensive international financial activity. Monetary integration reduces "currency risk", the risk that the value of debt obligations will change due to fluctuations in currency values. Secondly, membership in a monetary union might make a borrowing nation more averse to defaulting on its debt obligations for fear of sanctions from the other members.

As a result, many of the foundations have already been laid for the implementation of an East Africa Monetary Union, including the harmonization of banking regulations, payments system integration, the harmonization of monetary and exchange-rate policy formulation, and implementation.

CMS 2016 Findings – freedom of movement of capital

This Scorecard measures Partner States' compliance with commitments made toward the CMP Schedule on the Removal of Restrictions on the Free Movement of Capital, covering the 20 capital market operations in the schedule. The methodology for gathering and assessing the data and for scoring Partner States performance is set out in the methodology section of this report.

The data analyzed during the 2016 CMS reference period show that Partner States have undertaken efforts to address concerns raised in the 2014 CMS but that progress has been slow. Many of the issues identified in the CMS 2014 remain. The findings are elaborated in Table 3:

Table 3: Summary table: Number of restriction-free operations and number of reforms from 2014 to 2016, by country and by category

	Kenya	Uganda	Rwanda	Burundi	Tanzania
Measures 1 to 14 related to restrictions on securities operations					
2014	12	10	10	1	2
2016	14	13	10	5	7
Number of reforms from 2014 to 2016	2	3	0	4	5
Measures 15 to 16 related to restrictions on credit operations					
2014	2	2	2	1	1
2016	2	2	2	1	1
Number of reforms from 2014 to 2016	0	0	0	0	0
Measures 17 to 19 related to restrictions on direct investment operations					
2014	2	2	2	1	1
2016	2	2	2	1	1
Number of reforms from 2014 to 2016	0	0	0	0	0
Measure 20 related to restrictions on personal capital operations					
2014	1	1	1	1	0
2016	1	1	1	1	1
Number of reforms from 2014 to 2016	0	0	0	0	1
Total number of restrictions-free measures					
2014	17	15	15	4	4
2016	19	18	15	8	10
Number of reforms from 2014 to 2016	2	3	0	4	6

CMS 2016 Database

Which EAC Partner States makes it easiest to move capital within the bloc?

Kenya, with 19 of 20 unrestricted operations, make it easier for capital to move across EAC Partner States. Burundi with 8 of the 20 and Tanzania 10 of the 20, make it most difficult (Table 4).

One restriction can affect several operations. Capital controls in Burundi and Tanzania, for example, inward direct investment is restricted in Tanzania by the Investment Promotion Act (which requires among other things that to enjoy the benefits under the Act foreign investors invest at least USD 300,000 while the threshold for local investors is USD 100,000) and the Insurance Act (which provides among other things that "For registration as an Insurer, one has to be a local company, deemed to be resident and 1/3 of the controlling interest be held by citizens of Tanzania and that 1/3 of the members of the board of directors should also be citizens of Tanzania.)

Which EAC laws and regulations most impede the movement of capital?

Capital controls inhibit some EAC residents from benefiting from the increased investment opportunities of financial integration. For example, all EAC Partner States' Investment Codes/Acts have preferential treatment for nationals over other EAC Partner State nationals. No reforms have been made to reflect the regional aspirations.

Table 4: Freedom of movement of capital among EAC Partner States

	Kenya	Uganda	Rwanda	Burundi	Tanzania
Score 2016	95%	85%	75%	40 %	50%
Total Number of Restriction - Free Operations 2014	17	15	15	4	4
Score 2014	85%	75%	75%	20%	20%

CMS 2016 Database

What are the most severe restrictions on the movement of capital in the EAC?

Table 5: Examples of EAC Partner States' most severe capital restrictions

Country	Law/regulation	Operations affected (of 20)	Description
Tanzania	Bank of Tanzania Foreign Exchange circular 6000/DEM/EX.REG/5, issued on September 24, 1998	11	Restricts outward direct and portfolio investments, foreign lending favoring non-residents, acquisition of foreign real estate, operation of offshore foreign currency accounts by residents, and participation by non-residents in domestic money markets and capital markets.
Burundi	Foreign Exchange Regulation, issued on June 10, 2010	7	Requires that residents obtain Central Bank approval to buy foreign shares or securities, lend, or invest abroad.
Tanzania	Foreign Exchange (Listed Securities) (Amendment) Regulation GN No 132 of 2014.	3	States in Regulation 3 (1) that (a) a non-resident may acquire, sell or transfer any securities other than government securities issued in the United Republic (b) Notwithstanding the provisions of sub regulation (1) a resident of a prescribed territory may acquire, sell or transfer government securities provided that; <ul style="list-style-type: none"> • The total amount of securities acquired by residents from prescribed territories does not exceed 40% of the securities issued. • The amount acquired by the residents from a single prescribed territory does not exceed 2/3 of the amount acquired under paragraph (a) and • The government securities acquired shall not be transferred to a resident within 12 months of the acquisition.

An overall list of legal provisions that should be reviewed to facilitate free movement of capital in the EAC is detailed in Country tables. A specific analysis of the securities, credit, foreign direct investment sectors and, personal capital operations is provided below.

CMS 2016 Database

Securities

EAC securities markets offer a range of products, including equities, government securities, and corporate bonds. Still, they lag behind some other African securities markets—such as Egypt, Morocco, Nigeria, and South Africa—in terms of size and depth. Regionalization could help EAC capital markets achieve economies of scale, expand the pool of investors, increase the number and diversity of issuers and products, and strengthen corporate governance.

Of the 5 EAC Partner States, only Kenya and Uganda have a complete regulatory framework to support derivative market operations. These were developed following the findings of the 2014 Scorecard.

Table 6: Number of restrictions on securities operations by EAC Partner States

		Kenya	Uganda	Rwanda	Burundi	Tanzania
1	Purchase by residents of foreign shares or other securities of a participating nature	Open	Open	Open	Restricted	Open
2	Local purchase by non-residents of shares or other securities of a participating nature	Open	Restricted	Open	Restricted	Open
3	Participation of residents in initial public offers (IPOs) in foreign capital markets	Open	Open	Open	Restricted	Open
4	Local sale by non-residents of foreign shares or other securities of a participating nature	Open	Open	Open	No framework	Open
5	Foreign sale by residents of shares or other securities of a participating nature	Open	Open	Open	Open	Open
6	Local purchase of bonds and other debt instruments by non-residents	Open	Open	Open	Open	Restricted
7	Local sale of bonds and other debt instruments by non-residents	Open	Open	Open	Open	Restricted
8	Sale of bonds and other debt instruments abroad by residents	Open	Open	Open	Open	Restricted
9	Local purchase or sale of money market instruments by non-residents	Open	Open	Restricted	Open	Restricted
10	Foreign purchase or sale of money market instruments by residents	Open	Open	Restricted	Restricted	Open
11	Local purchase by non-residents of collective investment schemes	Open	Open	Open	No framework	Open
12	Local sale or issue by non-residents of collective investment schemes	Open	Open	Open	No framework	Restricted
13	Sale or issue of derivative products locally by non-residents	Open	Open	No framework	No framework	No framework
14	Sale or issue of derivative products abroad by residents	Open	Open	No framework	No framework	No framework
	Number of restrictions-Free securities operations in 2014	12	10	10	1	2
	Number of restrictions-Free securities operations in 2016	14	13	10	5	7
	Number of reforms from 2014 to 2016	2	3	0	4	5

CMS 2016 Database

Highlighted text represents reforms since CMS 2014.

Kenya restricts no securities transactions. Tanzania and Burundi, on the other hand, make it quite difficult to conduct securities operations. Tanzania's restrictions affect 5 of the 14 securities operations highlighted in Annex VI of the CMP, and a lack of regulation for derivatives affects two others. Burundi's restrictions affect four securities operations, and it has no regulations for five others, mostly related to securities, including derivatives. Underdeveloped securities regulation is not unusual for an economy of Burundi's size (\$2.3 billion in 2012). Globally, only 9 of 43 countries with a GDP under \$5 billion operated their own exchanges in 2012, while six others belonged to regional exchanges.

Rwanda places restrictions on two securities operations: foreign purchases and sales of money market instruments by residents and domestic purchases and sales of money market instruments by non-residents. Rwanda lacks a regulatory framework for derivatives, hence affecting two other operations. In Uganda a higher rate for non-residents on withholding tax for dividend payments restricts one operation.

Table 7: Examples of restrictions on securities operations in the EAC

Country	Restriction	Description
Tanzania	Regulations 2, 3 of the Capital Markets and Securities (Foreign Investors) Regulations 2014	According to these regulations, investors from EAC Partner States are also defined as foreign investors, and in subsequent clauses restrictions are imposed based on this definition. These restrictions include prohibition from participation in the primary market of Tanzanian Government securities whereby participation is subject to requirements imposed by the Bank of Tanzania.
Burundi	Article 16 (2) of the Law 1/01 of 9/02/2012 amending law No 4/03 of 19/02/ 2009 on the organization of the privatization of companies with public participation, services, or works	Article 16 authorizes the Inter ministerial Privatization Committee to establish contracts with domestic or foreign individual and entities. Then, based on the views of the Service in Charge of State Enterprises, the committee can decide whether some or all securities should be sold only to Burundian citizens or companies. It also establishes rules and procedures for subsequent transfer of these securities to foreign investors.
Uganda	Income Tax (Amendment) Act 2006, Part V Schedule 3, Sections 117 and 118	Residents receive a lower withholding tax rate (15 percent) than non-residents (10 percent) for dividend payments on listed securities.
Rwanda	Law No. 55/2007 of 30/11/2007 Governing the Central Bank of Rwanda, Article 55	The law allows the Central Bank to intervene in money markets, especially for lending, borrowing, selling, or buying liquid assets, as well as pensions and all other negotiable instruments.
Kenya	No restrictions	No restrictions

Credit

The credit operations covered by the CMP are foreign borrowing and lending by residents. Burundi and Tanzania make it difficult for their residents to lend abroad because of their capital controls. Kenya, Rwanda, and Uganda impose no restrictions on credit operations across EAC borders.

Direct investment

Direct investment (often known as foreign direct investment, or FDI) refers to a company or entity based in one country controlling ownership in a business or enterprise based in another country. Direct investment can provide existing businesses with much-needed capital. The increased competition with foreign investors often encourages efficiency and better services, and can also promote technology and skills transfer. Direct investment is essential for the EAC because of its potential to help develop the private sector and, by extension, reduce poverty. Direct investment can take various forms including mergers and acquisitions of existing business or setting up a business from scratch (greenfield investment). However, it is important to note that capital will gravitate towards areas where there is a good likelihood of return; therefore, better-managed companies will automatically attract more capital, and countries with investment laws that protect the rights of investors will experience proportionately higher level of direct investment.⁸

The CMP covers three direct investment operations: inward direct investment, outward direct investment, and repatriation of profits from sale of assets. Although no EAC Partner State imposes restrictions on repatriation of proceeds from asset sales within the region, they all except Burundi impose restrictions on inward direct investments. Among the Partner States, all except Burundi do not impose restrictions on outward direct investment.

⁸Palgrave Encyclopedia of Strategic Management

Table 8: Credit operations - status by Partner State

Credit Operations	Kenya	Uganda	Rwanda	Burundi	Tanzania
External borrowing by residents	Open	Open	Open	Restricted	Open
Lending abroad by residents	Open	Open	Open	Restricted	Restricted
Number of restrictions-free credit operations	2	2	2	0	1

Source: CMS 2016 Database

Table 9: Restrictions on direct investment operations

Direct Investment Operations	Kenya	Uganda	Rwanda	Burundi	Tanzania
Inward direct investments	Restricted	Restricted	Restricted	Open	Restricted
Outward direct investments	Open	Open	Open	Restricted	Open
Repatriation of proceeds from the sale of assets	Open	Open	Open	Open	Open
Number of restrictions-free direct investment operations	2	2	2	2	2

Source: CMS 2016 Database

Table 10: Examples of restrictions on inward direct investment in the EAC

Country	Details
Burundi	When state enterprises are privatized, a percentage of their ownership can be reserved for Burundians. Competitiveness of Burundi's domestic industry can be used as a reason to control potentially anticompetitive concentration.
Kenya	At least one-third of the controlling interest in insurance companies registered in Kenya must be held by citizens, by a corporate body whose shares are wholly owned by citizens, or by the government. At least 60% of the paid-up capital of insurance brokerages must be owned by citizens, by a corporate body whose shares are wholly owned by citizens of Kenya, or by the government. At least 30% of equity stake in telecommunications investments have to be Kenyan owned.
Rwanda	The Law on Investment and Export Promotion and Facilitation requires more minimum capital from Tanzanian investors than from majority investors from Rwanda or other EAC Partner States. The law governing telecommunications allows refusal of a license if the regulatory body reasonably believes that competition in the telecommunications sector can be adversely affected.
Tanzania	The 1997 Investment Promotion Act distinguishes between foreign and domestic investors. Businesses that can receive the benefits and protection provided under this Act are those that, if wholly owned by a foreign investor or a joint venture, have capital investment of at least \$300,000. If domestically owned, capital investment must be at least \$100,000. Foreign investors can obtain credit from domestic banks and financial institutions for such businesses up to the limit established by the Bank of Tanzania in consultation with the Tanzania Investment Centre. Such credit must be used solely for the purposes specified in the loan application and its use can be monitored by the bank granting the loan.
Uganda	Under Section 9 a foreign investor is defined as an individual who is not a Ugandan citizen or a company in which more than 50% of the shares are held by non citizens or a partnership in which most of the partners are non Ugandans. Based on this definition, Ugandan investors are accorded better treatment than investors from the other EAC Partner States. To engage in trade, foreign investors must deposit \$100,000 at the Bank of Uganda, to be used for imports or direct purchases of goods for their businesses. Foreign investors qualify for incentives under the Code if they make a capital investment of \$500,000 (though with many exemptions). Domestic investors receive such incentives with \$50,000 in investment. Schedule 3 of the Investment Code Act also excludes foreign investors from certain types of businesses.

Source: CMS 2016 Database

Table 11: Examples of restrictions on outward direct investment in the EAC

Country	Details
Burundi	The 2010 Foreign Exchange Regulations require prior approval by the Central Bank.
Kenya	None
Rwanda	None
Tanzania	None
Uganda	None

Source: CMS 2016 Database

Personal Capital Operations

Although all EAC Partner States except Tanzania require that all amounts above \$10,000 should be declared on exit or entry, they do not restrict the operation. Tanzania places a \$10,000 limit for residents travelling abroad with foreign currency, including to other EAC Partner States. Tanzania also provides that funds due from assurance policies taken outside Tanzania may only be transferred into or from Tanzania if servicing of such policies is done using externally generated funds.

Which EAC Partner States have introduced restrictions after signing the CMP?

The EAC CMP entered into force in May 2010. Article 24 (c) prohibits Partner States from introducing new restrictions on the movement of capital and payments connected with such movement. As reported in the 2014 Scorecard, some Partner States have not lifted the restrictions on freedom of movement of capital that were introduced after the CMP came into force. These violations were identified in the CMS 2014.

Examples of restrictions effective after the signing of the CMP and those that have been maintained after the 2014 Scorecard are detailed in Table 13.

Table 12: Examples of restrictions on personal capital operations

Personal Capital Operations	Kenya	Uganda	Rwanda	Burundi	Tanzania
Personal capital transactions	Open	Open	Open	Open	Open
Number of restrictions-free personal capital operations	1	1	1	1	1

Source: CMS 2016 Database

Table 13: Examples of restrictions effective after signing the CMP

Country	Details of Restriction
Rwanda	Applicants requesting licensing to participate in the Central Securities Depository may be refused so if their domestic law does not offer reciprocal market access under the same conditions to participants governed by Rwandan Law.
	Capital Markets Licensing Requirements of 2012 require applicants seeking approval of a foreign securities exchange to demonstrate that adequate arrangements exist for cooperation between the authority and those responsible for the supervision of the applicant in the country in which the applicant's head office is situated.
Tanzania	The Electronic and Postal Communications (Licensing) Regulations of 2011 require applicants for a broadcasting license to submit a list of shareholders with a minimum of 51% local ownership. The regulations also require that prior to transfer of shares, a licensee shall be required to submit to the authority proof that the minimum local shareholding requirement is maintained.
Uganda	The Income Tax Act provides a withholding tax rate of 10% on dividends in respect of listed securities, while the rate for non-residents is 15%.

*Kenya and Burundi did not introduce any new restrictions after the signing of the CMP.

Source: CMS 2016 Database

It should be noted that in May and September 2014, Tanzania amended some of its legislation relating to its capital account that resulted in relaxation of the capital controls. The new legislation included the Foreign Exchange (Amendment) Regulations, 2014 GN No. 133 of 2014, the Foreign Exchange (Listed Securities) (Amendment) Regulations, 2014 GN No. 132 of 2014, and the Capital Markets and Securities (Foreign Investors) Regulations No. 338 of 2014. However, a deeper analysis of the relevant legislation revealed that some of the provisions in the amendments were restrictive.

Table 14: Examples of restrictions in Tanzania's 2014 amendments

Provision	Details of Restriction
Regulation 3(1) of the Foreign Exchange (Listed Securities) (Amendment) Regulations, 2014	A non-resident may acquire, sell, or transfer any securities issued in Tanzania, apart from government securities issued in the country.
Regulation 2 and 3 of the Capital Markets and Securities (Foreign Investors) Regulations, 2014	Foreign investors are defined as individuals or corporate bodies who are not citizens of Tanzania. Participation of foreign investors in the primary market of government securities shall be subject to such conditions as the Bank of Tanzania may prescribe.

Source: CMS 2016 Database

Reform Initiatives flowing from the findings of the 2014 Scorecard

Following the publication of the 2014 Scorecard, some EAC Partner States made efforts to eliminate restrictions to the freedom of movement of capital found in their respective legislative provisions.

The various countries progressed differently owing to the technicalities of the legislative process in each of their jurisdictions.

Table 15: Examples of EAC Partner States' reforms

Country	Restriction Identified in the 2014 Scorecard	Status of Reform
Kenya	Lack of a regulatory framework to support derivatives operations.	CMA Kenya licensed NSE to operate a derivatives platform. NSE has developed rules governing the operation and has licensed market players.
	Restrictions on non-Kenyan nationals wishing to invest in the Kenyan insurance sector.	No reform
Uganda	Lack of clarity on the withholding tax chargeable on government securities holdings by non-Ugandans, potentially exposing investors from the other EAC Partner States to a higher withholding tax rate.	The Income Tax Act has been amended to provide a withholding tax rate of 20% on government securities for both residents and non-residents.
	Ugandan investors are accorded favorable treatment while setting up businesses in Uganda and are entitled to a range of incentives.	No reform
Tanzania	Other EAC nationals prohibited from participating in the government securities market.	EAC nationals may participate in the government securities primary market subject to such requirements that the Bank of Tanzania may prescribe. This reform still constitutes a restriction
	Non-Tanzanians prohibited from participating in the money markets.	No reforms
Rwanda	Non-residents are restricted from participating in money market instruments.	Draft Bill to amend the provisions of Law No. 55/2007 of 30/11/2007 that restrict this activity has been prepared and is due to progress through the legislative process.

Source: Partner States Laws and Regulations

Notification requirements

Article 25 (1) of the CMP allows Partner States to restrict the freedom of movement of capital for reasons of prudential supervision, public policy, money laundering, and financial sanctions agreed to by Partner States. However, Article 25 (2) requires Partner States that adopt any of the restrictions stipulated in Article 25 (1) to notify the EAC Secretariat and other Partner States. It also requires that they furnish proof that a restriction was reasonable and justified. This approach was designed to allow for discussion of the proposed actions, taking into account the views of state and non-state actors that might be affected by them, and for monitoring to ensure that such restrictions last only as long as needed.

One of the recommendations from the 2014 CMS was to enforce this notification mechanism. Nonetheless, EAC Partner States are still not complying with these notification requirements. Tanzania and Uganda have each made three such exemptions, and Kenya and Rwanda two each. None have notified these exemptions.

Partner States are again urged to comply with their notification requirements. They could develop guidelines to regulate the content for notifications. This may include standard notification instruments, reaction forms, and criteria for classifying notifications. Guidelines should also include operating arrangements such as deadlines for steps in the notification process. The public should have access to exceptional measures and all such restrictions should be temporary.

Table 16: Notification of exceptions

Country	Number of General Exceptions pursuant to Article 25 (1)	Notified
Uganda	3	No
Tanzania	3	No
Kenya	2	No
Rwanda	2	No
Burundi	0	Not Applicable

Source: CMS 2016 Database

Summary of Findings

- Despite signing the CMP in 2010, and contrary to the requirements of Article 24 and the findings of the 2014 Scorecard, EAC Partner States have maintained restrictions against the freedom of movement of capital. Restrictions on the movement of capital affect more than just moving capital across the EAC. Some restrictions remain during the life of the investment, favoring domestic investors. Based on the number of restrictions on the free movement of capital, Kenya makes it easiest to move capital across the EAC. Tanzania and Burundi make it hardest.
- Only 3 out of the 20 capital operations are free in all Partner States. These are external borrowing by residents and repatriation of proceeds from sale of assets. All other 17 operations have at least one Partner State restricting the operation.
- Since publication of CMS 2014, all EAC Partner States have maintained restrictions that affect inward investment from other EAC economies.
- Combined, EAC Partner States need to repeal provisions in at least 27 laws and regulations to fully comply with the CMP. Rwanda has the most provisions (9), while Burundi has the least (3).
- Capital controls are the most severe restriction on the movement of capital across the EAC, affecting the majority of transactions covered under the CMP. Burundi's controls restrict 8 operations and Tanzania's restrict 10.
- Restrictions on the movement of capital have an enormous impact on direct investment and securities, with no single operation in these areas being restriction-free across the bloc. This undermines efforts by EAC Partner States to expand their private sectors thereby affecting job creation and economic development.
- Burundi makes it the most difficult to conduct securities operations. Its restrictions affect 4 of the 14 securities operations covered by the CMP, and the lack of a regulatory framework affects 5 others.
- Burundi and Tanzania make it most challenging to undertake credit operations by restricting lending abroad by their residents. Kenya, Rwanda, and Uganda impose no such restrictions.
- Four EAC Partner States —Burundi being the only exception— have introduced exemptions to the CMP without following requirements for notification to other Partner States or the EAC Secretariat. Ten such exemptions are in place guided by concerns about prudential supervision, public policy, money laundering, financial sanctions, and financial disturbances.
- With the exception of Kenya and Uganda, the other EAC Partner States have not developed derivatives markets.

Key observations

During the process of developing the 2016 Scorecard, it became apparent that the pace of implementation of the 2014 Scorecard recommendations has been rather slow. A number of common constraints preventing Partner States from undertaking the reforms necessary to fully implement their CMP commitments were identified. These include a lengthy legislative processes, a crowded legislative agenda, need for capacity building of key personnel, and inadequate resources. More specifically, the following were observed across all the five Partner States:

- There is a need for greater information sharing regarding the Treaty and CMP provisions. Some members of the private sector, including private sector apex bodies, were unfamiliar with the CMP or with the commitments affecting their operations. There is a strong need to engage and inform the private sector on the implications of these reforms on their day-to-day operations across the region and to develop private sector reform champions who could help monitor and follow-up implementation.
- All Partner States have maintained restrictions in the area of inward direct investments, reserving preferential treatment for their nationals in their respective investment laws/codes. At the same time, across the EAC, the private sector is keen to access capital for investment and to expand across borders to take advantage of opportunities presented by regional integration. Access to long-term finance to facilitate growth and expansion of businesses, including small and medium size enterprises, is essential to foster growth, development, and the creation of employment opportunities.
- Partner States may require capacity building for personnel in relevant line ministries, including the draftspersons responsible for the legislation and what exactly the reforms are expected to address. In some of the Partner States, reforms were reported which on further scrutiny revealed existing restrictions. Active participation in the negotiation process will strengthen and fast-track their contribution.

Recommendations

- i. Regulators should move away from merit-based decision-making (that is, using the perceived likelihood of an investment's success as a basis for authorizing it) toward a disclosure approach (to ensure that sufficient information about a prospect is disclosed so that potential investors can make informed judgments about its attractiveness).
- ii. A mechanism must be developed to apply Article 25 (1) of the CMP. The EAC Secretariat and Partner States should develop guidelines to enforce the notification mechanism to increase transparency and to monitor exemptions and ensure that these are temporary.
- iii. To release regional capital for private sector growth, the EAC should prioritize the rollback of laws, regulations, and investment codes that impede investment.
- iv. The EAC Secretariat, Partner States, and Development Partners should provide technical and financial support for purposes of undertaking reforms to implement the provisions of the CMP. This should include capacity building aimed at financial integration, including the development of market intermediaries, stronger coordination of securities markets, technical assistance to establish and develop frameworks for efficient, fair, and transparent operations of derivative markets, and public awareness campaigns aimed at enhancing the public's understanding of the provisions of the CMP, including commitments made by each of the countries and existing restrictions.
- v. Private sector participation in all EAC CMP initiatives should be scaled up, in particular with regard to the implementation of the 2014 and 2016 Scorecard recommendations.
- vi. An aggressive awareness campaign needs to be aimed at the private sector to educate them on the opportunities and obligations for financing presented by capital markets in the region.
- vii. The private sector should be encouraged, and facilitated where necessary, to adopt good corporate governance practices in their businesses to enable them tap into various sources of capital and to attract investments.
- viii. Expedite the integration and establishment of an EAC Regional business registry portal. A centralized business registry would enhance the EAC region's profile as a single investment destination by making it easier for regional and international investors to assess the health of and compare different companies and sectors.
- ix. The EAC Secretariat and Partner States should expedite the outstanding process of harmonization of domestic tax laws.
- x. For subsequent monitoring tools on common market implementation, the EAC Secretariat should in addition consider a '*de facto*' analysis for development of subsequent Scorecards, taking into account barriers identified by the private sector.



SERVICES

The objectives of the 2016 CMS on services are two-fold: to provide a status update on the legal compliance of Partner States in implementing their obligations in the EAC CMP in four key sectors – professional services, (legal, accounting, architecture and engineering), road transport, distribution services (retail and wholesale) and telecommunications; and to propose key actions that Partner States can undertake to accelerate implementation and full integration of services in the EAC region.

The report finds that there have been a number of reforms undertaken since the 2014 CMS, but all the EAC Partner States remain non-compliant in their services trade liberalization commitments. A total of 59 non-conforming measures (NCMs), down from 63 in 2014, have been identified in over 600 laws and regulations governing the four sectors of focus. Of these, Tanzania has the highest number of NCMs at 27 percent, followed closely by Kenya at 24 percent, Rwanda and Uganda at 17 percent, and Burundi at 15 percent.

Professional services account for over two thirds of the total identified NCMs (71 percent), of which engineering (38 percent), accounting (29 percent), legal services (19 percent), and architecture services (14 percent) contribute greatest shares to this result. The rest of the NCMs are found in road transport (25 percent), telecommunications (2 percent), and the distribution sector (2

percent). A separate review of air transport legislation found a large number of NCMs (29 in number), but in line with decisions made for the 2014 CMS, the air transport sector has been excluded from the aggregate analysis given that it is typically regulated primarily on a bilateral level.

In terms of source of the NCMs, those identified are mainly found in laws, 68 percent of all NCMs, with only 15 percent being in regulations, and 17 percent in administrative measures. Nearly all NCMs violate multiple modes of service supply, with most affecting movement of service providers (97 percent) and commercial presence (76 percent).

These findings have shown that many of the barriers that existed prior to the CMP coming into force are still in place today, constraining the movement of services within the region. The CMS 2016 highlights the laws that need to be reviewed in the four focus sectors in order to comply with the CMP obligations.

It also proposes a number of recommendations, which include the need for a well-defined roadmap for reviewing the laws that encompass the entire legislative process in each Partner State, a call to build the capacity of service sector regulators to ensure service markets work efficiently, and to establish multi-stakeholder fora that bring together these regulators, private sector, and public

sector to ensure a coherent and coordinated approach to the reform process. Other recommendations include a call to produce and regularly update data on services and make it easily accessible to key stakeholders to drive both policy and business decisions; build capacity of consumer protection bodies; protect foreign investments and align obligations in investment agreements and the CMP through formulating an Investment Chapter or CMP; and the need to coordinate and communicate an EAC position in the on-going global discussions for a Trade in Services Agreement.

If the EAC Common Market is to achieve the envisaged objective of accelerating economic growth and development of the region, the Community must leverage the potential of service integration to not only drive this growth, but also play a structural, transformational role as a growth enabler.

Trade in services

Services are increasingly becoming 'a transformational force in the global economy, in many ways, the foundation of trade, without which trade would not happen'.⁹

As well as being important in its own right, the services sector plays a crucial role not only in the functioning, but also in the competitiveness of any modern economy, affecting growth and development in many ways. These include GDP growth, earning foreign exchange, productivity and efficiency gains, attracting and facilitating foreign direct investment (FDI), more and higher quality employment, and a wider and cheaper range of products for consumers. While export of services can drive diversification, import of services and FDI can lead to more competition, lower prices, and higher quality, thereby enhancing competitiveness and efficiency gains. Likewise, domestic trade in and export of goods can be undermined by lack of quality services along the whole value chain from energy, transport, distribution, warehousing, customs, communication, and financial services; their quality and accessibility directly impacts the cost of production and the competitiveness of the product both domestically and in international markets.

Research analyzing the linkages between services and manufacturing productivity performance, using data from developing country firms, finds that at the average rate of services input intensity, a 10 percent improvement in services productivity is associated with a 0.3 percent increase in manufacturing productivity and a resulting 0.2 percent increase in exports.¹⁰ In addition, the research finds that services trade restriction indices, especially those that affect FDI, have a significant relationship with manufacturing export performance, especially if these fall in the transport and retail distribution services sectors. More recently, a country study of India found that liberalizing banking, telecommunications, insurance, and transport sectors has significant positive effects on the productivity of manufacturing firms.¹¹ Global value chains, which are characterized by multiple stage production of goods across multiple

business locations before final products are assembled in one place, would not be possible without efficient services supporting the entire chain. The so called 'servicification' the process where companies in non-service sectors buy and produce more services and sell and export more services, often as a package deal with the good¹²—underscores the importance of services for trade in goods. Some service sectors such as health, education, water and sanitation are also directly relevant to achieving social development objectives.

As a generalisation, services comprise between 60 and 70 percent of GDP in developed economies and over 60 percent in Sub-Saharan Africa in 2013.¹³ As a component of GDP, services accounted for almost half of the EAC GDP in 2014, accounting for 43 percent in Burundi, 44 percent in Uganda, 53 percent in Rwanda, 44 percent in Tanzania, and 50 percent in Kenya. Services significantly outperform agriculture and industry in terms of contribution to GDP. Figure 1 shows the contribution of services to GDP compared to agriculture and industry.¹⁴

⁹ICTSD and World Economic Forum (2016), "Rethinking Services in a Changing World. Synthesis of Policy Options," E15 Initiative, Geneva.

¹⁰ Bernard Hoekman, and Ben Shepherd, (2015), *Services Productivity, Trade Policy, and Manufacturing Exports*, RSCAS 2015/07.

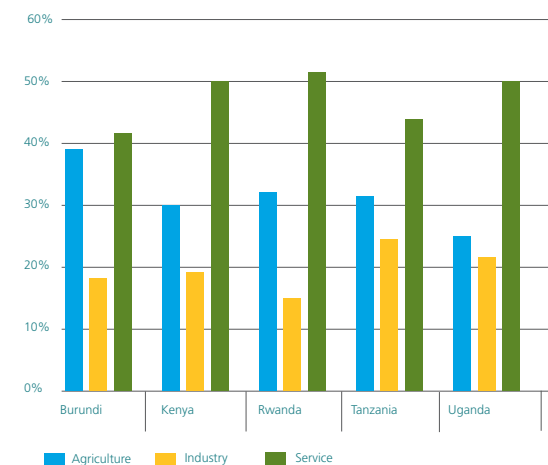
¹¹J.M. Arnold, B. Javorcik, M. Lipscomb, A. Mattoo, (2016), *Services Reform and Manufacturing Performance: Evidence from India*, *The Economic Journal*, 126: 1–39.

¹²Ibid.

¹³R. Sandrey, (2014), *The Services Sector in Africa*, Stellen Bosch: Tralac.

¹⁴World Bank, (2015), *World Development Indicators*.

Figure 1: Comparison of sector contribution to GDP (%) in 2014



Source: World Bank World Development Indicators

Services liberalization in the EAC – still nascent, but room to improve rapidly

Given their transformational effect, liberalisation of services has the potential to generate important benefits for the people of East Africa. When service markets are heavily protected, services are often inaccessible, prohibitively expensive, and of low quality. The openness of services sectors has a positive impact on FDI, as services constitute the majority of inward FDI stocks.¹⁵ Opening up to service imports and FDI can be an effective mechanism to increase competition, enhance efficiency, and bring international best practices and better skills and technologies to the domestic market. FDI also brings in much needed capital into a country and can help stimulate investment in key sectors such as infrastructure, where government and domestic private sector funding may be scarce.

Service trade liberalisation does however carry risks and potential costs; for example, most developing countries have limitations in supply-side capabilities, which may result in foreign providers crowding out and outcompeting weak domestic providers, allowing foreign firms and individuals, who often take money out of the country, to capture profits for themselves. Other risks include financial sector instability, through vulnerability to contagion and risk of environmental degradation.¹⁶ While some of these risks remain even without liberalisation, almost all service sectors need government intervention to regulate the market in areas such as competition, maintaining quality of services (e.g. through qualification standards), protecting consumers, maintaining financial stability and protecting the environment if the benefits of service liberalisation are to be realised.

¹⁵Stephen Golub, (2009), *Openness to Foreign Direct Investment in Services: An International Comparative Analysis*, *The World Economy*, 1245-1267.

Liberalisation of trade in various services sectors within the EAC has already begun, though it is still at the nascent stage. The EAC Common Market CMP provides that Partner States shall guarantee free movement of services and service suppliers under Article 16 (1). Although the WTO General Agreement for Trade in Services (GATS) classifies services into twelve different sectors, with a total of 160 sub-sectors, the EAC Partner States negotiated the following seven priority sectors in the first phase of the regional services negotiations: business, communication, distribution, education, finance, tourism, and transport services. According to the W/120 classification system that the EAC Partner States used in the negotiations, the total number of sub-sectors in the seven sectors is 136, broken down as follows: business (46); communications (24);

distribution (5); education (5); financial (17); tourism and travel (4); and transport (35).

Negotiations followed a positive list approach (Partner States only scheduled those sub-sectors they were willing to open up), with progressive implementation in accordance to the schedule specifications in the CMP. As such, different Partner States committed to liberalise different sub-sectors across the modes of supply by December 31, 2015, with Burundi scheduling 74 commitments, Kenya 63, Rwanda 101, Tanzania 59, and Uganda 98 (see Table 1). Partner States have also undertaken not to introduce any new restrictions on the provision of services (Art 16 (5)).

Table 1: Number of services sub-sectors committed by EAC Partner States in the CMP

	Burundi	Kenya	Rwanda	Tanzania	Uganda
Business	31	15	32	7	33
Communication	6	17	21	17	21
Distribution	3	3	4	2	4
Education	4	4	5	4	5
Financial	9	12	15	16	11
Tourism and Travel	4	3	4	4	4
Transport	17	9	20	9	20
Total sub-sectors committed	74	63	101	59	98

Source: EAC CMP

M. Cali, K. Ellis, and DW. Velde, (2008), *The Contribution of Services to Development: The Role of Regulation and Trade Liberalisation*. ODI Policy Briefing.

Although Partner States did not make any commitments under the CMP with regard to construction services, environmental services, health related and social services, and recreational, cultural and sporting services, in Article 23 of the CMP, they undertook to make additional commitments in these sectors after the CMP enters into force.

The key principles that underpin services liberalisation under the EAC CMP are:

- **National Treatment**, which in Article 17 obligates each Partner State to accord to services and service suppliers of any other Partner State treatment no less favourable than it accords to services and service suppliers of the country. By implication, this means that a Partner State cannot discriminate against natural or legal entities from a Partner State on the basis of nationality, and that a foreign company incorporated in one of the EAC Partner States is considered “a national” of that country.
- **Most Favoured Nation (MFN)** treatment in Article 18 obligates each Partner States to unconditionally accord to services and service providers of other Partner States treatment no less favourable than it accords to services and service suppliers of another Partner States, any third party, or a customs territory.
- **Transparency**, which obligates Partner States to notify the Council of Ministers of all measures of general application affecting the free movement of services (Article 19 (1)), of any international agreements pertaining to or affecting trade in services with parties that are signatory to the CMP (Article 19 (2)), and to inform the Council promptly and at least annually of new laws or administrative guidelines introduced or changes to existing ones that affect trade in services (Article 19 (4)).

- **Right to Regulate**, which in Article 20 allows Partner States to regulate their service sectors in accordance with their national policy objectives provided that the measures are consistent with the provisions of the CMP and do not constitute barriers to trade in services. Thus, while governments retain the right to set levels of safety, price, quality, and qualification requirements among others, these regulations are expected to be made in a reasonable, objective, and impartial manner.
- **Recognition**, which calls on Partner States to recognise each other’s conformity assessments and qualification. This is usually done through entering into to Mutual Recognition Agreements (MRAs). In Article 11.1(a) of the CMP, EAC Partner States undertake to ‘mutually recognize the academic and professional qualifications granted, experience obtained, requirements met, licenses or certificates granted in other Partner States.’ This provision, while falling under the freedom of movement of workers provisions, is key to achieving liberalization of the professional services sector and has been widely billed as the best process to be adopted if the free movement of service providers is to be achieved efficiently and effectively.

Given their intangible nature, the main means of liberalizing services depends on the territorial presence of the supplier and the consumer at the time of the transaction. Thus, four modes of supply are recognized globally and also in Article 16 (2 a-d) of the EAC CMP as illustrated

Table 2: The four modes of supply

Mode of supply	Description
Mode 1- Cross-border supply	Company in Uganda supplies services into Tanzania but has no physical commercial presence in Tanzania; e.g., telecommunication services, financial trading
Mode 2 - Consumption abroad	Consumers from Burundi consume services in Uganda; e.g., tourism, education, repair and maintenance of aircrafts
Mode 3 - Commercial presence	Company from Kenya sets up a physical presence in Rwanda, often in the form of a subsidiary or branch; e.g., local branches of foreign banks or insurance companies
Mode 4 – Temporary movement of natural persons	Company in Rwanda sends key personnel temporarily to Burundi; e.g., IT or engineering experts providing services for short periods

By its very definition as commercial presence, Mode 3 is at the same time foreign investment, which is usually regulated through International Investment Agreements (IIAs). IIAs are often Bilateral Investment Treaties (BITs) signed between two countries and are also sometimes included in preferential trade agreements, usually in form of an investment chapter. Where not included, it is necessary to determine that existing BITs do not offer any more favourable treatment than those afforded members of a preferential arrangement.

Article 19.2 CMP requires Partner States to notify the Council of any international agreements pertaining to or affecting trade in services with third parties that they are signatory to, prior to and after the entry into force of the Protocol.

Current data from the United Nations Conference on Trade and Development (UNCTAD) shows that EAC Partner States together have 46 separate BITs, signed with 31 different countries. Of these, 32 are in force, while 14 have yet to enter into force. Interestingly, among EAC Partner States, only Burundi and Kenya have a BIT which is not yet in force. Only Germany has BITs in force with all the five Partner States, followed by Switzerland and the United Kingdom, which have BITs in force with four EAC Partner States (see Table 3: – a green tick denotes BIT in force; red denotes not in force).

In Article 29 (2b) of the CMP, Partner States have undertaken to ensure non-discrimination of investors from other Partner States by according them no less favourable treatment than those accorded to other Partner States or third parties. In Article 29 (3), Partner States undertake, within two years of the CMP coming into force, to take measures to secure the protection of cross border investments within the Community. This provision is yet to be taken forward. It is necessary to examine whether any of the BITs signed with third parties offer any more favourable treatment than envisaged in the CMP. The CMS however, excludes bilateral agreements which violate the MFN obligation. (See Methodology section)

Table3: II As signed by EAC partner

	BU	KE	RW	TZ	UG
BLEU	✓		✓		✓
Burundi		✓			
Canada				✓	
China		✓		✓	✓
Comoros	✓				
Cuba					✓
Denmark				✓	✓
Egypt				✓	✓
Eritrea					✓
Finland		✓		✓	
France		✓			✓
Germany	✓	✓	✓	✓	✓
Iran		✓			
Italy		✓		✓	✓
Jordan				✓	
Kenya	✓				
Korea			✓	✓	
Kuwait		✓		✓	
Libya		✓			
Mauritius	✓	✓	✓	✓	✓
Netherlands	✓	✓		✓	
Nigeria					✓
Oman				✓	
Slovakia		✓			
South Africa			✓	✓	✓
Sweden				✓	
Switzerland		✓	✓	✓	✓
Turkey		✓		✓	
UK	✓	✓		✓	✓
USA			✓		
Zimbabwe				✓	✓

Source: UNCTAD

In the course of implementing the services commitments, legal discrepancies were found in the CMP, which have constrained the implementation process. Key among these was the 'linking' of mode 4 commitments under the services schedule to the commitments in the schedule of workers through the notation that reads "in accordance with the Schedule on the Annex on Free Movement of Workers." In practice, the linkage means that in order to understand any commitment on mode 4 in the services schedule (Annex V), one would need to consult a Partner State's commitments in the schedule on the movement of workers in Annex II – by implication, a Partner State may have no restrictions at all for a certain sector under the first 3 modes of supply, but if that sector is not opened up under the workers' schedule, then this means that it is restricted for service providers. For example, Burundi has made commitments in the legal sector, in the services schedule, but not in the workers schedule; the same is valid for Rwanda in regard to accountants and legal professionals, and Tanzania for accounting, auditing bookkeeping, and franchising professionals. This challenge is compounded by the fact that the CMP does not make a distinction between entry, stay, and exit of service suppliers and workers in another EAC Partner State, yet the regulations on the movement of natural persons between Partner States for purposes of employment are distinct from that of service providers. In addition, the CMP only defines who a worker is but does not define who a service supplier is. Such discrepancies resulted in combining both workers and service suppliers in the same category, thereby subjecting the latter to the same rigorous processes of long-term workers. Furthermore, Annex V also contains obligations for "market access", although there is no equivalent market access provision in the CMP itself. All these discrepancies have curtailed the free movement of services.

EAC Partner States, have agreed that in principle the free movement of service suppliers should be seen as separate from the free movement of workers in the EAC CMP. The temporary movement of service suppliers (who reside in and are paid in their country of origin) is separate and different from the (permanent or temporary) movement of workers who are paid in the country to which they move or emigrate.

The Free Movement of Services 2016 Scorecard: Focus and Methodology

Under the 2014 EAC Common Market Scorecard (CMS), selection of the focus sectors for inclusion in the CMS 2014 was on the basis of their GDP share and their relative restrictiveness. The rationale behind these criteria was to select the most economically significant sectors and at the same time those sectors where current restrictions suggest the greatest need for liberalisation. Using relative restrictiveness as a selection criterion allowed the assessment to capture the political effort a country had to undertake in order to comply with its obligations.

Based on this methodology, the following four sectors and sub-sectors were selected as proxies for inclusion in the Scorecard: a) professional services: legal, accounting, architecture, engineering; b) transportation services: air and road transport; c) telecommunication services; and d) distribution services: wholesale and retail trade;

For the above sectors, the CMS 2014 assessed *de jure* compliance to the CMP commitments rather than *de facto* compliance (referring to how commitments are implemented in practice). The analysis is thus based on a review of the laws, regulations, legal notices, and decrees that were relevant to the sectors. However, in some instances, *de facto* information is reviewed as a means to give effect to or enquire about the implementation of a *de jure* obligation.

The four focus sectors and the *de jure* assessment of compliance approach have been maintained for the CMS 2016. The CMS 2016, however, examines the status of compliance in the focus sectors as of December 31, 2015 when all obligations in the CMP were expected to be implemented. This means that any Partner State that had any of the four sectors 'unbound' or with specific restrictions

to be eliminated after August 2013 has had these sectors assessed. This includes legal, accounting, and telecommunication services in Burundi, telecommunication services in Kenya, telecommunication and distribution services in Rwanda, legal, wholesale and retailing services (all Mode 3) for Uganda, and telecommunication services in Tanzania.

To update the 2014 CMS data, the CMS 2016 has used information supplied by the National Implementation Committees (NICs) for the EAC CMP and validated the status through members of the CMS 2016 Reference Group that comprises the NIC Chairs and key public and private sector players drawn from the sectors of focus.

Professional Services

Professional services are one of the broad categories under business services. They fall into 11 different sub-sectors that include the four focus sub-sector under CMS 2016 (legal services, accounting, auditing and bookkeeping services, architectural services, and engineering services), as well as seven additional sub-sectors (taxation services, medical and dental services, integrated engineering services, urban planning and landscape architectural services, veterinary services, services provided by nurses, midwives and physiotherapists, and a residual 'other' sub-sector).

