



EAST AFRICAN COMMUNITY

EAC REGIONAL TRADE POLICY

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Table of Contents

Acronyms.....	ii
1.0 INTRODUCTION	1
2.0 SITUATIONAL ANALYSIS.....	1
2.1 EAC Merchandise Exports and Imports Performance	1
2.2 Export and Import Performance in Services	2
2.3 Overall Assessment	2
3.0 BENEFITS AND CHALLENGES ASSOCIATED WITH RTP	3
4.0 MISSION STATEMENT	4
5.0 OVER-ARCHING POLICY OBJECTIVE.....	4
6.0 GUIDING PRINCIPLES	4
7.0 PRIORITIES IN RTP	5
8.0 RTP-SPECIFIC POLICY INTERVENTIONS	10
9.0 CROSS-CUTTING PRIORITIES	12
9.1 Trade Remedies in EAC	12
9.2 E-Commerce in Intra and Extra EAC Trade.....	13
9.3 Other Cross-Cutting Priorities	15
10.0 REQUIREMENTS FOR IMPLEMENTATION OF RTP	16
11.0 IMPLEMENTATION OF RTP.....	16
11.1 Regional Level Responsibilities (Regional Focal Point)	16
11.2 National Level Responsibilities (National Focal Points)	17
12.0 CONCLUSION.....	17
ANNEXES.....	18

Acronyms

AD	Anti-Dumping
AEC	ASEAN Economic Community
ASEAN	Association of Southeast Asian Nations
ASCC	ASEAN Socio-Cultural Community
ASW	ASEAN Single Window
BOP	Balance of Payment
CETA	Comprehensive Economic and Trade Agreement
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
DCFTA	Deep and Comprehensive Free Trade Agreement
EAC	East African Community
EAS	East Asian Summit
EEA	European Economic Area
EFTA	European Free Trade Association
EnPA	Environmental Protection Agency
ESOSs	European Standardization Organizations
ETSI	European Telecommunication Standards Institute
EU	European Union
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GNP	Gross National Product
GI	Geographical Indicator
ILO	International Labour Organization
IP	Intellectual Property
JMC	Joint Management Committees
MFN	Most Favored Nation
MPAC	Master Plan on ASEAN Connectivity
NAFTA	North American Free Trade Agreement
NATO	North Atlantic Treaty Organization
NTMs	Non-Tariff Measures
PTA	Preferential Trade Agreement
ROO	Rules of Origin
SADC	Southern African Development Community
SCTIFI	EAC Sectoral Council on Trade, Industry, Finance and Investment
SEA	South East Asia
SMEs	Small and Medium-size Enterprises
SPS	Sanitary and Phytosanitary Standards
TPP	Trans-Pacific Partnership
TTIP	Transatlantic Trade and Investment Partnership
TRQ	Tariff Rate Quota
USMCA	United States-Mexico-Canada Agreement
WTO	World Trade Organization

1.0 INTRODUCTION

The Treaty establishing the EAC (EAC Treaty, 2000) provides for the Common Market, whose main thrust is articulated in the Customs Union Protocol (CUP) and the Common Market Protocol (CMP) and accompanying regulations and instruments that spell out rules and requirements for EAC cross border trade and investment in goods and services. The latter include; the EAC Customs Management Act, 2004 and Amendment Bill 2015; the EAC Standardisation, Quality assurance, Metrology and Testing Act, 2006; the EAC Elimination of Non-Tariff Barriers Act, 2017; the EAC One Stop Border Posts Act, 2016; the EAC Vehicle Load Control Act, 2013; and the draft EAC Model Investment Treaty, 2016, among others).

This notwithstanding, the key drivers of external trade policy remain at the national level, since a harmonised RTP has not yet been concluded. Thus trade priorities, targets and indicators for EAC external trade are set primarily at national level as spelt out in various national-level policy documents. These include Partner States' national visions, Poverty Reduction Strategy Papers (PRSPs), national trade policies, and sector and subject-based policies. Since national trade policies have an impact on the application of EAC external trade policy instruments and the realization of the Common Market objectives, it is therefore important to conclude an RTP as the reference document on the coherence between the Common Market and Partner States' external trade policies and priorities.

Development of the RTP is intended to be an answer to the Partner States' aspiration to use a harmonised regional approach to dealing with their external trade priorities. The EAC RTP will contribute to resolving regional integration challenges by ensuring Partner States pursue their trade-related socio-economic priorities using a harmonised joint approach. This will enable individual states to maximize trade and investment opportunities and potential benefits available from the regional integration process as provided for in the two main EAC trade related protocols; namely the Customs Union and Common Market Protocols.

Additionally, the EAC regional trade policy is expected to facilitate increased trade competitiveness and economic growth in the region, since these two factors are clearly linked. EAC Partner States can realize increased trade competitiveness if they pursue their external trade policy aspirations through a harmonised trade policy framework characterized by common market access approaches, and if they jointly pursue trade promotion, external trade, and trade facilitation measures under a harmonised regional umbrella.