Only Burundi, Rwanda, and Uganda made commitments in the CMP in all the four sub-sectors of focus, with Burundi indicating a requirement for one-third ownership of capital for accounting, auditing and bookkeeping services under mode 3, and Uganda requiring commercial presence to be subject to partnerships and

practitioners to be trained/ come from countries that practice common law, for legal services. Kenya made no commitments under engineering services and Tanzania made no commitments under legal and architectural services.

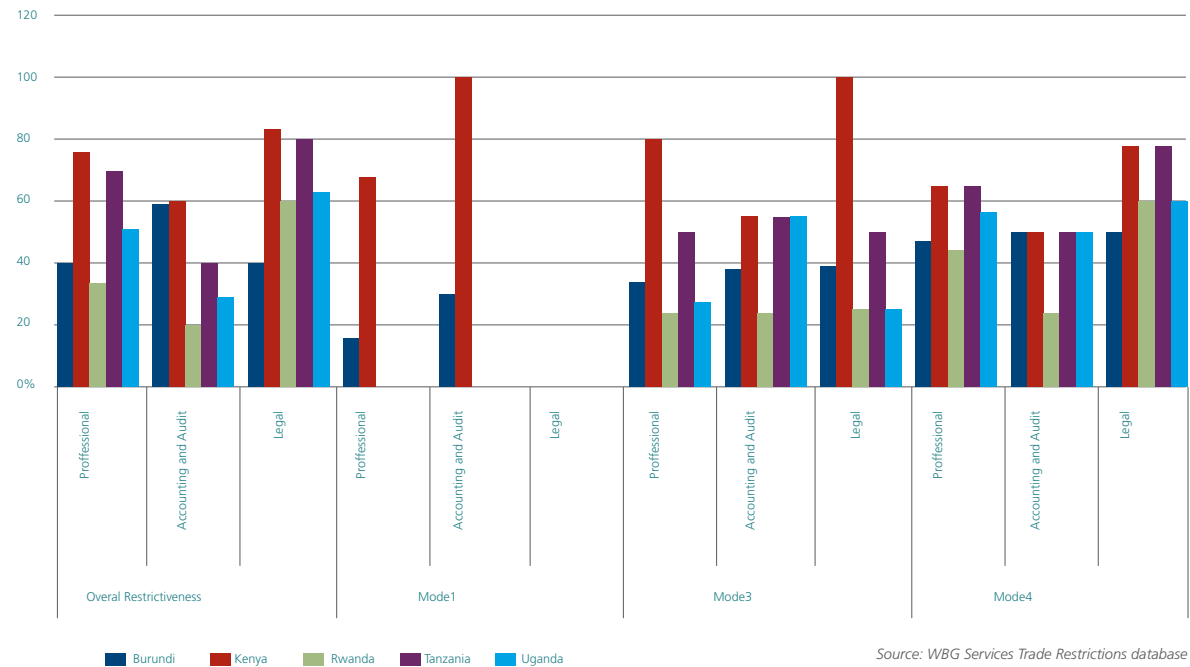
Professional services play an important role in the functioning of modern economies and are among the fastest growing services sector in many developed and developing countries. They contribute directly and indirectly to economic growth, by enhancing productivity, lowering transactions costs, creating spillovers of knowledge to other industries, and enabling increase in exports and export diversification. Accounting and legal services can help reduce transaction costs, while engineering services contribute to development of infrastructure that is essential for economic growth.

Professional services are thought to be very restricted in the East African region and constrained by various challenges. These include skills shortages, particularly in engineering and accounting services, skills mismatch, which leaves many professionals without jobs, and underdeveloped markets where professional services are less efficient, more costly, and less widely available relative to other countries at comparable levels of development. With less than one firm for 100,000 people in many professional services, East Africa has lower densities of service providers than more advanced comparators. Kenya is an exception though, with densities of 14 accountants per 100,000, and it beats advanced economies such as Spain. In terms of supply, the availability of middle-level professionals is another issue. Data on accounting technicians, paralegals, and engineering technicians suggests that, with the exception of accounting technicians in Kenya, East Africa is facing a middle-level skills vacuum. For example, in Tanzania, middle-level professionals account for 6 percent of all accountants. This

contrasts with Kenya where there are four times as many accounting technicians than qualified accountants.¹⁷ Generally, across the region, demand outstrips supply, especially at the middle level. The low densities of service providers is a cause for concern in light of evidence showing that productivity gains of using professional service providers can be as high as 10- 45 percent.¹⁸

The 2012 World Bank Services Trade Restrictiveness Index (STRI)¹⁹ reviewed the professional services sector for East African Partner States and found it to be highly restrictive. Using a scoring of (0) for completely open, (25) for virtually open but with minor restrictions, (50) for major restrictions, (75) for virtually closed with limited opportunities to enter and operate, and (100) for completely closed, Burundi, Kenya, Uganda, and Tanzania scored around 50 or above for overall restrictiveness in professional services, with Kenya being deemed virtually closed with a score of 75. Under mode 1 and 3, Kenya is scored as being completely closed and virtually closed for mode 4. The picture is not encouraging for other EAC Partner States, especially in modes 3 and 4 as illustrated in Figure 2.

Figure 2: STRI in professional services among EAC Partner States



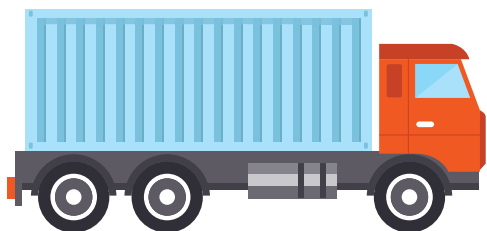
¹⁷ World Bank, (2010), *Reform and Regional Integration of Professional Services in East Africa: Time For Action*, Washington DC.

¹⁸ *Ibid.*

¹⁹ Borchert, Ingo, Batshur Gootiz, and Aaditya Mattoo, (2012), "Guide to the Services Trade Restrictions Database," *World Bank Policy Research Working Paper (WPS6108)*.

Liberalization offers an opportunity to address many of these challenges if it can tackle the restrictive policies, especially related to entry and conduct, the fragmentation of the market, and the underdevelopment of national professional markets.

Transport services



Road Transport:

In liberalizing the road transport sector, five sub-sectors are recognized as follows: passenger transportation, freight transportation, rental of commercial vehicles with operator, maintenance and repair of road transport equipment and supporting services for road transport services. All the EAC Partner States except Tanzania made commitments to liberalize the five sub-sectors. Tanzania made no commitments in the last three sub-sectors.

Road transport is a critical component of doing business in the East African region since almost all of EAC internal and external trade is transported through the two main northern and central corridors. Road transport is also the main means of transport for passengers across the EAC due to inadequate rail networks and prohibitive air transport costs. The efficiency and capacity of the road network directly impacts the region's competitiveness as transport costs are a significant component of production costs and costs of consumer goods.

Several studies have highlighted the inefficiency of the road transport system in the region. Transport prices on the northern corridor are considered to be double those of developed countries, and a third higher than better performing African corridors.²⁰ Some studies²¹ suggest that the high road transport costs are explained by a combination of factors including: poor road conditions and lack

of viable alternatives such as rail; protectionist haulage regulation which restricts backhauls (meaning that many trucks must travel part of their round trip without cargo); congestion and inefficiencies at the ports of Mombasa and Dar es Salaam; delays at the borders due to poor infrastructure, poor trade facilitation, and persistence of non-tariff barriers (NTBs). Other causes are inefficient provision of transport and logistics, complicated and expensive transit bond procedures, limited data on corridor performance, and high cost of freight logistics services. Transit delays on the corridors are said to have the most economically and statistically significant effect on exports. A one-day reduction in inland travel times leads to a 7 percent increase in exports.²² These delays contribute significantly to high costs of freight driving the cost of consumer goods higher and adversely affecting the region's capability to trade in the international market.

While transport conditions have improved significantly over the last few years, the cost of transport is still high compared to the rest of the world. To support the growth of EAC economies, implementation of commitments to liberalize the road transport sector, supported by trade facilitation measures and liberalization of other means of transport is needed.



Air Transport:

The air transport industry is not only a vital engine of global socio-economic growth, but it is also of vital importance as a catalyst for economic development, creating direct and indirect employment, supporting tourism and local businesses, and stimulating foreign investment and international trade. Since 1995, the world GDP grew at 2.8 percent annually while the world passenger air traffic (expressed in revenue passenger-kilometers) increased at an average annual growth rate of 5 percent.²³ Despite Africa's large size, it accounts for less than two per cent of global airline passenger traffic and about one percent of global airlines' cargo. The challenges facing the African aviation industry range from state protectionism and lack of an enabling environment for new investors, to high taxes and charges (above comparative world averages), and a poor safety record due to ageing fleet and insufficient regulatory supervision in some cases. Likewise, a lot of air transport infrastructure across the continent is in need of upgrading.²⁴

²⁰ Supee Teravaninthorn, and Gaël Raballand, (2009), *Transport Prices and Costs in Africa: A Review of the Main International Corridors*, World Bank.

²¹ Nathan Associates, (2009), *Corridor Diagnostic Study of the Northern and Central Corridors of East Africa*.

²² Freund and Rocha, (2010), *What Constrains Africa's Exports*, World Bank.

²³ International Civil Association Organization, www.icao.int.

²⁴ The East African, "What ails African carriers, making air transport expensive on the continent?" (Jan. 25, 2014, <http://www.theeastafrican.co.ke/OpEd/comment/What-ails-African-carriers-making-air-transport-expensive/-/434750/2159958/-/x3brjj/-/index.html>)

Lack of competition, contributes to high fares. While low passenger volumes may create natural monopolies in many countries competition is artificially restricted by making it difficult for foreign airlines to access certain routes in order for governments to support their own national carriers. This protection is despite the Yamoussoukro Declaration (YD) of 1999 in which 44 countries (EAC Partner States included) agreed to liberalize intra-African air transport, including fifth freedom rights that allow non-national airlines to land and take passengers to a third country. Implementing this decision could contribute to reduce fares and increase air traffic across the continent.

The World Bank STRI notes that the air transport industry across all EAC Partner States has major restrictions, as illustrated in Figure 3.

The potential impact of liberalizing the sector was highlighted by a World Bank study, which noted that when the Nairobi-Johannesburg route was fully opened up in 2003, passenger volumes increased 69-fold. Domestic South African passenger volumes increased by 80 percent when the market was liberalized and in the Southern African Development Community (SADC), routes that were liberalized resulted in a fares drop by an average of 18 percent.²⁵ The study estimates that full liberalization in the SADC region would increase passenger volumes by around 20 percent.

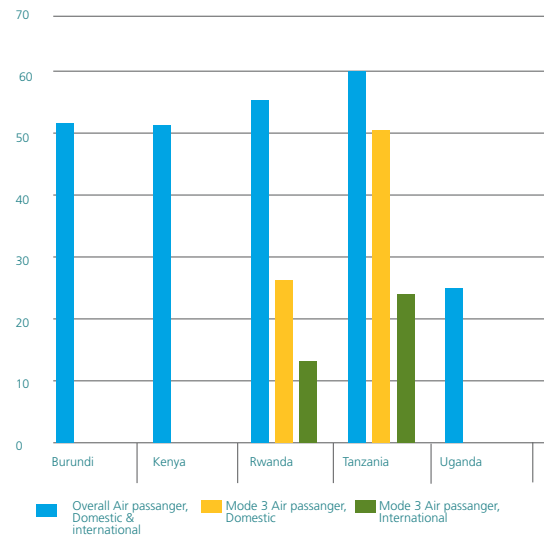
At the regional level, in 2016, the Council of Ministers adopted ten regulations on air transport covering Airworthiness; Aircraft Maintenance Organizations; Air Operator Certificate Administration; Approved Training Organizations; Instruments and Equipment; Operation of Aircraft; Personnel Licensing; Registration of Aircraft; Aviation Security, and Air-routes and Ground Aids. These are expected to be promulgated at the Partner State level.

Under the CMP, Burundi, Rwanda, and Uganda committed to liberalize all the five sub-sectors under air transport: passenger

transportation, freight transportation, rental of aircraft with crew, maintenance and repair of aircraft, and supporting services for air transport. Kenya made no commitments in passenger and freight transport and rental of aircrafts, and Tanzania only made commitments in passenger and freight transport, with mode 3 being subject to Bilateral Air Service Agreements (BASA). If the region is to reap the potential benefits envisaged by the CMP and the YD, full implementation of these commitments must be made.

²⁵ Charles E. Schlumberger, (2010), *Open Skies for Africa: Implementing the Yamoussoukro Decision. Directions in Development; Infrastructure. World Bank.*

Figure 3: STRI in air transport among EAC Partner States



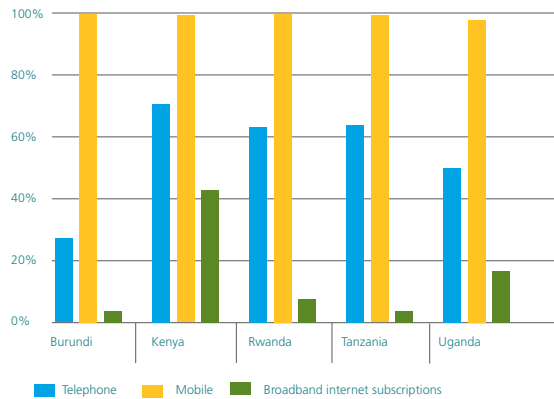
Source: WBG Services Trade Restrictions database



Telecommunications services

Telecommunications has not only undergone a revolution in the past decade, but it has also revolutionized the way the world communicates and the way the global economy functions. From fixed and mobile telephony, to mobile banking, mobile money, airtime top-ups through banks, internet banking, including remittance services, e-education, e-health, e-government, e-commerce, mobile insurance, internet services, global availability of information in real time, to many other aspects of a digital economy, telecommunications services lie at the heart of the information society, both as a direct creator of wealth and as an enabler of wealth creation in related services.

Figure 4: Key market indicators for the telecommunication sector (per 100 people)



Source: World Bank World Development Indicators

Telecommunication services cover the transmission and reception of signals by any electromagnetic means and are classified into the following 14 sub-sectors plus a residual 'other': voice telephone, packet-switched data transmission, circuit-switched data transmission services, telex, telegraph, facsimile, private leased circuit services, electronic mail, voice mail, on-line information and data base retrieval, electronic data interchange (EDI), enhanced/value-added facsimile services, including store and forward, store and retrieve, code and CMP conversion, and on-line information and/or data processing (including transaction processing). In the

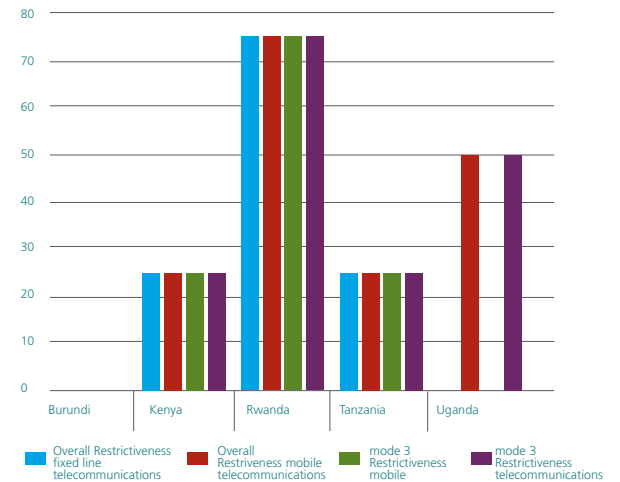
CMP, Rwanda, Uganda, and Tanzania made commitments in all sub-sectors (though Tanzania did not specify the sub-sectors). Kenya made commitments in all sub-sectors with the exception of online information system, but with two additional services – vending of telecommunication service equipment and installation and maintenance of telecommunication equipment, while Burundi made commitments in voice telephone services only.

Improvements in telecommunication services have positive effects on the ability of an economy to grow as a whole. A recent analysis of the telecommunications market in East Africa found that the mobile communications market grew steadily at 11 percent during 2013-2014. The report also indicates that East Africa has a high adoption rate of mobile money, with Kenya accounting for the highest mobile money penetration in Africa,²⁶ with 985 registered mobile money accounts per 1,000 people, according to the IMF,²⁷ presenting opportunities for entire groups that were previously unbanked. All EAC Partner States have almost achieved 100 percent market penetration in terms of mobile phone subscribers, but Internet users (at less than 20 percent except in Kenya) and broadband subscribers (at less than 1 percent) are still very few. Figure 5 presents the key indicators for telecommunication services.

²⁶ Frost & Sullivan, (2014), "The Telecommunications Market in East Africa: Key Fixed and Mobile Market Indicators," <http://www2.frost.com/news/press-releases/telecommunications-providers-east-africa-diversify-services-sustain-revenue-growth-finds-frost-sullivan/>.

²⁷ This is Africa, "Africa's mobile subscriptions grow fastest globally," (March 2, 2016), www.thisisafrioonline.com/Analysis/Africa-s-mobile-subscriptions-grow-fastest-globally.

Figure 5: STRI in the telecommunications sector



Source: WBG Services Trade Restrictions database

Competition can come in to address the challenges in the sector, that include among others, poor connectivity in rural areas, limited funds for fixed infrastructure upgrades and restrictive policies that limit participation especially in investment.

Distribution services

Distribution services provide a vital link between millions of producers of goods and billions of consumers globally. The efficiency of the sector is thus crucial in ensuring that a wide choice of goods reach consumers at competitive prices and in good condition, thereby maximizing the potential gains from liberalization of trade in goods. The sector is highly dynamic and changing rapidly, and has evolved from mere dispensing of goods to include value added services such as door to door delivery and after sales service, different formats such as hyper/supermarkets, convenience stores, traditional small shops and kiosks, forms to include fixed location, electronic commerce, open markets, and different legal structures that include franchises and independent distributors.

Four main sub-sectors are recognized under distribution services: commission agents, wholesale trade services, retailing services, and franchising. Liberalization of the sector varies across the EAC Partner States with Rwanda and Uganda making commitments in all the four sub-sectors, Burundi committing to all but franchising, Kenya not committing in retailing services, and Tanzania not committing in both wholesale trade and retailing services.

Distribution services are an important driver of economic growth in East Africa, with contributions to GDP ranging from about 11 percent in Kenya, Rwanda, and Tanzania to more than 14 percent in Uganda in 2008/9. The sector also employs an important part of the population (over 10 percent of the active population in many East African countries) and includes a high proportion of informal, unskilled, female and part-time workers. Distribution services are among the most rapidly expanding sectors in East Africa. Over the period 2001-08, distribution services have grown on average at 8 percent in Rwanda, 12 percent in Kenya and Tanzania, and 20 percent in Uganda.²⁸

The East African distribution market is largely mixed – despite major transformations during the last decade, with modern retail stores, supermarkets, and franchises increasing across the region. A large portion of the sector is served by medium-sized wholesalers and retailers and a large number of independent, often informal small retail shops and street vendors. The informal distributors are often marginalized from formal distribution channels and they mainly target the lower income bracket in both rural and urban areas, often breaking bulk into ever-smaller sizes that can serve this group. The result is that very poor households end up paying more per unit for basic goods than wealthier households. Despite recent growth, the sector remains underdeveloped across the region. Key barriers include requirements for joint ventures for investments, restrictions on access to land, restrictions on movement of service providers in the sector, and barriers in other sectors that affect distribution such as transport, trade facilitation, and financial services. Growth of the sector must however also balance the needs of consumers, especially those at the bottom of the pyramid, the inclusion of small-scale suppliers into distribution chains, and balance how small and informal retailers' access goods competitively. Regulatory reform is needed to complement liberalization of the sector across the region.²⁹

²⁸ Nora Dihel, (2011), "Beyond the Nakumatt Generation: Distribution Services in East Africa," *Africa Trade Policy Notes*, Note #26.

²⁹ *Ibid.*

CMS 2016 Summary Findings

In scoring the EAC Partner States on their *de jure* compliance to the CMP commitments, the CMS 2016 follows the CMS 2014 methodology, using the number of NCM as the score without assigning different restrictiveness weights to different NCMs. This is due to lack of data on the relative impact of NCMs. It should be noted that the number of NCMs is not an indication of how open or closed an EAC market is as other factors could contribute to the NCM; for example, larger economies tend to have more laws and thus more restrictions (and lack of a law has not been counted as an NCM), and different Partner States have made commitments in different sectors. We believe that this manner of scoring is more direct, simpler, and more transparent.

It is also important to consider that NCMs are assessed when countries enact laws or regulations. However, a lack of laws or regulations could in practice have an effect that is equivalent to a non-conforming measure, creating uncertainty on how the commitments undertaken by a country are actually implemented. However, for the purposes of this Scorecard we have not scored the lack of regulation per se as a negative factor, as the actual impact of the lack of legislation or regulation in particular sector should be analyzed on a case basis.

³⁰ Detailed country tables showing the source of law/regulations and non-conforming measures can be found in the appendix.

1. Number and Distribution of the NCMs³⁰ across the Five Partner States

There has been a small decline in the total number of NCMs in the EAC Partner States' laws since the publication of the Common Market Scorecard 2014, falling from 63 to 59. In terms of scoring, Tanzania has the highest number of NCMs (27 percent of the total number), followed closely by Kenya with a share of 24 percent and Rwanda at 17 percent. Burundi still maintains the lowest number of NCMs at 15 percent but with no reported reforms since the publication of CMS 2014. In the case of Uganda, the CMS 2014 reported a total number of 10 NCMs, although 12 NCMs were

listed in the respective country table of the same document.³¹ Upon review, we have found that 12 was the correct number of NCMs that should have been included in the summary of findings.³² This is the baseline we have considered in the CMS 2016. In our findings, there have been two reforms undertaken in Uganda and two new NCMs arising from the lifting of the 2015 elimination date under legal services, resulting in a total number of 10 NCMs, which are 17 percent of the total share. Table 4 shows the distribution of NCMs across all the Partner States.

Table 4: Distribution of NCMs in the EAC Partner States

Country	Number of NCMs 2014	Number of NCMs 2016	Share of NCMs 2016
Tanzania	17	16	27%
Kenya	16	14	24%
Uganda	10	10	17%
Rwanda	11	10	17%
Burundi	9	9	15%
Total	63	59	100%

Source: CMS 2016 Database

³¹ See CMS 2014, p. 67-71.

³² See CMS 2014, p. 20.

2. Distribution of NCMs across Partner States

Table 5: Distribution of NCMs across sectors and across Partner States

The table below shows the sectoral distribution of NCMs across the five EAC Partner States.

Sector	Professional services				Telecom	Transport	Distribution		Country total	Country share of EAC NCMs
	Legal services	Accounting Auditing and Bookkeeping	Architectural services	Engineering services	Telecommunication services	Road Transport	Wholesale Trade Services	Retailing Services		
Burundi	4	5	0	0	0	0	0	0	9	15%
Kenya	0	0	1	7	1	5	0	n/a	14	24%
Rwanda	0	4	2	2	0	2	n/a	n/a	10	17%
Uganda	4	0	3	1	0	1	1	0	10	17%
Tanzania	n/a	3	n/a	6	0	7	n/a	n/a	16	27%
Sub-sector total	8	12	6	16	1	15	1	0	59	100%
Sub-sector share	19%	29%	14%	38%	100%	100%	100%	-	-	-

Source: CMS 2016 Database

As seen in the Table 5:

Burundi's NCMs are all found in professional services, with four related to legal services and five in accounting services. There were no laws found regulating the engineering and architecture sectors.

- Kenya's NCMs are mostly found in professional services (57 percent of the total NCMs) followed by transport services (36 percent), and telecommunication services (7 percent of the total). No NCM is recorded under distribution services.
- Rwanda's NCMs are also mostly found in professional services, which account for 80 percent of all the total NCMs, followed by transport services (20 percent of the NCMs). No NCMs are recorded under distribution and telecommunication services.
- Tanzania's NCMs are mostly found in professional services (56 percent of all the total NCMs), followed by transport services (44 percent of all NCMs). No NCM is recorded under distribution services since no commitments were made in this area, or under telecommunication services since the restriction was to be removed subject to harmonization of requirements by all the five Partner States.
- Uganda's NCMs are mostly found in professional services (80 percent of all the total NCMs), followed by transport services and road transport (both 10 percent of all NCMs). No NCM is recorded under telecommunication services.

3. Distribution of NCMS across the four sectors

Professional Services

Over three quarters of all NCMS are found in professional services (71 percent of the total number of NCMS).

Engineering:

The largest number of NCMS (38 percent of total NCMS in professional services) affect the engineering sector. This could be due to the fact that all countries made commitments under the engineering sector. All EAC Partner States, except Burundi, have laws regulating the engineering sector. While Kenya, Rwanda, Uganda, and Tanzania all have incidences of engineering NCMS, all but one measure are violations of the national treatment principle, and nearly all of them affect mode 4.

No legal reforms have been reported in this sector since the publication of the CMS 2014. However, in an effort to recognize one another's conformity assessments of their engineering professions, Kenya, Rwanda, Uganda, and Tanzania, through their competent bodies governing the engineering profession, have concluded Mutual Recognition Agreements (MRAs).

MRAs, however, do not give the provisions therein the force of law, so it remains of great importance that Partner States endeavor to do away with the non-conforming measures existing in their laws and regulations as per their CMP obligations. Burundi should also enact laws regulating this sector.

Table 6: Examples of NCMs in engineering services ³³

Partner State	Source law / regulation	Source details	Non-Conforming Measure (NCM)
Burundi	No laws regulating the sector		
Kenya	Engineers Act, 2011(Chapter 43):	Section 18 of the Engineers Act, 2011	Subject to provisions of this Act, a person shall be eligible for registration under this Act as a graduate engineer if that person is a citizen or permanent resident of Kenya
Rwanda	Law No. 26/2012 of 29/06/2012 Governing the Professions of Architecture and Engineering and Establishing the Institute of Architects and the Institute of Engineers in Rwanda	Article 6	For a person to be authorized to practice the engineering profession in Rwanda, he/she must: 1) Be a Rwandan national. A foreigner who applies for the authorization to practice the engineering profession in Rwanda must fulfill the following conditions: 1) Hold a required degree; 2) Be a member of the institute of those who practice such professions in his/her country of origin; 3) Be a national of a country which entered into a bilateral agreement authorizing Rwandan nationals to practice such profession.
Uganda	Engineers Registration Act of Uganda Chapter 271	Section 21 (1)	The board may, if it thinks fit, direct that a person shall upon application be registered temporarily under this section either for a period not exceeding one year or for the duration of any specific work or works if that person satisfies the board— a) That he or she is not ordinarily resident in Uganda; b) That he or she is, or intends to be, present in Uganda in the capacity of a professionally qualified engineer for the express purpose of carrying out specific work or works for which he or she has been engaged; and c) That he or she is, or immediately prior to entering Uganda was, in practice as an engineer in such a capacity as to satisfy the board of his or her fitness to serve the public as a professionally qualified engineer.
Tanzania	Engineers Registration (Amendment) Act, No. 24, 2007	Section 12 (1)(a)	No person or body of persons not citizen of the United Republic shall be registered as a local consultant or consulting firm unless— (a) In the case of a natural person, he is a citizen of the United Republic.

Source: CMS 2016 Database

Accounting, Auditing, and Bookkeeping Services:

29 percent of the total NCMs under professional services are found in the accounting, auditing, and bookkeeping sector.

Burundi, Kenya, Rwanda, and Tanzania all have provisions in their laws governing the accounting profession that do not comply with their commitments under the CMP. More than half of Burundi's identified NCMs affect the provision of accounting services. Rwanda has four NCMs in accounting, Kenya has one, and Tanzania has three. All but one NCM is a violation of national treatment. Modes 1, 3, and 4 are equally affected. Uganda, through the Accountants Act 19, 2013, in Section 5 (2, 3, and 4), provides accountants from all EAC Partner States eligibility of full membership to the Institute of Accountants.

Tanzania, in its National Board of Accountants Membership and Registration By-laws, 1997 (revised in 2012), provides that applicants who are citizens of EAC Partner States shall have the same status as enshrined in Mutual Recognition Agreements signed by members and approved by the governing board/council of the respective country. While this was listed as an NCM in the CMS 2014, we have found that it is indeed not an NCM as accountants, auditors, and bookkeepers from the other EAC Partner States are availed with the same treatment as national ones by virtue of these regulations. However a challenge arises from the fact that the parent law, which is the Accounting and Auditors (Registration Act), Chapter 286, still violates the national treatment principal that should be accorded to accountants, auditors, and bookkeepers from EAC Partner States. Therefore, since a subsidiary law cannot override a parent act, the NCMs listed under Tanzania in this sector shall remain.

Also important to note is that all the five Partner States, through their competent authorities, have entered into an MRA to recognize professional accountancy qualifications with the aim of facilitating the movement of professional accountants within Partner States.

³³ Detailed country tables showing the source of law/regulations and non-conforming measures can be found in further sections.

Table 7: Examples of NCMs in accounting, auditing, and bookkeeping services ³⁴

Partner State	Source law / regulation	Source details	Non-Conforming Measure (NCM)
Burundi	Regulation of Banks and Financial Establishments, Law No 01/017 of October 13, 2003	Article 19	A foreign firm wanting to operate in Burundi may open an establishment under the following conditions: <ul style="list-style-type: none"> a) Enter into a joint venture under Burundian law with one or more certified accountants, natural or legal persons who are members of the institute; b) Reserve at least one third of the shares to national or resident professional accountants; c) Choose the majority of its managers from among members of the Institute.
Kenya	Accountants Act, 2008 (No. 15 of 2008)	Section 26 of the Accountants Act, 2008	A person is qualified to be registered if the person— <ul style="list-style-type: none"> (a) has been awarded by the Examinations Board a certificate designated the Final Accountancy Certificate; or (b) Holds a qualification approved under subsection (2) by the Council. <p>(2) The Council may in consultation with the Examinations Board and with the approval of the Minister, from time to time, by notice in the Gazette, approve qualifications which it considers sufficient to allow a person to be registered, and may, in like manner, withdraw any such approval.</p> <p>(3) Notwithstanding subsection (1) or (2), the Council may require a person making an application for registration to satisfy the Registration Committee, in such manner as it may direct, that the person has—</p> <ul style="list-style-type: none"> (a) Adequate knowledge of local law and practice; (b) Adequate experience in accounting; and (c) Acceptable professional conduct and general character which, in the opinion of the Committee, make such person a fit and proper person to be registered, and unless the person so satisfies the Registration Committee, he shall not be treated as being qualified to be registered.
Rwanda	Law No. 11/2008 of 06/05/2008 establishing the Institute of Certified Public Accountants of Rwanda and determining its Powers, Organization and Functioning	Article 58	For a person to be a Certified Public Accountant, he/she shall fulfill at least one of the following requirements: <ul style="list-style-type: none"> (1) Be a holder of the professional qualification of a certified public accountant issued by the Institute; (2) Be a holder of a professional qualification of a chartered accountant or certified public accountant issued by a body of professional accountants in another country which has full membership of IFAC (International Federation of Accountants).
Tanzania	Accountants and Auditors (Registration) Act, Chapter 286	Article 15 (1)	A foreign accountant or auditor may be temporarily registered as a Certified Public Accountant or Auditor where he or she satisfies the Board- <ul style="list-style-type: none"> (a) That he is not ordinary resident in Mainland Tanzania (b) That he is or intends to be present in Mainland Tanzania in the capacity of a professionally qualified accountant or auditor for the express purpose of carrying out a specific assignment for which he has been engaged.

Source: CMS 2016 Database

Legal services

Legal services contribute 19% of total NCMs in the professional services sector. Both Kenya and Rwanda in their laws, the Advocates Act Cap 16 Revised Edition 2014 [2012] and the Law N°83/2013 of 11/09/2013 establishing the Bar Association respectively, allow for advocates from other EAC Partner States to practice as advocates.

Burundi has 4 NCMs and Uganda 2, which violate their liberalization commitments, with most of these NCMs violating the national treatment principle and affecting in particular Mode 4.

Tanzania did not include legal services in its schedule of commitments. All the five Partner States are yet to conclude an MRA on Legal Services, but negotiations are on-going. Important to note however is the fact that even though Tanzania did not commit to this sub-sector, it still would not be bound by its being party to the MRA on legal services.

Table 8: Examples of NCMs in legal services ³⁵

Partner State	Source law / regulation	Source details	Non-Conforming Measure (NCM)
Burundi	Advocates Act (reform of the Status of Advocates Profession in Burundi, Law No 1/014/of 29/11/2002)	Article 7 (a)	No one can be admitted to practice law as a trainee advocate unless he fulfills the following conditions: a) Is a citizen of Burundi Foreigners may be admitted as advocates in accordance with international Agreements or subject to the reciprocity clause.
Uganda	Advocates Act Chapter 267	Section 8 (5) (a) (b)	The requirements for admission and enrollment of advocates set under section 8 apply to a person who is a Ugandan citizen, or who normally resides in Uganda, and who— (a) Is the holder – (i) of a degree in law granted by a university in Uganda; or (ii) a degree in law or other legal qualification granted by or obtained from such other university or institution outside Uganda as may be recognized by the Law Council by regulations made for the purposes of this section; or b) Prior to his or her application, has been in practice as a legal practitioner (by whatever name called) for an aggregate period of not less than five years in any country designated by the Law Council by regulations for the purposes of this section.

Source: CMS 2016 Database

³⁴ Detailed country tables showing the source of law/regulations and non-conforming measures can be found in further sections.

³⁵ Detailed country tables showing the source of law/regulations and non-conforming measures can be found in further sections.

Architectural services

Architectural services include the least number of NCMs under professional services, 14 percent. While Tanzania excluded architecture from its schedule of commitments and Burundi has no legislation governing this sector, the other Partner States only have a small number of NCMs affecting this sector: one in Kenya, two in

Rwanda, and three in Uganda. Only one of the NCMs violates the MFN principle; the others are violations on national treatment.

Burundi, Kenya, Rwanda, and Tanzania, through their competent authorities, have signed the MRA applying to Architectural Services

and Service Suppliers in accordance with the commitments made by the Partner States in this sector. Important to note however is the fact that since Tanzania did not make any commitments in this sub-sector, it is still not bound by being party to the MRA on architectural services.

Table 9: Examples of NCMs in architectural services ³⁶

Partner State	Source law / regulation	Source details	Non-Conforming Measure (NCM)
Burundi	No laws regulating the class		
Kenya	Architects and Quantity Surveyors Act (Chapter 525)	Section 7 (c)	No person shall be registered as an architect unless he has had a minimum of one year of professional experience in Kenya to the satisfaction of the board, or has satisfied the board that he has otherwise acquired an adequate knowledge of Kenya building contract procedures.
Rwanda	Law No. 26/2012 of 29/06/2012 Governing the Professions of Architecture and Engineering and Establishing the Institute of Architects and the Institute of Engineers in Rwanda	Article 6	A foreign legal entity may be authorized to provide architecture or engineering services in Rwanda as long as reciprocity is admitted by the country in which it is registered, subject to bilateral agreements or regional integration treaties.
Uganda	The Architects Registration Act Chapter 269	Section 11 (1), (4)	Where any person satisfies the board that— (a) He or she is not ordinarily resident in Uganda, (c) He or she is, or immediately prior to entering Uganda was, in practice as an architect in that capacity as to satisfy the board of his or her fitness to serve the public as a professionally qualified architect, the board may authorize the registrar to register that person only for the duration of the period of any specific work for which he or she has been engaged. Provided he or she satisfies the board, he or she may carry out work with a registered architect. (c) Registration of any person under this section shall continue only for the period or for the duration of the specific work or works as is directed by the board under subsection (1), and on its termination that person shall cease to be registered; and in case of any doubt, the decision of the board regarding the termination of the work or works shall be conclusive

³⁶ *Ibid*

Source: CMS 2016 Database

Transport

Road Transport

A quarter of all NCMs identified affect road transport. NCMs found in this sector are varied in nature. They affect different areas of transportation such as registration of companies for freight transport, registration of motor vehicles upon entry into another Partner State, as well as goods conveyance from one state to another.

Tanzania has the highest number of NCMs in this sector with eight NCMs, followed by Kenya with five. In Rwanda and Uganda, only two and one NCM(s), respectively, were identified. No NCMs were found in Burundi's legislation.

Unlike in professional services, where nearly all NCMs were violations of national treatment, we see relatively more NCMs violating the MFN principle under this sector. Two thirds of the NCMs are nonetheless still national treatment violations.

NCMs affecting mode 3 (commercial presence) are also more common in transportation than in professional services. Nonetheless, all NCMs in road transport also violate provision of services through mode 4.

Table 10: Examples of NCMs in road transport ³⁷

Partner State	Source law / regulation	Source details	Non-Conforming Measure (NCM)
Burundi	No NCMs found		
Kenya	Public Roads Toll Act	The Traffic Rules, Section 7A	(1) Any person who brings a foreign vehicle to Kenya by road or by other means shall report the presence of such vehicle to a licensing officer at the nearest point of entry or at any government office where vehicle licenses are normally issued, and shall submit an application in the prescribed form for an authorization permit which shall be accompanied by the foreign vehicle registration book. (2) For the purpose of this rule, the points of entry and exit shall be Lunga Lunga, Taveta, Namanga, Isebania, Busia, Malaba, Mandera, Moyale, Liboi, Keekorok, Oloitokitok, Lwakhakha, Kilindini, Lamu, and Lokichoggio.
Rwanda	Guidelines No 005/TRANS-RURA/2011 of 26/08/2011 on public transport in Rwanda	Article 3 Section 2	Section 3.2: Requirements for a company to transport freight in Rwanda: (2) An evidence that the company is registered "Business registration certificate" (undertone the registration in Rwanda)
Uganda	The Specified Goods (Conveyance) Act Chapter 359; The Specified Goods (Conveyance) Regulations Statutory Instrument 359-1	The Specified Goods (Conveyance) Act Chapter 359; The Specified Goods (Conveyance) Regulations Statutory Instrument 359-1 1.Section 3 2.First Schedule	Measure: The Specified Goods (Conveyance) Act Chapter 359 provides for the control of the means of conveyance of certain goods to and from the Republics of Sudan, the Congo and Rwanda. (1).Section 2(a) (2).Schedule The Specified Goods (Conveyance) Regulations Statutory Instrument 359-1 (1).Section 3 (2).First Schedule Description: (2). Regulations. The Minister may, by statutory instrument, make regulations prescribing— (a) The routes on which any goods specified in the Schedule to this Act may be conveyed in or out of Uganda; Schedule. Restricted goods. Coffee, Tea, Petroleum products and lubricants excluding high-octane aviation spirit (3) Prescription of routes. The routes on or by which any goods specified in the first column of the First Schedule to these Regulations may be imported from or exported to the Democratic Republic of Congo shall be those specified in the second column of that Schedule.
Tanzania	The Foreign Vehicles Transit Charges Act - Cap. 84 of the Revised Edition 2002	Section 3(1)	A transit charge is imposed on the use of foreign vehicles on public roads in Mainland Tanzania, payable by every person in respect of the foreign vehicle he or she drives along a public road. The law defines a "foreign vehicle" as a motor vehicle registered in a country other than Tanzania.

³⁷ Ibid

Source: CMS 2016 Database

Box 3: Case study of the air transport sector

The analysis included a review of NCMs in the air transport sector. However, like in the CMS 2014, for reasons presented below, the results of this analysis were excluded from the overall Scorecard assessment presented thus far.

The EAC CMP is one of the world's few regional agreements that include regional liberalization commitments for air transportation. While this is also the case in the European Union, air transport is notable absent from NAFTA and other regional trade agreements. This is due to the fact that air transport is commonly regulated at a bilateral level. At the WTO level, air transport negotiations began in 2010 but have not yet been concluded.

An analysis of EAC Partner States' legislations revealed a relatively high share of NCMs in this sector. Tanzania and Rwanda had most NCMs in this sector, 12 and 9, respectively. In Rwanda, the source of all NCMs is the Ministerial Regulations No. 02/MOS/TRANS/015 of 08/04/2015 implementing the law no. 75/2013 of 11/09/2013 establishing regulation governing civil aviation.

At the regional level, all Partner States made commitments to liberalize their air transport. In particular, they made commitments in passenger air transport, freight air transport, and rental services of aircraft with operator. In effecting their commitments to liberalize this sub-sector, Partner States, coordinated by the East African Community Safety and Security Oversight Agency (CASSOA), developed the EAC Civil Aviation Regulations, which were approved in May 2016 by the Agency Board. The aim of the regulations is to harmonize Partner States laws in this sub-sector.

Partner States are expected to promulgate the following approved regulations:

1. EAC Civil Aviation (Airworthiness) Regulations, 2016
2. EAC Civil Aviation (Aircraft Maintenance Organizations) Regulations, 2016
3. EAC Civil Aviation (Air Operator Certificate Administration) Regulations, 2016
4. EAC Civil Aviation (Approved Training Organizations) Regulations, 2016,
5. EAC Civil Aviation (Instruments and Equipment) Regulations. 2016
6. EAC Civil Aviation (Operation of Aircraft) Regulations, 2016
7. EAC Civil Aviation (Personnel Licensing) Regulations, 2016
8. EAC Civil Aviation (Registration of Aircraft) Regulations, 2016
9. EAC Civil Aviation (AVSEC) Regulations, 2016
10. EAC Civil Aviation (AGA) Regulations, 2016

NCMs in air transport

Country	Number of NCMs
Burundi	1
Kenya	4
Rwanda	9
Uganda	3
Tanzania	12
TOTAL	29

Examples of NCMs in air transport

Partner State	Source law / regulation	Source details	Non-conforming measure (NCM)
Burundi	Creation of the Autonomous Administrative Entity called « AIR BURUND », Law No 1/99 of 17 April 1975	Article 3	The Government of Burundi grants Air Burundi the exclusivity to operate scheduled or non- scheduled air transport within the territory of Burundi.
Kenya	Civil Aviation Act, 2013, Section 4 (1)(a) Civil Aviation (Aircraft Nationality and Registration Marks) Regulations, 2013	Section 4 (1) (a) Civil Aviation (Aircraft Nationality and Registration Marks) Regulations, 2013	Eligibility for registration: 4 (1) An aircraft is eligible for registration if it is- (a) The Government of Kenya (b) Citizens of Kenya or persons bona fide resident in Kenya
Rwanda	Civil Aviation (Air Operator Certification And Administration) Regulations, 2015, Annex IX to the Ministerial Regulations No 02/Mos/Trans/015 Of 08/04/2015 Implementing The Law No 75/2013 of 11/09/2013 Establishing Regulation Governing Civil Aviation	Article 5 (1)(a)	Article 5 (1): The Authority may issue an air operator certificate to an applicant if that applicant: (a) Has its principal place of business in and is registered in Rwanda; Article 11 (1): An air operator certificate holder shall maintain a principal base of operations in Rwanda.
Uganda	The Airport Service Charges Act Chapter 353	Section 2(1)	Imposition of service charge. (1) Subject to this section, the amount of airport charges payable by a passenger departing by aircraft from any airport in Uganda in respect of each flight to a destination outside Uganda shall, in respect of— (a) a non-Ugandan passport holder, be twenty United States dollars.
Tanzania	The Tanzania Civil Aviation (Economic Regulation) Regulations, 2006	Regulation 4 (1)	An undertaking shall be eligible for designation on regional or international operations if it meets the requirements of regulation 3, applicable air services licensing regulations and the following criteria - (a) Is substantially owned and effectively controlled by the United Republic or nationals of the United Republic, or has its principal place of business in the United Republic and the Authority maintains effective regulatory control over it.

Source: EAC Partner States

Telecommunications

Telecommunications are one of the most liberal services analyzed in this exercise, with only 2 percent of the total number of NCMs. None of the five Partner States have any NCMs in this sector. However, the absence of the NCMs in their laws does not mean that this sector been in practice been liberalized. The common scenario is that while the Partner States' laws and regulations do not indicate any NCMs *de facto*, telecommunication service providers from the other EAC partner states are treated like foreigners.

For example, the Kenya Communications and Information Act Cap 411A in its Section 25 (1) provides that: "The Commission may, upon application in the prescribed manner and subject to such conditions as it may deem necessary, grant licenses under this section authorizing all persons, whether of a specified class or any particular person to—

- Operate telecommunication systems; or
- Provide telecommunication services, of such description as may be specified in the license."

The Commission thus, in its powers as granted by the Act, sets the following terms and conditions for granting licenses:

"Generally, all applicants for commercial licenses should meet the following minimum conditions:

- i. The entity should be registered in Kenya as a company, sole proprietor or partnership;
- ii. Have a duly registered office and permanent premises in Kenya;
- iii. Provide details of shareholders and directors;
- iv. Issue at least 20% of its shares to Kenyans on or before the end of three years after receiving a license."

In the case of Rwanda, Law No. 44/2001 of 30/11/2001 governing telecommunications allows refusal of a license if the regulatory body reasonably believes that competition in the telecommunications sector can be adversely affected (Article 8); and also restricts companies

supplying telecommunication networks and/or services to hold any shares in any other company which is supplying telecommunications networks and/or services either directly or indirectly through any nominee organization or subsidiary or other associated company which is part of the same group of companies as the first company (article 53), thereby limiting businesses from taking advantage of opportunities. These restrictions affect both Rwandan and other EAC companies equally and can therefore not be deemed as NCMs.

In the case of Tanzania, the elimination date for telecommunication services was set for 2015, subject to harmonized local shareholding requirement among EAC Partner States. To this date, Partner States have not harmonized their shareholding requirement and as such Tanzania's laws cannot be considered for this data analysis.

Table 11: Examples of telecommunication NCMs

Partner State	Source law / regulation	Source details	Non-Conforming Measure (NCM)
Burundi	No NCMs found		
Kenya	Kenya Communications and Information Act Cap 411A	Section 25. (1)	<p>The Commission may, upon application in the prescribed manner and subject to such conditions as it may deem necessary, grant licenses under this section authorizing all persons, whether of a specified class or any particular person to—</p> <p>(a). Operate telecommunication systems; or</p> <p>(b). Provide telecommunication services, of such description as may be specified in the license. The Commission thus in its powers as granted by the Act sets the following terms and conditions for granting licenses:</p> <p>“Generally, all applicants for commercial licenses should meet the following minimum conditions:</p> <ul style="list-style-type: none"> • The entity should be registered in Kenya as a company, sole proprietor or partnership; • Have a duly registered office and permanent premises in Kenya; • Provide details of shareholders and directors. • Issue at least 20% of its shares to Kenyans on or before the end of three years after receiving a license.”
Rwanda	N/A unbound		
Uganda	No NCMs found		
Tanzania	N/A Elimination set for 2015 subject to harmonized local shareholding requirement among EAC Partner States		

Source: CMS 2016 Database

Distribution services

Distribution services contribute only 2 percent of the total number of NCMs. However, not all Partner States scheduled commitments in the wholesale and retail sectors - Tanzania did not include either of these sectors in its schedule and Kenya excluded retail.

The legal compliance review indicate that none of the other three Partner States that scheduled retail trade – Burundi, Rwanda, and Uganda – violated their commitments. As a result, retail trade is the only measured sector where the legislation of all Partner States is fully compliant with their regional obligations.

In wholesale distribution, the CMS 2014 found that only Uganda's laws had NCMs. However, with the coming into force of the Trade Licensing (Amendment) Act, 2015 the restriction on trading by non-citizens in certain areas and goods is stated under section 3 as not applying to a person who is a citizen of a partner state of the East African Community. However, Uganda's Specified Goods (Conveyance) Act Cap 359 still has an NCM by virtue of limiting the means of conveyance of certain goods to and from Rwanda.

Table 12: Examples of NCMs in retail and wholesale distribution

Partner State	Sub-Sector	Source law / regulation	Source details	Non-Conforming Measure (NCM)
Burundi	Wholesale	No NCMs found		
Burundi	Retail	No NCMs found		
Kenya	Wholesale	No NCMs found		
Kenya	Retail	Sector/class not committed		
Rwanda	Wholesale	No NCMs found		
Rwanda	Retail	No NCMs found		
Uganda	Retail	No NCMs found		
Uganda	Wholesale	The Specified Goods (Conveyance) Act Chapter 359	Schedule and Section 6, 7, 8(3) and (4) and 9	This law is an act to provide for the control of the means of conveyance of certain goods to and from the Republics of Sudan, the Congo, and Rwanda.
Tanzania	Wholesale	Sector/class not committed		
Tanzania	Retail	Sector/class not committed		

Source: CMS 2016 Database

4. Legal source of non-conformance

The identified NCMs were found in the laws (enacted by the parliament), administrative measures (enacted by the executive branch, including presidential decrees and ministerial orders), and regulations (internal by-laws enacted by institutions). Across the five Partner States, 68 percent of the NCMs were identified in laws, fifteen percent of NCMs were found in regulations, while administrative measures accounted for 17 percent of the identified NCMs.

All of Kenya's identified NCMs were found in their laws. In Uganda, none of the NCMs were found in administrative measures. In Rwanda, NCMs were found in both laws and regulations, while in Burundi regulations did not account for any NCMs.

Table 13: Legal sources of non-compliance

	No. of Laws	Share of laws	No. of Regulations	Share of Regulations	No. of Administrative Measures	Share of Administrative Measures
Burundi	4	44%	0	0%	5	56%
Kenya	16	100%	0	0%	0	0%
Rwanda	6	60%	2	20%	2	20%
Uganda	7	64%	4	36%	0	0%
Tanzania	8	50%	4	31%	3	19%
EAC Total	41	n/a	10	n/a	10	n/a

Source: CMS 2016 Database

5. National treatment and MFN violations

Most identified NCMs (79 percent) are violations of the national treatment (NT) principle. Little more than a fifth (21 percent) are violations of the MFN principle. These results are rather consistent across all Partner States. The only exception is Burundi, where all identified NCMs violate the national treatment principle, and Kenya where 93 violate the national treatment principle. Market access violations were not analyzed as this principle is not explicitly defined in the CMP.

Table 14: Types of violations

	No. of NT	Share of NT	No. of MFN	Share of MFN
Burundi	9	100%	0	0%
Kenya	13	93%	1	7%
Rwanda	6	55%	5	45%
Uganda	7	70%	3	30%
Tanzania	12	75%	4	25%
EAC Total	48	79%	13	21%

Source: CMS 2016 Database

6. Mode of supply affected

Nearly all NCMs violate multiple modes of service supply. Most NCMs violate the free movement of service providers under mode 4, which is affected by 97 percent of the identified NCMs. Mode 3 is affected by more than two thirds (76 percent) of all identified NCMs, and mode 1 by more than a half (68 percent) of the total identified NCMs. Mode 2 is not affected by any of the identified NCMs.

However, the analysis of the NCMs for each Partner State shows more diverse trends. In Rwanda and Tanzania, all three concerned modes of supply are affected by nearly the same number of NCMs. This is however not the case in Uganda, for example, where mode 4 is affected by 12 NCMs, and mode 3 by a mere two NCMs. The contrast is even starker in Burundi where only one NCM affects mode 1, while seven NCMs affect mode 4.

7. Horizontally applicable non-conforming measures (NCMs)

The analysis presented thus far is based on a review of sectoral legislation. However, NCMs are also found in legislation that cuts across all sectors. A review of the Partner States' principal investment, immigration, tax, company and procurement legislation identified a total of 44 NCMs.

Most of the identified NCMs are found in immigration laws, which is consistent with the aforementioned results on the prevalence of measures affecting the movement of individual services suppliers (mode 4). A relatively large number of horizontally applicable NCMs are also found in tax and investment legislation. Company and procurement laws each account for the least number of the identified NCMs.

Table 15: Modes of supply affected by NCMs

Partner State	No. of NCMs across Modes of Supply			
	Cross-border supply	Consumption abroad	Commercial presence	Temporary movement of a service provider
Burundi	1	0	5	7
Kenya	7	0	14	13
Rwanda	10	0	8	9
Uganda	7	0	3	12
Tanzania	15	0	15	16
EAC Total	40	0	45	57
Share of NCMs affecting each mode	68%	0%	76%	97%

Source: CMS 2016 Database

Table 16: Horizontally applicable NCMs in the EAC

	Total number of NCMs	Source of NCM				
		Immigration law	Investment law	Tax law	Company law	Procurement Law
Burundi	5	5	0	0	0	0
Kenya	6	1	1	2	1	3
Rwanda	0	0	0	0	0	0
Uganda	16	5	3	3	3	2
Tanzania	17	6	3	8	0	0
Total	46	17	7	13	4	5

Source: CMS 2016 Database

In comparison to the CMS 2014, an analysis of the horizontally applicable legislation in the Partner States reveals that most of the Partner States have hardly reformed their laws to do away with the reported NCMs in 2014 and have in fact enacted new laws that contain NCMs, contravening their CMP obligations. The only positive

reform in this area is Rwanda, which passed a new law relating to investment promotion and facilitation. The Law N° 06/2015 of 28/03/2015 has done away with the NCM listed in the CMS 2014 on Investment and provides that

a foreign investor is a natural person who is not a citizen of Rwanda or of a member State of the East African Community (EAC) or the Common Market for Eastern and Southern Africa (COMESA) OR a business company or a partnership not a registered in Rwanda, a member state of the East African Community (EAC) or Common Market for Eastern and Southern Africa (COMESA).

Table 17: Examples of NCMs in horizontal legislation

Partner State	Source law / regulation	Type of law / regulation	Source details	Non-conforming measure (NCM)
Burundi	Regulation of employment of foreigners in Burundi, Ministerial order No. 660/086/92 of 17/2/1992	Immigration	Article 65	Beneficiaries (of national preference) When entering into a contract, and in order to promote national companies, it will be given a preference to the tender of a national contractor provided that it conforms to the the DAO (ToRs for the tender).
Kenya	Investment Promotion Act, 2004	Investment	Section 4	An applicant shall be entitled to an investment certificate if— (b) the amount to be invested by a foreign investor is at least one hundred thousand United States of America dollars or the equivalent in any currency

Source: CMS 2016 Database

Table 17: Examples of NCMs in horizontal legislation

Partner State	Source law / regulation	Type of law / regulation	Source details	Non-conforming measure (NCM)
Kenya	Public Procurement and Asset Disposal Act 2015	Procurement	PART XII—Preferences and Reservation in Procurement	<p>PART XII— Preferences and Reservation in Procurement Part.</p> <p>(2) Subject to availability and realisation of the applicable international or local standards, only such manufactured articles, materials or supplies wholly mined and produced in Kenya shall be subject to preferential procurement.</p> <p>(3) Despite the provisions of subsection (1), preference shall be given to—</p> <p>(a) manufactured articles, materials and supplies partially mined or produced in Kenya or where applicable have been assembled in Kenya; or</p> <p>(b) firms where Kenyans are shareholders.</p> <p>(4) The threshold for the provision under subsection</p> <p>(3) (b) shall be above fifty-one percent of Kenyan shareholders.</p> <p>(8) In applying the preferences and reservations under this section—</p> <p>(a) exclusive preference shall be given to citizens of Kenya where—</p> <p>(i) the funding is 100% from the national government or county government or a Kenyan body; and</p> <p>(ii) the amounts are below the prescribed threshold;</p> <p>(iii) the prescribed threshold for exclusive preference shall be above five hundred million shillings;</p> <p>(b) a prescribed margin of preference shall be given—</p> <p>(i) in the evaluation of tenders to candidates offering goods manufactured, assembled, mined, extracted or grown in Kenya; or</p> <p>(ii) works, goods and services where a preference may be applied depending on the percentage of shareholding of the locals on a graduating scale as prescribed.</p>
Kenya	Income Tax Act	Tax	Third Schedule (Sections 29, 30, 31, 32, 33, 34 and 35), Head B—Rates of Tax	<p>1. The corporation rate of tax shall be—</p> <p>(a) In the case of a resident company—</p> <p>(b) In the case of a non-resident company having a permanent establishment in Kenya— ... higher tax rates</p>

Source: CMS 2016 Database

Table 17: Examples of NCMs in horizontal legislation

Partner State	Source law / regulation	Type of law / regulation	Source details	Non-conforming measure (NCM)
Kenya	Companies Act, 2015,	Company	S. 975 (2) (b)	Division 2—Procedure for registration of foreign companies (2) The Registrar shall approve the application for registration and register the company by entering its name and other particulars in the Foreign Companies Register if the application- (b) demonstrates that at least thirtypercent of the company’s shareholding is held by Kenyan citizens by birth;
Tanzania	Immigration Act	Immigration	Chapter 54, Section 18	(1) There shall be three classes of residence permits to be known respectively as Class A permits, Class B permits, and Class C permits. (2) A residence permit may be issued for any period not exceeding three years and may be renewed for any period not exceeding two years by an endorsement of renewal effected on it by the Director, but the total period of the validity of the original permit and of its renewals shall not in any case exceed five years. (2) The businesses specified for the purpose of this section which may enjoy the benefits and protection provided under this Act, are those which—
Tanzania	Tanzania Investment Act	Investment	Chapter 38, Section 2	a. If wholly owned by a foreign investor or if a joint venture, the minimum investment capital is not less than Tanzanian shillings equivalent to three hundred thousand US dollars (US \$300,000); b. If locally owned, the minimum investment capital is less than Tanzanian shillings equivalent to one hundred thousand US dollars (US \$100,000).
Tanzania	The Income Tax Act, no. 11 of 2004	Tax	Section 67	A person’s foreign source of income or loss from an employment, business or investment shall be calculated as - (a) the person’s worldwide income or loss from that employment, business, or investment (calculated notwithstanding subsection (1)); less (b) any income with a source in the United Republic from that employment, business, or investment; or plus (c) any loss with a source in the United Republic from that employment, business, or investment.
Uganda	The Companies Act 2012	Company	Section 256	Accounts of a foreign company. (2) A foreign company shall not be obliged to comply with subsection (1) if— (a) it was incorporated in any part of the Commonwealth

Table 17: Examples of NCMs in horizontal legislation

Partner State	Source law / regulation	Type of law / regulation	Source details	Non-conforming measure (NCM)
Uganda	The Uganda Citizenship and Immigration Act	Immigration	Chapter 58	<p>Entry into Uganda.</p> <p>(1) Subject to this Act, no person shall enter or remain in Uganda unless that person is in possession of a valid entry permit, certificate of permanent residence, or pass, issued under this Act.</p> <p>(2) This section shall not apply to such person or class of persons as the Minister, may by statutory order, declare.</p> <p>(3) A person who is not a citizen of Uganda shall not be issued with an entry permit, certificate of permanent residence, or pass referred to in subsection (1) unless that person is in possession of a passport, certificate of identity, convention travel document, or any other valid travel document.</p>
Uganda	The Public Procurement and Disposal of Assets Regulations 70 of 2003	Procurement	Regulation 28	28. (1) The procurement of works, services, or supplies may be subject to a preference scheme consistent with the government's economic and social policies, or with international obligations.
Uganda	Income Tax 340	Tax	Section 12	A partnership is a resident partnership for a year of income if, at any time during that year, a partner in the partnership was a resident person

Source: CMS 2016 Database

8. Reforms undertaken since the publication of the CMS 2014

Kenya, Rwanda, and Uganda have undertaken reforms in the professional services area. These are as follows:

- Kenya, through the Advocates Act Cap 16 Revised Edition 2014 (2012), allows advocates from other EAC Partner States to practice as advocates in Kenya.
- Rwanda, through the Law N°83/2013 of 11/09/2013 establishing the Bar Association, allows the advocates from other EAC Partner States to practice as advocates in Rwanda.
- Uganda, through the Accountants Act 19 of 2013 in Section 5 (2, 3, 4), recognizes accounting professionals from the other EAC Partner States by allowing them to be registered as full members in the Uganda Institute of Accountants.
- Uganda, through the Trade Licensing (Amendment) Act 2015, has removed the restriction on trading by non-citizens in certain areas and goods.
- Through Law N° 06/2015 of 28/03/2015, Rwanda has done away with the NCM listed in the CMS 2014 on investment and provides that a foreign investor is a natural person who is not a citizen of Rwanda, a member State of the East African Community (EAC), the Common Market for Eastern and Southern Africa (COMESA), or a business company or partnership not registered in Rwanda, or a member state of the East African Community (EAC), or Common Market for Eastern and Southern Africa (COMESA). In telecommunications, three of the EAC Partner States (Kenya, Rwanda, and Uganda) have, since January 2015, taken forward the Summit Directive on Projects to operationalize the One Network Area (ONA) for voice in the region. The ONA requires that member countries exempt

regional calls from surcharges applied by Partner States on international incoming calls and remove any additional charges to subscribers on account of roaming within the region. As such, all calls in the three Partner States incur the same charges, which has resulted in an over 50 percent reduction in call costs within the region.

9. Progress in undertaking reforms

Following from the 2014 Scorecard, there is evidence that all EAC Partner States have embarked on the process of reforming and harmonizing national laws and other administrative procedures to comply with the CMP obligations. Some Partner States have draft bills in place that are expected to be presented to parliament. For example:

- Burundi has identified 27 laws that require harmonization, which cover all the NMCs affecting the sectors under focus.
- Uganda identified the first batch of laws to be amended in 2014, which included laws for engineering services and distribution services, specifically on the Trade Licenses Act and the Investment Code Act. A draft bill was prepared by the Uganda Law Commission and has now been submitted to the Cabinet for approval. A second batch of laws has also been identified, which cover a number of other NMCs. A draft bill has been prepared and it is undergoing stakeholder consultation.

10. There have been efforts to enhance movement of service providers through the signing of MRAs

At the regional level, the East African Community Common Market (Mutual Recognition of Academic and Professional Qualifications) Regulations, 2011, were adopted by the 22nd meeting of the Council of Ministers, and a Legally Binding Framework for MRAs that will enable them to be deposited with the EAC Secretariat and formally adopted as instruments of the community is currently under discussion.

In addition, MRAs have been concluded for the following professions: engineering services; architectural services; and accounting, auditing, and bookkeeping Services. A draft MRA for the legal sector exists. The table below shows the parties to the MRA.

Table 18: MRAs signed in the EAC

Service sector	Parties to the MRA	Key provisions of the MRA
Engineering Services	Kenya, Rwanda, Uganda, & Tanzania	<p>The MRA was signed by the registrars from the Engineers Registration Boards of Kenya, Tanzania, and Uganda on 7th December 2012, and Rwanda, through the Rwanda Engineering Council, became a party to the MRA on 1st March 2016. The purpose of the MRA is to establish the conditions under which an engineer in a Partner State may have his or her qualifications recognized and be eligible to practice in a Partner States that is a party to the MRA.</p> <p>The MRA was signed after the competent authorities carried out conformity assessments of their engineering professions and were satisfied they meet satisfactory levels of equivalence in Kenya, Uganda, and Tanzania. The MRA notes the desire of the signatories to enhance cooperation in professional engineering services in order to improve efficiency and effectiveness, diversify production capacity, supply, and distribution of services and service providers within the Partner States.</p> <p>The MRA provides for a coordination committee known as the East African Community Engineers Competent Authorities Coordination Committee whose functions include overseeing the implementation and administration of the MRA.</p> <p>None of the four partner states have amended their laws to align it to the provisions of the MRA.</p>
Accounting, Auditing, and Bookkeeping Services	Kenya, Rwanda, Uganda, & Tanzania	<p>The five professional Accountancy Institutes/ Boards of the five EAC Partner States signed the MRA on 14th September 2011 to recognize professional accountancy qualifications that will facilitate movement of professional accountants within the EAC Partner States.</p> <p>For purposes of monitoring the enforcement of the MRA, it is provided therein that a Joint Governance Committee be established to monitor the performance of all parties bound by the Agreement and facilitate the implementation of the Agreement.</p> <p>To date, only Uganda has amended its laws to recognize accounting professionals from the other EAC Partner States.</p>
Architectural Services	Burundi, Kenya, Rwanda, Uganda	<p>The MRA on architectural services was signed in July 2011. Only four Partner States, Burundi, Kenya, Rwanda, and Uganda, through their Architects Professional Bodies, are parties to this MRA. The MRA establishes the conditions under which an architect from any Partner State party to the MRA may have their qualifications recognized and may be eligible to practice in a country that is party to the MRA.</p> <p>This MRA lists the scope of architectural practices to include architects, architectural technologists, technicians, and architectural assistants.</p> <p>Important to note, however, is that although Burundi, through the Architects Association of Burundi (AAB), is a party to the MRA, Burundi nether has a professional regulatory authority for the practice of architecture, nor a law governing the profession. The AAB is a not-for profit association without the powers to regulate the architects' profession, with only a mandate to carry out advocacy, mobilization, and lobbying for architects. This presents a challenge for architects from Burundi when it comes to them practicing in other Partner States despite them being party to this MRA. Failure to have a professional regulatory authority means that they are not able to register or get certification for their architectural profession in Burundi. Reciprocal arrangements in this case can only be effected on the basis of recognition of and existence of approved certification and registration criteria in the home state.</p> <p>Unlike the MRA on Accounting, Auditing, and Bookkeeping Services, the MRA on Architectural Services does not provide for a joint mechanism to monitor the performances of all parties bound by the MRA and facilitate the implementation of the Agreement.</p> <p>None of the four Partner States have amended their laws to recognize architectural professionals from the other EAC Partner States.</p>

Source: Professional Association in respective Partner States

11. Progress in resolving the discrepancies in the CMP

The EAC Partner States have agreed to amend the EAC CMP to address the discrepancies in the services schedule, including the delinking the schedule of services from the schedule of workers in respect to movement of service providers (mode 4).

As of the end of May 2016, Kenya and Rwanda had submitted their draft revised schedules of commitments to the EAC Secretariat. They had rectified errors and legal discrepancies, made horizontal commitments, as well as commitments on mode 4. The other Partner States are expected to submit their revised schedules by end of August 2016. SCTIFI has directed the EAC Secretariat to initiate the process of undertaking sector regulatory audits in the services sectors in the Partner States. The audit will, among others, take an inventory of the laws and regulations pertaining to the particular sector and also those affecting that sector, be they related to investment or immigration to name a few. The main aim of an audit is assess the policy and regulatory environment for a specific service sector's development and to understand the impact of the laws and regulations affecting that sector.

Key Recommendations

For the EAC to achieve the accelerated economic growth and development envisaged in the CMP, an efficient services sector is key, given its centrality to the proper functioning of every other sector. Based on inputs received from the EAC Secretariat, national public, and private sector representatives during the 2016 Scorecard consultative meetings, the following recommendations are critical to furthering the trade in services agenda:

1. The amendment of the relevant provisions on trade in services under the CMP (including correcting the errors and inconsistencies; delinking mode 4 from the schedule of workers; including all the necessary definitions) and the review of the schedules of commitment on services should be finalized as a matter of urgency. . This will not only deepen integration of services in the EAC, but it will also greatly boost and attract investment within and into the EAC region.
2. Experience from Partner States shows that the process of reforming and harmonizing national laws and other administrative procedures to comply with the CMP is a long and laborious one, cutting across various sectors and stakeholders. Often, Partner States lack the financial means and dedicated personnel to carry out the process in its entirety, from the identification of the non-confirming laws, the drafting of the amendments, consultation with key stakeholders and to moving the draft bills through the respective national legislative processes. Development partners, the World Bank included, should work with Partner States to support the entire process. A roadmap for harmonizing all the remaining laws, including those not covered by the scorecard, should be developed to ensure that the process is approached in a structured manner.
3. Given the critical role of service sector regulators, many of who were not involved at all during the CMP negotiations, there is need to build their capacity to regulate the various sectors, to ensure that the service markets work efficiently, without the regulations being unnecessary burdensome and distorting. The sector regulatory audits to be undertaken by the EAC Secretariat present an opportunity to start engaging and building the capacity of the regulators across the region.
4. The lack of a clear policies / regulatory frameworks is a key challenge, especially when it comes to addressing the barriers affecting a number of sectors, such as telecommunication, wholesale, retail and professional services. In many cases, the restrictions are only found in practice and are not captured in any law. To ensure predictability of the operating environment, it is necessary that Partner States enact and / or clarify and make readily available all laws and regulation that govern a given sector.

5. There is need to adopt a sectoral approach to service liberalization, through formation of sectoral multi-stakeholder fora at both national and regional level. These fora should bring together private sector, sector regulators and other policy makers relevant to the sector to ensure coherence and coordination of the reform process. The fora will also be fundamental to address the problem of institutional memory that currently besets the trade in services agenda. The fora can also act as a public private dialogue (PPD) platform between the public and private sector. It could also serve as body to track NCMs in trade in services, reporting persistent and new measures, and also problems of *de facto* implementation in the absence of legal NCMs (see examples in the Telecommunications sector , following the model of the EAC Time Bound Program on Elimination of Non-Tariff Barriers (NTBs) or the e-tracking tool that Rwanda Law Reform Commission has developed.
6. Update data on trade in services. Not only in the EAC, but globally, trade in services has been neglected in both academic work and policy discourse. Part of the challenge is the invisibility of services and the fact that services is not one sector, but twelve different sectors each with numerous sub-sectors and different modes of supply. Within the EAC, there is clear paucity of data on the value contribution of services to the economies of the EAC Partner States, the ways the services are produced and consumed and the various functions of services in production, trade and consumption. This lack of information often leads to fear about the impact of opening up the sector.
7. Once data is updated, a mechanism to enhance information exchange on trade in services across the EAC is needed. This can be in the form of a Trade in Services Knowledge Platform, to be anchored within the Directorate of Trade in the EAC Secretariat, with access to all Partner States and interested stakeholders like the business community.
8. To facilitate movement of professional services under mode 4, it is recommended that:
 - MRAs be negotiated in all professional services, by all Partner States. Where there is lack of consensus, the principle of variable geometry should apply.
 - EAC Secretariat, through professional associations and regulatory bodies, should initiate negotiations of MRAs. Initiation may also be done by any Partner State. Once signed, MRA should be incorporated into national laws where the EAC Partner States has made commitments in the CMP.
 - Partner States that have not acceded to the various MRAs that have been negotiated should be facilitated to do so. AS a first step, the EAC Secretariat should provide Partner States with an update on the status of the MRAs. In addition, the Secretariat should assess the challenges of implementing the various MRAs that have been signed, with a view to learning lessons that can enhance implementation.
- EAC Partner States should expedite the conclusion and implementation of Annex VI currently being negotiated, which will provide a legal binding framework for MRAs at the regional level and the framework for recognition of foreign qualifications in the EAC should be concluded
- EAC regulations on the movement of general service providers that do not fall under professional services, should be fast-tracked and the negotiations should involve the private sector.
9. Build the capacity of consumer protection bodies – these have a role to play in making sure that service markets work properly so that competition between businesses results in lower prices and more product choice, from which consumers benefit. Consumer lobby bodies also have a role to play in influencing the pace of reforms, especially in liberalization of sectors that affect them. Likewise, they can be a tool for governments when there is reluctance to make reforms that may have negative effects in the short term - an informed and educated public will better understand and support government reforms.
10. There is evidence that Partner States are enacting laws without due regard to their CMP obligations as was seen in the case of Kenya's Companies' Act and Procurement Act. It is recommended that all laws being considered for enactment in any of the EAC Partner States be scrutinized and given approval by the Ministry responsible for EAC Affairs as a minimum requirement; and if possible, a mechanism to notify other EAC Partner States be established.

11. A number of the CPC codes in the W/120 are outdated especially due to technological advancements. The on-going review of commitments by Partner States and corrections of errors and inconsistencies should use new CPC codes where applicable.
12. Regarding the IIAs that EAC Partner States have signed, it is necessary to examine if any of their provisions contravene MFN and NT provisions where the EAC CMP is concerned. The EAC Partner States may consider introducing a comprehensive investment chapter as an Annex to the CMP, or a separate Protocol on Investment as a means of fulfilling their undertaking to take measures to secure the protection of cross border investments within the Community.
13. At the international level, discussions for a Trade in Services Agreement (TISA) have been underway since 2012. Given the stated objective to achieve an ambitious outcome that would attract broad participation and that could be multilateralized in the future,³⁸ EAC Partner States may consider participating in the negotiations and coordinating an EAC positions that will serve the interests and developmental objectives of the Community.

³⁸ https://www.wto.org/english/thewto_e/minist_e/mc9_e/brief_serv_e.htm

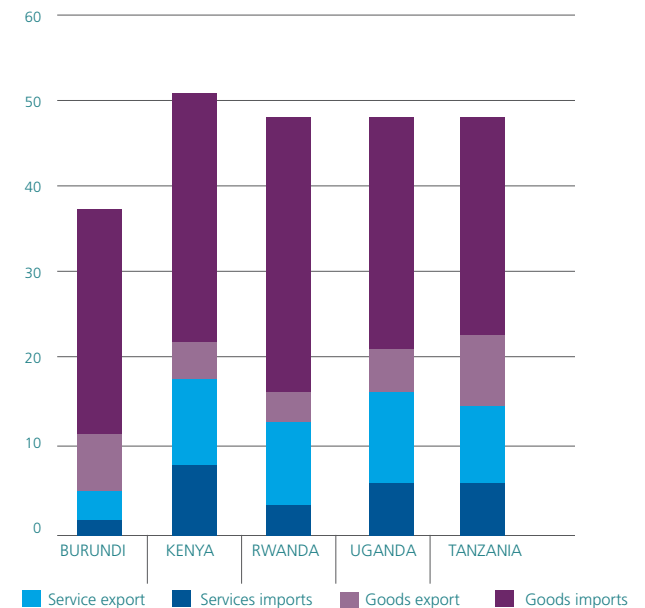


GOODS

EAC Partner States sell about 20 percent of their exports in the EAC market. The CMS 2016 analysis suggests that great potential exists for expanded intra-regional trade. Building on the CMS 2014, this report assesses Partner States' fulfillment of their commitments to eliminate tariffs and non-tariff barriers and harmonize or mutually recognize each other's SPS measures and standards with a view to reducing barriers to intra-regional trade. By and large, Partner States have eliminated intra-EAC tariffs and adopted EAC rules of origin. However, both recurrent and new NTBs act as barriers to intra-regional trade. The CMS 2016 assessment found that the number of NTBs reported has grown by 53 percent since the 2014 analysis. On the positive side, it found that countries are becoming more efficient at resolving obstacles to intra-EAC trade; nearly half of the measures identified between July 2013 and December 2015 were resolved during this period. The authors note the progress made through the public-private sector National Monitoring Committees (NMCs) and the relevant directives of the Sectoral Council of Trade, Industry, Finance and Investment. A number of recommendations for improving the elimination of barriers to EAC trade have been proposed.

Trade accounts for about half of EAC Partner States GDP. This demonstrates the significance of trade in the economies of the EAC Partner States and underscores the importance of their sustained effort to consolidate their regional market through the Customs Union. Figure 1 illustrates this: total trade of goods and services comprises about half of GDP, with goods trade making up between 29 and 40 percent of GDP. For EAC Partner States, goods trade far outweighs services trade, and all countries are more dependent on imports than exports.

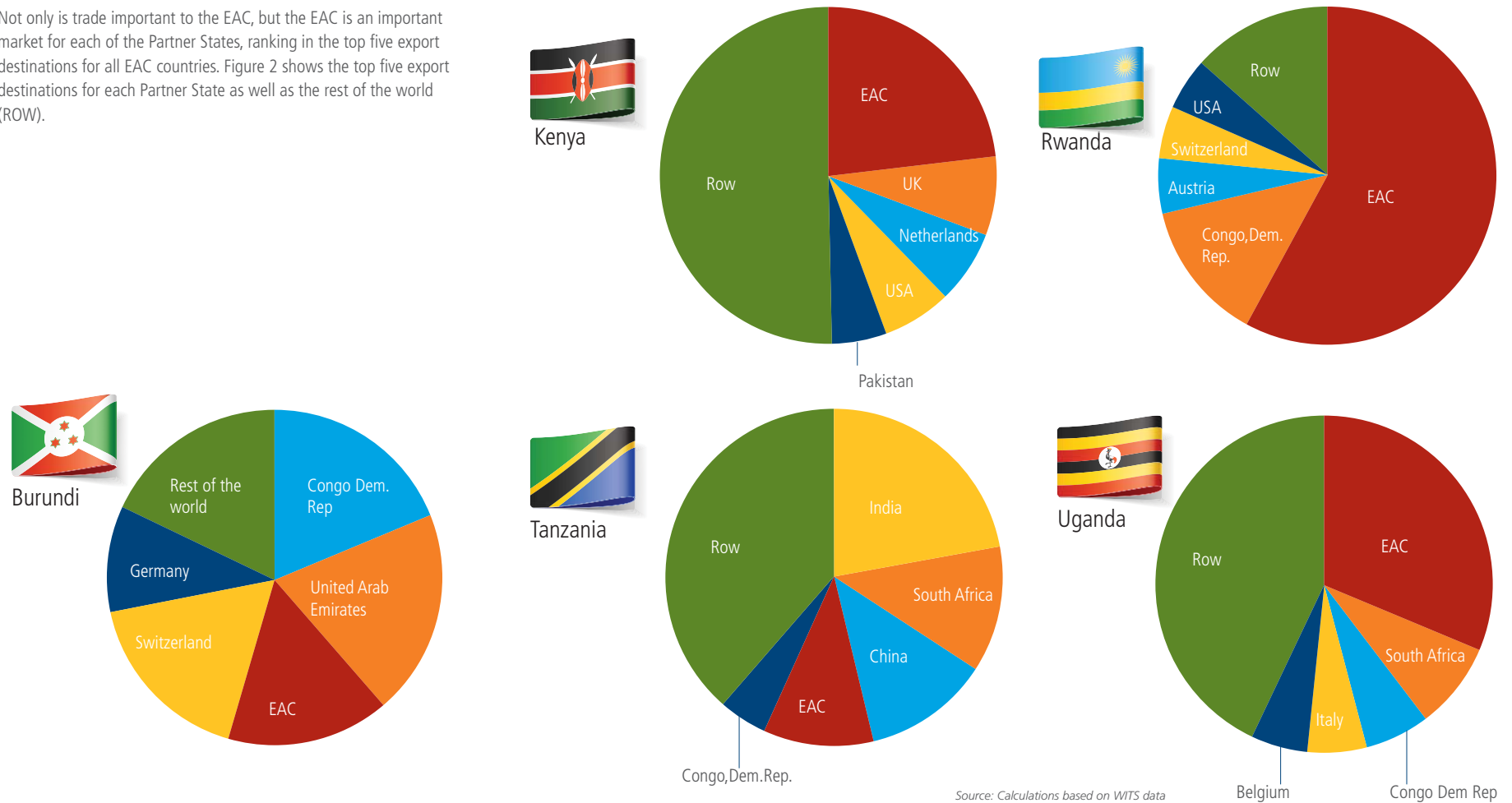
Figure 1: EAC Partner States: Exports and imports of goods and services, % of GDP (2014)



Source: WBG WDI

Not only is trade important to the EAC, but the EAC is an important market for each of the Partner States, ranking in the top five export destinations for all EAC countries. Figure 2 shows the top five export destinations for each Partner State as well as the rest of the world (ROW).

Figure 2: Top five export destinations for EAC Partner States' Goods, % of total exports (2014)



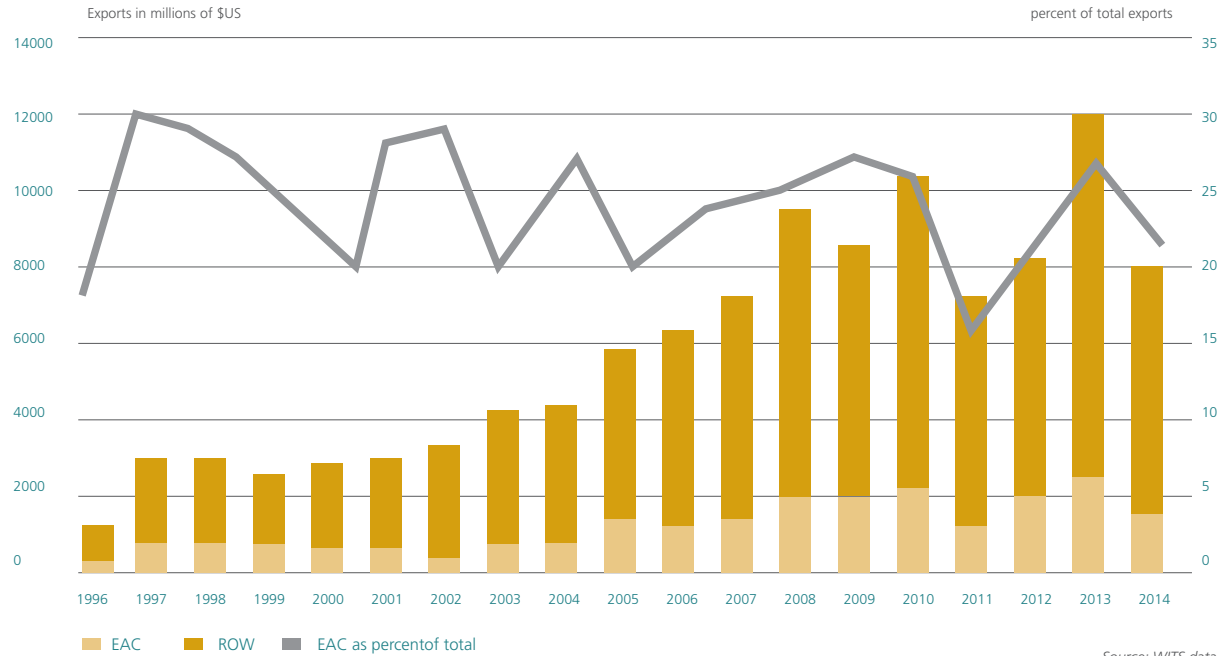
Source: Calculations based on WITS data

Figure 3: EAC exports to the Community and the ROW, % of total exports

Figure 3 also illustrates the differences in reliance on EAC export markets: EAC markets are more important as a percent of total exports for some countries than for others. For Rwanda and Uganda, 58 and 31 percent of their exports, respectively, go to EAC countries. Tanzania is the least dependent on the EAC as an export destination, selling only slightly more than 10 percent of its exported goods in the region, with the bulk of exports aimed at India (22 percent), followed by South Africa and China (12 percent each). Drilling down into the export composition, however, it becomes clear that the EAC is an important market for nontraditional goods. While Tanzania’s main exports to its three main markets are predominantly gold and ores, exports to Kenya, for example, are much more diversified, including maize, frozen vegetables, wine, textiles, and cereals, among others.

Intra-regional exports have remained at around 20 percent of total exports for the past few decades. Figure 3 shows the growing levels of both intra-regional exports and exports to the rest of the world as well as the share of intra-regional in total exports. Trade within the region and the rest of the world has been subject to upticks and downturns; many goods traded both intra-regionally and externally are highly vulnerable to changes in world prices. For the past ten years, the average annual growth rate of exports within the EAC has been 17 percent per year, compared to 9 percent per year growth to the rest of the world.

EAC Partner States have recognized the importance of the EAC market and its unrealized potential by committing to liberalize trade in goods through their CMP commitments to eliminate tariffs and nontariff barriers to intra-regional trade and to harmonize or mutually recognize standards and sanitary and phytosanitary measures.



Source: WITS data

The CMS 2014 assessed the EAC’s progress towards regional integration, identifying a number of significant barriers to intra-regional trade in goods that resulted from Partner States not taking legal steps necessary to comply with CMP commitments, or non-implementation of legal provisions. The CMS 2016 updates the work done in the CMS 2014, tracking subsequent progress towards elimination of NTBs. It also points out where additional NTBs have

been established and sets out recommendations towards eliminating these persistent and new NTBs. This is followed by a discussion of the findings and a conclusion containing recommendations to address the NTBs. The next sections describe the methodology used to assess progress in fulfilling the commitments in the free movement of goods.

Methodology

The EAC Partner States, under Article 5(2) (a) of the CMP undertook the following commitments towards facilitating free movement of goods in the EAC region:

- Elimination of tariffs on goods originating from within the EAC region;
- Eliminate non-tariff barriers;
- Harmonize and mutually recognize sanitary and phytosanitary standards (SPS) and standards
- Develop a common trade policy for the community.

This Article reinforces the tenets of free movement of trade in goods that is well articulated in the EAC Customs Union Protocol, which besides the above measures also calls for: -

- Establishment of Common External Tariff
- Elimination of other charges of tariff equivalence on trade among EAC Partner States
- Rules of Origin
- Duty draw back, refund and remission of duties and taxes
- Exemption regimes
- Simplification and harmonization of trade documentation and procedures

This Article further requires Partner States to take all necessary steps to achieve these obligations through national and regional laws and regulations

The analysis of barriers to intra-EAC trade under CMS 2016 is based on the methodology developed for the 2014 CMS, which aims to assess how Partner States have complied with their obligations under Article 5(2) (a) of the CMP. This assessment has two components:

- An assessment of legal compliance, which measures how far Partner States are from taking all the necessary steps to comply with their legal obligations as stated in Article 5(2) (a).
- An assessment of “*de jure*” implementation, which assesses whether Partner States have enacted measures inconsistent with their Article 5(2) (a) obligations.

The assessment is based on the data and information obtained from the EAC Time Bound Program on Elimination of Non-Tariff Barriers (NTBs), Regional National Monitoring Committee (NMC) reports and the CMS 2016 National Steering Committee meetings, which validated reported NTBs and gave insights that were invaluable in the scoring exercise. Information on reforms undertaken during the CMS 2016 was obtained through review of the EAC Policy Organs meetings (SCTIFI and the EAC Council) and validated through consultations with the EAC Secretariat and Partner States.

The definition of NTBs used in this scorecard is different from that applied in the CMS 2014, which was based on the UNCTAD Classification of Non-Tariff Measures (February 2012). In this edition of the scorecard, NTBs have been classified according to the methodology used in the EAC NTB Elimination Act, 2015. Accordingly, the NTBs in this scorecard fall into the following categories:

- i. Government participation in trade and restrictive practices tolerated by Government (e.g., subsidies, monopolies, domestic preferences, government procurement flawed procedures)
- ii. Customs and administrative entry procedures (e.g., anti-dumping, rules of origin, licensing, charges equivalent to tariffs)
- iii. Technical barriers to trade (TBTs)
- iv. Sanitary and phytosanitary measures (SPS)
- v. Specific limitations (e.g., quantitative restrictions, exchange controls)

- vi. Charges on imports (e.g., supplementary duties, prior deposits)
- vii. Other procedural problems (e.g., arbitrariness, lack of information)

The scoring mechanism for CMS 2016 follows that developed for CMS 2014. A numerical value is assigned to countries' performance with respect to both legal compliance and *de jure* implementation as follows: -

Legal compliance (40 percent)

Strict legal compliance includes two components: compliance with the adoption of the EAC tariff schedule and compliance with the adoption of EAC. For purposes of scoring, each of these variables was allocated 20 percent of the total score, considering that both have the same binding effect for EAC Partner States.

Effective implementation (60 percent)

The following variables were used to assess the effective implementation of measures that would eliminate internal tariffs:

- Use of charges having a tariff-equivalent effect. This is assigned a maximum score of 40 percent considering that this was the most frequently reported NTB, cited almost twice as frequently as those relating to the recognition of CoO.
- Application of EAC RoO. This is assigned a maximum score of 20 percent, allocated as follows:
 - » Recognition of CoO (maximum score of 10 percent);
 - » Compliance with the EAC Council directive that CoO be issued by Customs Authorities (maximum score of 5 percent); and
 - » Compliance with EAC RoO requiring Partner States to enact legislation to impose penalties on people who provide false

Box 1: The CMS 2014 methodology: A “legal compliance” and “*de jure* implementation” approach

- The 2014 EAC Common Market Scorecard (CMS) presented an extensive analysis of the legal modifications required for the implementation of regional integration in the EAC. This assessment was necessary to build a basis for assessing reforms and identifying any remaining barriers to regional integration in goods among EAC Partner States. The process consisted of two steps:



- Step one: Legal Compliance.** Determine whether Partner States are in “**legal compliance**” – that is, have they taken **the minimum steps necessary** to comply with the obligations stated in Article 5(2) (a). The initial analysis of legal compliance entailed a substantial number of subsidiary steps, such as assessing compliance with all obligations included in the derived instruments of the Common Market the Customs Union Protocols and other regional instruments, plus an examination of each of those commitments as to whether Member States had enacted all domestic legislation necessary to implement them.



- Step two: “*De jure*” implementation.** Verify whether each Partner State has **enacted measures that may be inconsistent** with the obligations mandated by Article 5(2) (a). By virtue of the potential scale of such an endeavor, the decision was made to use a set of NTBs already being identified at the EAC level by Partner States in the context of their EAC Time Bound Program, which was created to identify and eliminate non-tariff barriers and is coordinated by the EAC Secretariat. These notified NTBs are used as proxies for the CMS exercise in order to facilitate the process of review. A complete

de facto analysis was not performed because it would have required factual verification of many conditions needed to enable free trade in goods—information that is currently unavailable. Thus, the data and analysis presented in this Scorecard serve as indicators of State behavior at national level and regional level.

The terms **Legal compliance** and ***de jure* implementation** are used, as defined above, throughout the Scorecard. Reference to the detailed chapter on methodology and EAC CMS 2014, for a more thorough description of the methodology.

The bulk of the information for this chapter comes from the EAC Time Bound Program on Elimination of Non-Tariff Barriers (NTBs) and the CMS 2016 National Steering Committee meetings, which validated reported NTBs and gave insights that were invaluable in the scoring exercise.

1. Tariffs and tariff equivalent charges

Elimination of tariffs by EAC Partner States on intra-regional trade

EAC Partner States formally eliminated tariffs on intra-regional trade as of 2010 and have implemented the legal requirements with regard to the RoO regime. However, Partner States have continued to apply charges with equivalent effect to tariffs on each other's products and exporters report that their EAC CoO often are not recognized. These issues were identified as impediments to regional integration in the CMS 2014, and they continue to disrupt intraregional trade. SPS and TBT measures also continue as prickly barriers to regional integration.

The results of the CMS 2016 are displayed in Table 1. Partner States are scored according to their compliance in meeting their legal commitments and their *de jure* implementation, as set out in the methodology section. The compound score presented should be seen as an indication of the trend in each country's level of legal compliance and is not intended as an indicator of implementation. Specific data on NTBs for each Partner State is available in the Country Tables- Goods.

Table 1 shows that all EAC Partner States are in compliance with the requirement to eliminate internal tariffs. All Partner States are also in strict legal compliance with the requirement for adoption of the Rules of Origin. Each of the EAC Partner States formally adopted the revised EAC Rules of Origin (2015) which replaced the Rules of Origin (2009).

In terms of effective, or *de facto*, implementation, Table 1 reveals that a number of charges that have tariff equivalent effects continue to be used, most notably by Tanzania, which scores lowest, 28 out of 40. The two main areas in which less progress was made towards eliminating barriers to intra-regional goods trade were Partner States' use of tariff-equivalent charges and their lack of recognition of each other's CoO. When CoO are not recognized, the importer of goods originating from the EAC Partner States is obliged to pay the Common External Tariff, rather than zero duty which is reserved for goods that are accompanied by a CoO.

The aggregate score for tariff elimination is largely influenced by issues pertaining to the use of charges of equivalent effect to tariffs, and the lack of recognition of CoOs. Several countries score relatively low on recognition of each other's CoO. Less significant for the aggregate score are cases of non-compliance with the EAC Council of Ministers' directive that CoO be issued by customs authorities.³⁹ Although this is not a document of binding nature, in the CMS 2014 it was considered as an important recommendation due to the level at which it was adopted and its impact on reported NTBs. Uganda and Tanzania continue to receive a score of 0 on this indicator. As at the cut-off date of this analysis, Uganda Export Promotion Board⁴⁰ and the Tanzania Chambers of Commerce, not the customs authorities, continued to issue the CoO, contrary to the EAC Council directive.⁴¹

³⁹ EAC/CM10/ Directive 10h: "...A simplified certificate of origin be developed for cross border trade based on a criteria under the regulations. The Partner States print the certificates of origin in accordance with the specifications. Customs be the issuing authority of the EAC Certificates of Origin. The Directorate initiate training programmes on the EAC Rules of origin."

⁴⁰ <http://www.ugandaexports.go.ug/en/obtaining-a-preferential-certificate-of-origin/>.

⁴¹ http://www.tccia.com/tccial?page_id=401.

In the CMS 2014, no EAC Partner State had yet complied with Rule 13 of the Customs Union CMP Annex III (Rules of Origin) regarding false documentation for certificates of origin and so received a score of 0 on this component.⁴² This situation has since changed. Rule 26 of the new EAC Rules of Origin, which came into force in January 2015, includes a special provision on infringement and penalties for those who falsely claim origin of goods. Such actions will now trigger an inter-state mechanism for the settlement of these issues.⁴³ Under the new RoO, Partner States are not required to enact domestic legislation providing for penalties against such actions. Instead, the new RoO regime invokes a regional instrument, the revised edition of the East African Community Customs Management Act (2004) which in Section 203(h) establishes that "any person that counterfeits or in any way falsifies, or knowingly uses when counterfeited or in any way falsified, any documents required or issued by, or used for the purpose of the customs, commits an offence and shall be liable on conviction to prison for a term not exceeding three years or to a fine not exceeding ten thousand dollars." As this is a regional rule that applies to all Partner States and since all states formally adopted the new RoO regime, referencing the Customs Management Act., all scored 5 points on this indicator.

Overall, Burundi scored the highest in the elimination of tariffs, with a score of 97. It was followed by Kenya with 93, Rwanda with 91, Uganda with 82, and Tanzania with 79. All countries have improved their average performance since the CMS 2014, especially Tanzania, whose score rose by 13 points. The country with lowest ratio of improvement is Kenya (but with the second highest score)—only 1 point.

⁴² Rule 13 of 2005 the EAC Rules of Origin

⁴³ Rule 26 of the 2015 EAC Rules of Origin

Table 1: Progress on elimination of tariffs by EAC Partner States on intra-regional trade ⁴⁴

Component	Points possible	Burundi	Rwanda	Kenya	Uganda	Tanzania	Source of data/ information for use in scoring
Legal Compliance							
Compliance w/ EAC Tariff schedule	20	20	20	20	20	20	CMS 2014 - No change. Zero tariffs on intra-EAC trade.
Adoption of EAC RoO	20	20	20	20	20	20	CMS 2014 - No change. Revised RoO have replaced 2009 version.
Compliance w/EAC recommendation on issuance of CoO by customs authorities	5	5	5	5	0	0	CMS 2014 - No change. Situation with Uganda and Tanzania is as was in CMS 2014.
Compliance w/ EAC directive on falsified CoO	5	5	5	5	5	5	New Rules of Origin, which include provision on false claims in respect of the origin of goods.
De jure implementation							
Use of charges of tariff -equivalent effects	40	37	35	34	31	28	NTB Tables. Focus in CMS 2016 is to establish charges of equivalent effects outstanding as of December 2015.
Recognition of EAC CoO	10	10	6	9	6	6	NTB Tables. Focus in CMS 2016 is to establish non-recognition of CoO. NTBs outstanding as of December 2015.
Aggregate Score CMS 2016	100	97	91	93	82	79	
Aggregate Score CMS2014	100	90	85	92	72	66	
Change from CMS 2014 to CMS 2016*		7	6	1	10	13	

⁴⁴ A higher score means a better performance in elimination on tariffs in intra-regional trade (based on CMS 2014 methodology)

* positive number indicates improvement

Source: EAC Time Bound Tables

Elimination of tariff-equivalent charges

The EAC Partner States committed under the EAC Customs Union Protocol Article 10 to eliminate charges that have equivalence effect to trade as tariff. These charges include charges levied on imports by various government agencies and local authorities or county governments, road user charges, charges associated with all cases of non-recognition of COO. During the CMS 2016 review period (July 2013 to December 2015), all Partner States applied some type of charge that had tariff equivalent effects. In total, there were 35 such charges, comprising of 28 new charges which were imposed in the CMS 2016 review period and 7 charges carried forward from the CMS 2014. These additional taxes and charges account for around 45 percent of the total number of NTBs reported in the review period (78 NTBs in total).

Table 2: Number of charges of tariff equivalence

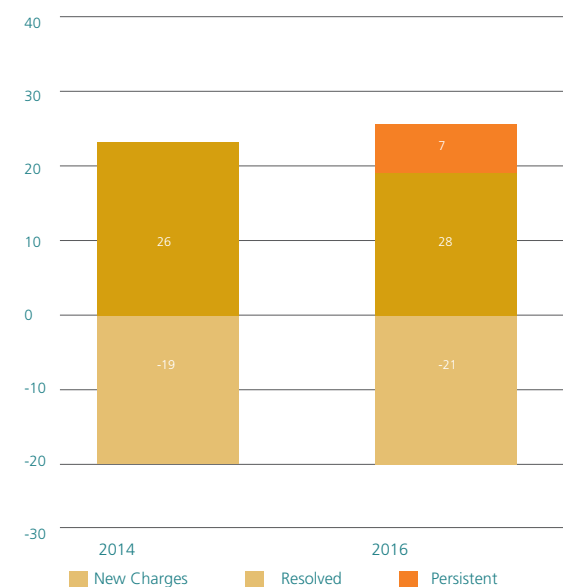
EAC Partner State	CMS 2014		CMS 2016			
	Number of charges	Charges resolved during reference period	Charges carried over from CMS 2014	New charges	Charges resolved during reference period	Total remaining charges 2016
Burundi	1	1	0	2	1	1
Kenya	9	5	4	5	8	1
Rwanda	0	0	0	4	2	2
Tanzania	11	9	2	10	8	4
Uganda	5	4	1	7	3	5
Total charges of tariff equivalence	26	19	7	28	21	14

Source: EAC Time Bound Tables

Analysis of the charges of tariff equivalence by Partner States shows some increase or persistence in Tanzania, Uganda, Rwanda and Kenya. A comparative analysis of these charges between CMS 2014 and CMS 2016 is provided in the table below.

As shown in Figure 4, while the number of new charges during the CMS 2016 review period was slightly greater than for the CMS 2014 review period, the number of resolved charges also increased. Partner States resolved 21 charges in the CMS 2016 review period, up from 19 in CMS 2014. However, in CMS 2016, 14 charges were carried over into the new review period, double the number that were carried over from CMS 2014.

Figure 4: Number of charges of tariff equivalence: new charges, charges resolved and charges carried over

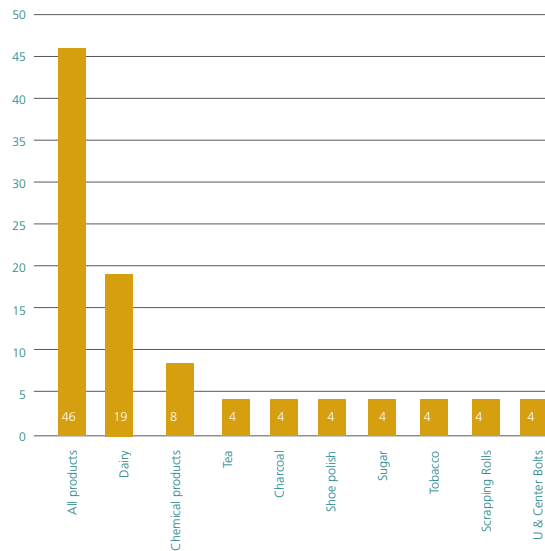


Source: EAC Time Bound Tables

As seen in Figure 5, 46 percent of tariff equivalent charges affect all products. The remaining charges were product specific, applied to dairy, tea, tobacco, chemical products, shoe polish, and scrapping rolls.

The majority of new charges, as seen in Figure 6 were imposed by Tanzania, with about 40 percent of total EAC charges in both periods. More than half of the charges that were carried over from 2014 were imposed by Kenya.

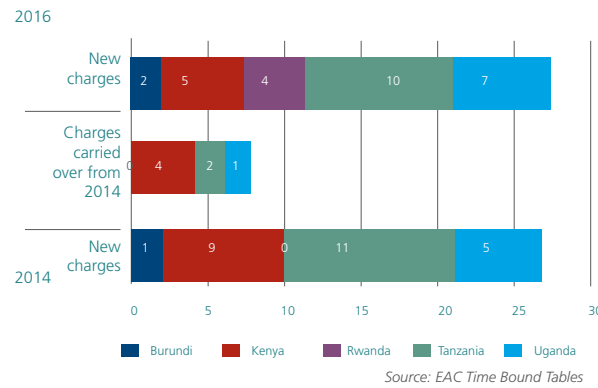
Figure 5: Reported charges of tariff equivalence post CMS 2014, by product coverage (percent)



Source: EAC Time Bound Tables

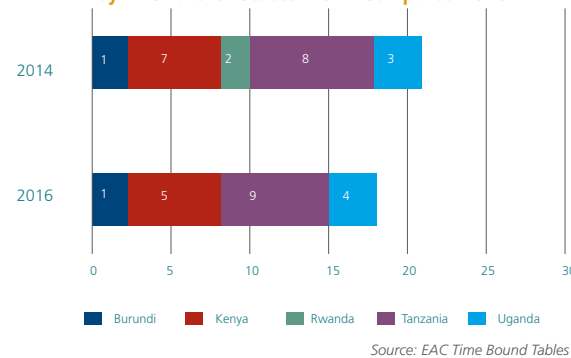
In 2014 all countries but Kenya and Rwanda (who had no such measures) added new charges at about the same rate as they resolved identified measures. In 2016, This rose to a nearly 2 to 1 ratio, with the exception of Tanzania, which resolved 8 measures but added 10 new charges and Kenya, which 7 measures and only added 5.

Figure 6: Charges of tariff equivalence per Partner State, new and carried over (CMS 2014 as compared to CMS 2016)



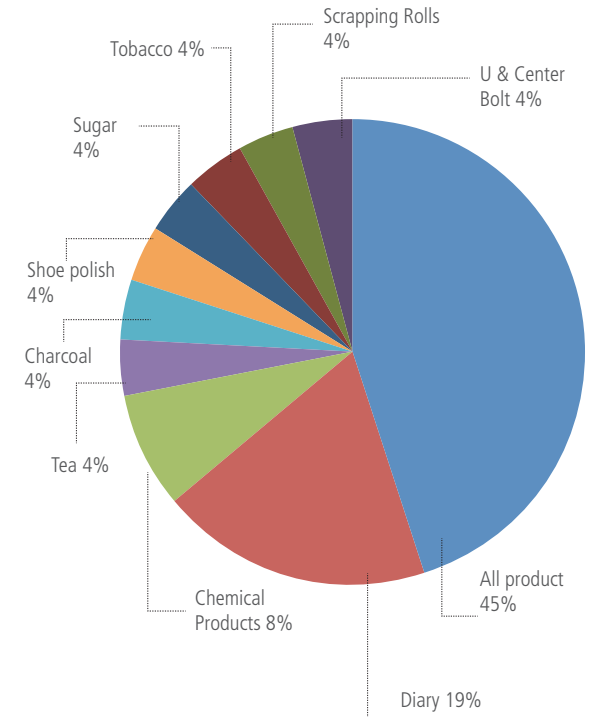
Source: EAC Time Bound Tables

Figure 7: Number of resolved charges of tariff equivalence by EAC Partner States- 2014 Compared 2016.



Source: EAC Time Bound Tables

Figure 8: Products affected by tariff-equivalent measure, CMS 2016



Source: EAC Time Bound Tables

A comparison of the 2014 and 2016 scores underlines the persistence of such charges, particularly on dairy products. This goes against the EAC Customs Union Protocol, Article 13 which requires the EAC Partner States not to introduce new NTBs. New charges were also introduced on specific products including tobacco, shoe polish, chemical products, and scrapping rolls.

2. Barriers related to Rules of Origin

The CMS 2014 analysis established that all Partner States apply the EAC RoO contained in Annex III to the EAC CMP. Under the revised RoO, goods shall be accepted as originating if wholly produced or produced in a Partner State using material imported from outside the EAC region, provided that such materials undergo “sufficient working” or processing in the Partner State to ensure that the final product meets the corresponding origin criteria listed in the respective columns of the list found in Schedule 1 of the Revised RoO.⁴⁵ Thresholds are based on the ex-works price of the product or headings of the harmonized system.⁴⁶

These revisions to the RoO were made with a view to addressing some of the issues that have caused them to feature among the leading barriers to intra-EAC trade in goods. The revision includes several aspects that increase their flexibility, namely:

- Specific rules per product with options that allow industry to use the rule most appropriate to their need. This was achieved by dropping the horizontal 35 percent value addition rule in the previous rules of origin and embracing a variable ex-factory threshold in accordance to the needs of the specific industry.
- Introduction of the “enabling rule” that allows global sourcing of raw material for industry with insufficient regional supply;
- Movement to a Change in Tariff Heading rule for several products that were subject to a less flexible rule under the previous regime.

While all Partner States apply the harmonized EAC RoO, serious problem remain with respect to the determination of origin. As laid out in Table 3, the review period for CMS 2016 revealed 13 cases in which EAC CoOs were not recognized by other Partner States. Reports were made against all Partner States except Burundi. These cases accounted for 21 percent of the 78 NTBs reported between July 2013 and December 2015. Kenya, Uganda, and Tanzania were responsible for the most cases of non-recognition of CoO.

Table 3: Number of cases of non-recognition of certificates of origin

	CMS 2014	CMS 2016
Burundi	1	0
Kenya	2	1
Rwanda	3	4
Tanzania	5	4
Uganda	2	4
	13	13

Source: EAC Time Bound Reports

Both the CMS 2014 and CMS 2016 reported 13 incidences of non-recognition of EAC CoOs. However, there is hope that some of the improvements made following the implementation of the Revised EAC RoO will mitigate this in future CMSs. One sign of success is an increase in the number of simplified CoOs issued for goods with a value of \$2000 or less.⁴⁷ EAC Partner States are now able to cumulate material imported from countries with which the EAC has concluded an FTA, such as members of the COMESA/EAC/SADC FTA, also known as the Tripartite FTA, and potentially EU members once this agreement is ratified. The revised rules also allow materials which originate from a country or a territory benefiting from duty free, quota free access to be eligible for cumulation.⁴⁸ This enables finished products that could not otherwise trade in EAC on a duty free basis under the old rules to access the regional market.

⁴⁵ EAC Rules of Origin, Rules 4 to 6.

⁴⁶ EAC Rules of Origin, Part 2 Explanatory notes to the list in Part 1.

⁴⁷ See Status of the Implementation of the Common Market Protocol, June 2015, p. 3-4.

⁴⁸ EAC Rules of Origin, (2009), Rule 8.

3. Elimination of Non Tariff Barriers (NTBs)

The 2016 CMS also builds on the 2014 CMS assessment of whether EAC Partner States are fulfilling their commitment to eliminate NTBs.

Definition of NTBs

In this edition of the Scorecard, NTBs have been classified according to the EAC NTB Elimination Act, 2015. Part I, Section 4 provides that NTBs shall be categorized according to the World Trade Organization (WTO) classification set out in the schedule to the Act. This classification is similar to the UNCTAD-based classification used in the previous Scorecard but contains only seven categories (instead of the 16 considered by UNCTAD). Accordingly, the NTBs in this Scorecard fall into the following categories:

- i. Government participation in trade and restrictive practices tolerated by Government (e.g., subsidies, monopolies, domestic preferences, government procurement flawed procedures)
- ii. Customs and administrative entry procedures (e.g., anti-dumping, rules of origin, licensing, charges equivalent to tariffs)
- iii. Technical barriers to trade (TBTs)
- iv. Sanitary and phytosanitary measures (SPS)
- v. Specific limitations (e.g., quantitative restrictions, exchange controls)
- vi. Charges on imports (e.g., supplementary duties, prior deposits)
- vii. Other procedural problems (e.g., arbitrariness, lack of information)

It is important to note that, in a departure from the 2014 Scorecard, for the CMS 2016, NTBs found to be common to all EAC Partner States were reported as an NTB of each country. This was done after recommending that NTBs require a regional approach to be resolved, implying that all EAC Partner States have individual duties but also a collective responsibility to undertake measures to resolve the NTBs. However, as most of these NTBs have persisted since 2008, Partner States are encouraged, post CMS 2016, to take collective measures to eliminate these NTBs.

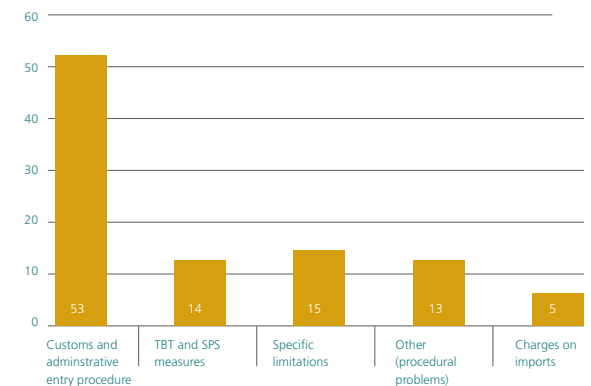
Types of NTBs reported

The NTBs reported during the reference period for CMS 2016 fall into the following six EAC NTB classifications: Customs and Administrative Entry Procedures (Category 2), Technical barriers to trade (TBT) Measures (Category 3), Sanitary and phytosanitary (SPS) Measures (Category 4), Specific Limitations (Category 5) Charges on imports (Category 6) and Other Procedural Problems (Category 7).

Figure 9 depicts the distribution of NTBs by category. Customs and administrative entry procedures accounted for the highest number, representing slightly more than half of the reported NTBs (53 percent). This category was followed by Specific Limitations which accounted for 15 percent of total post CMS 2014 NTBs. Other (procedural problems) followed, accounting for 13 percent of the post CMS 2014 NTBs.

SPS and TBT measures together accounted for 14 percent and individually for 5 percent (SPS), and 9 percent (TBT). A comparison of the 2014 and the 2016 categories shows that the SPS and TBT share

Figure 9: Reported NTBs by type (%), CMS 2016



Source: EAC Time Bound Reports

in total NTBs dropped from 32 percent in CMS 2014 to 20 percent in CMS 2016. Only four new cases of SPS and TBTs were reported during the CMS 2016 (and only involving Tanzania and Uganda). However, SPS and TBT measures are among the yet to be resolved NTBs brought forward from CMS 2014, with some having persisted since 2012.

Finally, charges on imports only accounted for 5% of the NTBs reported in the CMS 2016.

Major work towards resolving the unresolved NTBs lies in the

following categories of NTBs:

- Customs and administrative entry procedures (e.g., anti-dumping, rules of origin, licensing, charges equivalent to tariffs)
- Technical barriers to trade (TBTs)
- Sanitary and phytosanitary measures (SPS)
- Specific limitations (e.g., quantitative restrictions, exchange controls)
- Charges on imports (e.g., supplementary duties, prior deposits)

In total, as illustrated in Table 4, 41 of the reported NTBs related to customs and administrative entry procedures, with 23 of these remaining unresolved by December 2015. Tanzania accounted for the highest number, with 37 percent, followed by Uganda (22 percent), Rwanda (15 percent), Kenya (17 percent), and Burundi (10 percent).

The other prevalent type of reported NTBs related to Specific Limitations and Others (Procedural Problems), 12 and 10 NTBs reported, respectively. The third most recurrent type of NTBs were SPS and TBT measures, where a total of 11 were reported (7 TBT and 4 SPS).

⁴⁹ SPS jointly accounts for the NTB "Lack of coordination among the numerous institutions involved in testing goods" with TBT. This NTB is accounted for under TBT although action to resolve will require action by SPS authorities as well.

Table 4: Reported NTBs by EAC classification

EAC Partner State	Customs and administrative entry procedures				TBT and SPS measures ⁴⁹				Specific limitations				Other (procedural problems)				Charges on imports			
	UR	R	T	% share	UR	R	T	% share	UR	R	T	% share	UR	R	T	% share	UR	R	T	% share
Burundi	3	1	4	10%	1	0	1	9%	0	0	0	0%	0	0	0	0%	0	0	0	0%
Kenya	4	3	7	17%	1	0	1	9%	0	5	5	41%	3	4	7	70%	1	2	3	75%
Rwanda	3	3	6	15%	1	1	2	18%	1	1	2	17%	0	0	0	0%	0	0	0	0%
Tanzania	7	8	15	37%	4	0	4	37%	2	1	3	25%	0	2	2	20%	0	0	0	0%
Uganda	6	3	9	22%	2	1	3	27%	0	2	2	17%	0	1	1	10%	1	0	1	25%
Total	23	18	41	100%	9	2	11	100%	3	8	12	100%	3	7	10	100%	2	2	4	100%

Key: UR - Unresolved; R - Resolved; T - Total

Source: EAC Time Bound Tables

New NTBs reported during the review period

A detailed list of these NTBs is provided in the country tables on goods for each Partner State. The number of NTBs reported during this period was 53 percent higher than for the 2014 review period. As illustrated in Table 5, the total NTBs for the CMS 2016 consist of 32 NTBs left unresolved from the CMS 2014 and 46 new NTBs identified during the CMS 2016 reference period. This situation is contrary to the provisions of Article 13 of the EAC Customs Union Protocol which called for the immediate removal of all NTBs at the entry into force of the EAC Customs Union and prohibited the introduction of any new NTBs.

The CMS 2016 counts NTBs that are common to all EAC Partner

States as an NTB of each country. This was done to underscore the need for Partner States to undertake individual responsibility to resolve each NTB. The CMS 2014 recommended a regional approach to resolve these common issues, some of which have persisted since 2008. This Scorecard reiterates this recommendation for a collective and regional approach to resolve these persistent NTBs that are common to all EAC Partner States.

As seen in Table 5, Tanzania and Kenya each make up about a third of all EAC NTBs for the CMS 2016 period. Uganda is responsible for about a fifth of the NTBs, Rwanda for 13 percent and Burundi for 6 percent and Burundi for 6 percent.

a) NTBs resolved during post CMS 2014 period

Although many new NTBs were introduced since the CMS 2014. It is important to note that many barriers were also resolved during this period. Out of the 78 NTBs reported during the review period, 38 (about half) were resolved. As shown in Table 6, out of the resolved NTBs, Kenya resolved 5 NTBs of the 10 carried over from 2014 and 9 of the 13 new ones; Tanzania resolved 3 lingering NTBs and 8 of its 17 new measures; Uganda resolved half of its new NTBs, but only 2 of the 6 continuing NTBs; while Rwanda resolved half of its 6 NTBs that had been carried over and half of its 4 new measures. Burundi resolved half of its 2 new measures and the 3 NTBs persisting since CMS 2014 continue.

This analysis points to the persistence of a number of measures. Of the 32 NTBs which were carried over from CMS 2014, only 13 (or 41 percent) were resolved by December 2015. This suggests some significant challenges for the resolution of these NTBs.

Table 5: Number of reported NTBs post CMS 2014

	CMS 2014		CMS 2016			
	Reported 2008-June 2013	% share in total	Continuing NTBs from 2014	New NTBs	Total NTBs in review period	% share in total NTBs
Burundi	3	6	3	2	5	6%
Kenya	16	31	10	13	23	29%
Rwanda	5	10	6	4	10	13%
Tanzania	18	35	7	17	24	31%
Uganda	9	18	6	10	16	21%
Total	51	100	32	46	78	100%
Percent increase in reported NTBs post CMS 2014					+53%	

Source: EAC Time Bound Tables

Table 6: Number of NTBs resolved in the period following the CMS 2014

Partner States	Total CMS 2016 NTBs (continuing NTBs + New NTBS)	Total NTBs resolved of the continuing and new NTBs)	Resolved NTBs percent of NTBs.	CMS 2014 NTBs				CMS 2016 NTBs			
				Continuing NTBs	Resolved NTBs	% Resolved	Average period (months)	New NTBs	Resolved NTBs	% Resolved	Average period (months)
Burundi	5	1	20	3	0	0	0	2	1	50	4
Kenya	23	14	61	10	5	50	19	13	9	70	11
Rwanda	10	5	50	6	3	50	31	4	2	50	8
Tanzania	24	11	46	7	3	43	34	17	8	47	5
Uganda	16	7	44	6	2	33	13	10	5	50	10
Total	78	38	51	32	13	38	24	46	25	54	8

Source: EAC Time Bound Tables

With regard to the new NTBs, Kenya performed best, resolving 70% of the new NTBs reported against it. Other best performing countries were Uganda and Tanzania, which recorded a 50% and 47% respectively, on the resolution of the new Post CMS2014 NTBs reported against them (Burundi also has 50%, but only with one resolved NTB). Rwanda followed, reporting 47% rate of resolving the new NTBs.

An assessment of the efficiency in resolving these persistent measures showed that Tanzania and Rwanda took the longest time to address these barriers - an average of 34 months for Tanzania, and 31, and 19 months, respectively, for Rwanda and Kenya. Uganda was the most efficient with an average period of 13 months. Findings and the results are compared as per Table 5. It is important to indicate that this indicator is introduced in the CMS 2016 and was not applied to the CMS 2014.

A notable result is that, nearly all Partner States have reduced the average time taken to resolve their reported NTBs. Tanzania has improved the most - going from an average of 34 months down to five months. Tanzania also maintains a better ratio of the number of reported NTBs and those NTBs resolved in less than a year. Although Burundi has a lower average (four months), it only reports one resolved NTB in the time frame of this Scorecard. Although this improvement in the resolution of NTBs, it must be noted that overall number of unresolved NTBs has increased in the last couple of years.

b) Unresolved NTBs

At the end of the CMS 2016 reference period there were 40 unresolved NTBs, nearly twice as many as at the end of the CMS 2014 period. About a third of these were attributed to Tanzania; Kenya and Uganda were responsible for 23 percent each. Four persistent unresolved NTBs were common to all EAC Partner States. These were:

- The lack of harmonization of the working hours for customs authorities.
- Lack of coordination among institutions involved in testing goods.
- Lack of harmonization of road user charges / road tolls.
- Numerous monetary charges required by various agencies in the EAC Partner States for exports of milk.

We note that the EAC Secretariat commenced some initiatives targeting the resolution of these NTBs. To address this challenge, however, the Partner States and the EAC Secretariat should work together in finding workable solutions.

Some persistent NTBs are country-specific. Examples include Ugandan bans on beef and beef products from Kenya, Tanzania's tobacco content requirement for cigarettes manufactured in Kenya, Kenya's charges on Ugandan tea destined for auction at the Mombasa Plant, and differentiated treatment for rice and wheat flour originating from Tanzania and exported to Kenya through the Lunga Lunga border.

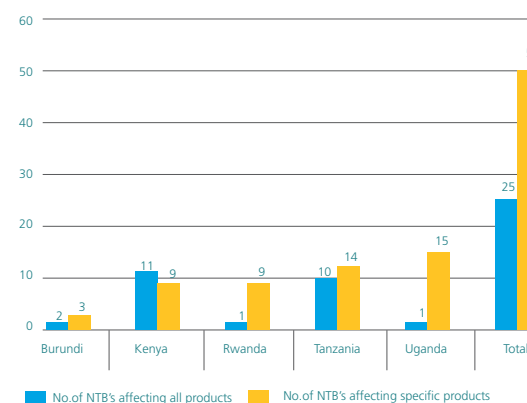
As evidenced in Figure 10 during the post CMS 2014 period, about two thirds (or 50 NTBs) of the reported NTBs were targeted at specific products, while the remaining third (for 25 NTBs) were targeted at all products generally. The details of NTBs targeting specific products reported against each of the EAC Partner States are provided in the Country Tables- Goods (a).

The specific products which were affected include agricultural products (including dairy products, rice, wheat, tea, beef, fish, tobacco, charcoal, sugar) and manufactured products (fruit juices, alcoholic drinks, cigarettes, agro-processed products, salt, chemical products, soaps, shoe polish, cement, plastic products, aluminum products, scrap rolls, electric cables, motor vehicles and motor vehicle parts (u and center bolts)).

More NTBs on most of the above specific products has persisted from CMS 2014. For instance, in CMS 2014, certain specific sectors such as milk, sugar, tea, agricultural products, motor vehicles, clothes, and shoes in Kenya, food products, sugar, fuel, plastic bags, furniture, alcoholic beverages, and herbal products in Tanzania, and milk and dairy products in Uganda were main targets of NTBs from the other EAC countries. It is worth noting that these products often also appear in the EAC List of Sensitive Items.⁵⁰

⁵⁰ See EAC Tariff Book (2012)

Figure 10: Number of NTBs affecting all products and NTBs on specific products



Source: EAC Time Bound Tables:

Table 7: Unresolved NTBs by country as of June 2013 and December 2015

EAC Partner State	CMS 2014		CMS 2016	
	Unresolved NTBs as of June 2013	% share in total unresolved NTBs	Unresolved NTBs as of December 2015	% share in total unresolved NTBs
Burundi	1	5	4	10
Kenya	7	33	9	22
Rwanda	3	14	5	12
Tanzania	5	24	13	34
Uganda	5	24	9	22
Total NTBs	21	100	40	100%
% Increase in unresolved NTBs (SC'14-'16)			+90	

Source: EAC Time Bound Tablest

4. Harmonization and Mutual Recognition of Sanitary and Phytosanitary Standards (SPS) and Standards with a view to preventing Technical Barriers to Trade (TBTs)

All EAC Partner States are in compliance with their commitments to harmonize and mutually recognize sanitary and phytosanitary standards, and technical standards, through the adoption of the EAC Standardization, Quality Assurance, Metrology, and Testing CMP (2001) and the Standardization, Quality Assurance, Metrology and Testing Act (2007). Partner States are also in the process of adopting and ratifying the SPS Protocol, which was approved by the EAC Heads of State in July 2013. The SPS Protocol has so far been ratified by Rwanda and Uganda. The process of ratification in Burundi, Kenya, and Tanzania was still pending as per the data cut-off date of this publication.

The CMS 2014 analysis revealed that despite legal compliance with the SQMT CMP (2001) and Act (2007), and approval of the SPS Protocol (2013), SPS and TBT issues continue to be subject to implementation problems. Those reported to the EAC NTB Time Bound Program are captured below.

a) Reported SPS/TBT NTBs

As seen in Table 8, at the end of December 2015, 11 SPS/TBT NTBs had been reported. Of these, four new measures were reported during the 2016 CMS reference period and seven were unresolved SPS/TBT measures reported during the CMS 2014 period. Tanzania and Uganda accounted for the highest number of SPS/TBT measures, with 4 and 3 measures each.

All of the newly reported SPS/TBT NTBs remained unresolved by the cut-off date for CMS 2016. Out of these NTBs, two are regional in nature and cannot be resolved unilaterally by any single country in the EAC. This suggests a need for a common regional approach.

Table 8: Reported SPS/TBT NTBs

EAC Partner State	Total TBT/SPS by June 2013	CMS 2014	CMS 2016					
		% Share in total SPS/TBT	SPS/TBT persisting from CMS 2014	New SPS/TBT (July 2014-Dec 2015)	Total SPS/TBT Dec 2015	% Share in total SPS/TBT	Total NTBs Jul'13-Dec'15	TBT/SPS % share in total NTBs
Burundi	1	6	1	0	1	9	5	20
Kenya	5	31	1	0	1	9	20	5
Rwanda	3	19	2	0	2	18	10	20
Tanzania	5	31	1	3	4	36	24	17
Uganda	2	13	2	1	3	27	16	19
	16	100	7	4	11	100	75	15

Source: EAC Time Bound Tables

During the period under review there were a number of developments in the area of standards harmonization as well as the elimination of some obsolete standards:⁵¹

- In the first semester of 2014, the EAC Council of Ministers declared 120 standards as East African Standards. 71 domestic standards were considered obsolete and withdrawn by Partner States and 252 international standards included in the EAC catalogue were recommended for adoption by Partner States.⁵²
- In the first semester of 2015, 384 harmonized standards were reported.⁵³ According to the EAC Gazette Notice of October 2015, 18 standards were declared as East African Standards, 12 standards were referenced for endorsement and adoption in accordance with the EAC procedures for the development of standards,⁵⁴ and three standards were recommended for withdrawal.

Not all developments in this field are positive. In the second semester of 2014, EAC adopted 366 standards and endorsed 778 International standards for uniform application by Partner States. Adopting standards that differ from international standards can have serious negative impacts for trade.

The East African Standards Committee (EASC) established in accordance with the East African Community Standardization, Quality Assurance, Metrology and Testing Act, 2006, prepares East African Standards. The Committee brings together the National Bureau of Standards of the Partner States, including the Bureau Burundais de Normalisation et Contrôle de la Qualité (BBN), Kenya Bureau of Standards (KEBS), Rwanda Standards Board (RSB), Tanzania Bureau of Standards (TBS) and Uganda National Bureau of Standards (UNBS)] together with designated national metrology institutes, the legal metrology organizations, representatives of the private sector testing laboratories, certification organizations and representatives of national manufacturing/trading associations, and consumer organizations.

⁵¹ See *Status of the Implementation of the Common Market Protocol*, June 2015, p. 5.

⁵² The East African Standards Committee (EASC) established in accordance with the East African Community Standardization, Quality Assurance, Metrology and Testing Act, 2006, prepares East African Standards. The Committee brings together the National Bureau of Standards of the Partner States, including the Bureau Burundais de Normalisation et Contrôle de la Qualité (BBN), Kenya Bureau of Standards (KEBS), Rwanda Standards Board (RSB), Tanzania Bureau of Standards (TBS) and Uganda National Bureau of Standards (UNBS)] together with designated national metrology institutes, the legal metrology organizations, representatives of the private sector testing laboratories, certification organizations and representatives of national manufacturing/trading associations, and consumer organizations.

⁵³ Harmonized standards are not East African Standards per se, but a harmonization agreed by the regional bloc's bureaus standards have made an achievement with respect to specific products.

⁵⁴ East African Standards Committee, (2012), "Principles And Procedures For The Development Of East African Standards," available at: http://www.eac-quality.net/fileadmin/eac_quality/user_documents/3_pdf/Principles_and_Procedures_of_EAS_September_2nd_Ed._2012.pdf.



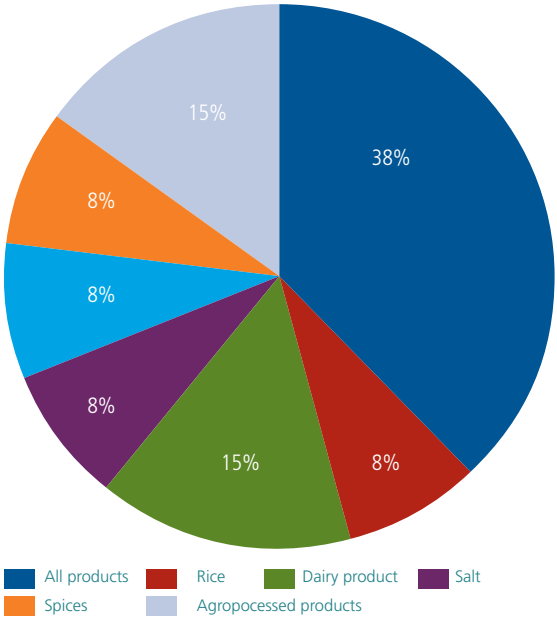
Figure 11: Analysis of SPS/TBT NTBs by product (% share of total SPS/TBT NTBs)

b) Analysis of SPS/TBT by products

All traded products in principal agricultural and manufactured products faced SPS & TBT NTBs, accounting for 56 percent of total reported SPS/TBT NTBs. Some specific products were also affected by other NTBs. These included dairy and agro-processed products, which accounted for 15 percent of the reported SPS/TBT NTBs each. Other specific products that faced SPS/TBT NTBs included beef and beef products, rice, salt and spices, each accounting for 8 percent of the reported SPS/TBT, as seen in the chart below.

It is worth noting that dairy products and rice are on the EAC List of Sensitive Items, implying that the restrictive effect of the NTBs deny exploitation of the trade potential that was the very reason for classifying these products as sensitive and thus assigning them high Common External Tariff rates.

A comparative analysis with the CMS 2014 reveals that SPS and TBT NTBs had also affected all type of products, as well as specifically agro-processed products, dairy products, beef and beef products, ice, and tea in the CMS 2014 period. Tea is the only product affected by SPS and TBT NTBs in the CMS 2014 that does not recur in the CMS 2016.



Source: EAC Time Bound Tables

Sensitive goods

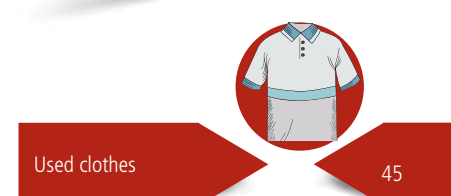
EAC Partner States have designated 58 goods as sensitive, meaning that they are eligible for tariffs above the CET ceiling. Sensitive products are those that Partner States perceive have the potential for sufficient produced regionally to meet EAC Partner States demand. Partner States have periodically submitted requests to waive the application of these higher rates in order to be able to import sensitive products when regional supply has not been able to fulfill regional demand.

As detailed in the CMS 2016 analysis, sensitive products are also subject to non-tariff barriers that limit trade within the EAC. Such barriers have limited exploitation of the regional market potential for sensitive items, which continues to be dominated by extra-regional imports of the same products at the expense of regionally produced products. The repeated waiver of CET rates for these products have put the sensitive items in direct competition with extra-regionally sourced products. Therefore, besides working towards eliminating NTBs on sensitive products, the EAC should consider deeper sectoral and a cost-benefit analysis of this policy to establish the necessity of the high CET rates vis a vis regional production potential to meet regional demand. The opportunity for EAC to address this is the ongoing exercise of the CET review as directed by the EAC Council.

Sensitive product Tariff rate



Sensitive product Tariff rate



Source: East African Community, EAC Common External Tariff

Other ongoing Initiatives made towards implementation of the EAC Customs Union

Single Customs Territory

The Single Customs Territory (SCT) is a step towards a full customs union. The EAC Partner States launched the SCT in October 2013 with the aim of ensuring free circulation of goods through the removal of restrictive regulations or the minimization of internal border controls. Notable achievements since the establishment of the SCT include:

- Clearance of goods under Home Consumption and Warehousing regime at the first port of entry (Mombasa and Dar es Salaam);
- Interfacing of Revenue Authorities Systems of the three Partner States (Rwanda, Uganda and Kenya);
- Integration of Regional Customs Bond with Revenue Authorities Systems;
- Reduction of multiple customs bonds to a single bond;
- Reduction of multiple cargo declarations to a single declaration;
- Tremendous reduction in the duration that was spent along the northern corridor from 18 days to 4 days from Mombasa to Kampala and from 21 days to 6 days from Mombasa to Kigali due to the reduction of weighbridges and elimination of road blocks.

One Stop Border Posts

In a bid to ease cross border trading and eliminate delays experienced at the borders, the EAC Legislative Assembly passed the EAC One Stop Border Post Act 2016, which was assented to in December 2015. The Act provides legal framework to the operationalization and the running of the One Stop Border Posts (OSBPs). Operationalization of OSBPs will resolve a number of NTBs that have remained unresolved since 2008 due to structural and administrative constraints that required a regional solution.

According to the Sectoral Council of Trade, Industry Finance and Investment Report of November 2015 there were 15 OSBP Projects at various levels of development on internal borders; 7 OSBPs had been completed: Nemba/Gasinye, Ruhwa, Rusumo, Kagitumba/Mirama hills, Isabania/ Sirari, LungaLunga/ Hororo and TavetayHolili. 4 OSBPs Mutukula, Malaba, Busia and Namanga were scheduled for completion by 31 December 2015; while two OSBPs (Kobero and Gatuna/Katuna) Rwanda/Uganda were under construction.

Standards, Quality, Metrology and Testing (SQMT) Protocol and Act, 2006

During the CMS 2016 period, the EAC initiated a number of measures aimed at addressing the TBT related NTBs in support of the implementation of Single Customs Territory and full implementation of free movement of goods in accordance to the provisions of the Common Market Protocol. The EAC Council of Ministers whose primary goal was to operationalize the EAC SQMT Act, 2006 and implement the Common Market Protocol on free movement of goods:

- a. The SQMT (Product Certification Schemes in Partner States) Regulations, 2013
- b. The SQMT (Enforcement of Technical Regulations in Partner States) Regulations, 2013
- c. The SQMT (Designation of Testing Laboratories in Partner States) Regulations, 2013
- d. The EAC SQMT (Weighing and Measuring) Regulations, 2014
- e. The SQMT (Spirits Measuring) Regulations, 2014;
- f. The EAC SQMT (Pattern Approval) Regulations, 2014
- g. The EAC SQMT (Sale and Labeling of Goods), Regulations, 2014;
- h. The SQMT (Measure of Capacity) Regulations, 2014
- i. The SQMT (Leather Measuring) Regulations, 2014;
- j. The EAC SQMT (Inspection) Regulations, 2014
- k. The EAC SQMT (Fabric Measuring Instruments) Regulations, 2014;
- l. The EAC SQMT (Dry Measure of Capacity) Regulations, 2014
- m. The EAC SQMT (Dispensing Pumps) Regulations, 2014; and
- n. The EAC SQMT (Bulk Meters) Regulations, 2014.

The task ahead therefore is to ensure Partner States implement the Regulations.

Recommendations

1. Elimination of Tariffs and charges with equivalent effect

a) Develop a common policy for the elimination of tariff equivalent measures on intra-regional trade

- The EAC should develop a regional policy on charges of tariff equivalence to avoid use of these charges contrary to the principle of free trade within the EAC. Partner States should encourage a regional forum of local authorities to help provide information on regional trade and educate regarding the costs of imposing charges on intra-EAC trade. EAC Partner States could initiate a joint study to identify with equivalent effect to tariffs across countries.
- Charges with equivalent effect to tariffs that are common to all Partner States should have a common treatment. For example, road user charges should be harmonized at the EAC level through regional legislation that ensures such charges are not used for tax purposes but cost recovery, and information on applicable charges across EAC transport corridors should be disseminated.
- Amend the EAC Customs Management Act to ensure specific provision that enforce the provision of Article 10 of the Customs Union Protocol pertaining to the requirement for Partner States to eliminate "... other charges of equivalent effect to tariff on trade among them".

b) EAC should address fundamental issues behind the non-recognition of certificates of origin

- There should be an overhaul of duty remission and exemption regimes to introduce accountability and traceability of products that are granted duty remission privileges. Mistrust in RoO has been traced to products benefitting from duty remission, where countries allege circumvention of the EAC Common External Tariff (CET) by the products suspected to be imported from third countries. Rice is the most notorious case.
- A campaign to raise awareness of the revised EAC RoO should be implemented, supplemented by capacity building of customs officials and the private sector to ensure correct application of the RoO and elimination of NTBs associated with the non-recognition of CoO.
- CoOs should be made available electronically. This will increase transparency and enhance efficiency in issuing and administering the certificates. The issuance of electronic CoOs has not been adopted regionally.
- Advanced rulings on RoO should be employed to minimize cases of non-recognition of CoO.
- The ongoing exercise of the CET review should address all cases of non-recognition of COO associated with exemption regime and where possible explore possibility of reviewing the CET to levels that have been granted under the exemption and duty remission schemes. The region's unexploited production potential and possibility for enhancing intra-regional trade for the affected commodities should be considered as fundamental determinants in the review of the CET, especially for products under the EAC List of Sensitive Items.

2. Elimination of NTBs

a) Prioritize removal of certain NTBs

- Establish the reasons for the continued existence of the NTBs that have persisted since CMS 2014 despite an EAC Council deadline for their removal.
- EAC Partner States should identify and adopt common approaches and joint actions for NTBs that affect all Partner States such as those relating to SPS and TBTs. This would promote consistency and harmonization in these regulations and improve traceability on the elimination of this type of NTB. The private sector should be fully engaged through national committees and at the regional level.

b) Develop studies to support impact of NTBs

- The EAC should undertake evidence-based studies, considering both the value and volume of goods affected by the reported NTBs on intra-regional trade, as a measure towards quantification of the impact and elimination of the NTB on the free movement of goods. A common methodology should be developed in order to assess and quantify the impact of NTBs to show Partner States how NTBs could undermine the free movement of goods in the region.
- Partner States should notify each other of new rules and regulations that could affect trade before such rules are introduced and give each other an opportunity to comment on such rules in the context of free movement of goods within the EAC. EAC Partner States should agree on a mechanism for resolving administrative NTBs as the first line of action to avoid reporting NTBs that can be resolved administratively through regionally agreed structures.

c) Improving Regulations and Reporting

- EAC Partner States should be more accurate and specific in the tracking of NTBs and should specify follow-up actions. Reported NTBs are sometimes too general and certain content is not detailed enough to define concrete actions to resolve these measures. The monitoring of elimination of NTBs should be strengthened in order to avoid having “resolved NTBs” simply being replaced by other restrictive measures.

d) Lesson Sharing

- Prepare and share lessons on resolved NTBs among EAC Partner States to avoid recurrence of NTBs through re-introduction by other countries using case studies to demonstrate effective methods.
- Share national strategies for eliminating potential NTBs before they are implemented.

3. Harmonization and mutual recognition of SPS and TBT

a) Regulatory issues

- Ratify the SPS Protocol as a step towards building a regional platform for mutual recognition of SPS measures. Currently, the SPS Protocol has been ratified by Rwanda and Uganda. The status reported at the NMC meeting of 30th March- 1st April 2016 is that the SPS Protocol is pending ratification by Parliament in Burundi, Kenya, and Tanzania.
- Fast track:
 - » The development of Sanitary and Phytosanitary Bill immediately the SPS Protocol is ratified
 - » The domestication of the Standards, Quality, Meteorology and Testing (SQMT) Act 2006 and Protocol
- EAC Partner States could work towards joint risk assessments of most frequently traded agricultural products that are adversely affected by SPS NTBs.

b) Implementation issues

- Develop an SPS database on pest and plant diseases. Regional resource that could be used by SPS authorities in facilitating regional trade of agricultural products. It will be the reference point for SPS authorities regarding agricultural products with shared pest and plant diseases.
- Technical assistance could help Partner States to fully comply with their commitments to harmonize and mutually recognize SPS and TBTs, aligning roles and responsibilities of institutions assigned to handle these matters. It would be useful to examine similar experiences in other regional trade groups to identify pragmatic approaches that promote more fluid circulation of goods.

4. Role of the EAC Secretariat

a) Improving Reporting of NTBs

The EAC Secretariat could improve its reporting on NTBs, considering that:

- The date when an NTB is reported or resolved is not always available. Certain NTBs are not subsequently tracked in every report and are sometimes deemed solved without further explanation.
- NTBs that are solved are kept in consecutive reports without indicating dates that they were introduced and resolved. This is highly confusing and gives the impression that a large number of NTBs are solved in every report, which is not the case. The reporting of resolved NTBs should be improved through introduction of the following details: date the NTBs were reported and resolved, reason behind the introduction of the NTB which should be given when Partner States are reporting action taken to remove the NTB.

b) Follow-Up and Information Measures

Need for more information on continued activities by the Secretariat:

- The Secretariat develop a specific program to follow up the NTBs on which it is directed to take action, both with Partner States and with specific standing committees. It should also keep track if the measure is resolved following such interventions or if it remains unresolved.
- The Secretariat is urged to consistently maintain and update information on EAC legal instruments and reports as their status is important to ensure easy accessibility and foster compliance with commitments.

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METHODOLOGY

The 2016 CMS methodology basically follows the methodology set out in the CMS 2014. There have been a few adjustments made, which are explained below, but in general the approach to identifying and assessing compliance with the CMP commitments is the same *de jure* approach as in 2014.

Capital

This Scorecard measures Partner States' compliance with commitments made toward the EAC CMP Schedule on the Removal of Restrictions on the Free Movement of Capital, covering the 20 capital market operations in the schedule. A headline score is on a scale of 0 to 100, with the goal of indicating compliance with the free movement of capital. The Scorecard is not an assessment of domestic regulation in Partner States.

Non-compliance by Partner States with commitments made in the CMP affects the free movement of capital in the EAC and by extension hinders economic growth. However, other factors have also affected EAC growth in recent years, including the size and depth of the region's capital markets and limited awareness of opportunities for investments. This Scorecard does not assess those issues.

Data gathering and review

The first step in the development of the Scorecard involved putting together reform tracker tables based on the findings of the 2014 Scorecard and reviewing changes to the regulatory framework arising from amendments effected after the data analysis cut-off date for the 2014 Scorecard (30th September 2013). The reform trackers were developed in collaboration with each of the EAC Partner States' National Implementation Committees (NICs) for the CMP.

This review is accurate as of December 31, 2015. The main source for the data was research by legal analysts in the five EAC Partner States, complemented by information such as International Monetary Fund (IMF) findings on capital flows and restrictions in the region. In addition, the report team sent questionnaires to relevant public agencies (such as central banks and capital market authorities) and private organizations (such as law firms engaged in cross-border financial operations, legal departments of investment firms and commercial banks, and brokerage houses and stock exchanges). About 60 responses were received. If clarification was needed from respondents, the team contacted them.

Coding (identifying restrictions)

The second step in developing this Scorecard was coding the collected data. The coding for this Scorecard sought to identify restrictions in terms of laws and regulations that limit the free movement of capital in the EAC. This approach was based on the number of operations affected by those laws and regulations, not by tallying the total number of restrictions. Several restrictions can affect one operation, in which case they are all considered and penalized as one restriction. Conversely, a single restriction (such as the capital controls in Burundi and Tanzania) can affect several operations, in which case they are considered and penalized separately for each operation.

Regulations that constitute a restriction include:

- Any regulation that discriminates between individuals of different Partner States. An example would be requiring government approval for residents of other Partner States to participate in local money markets, but not requiring similar approval for local residents;
- When governments require that only certain types of funds (such as those generated externally) can be used for cross-border capital market operations;
- Deposit requirements associated with moving capital;
- Administrative requirements that could inhibit the free movement of capital. An example is a registration requirement that must be completed to allow for a capital market operation or for subsequent payments associated with that capital flow. Caution was used to distinguish between administrative and regulatory requirements imposed to ensure order, promote transparency, and protect operations from abuse and those that are unduly restrictive;
- A regulatory framework not adequately developed for a particular capital operation because that absence will either significantly slow activity for such operations or deny the market the opportunity to undertake the operation;
- Restrictions with future expiration dates. This approach ensures that the Scorecard reflects the current legal environment for capital movement and avoids potential drops in country scores once expiration dates have passed.

Regulations that do not constitute a restriction include:

- Those that do not substantively limit the free movement of capital, such as those for which no government response is required or that can be conducted after a capital market operation has been completed such as notification to a central bank for statistical purposes;
- Those in compliance with one of the exceptions in Articles 25, 26 or 27 of the CMP—being justified by concerns about prudential supervision, public policy, money laundering, financial sanctions, or safeguard measures. For such regulations not to be considered restrictions, Partner States must have appropriately notified the EAC Secretariat;
- Those that limit capital movements by discriminating between residents and non-residents, but that define residents as a resident of any Partner State;
- Those limiting capital operations not covered by the CMP.

Once coding was complete, the data were verified by compiling legal and regulatory information for each Partner State and determining whether a restriction should be applied to each capital operation (with legal and regulatory citations whenever possible). That information was then shared with the ministries responsible for EAC affairs in the 5 Partner States.

Scoring (development of quantitative indicator scores)

After restrictions were identified, we assigned quantitative indicator scores. The scoring criteria were:

- No restriction in place: 1
- Restriction in place on the operation or no enabling regulatory framework: 0

The scores for the 20 capital operations covered by Annex VI of the CMP were then summed and multiplied by 5 to develop a scale of 0 to 100 for each Partner State. A Partner State that has removed all regulatory restrictions on the relevant operations, or that did not have any, would receive a score of 100. A score of 0 would indicate that the country maintains a restriction on every capital market operation.

Services

Services are a particularly dynamic sector of the economy that experience constant evolution. New services are created all the time, and recently, digitalization has enabled the differentiation between final and intermediate services. Furthermore, unlike goods, services are intangible and cannot be stored. These defining characteristics of the services sectors have profound implications on the way services are traded.

Trade in services is a relatively new topic in international trade law and economics. At an international level, the first normative framework came into force in 1995 with the General Agreement on Trade in Services (GATS) of the World Trade Organization (WTO). All WTO members are signatories to the GATS. This treaty was developed to extend the multilateral trading system to services in the same way the General Agreement on Tariffs and Trade (GATT) provides such a system for trade in goods. For countries looking to attract trade and investment, GATS adds a measure of transparency and legal predictability.

As evidenced in the case of the EAC, members are free to choose which sectors are to be progressively liberalized (i.e., opened up and/or privatized), which mode of supply would apply to a particular sector, and to what extent liberalization will occur over a given period of time.

Services are highly regulated activities and as such they are subject to domestic regulatory frameworks. Liberalization and opening up of services does not mean de-regulation, but rather adherence to certain internally accepted norms and principles of fairness and non-discrimination, including national treatment and most favored national treatment.

The services Scorecard is intended to measure the extent to which EAC Partner States are compliant with these substantive obligations. The Scorecard shall therefore comprise a review and assessment of laws, regulations, and administrative actions affecting the free movement of services of each EAC Partner State. The objectives of the Scorecard are hence to:

- Promote transparency and accountability of the Partner States through making publically available information on the progress in implementing the CMP;
- Serve as a feedback loop and a lesson learning tool to provide constructive feedback to all concerned stakeholders about where follow-up actions are needed;
- Facilitate progress towards *de jure* compliance through generating public awareness, public support, and political will for the reviewing of laws and regulations;
- Recommend next steps and the way forward.

Project scope: Summary of obligations (Part F of CMP)

Part F of the EAC CMP, titled “Free Movement of Services”, provides the key obligations concerning services trade liberalization in the Community. It is accompanied by a “Schedule of Commitments on the Progressive Liberalization of Services” (Annex 5), which lists the market access and national treatment commitments scheduled by each EAC Partner State. The services chapter of the CMP thus provides for a progressive liberalization of services in accordance with a Schedule (Annex 5) that presents legally binding offers of sectors and sub-sectors that Partner States have agreed to liberalize.

The key obligations for services trade under the CMP are the following:

Article 16.1:

“The Partner States hereby guarantee the free movement of services supplied by nationals of Partner States and the free movement of services suppliers who are nationals of the Partner States within the Community”.⁵⁵

Article 16.2:

Free movement of services shall cover the four modes of supply for the delivery of services in cross-border trade.

Articles 16.3 & 4

refer to the obligation to ensure compliance at all levels of government and by non-governmental bodies in the exercise of powers delegated by governments.

Article 16.5:

“The Partner States shall progressively remove existing restrictions and shall not introduce any new restrictions on the provision of services in the Partner States...” These obligations are based on standstill and gradual roll-back commitments in Annex 5 of the CMP.

Article 16.7

notes that the definition of services for the purposes of the CMP excludes (a) services supplied in the exercise of governmental authority on a non-commercial basis, and (b) services provided for remuneration governed by the provisions relating to free movement of goods, capital and persons.

As noted earlier, the two key substantive obligations concern national treatment and most favored nation treatment. Curiously, Annex 5 also contains obligations for “market access”; however, there is no equivalent market access provision in the actual CMP. It has been explained to the World Bank Group team that this is most likely due to a drafting error. Given that the CMP does not explicitly include a market access obligation, this has been excluded from the scope of the Scorecard project, as was already done in the CMS 2014.

⁵⁵ “A national of a Partner State” means a natural or legal person who is a national in accordance with the laws of the Partner State. A “company” is defined as a business entity incorporated as a company under the laws of a Partner State.

National Treatment and Most Favored Nation (MFN) Treatment obligations

The CMP provides the following obligations for National Treatment and Most Favored Nation (MFN) Treatment, consistent with the WTO GATS principles:

National Treatment (Art. 17):

- “Each Partner State shall accord to services and services suppliers of other Partner States, treatment no less favorable than that accorded to similar services and services suppliers of the Partner State.”
- Treatment shall be considered less favorable if it modifies the conditions of competition in favor of services or services suppliers of the Partner State compared to like services or services suppliers of the other Partner States.

MFN Treatment (Art. 18):

- “Each Partner State shall upon the coming into force of this CMP, accord unconditionally, to services and services suppliers of the other Partner States, treatment no less favorable than that it accords to like services and services suppliers of other Partner States or any third party or a customs territory.”

Source: EAC CMP

The box above provides the verbatim definitions of the National Treatment and MFN Treatment obligations as spelled out in the CMP. In practical terms, the National Treatment obligation comprises the following aspects:

- Cannot discriminate on the basis of nationality;
- A foreign company incorporated in one of the countries of EAC is considered “a national” of that country;
- Applies to natural and legal entities;
- Cannot modify condition of competition.

Sector coverage (Annex 5 of CMP)

For the purposes of the services Scorecard, the key source document is Annex 5. As explained above, it comprises a detailed schedule of commitments that are legally binding offers of sectors and sub-sectors that the Partner States have agreed to liberalize (see Annex 1 for the full list of all sub-sectors included in Annex 5):⁵⁶

- a. Business services (professional services– legal, accounting, tax, architecture, engineering; computer and related services, R&D services, other);
- b. Communication services (telecommunications, courier, audio-visual) ;
- c. Distribution (commission agents’ services, wholesale, retail);
- d. Education (primary, secondary, higher, adult, other);
- e. Financial (all insurance, banking, other financial services);
- f. Tourism and travel-related (hotels, restaurants, travel agencies, tour operators, tourist guides, other);
- g. Transport (internal waterways, maritime, air, road, pipeline, other).

The following is an extract from Annex 5 to illustrate how the commitments are listed for each Partner State and sector/sub-sector.

⁵⁶ While all five Partner States have listed commitments for each of the sectors, the coverage of sub-sectors is not necessarily consistent across countries. For example, under financial services, Uganda chose not to include any commitments related to the insurance sub-sector, while the other Partner States did. Similarly, in communication services, Rwanda is the only Partner State to have included commitments under the postal services sub-sector.

Extract of EAC CMP Annex 5:

The East African community common market ANNEX V

Schedule of commitments on progressive liberation of services

Country	(Sub sector) CPC code	Market access	Elimination date	National treatment	Elimination date
Business services					
Burundi	A. Professional services				
	(a). Legal services (CPC 861)	1. None 2. None 3. Unbound 4. In accordance with the schedule on the Free Movement of Workers	2015	1. None 2. None 3. None 4. In accordance with the schedule on the free Movement of Workers	2010
	(b). Accounting, Auditing and Book keeping services (CPC 862)	1. None 2. None 3. Unbound except of 1/3 of the capital is owned by Nationals 4. In accordance with the schedule on the Free Movement of Workers	2015	1. None 2. None 3. None 4. In accordance with the schedule on the free Movement of Workers	2010
	(c). Taxation Services (CPC 863)	1. None 2. None 3. Unbound except of 1/3 of the capital is owned by Nationals 4. In accordance with the schedule on the Free Movement of Workers	2010	1. None 2. None 3. None 4. In accordance with the schedule on the free Movement of Workers	2010

Source: Annex 5 of EAC CMP

The exact definition of each sub-sector and the commercial activities it includes is provided through a reference in the Annex to the UN Central Product Classification (CPC) codes.⁵⁷ The box below provides an example of the CPC definition of taxation services.

Box 4: Taxation services (as defined by the CPC at 3-, 4- and 5- digit levels)

863 Taxation services

8630 Taxation services

86301 Business tax planning and consulting services:

Advisory services to enterprises on how to arrange their affairs, with a view to minimizing the impact of income taxation on their profits by taking advantage of all allowances and benefits that the law provides.

Exclusion: Similar advisory services but including preparation or review services of various returns and reports for the client are classified in subclass 86302 (Business tax preparation and review services).

86302 Business tax preparation and review services:

Services consisting in preparing or reviewing, for enterprises, various returns and reports required for compliance with the

income tax laws and regulations and defending them if contested by the tax authorities. This may also include tax planning and control.

Exclusion: Advisory services on tax planning not including preparation or review services of returns and reports are classified in subclass/86301 (Business tax planning and consulting services).

86303 Individual tax preparation and planning services:

Services consisting in advising individuals on the means to minimize the impact of income tax on their revenues by taking advantage of all allowances and benefits that the law provides and/or preparing the returns and reports required for compliance with tax laws and regulations.

86309 Other tax related services:

Services consisting in assisting enterprises in tax planning and control other than income tax and preparing all documentation required by law.

Source: UN CPC, Provisional Central Product Classification, unstats.un.org/unsd/cr/registry/regist.asp?cl=9&lg=1

Scorecard proxies

Given the time, financial, and human resource constraints of the EAC Scorecard project, it is not feasible to include in the Scorecard analysis all sectors and sub-sectors covered by Annex 5. As a result, four key sectors/ sub-sectors were selected based on their GDP share and their relative restrictiveness. The rationale behind these criteria was to select the most economically significant sectors and at the same time those sectors where current restrictions suggest the greatest need for liberalization. Using relative restrictiveness as a selection criterion allows us to capture the political effort a country has to undertake in order to comply with its obligations. This is consistent with the overall objective of the project.

Based on this methodology, the following four sectors/ sub-sectors were selected as proxies for inclusion in the Scorecard, as in the CMS 2014:

- a. Distribution services: wholesale and retail trade;
- b. Transportation services: air and road transport;
- c. Telecommunication services;
- d. Professional services: legal, accounting, architecture, engineering.

⁵⁷ United Nations, Detailed structure and explanatory notes, CPCprov (Provisional Central Product Classification) unstats.un.org/unsd/cr/registry/regist.asp?cl=9&lg=1

The following three methodologies were applied to select the set of sectors and sub-sectors for the Services Scorecard.

A) GDP contribution of the various service sectors in the EAC economies yields the following ordering of sectors:

Largest to Smallest GDP Share



Source: World Bank Group calculations

B) Restrictiveness of the various service sectors based on the Services Trade Restrictiveness Database⁵⁸ methodology yields the following ordering of sectors:

Most to Least Restricted



Note: As shown above, financial services (banking and insurance) ranked 3rd on the restrictiveness indices. The World Bank Group team will consider the addition of the financial services to the scope of the project as time and resources allow.

C) Restrictiveness of the various service sectors based on a methodology that quantifies the liberalization commitments scheduled in Annex 5⁵⁹ yields for the following ordering of sectors:

Most to Least Restricted



⁵⁸ World Bank, Services Trade Restrictions Database, <http://research.worldbank.org/servicetrade/>

⁵⁹ For example, if Annex 5 indicates there are no restrictions ("none") in a particular sector, the country received a perfect score. If Annex 5 suggests a restriction, such as JV requirements or "unbound", the country is penalized with a lower score. Sectors with the lowest score are considered most restricted.

Table 37: CPC codes of sectors and sub-sectors included in the services Scorecard

Sector	Sub-sector	CPC Codes				
		Burundi	Kenya	Rwanda	Uganda	Tanzania
Professional services	Legal services	861	86119	861*	861	n/a
	Accounting, Auditing and Bookkeeping services	862	862 (excl. 86213 and 86211)	862	862	862
	Architectural services	8671	8671	8671	8671	n/a
	Engineering	8672	86721	8672	8672	8672
Telecommunication services	Telecommunication services	7521	7521-23, 7529	7521-23*	7521-23*	7521-23*
Transportation services	Road transport	7121-24, 6112, 8867, 744	7121-23, 6112, 8867, 744	7121-24, 6112, 8868, 744	7121-24, 6112, 8868, 744	7121-23
Distribution services	Wholesale	622	622	622	622	n/a
	Retail	631-32	n/a	631-2	631-2, 6111, 6113, 6121	n/a

Source: EAC CMP Annex 5

Data collection and analysis process

The information for the Scorecard is based on a comprehensive review of each Partner State's domestic legislation and administrative actions in the four target sectors and the associated sub-sectors and classes. The purpose of this review was to identify provisions that violate the Partner States' commitments under the national treatment and MFN obligations listed in Annex 5 of the CMP.

The analysis only focused on legal compliance with the obligations. In other words, it sought to identify *de jure* violations of the Annex 5 commitments. Implementation of the laws in practice (i.e. *de facto* analysis) was outside the scope of the project. The legal review was conducted by a team of licensed attorneys in each Partner State. The principal research tools included searching the electronic law databases of the EAC Partner States, reviewing official gazettes, and interviewing regulators and practitioners in each of the target sectors and sub-sectors. The process also included consultations with key stakeholders, comprising:

- Ministry of East African Community in each Partner State
- Ministry of Trade in each Partner State;
- State Law Office in each Partner State;
- Law Reform Commissions in each Partner State;
- Other competent authorities (e.g. regulatory agencies, professional associations, etc.)

All identified information was shared with the concerned public authorities for their validation.

EAC online law databases

Rwanda:

<http://www.primature.gov.rw/> (or <http://www.primature.gov.rw/>)

Uganda:

<http://www.ulii.org>

Tanzania:

<http://www.parliament.go.tz/bunge/acts.php>

Kenya:

<http://www.kenyalaw.org/klrl/index.php>

Burundi:

no online law database

Throughout the legal review, all provisions of the laws and regulations that violated the Partner States' obligations were recorded in a separate template. All these provisions have henceforth been referred to as "non-conforming measures", or NCMs. For each NCM, the following information was also recorded:

- Exact text of the NCM;
- Legal source;
- Year of the law/regulation;
- Type of violation (National Treatment or MFN);
- Mode of supply affected.

In instances where specific Partner States did not make any commitments in individual sub-sectors, these were excluded from the analysis.

Limitations

The Scorecard has certain limitations that should be considered:

- The Scorecard focuses on national treatment and MFN obligations, and it excludes market access obligations;
- It excludes certain sectors and sub-sectors, based on the proxy selection methodology;
- It excludes those sectors and sub-sectors where a Partner State made no commitment (i.e., listed "unbound"⁶⁰ in Annex 5).
- It excludes sectors and sub-sectors with a future date for the elimination of restrictions;
- It measures the Partner States' legal compliance (i.e., domestication) with the provisions of the CMP. It does not measure implementation of those provisions in practice;
- It only considers laws, regulations, and administrative actions taken by the Partner States' national governments, local governments, or local authorities. It excludes measures taken by non-governmental bodies in the exercise of powers delegated by national governments, local governments, or local authorities;
- It excludes legal acts under preparation and consideration in a Partner State;
- It does not consider directives and decisions of the Council of Ministers issued with regard to implementation of the Common Market;
- It does not consider domestication of laws passed by the East African Legislative Assembly;
- It excludes bilateral agreements which violate the MFN obligation;
- It excludes administrative actions targeted at individual or companies;
- It excludes administrative actions which are not based on the law and therefore are measures that are not published;
- It excludes laws of general application;
- The Scorecard looks into supply of service under Mode 4 notwithstanding its linkage to Annex II of the CMP. A conflict between Annex 5 and II will be treated as a restriction;
- A lack of legislation or regulation is not scored negatively.

⁶⁰ Annex 5 defines unbound as "no commitment to fully liberalize the subsector until the mentioned date when there will be a full commitment or the commitment undertaken does not take effect until the mentioned date."

Goods

- Article 5(2) (a) of the EAC Common Market CMP (CMP) commits EAC Partner States to: Eliminate tariffs and equivalent measures on intraregional trade;
- Eliminate non-tariff barriers;
- Harmonize and mutually recognize sanitary and phytosanitary standards (SPS) and standards with a view to preventing these from becoming technical barriers to trade (TBT); and
- Develop a common trade policy for the community.

This Article further requires Partner States to take all necessary steps to achieve these obligations through national and regional laws and regulations. The following regional laws and instruments have been promulgated to help further the free movement of goods within the community:

- The East African Community CMP on Standardization, Quality Assurance, Metrology and Testing (2001);
- The EAC Customs Law, including the EAC Customs Union CMP (2004) and the EAC Customs Management Act (2004);
- The East African Community Standardization, Quality Assurance, Metrology and Testing Act (2006);
- The EAC Rules of Origin (2009), revised in 2014 and in force since January 2015;
- The EAC Sanitary and Phytosanitary CMP (2013); and
- The EAC Non-Tariff Barriers Act (2015).

The EAC Customs Law, enacted in accordance with Article 39 of the Customs Union CMP, bars Partner States from introducing measures inconsistent with regional customs law.

The analysis of barriers to intra-EAC trade under CMS 2016 is based on the methodology developed for the 2014 CMS, which aims to assess how Partner States have complied with their obligations under Article 5(2) (a) of the CMP. This assessment has two components:

- An assessment of legal compliance, which measures how far Partner States are from taking all the necessary steps to comply with their legal obligations as stated in Article 5(2) (a). The CMS 2014 reviewed a significant number of national laws (See Box 8). This review serves as the basis for the CMS 2016 analysis. For CMS 2016, the legal compliance review assesses whether Partner States have enacted the remaining measures required for compliance.
- An assessment of “*de jure*” implementation, which assesses whether Partner States have enacted measures inconsistent with their Article 5(2) (a) obligations. The methodology established for the CMS 2014, as detailed in Box 8, adopted the data from the EAC’s Time Bound Program, through which EAC Partner States, in coordination with the EAC Secretariat, regularly identify non-tariff barriers (NTBs) that affect their ability to effectively carry out intra-regional trade. While not necessarily exhaustive, these member-identified measures serve as proxies for the broader universe of potential NTBs.

The CMS 2014 identified a number of outstanding and continuing barriers to trade in goods, including measures related to tariffs, NTBs, and standards. The EAC Council directed that the incidences of noncompliance noted in the CMS 2014 be addressed as part of the EAC strategy for implementation of EAC regional policies to stimulate intra-EAC trade. The CMS 2016 adds to this momentum by evaluating the progress since the CMS 2014.

The CMS 2014 thoroughly assessed Partner States’ implementation of the Common External Tariff (CET). The study identified two areas of non-implementation. One was the perforation of the CET resulting from imports from non-EAC members of other Regional Economic Communities (RECs) to which EAC Partner States belong. The other source of perforation was occasioned by exemption of certain products from the CET under the EAC Duty Exemption Regime and the EAC Duty Remission Scheme.

The CMS 2014 assessed both of these CET perforations to be legal. Provisions within the EAC Customs Management Act (CMA) allow for EAC Partner States to trade with RECs to which they belonged before the establishment of the EAC Customs Union under the prevailing preferential terms. All exemptions and remissions to the CET were granted in accordance with the EAC (CMA) and Customs Union CMP. These perforations are not, therefore, considered as non-conforming measures and all Partner States are regarded as having complied with this obligation. As such, the CMS 2016 update does not further examine this issue.

Although duty exemption and remission schemes have been deemed legal, they are not without problems. Partner States have raised a number of concerns regarding the implementation of these, including capacity-related challenges, both at the Partner State and the EAC Secretariat level. These arise from the perception that some finished products from intra-EAC industries that benefit from duty remissions are circulating within the EAC duty free instead of at the CET rate. The EAC is in the process of overhauling the Duty Remission Scheme and exemptions regime through a comprehensive review of the CET, which is envisaged to be completed by November 2016. The aim of the review is to align the CET to rates that reflect the dynamics that have in the past rendered the industry to seek CET exemptions due to regional shortages of raw material and intermediate products.

Box 6: The CMS 2014 methodology: A “legal compliance” and “*de jure* implementation” approach

- The 2014 EAC Common Market Scorecard (CMS) presented an extensive analysis of the legal modifications required for the implementation of regional integration in the EAC. This assessment was necessary to build a basis for assessing reforms and identifying any remaining barriers to regional integration in goods among EAC Partner States. The process consisted of two steps:



- **Step one: Legal Compliance.** Determine whether Partner States are in “**legal compliance**” – that is, have they taken **the minimum steps necessary** to comply with the obligations stated in Article 5(2) (a). The initial analysis of legal compliance entailed a substantial number of subsidiary steps, such as assessing compliance with all obligations included in the derived instruments of the Common Market the Customs Union Protocols and other regional instruments, plus an examination of each of those commitments as to whether

Member States had enacted all domestic legislation necessary to implement them.

- **Step two: “*De jure*” implementation.** Verify whether each Partner State has **enacted measures that may be inconsistent** with the obligations mandated



by Article 5(2) (a). By virtue of the potential scale of such an endeavor, the decision was made to use a set of NTBs already being identified at the EAC level by Partner States in the context of their EAC Time Bound Program, which was created to identify and eliminate non-tariff barriers and is coordinated by the EAC Secretariat. These notified NTBs are used as proxies for the CMS exercise in order to facilitate the process of review. A complete *de facto* analysis was not performed because it would have required factual verification of many conditions needed to enable free trade in goods—information that is currently

unavailable. Thus, the data and analysis presented in this Scorecard serve as indicators of State behavior at national level and regional level.

The terms **Legal compliance** and ***de jure* implementation** are used, as defined above, throughout the Scorecard. Reference to the detailed chapter on methodology and EAC CMS 2014, for a more thorough description of the methodology.

The bulk of the information for this chapter comes from the EAC Time Bound Program on Elimination of Non-Tariff Barriers (NTBs) and the CMS 2016 National Steering Committee meetings, which validated reported NTBs and gave insights that were invaluable in the scoring exercise.

Definition of NTBs

The definition of NTBs used in this Scorecard is different from that applied in the 2014 version, which was based on the EAC time bound tables. In 2014, legal NTBs were classified in accordance with the UNCTAD Classification of Non-Tariff Measures (February 2012). In this edition of the Scorecard, NTBs have been classified according to the methodology used in the EAC NTB Elimination Act, 2015. Part I, Section 4 provides that NTBs shall be categorized according to the World Trade Organization (WTO) classification set out in the schedule to the Act. This classification is similar to the UNCTAD-based classification used in the previous Scorecard but contains only seven categories (instead of the 16 considered by UNCTAD). Accordingly, the NTBs in this Scorecard fall into the following categories:

- i. Government participation in trade and restrictive practices tolerated by Government (e.g., subsidies, monopolies, domestic preferences, government procurement flawed procedures)
- ii. Customs and administrative entry procedures (e.g., anti-dumping, rules of origin, licensing, charges equivalent to tariffs)
- iii. Technical barriers to trade (TBTs)
- iv. Sanitary and phytosanitary measures (SPS)
- v. Specific limitations (e.g., quantitative restrictions, exchange controls)
- vi. Charges on imports (e.g., supplementary duties, prior deposits)
- vii. Other procedural problems (e.g., arbitrariness, lack of information)

It is important to note that, in a departure from the 2014 Scorecard, for the CMS 2016, NTBs found to be common to all EAC Partner States were reported as an NTB of each country. This was done after recommending that NTBs require a regional approach to be

resolved, implying that all EAC countries have individual duties but also a collective responsibility to undertake measures to resolve the NTBs. However, as most of these NTBs have persisted since 2008 across all EAC countries, Partner States are encouraged, post CMS 2016, to take collective measures to eliminate these NTBs.

Scoring

The scoring mechanism for CMS 2016 follows that developed for CMS 2014. A numerical value is assigned to countries' performance with respect to both legal compliance and *de jure* implementation (as described in Box 8). The weights for the components and sub-components described below were assigned by a panel of experts serving as a reference group for the project.

Because the focus of this exercise was to measure progress toward completion of the EAC Common Market, a higher weighting was assigned to implementation (60 percent) than to legal compliance (40 percent). This reflects the fact that a country can have perfectly implemented its legal obligations but implementation issues can lead to significant erosion of the impact of this accomplishment. Because complete information on *de facto* implementation was not available for the CMS 2014, the analysis assumed that different elements of the variable of effective implementation had similar effects on compliance. In the CMS 2016 analysis, the weights assigned to the proxies of effective implementation have been adjusted, aiming to reflect the impact of more recurrent NTBs, as explained below.

1. Strict legal compliance (40 percent)

Strict legal compliance includes two components: compliance with the adoption of the EAC tariff schedule and compliance with the adoption of EAC Rules of Origin. For purposes of scoring, each of these variables was allocated 20 percent of the total score, considering that both have the same binding effect for EAC Partner States.

All EAC Partner States have adjusted their tariff schedules to provide zero tariffs on intra-EAC trade and have adopted the EAC Rules of Origin (the 2009 version assessed in CMS 2014 was replaced by a revised version in 2015); thus, all currently formally comply with the obligation to eliminate tariffs on intra-regional trade. Given that the 2014 Scorecard assessment established that all EAC countries have complied with both of these variables, each Partner State was assigned a full score of 20 percent for this variable.

2. Effective implementation (60 percent)

In the CMS 2014, as there was incomplete information about *de facto* implementation, it was assumed that different factors relating to each variable have a similar influence on the level of compliance. The relative weights assigned to the sub-components of effective implementation are 30 percent for NTBs related to the implementation of the EAC tariff schedule (price control and similar measures), and 30 percent for NTBs related to rules of origin (problems related to certificates of origin, non-recognition of certificates of origin, issuance of certificates of origin by other agencies other than the customs authority, and false documentation for certificate of origin).

Building on the information gathered in the CMS 2014, the relative weights assigned to the effective implementation variables for CMS 2016 were updated considering the recurrence of NTBs on charges having a tariff-equivalent effect and on the application of rules of origin:

The following variables were used to assess the effective implementation of measures that would eliminate internal tariffs:

a) Use of charges having a tariff-equivalent effect.

This is assigned a maximum score of **40** percent considering that this was the most frequently reported NTB, cited almost twice as frequently as those relating to the recognition of certificates of origin.

b) Application of EAC Rules of Origin. This is assigned a maximum score of **20** percent, allocated as follows:

- Recognition of certificates of origin (maximum score of **10** percent);
- Compliance with the EAC Council directive that certificates of origin be issued by Customs Authorities (maximum score of **5** percent); and
- Compliance with EAC Rules of Origin requiring Partner States to enact legislation to impose penalties on people who provide false documentation for certificates of origin (maximum score of **5** percent).

The score gives more weight to the recognition of certificates of origin as this was the problem that was most frequently reported in NTBs regarding rules of origin.

The following rules were applied in scoring the use of charges of equivalent effect to tariffs and the recognition of certificates of origin:

- If a country did not use charges with a tariff-equivalent effect, or did not fail to recognize certificates of origin (CoO) over the review period, it scored 40 percent (for charges of equivalent effect to tariffs) or 10 percent (for CoO).
- If a country used charges with a tariff-equivalent effect or did not recognize CoO over the review period, the score of 40 percent or 10 percent was reduced in proportion to the number of NTBs reported on this issue (this included both resolved and unresolved NTBs).

For scoring charges equivalent to tariffs, all charges applied at the border were considered, including the cash-bonds, levies, non-recognition (partial or total) of preferential tariffs and the requirement of bonds or guarantees. Charges imposed after customs (e.g. road tolls) were not considered for this purpose.



COUNTRY TABLES



Country Summary: Burundi

To what extent has Burundi complied with the recommendations for reform made in the 2014 Scorecard?

As found in the 2014 Scorecard, Burundi imposes restrictions on residents on purchases of foreign shares (onerous requirements and unfettered discretion by central bank), purchase of securities by non-residents (unfettered discretion by ministerial committees to allocate access), lending abroad by residents (capital controls), and inward investments (carve-outs for Burundian nationals in privatization of state owned enterprises and discriminative competition laws). Central Bank approval is required for several transactions including participation in IPOs in other EAC Partner States, foreign sale of securities by residents, sale of bonds and other debt securities abroad by residents, foreign purchase or sale of money market instruments by residents, and outward investment. Burundi does not apply any exemptions under article 25 (1).

One of the 2014 Scorecard recommendations was that Burundi establish a stock exchange. Burundi, with the support of the EAC Financial Sector Development and Regionalization Project, developed a securities market draft legal and regulatory framework to facilitate the introduction of a securities industry. Draft laws on the Capital Markets Authority (to establish the regulatory authority), Capital Markets Industry (to provide for the establishment of the securities exchange and market intermediaries), and the Central Securities Depository (to provide for electronic holding, circulation, and settlement of securities) were developed. Draft regulations were developed on Licensing on Market Intermediaries, Public Offer of Securities, Conduct of Business, Central Securities Depository, Collective Investment Schemes, Corporate Governance, Takeovers

and Mergers, Information (Analytical and Evaluative) Services Providers, Fees Regulations and Complaints. Draft Enforcement Guidelines and a Journalist Code have also been developed. The drafts were completed and presented to the East African Secretariat in October 2015 and await progression through the legislative process.

No	Type of operations	Existence of restriction	Citation of legislation imposing the restriction where applicable / comments
1.	Purchase by residents of foreign shares or other securities of a participating nature	The approval of the Central Bank must be sought	<p>Article 3, paragraph 2, and article 63 of the Foreign Exchange Regulation of June 10, 2010. http://www.brb.bi/se/docs/rglt_chge_scn.pdf</p> <p>The application for this approval shall provide the following information:</p> <ul style="list-style-type: none"> -Names of the shareholders of the company and their respective amount of share capital; -The financial statements of the company for the last three years preceding the purchase; -The prospective profitability statement/assessment for the coming three years from the date of the purchase; -An authenticated copy of the Memorandum and Articles of Association of the company; -The amount and purpose of the money to be transferred; -The nature of the shares or other securities to be purchased; -The name and address of the financial institution to which the funds are transferred; <p>In the case of a new transfer of funds, a justification showing how the return on the previous investments was utilized. (The approval process may take long)</p>
2.	Local purchase by non-residents of shares or other securities of a participating nature	A restriction exists. The total or a specified percentage of the securities may, at the discretion of the Inter Ministerial Privatization Committee, be sold to citizens of Burundi or to companies with mainly Burundian capital.	<p>Article 16 paragraph 2 of the Law No. 1/01 of 9/02/2012 amending the Law No. 1/03 / of 19/02/2009 on the Organization of the Privatization of Companies with Government's Participation, Public Services, and Works.</p> <p>Article 16</p> <p>As part of the privatization of a company with public participations, public service, or public works, the Inter-ministerial Privatization Committee is authorized to negotiate and conclude any contract with any national or foreign individual or entity, whether or not resident in Burundi.</p> <p>However, after due consideration and upon favorable recommendation of the Service in Charge of State Enterprises, (SCEP), the Inter-ministerial Privatization Committee may decide the division of shares and retain all or a specified percentage of securities to be sold to citizens of Burundi or companies with mainly Burundian capital. At the same time, it sets the rules and procedures for subsequent transfer of these securities to foreign investors (Inter-ministerial Privatization Committee has a lot of discretion on transfer of securities to foreign investors).</p>
3.	Participation of residents in initial public offers (IPOs) in foreign capital markets	The approval of the Central Bank is required.	<p>Articles 3 paragraphs 2 and 63 of the Foreign Exchange Regulation of 10th June 2010 http://www.brb.bi/se/docs/rglt_chge_scn.pde. Provision as quoted in (1) above.</p>
4.	Local sale by non-residents of foreign shares or other securities of a participating nature	No regulatory framework for this.	Not Applicable



Burundi

No	Type of operations	Existence of restriction	Citation of legislation imposing the restriction where applicable / comments
5.	Foreign sale by residents of shares or other securities of a participating nature	The approval of the Central Bank is required	Article 3 par 2of the foreign exchange regulation of 10 June 2010
6.	Local purchase or sale of money market instruments by non-residents	There is no restriction on the purchase or sale of treasury bills, and the purchase or sale of other money market instruments is not regulated. The principle is freedom of inward investment by non-residents and local investment by non-residents is not restricted as a matter of principle.	Not applicable
7.	Local sale of bonds and other debt instruments by non-residents	See 6 above.	Not Applicable
8.	Sale of bonds and other debt securities abroad by residents	The approval of the Central Bank is required.	Article 3 paragraph 2 of the Foreign Exchange Regulation of June 2010.
9.	Local purchase or sale of money market instruments by non-residents	There is no restriction on the purchase or sale of treasury bills, and the purchase or sale of other money market instruments is not regulated. The principle is freedom of inward investment by non-residents and local investment by non-residents is not restricted as a matter of principle.	Not applicable
10.	Foreign purchase or sale of money market instruments by resident	The approval of the Central Bank must be sought.	Article 3 paragraph 2, and article 63 of the Foreign Exchange Regulation of June 2010.
11.	Local purchase by non-residents of collective investment schemes	There is no regulatory framework to support this operation.	Not Applicable
12.	Local sale or issue by non-residents of collective investment schemes	There is no regulatory framework in place to support this operation.	Not Applicable
13.	Sale or issue of derivative product locally by non-residents	There is no regulatory framework in place to support this operation.	Not Applicable
14.	Sale or issue of derivative products abroad by residents	There is no regulatory framework in place to support this operation.	Not Applicable
15.	External borrowing by residents	No restrictions exist.	
16.	Lending abroad by residents	Restrictions exist.	Article 3 paragraph 2 and article 63 of the Foreign Exchange Regulation of June 2010.



Kenya

To what extent has Kenya complied with the recommendations for reform made in the 2014 Scorecard?

Kenya imposes restrictions in inward direct investments (discriminatory treatment for EAC domiciled investors and restriction of market access in selected sectors). These restrictions are found in investment laws, and telecommunications laws. Kenya exercises two exemptions related to prudential supervision (controlling bank transactions between residents and non-residents through requiring central bank authorization) and anti-money laundering (placing ceilings on transportation of monetary instruments within the EAC). Kenya is required to notify EAC Partner States of these exemptions, but it has not complied.

Regarding the need for a regulatory framework for derivative products, as highlighted in the 2014 Scorecard, Nairobi Securities Exchange (NSE) received formal approval from the Kenyan Capital Markets Authority (CMA) to operate a derivatives market. This followed the satisfactory fulfillment of the requirements stipulated under Section 63A of the CMA Act, the Capital Markets (Futures Exchange) (Licensing Requirements) Regulations, and further requirements as imposed by CMA following the provisional license granted to the NSE on December 18, 2014.

No	Type of operations	Existence of restriction	Citation of legislation imposing the restriction where applicable / comments
1.	Inward direct investments	Restrictions exist on inward investments by foreign investors (any investor who is a non-citizen of Kenya) in some enterprises and sectors.	<p>The Investment Promotion Act, 2004 makes a distinction between foreign and local investors. In Section the Act 2 describes a foreign investor as:</p> <ul style="list-style-type: none"> a) A natural person who is not a citizen of Kenya; b) A partnership in which the controlling interest is owned by a person or persons who are not citizens of Kenya; c) A company or other body corporate incorporated under the law of a country other than Kenya's. <p>S.6 (3) requires a that a foreign investor be issued with an investment certificate before investing in Kenya;</p> <p>S. 6(4) provides that a local investor who does not hold an investment certificate shall register the investment with the Kenya Investment Authority.</p> <p>There are restrictions on the acquisition of shares by non-residents in Kenyan companies in the following sectors:</p> <p>Telecommunications</p> <p>Kenya Information and Communication (Licensing and Quality of Service) Regulations, 2010- issued under the Kenya Information and Communications Act Cap 411A- Regulation 4 (3), an entity applying for a license under these regulations shall ensure that its shareholding conforms to the prevailing communications sector policy.</p> <p>The Nation Information and Communications Technology Policy, published by the Ministry of Information and Communications in January 2006, provides in article 5.6 under the heading Equity Participation: "The Government will encourage Kenyans to participate in the sector through equity ownership. Consequently, firm licenses to provide telecommunication services shall have at least 30% Kenyan equity ownership. However, for all listed companies, the equity participation shall conform to the existing rules and regulations of the Capital Markets Authority. The Government will support upcoming small-scale operators through proactive measures (reserving of a certain percentage for</p>



Kenya

APPLICATION OF ANY GENERAL EXCEPTIONS PURSUANT TO ARTICLE 25.1 OF THE EAC COMMON MARKET CMP

No	Purpose of restriction	Whether restriction is imposed	Describe nature of restrictions and whether EAC Secretariat and other Partner States duly notified
1.	Prudential supervision	Yes	Central Bank of Kenya Act, cap 491. S.33H (1) provides that except with the permission of the Central Bank every payment made; (a) In Kenya, to or for the credit of a person outside Kenya; or (b) Outside Kenya, to or for the credit of a person in Kenya; or (c) In Kenya (other than a payment for a current transaction) between a resident and non-resident shall be effected through an authorized bank. (No notification as prescribed by the common market CMP).
2.	Anti-money laundering	Yes	The Proceeds of Crime and Anti- Money Laundering Act, 2009 S.12 (1) and schedule 2 provides that a person who transports monetary instruments of USD 10,000 or its equivalent in Kenya shillings or other currency in or out of Kenya shall declare in a prescribed form at the point of entry or exit. (No notification as prescribed by the common market CMP).

Country Summary: Rwanda

To what extent has Rwanda complied with the recommendations for reform made in the 2014 Scorecard?

As was found in the 2014 Scorecard, Rwanda imposes restrictions in the purchase and sale of money market instruments (Central Bank has unfettered discretion to control local money market instrument transactions by East African residents and money market transactions in EAC Partner States by residents), inward investments (requirements for reciprocal market access, requirements to use advocates practicing in Rwanda for legal opinions, onerous home jurisdiction requirements for market entrants, market access restrictions in selected sectors, restrictions on transfer of shareholding in companies in selected sectors, outward direct investment (restrictions on investments by major banks in other EAC Partner States), and repatriation of proceeds from sale of assets. Rwanda's restrictions are to be found in laws governing the operation of the central bank, licensing requirements for participants in central securities, corporate governance laws, laws in telecommunications and insurance, and laws governing investment policy. Rwanda exercises two exemptions related to prudential supervision (unfettered discretion by the Central Bank to intervene in the money markets) and anti-money laundering (capping of transportation of money instruments by EAC nationals).

It is noteworthy that Rwanda has prepared a number of draft bills to address the findings in the 2014 Scorecard: The Draft Investment Code to address the restrictions against inward direct investments, and the Capital Market Authority in conjunction with a number of stakeholders is looking to develop a platform for trading derivative products.



Rwanda

No	Type of operations	Existence of restriction	Citation of legislation imposing the restriction where applicable / comments
1.	Local purchase or sale of money market instruments by non-residents	Central Bank may impose restrictions in order to achieve monetary policy objectives.	Article 55 Law No. 55/2007 of 30/11/2007 Governing the Central Bank of Rwanda provides: "In order to achieve monetary policy objectives, the bank may intervene in the money market especially for lending, borrowing, selling, buying liquid assets with options to repurchase or of pension of public or private effects or any other negotiable instrument. (Central Bank has wide powers to intervene in money market operations which powers can potentially be applied against non-Rwandans)
2.	Foreign purchase or sale of money market instruments by residents	Central Bank may impose restrictions in order to achieve monetary policy objectives	Article 55 of Law No. 55/2007 of 30/11/2007 Governing the Central Bank of Rwanda provides: "In order to achieve monetary policy objectives, the bank may intervene in the money market especially for lending, borrowing, selling, buying liquid assets with options to repurchase or of pension of public or private effects or any other negotiable instrument. (The Central Bank may use its powers against non-Rwandans).
3.	Sale or issue of derivative products locally by non-residents	No regulatory framework to enable the sale or issue of derivative products.	Not Applicable
4.	Sale or issue of derivative products abroad by residents	No regulatory framework in place to facilitate the sale or issue of derivative products abroad by residents.	Not Applicable

No	Type of operations	Existence of restriction	Citation of legislation imposing the restriction where applicable / comments
5.	Inward direct investments	Restrictions exist	<p>Article 10 of Regulation No. 08/2010 of 27/12/2010 on Licensing Requirements for Participants in Central Securities Depository and Protection of Securities Holders provides that: "The Central Bank may refuse to authorize a participant governed by the law of a state which does not offer reciprocal market access under the same conditions to participants governed by Rwandan Law. (These conditions can range from capital requirements, qualifications of Key personnel etc. Currently there is no harmonization of laws in the securities industry meaning that other EA brokers may potentially be refused admission to operate as CSD on the grounds that their states do not offer reciprocal market access under the same conditions to participants governed by Rwandan Law).</p> <p>Article 5 of Regulation No. 01/06/2012 on Regulation of Capital Markets (Licensing Requirements) 2012 provides that: "Applicants for Approval of a Foreign Securities Exchange must demonstrate that adequate arrangements exist for cooperation between the Authority and those responsible for the supervision of the applicant in the country in which the applicant's head office is situated. (No details of what would constitute adequate arrangements is given, usually the foreign securities exchange would be under the jurisdiction of the local regulatory authority, and the requirement to demonstrate existence of adequate arrangements for cooperation between the Authority in the local market and the Authority responsible for the supervision of the applicant in the country in which the applicant's head office is situated is onerous.)</p> <p>Article 6 of Law No. 01/2011 of 10/02/2011- Law Regulating Capital Market in Rwanda provides that: "A foreign person shall be authorized to carry out capital market business in Rwanda if the Authority is satisfied that the person is regulated and licensed by a foreign agency with equivalent powers. The Authority shall make regulations to be followed by a foreign person before he/she is authorized to operate. (This disqualifies those who do not have offices in the other countries.)</p> <p>Article 8 of Law No. 44/2001 of 30/11/2001 Governing Telecommunications provides: "Natural Persons and organizations may be refused a license for the following reasons:</p> <ul style="list-style-type: none"> • In order to protect the national integrity and/or national security; • If the regulatory body reasonably believes that competition in the telecommunications sector can be adversely affected. (Article 8 may be interpreted to adversely affected non-Rwandan companies); <p>Article 53; Except with the prior permission of the Minister, it is strictly forbidden;</p> <ul style="list-style-type: none"> • For any one company which is supplying telecommunication networks and/or services to hold any shares in any other company which is supplying telecommunications networks and/or services either directly or indirectly through any nominee organization or subsidiary or other associated company which is part of the same group of companies as the first company; • For any company to hold shares whether directly or indirectly through any nominee organizations or subsidiary or other associated company which is part of the same group of companies in another company which is supplying telecommunications networks and/or services. <p>Any company contravening these provisions must sell its shareholding forthwith. (Article 53 makes it difficult for companies in the telecommunication sector to take advantage of business opportunities that may present themselves in similar companies.)</p> <ul style="list-style-type: none"> • Law No. 14/98 of 18/12/98 Establishing the Rwanda Investment Promotion Agency: Article 1(f) (i) defines a foreign investor as "a natural person; who is not a citizen of Rwanda nor a citizen of the Common Market of Eastern and Southern African States (COMESA)." Article 1 (f) (ii) a company incorporated under the laws of any country other than Rwanda or COMESA NB. Tanzania is not a member of COMESA (These provisions discriminate against Tanzanians who are not members of COMESA.)

Country Summary: Tanzania

To what extent has Tanzania complied with the recommendations for reform made in the 2014 Scorecard?

In 2014, the United Republic of Tanzania (URT) made reforms aimed at enhancing the free movement of capital as provided in the East African Community Common Market Protocol. The reforms were contained in the following documents;

- i. The Foreign Exchange (Amendment) Regulations, GN No. 133 of 2014 These regulations among other things opens up the government securities market to EAC Partner States' citizens but limits their collective participation to not more than 40% of securities issued. They restrict the quantum that citizens of one EAC Partner State can acquire to not more than two thirds of the 40%. Furthermore, the citizen of the EAC Partner States can transfer the securities to a resident of the United Republic of Tanzania after the expiration of 12 month from the date of acquisition.
- ii. The Foreign Exchange (Listed Securities) (Amendment) Regulations No. 132 of 2014. These regulations amend the Foreign Exchange (Listed Securities) Regulations GN. No 227 of 2003 which restricted URT residents from participating in the securities markets of other EAC Partner States. The Foreign Exchange (Listed Securities)(Amendment) Regulations introduce a new definition; prescribed territory which means " a member country of the East Africa Community" and purports to lift the restrictions previously imposed by the 2003 regulations. For example, the 2014 Regulations provide that any Tanzanian resident can acquire, sell, or transfer any security or coupon to a non resident if (a) the issuer or buyer of the security or coupon is a resident of any prescribed territory and (b) the security or coupon to be acquired, sold, or transferred outside the prescribed territory are funded exclusively by externally generated funds. However, the fact that the regulations define "prescribed territory" as a member country of the East African Community as opposed to the East Africa Community has the potential to create the impression that capital is restricted from moving from Tanzania to the individual EAC Partner States and vice versa, except where the acquisition of the capital instruments moving were financed by externally generated funds.
- iii. The Capital Markets and Securities (Foreign) Investors Regulations GN 338 of 2014
- iv. These regulations lift the restrictions that previously existed on the purchase and sale of securities other than government securities.



Tanzania

No	Type of operations	Existence of restriction	Citation of legislation imposing the restriction where applicable / comments
1.	Local purchase of bonds and other debt instruments by non-residents	Non Tanzanians are restricted from purchase or sale of Government securities	<p>The Capital Markets and Securities (Foreign Investors) Regulations 2014:</p> <p>Regulation 3(1): A non-resident may acquire, sell or transfer any securities other than Government securities issued in the United Republic of Tanzania.</p> <p>Regulation 3 (2): The participation of foreign investors in the primary market of government securities shall be subject to such conditions or requirements as the Bank of Tanzania may prescribe.</p> <p>The Foreign Exchange (Listed Securities) (Amendment) Regulations:</p> <p>Regulation 3 (1) amends Regulation 3 of the Foreign Exchange Listed Securities Regulations, 2003 by inserting a new Regulation 3 which provides as follows;</p> <p>a. A non-resident may acquire, sell or transfer any securities other than government securities issued in the United Republic.</p> <p>b. Notwithstanding the provisions of sub regulation (1), a resident of a prescribed territory may acquire sell or transfer government securities provided that;</p> <ul style="list-style-type: none"> • The total amount of securities acquired by residents from prescribed territories does not exceed 40% of the securities issued • The amount acquired by the residents from a single prescribed territory does not exceed 2/3 of the amount acquired under paragraph (a); and • The government securities acquired shall not be transferred to a resident within 12 months of the date of acquisition
2.	Local sale of bonds and other debt instruments by non-residents	See 6 above	See 6 above
3.	Sale of bonds and other debt securities abroad by residents	See 6 above	See 6 above

No	Type of operations	Existence of restriction	Citation of legislation imposing the restriction where applicable / comments
4.	Local purchase or sale of money market instruments by non-residents	There is a restriction.	Clause 3.3 provides that "it should be noted that outward portfolio investments, foreign lending operations in favor of non-residents, acquisition of real estate, outward direct investments, operation of off shore foreign currency accounts by residents and participation of non-residents in domestic money and capital markets are still subject of restrictions.
5.	Foreign purchase or sale of money market instruments by residents	No restriction	Not applicable
6.	Local purchase by non-residents of collective investment schemes	No restriction	Not applicable
7.	Local sale or issue by non-residents of collective investment schemes	CIS products can only be sold or issued by statutory bodies or companies incorporated in Tanzania.	Capital Markets and Securities Act cap 79. S. 118 provides for application to CMSA to operate a collective investment scheme and provides in Sub-section 2 that "no application to be made to operate a collective investment scheme unless the applicant is the manager, trustee or custodian or the proposed manager, trustee or custodian of the scheme." S.119 (1) provides that "the trustee or custodian shall either be a statutory body or a company incorporated in Tanzania." (This is restricted to Tanzanian companies as the operation of a branch office would not suffice to enable companies incorporated in other EAC Partner States to participate through registration as a foreign company and/or the establishment of a branch office for example. The additional burden of incorporation may prove restrictive)
8.	Sale or issue of derivative product locally by non-residents	No enabling framework	Regulatory framework not in place
9.	Sale or issue of derivative products abroad by residents	No enabling framework	Regulatory framework not in place
10.	Lending abroad by residents	This is restricted.	The Foreign Exchange Regulations, GN. No 629 of 1998. Regulation 20 provides that " Any institution authorized to lend, may lend any amount of money in Tanzania shillings or foreign currency or assign treasury bills, or securities denominated in Tanzanian shillings to any individual or body corporate resident in Tanzania whether the body corporate is foreign controlled or otherwise. Will not lend to an entity not resident Tanzania) Clause 3.3 of the Central Bank.



Tanzania

No	Type of operations	Existence of restriction	Citation of legislation imposing the restriction where applicable / comments
11.	Inward direct investments	Restrictions exist on inward investments by foreign investors (any investor who is a non- citizen of Tanzania).	<p>The Investment Promotion Act, 1997 makes a distinction between foreign and local investors. In Section, the Act 2 describes a foreign investor as:</p> <p>“In the case of a natural person, means a person who is not a citizen of Tanzania and in the case of a company, a company incorporated under the laws of any country other than Tanzania with more than 50% of the share are held by a person who is not a citizen of Tanzania, and in the case of partnerships, means a partnership in which the partnership controlling interest is owned by a person who is not a citizen of Tanzania.”</p> <p>Local investor is “a natural person who is a citizen of Tanzania, a company incorporated under the laws of Tanzania in which the majority of the shares are held by a person who is a citizen of Tanzania, or a partnership in which the partnership controlling interest is owned by a person who is a citizen of Tanzania.”</p> <p>S. 2 (1) subject to this section, this Act shall apply to any business enterprise which meets the requirements specified in subsection (2).</p> <p>S.2 (2) the businesses specified for this purpose of this section which may enjoy the benefits and protection provided under this Act, are those which-</p> <p>a. If wholly owned by a foreign investor or if a joint venture, the minimum capital is not less than Tanzanian shilling equivalent to three hundred thousand US dollars.</p> <p>b. If locally owned, the minimum capital investment is not less Tanzanian shillings equivalent of one hundred thousand US dollars.</p> <p>S.25 (1) subject to subsection (2) a foreign investor, may, in relation to the business enterprise which he operates obtain credit from domestic banks and financial institutions up to the limit established by the Bank of Tanzania in consultation with the Tanzania Investment Centre having regard to the amount of foreign capital invested in the business enterprise.</p> <p>(2) A foreign investor who obtains credit in accordance with subsection (1) shall ensure that the proceeds of that credit are used solely for the purpose of the activities specified in his loan application.</p> <p>(3) The bank granting the loan may, for the purposes of this section, appoint its officer or agent to verify the due application of the credit obtained under subsection (1).</p>

No	Type of operations	Existence of restriction	Citation of legislation imposing the restriction where applicable / comments
12.	Inward direct investments	Restrictions exist on inward investments by foreign investors (any investor who is a non- citizen of Tanzania).	<p>S.16 (1) of the Insurance Act, 2009: "An insurer shall not be registered as an insurer within the United Republic unless it is a body corporate incorporated under the Companies Act or any law in the United Republic and is deemed to be resident in Tanzania and at least 1/3 of the controlling interest whether in terms of shares or of paid up capital or voting rights are held by citizens of Tanzania and at least one third of the members of the board of that company are citizens of Tanzania."</p> <p>Insurance Regulations, 2009 – Regulation 6 (3) (b): "No person shall be registered as an insurance broker unless, at least one third of the controlling interest whether in terms of shares, paid up capital or voting rights are held by citizens of Tanzania."</p> <p>Electronic and Postal Communications (Licensing) Regulations 2011- Regulation 18 (1) (b): "An applicant shall be required when applying for a license, to submit the following shareholding requirements as ongoing obligations throughout the license period, for approval by the Authority, in the case of content services, license for free to air broadcasting, the applicant shall submit a list of shareholders with a minimum of 51% local ownership."</p> <p>18 (3) (b): "Prior to transfer of shares, a licensee shall be required to submit to the authority proof that the minimum local shareholding requirements is maintained."</p> <p>Capital Markets and Securities (Collective Investment Schemes Real Estate Investment Trust) Rules- Rule (c) provides that "a management company shall have a minimum of 30% Tanzanian equity."</p> <p>Distinctions are made between Tanzanian and non-Tanzanian nationals.</p>



Tanzania

No	Type of operations	Existence of restriction	Citation of legislation imposing the restriction where applicable / comments
			<p>a. The investment is undertaken in any of the prescribed territory.</p> <p>b. The supporting documents including certificate of incorporation issued in the host country, business license, certificate of compliance (where applicable) tax registration certificate or any applicable permit, in respect of the intended investment are submitted to a bank or financial institution for verification.”</p> <p>Regulation 9A (3): “A bank or financial institution through which the remittance referred to in sub-regulation (1) is intended to be effected shall, at the time that may be determined by the bank, prior to the date of the remittance,</p> <ul style="list-style-type: none"> • Notify the Bank on the intended remittance; and • Submit to the bank the documents referred to in sub regulation (1) (c).” <p>This provision is restrictive in as far as it requires the potential investor to submit the documents pertaining to the investment in the host country, issued by the host country to a financial institution in Tanzania for verification. This has the effect of substantially delaying the remittance of funds for the outward direct investment activity because a financial institution in Tanzania has no basis for verifying of the mentioned documents. This would then mean that the institution would have to have recourse to the institutions that issued those documents, therefore indefinitely lengthening the process.</p>
13.	Repatriation of proceeds from the sale of assets	No restrictions exist against repatriation of proceeds from the sale of assets.	Not applicable

No	Type of operations	Existence of restriction	Citation of legislation imposing the restriction where applicable / comments
14.	Personal capital transactions	There are restrictions on this operation.	<p>Clause 2.1 of the Bank of Tanzania circular provides that, "as a general rule, banks and financial institutions are allowed to provide access to foreign currency facilities to residents in respect of all current account payments and transfers free of any ceilings, the exception being for travel abroad in which case the USD 10,000 ceiling for an individual shall continue to apply. Banks and financial institutions must practice and comply with the following requirements:</p> <ol style="list-style-type: none"> Production of relevant documentary evidence in support of the request made at the time of availing the foreign currency facility by the applicant; Retention of the aforesaid documents (in original form) by banks and between financial institutions for the purpose of examination by the Bank of Tanzania in the exercise of its prudential and regulatory functions." <p>What if an individual needs to travel with more than 10,000 USD? The wording of the law suggests that the 10,000 USD ceiling is fixed.</p> <p>Regulation 18 of the Foreign Exchange Regulations GN No 629 of 1998 provides that any person may transfer into or from Tanzania any right to the sums assured by any policy of assurance acquired outside Tanzania provided that servicing of such assurance policy is realized by externally acquired funds.</p>



Country Summary: Uganda

To what extent has Uganda complied with the recommendations for reform made in the 2014 Scorecard?

As found in the 2014 Scorecard, Uganda still imposes restrictions on the purchase of securities (non-residents pay higher tax withholding rate), inward direct investments (discriminatory treatment for EAC domiciled investors, requirement to deposit bonds with the central bank for the duration of the investment, outright ban in participation in selected sub-sectors, and minimum investment requirements), and personal capital transactions (restrictions on transportation of money instruments by EAC nationals). These restrictions are found in income tax laws and investment policy laws. Uganda exercises two exemptions related to prudential supervision (capping the size of loans denominated in foreign currency) and anti-money laundering (requiring reporting transactions involving cash or "near cash" of sums higher than US\$10,000). Uganda is required to notify EAC Partner States of these exemptions, but it has not yet done so.

Uganda has made reforms in the area of operationalization of the framework for dealing in derivative products. In March 2014, the Capital Markets Authority licensed a second securities exchange, ALT Xchange Ltd., which is mandated to operate an electronic marketplace for securities, derivatives, currencies, and commodities. ALT Xchange will also facilitate subscriptions to the electronic marketplace, the depository, and the clearing-house in order to ensure an active market place. ALT Xchange will operate a T +1 settlement cycle.

Following on from the findings on the restrictions on direct investments, the Uganda Investment Authority, in conjunction with the Uganda Law, reform drafted a bill designed to address non-conforming measures identified in the Investment Code. The draft bill is yet to be subjected to the legislative process.



Uganda

No	Type of operations	Existence of restriction	Citation of legislation imposing the restriction where applicable / comments
1.	Local purchase by non-residents of shares or other securities of a participating nature	There is a restriction.	Residents receive a better rate of withholding tax than non-residents on listed securities. Income Tax (Amendment) Act 2006, Part V of schedule 3, sections 117 and 118: "The withholding tax rate applicable for interest and dividend payments to a resident person under sections 117 and 118 is 15%. The withholding tax rate applicable for dividend payments from companies listed on the Stock Exchange to individuals under section 118 is 10%. Non-residents who invest on Uganda Securities Exchange are subject to withholding tax rate of 15% on their dividends." (Difference in withholding tax rate between residents and non-residents).
2.	Inward direct investments	Restrictions exist on investments by foreign investors (any investor who is a non-citizen of Uganda) in agricultural enterprises.	Investment Code Act Cap 92 of the Laws of Uganda, S. 9(1): "Foreign investor means a person who is not a citizen of Uganda, in the case of a company it is one in which more than 50% of the shares are held by a non-citizen of Uganda, and for a partnership it is one in which the majority of the partners are non-citizens of Uganda." S.10(2): "No foreign investor shall carry on the business of crop production, animal production or acquire or be granted or lease land for the purpose of crop production or animal production." 10(5): "A foreign investor intending to engage in trade shall deposit the sum of the equivalent of USD 100,000 or its equivalent in Uganda shillings at the Bank of Uganda, which sum shall be used specifically for the importation or direct purchase of goods for the business." NB. It is on the basis of this deposit that BOU issues a certificate of deposit. Subject to compliance with this and immigration laws, an entry permit may be issued to the foreign investor. S.22 (2): "A foreign investor shall qualify for incentives under the Code if that investor makes a capital investment or an equivalent in capital goods worth at least USD 500,000 by way of capital." S.22 (3): "The threshold for Ugandan investors is at least USD 50,000." Schedule 3 to the Code sets out business activities where foreign investors are exempted from eligibility for incentives: wholesale and retail commerce, personal services sector, public relations business, car hire services and operation of taxis, bakeries, confectionaries and food processing for the Ugandan market only, postal services, and professional services. (Other EA nationals are classified as foreign investors and the conditions for foreign investors are more onerous than those for local investors.)



Burundi

Partner State	Sector	Sub-Sector	Source law / regulation	Source details	Non-Conforming Measure (NCM)	Type of violation (National Treatment or MFN)
Burundi	Professional Services	Accounting, auditing, bookkeeping	Implementation of the Decree No. 100/053 of 11/5/2011 on the Establishment of the Institute of Certified Public Accountants, Ministerial Order No. 540/1033 of 30/07/2004	Article 11	Applicant for enrollment to level A of Professional Accounts shall meet the following conditions: a) Being a citizen of Burundi or having his/her residence in Burundi.	NT
Burundi	Professional Services	Accounting, auditing, bookkeeping	Implementation of the Decree No. 100/053 of 11/5/2011 on the Establishment of the Institute of Certified Public Accountants, Ministerial Order No. 540/1033 of 30/07/2004	Article 12	Applicant for enrollment to level B of Professional Accounts shall fulfill the following conditions: a) Being a citizen of Burundi or having his/her residence in Burundi.	NT
Burundi	Professional Services	Accounting, auditing, bookkeeping	Implementation of the Decree No. 100/053 of 11/5/2011 on the Establishment of the Institute of Certified Public Accountants, Ministerial Order No. 540/1033 of 30/07/2004	Article 18	Foreign non-resident may conduct audit missions in Burundi as long as they form an association with a local firm of certified professionals accountants. The reports issued at the end of these missions must be signed together with the representative the local firm.	NT

Partner State	Sector	Sub-Sector	Source law / regulation	Source details	Non-Conforming Measure (NCM)	Type of violation (National Treatment or MFN)
Burundi	Professional Services	Accounting, auditing, bookkeeping	Implementation of the Decree No. 100/053 of 11/5/2011 on the Establishment of the Institute of Certified Public Accountants, Ministerial Order No. 540/1033 of 30/07/2004	Article 19	<p>If a foreign firm wants to operate in Burundi, it may open an establishment under the following conditions:</p> <ul style="list-style-type: none"> - Being a certified professional accountant registered in his home country (country of origin) - Having the exclusive purpose of carrying out the accounting profession - Establishing a corporation under Burundian law with one or more certified professional accountants (joint venture), natural or legal persons, members of the Institute - Reserving at least one third of the shares to national or resident professional accountants. - Choosing the majority of its managers from among the members of the Institute <p>The Board of the Institute may take a civil action against the exercise of the accounting profession in Burundi without regard to the provisions cited above.</p>	NT
Burundi	Professional Services	Accounting, auditing, bookkeeping	Regulation of Banks and Financial establishments, Law No. 01/017 of 13 October 2003	Article 59	<p>Every bank and every financial institution must designate at least an auditor who shall be a legal person, whether an accounting firm or auditing firm. The designation of the auditor is subject to the prior approval of the Central Bank.</p> <p>The auditor shall not perform this function for more than five successive years from a bank or Financial Institution.</p> <p>Unless otherwise approved by the Central Bank, this auditor must be domiciled in Burundi.</p> <p>The auditors are subject to the criteria of Article 17.</p>	NT



Burundi

Partner State	Sector	Sub-Sector	Source law / regulation	Source details	Non-Conforming Measure (NCM)	Type of violation (National Treatment or MFN)
Burundi	Professional Services	Architecture	No laws regulating the sub-sector			
Burundi	Professional Services	Engineering	No laws regulating the sub-sector			
Burundi	Professional Services	Legal services	Advocates Act (reform of the Status of Advocates Profession in Burundi, Law No. 1/014/of 29/11/2002)	Article 7 a)	Chapter II: Admission of advocates Article 7 None can be admitted to practice law as a trainee Advocate unless he fulfills the following conditions: a) Being a citizen of Burundi Notwithstanding the foregoing of a), foreigners may be admitted as Advocates in accordance with international Agreements or subject to the reciprocity clause.	NT
Burundi	Professional Services	Legal services	Advocates Act (reform of the Status of Advocates Profession in Burundi, Law No. 1/014/of 29/11/2002)	Article 30	Title II: Rights and duties of advocates Chapter I: Professional monopoly Article 30 Only regularly enrolled advocates have the right to exercise legal profession in Burundi. However, a foreign Advocate may be allowed by the Court/ Tribunal before which the case is lodged to assist or defend a party. The request of the foreign Advocate must be notified to the Chairperson of Burundi Bar Association who may provide his opinion as to the response to be given to the request. The foreign lawyer admitted to assist or represent his/her client in Burundi must comply with the professional practices and obligations applicable to advocates of Burundi	NT

Partner State	Sector	Sub-Sector	Source law / regulation	Source details	Non-Conforming Measure (NCM)	Type of violation (National Treatment or MFN)
Burundi	Professional Services	Legal services	Internal Regulations of Burundi Bar Association	Article 5	Any person who applies for enrollment to the Bar association shall submit to the Secretariat of the Bar association an application, to which are attached documents that certify the fulfillment of conditions set out by Articles 7 of the Law of 29 November 2002: -A nationality Certificate issued by the competent author	NT
Burundi	Professional Services	Legal services	Notaries Act, (Organization and Functioning of Notary Profession and the Status of Notaries in Burundi, Law No. 1/004/ of 9/7/1996)	Article 10	Chapter II: Conditions of access and exercise of the notary profession Section 1: Training and Appointment Article 10 The applicant to Notary profession must meet the following conditions: - Being a citizen of Burundi or a citizen of a Country that grants reciprocity.	NT
Burundi	Telecommunication Services	Telecommunication services	No NCMs found			
Burundi	Distribution Services	Retail	No NCMs found			
Burundi	Distribution Services	Wholesale	No NCMs found			
Burundi	Transport Services	Road transport	No NCMs found			



Kenya

Partner State	Sector	Sub-Sector	Source law / regulation	Source details	Non-Conforming Measure (NCM)	Type of violation (National Treatment or MFN)
Kenya	Professional Services	Accounting, auditing, bookkeeping	Accountants Act, 2008 (No. 15 of 2008)	Section 26 of the Accountants Act, 2008	<p>26. Qualifications for registration</p> <p>(1) Subject to this section, a person is qualified to be registered if the person—</p> <ul style="list-style-type: none"> • has been awarded by the Examinations Board a certificate designated the Final Accountancy Certificate; or • holds a qualification approved under subsection (2) by the Council. <p>(2) The Council may in consultation with the Examinations Board and with the approval of the Minister, from time to time, by notice in the Gazette, approve qualifications which it considers sufficient to allow a person to be registered, and may, in like manner, withdraw any such approval.</p> <p>(3) Notwithstanding subsection (1) or (2), the Council may require a person making an application for registration to satisfy the Registration Committee, in such manner as it may direct, that the person has—</p> <ul style="list-style-type: none"> • adequate knowledge of local law and practice; • adequate experience in accounting; and • acceptable professional conduct and general character which, in the opinion of the Committee, make such person a fit and proper person to be registered, and unless the person so satisfies the Registration Committee, he shall not be treated as being qualified to be registered. 	NT
Kenya	Professional Services	Architecture	Architects and Quantity Surveyors Act (Chapter 525)	Section 7 (c)	<p>No person shall be registered as an architect unless he...</p> <ul style="list-style-type: none"> • has had a minimum of one year of professional experience in Kenya to the satisfaction of the Board or has satisfied the Board that he has otherwise acquired an adequate knowledge of Kenya building contract procedures. 	NT
Kenya	Professional Services	Engineering	Engineers Act, 2011 (Chapter 43):	Section 18 of the Engineers Act, 2011	<p>Subject to provisions of this Act, a person shall be eligible for registration under this Act as a graduate engineer if that person</p> <ul style="list-style-type: none"> • is a citizen or permanent resident of Kenya. 	NT

Partner State	Sector	Sub-Sector	Source law / regulation	Source details	Non-Conforming Measure (NCM)	Type of violation (National Treatment or MFN)
Kenya	Professional Services	Engineering	Engineers Act, 2011(Chapter 43):	Section 20 (1) of the Engineers Act, 2011	Subject to the provisions of this Act, a person may register an engineering consulting firm if— <ul style="list-style-type: none"> the firm has a certificate of registration of a business name or a certificate of incorporation; at least fifty one percent of the shares in the firm are held by Kenyan citizens 	NT
Kenya	Professional Services	Engineering	Engineers Act, 2011(Chapter 43):	Section 22 of the Engineers Act, 2011	A foreign person or firm shall not be registered as a professional engineer or consulting engineer or engineering consulting firm unless— <ul style="list-style-type: none"> in the case of a natural person— <ol style="list-style-type: none"> that person possesses the necessary qualifications recognized for the practice of engineering as a professional engineer in the country where he normally practises and that immediately before entering Kenya he was practising as a professional engineer and holds a valid license; and he is a resident of Kenya with a valid working permit 	NT
Kenya	Professional Services	Engineering	Engineers Act, 2011(Chapter 43):	Section 22 of the Engineers Act, 2011	A foreign person or firm shall not be registered as a professional engineer or consulting engineer or engineering consulting firm unless— <ul style="list-style-type: none"> (b) in the case of a firm, the firm is incorporated in Kenya and a minimum of fifty one percent of its shares are held by Kenyan citizens. 	NT
Kenya	Professional Services	Engineering	Engineers Act, 2011(Chapter 43):	Section 23 of the Engineers Act, 2011	(1) A foreign person may be considered for registration as a temporary professional engineer if that person satisfies the Board that— <ol style="list-style-type: none"> he is not ordinarily resident in Kenya. 	NT



Kenya

Partner State	Sector	Sub-Sector	Source law / regulation	Source details	Non-Conforming Measure (NCM)	Type of violation (National Treatment or MFN)
Kenya	Professional Services	Engineering	Engineers Act, 2011(Chapter 43):	Section 23 of the Engineers Act, 2011	<p>(1) A foreign person may be considered for registration as a temporary professional engineer if that person satisfies the Board that—</p> <p>(b) he intends to be present in Kenya in the capacity of professional engineer for the express purpose of carrying out specific work...</p> <p>(4) The registration of a person under this section shall be valid for the period or for the duration of the work specified by the Board;</p> <p>(6) Subject to subsection (4), the Board may approve temporary registration for such period not exceeding one calendar year.</p>	NT
Kenya	Professional Services	Engineering	Engineers Act, 2011(Chapter 43):	Section 23 of the Engineers Act, 2011	<p>1) A foreign person may be considered for registration as a temporary professional engineer if that person satisfies the Board that—</p> <p>(5) Where the expertise skills of a person registered under this section are not available in Kenya, the Board shall notify the applicant and the applicant shall provide an undertaking that the locals shall be trained to fill the skills gap.</p>	NT
Kenya	Telecommunication services	Telecommunication services	Kenya Communications and information Act Cap 411A	Section 25(1)	<p>The Commission may, upon application in the prescribed manner and subject to such conditions as it may deem necessary, grant licenses under this section authorizing all persons, whether of a specified class or any particular person to—</p> <ol style="list-style-type: none"> operate telecommunication systems; or provide telecommunication services, of such description as may be specified in the license. 	

Partner State	Sector	Sub-Sector	Source law / regulation	Source details	Non-Conforming Measure (NCM)	Type of violation (National Treatment or MFN)
Kenya	Distribution Services	Retail	Sector/sub-sector not committed			
Kenya	Distribution Services	Wholesale	No NCMs found			
Kenya	Transport Services	Road transport	Public Roads Toll Act	Second schedule	[Cannot copy text.]	MFN
Kenya	Transport Services	Road transport	Public Roads Toll Act	The Traffic Rules, Section 7A	<p>Section 7A:</p> <p>(1) Any person who brings a foreign vehicle to Kenya by road or by other means shall report the presence of such vehicle to a licensing officer at the nearest point of entry or at any Government office where vehicle licenses are normally issued and shall submit an application in the prescribed form for an authorization permit which shall be accompanied by the foreign vehicle registration book.</p> <p>(2) For the purpose of this rule, the points of entry and exit shall be Lunga Lunga, Taveta, Namanga, Isebania, Busia, Malaba, Mandera, Moyale, Liboi, Keekorok, Oloitokitok, Lwakhakha, Kilindini, Lamu and Lokichoggio.</p>	NT
Kenya	Transport Services	Road transport	Public Roads Toll Act	The Traffic Rules, Section 7A	<p>(5) In the case of a foreign commercial or public service vehicle in respect of which there is not in force an international certificate or P.T.A. carrier license, the licensing officer may, on payment of the prescribed fee, issue in respect of the vehicle an authorization permit in the prescribed form valid for a period not exceeding thirty days but renewable on expiry for an aggregate period not exceeding twelve months from the date of entry into Kenya, and the owner shall, on expiration of the authorization period, remove the vehicle from or send it out of Kenya: Provided that where the owner desires to keep the vehicle in Kenya for a period exceeding twelve months, he shall have the vehicle registered and licensed in Kenya before the expiry of the authorization period under this paragraph.</p>	NT



Kenya

Partner State	Sector	Sub-Sector	Source law / regulation	Source details	Non-Conforming Measure (NCM)	Type of violation (National Treatment or MFN)
Kenya	Transport Services	Road transport	Public Roads Toll Act	The Traffic Rules, Section 7A	(5) In the case of a foreign commercial or public service vehicle in respect of which there is not in force an international certificate or P.T.A. carrier license, the licensing officer may, on payment of the prescribed fee, issue in respect of the vehicle an authorization permit in the prescribed form valid for a period not exceeding thirty days but renewable on expiry for an aggregate period not exceeding twelve months from the date of entry into Kenya, and the owner shall, on expiration of the authorization period, remove the vehicle from or send it out of Kenya: Provided that where the owner desires to keep the vehicle in Kenya for a period exceeding twelve months, he shall have the vehicle registered and licensed in Kenya before the expiry of the authorization period under this paragraph.	NT
Kenya	Transport Services	Road transport	Public Roads Toll Act	The Traffic Rules, Section 94	(1) A motor vehicle in respect of which a valid international certificate is in force shall not be required to be registered under the Act while in use in Kenya until the expiry of one year from the date of the issue of such certificate. (2) A motor vehicle in respect of which a valid international certificate is in force shall not be required to be licensed under the Act while in use in Kenya during the currency of such certificate for a period or periods not exceeding in the aggregate – (a) in the case of a public service vehicle or commercial vehicle, 30 days; and (b) in the case of any other vehicle, 90 days.	NT
Kenya	Transport Services	Road transport	Public Roads Toll Act	First Schedule	[Cannot copy text.]	NT



Rwanda

Partner State	Sector	Sub-Sector	Source law / regulation	Source details	Non-Conforming Measure (NCM)	Type of violation (National Treatment or MFN)
Rwanda	Professional Services	Accounting, auditing, bookkeeping	Law No. 11/2008 of 06/05/2008 establishing the Institute of Certified Public Accountants of Rwanda and determining its Powers, Organization and Functioning	Article 58	For a person to be a Certified Public Accountant, he/she shall fulfill at least one of the following requirements: 1) be a holder of the professional qualification of a certified public accountant issued by the Institute; 2) be a holder of a professional qualification of a chartered accountant or certified public accountant issued by a body of professional accountants in another country which has full membership of IFAC (International Federation of Accountants).	NT, MFN
Rwanda	Professional Services	Accounting, auditing, bookkeeping	Law No. 11/2008 of 06/05/2008 establishing the Institute of Certified Public Accountants of Rwanda and determining its Powers, Organization and Functioning	Article 62	To be eligible for registration as a Certified Accounting Technician, a person shall fulfill any one of the following requirements: 1) be a holder of the Certified Accounting Technician certificate awarded by the Institute; 2) be a holder of a certified accounting technician certificate awarded by a body of professional accountants outside Rwanda which is a full member of IFAC.	NT, MFN
Rwanda	Professional Services	Accounting, auditing, bookkeeping	ICPAR Bi Law October 2012	Article 22	The Governing Council shall issue annual licenses to members in public practice of accountancy in Rwanda or who have applied to practice as long as they meet the requirements of Article 68 of the Law and are in good standing, which will be determined by the Governing Council. For applicants that are not citizens of Rwanda, the following shall be required in addition to the requirement under Article 58 (2); i. A person applying for iCPAR practice certificate must provide evidence of practical audit experience (recommendation letter) as required by Article 68 of the Law. The recommendation letter should be given by former immediate supervisor who must him/herself be a holder of a valid practice certificate of iCPAR or of another accounting body that is a member of IFAC. If at the time of applying for iCPAR practice certificate one is a non- resident but a member of EAC Institutes of Accountants (EACIA), then in addition to the foregoing he/she must provide a certificate of practice issued by a competent authority (Accounting body of EACIA) in the country of former residence. In all cases, the applicant must be a member of iCPAR and a resident as shall be defined by the income tax Law from time to time.	NT, MFN



Rwanda

Partner State	Sector	Sub-Sector	Source law / regulation	Source details	Non-Conforming Measure (NCM)	Type of violation (National Treatment or MFN)
Rwanda	Professional Services	Accounting, auditing, bookkeeping	ICPAR Bi Law October 2012	Article 68	Application to engage in the profession The application shall be supported by the following information: 1) certificate of membership; 2) evidence that the applicant is resident in Rwanda	NT
Rwanda	Professional Services	Architecture	Law No. 26/2012 of 29/06/2012 Governing the Professions of Architecture and Engineering and Establishing the Institute of Architects and the Institute of Engineers in Rwanda	Article 6	Requirements for admission to practice the profession of architecture or engineering: For a person to be authorized to practice the architecture or engineering profession in Rwanda, he/she must meet the following conditions: 1) be a Rwandan national. Admission requirements for foreigners to practice the profession of architecture or engineering in Rwanda: A foreigner who applies for the authorization to practice the architecture or engineering profession in Rwanda must fulfill the following conditions: 1) hold a required degree; 2) be a member of the Institute of those who practice such professions in his/her country of origin; 3) be a national of a country which entered into a bilateral agreement authorizing Rwandan nationals to practice such profession.	NT
Rwanda	Professional Services	Architecture	Law No. 26/2012 of 29/06/2012 Governing the Professions of Architecture and Engineering and Establishing the Institute of Architects and the Institute of Engineers in Rwanda	Article 9	A foreign legal entity may be authorized to provide architecture or engineering services in Rwanda as long as reciprocity is admitted by the country in which it is registered, subject to bilateral agreements or regional integration treaties.	MFN

Partner State	Sector	Sub-Sector	Source law / regulation	Source details	Non-Conforming Measure (NCM)	Type of violation (National Treatment or MFN)
Rwanda	Professional Services	Engineering	Law No. 26/2012 of 29/06/2012 Governing the Professions of Architecture and Engineering and Establishing the Institute of Architects and the Institute of Engineers in Rwanda	Article 6	<p>Requirements for admission to practice the profession of architecture or engineering:</p> <p>For a person to be authorized to practice the architecture or engineering profession in Rwanda, he/she must meet the following conditions:</p> <p>1) be a Rwandan national.</p> <p>Admission requirements for foreigners to practice the profession of architecture or engineering in Rwanda:</p> <p>A foreigner who applies for the authorization to practice the architecture or engineering profession in Rwanda must fulfill the following conditions:</p> <p>1) hold a required degree;</p> <p>2) be a member of the Institute of those who practice such professions in his/her country of origin;</p> <p>3) be a national of a country which entered into a bilateral agreement authorizing Rwandan nationals to practice such profession.</p>	NT
Rwanda	Professional Services	Engineering	Law No. 26/2012 of 29/06/2012 Governing the Professions of Architecture and Engineering and Establishing the Institute of Architects and the Institute of Engineers in Rwanda	Article 9	A foreign legal entity may be authorized to provide architecture or engineering services in Rwanda as long as reciprocity is admitted by the country in which it is registered, subject to bilateral agreements or regional integration treaties.	MFN



Rwanda

Partner State	Sector	Sub-Sector	Source law / regulation	Source details	Non-Conforming Measure (NCM)	Type of violation (National Treatment or MFN)
Rwanda	Telecommunication Services	Telecommunication services	No NCMs found			
Rwanda	Distribution Services	Retail	No NCMs found			
Rwanda	Distribution Services	Wholesale	No NCMs found			
Rwanda	Transport services	Road transport	Guidelines No. 005/ TRANS-RURA/2011 of 26/08/2011 on public transport in Rwanda	Article 3 sect 2	Section 3.2: Requirements for a company to transport freight in Rwanda (2) An evidence that the company is registered "Business registration certificate" (undertone the registration in Rwanda).	NT
Rwanda	Transport services	Road transport	Guidelines No. 005/ TRANS-RURA/2011 of 26/08/2011 on public transport in Rwanda	Article 12 (5)	Article 12: Requirements to obtain a public transport service permit by foreign companies 5. An evidence that the company has been registered in the [Rwandan] "Registry of commerce"	NT



Tanzania

Partner State	Sector	Sub-Sector	Source law / regulation	Source details	Non-Conforming Measure (NCM)	Type of violation (national treatment of MFN)
Tanzania	Professional Services	Accounting, auditing, bookkeeping	Accountants and Auditors (Registration) Act, Chapter 286	Section 15 (1)	Temporary registration as Certified Public Accountant or Auditor (1) Where a person satisfies the Board– (a) That he is not ordinary resident public in Mainland Tanzania; (b) That he is or intends to be present in Mainland Tanzania in the capacity of a professionally qualified accountant or auditor for the express purpose of carrying out a specific assignment for which he has been engaged; and (2) The National Board of Accountants and Auditors (Membership and Registration) By-laws, 1997 (Revised in 2012). (a) By-law 9 (1), (2), (3) and (4). (3) Any applicant who is a foreigner registered as a member of a professional accountancy body of equivalent standing existing outside Tanzania and a member in good standing of a professional accountancy body in his home country and enters Tanzania to work in a different capacity other than accounting or auditing may be considered for admission as temporary member provided that he fulfills conditions stipulated under by-law 9(1).	NT

Partner State	Sector	Sub-Sector	Source law / regulation	Source details	Non-Conforming Measure (NCM)	Type of violation (national treatment of MFN)
Tanzania	Professional Services	Accounting, auditing, bookkeeping	The National Board of Accountants and Auditors (Membership and Registration) By-laws, 1997 (Revised in 2012)	By-law 9 (1)	Any applicant who is a foreigner may be considered for admission as a temporary member after fulfilling the following conditions:- (a) Complete a prescribed application form and submit it to the Board; (b) Must be a member in good standing of a professional accountancy body of equivalent standing existing outside Tanzania and must have completed a professional accountancy course as per the International Education Standards (IES) issued by the International Accounting Education Standards Board (IAESB); (c) Must be a member of a professional accountancy body of equivalent standing existing outside Tanzania and must have obtained the requisite practical experience in accordance with the national laws of the home country; (d) Pass two conversion papers in local taxation and company law and on such other terms as the Board may, from time to time, determine; (e) Provide proof of employment with a local employer; (f) Pay the appropriate application fees as shall be determined by the Board	NT
Tanzania	Professional Services	Accounting, auditing, bookkeeping	The National Board of Accountants and Auditors (Membership and Registration) By-laws, 1997 (Revised in 2012)	By-law 9	Where the partnership involves foreign partners, the local partners shall not constitute less than fifty percent, in any case, the majority of partners shall be the local partners.	NT
Tanzania	Professional Services	Architecture	sector not committed			



Tanzania

Partner State	Sector	Sub-Sector	Source law / regulation	Source details	Non-Conforming Measure (NCM)	Type of violation (national treatment of MFN)
Tanzania	Professional Services	Engineering	Engineers Registration (Amendment) Act, No. 24, 2007	Section 11 (1) (c) of Cap 63 and Section 6 of the Amended Act, 2007	<p>Temporary Registration</p> <p>(1) Where a person satisfies the Board-</p> <p>(a) That he is not ordinarily resident in Tanzania;</p> <p>(b) That he is or intends to be present in Tanzania in the capacity of a professionally qualified engineer for the express purpose of carrying out specific work or works for which he has been engaged; and</p> <p>(c) That he is, or immediately prior to entering Tanzania was in practice as an engineer in a capacity which satisfies the Board of his fitness to serve the public as a professionally qualified engineer.</p> <p>Provided that such qualifications, expertise and skills are not available amongst Tanzanian engineers or engineering technicians:</p> <p>The Board may, if it thinks fit, direct that person be registered under this section either for a period not exceeding one year or for the duration of any specific work or work</p> <p>(3) Registration of a person under this section shall continue only for the period or for the duration of the work or works as is directed by the Board under subsection (1) and on its termination such person shall cease to be so registered and in case of doubt the decision of the Board as to the termination of the work or works shall be conclusive.</p> <p>(4) A person registered under this section shall, in relation to the period or the duration of the work or works as is directed by the Board under subsection (1) and to things done and omitted in the course of such work or works, be treated as registered under this Act as a registered but in relation to other matters shall be treated as not so registered.</p> <p>(5) For the purpose of this section, the word person includes a body of persons corporate or unincorporated</p>	NT

Partner State	Sector	Sub-Sector	Source law / regulation	Source details	Non-Conforming Measure (NCM)	Type of violation (national treatment of MFN)
Tanzania	Professional Services	Engineering	Engineers Registration (Amendment) Act, No. 24, 2007	Section 12 (1)(a)	No person or body of persons not citizen of the United Republic shall be registered as a local consultant or consulting firm unless– (a) In the case of natural person, he is a citizen of the United Republic,	NT
Tanzania	Professional Services	Engineering	Engineers Registration (Amendment) Act, No. 24, 2007	Section 12 (1) (b)	No person or body of persons not citizen of the United Republic shall be registered as a local consultant or consulting firm unless– (b) In the case of a company, it is incorporated in Tanzania and the majority of its shares are owned by the citizens of the United Republic.	NT



Tanzania

Partner State	Sector	Sub-Sector	Source law / regulation	Source details	Non-Conforming Measure (NCM)	Type of violation (national treatment of MFN)
Tanzania	Professional Services	Engineering	Engineers Registration (Amendment) Act, No. 24, 2007	Section 34	<p>With the consent of the Minister the By-laws Board may make by-laws for the better carrying, out of its objects and functions, and without prejudice to the generality of the proceeding provisions, may make bylaws-</p> <p>(a) Prescribing scale of fees which may be charged by engineers or consulting firms for services rendered by them;</p> <p>(b)</p> <p>(c)</p> <p>(d)</p> <p>(e).....;</p> <p>(f) Prescribing fees for admission to any course offered by the Board;</p> <p>(g) prescribing fees payable by the candidates for any professional interview or examination held or conducted by the Board;</p> <p>(h)</p> <p>(i)</p> <p>(j) Prescribing the fees to be paid on application, registration, annual subscription; the issue of certificates of registration and extracts, copies and lists of, or in relation to entries in the registers and other related fees.</p> <p>First Schedule: Board Fees:</p> <p>Section 11, (2) An application for registration under this section shall be in the prescribed form, accompanied by the prescribed fee, and the Board may require an applicant to appear before it for the purposes of considering his application and shall require every applicant to produce documentary evidence of his work or employment immediately prior to his entering Tanzania.</p>	NT

Partner State	Sector	Sub-Sector	Source law / regulation	Source details	Non-Conforming Measure (NCM)	Type of violation (national treatment of MFN)
Tanzania	Professional Services	Engineering	The Engineers Registration (Professional Examinations) By-Laws	Section 34	<p>Construction</p> <p>In these Regulations– (...)</p> <p>“foreign engineer” means a person who is an engineer but is not a citizen of Tanzania or is not a permanent resident of Tanzania;</p> <p>19. Foreign engineer to apply for registration while outside Tanzania:</p> <p>All foreign engineers shall, as soon as practicable, apply for registration with the Board and those who are residing outside Tanzania must apply for registration before entering Tanzania or soon thereafter.</p> <p>30. Application for registration of Professional Engineers</p> <p>(1) A person wishing to be registered as a Professional Engineer shall make an application to the Board in Form B-02 accompanied by a fee of such amount as the Board may prescribe.</p> <p>(2) A foreign engineer desirous of being temporarily registered as Professional Engineer shall make an application to the Board in Form BF-02 accompanied by a fee of such amount as the Board may prescribe.</p> <p>36. Application forms</p> <p>(1) A person wishing to be registered as a Consulting Engineer shall make an application to the Board in Form B-03 accompanied by a fee of an amount as the Board may prescribe, provided that the applicant has a practical experience of not less than three years as a registered Professional Engineer and has satisfied the Board as to his professional competency.</p> <p>(2) Every foreign engineer desirous of being temporarily registered as a Consulting Engineer shall make an application to the Board in Form BF-01 accompanied by a fee of an amount as the Board may prescribe.</p> <p>(3) Local Consulting Engineer shall practise either as sole proprietor or work with a registered Consulting firm or work under the Business Name and shall apply for a Business License.</p> <p>(4) A foreign Consulting Engineer shall practise with a registered consulting firm.</p>	NT



Tanzania

Partner State	Sector	Sub-Sector	Source law / regulation	Source details	Non-Conforming Measure (NCM)	Type of violation (national treatment of MFN)
Tanzania	Professional Services	Engineering	Fees for application and registration G.N.No. 487 of 2002	Regulation 2(2)	Second Schedule: Category of engineers sub-sectorification Local/foreign (level fees); Application form Application fee Registration fee Rubber stamp Annual fee: T.Shs USD T.Shs USD T.Shs USD T.Shs USD T.Shs USD Graduate Technician Engineer Local - - 2,000 - 5,000 Graduate Engineer Local - - 2,000 - 5,000 Technician Engineer Local 2,000 10,000 10,000 - 15,000 Professional Local 2,000 10,000 20,000 15,000 20,000 Engineer Foreign 5 100 400 25 Consulting Local 2,000 20,000 30,000 15,000 30,000 Engineer Foreign 5 100 500 25 400 Consulting Local 4,000 60,000 100,000 20,000 200,000 Firm Foreign 10 1,000 10,000 35 4,000	NT
Tanzania	Professional Services	Legal services	Sector not committed			
Tanzania	Telecommunication Services	Telecommunication services	Elimination in 2015 subject to harmonized local shareholding requirement among EAC Partner States			
Tanzania	Distribution Services	Retail	Sector/sub-sector not committed			
Tanzania	Distribution Services	Wholesale	Sector/sub-sector not committed			

Partner State	Sector	Sub-Sector	Source law / regulation	Source details	Non-Conforming Measure (NCM)	Type of violation (national treatment of MFN)
Tanzania	Transport services	Road transport	The Foreign Vehicles Transit Charges Act - Cap 84 of The Revised Edition 2002	Section 3	(1) There is imposed a transit charge on the use of foreign vehicles on public roads in Mainland Tanzania, payable by every person in respect of the foreign vehicle he drives along a public road.	NT
Tanzania	Transport services	Road transport	The Foreign Vehicles Transit Charges Act - Cap 84 of The Revised Edition 2002	Section 3	(2) The transit charge payable under this Act shall be paid upon the foreign vehicle in question passing through the entry point along a public road. (3) There shall be levied and paid in accordance with the rates prescribed in the Schedule to this Act, the transit charges in respect of a vehicle passing through the entry point along a public road for the whole of the distance to be covered by the vehicle in while in the country.	NT



Tanzania

Partner State	Sector	Sub-Sector	Source law / regulation	Source details	Non-Conforming Measure (NCM)	Type of violation (national treatment of MFN)
Tanzania	Transport services	Road transport	The Foreign Vehicles Transit Charges Act - Cap 84 of the Revised Edition 2002	Section 11	<p>(1) Any person who –</p> <p>(a) drives a foreign vehicle through the entry point except by the route designated for the passage of that vehicle; or</p> <p>(b) refuses to stop a foreign vehicle at the entry point and to pay transit charge; or</p> <p>(c) fraudulently or forcibly drives a foreign vehicle through the entry point or without paying the transit charge; or</p> <p>(d) having collected any transit charge fails or refuses to remit the money collected as transit charge money to the Commissioner or to any other authorized person; or</p> <p>(e) obstructs any public officer in exercise of the powers conferred upon him by section 8 or section 9; or</p> <p>(f) refuses to answer any reasonable question put to him by such public officer is guilty of an offence and shall be liable on conviction to a fine not exceeding US\$ 500 or imprisonment of a term not exceeding six months, or to both:</p> <p>(2) In addition to the penalty imposable under subsection (1), the court shall order the offender to pay the prescribed transit charge where the offence is one of failing or refusing to pay the transit charge or to remit to the Commissioner the transit charge collected.</p>	NT

Schedule A

Partner State	Sector	Sub-Sector	Source law / regulation	Source details	Non-Conforming Measure (NCM)	Type of violation (national treatment of MFN)
Tanzania	Transport services	Road transport	The Motor Vehicles Insurance Act Chapter 169	Section 17	Where there is in existence in respect of a motor vehicle– (a) a valid and subsisting international certificate issued in pursuance of the International Convention relative to Motor Traffic, 1926; or (b) a valid and subsisting license to use such motor vehicle which has been granted under any law in force in Malawi, Kenya, Tanzania, Zanzibar, Uganda, or Zambia; (c) no person driving such motor vehicle shall be required to produce a certificate of insurance, but it shall be the duty of such person to give such information as he may be required by or on behalf of the Commissioner of Police to give for the purpose of determining whether the vehicle was or was not being driven in contravention of section 4 of this Act.	MFN
Tanzania	Transport services	Road transport	Kanuni Za Leseni Ya Usafirishaji (Magari Ya Kubeba Mizigo) - Notise Ya Serikali Na. 90/2012	Section 11	Kanuni 11 (1) Mamlaka itatoa kibali cha kubeba mizigo au kibali kwa magari yanayovuka mipaka kwa mujibu wa mikatana yoyote ya makubaliano ya nchi mbili au makubaliano ya kikanda ambayo Tanzania imeingia. (2) Kibali cha magari kilichotolewa chini ya kanuni ndogo ya (1) kitatolewa kwa magari yenye leseni	MFN
Tanzania	Transport services	Road transport	Kanuni Za Leseni Ya Usafirishaji (Magari Ya Kubeba Mizigo) - Notise Ya Serikali Na. 90/2012	Section 11	(3) Kibali cha magari yanayovuka njee ya mipaka kitatolewa kwa magari ya nje badala ya kulipa ada iliyowekwa katika Jedwali la pili la kanuni hizi.	MFN



Tanzania

Partner State	Sector	Sub-Sector	Source law / regulation	Source details	Non-Conforming Measure (NCM)	Type of violation (national treatment of MFN)
Tanzania	Transport services	Road transport	Kanuni Za Leseni Ya Usafirishaji (Magari Ya Kubeba Mizigo) - Notise Ya Serikali Na. 90/2012	Schedule 2	Imetengenezwa Chini Ya Kanuni Ya 10 Jedwali ya ada za leseni kwa ajili ya magari ya kubeba ya ndani nay a nje.	NT
Tanzania	Transport services	Road transport	The Road Traffic Act, Cap 168	Section 36	'Partner States" means the United Republic of Tanzania, the Republic of Uganda, and the Republic of Kenya; Any person who (a) is disqualified from obtaining a driving license; or (b) has had his driving license cancelled; or (c) in any way if prohibited from driving any sub-sector of motor vehicles, in any of the Partner States shall be subject to the same disqualification cancellation or prohibition m Tanganyika as if such disqualification, cancellation or prohibition had been imposed by a court in Tanganyika.	MFN



Uganda

Partner State	Sector	Sub-Sector	Source law / regulation	Source details	Non-Conforming Measure (NCM)
Uganda	Professional Services	Architecture	The Architects Registration Act Chapter 269	Section 11 (1), 11 (2), 11 (3) and 11 (4)	<p>Temporary registration</p> <p>(1) Where any person satisfies the board that—</p> <p>(a) he or she is not ordinarily resident in Uganda</p> <p>(c) he or she is, or immediately prior to entering Uganda was, in practice as an architect in that capacity as to satisfy the board of his or her fitness to serve the public as a professionally qualified architect, the board may authorize the registrar to register that person only for the duration of the period of any specific work for which he or she has been engaged; provided he or she satisfies the board, he or she may carry out work with a registered architect.</p> <p>(3) The board may require the person applying for registration under this section to appear before it for the purpose of considering his or her application but shall require that applicant to produce documentary evidence to support his or her application.</p> <p>(4) Registration of any person under this section shall continue only for the period or for the duration of the specific work or works as is directed by the board under subsection (1), and on its termination that person shall cease to be registered; and in case of any doubt, the decision of the board regarding the termination of the work or works shall be conclusive</p>
Uganda	Professional Services	Architecture	The Architects Registration (Prescription of Forms and Fees) Regulations Statutory Instrument 269 – 1	Schedules	<p>1. First Schedule – Forms;</p> <p>a. Form TR part 14 and notes 2 (as against Ugandans who only need to provide references not signatures) and 3</p> <p>b. Form TPC validity</p> <p>c. Form AR note 3 – non-citizens</p> <p>d. No Registration Certificate for Temporary Applicants</p> <p>..... [long form not shown for reasons of space]</p>

Partner State	Sector	Sub-Sector	Source law / regulation	Source details	Non-Conforming Measure (NCM)
Uganda	Professional Services	Architecture	The Architects Registration (Prescription of Forms and Fees) Regulations Statutory Instrument 269 – 1	Schedules	Second Schedule – Forms and fee schedules [long form not shown for reasons of space]
Uganda	Professional Services	Engineering	Engineers Registration Act of Uganda Chapter 271	Section 1 (e); 2. Section 21 (1), 21 (2), 21 (3), 21 (5), 21 (6), 21 (7)	In this Act, unless the context otherwise requires — (e) “Ordinarily resident” means resident in the country for more than six months of each year for five consecutive years. Section 21 Temporary registration (1) Where a person satisfies the board— (a) that he or she is not ordinarily resident in Uganda



Uganda

Partner State	Sector	Sub-Sector	Source law / regulation	Source details	Non-Conforming Measure (NCM)
Uganda	Professional Services	Legal services	Advocates Act Chapter 267	Section 8 (5)(b) (includes Regulation 4 (1) (d))	<p>This section applies to a person who is a Uganda citizen or who normally resides in Uganda, and who— (b) prior to his or her application, has been in practice as a legal practitioner (by whatever name called) for an aggregate period of not less than five years in any country designated by the Law Council by regulations for the purposes of this section.</p> <p>Regulation 2(b)</p> <p>The requirements as to the acquisition of professional skill and experience under section 8(1) of the Act shall be— (b) in the case of a person specified in section 8(5)(b) of the Act who has been entered on the roll as a legal practitioner (by whatever name called) in a country specified in Part I of the First Schedule to these Regulations, work under the surveillance and in the chambers of an advocate enrolled under the Act or in the service of the Government as a State attorney at the commencement of his or her practice in Uganda for a period of not less than six months and who satisfies any regulations which may be made under section 8(7) of the Act</p> <p>Regulation 4 (1) (d)</p> <p>4. (1) In application for the certificate under section 8(2) of the Act, there shall be stated-</p> <p>(d) if the applicant was not born in Uganda, the aggregate period of continuous residence in Uganda during the twelve months immediately preceding the date of the application or the aggregate period during which he or she has been in practice as an advocate in any of the countries specified in Part II of the First Schedule to these Regulations.</p>

Partner State	Sector	Sub-Sector	Source law / regulation	Source details	Non-Conforming Measure (NCM)
Uganda	Professional Services	Legal services	Advocates Act Chapter 267	Section 13 (1) (2)	<p>(1) Notwithstanding the other provisions of this Part, the Chief Justice may, subject to the person obtaining a special practising certificate, admit to practise as an advocate for the purpose of any one case or matter any legal practitioner (by whatever name called) of any country designated by regulations made under section 8(5)(b) who has come or intends to come to Uganda for the purpose of appearing or acting in that case or matter; but any such person shall only be entitled to appear or act— (a) in the case or matter for the purpose of which he or she is admitted; and (b) if he or she is instructed by, and if when appearing in any court in the conduct of the case or matter he or she appears together with, an advocate with a valid practising certificate or a person mentioned in section 6.</p> <p>(2) On payment of the prescribed fee for such a special practicing certificate, the registrar shall issue a special practising certificate to any person admitted to practise under subsection (1).</p>
Uganda	Professional Services	Legal Services	The Advocates (Enrollment and Certification) Regulations	Rule 3	<p>(1) The legal qualifications set out in Part I of the First Schedule to these Regulations are recognized by the Law Council for the purposes of section 8(5)(a) of the Act.</p> <p>Schedule 1, Part I: Recognized legal qualifications</p> <ol style="list-style-type: none"> 2. A legal qualification, which entitles a person to be called to the bar in England and Wales, Scotland, Northern Ireland, or the Republic of Ireland. 3. A legal qualification which entitles its holder to be enrolled as a solicitor of the Supreme Court of England and Wales, Scotland, Northern Ireland, or the Republic of Ireland.



Uganda

Partner State	Sector	Sub-Sector	Source law / regulation	Source details	Non-Conforming Measure (NCM)
Uganda	Professional Services	Legal Services	The Business Names Registration Act Cap 109	Section 1	"Firm" means an unincorporated body of two or more individuals, or one or more individuals and one or more corporations, or two or more corporations who have entered into partnership with one another with a view to carrying on business for profit
Uganda	Distribution Services	Retail	No NCMs found		
Uganda	Distribution Services	Wholesale	The Specified Goods (Conveyance) Act Chapter 359	Schedule and Section 6, 7, 8(3) and (4) and 9	<p>An Act to provide for the control of the means of conveyance of certain goods to and from the Republics of Sudan, the Congo, and Rwanda.</p> <p>1.- Schedule</p> <p>The Specified Goods (Conveyance) Regulations Statutory Instrument 359-1</p> <p>1.- Section 6, 7, 8(3) and (4) and 9</p> <p>Description:</p> <p>Schedule.</p> <p>Restricted goods.</p> <p>Coffee</p> <p>Tea</p> <p>Petroleum products and lubricants excluding high octane aviation spirit</p> <p>6. Exportation and importation of specified goods prohibited.No person may export or import specified goods to or from the Democratic Republic of Congo unless he or she is in possession of a valid movement permit issued by the administration</p>

Partner State	Sector	Sub-Sector	Source law / regulation	Source details	Non-Conforming Measure (NCM)
					<p>7. Application for movement permit.</p> <p>(1) An application for a movement permit to import or export specified goods shall be made in writing to the administration in the form set out in Part I of the Second Schedule to these Regulations.</p> <p>(2) The application shall be accompanied by—</p> <p>(a) a sum of money tendered to the administration; or</p> <p>(b) a bond executed by the applicant in the form set out in Part II of the Second Schedule to these Regulations, as security for the payment of freight charges which, in either case, shall be a sum of money equal to the freight charges on the tonnage of traffic on the section of the railway line set out in the third sub-column of the second column of the First Schedule.</p> <p>(3) A bond entered into under this regulation may be enforced before any court in the same manner as a bail bond under the Magistrates Courts Act or the Trial on Indictments Act.</p> <p>8. Issue of movement permit.(...)</p> <p>(3) An applicant to whom a movement permit has been issued under this regulation shall within four days of the date of importation or such other period as may be allowed by the authority tender the goods for carriage to the administration.</p> <p>(4) At the expiration of the four days or period allowed by the movement permit an applicant shall not tender the goods for carriage unless he or she is in possession of a new movement permit issued by the administration on the payment of the prescribed fee and, if it is necessary to increase his or her security, after complying with regulation 7(2) of these Regulations.</p> <p>9. Forfeiture of the deposit.</p> <p>(1) Notwithstanding regulation 8(4) of these Regulations, if the carrier fails to tender the specified goods for carriage within the days or period allowed by the movement permit, he or she shall forfeit to the administration, out of his or her security, a sum of money equal to the actual freight charges he or she would have paid had he or she railed the goods.</p> <p>(2) Where the carrier has executed a bond the administration may enforce the terms of the bond to recover from the carrier the sum of money mentioned under this regulation.</p>



Uganda

Partner State	Sector	Sub-Sector	Source law / regulation	Source details	Non-Conforming Measure (NCM)
Uganda	Transport Services	Road transport	The Specified Goods (Conveyance) Act Chapter 359; The Specified Goods (Conveyance) Regulations Statutory Instrument 359-1	The Specified Goods (Conveyance) Act Chapter 359; The Specified Goods (Conveyance) Regulations Statutory Instrument 359-1 1.- Section 3 2.- First Schedule	<p>Measure: The Specified Goods (Conveyance) Act Chapter 359 An Act to provide for the control of the means of conveyance of certain goods to and from the Republics of Sudan, the Congo and Rwanda.</p> <p>1.- Section 2(a) 2.- Schedule</p> <p>The Specified Goods (Conveyance) Regulations Statutory Instrument 359-1 1.- Section 3 2.- First Schedule</p> <p>Description: 2. Regulations. The Minister may, by statutory instrument, make regulations prescribing— (a) the routes on which any goods specified in the Schedule to this Act may be conveyed in or out of Uganda;</p> <p>Schedule. Restricted goods. Coffee Tea Petroleum products and lubricants excluding high octane aviation spirit</p> <p>3. Prescription of routes. The routes on or by which any goods specified in the first column of the First Schedule to these Regulations may be imported from or exported to the Democratic Republic of Congo shall be those specified in the second column of that Schedule.</p>

NON-CONFORMING MEASURES IN AIR-TRANSPORT

Partner State	Source law / regulation	Source details	Non-conforming measure (NCM)	Type of violation (National Treatment or MFN)
Burundi	Creation of the Autonomous Administrative Entity called « AIR BURUND », Law No 1/99 of 17 April 1975	Article 3	The Government of Burundi grants Air Burundi the exclusivity to operate scheduled or non-scheduled air transport within the territory of Burundi	NT
Kenya	Civil Aviation Act, 2013, Section 4 (1) (a) Civil Aviation (Aircraft Nationality and Registration Marks) Regulations, 2013	Section 4 (1)(a) Civil Aviation (Aircraft Nationality and Registration Marks) Regulations, 2013	Eligibility for registration 4 (1) An aircraft is eligible for registration if it is- (a) The Government of Kenya (b) Citizens of Kenya or persons bona fide resident in Kenya	NT
Kenya	Civil Aviation Act, 2013, Section 4 (1) (a) Civil Aviation (Aircraft Nationality and Registration Marks) Regulations, 2013	Section 4 (2) Civil Aviation (Aircraft Nationality and Registration Marks) Regulations, 2013	4 (2) The following persons shall be qualified to be the owners of a legal or beneficial interest in an aircraft registered in Kenya, or a share therein— (c) The Government of Kenya (d) Citizens of Kenya or persons bona fide resident in Kenya	NT
Kenya	The Civil Aviation (Air Operator Certification and Administration) Regulations, 2007	Section 23 (4) Dry leasing of foreign registered aircraft	The total number of dry leased aircraft shall be such that an air operator certificate holder will not be predominantly dependent on foreign registered aircraft.	NT
Kenya	The Civil Aviation (Air Operator Certification and Administration) Regulations, 2007	Charges for air navigation services and regulatory fees	7. Grant/issue or renewal of an approval for Aircraft Maintenance Organization (AMO). Section C 8: air operator's certificate (AOC) A: AOC Inspections	NT

Partner State	Source law / regulation	Source details	Non-conforming measure (NCM)	Type of violation (National Treatment or MFN)
Rwanda	Civil Aviation (Aircraft Registration And Marking) Regulations 2015 Annex IV To The Ministerial Regulations No. 02/Mos/Trans/015 Of 08/04/2015 Implementing The Law No. 75/2013 of 11/09/2013 Establishing Regulation Governing Civil Aviation	Section 5 (2) c	5 (2) The following persons shall be qualified to be the owners of a legal or beneficial interest in an aircraft registered in Rwanda, or a share therein— (c) Corporate bodies incorporated under the laws of Rwanda that are controlled in fact by citizens of Rwanda or persons legally and bonafide resident in Rwanda and of which at least seventy-five per cent, or such lesser percentage as the Minister may by Order specify, of the voting interests are owned and controlled by citizens of Rwanda or persons legally and bonafide resident in Rwanda;.	
Rwanda	Civil Aviation (Air Operator Certification And Administration) Regulations 2015 Annex IX to the Ministerial Regulations No. 02/Mos/Trans/015 Of 08/04/2015 Implementing The Law No. 75/2013 of 11/09/2013 Establishing Regulation Governing Civil Aviation	Section 5(1)(a)	Issuance of air operator certificate (1) The Authority may issue an air operator certificate to an applicant if that applicant: (a) Has its principal place of business and it is registered in Rwanda.	NT
Rwanda	Civil Aviation (Air Operator Certification And Administration) Regulations 2015 Annex IX to the Ministerial Regulations No. 02/Mos/Trans/015 of 08/04/2015 Implementing The Law No. 75/2013 of 11/09/2013 Establishing Regulation Governing Civil Aviation	Section 11(1)	Base of operations 1. An air operator certificate holder shall maintain a principal base of operations in Rwanda.	NT

Partner State	Source law / regulation	Source details	Non-conforming measure (NCM)	Type of violation (National Treatment or MFN)
Rwanda	Civil Aviation (Personnel Licensing) Regulations 2015 Annex V to the Ministerial Regulations No. 02/Mos/Trans/015 of 08/04/2015 Implementing The Law No. 75/2013 of 11/09/2013 Establishing Regulation Governing Civil Aviation	Section 8(1)	Application of certificate of airworthiness (1) An owner or his representative of an aircraft registered in Rwanda may apply to the Authority for issue of a certificate of airworthiness for that aircraft.	NT
Rwanda	Civil Aviation (Fees And Charges) Regulations 2015 Annex XV to the Ministerial Regulations No. 02/Mos/Trans/015 of 08/04/2015 Implementing The Law No. 75/2013 of 11/09/2013 Establishing Regulation Governing Civil Aviation	Section 10 (2)	Air Navigation and VSAT charges: (2) When flights cross international FIR boundaries or international border of States where air traffic control centres are equipped with a SADC VSAT satellite communications system, SAT Network flat rate charge for South African Development Community (SADC) is levied.	MFN
Rwanda	Civil Aviation (Licensing Of Air Services) Regulations 2015 Annex XIX to the Ministerial Regulations No. 02/Mos/Trans/015 of 08/04/2015 Implementing The Law No. 75/2013 of 11/09/2013 Establishing Regulation Governing Civil Aviation	Section 11 (2) (a)	International air services to be licensed Notwithstanding the provisions of sub-regulation (1), no license shall be required in respect of an international scheduled air transport service operated by an airline of another State under and in accordance with: (a) any bilateral or multilateral agreement concluded between the Government of Rwanda and such other State or States.	MFN
Rwanda	Civil Aviation (Licensing Of Air Services) Regulations 2015 Annex XIX to the Ministerial Regulations No. 02/Mos/Trans/015 of 08/04/2015 Implementing The Law No. 75/2013 of 11/09/2013 Establishing Regulation Governing Civil Aviation	Section 11 (6) (a)	An undertaking whose principal place of business is within Rwanda shall not be designated in order to establish a scheduled air transport service between Rwanda and any other State or territory except if: (a) he is a natural person, he is a citizen or resident of Rwanda	NT

Partner State	Source law / regulation	Source details	Non-conforming measure (NCM)	Type of violation (National Treatment or MFN)
Rwanda	Civil Aviation (Licensing Of Air Services) Regulations 2015 Annex XIX to the Ministerial Regulations No. 02/Mos/Trans/015 of 08/04/2015 Implementing The Law No. 75/2013 of 11/09/2013 Establishing Regulation Governing Civil Aviation	Section 11 (6) (b)	<p>An undertaking whose principal place of business is within Rwanda shall not be designated in order to establish a scheduled air transport service between Rwanda and any other State or territory except if:</p> <p>(b) not a natural person, is incorporated in Rwanda and 51% of the voting rights in respect of such person are held by citizens and/or residents of Rwanda; provided that if an applicable bilateral or multilateral agreement provides otherwise, the bilateral or multilateral agreement shall prevail.</p>	NT
Rwanda	Civil Aviation (Personnel Licensing) Regulations 2015 Annex V to the Ministerial Regulations No. 02/Mos/Trans/015 of 08/04/2015 Implementing The Law No. 75/2013 of 11/09/2013 Establishing Regulation Governing Civil Aviation	Section 22 (1), (6)	<p>Validation of Aircraft Maintenance Engineer License</p> <p>(1) A person who holds a current and valid Aircraft Maintenance Engineer License issued by another Contracting State may apply for and may be issued a certificate of validation with the appropriate rating,</p> <p>(6) A person who receives a certificate of validation under this regulation shall:</p> <p>(a) Be limited to the privileges placed on the certificate;</p> <p>(b) Be subject to the limitations and restrictions on the certificate and the foreign Aircraft Maintenance Engineer License when exercising the privileges of that certificate on an aircraft registered in Rwanda; and</p> <p>(c) Not exercise the privileges of the certificate when the person's foreign license has been revoked or suspended.</p>	MFN
Uganda	The Airport Service Charges Act Chapter 353	Section 2(1)	<p>Imposition of service charge.</p> <p>(1) Subject to this section, the amount of airport charges payable by a passenger departing by aircraft from any airport in Uganda in respect of each flight to a destination outside Uganda shall, in respect of—</p> <p>(a) a non-Ugandan passport holder, be twenty United States dollars.</p>	NT

Partner State	Source law / regulation	Source details	Non-conforming measure (NCM)	Type of violation (National Treatment or MFN)
Uganda	The Civil Aviation (Air Operator Certification and Administration) Regulations No. 26 of 2012	Regulation 6(a)	Issuance of Air Operator Certificate. (1) The Authority may issue an air operator certificate (AOC) to an applicant if that applicant – (a) has its principle business and it is registered in Uganda.	NT
Uganda	The Civil Aviation (Aircraft Registration and Marking) Regulations	Regulation 4	Eligibility for registration: (1) An aircraft is eligible for registration if it is – (a) Owned by a citizen of Uganda, an individual citizen of a foreign State who is lawfully admitted for residence in Uganda, a cooperation lawfully organized and doing business under the Laws of Uganda or a government entity of Uganda....	NT
Tanzania	The Civil Aviation (Air Operator Certification and Administration) Regulations, 2011	Regulation 6 (1)	The Authority may issue an air operator certificate (AOC) to an applicant if that applicant- (a) Has its principal place of business and it is registered in the United Republic of Tanzania	NT
Tanzania	The Civil Aviation (Air Operator Certification and Administration) Regulations, 2011	Regulation 12 (1)	Air operator certificate (AOC) holder shall maintain a principal base of operations in the United Republic of Tanzania.	NT
Tanzania	The Civil Aviation (Air Operator Certification and Administration) Regulations, 2011	Regulation 23 (1) (2) (3)	Dry leasing of foreign registered aircraft: 23 (1) An air operator certificate (AOC) holder may dry-lease a foreign-registered aircraft for commercial air transport as authorized by the Authority. (2) An AOC holder shall not operate a foreign registered aircraft unless; (a) there is in existence a current agreement between the Authority and the State of Registry that, while the aircraft is operated by a United Republic of Tanzania AOC holder, these Regulations governing the issuance of the United Republic of Tanzania AOC and its operation specification shall apply (b) while the aircraft is operated by the AOC holder, the Airworthiness Regulations of the State of Registry are applicable...	MFN

Partner State	Source law / regulation	Source details	Non-conforming measure (NCM)	Type of violation (National Treatment or MFN)
Tanzania	The Civil Aviation (Air Operator Certification and Administration) Regulations, 2011	Regulation 23 (1) (2) (3)	Pursuant to sub-regulation (2), an AOC holder may operate a foreign registered aircraft for a period not exceeding six consecutive months	NT
Tanzania	The Civil Aviation (Aircraft Registration And Marking) Regulations, 2011	Regulation 4 (1)	An aircraft is eligible for registration if it is- (a) Owned by a citizen of the United Republic of Tanzania; (b) A corporation lawfully organized and doing business under the laws of the United Republic of Tanzania; (c) Owned by an individual citizen of a foreign State who is lawfully admitted for residency in the United Republic of Tanzania.	NT
Tanzania	The Civil Aviation (Aircraft Registration And Marking) Regulations, 2011	Regulation 4 (2)	The following persons shall be qualified to be the owners of a legal or beneficial interest in an aircraft registered in the United Republic of Tanzania, or a share therein- (a) The Government of the United Republic of Tanzania; (b) Citizens of the United Republic of Tanzania or persons bona fide resident in the United Republic of Tanzania; (c) Such other persons as the Authority may approve, on condition that the aircraft is not used for commercial air transport, flying training or aerial work and such other conditions as the Authority may specify; and bodies corporate (i) Established under subject laws of the United Republic of Tanzania; or (ii) Established under and subject to the laws of such country as the Authority may approve .	MFN

Partner State	Source law / regulation	Source details	Non-conforming measure (NCM)	Type of violation (National Treatment or MFN)
Tanzania	The Tanzania Civil Aviation (Economic Regulation) Regulations, 2006	Regulation 4 (1)	An undertaking shall be eligible for designation on regional or international operations, if it meets the requirements of regulation 3, applicable air services licensing regulations and the following criteria - (a) Is substantially owned and effectively controlled by the United Republic or nationals of the United Republic or has its principal place of business in the United Republic and the Authority maintains effective regulatory control over it.	NT
Tanzania	The Tanzania Civil Aviation Ground Handling Services Regulations, 2007	Regulation 6	No undertaking shall provide airport ground handling services without having a ground handling license issued under these Regulations. (2) No undertaking shall be granted a ground handling license unless: (a) its principal place of business and its registered office are located in the United Republic of Tanzania.	NT
Tanzania	The Tanzania Civil Aviation Ground Handling Services Regulations, 2007	Regulation 6	No undertaking shall be granted a ground handling license unless: (b) The undertaking is owned by Tanzanians by at least thirty five percent of total shares.	NT
Tanzania	Tanzania Civil Aviation (Licensing of Air Services) Regulations, 2006	Regulation 17 (1)	An air carrier whose principal place of business is in a State, other than the United Republic shall not operate a scheduled air service to, from or across the United Republic unless there is in force an operating authorization for that air service issued by the licensing authority in accordance with regulation 20 (1).	NT

Partner State	Source law / regulation	Source details	Non-conforming measure (NCM)	Type of violation (National Treatment or MFN)
Tanzania	<p>Aeronautical Info Circulars</p> <p>Landing-Charges- For- Tanzania- Registered- Aircraft- Circular – 2013;</p> <p>Revised Charges For Air Navigation Services - Dar Es Salaam Flight Information Region- 2012</p> <p>Aeronautical Info Circulars</p> <p>Landing-Charges- For- Tanzania- Registered- Aircraft- Circular – 2013;</p> <p>Revised Charges For Air Navigation Services - Dar Es Salaam Flight Information Region- 2012</p>	Schedule of fees	<p>Aeronautical Fees:</p> <p>2. Landing Charges</p> <p>Aerodromes Charges per 1,000 or part thereof</p> <p>Aircraft registered in Tanzania Foreign Registered Aircraft</p> <p>Dar es salaam, Kilimanjaro, Zanzibar and Pemba Tshs. 5,500.00 US \$5.00</p> <p>Dodoma, Kigoma, Mtwara, Mwanza, Songea, Tanga, and Tabora Tshs. 4,950.00 US \$4.50</p> <p>Arusha, Bukoba, Biharamulo, Iringa, Kilwa Masoko, Lake Manyara, Lindi, Mafia, Mbeya, Moshi, Musoma, Nachingwea, Njombe, and Shinyanga Tshs. 4,400.00 US \$4.00</p> <p>Other Government Aerodromes Tshs. 3,300.00 US \$3.00</p> <p>Aeronautical Fees:</p> <p>3. Parking Charges</p> <p>Aircraft Weight Charges Per Aircraft (after the first two hours)</p> <p>Aircraft Registered in Tanzania Foreign Registered Aircraft</p> <p>Up to 20,000 Kg Tshs 1000 per 12 hours or part thereof US \$5.00 per 12 hours or part thereof</p> <p>20,000Kg - 60,000 Kg Tshs 1000 per 6 hours or part thereof US \$5.00 per 6 hours or part thereof</p> <p>More than 60,000 Kg Tshs 1000 per hour or part thereof US \$5.00 per hour or part thereof.</p>	NT



Burundi

REPORTED NTBS POST CMS 2014 PERIOD (JULY 2013-DECEMBER 2015): STATUS AS OF DECEMBER 2015

No	Description of NTB	NTB Classification	NTB Source (MDA)	Affected country	SC 2014 B/F or New	Period by Dec 2015 NTB has been in force since date it was reported	EAC Council recommended date by which NTB should be resolved (Status in Dec. 2015)	Products affected	Status of NTB as of December 2015 [Resolved/ Unresolved]
1.	Customs (border management institutions) working hours not harmonized	2. Customs and Administrative Entry Procedures	All EAC Revenue Authorities	All EAC PSs	B/F – September 2008	91 months	June 2016	All products	Unresolved as of December 2015
2.	Non-harmonized road user charges / road tolls	2. Customs and Administrative Entry Procedures	Ministries of Transport and Infrastructure	All EAC PSs	B/F – September 2008	91 months	June 2016	All products	Unresolved as of December 2015
3.	Lack of coordination among the numerous institutions involved in testing goods	3. TBT Measures and 4 SPS Measures	Statutory Agencies responsible for SPS and TBT	All EAC PSs	B/F - December 2012	42 months	June 2016	Agriculture and Manufactured products	Unresolved as of December 2015

No	Description of NTB	NTB Classification	NTB Source (MDA)	Affected country	SC 2014 B/F or New	Period by Dec 2015 NTB has been in force since date it was reported	EAC Council recommended date by which NTB should be resolved (Status in Dec. 2015)	Products affected	Status of NTB as of December 2015 [Resolved/ Unresolved]
4.	Numerous monetary charges required by various agencies in the EAC Partner States for exports of milk	2. Customs and Administrative Entry Procedures	Various agencies in the Partner States.	All EAC PSs	New (May 2014)	23 months	March 2016	Dairy products	Unresolved as of December 2015
5.	Metal products from Kenya are charged a CET rate of 25% when exported to Burundi	2. Customs and Administrative Entry Procedures	Office Burundais des Recettes (OBR)	Kenya	New (May 2014)	4 months	Resolved September 2014	Metal	Resolved as of December 2015
Total Reported NTBs - Post CMS 2014 (July 2013 - Dec 2015)							5		
Total Unresolved							4		
Total Resolved							1		



Kenya

REPORTED NTBS POST CMS 2014 PERIOD (JULY 2013-DECEMBER 2015): STATUS AS OF DECEMBER 2015

No	Description of NTB	NTB Classification	NTB Source (MDA)	Affected country	SC 2014 B/F or New	Period by Dec 2015 NTB has been in force since date it was reported	EAC Council recommended date by which NTB should be resolved (Status in Dec. 2015)	Products affected	Status of NTB as of December 2015 [Resolved/ Unresolved]
1.	Customs (border management Institutions) working hours not harmonised	2. Customs and Administrative Entry Procedures	All EAC Revenue Authorities	All EAC PSs	B/F – September 2008	91 months	June 2016	All products	Unresolved as of December 2015
2.	Charges on Plant Import Permit (PIP) at Malaba on Ugandan tea destined for auction at Mombasa	6. Charges on Imports	Kenya Plant Health Inspectorate Services (KEPHIS)	Burundi	B/F – September 2008	91 months	June 2016	Tea	Unresolved as of December 2015
3.	Non-harmonized road user charges / road tolls	2. Customs and Administrative Entry Procedures	Ministries of Transport and Infrastructure	All EAC PSs	B/F – September 2008	91 months	June 2016	All products	Unresolved as of December 2015
4.	Charges by container freight stations vary from port charges	2. Customs and Administrative Entry Procedures	Kenya Ports Authority (KPA)	Uganda, Rwanda and Burundi.	November 2011	28 months	Resolved May 2014	All products	Resolved as of May 2014

No	Description of NTB	NTB Classification	NTB Source (MDA)	Affected country	SC 2014 B/F or New	Period by Dec 2015 NTB has been in force since date it was reported	EAC Council recommended date by which NTB should be resolved (Status in Dec. 2015)	Products affected	Status of NTB as of December 2015 [Resolved/ Unresolved]
5.	Requirement by KRA that tea from Uganda destined for Mombasa auction market should be stored at 3 selected customs transit go-down in Mombasa	5. Specific Limitations	Kenya Revenue Authority (KRA)	Uganda	November 2012	18 months	Resolved May 2014	Tea	Resolved as of May 2014
6.	Lack of Harmonized Port Procedures Manual	7. Other procedural problems	KPA	Burundi, Rwanda and Uganda	November 2012	25 months	Resolved Dec 2014	All products	Resolved as of December 2014
7.	Lack of coordination among the numerous institutions involved in testing goods	3 TBT measures and 4 SPS Measures	Statutory Agencies responsible for SPS and TBT	All EAC PSs	B/F - December 2012	42 months	June 2016	Agricultural and manufactured products	Unresolved as of December 2015



Kenya

No	Description of NTB	NTB Classification	NTB Source (MDA)	Affected country	SC 2014 B/F or New	Period by Dec 2015 NTB has been in force since date it was reported	EAC Council recommended date by which NTB should be resolved (Status in Dec. 2015)	Products affected	Status of NTB as of December 2015 [Resolved/ Unresolved]
8.	Rice and wheat flour originating from Tanzania and exported through Lunga Lunga border being treated as not wholly produced from Tanzania	2. Customs and Administrative Entry Procedures	Kenya	Tanzania	B/F-June 2013	30 months	Dec 2015	Rice and wheat	Unresolved as of December 2015
9	Kenya Revenue Authority at Taveta Border requires certificates of origin from Tanzania to have serial numbers	2. Customs and Administrative Entry Procedures	KRA	Tanzania	June 2013	11 months	Resolved May 2014	All products	Resolved as of May 2014
10	Kenya requires oil to be transported through rail and by road to have bond guaranteed by bank	5. Specific Limitations	KPA	Uganda	June 2013	11 months	Resolved May 2014	Oil	Resolved as of May 2014

No	Description of NTB	NTB Classification	NTB Source (MDA)	Affected country	SC 2014 B/F or New	Period by Dec 2015 NTB has been in force since date it was reported	EAC Council recommended date by which NTB should be resolved (Status in Dec. 2015)	Products affected	Status of NTB as of December 2015 [Resolved/ Unresolved]
11	Kenya delays inspection of export goods at factory level	7. Other (Procedural Problems)	Kenya	Tanzania	New (October 2013)	27 months	Resolved December 2015	All products	Resolved as of December 2015
12	Re-introduction of County Transit Fee by the Counties of Kajiado & Kwale	2. Customs and Administrative Entry Procedures	County Governments	Tanzania	New (October 2013)	26 months	Resolved December 2014	All products	Resolved as of May 2014
13	Introduction of a levy of 1.5% for railway development in Kenya for imports destined to Kenya	6. Charges on imports	KRA	EAC Partner States	May 2014	4 months	Resolved September 2014	All products	Resolved as of September 2014
14	Mandatory requirement for all sugar Importers to obtain prior permission and costly registration fees by Kenya Sugar Board for any sugar import	5. Specific Limitations	Kenya Sugar Board (KSB)	Uganda	May 2014	7 months	December 2014	Sugar	Resolved as of December 2014



Kenya

No	Description of NTB	NTB Classification	NTB Source (MDA)	Affected country	SC 2014 B/F or New	Period by Dec 2015 NTB has been in force since date it was reported	EAC Council recommended date by which NTB should be resolved (Status in Dec. 2015)	Products affected	Status of NTB as of December 2015 [Resolved/ Unresolved]
15.	Requirement of a single bond in the Single Customs Territory	6. Charges on imports	KRA	Uganda	September 2014	3 months	December 2014	All products	Resolved as of December 2014
16.	Numerous weighbridges: Containerized cargo is being subjected to imposition of 4 weighbridges instead of agreed 2 as agreed by Partner States	5. Specific Limitations	Kenya	Uganda	New (May 2014)	19 months	Resolved December 2015	All products	Resolved as of December 2015
17.	Numerous monetary charges required by various agencies in the EAC Partner States for exports of milk	2. Customs and Administrative Entry Procedures	Various agencies in the Partner States.	All EAC PSs	New (May 2014)	23 months	March 2016	Dairy products	Unresolved as of December 2015

No	Description of NTB	NTB Classification	NTB Source (MDA)	Affected country	SC 2014 B/F or New	Period by Dec 2015 NTB has been in force since date it was reported	EAC Council recommended date by which NTB should be resolved (Status in Dec. 2015)	Products affected	Status of NTB as of December 2015 [Resolved/ Unresolved]
18.	Uganda registered insurance companies are not recognized in Kenya	7. Other (Procedural Problems)	Kenya	Uganda	New (September 2014)	3 months	Resolved December 2014	All products	Resolved as of December 2014
19.	Lengthy restrictive and unclear administrative procedures of licensing Uganda-owned container freight stations/warehouses in Kenya	7. Other (Procedural Problems)	Kenya	Uganda	New (September 2014)	3 months	Resolved December 2014	All products	Resolved as of December 2014
20.	Kenya was restricting Cable Corporation (Uganda) Ltd from its tendering processes for the supply of electric cable products	7 Other (Procedural Problems)	Kenya	Uganda	New (March 2015)	13 months	March 2016	Electric cables	Unresolved as at Dec 2015



Kenya

No	Description of NTB	NTB Classification	NTB Source (MDA)	Affected country	SC 2014 B/F or New	Period by Dec 2015 NTB has been in force since date it was reported	EAC Council recommended date by which NTB should be resolved (Status in Dec. 2015)	Products affected	Status of NTB as of December 2015 [Resolved/ Unresolved]
21.	Kenya has introduced a compulsory requirement under the Single Customs Territory for all trucks loaded within Kenya and destined to be verified, issued with a C2 document and exit note at an Inland Container Depot located on Mombasa road	7 Other (Procedural Problems)	Kenya	Uganda	New (March 2015)	13 months	March 2016	All products	Unresolved as of December 2015
22.	KRA requires the importer of ethanol (Kenya importer) from Tanzania to construct separate storage tanks. This requirement is seen to be a discrimination against Tanzania's product since other manufacturers from other countries are not subjected under the same requirement.	7 Other (Procedural Problems)	Kenya	Tanzania	New (March 2015)	13 months	March 2016	Ethanol	Unresolved as of December 2015
23	Mamimou Charcoal Export Ltd, based in Kigali, is charged transit fees on charcoal exports to Dubai via Mombasa	5. Specific Limitations	Kenya	Rwanda	New (May 2015)	10 months	Resolved December 2015	Charcoal	Resolved as of Dec ember 2015
Total reported NTBs - Post CMS 2014 (July 2013 - Dec 2015)							23		
Total Unresolved							9		
Total Resolved							14		



Rwanda

REPORTED NTBS POST CMS 2014 PERIOD (JULY 2013-DECEMBER 2015): STATUS AS OF DECEMBER 2015

No	Description of NTB	NTB Classification	NTB Source (MDA)	Affected country	SC 2014 B/F or New	Period by Dec 2015 NTB has been in force since date it was reported	EAC Council recommended date by which NTB should be resolved (Status in Dec. 2015)	Products affected	Status of NTB as of December 2015 [Resolved/ Unresolved]
1.	Customs (border management Institutions) working hours not harmonised	2. Customs and Administrative Entry Procedures	All EAC Revenue Authorities	All EAC PSs	B/F – September 2008	91 months	June 2016	All products	Unresolved as of December 2015
2.	Non-harmonized road user charges / road tolls	2. Customs and Administrative Entry Procedures	Ministries of Transport and Infrastructure	All EAC PSs	B/F – September 2008	91 months	June 2016	All products	Unresolved as of December 2015
3.	Restriction of rice exports from Tanzania through Rusumo Border	4. SPS Measures	Rwanda Revenue Authority (RRA)	Tanzania	Dec 2011	48 months	Resolved December 2015	Rice	Resolved as of December 2015
4.	Non recognition of motor vehicles from Kenya	2. Customs and Administrative Entry Procedures	RRA	Kenya	March 2012	33 months	Resolved	Motor vehicles	Resolved as of December 2014
5.	Numerous institutions involved in testing goods	3. TBT measures and 4 SPS Measures	Statutory Agencies responsible for SPS and TBT	All EAC PSs	B/F - December 2012	42 months	June 2016	Agricultural and manufactured products	Unresolved as at Dec 2015

No	Description of NTB	NTB Classification	NTB Source (MDA)	Affected country	SC 2014 B/F or New	Period by Dec 2015 NTB has been in force since date it was reported	EAC Council recommended date by which NTB should be resolved (Status in Dec. 2015)	Products affected	Status of NTB as of December 2015 [Resolved/Unresolved]
6.	Prohibition of imports of food products from Burundi	5. Specific Limitations	RRA	Burundi	June 2013	11 months	Resolved	Food products	Resolved as of May 2014
7.	Numerous monetary charges required by various agencies in the EAC Partner States for exports of milk	5. Specific Limitations	Various agencies in the Partner States	All EAC PSs	New (May 2014)	23 months	March 2016	Dairy products	Unresolved as of December 2015
8.	Not according preferential treatment on confectionary products by Candy Kenya Ltd.	2. Customs and Administrative Entry Procedures	Rwanda	Kenya	New (March 2015)	6 months	Resolved	Confectionery products	Resolved as of December 2015
9.	RRA not according preferential treatment to G & B Soap Industries Ltd.	2. Customs and Administrative Entry Procedures	Rwanda	Kenya [Confirm from relevant NTB tables]	New (March 2015)	10 months	Resolved December 2015	Soaps	Resolved as of December 2015
10.	Exports of juices produced by Delmonte company in Kenya are not accorded preferential treatment in Rwanda	2. Customs and Administrative Entry Procedures	Rwanda	Kenya	New (September 2015)	7 months	March 2016	Fruit juices	Unresolved as of December 2015
Total reported NTBs - Post CMS 2014 (July 2013 - Dec 2015)							10		
Total Unresolved							5		
Total Resolved							5		



Tanzania

REPORTED NTBS POST CMS 2014 PERIOD (JULY 2013-DECEMBER 2015): STATUS AS OF DECEMBER 2015

No	Description of NTB	NTB Classification	NTB Source (MDA)	Affected country	SC 2014 B/F or New	Period by Dec 2015 NTB has been in force since date it was reported	EAC Council recommended date by which NTB should be resolved (Status in Dec. 2015)	Products affected	Status of NTB as of December 2015 [Resolved/ Unresolved]
1.	Customs (border management Institutions) working hours not harmonised	2. Customs and Administrative Entry Procedures	All EAC Revenue Authorities	All EAC PSs	B/F – September 2008	91 months	June 2016	All products	Unresolved as of December 2015
2.	Non-harmonized road user charges / road tolls	2. Customs and Administrative Entry Procedures	Ministries of Transport and Infrastructure	All EAC PSs	B/F – September 2008	91 months	June 2016	All products	Unresolved as of December 2015
3.	Weighing of empty trucks in the Central Corridor-Tanzania	7. Other procedural problems	Tanzania National Roads Agency (TANROADS)	Rwanda & Burundi	March 2012	42 months	Resolved September 2015	All products	Resolved as of September 2015
4.	Non recognition of rules of origin for motor vehicles	2. Customs and Administrative Entry Procedures	Tanzania Revenue Authority (TRA)	Kenya	March 2012	33 months	Resolved December 2014	Motor vehicles	Resolved December 2014
5.	Lack of Harmonized Port Procedures Manual	7. Other procedural problems	Tanzania Ports Authority (TPA)	Burundi	Rwanda and Uganda	25 months	Resolved December 2014	All products	Resolved as of December 2014

No	Description of NTB	NTB Classification	NTB Source (MDA)	Affected country	SC 2014 B/F or New	Period by Dec 2015 NTB has been in force since date it was reported	EAC Council recommended date by which NTB should be resolved (Status in Dec. 2015)	Products affected	Status of NTB as of December 2015 [Resolved/ Unresolved]
6.	Lack of coordination among the numerous institutions involved in testing goods	3. TBT measures and 4 SPS Measures	Statutory Agencies responsible for SPS and TBT	All EAC PSs	B/F - December 2012	42 months	June 2016	Agricultural and manufactured products	Unresolved as of December 2015
7.	Cigarettes manufactured in Kenya exported to Tanzania required to have a local 75% tobacco content	5. Specific Limitations	Tanzania	Kenya	B/F - May 2012	47 months	July 2016	Cigarettes	Unresolved as of December 2015
8.	Tanzania restricted export of beer from Burundi through the border of Kobero/ Kabanga	5. Specific Limitations	Tanzania	Burundi	New (December 2013)	5 months	Resolved May 2014	Beer	Resolved May 2014
9.	Tanzania Food and Drug Authority labeling requirement on salt and dairy products imported into Tanzania	4. SPS Measures	TRA	Kenya	New (May 2014)	19 months	June 2015	Salt and dairy	Unresolved as of December 2015



Tanzania

No	Description of NTB	NTB Classification	NTB Source (MDA)	Affected country	SC 2014 B/F or New	Period by Dec 2015 NTB has been in force since date it was reported	EAC Council recommended date by which NTB should be resolved (Status in Dec. 2015)	Products affected	Status of NTB as of December 2015 [Resolved/ Unresolved]
10.	Discrimination of East African Breweries (Kenya) products (Smirnoff Ice)	2. Customs and Administrative Entry Procedures	Tanzania	Kenya	New (May 2014)	19 months	March 2016	Alcoholic drinks	Unresolved as of December 2015
11.	Numerous monetary charges required by various agencies in the EAC Partner States for exports of milk	5. Specific Limitations	Various agencies in the Partner States.	All EAC PSs	New (May 2014)	23 months	March 2016	Dairy products	Unresolved as of December 2015
12.	Charging of 25% duty to consignment of kiwi shoe polish of S.C Johnson & Son Kenya Ltd. at Namanga border while the company had been degazetted from EAC Duty Remission Scheme	2. Customs and Administrative Entry	Tanzania		New (May 2014)	1 month	Resolved May 2014 as informed by EAC Secretariat	Shoe polish	Resolved as of May 2014
13.	Charge of \$500 for all trucks registered in Burundi when they ferry cargo through Tanzania	2. Customs and Administrative Entry Procedure	TANROADS	Burundi	New (May 2014)	4 months	Resolved September 2014	All products	All products Resolved as of September 2014

No	Description of NTB	NTB Classification	NTB Source (MDA)	Affected country	SC 2014 B/F or New	Period by Dec 2015 NTB has been in force since date it was reported	EAC Council recommended date by which NTB should be resolved (Status in Dec. 2015)	Products affected	Status of NTB as of December 2015 [Resolved/ Unresolved]
14.	Kenyan Company Auto axillary Ltd. products (U bolt and center bolts) are charged CET of 25%	2. Customs and Administrative Entry Procedures	TRA	Kenya	New (May 2014)	7 months	Resolved December 2014	U Bolts and Center Bolts	Resolved as of December 2014
15.	Tanzania Ports Authority (TPA) is charging \$90 as way leave fees for transit container of 20 feet and \$140 for container of 40 feet for transit trucks	2. Customs and Administrative Entry Procedures	TPA	Burundi	New (December 2014)	3 months	Resolved March 2015	All products	Resolved as of March 2015
16.	Tanzania is charging \$200 as transit fee for containers with chemical products	2. Customs and Administrative Entry Procedures	All Partner States	TRA	New (December 2014)	12 months	Resolved December 2015	Chemical products	Resolved as of December 2015
17.	Requirement by Tanzania Food and Drugs Authority for companies exporting to Tanzania to register, re-label, and retesting of certified EAC Partner States	3. SPS Measures	Tanzania Food and Drugs Authority (TFDA)	All EAC PSs	New (December 2014)	16 months	June, 2016	Agricultural and agro-processed products	Unresolved as of December 2015



Tanzania

No	Description of NTB	NTB Classification	NTB Source (MDA)	Affected country	SC 2014 B/F or New	Period by Dec 2015 NTB has been in force since date it was reported	EAC Council recommended date by which NTB should be resolved (Status in Dec. 2015)	Products affected	Status of NTB as of December 2015 [Resolved/ Unresolved]
18.	Existence of several weighbridge stations in the central corridor	2. Customs and Administrative Entry Procedures	Tanzania	Rwanda, Uganda, Burundi	New (March 2015)	13 months	June 2016	All products	Unresolved as of December 2015
19.	Plastic stripping products exported to Tanzania are not accorded preferential treatment by Tanzania	2. Customs and Administrative Entry Procedures	Tanzania	Kenya	New (March 2015)	13 months	March 2016	Plastic products	Unresolved as of December 2015
20.	Rwandan transporters pay \$ 300 per truck as national park fees	2. Customs and Administrative Entry Procedures	TRA	Rwanda	New (March 2015)	8 months	Resolved September 2015	All products	Resolved as of September 2015
21.	Tanzania has introduced a railway development levy of 1.5 percent for imports from Kenya	2. Customs and Administrative Entry Procedures	Tanzania	Kenya	New (September 2015)	7 months	Immediate	All products	Unresolved as of December 2015
22.	Delays in issuance of certificates by Tanzania's National Environment Management Authority (NEMA) which takes three months to get a new certificate and three months to renew the certificate	3. TBT Measures	Tanzania	Rwanda	New (September 2015)	7 months	March 2016	All products	Unresolved as of December 2015

No	Description of NTB	NTB Classification	NTB Source (MDA)	Affected country	SC 2014 B/F or New	Period by Dec 2015 NTB has been in force since date it was reported	EAC Council recommended date by which NTB should be resolved (Status in Dec. 2015)	Products affected	Status of NTB as of December 2015 [Resolved/ Unresolved]
23.	SCT document processing in Tanzania is taking longer, up to 10 days to be cleared	2. Customs and Administrative Entry Procedures	Tanzania	Kenya	New (September 2015)	7 months	March 2016	All products	Unresolved as of December 2015
24.	Salt exports are not accorded preferential treatment in United Republic of Tanzania	2. Customs and Administrative Entry Procedures	Tanzania	Kenya	New (September 2015)	3 months	Resolved December 2015	Salt	Resolved as of December 2015
Total reported NTBs - Post CMS 2014 (July 2013 - Dec 2015)							24		
Total Unresolved							13		
Total Resolved							11		



Uganda

REPORTED NTBS POST CMS 2014 PERIOD (JULY 2013-DECEMBER 2015): STATUS AS OF DECEMBER 2015

No	Description of NTB	NTB Classification	NTB Source (MDA)	Affected country	SC 2014 B/F or New	Period by Dec 2015 NTB has been in force since date it was reported	EAC Council recommended date by which NTB should be resolved (Status in Dec. 2015)	Products affected	Status of NTB as of December 2015 [Resolved/Unresolved]
1.	Customs (border management Institutions) working hours not harmonized	2. Customs and Administrative Entry Procedures	All EAC Revenue Authorities	All EAC PSs	B/F- September 2008	91 months	June 2016	All products	Unresolved as of December 2015
2.	Ugandan ban on beef and beef products from Kenya	4. SPS Measures	Uganda Departments of Veterinary Services; Ministries of livestock development and Agriculture	Kenya	B/F- September 2008	91 months	November 2015	Beef and beef products	Unresolved as of December 2015
3.	Non-harmonized road user charges / road tolls	2. Customs and Administrative Entry Procedures	Ministries of Transport and Infrastructure	All EAC PSs	B/F – September 2008	91 months	June 2016	All products	Unresolved as of December 2015
4.	Lack of coordination among the numerous institutions involved in testing goods	3. TBT measures and 4 SPS Measures	Statutory Agencies responsible for SPS and TBT	All EAC PSs	B/F- March 2012	49 months	June 2016	All products	Unresolved as of December 2015

No	Description of NTB	NTB Classification	NTB Source (MDA)	Affected country	SC 2014 B/F or New	Period by Dec 2015 NTB has been in force since date it was reported	EAC Council recommended date by which NTB should be resolved (Status in Dec. 2015)	Products affected	Status of NTB as of December 2015 [Resolved/ Unresolved]
5.	Uganda is restricting export of mosquito nets produced by A to Z Mills Company in Arusha; UNBS has introduced requirements that do not adhere to WHO, ISO, and TBS Standards	5 Specific Limitations	Uganda National Bureau of Standards (UNBS)	Tanzania	June 2013	11 months	Resolved	Mosquito nets	Resolved as of May 2014
6.	Charging of full duty on aluminum products on EAC duty remission scheme produced in Kenya and exported to Uganda	2. Customs and Administrative Entry Procedures	Uganda Revenue Authority (URA)	Kenya	June 2013	15 months	Resolved September 2014	Aluminum	Resolved as of September 2014
7.	70% local content requirement imposed on cigarettes imported from Kenya	5. Specific Limitations	Uganda	Kenya	New (May 2014)	22 months	Resolved as informed by the EAC Secretariat in March 2016	Cigarettes	Resolved as of March 2016
8.	Export tax of 0.2 % of raw materials exported from Rwanda Premier Tobacco Company Ltd.	6. Charges on Imports	Uganda	Rwanda	New (May 2014)	22 months	March 2016, Uganda and Rwanda undertook to hold a bilateral meeting and report back during the next	Tobacco	Unresolved as of December 2015



Uganda

No	Description of NTB	NTB Classification	NTB Source (MDA)	Affected country	SC 2014 B/F or New	Period by Dec 2015 NTB has been in force since date it was reported	EAC Council recommended date by which NTB should be resolved (Status in Dec. 2015)	Products affected	Status of NTB as of December 2015 [Resolved/Unresolved]
9.	Numerous monetary charges required by various agencies in the EAC Partner States for exports of milk	2. Customs and Administrative Entry Procedures	Various agencies in the Partner States	All EAC PSs	New (May 2014)	13 months	March 2016	Dairy products	Unresolved as of December 2015
10.	UNBS rejecting Tropical Heats Products exported by Kenya as substandard	3. TBT Measures	UNBS	Kenya	New (May 2014)	7 months	Resolved December 2014	Spices, seasoning and snacks	Resolved as of December 2014
11.	Charging of 25% duty rate on scrapping rolls manufactured in Kenya	2. Customs and Administrative Entry Procedures	URA	Kenya	New (September 2014)	6 months	Resolved March 2015	Scrapping Rolls	Resolved as of March 2015
12.	Not according preferential treatment on exports of rice from Tanzania through Mutukula border	2. Customs and Administrative Entry Procedures	URA	Tanzania	New (March 2015)	9 months	Resolved December 2015	Rice	Resolved as of December 2015
13.	Fish exports to DRC are being confiscated in Uganda	7. Other (Procedural Problems)	Uganda	Kenya	New (September 2015)	7 months	Reported as resolved by the EAC Secretariat in April 2016	Fish	Resolved as of April 2016

No	Description of NTB	NTB Classification	NTB Source (MDA)	Affected country	SC 2014 B/F or New	Period by Dec 2015 NTB has been in force since date it was reported	EAC Council recommended date by which NTB should be resolved (Status in Dec. 2015)	Products affected	Status of NTB as of December 2015 [Resolved/ Unresolved]
14.	Savannah cement produced in Kenya is not accorded preferential treatment while exported in Uganda	2. Customs and Administrative Entry Procedures	Uganda	Kenya	New (September 2015)	7 months	March 2016	Cement	Unresolved as of December 2015
15.	URA has uplifted the price of ethanol produced by Kilimanjaro Biochem Ltd. from US \$0.87 to US \$1.04 for duty evaluation purposes	2. Customs and Administrative Entry Procedures	URA	Tanzania	New	7 months	March 2016	Chemical products (Ethanol)	Unresolved as of December 2015
16.	Bidco Soap not accorded preferential treatment when exported to Uganda	2. Customs and Administrative Entry Procedures	Uganda	Kenya	New (September 2015)	7 months	March 2016 Kenya provided documentary evidence. Uganda undertook to study the evidence and report back during the next meeting.	Soaps	Unresolved as of December 2015
Total reported NTBs - Post CMS 2014 (July 2013 - Dec 2015)							16		
Total Unresolved							9		
Total Resolved							7		



Burundi

REPORTED RESOLVED NTBS (SEPTEMBER 2008-DECEMBER 2015): STATUS AS OF DECEMBER 2015

RESOLVED (LEGAL) NON TARIFF BARRIERS CUMULATIVE AS PER DECEMBER 2015

No.	NTB summary description	EAC classification	Date reported as NTB by the EAC Secretariat	Affected countries	NTB source & ministry/ department/ agency for action	Type of product affected	Date reported as solved by the EAC Secretariat	Number of months to resolve an NTB
1.	Burundi charges entry fee for vehicles from other Partner States	2. Customs and Administrative Entry Procedures	August 2011	Kenya, Uganda, Tanzania, & Rwanda	Burundi Customs	All products	March 2012	7 months
2.	Requirement for certificates of analysis for goods destined for export to Rwanda and Burundi	3. TBT Measures	Reported by Delmas Trade Watch in December 2011	Tanzania, Uganda, and Kenya	Burundi and Rwanda Bureau of Standards	All products	March 2012	3 months
3.	Metal products from Kenya are charged a CET rate of 25% when exported to Burundi	2. Customs and Administrative Entry Procedures	May 2014	Kenya	Office Burundais des Recettes (OBR)	Metal products	September 2014	4 months
Average number of months to resolve an NTB								5 months

Analysis of the date when an NTB is reported and settled is taken from the EAC reports (except in the few cases when the date of report was not available in EAC documents and information from open sources was used as a benchmark).

Source: Publications on the Status of Elimination of NTBs within EAC, EAC Secretariat Reports



Kenya

RESOLVED (LEGAL) NON TARIFF BARRIERS CUMULATIVE AS PER DECEMBER 2015

No.	NTB summary description	EAC classification	Date reported as NTB by the EAC Secretariat	Affected countries	NTB source & ministry/ department/ agency for action	Type of product affected	Date reported as solved by the EAC Secretariat	Number of months to resolve an NTB
1.	Kenya delays inspection of export goods at factory level	7. Other (Procedural Problems)	Not clear; Reported by tradebarriers.org in August 2007 but not found in the EAC Secretariat first report of September 2008.	Tanzania	Kenya Revenue Authority (KRA)	Vehicles, plastics, and all products	May 2014	68 months
2.	Kenyan ban on Ugandan day old chicks	4. SPS Measures	September 2008	Uganda	Ministries of Livestock Development and Agriculture	Poultry	August 2011	35 months
3.	Restriction of Konyagi exports into Kenya Market	4. SPS Measures	October 2009	Tanzania	KRA and Kenya Bureau of Standards (KBS)	Liquor	August 2011	22 months
4.	Holding, retesting milk and milk products bearing Uganda National Bureau of Standards quality marks and imposition of import quotas	4. SPS Measures	October 2009	Uganda and Tanzania	Kenya's Ministry of Fisheries and Livestock Development, Kenya Dairy Board, and KBS.	Milk and milk products	August 2011	22 months
5.	Charges by Container Freight Stations vary from port charges	2. Customs and Administrative Entry Procedures	Not clear. First time reported the EAC Secretariat in November 2011	Uganda, Rwanda and Burundi.	Kenya Ports Authority (KPA)	All products	May 2014	28 months

No.	NTB summary description	EAC classification	Date reported as NTB by the EAC Secretariat	Affected countries	NTB source & ministry/department/ agency for action	Type of product affected	Date reported as solved by the EAC Secretariat	Number of months to resolve an NTB
6.	Delays in issuing bonds at Kenya border with Uganda for tea meant for auction in Mombasa	7. Other (Procedural Problems)	March 2012	Rwanda	KRA	Tea	December 2012	9 months
7.	Kenya import levy of Kshs 2 per kg on agricultural products from Tanzania	2. Customs and Administrative Entry Procedures	March 2012	Tanzania	KRA	Agricultural products	December 2012	9 months
8.	Kenya has introduced cash bond on used clothes, shoes, and other items of high value	6. Charges on imports	March 2012	Uganda	KRA	Clothes	June 2012	3 months
9.	Cut flower from Tanzania for re-export to Europe and Russia blocked by Kenya	5. Specific Limitations	March 2012	Tanzania	Kenya Plant Health Inspectorate Service (KEPHIS)	Flowers	June 2013	15 months
10.	Requirements for cash bonds by the KRA prior to clearance of certain goods	6. Charges on imports	November 2012	Uganda	KRA	All products	March 2013	4 months
11.	Requirement by KRA that tea from Uganda destined for Mombasa auction market should be stored at 3 selected customs transit go-down in Mombasa	5. Specific Limitations	November 2012	Uganda	KRA	Tea	May 2014	18 months
12.	Re-introduction by Kenya of a cash bond on vehicles above 2,000 cc and sugar transiting from Mombasa to Uganda	6. Charges on imports	Not clear. It was reported by The East African Journal in January 2013	Uganda, Burundi, and Rwanda	KRA	Sugar and all other products	March 2013	2 months



Kenya

No.	NTB summary description	EAC classification	Date reported as NTB by the EAC Secretariat	Affected countries	NTB source & ministry/department/ agency for action	Type of product affected	Date reported as solved by the EAC Secretariat	Number of months to resolve an NTB
13.	Kenya Revenue Authority at Taveta Border requires certificates of origin from Tanzania to have serial numbers	2. Customs and Administrative Entry Procedures	June 2013	Tanzania	Kenya Revenue Authority	All products	May 2014	11 months
14.	Kenya requires oil to be transported through rail and road to have bond guaranteed by bank	5. Specific Limitations	June 2013	Uganda	KPA	Oil	May 2014	11 months
15.	Kenya delays inspection of export goods at factory level	7. Other (Procedural Problems)	October 2013	Tanzania	Kenya	All products	Resolved December 2015	27 months
16.	Re-introduction of County Transit Fee by the Counties of Kajiado & Kwale	2. Customs and Administrative Entry Procedures	October 2013	Tanzania	County governments	All products	December 2015	26 months
17.	Introduction of a levy of 1.5% for railway development in Kenya for imports destined to Kenya	6. Charges on imports	May 2014	EAC Partner States	KRA	All products	September 2014	4 months
18.	Mandatory requirement for all sugar Importers to obtain prior permission and costly registration fees by Kenya Sugar Board for any sugar import	5. Specific Limitations	May 2014	Uganda	Kenya Sugar Board (KSB)	Sugar	December 2014	7 months
19.	Requirement of a single bond in the Single Customs Territory	6. Charges on imports	September 2014	Uganda	KRA	All products	December 2014	3 months

No.	NTB summary description	EAC classification	Date reported as NTB by the EAC Secretariat	Affected countries	NTB source & ministry/department/ agency for action	Type of product affected	Date reported as solved by the EAC Secretariat	Number of months to resolve an NTB
20.	Numerous weighbridges: Containerized cargo is subjected to imposition of 4 weighbridges instead of 2 as agreed by Partner States	7. Other (Procedural Problems)	May 2014	Uganda	Kenya	All products	December 2015	19 months
21.	Uganda registered insurance companies are not recognized in Kenya	7. Other (Procedural Problems)	September 2014	Uganda	Kenya	All products	December 2014	3 months
22.	Lengthy restrictive and unclear administrative procedures of licensing Uganda owned container freight stations/ warehouses in Kenya	7. Other (Procedural Problems)	September 2014	Uganda	Kenya	All products	December 2014	3 months
23.	Mamimou Charcoal Export Limited, based in Kigali, is charged transit fees on charcoal exports to Dubai via Mombasa	5. Specific Limitations	March 2015	Rwanda	KPA	Charcoal	December 2015	10 months
Average number of months to resolve an NTB								15 months

Source: Publications on the Status of Elimination of NTBs within EAC, EAC Secretariat Reports



Rwanda

RESOLVED (LEGAL) NON TARIFF BARRIERS CUMULATIVE AS PER DECEMBER 2015

No.	NTB summary description	EAC classification	Date reported as NTB by the EAC Secretariat	Affected countries	NTB source & ministry/ department/ agency for action	Type of product affected	Date reported as solved by the EAC Secretariat	Number of months to resolve an NTB
1.	Non recognition of motor vehicles from Kenya	2. Customs and Administrative Entry Procedures	March 2012	Kenya	Rwanda Revenue Authority (RRA)	Motor vehicles	December 2014	33 months
2.	Lack of preferential treatment on galvanized sheets	2. Customs and Administrative Entry Procedures	December 2012	Kenya	RRA	Galvanized sheets	March 2013	3 months
3.	Requirement for certificates of analysis for goods destined for export to Rwanda and Burundi	3. TBT Measures	December 2012	Tanzania, Uganda and Kenya	Burundi and Rwanda Bureau of Standards	All products	March 2013	3 months
4.	Rice, small fish, and palm oil from Burundi denied entry to Rwanda	4. SPS Measures	October 2013	Burundi	RRA	Rice, fish, palm oil	December 2013	2 months
5.	Restriction of rice exports from Tanzania through Rusumo Border	4. SPS Measures	Reported by Trade Barrier in December 2011	Tanzania	RRA	Rice	December 2015	48 months
6.	Rwanda not according preferential treatment to confectionary products produced by Candy Kenya Ltd	2. Customs and Administrative Entry Procedures	March 2015	Kenya	RRA	Sweets	September 2015	6 months
7.	Prohibition of imports of food products from Burundi	5. Specific Limitations	June 2013	Burundi	Office Burundais des Recettes (OBR)	Food products	May 2014	11 months
8.	RRA not according preferential treatment to G & B Soap Industries Ltd.	2. Customs and Administrative Entry Procedures	March 2015	Kenya	RRA	Soap	December 2015	10 months
Average number of months to resolve an NTB								13 months

Source: Publications on the Status of Elimination of NTBs within EAC, EAC Secretariat Reports



Tanzania

RESOLVED (LEGAL) NON TARIFF BARRIERS CUMULATIVE AS PER DECEMBER 2015

No.	NTB summary description	EAC classification	Date reported as NTB by the EAC Secretariat	Affected countries	NTB source & ministry/ department/ agency for action	Type of product affected	Date reported as solved by the EAC Secretariat	Number of months to resolve an NTB
1.	Tanzania requires cash bonds for transportation of sugar to Rwanda	6. Charges on Imports	August 2011	Rwanda	Tanzania Revenue Authority (TRA)	Sugar	March 2012	7 months
2.	Levy of extra charges on Kenya pharmaceutical firms exporting to Tanzania	2. Customs and Administrative Entry Procedures	September 2008	Kenya	TRA	Pharmaceuticals	December 2010	27 months
3.	Requirement of TISCAN inspection procedure that requires documents to be transmitted to SA and cleared there for each lot	5. Specific Limitations	August 2011	Kenya	TRA	All products	March 2012	7 months
4.	Requirement of road consignment note from transporters even before the goods have been packed	5. Specific Limitations	September 2008	Kenya	TRA	All products	December 2010	27 months
5.	Requirement for executing a bond for import taxes before being issued with stamps for excise duty purposes in Tanzania	6. Charges on Imports	September 2008	Kenya	TRA	All products	December 2010	27 months
6.	Cumbersome testing procedures for food exports and imports into Tanzania	4. SPS Measures	September 2008	Kenya	Tanzania Food and Drug Authority (TFDA)	All products	December 2010	27 months
7.	Requirement that to export herbal products to Tanzania you either have to be a member of Tanzania Herbalists Organization or to declare their formulas	7. Other (Procedural Problems)	August 2011	Uganda	Tanzania Herbalists Organization (THO)	Herbal products	March 2012	7 months

No.	NTB summary description	EAC classification	Date reported as NTB by the EAC Secretariat	Affected countries	NTB source & ministry/ department/ agency for action	Type of product affected	Date reported as solved by the EAC Secretariat	Number of months to resolve an NTB
9.	Kenyan Trucks entering into Tanzania are charged a levy of US \$200 each	2. Customs and Administrative Entry Procedures	March 2012	Kenya	Tanzania Border Authorities (TBA)	All products	June 2012	3 months
10.	Lack of availability of simplified certificate of origin issued by Tanzania	2. Customs and Administrative Entry Procedures	March 2012	Kenya	TBA	All products	June 2012	3 months
11.	Non recognition of rules of origin for motor vehicles	2. Customs and Administrative Entry Procedures	March 2012	Kenya	TRA	Motor vehicles	December 2014	33 months
12.	Weighing of empty trucks in the Central Corridor-Tanzania	7. Other procedural problems	March 2012	Rwanda and Burundi	Tanzania National Roads Agency (TANROADS)	All products	September 2015	42 months
13.	Lack of Harmonized Port Procedures Manual	7. Other procedural problems	November 2012	Other EAC countries	Tanzania Ports Authority (TPA)	All products	December 2014	25 months
14.	Non recognition of EAC certificate of origin by TRA for furniture products manufactured in Kenya	2. Customs and Administrative Entry Procedures	June 2012	Kenya	TRA	Furniture	December 2012	6 months
15.	Exports of plastic products from Kenya are subjected to 10% and 25% CET rate.	2. Customs and Administrative Entry Procedures	August 2011	Kenya	TRA	Plastic products	March 2013	19 months
16.	TRA imposes a duty of 25% of EABL products exported to its subsidiary Serengeti breweries Limited in Tanzania	2 Customs and Administrative Entry Procedures	June 2012	Kenya	TRA	Alcoholic beverages	June 2013	12 months



Tanzania

No.	NTB summary description	EAC classification	Date reported as NTB by the EAC Secretariat	Affected countries	NTB source & ministry/ department/ agency for action	Type of product affected	Date reported as solved by the EAC Secretariat	Number of months to resolve an NTB
17.	Requirement for OTS (Open Tender System) for bulk Fuel Procurement System	3. TBT measures	March 2012	Burundi	Bulk Fuel Procurement System	Fuel	March 2013	12 months
18.	Lack of clearance of trucks at the border of Sirare between Kenya and Tanzania by TRA declining to accept copies of bills of lading, clearing of part shipment, clearance of trucks without containers, and not working on Saturdays and Sundays	2. Customs and Administrative Entry Procedures	June 2013	Kenya	TRA	All products	May 2014	11 months
19.	Tanzania restricted export of beer from Burundi through the border of Kobero/Kabanga	5. Specific Limitations	December 2013	Burundi	Tanzania	Beer	May 2014	5 months
20.	Charge of \$500 for all trucks registered in Burundi when they ferry cargo through Tanzania	2. Customs and Administrative Entry Procedures	May 2014	Burundi	TANROADS	All products	September 2014	4 months
21.	Kenyan Company Auto Axillary Ltd products (U bolt and center bolts) are charged CET of 25%	2. Customs and Administrative Entry Procedures	May 2014	Kenya	TRA	U bolts and center bolts	December 2014	7 months
22.	TPA is charging \$90 as way leave fees for transit container of 20 feet and \$140 for container of 40 feet for transit trucks	2. Customs and Administrative Entry Procedures	December 2014	Burundi	TPA	All products	March 2015	3 months

No.	NTB summary description	EAC classification	Date reported as NTB by the EAC Secretariat	Affected countries	NTB source & ministry/ department/ agency for action	Type of product affected	Date reported as solved by the EAC Secretariat	Number of months to resolve an NTB
23.	Tanzania is charging \$200 as transit fee for containers with chemical products	2. Customs and Administrative Entry Procedures	December 2014	TRA	Tanzania	Chemical products	December 2015	12 months
24.	Plastic stripping products exported to Tanzania are not accorded preferential treatment by Tanzania	2. Customs and Administrative Entry Procedures	September 2015	Kenya	TRA	Plastic products	December 2015	3 months
25.	Rwandan transporters pay \$300 per truck as national park fees	2. Customs and Administrative Entry Procedures	March 2015	Rwanda	TRA	All products	September 2015	6 months
Average number of months to resolve an NTB								13 months

Source: Publications on the Status of Elimination of NTBs within EAC, EAC Secretariat Reports



Uganda

RESOLVED (LEGAL) NON TARIFF BARRIERS CUMULATIVE AS PER DECEMBER 2015

No.	NTB summary description	EAC classification	Date reported as NTB by the EAC Secretariat	Affected countries	NTB source & ministry/ department/ agency for action	Type of product affected	Date reported as solved by the EAC Secretariat	Number of months to resolve an NTB
1.	Charging 6% withholding tax by URA	2. Customs and Administrative Entry Procedures	Not clear, but it is reported for the first time by the EAC Secretariat in October 2009	Kenya	Uganda Dairy Board (UDB)	Dairy	August 2011	22 months
2.	Charge of 1.5% dairy levy	2. Customs and Administrative Entry Procedures	Not clear, but it is reported for the first time by the EAC Secretariat in October 2009	Kenya	UDB	Dairy	August 2011	22 months
3.	Uganda's certification procedures on exports of milk from Kenya	4. SPS Measures	September 2008	Kenya	UDB	Dairy	March 2012	42 months
4.	Imposition of 75% CET duty or \$200 per metric ton on rice wholly produced in Kenya by Uganda	2. Customs and Administrative Entry Procedures	November 2012	Kenya	Uganda Revenue Authority (URA)	Rice	March 2013	4 months

No.	NTB summary description	EAC classification	Date reported as NTB by the EAC Secretariat	Affected countries	NTB source & ministry/ department/ agency for action	Type of product affected	Date reported as solved by the EAC Secretariat	Number of months to resolve an NTB
5.	Uganda is restricting export of mosquito nets produced by A to Z Mills Company in Arusha; UNBS has introduced requirements that do not adhere to World Health Organization (WHO), International Organization for Standardization (ISO), and Tanzania Bureau of Standards (TBS)	5. Specific Limitations	June 2013	Tanzania	Uganda National Bureau of Standards (UNBS)	Mosquito nets	May 2014	11 months
6.	Charging of full duty on aluminum products on EAC duty remission scheme produced in Kenya and exported to Uganda	2. Customs and Administrative Entry Procedures	June 2013	Kenya	URA	Aluminum	September 2014	15 months
7.	UNBS rejecting Tropical Heats Products exported by Kenya as substandard	3.TBT Measures	May 2014	Kenya	UNBS	Spices, seasonings, and snacks	December 2014	7 months
8.	Charging of 25% duty rate on scrapping rolls manufactured in Kenya	2. Customs and Administrative Entry Procedures	September 2014	Kenya	URA	Scrapping rolls	March 2015	8 months
9.	Not according preferential treatment on exports of rice from Tanzania through Mutukula border	2. Customs and Administrative Entry Procedures	March 2015	Tanzania	URA		December 2015	9 months
10.	Fish exports to Democratic Republic of Congo (DRC) are being confiscated in Uganda	7. Other (Procedural Problems)	March 2015	Kenya	URA		December 2015	9 months
Average number of months to resolve an NTB								15 months

Source: Publications on the Status of Elimination of NTBs within EAC, EAC Secretariat Reports



LIST OF LAWS & REGULATIONS

Rwanda

- National Bank of Rwanda Guidelines on Agent Banking, 2011.
- Capital Markets Regulation of the Central Securities Depository
- Capital Markets Ministerial Orders, 003/12/2012 of 18/05/2012
- Capital Markets Regulations on Issuance of Fixed Income Securities No. 13 of 5/12/2012
- Rwanda Stock Exchange Handbook
- Law No. 14/98 of 18/12/1998 Establishing The Rwanda Investment Promotion Agency.
- Law No. 44/2001 of 30/11/2001 Governing Telecommunications.
- Law No. 26/2005 of 17/12/2005 Relating to Investment and Export Promotion and Facilitation
- Law No. 55/2007 of 30/11/2007 Governing the Central Bank of Rwanda
- Law No. 007/2008 of 08/04/2008 Concerning Organization of Banking
- Law No. 47/2008 of 09/09/2008 Law on Prevention and Penalizing of the Crime of Money Laundering and Financial Terrorism
- Regulation No. 03/2008 on Licensing Condition of Banks
- Regulation No. 04/2008 on Insider Trading of Banks
- Regulation No. 05/2008 on Credit Concentration and Large Exposure
- Regulation No. 06/2008 on Corporate Governance of Banks
- Regulation No. 07/2009 of 29/07/2009 on Corporate Governance of Insurance Business
- Regulation No. 05/2009 of 29/07/2009 on Licensing Requirements and Other Requirements for Carrying out Insurance Business.
- Regulation No. 08/2010 of 27/12/2010 of the National Bank of Rwanda on Licensing Requirements for Participants in the Central Securities Depository and the Protection of Securities Holders
- Law No. 01/2011 of 10/02/2011 Regulating Capital Markets in Rwanda
- Law No. 11/2011 of 18/05/2011 Establishing the Capital Markets Authority and Determining its Mission, Powers, Organization, and Functioning
- Law No. 40/2011 of 20/09/2011 Establishing Collective Investment Schemes in Rwanda
- Regulation No. 05/2011 on Mergers and Acquisitions of Banks

- Regulation No. 09/2011 on Major Investments of Banks
- Regulation No. 10/2011 on Shareholding in Banks
- Regulation No. 13/2011 of 24/11/2011 on Foreign Exchange Bureau
- Directive No. 04/2012 of 07/05/2012 of the National Bank of Rwanda Determining Conditions for Provisioning Loans Secured by Moveable Property
- Law No. 22 of 28/05/2012 on the Regulation of the Central Bank of Rwanda
- Regulation No. 01 Of 06/06/2012 on Capital Markets (Licensing Requirements), 2012
- Regulation No. 03 of 06/06/2012 on Capital Markets (Cross Border Introductions), 2012

Tanzania

- Foreign Exchange Circular No. 6000/DEMTEX/EX.REG/58
- Guidelines for Participation in Primary and Secondary Markets for Treasury Bills
- Guidelines for Participation in Primary and Secondary Markets for Treasury Bonds
- Capital Markets and Securities Act, Cap 79, 1994
- The Capital Markets (Licensing) Regulations, 1996
- The Capital Markets and Securities (Prospectus Requirements) Regulations, 1997
- The Capital Markets and Securities (Foreign Companies Public Offers Eligibility and Cross Listing) Amendment Regulations, 2005
- The Capital Markets and Securities (Collective Investment Schemes) Regulations, 1997
- The Capital Markets and Securities (Capitalization and Rights Issue) Regulations, 2000
- Foreign Investment (Protection) Act, 1963
- Foreign Investors (Protection) Amendment Act, 1967
- National Investment (Promotion and Protection) Act, 1990
- The Foreign Exchange Act, 1992
- Tanzania Investment Act, 1997
- The Capital Markets and Securities (Amendment) Act, 1997
- The Anti- Money Laundering Act, 2006
- Bank of Tanzania Act, 2006
- The Banking and Financial Institutions (Foreign Exchange Exposure Limits) Regulations, 2008
- The Finance Act, 2008
- The Anti- Money Laundering and Proceeds of Crime Act, 2009
- The Banking and Financial Institutions Act, 2009
- The Insurance Act, 2009
- Capital Markets and Securities (Collective Investment Schemes Real Estate Investment Trusts) Rules, 2011
- The Anti- Money Laundering (Amendment) Act, 2012
- The Foreign Exchange (Listed Securities) (Amendment) Regulations, 2014 (May)
- The Foreign Exchange (Amendment) Regulations, 2014.
- The Capital Markets and Securities (Foreign Investors) Regulations, 2014 (September)

Uganda

- Capital Markets Authority Act Cap, 84, 1996
- The Financial Institutions Ownership and Control Regulations, 2005
- The Investment Code Act, 1991
- Capital Markets (Prospectus Requirements) Regulations 1996
- Capital Markets (Establishment of Stock Exchanges) Regulations 1996
- Capital Markets (Prospectus Requirements) (Amendment) Regulations 1999
- The Bank of Uganda Act, 2000
- The Financial Institutions Act, 2000
- Insurance Act (Cap 213) Laws of Uganda, 2000
- Capital Markets (Prospectus Requirements) (Amendments) (No.2) Regulations, 2001
- Capital Markets (Fund Managers) Regulations, 2001
- Insurance Regulations 2002
- The Uganda Securities Exchange Rules, 2003
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Kenya

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Legal Provisions to be Reviewed to Facilitate Free movement of Capital in the EAC

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Kenya

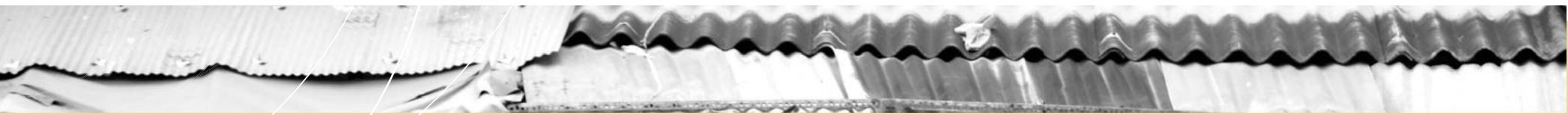
4. The Investment Promotion Act, 2004, Sections 2 and 6
5. Kenya Information and Communication (Licensing and Quality of Service) Regulations, 2010, issued under the Kenya Information and Communications Act, Cap 411A, Regulation 4
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