2.0 SITUATIONAL ANALYSIS

2.1 EAC Merchandise Exports and Imports Performance

Total EAC exports of goods during the period 2009-2018 amounted to US\$ 133.1 billion, growing from US\$ 9.4 billion in 2009 to US\$ 14.13 billion in 2018. EAC exported more to non-African countries at 59% market share than to African countries at 41% market share. Total intra-EAC exports stood at an average 19% of total EAC exports to the world, while total EAC exports to COMESA and SADC stood at an average 24% and 16% respectively.

Analysis shows that Kenya is the dominant exporter of merchandise goods, taking an average 43% of the combined EAC exports during the period 2009-2018, followed by Tanzania at 34%,

Uganda at 17%, Rwanda at 4%, and Burundi at 1%. On intra-EAC merchandise exports, Kenya took the largest market share at 50% of the combined intra-EAC exports during the period 2009-2018, followed by Uganda at 24% and Tanzania 19%. Rwanda and Burundi accounted for 7% and 1% respectively, of the total intra-EAC merchandise exports.

The total imports of goods by EAC from the rest of the world during the period 2009-2018 amounted to US\$ 337.4 billion. During this period, intra-EAC imports stood at a mere 6% of the region's total imports from the world. Imports from non-African states dominated the region's imports taking an average 86% share, compared to total imports from African countries at only 14%, and total imports from SADC and COMESA at 8% and 7% respectively.

Analysis further shows that out of the total global EAC merchandise imports during the period 2009-2018 (US\$ 337.4 billion), Kenya took the largest share at US\$ 152.6 billion or 45%, followed by Tanzania at US\$ 101.3 billion or 30% market share, Uganda at US\$ 55.2 billion or 16% share, Rwanda at US\$ 21 billion or 6%, and Burundi at US\$ 7.5 billion, accounted for 2% of the share. Intra-EAC merchandise imports during the same period amounted to US\$ 20.1 billion. Uganda was the lead intra-EAC importer taking 33% of intra-EAC imports, followed by Rwanda at 23%, Tanzania at 20% and Kenya at 19%, while Burundi trailed at 7%.

2.2 Export and Import Performance in Services

EAC combined exports to the world amounted to US\$ 100.5 billion over the period 2009-2018, growing from US\$ 6.2 billion in 2009 to US\$ 12.24 billion in 2018. Kenya accounted for the bulk of the region's service exports during the period at 44%, followed by Tanzania at 30% and Uganda at 18%. Rwanda and Burundi accounted for 7% and 1% respectively. The major EAC services traded during the period 2009-2018 were commercial services, travel, transport, government goods and services; telecommunications, computer & information services; and Other business services.

Total EAC imports of services amounted to US\$ 238 billion during the period 2009-2018, growing from US\$ 16.65 billion in 2009 to US\$ 24 billion in 2018. Kenya took the bulk of the services imported into the region at an average of 33%, followed by Tanzania and Uganda at 28% each. Rwanda and Burundi took 9% and 2% respectively. The services categories significantly imported by Partner States during the same period, fall under Memo item: commercial services, transport, other business services, travel, government goods and services, construction, insurance and pension services; and telecommunications, and computer and information services.

2.3 Overall Assessment

The overall picture on trade performance in merchandise trade shows that all the EAC countries performed poorly, with each partner state posting an overall trade deficit over the period 2009-2019. In this respect, Kenya's overall trade deficit was the highest at US\$ 107 billion, followed by Tanzania at US\$ 62.3 billion, Uganda at US\$ 34.3 billion, Rwanda at US\$ 16 billion, and Burundi at US\$ 6.45 billion. Burundi's trade deficit grew at the highest rate of 205% from US\$ 231.2million in 2009 to US\$ 706,573million in 2019, followed by Kenya at 98%, and Tanzania at 86%. Uganda and Rwanda however performed much better in their trade deficits, with Uganda posting a 15% reduction in trade deficit from US\$ 2.68 billion in

2009 to US\$ 2.28 billion in 2019, while Rwanda's trade deficit reduced by 2% from US\$ 851.4 million in 2009 to US\$ 838.5 million in 2019.

In addition, the analysis highlights a number of issues: that EAC Partner States trade more on goods with the rest of the world than between themselves. They also trade more with non-African countries than with African countries; that there is unbalanced intra-EAC merchandise exports in the region; that intra-EAC merchandise imports is very small, and the Partner States do not import much from the African continent including the regional trading blocs (COMESA and SADC) to which the five partner states belong.

The overall picture on trade in services shows that Kenya and Tanzania performed well with each posting a positive trade balance over the period 2009-2018. Kenya posted an average positive growth of 50% while Tanzania was the best performer with a whopping 1340% growth in services trade balance over the period. The other three EAC countries performed poorly, with Burundi's services trade deficit declining slightly from US\$ (-ve) 588.2 million in 2007 to US (-ve) 519.8 million in 2017; Rwanda's trade deficit dropping by an average 81% from US\$ (-ve) 528.7 million in 2009 to US\$ (-ve) 99.1 million in 2018, and Uganda's trade deficit growing by an average 71% from US\$ (-ve) 1.25 billion in 2009 to US\$ 2.14 billion in 2018. **Individual Partner States' and overall trade performance in EAC is hereto attached as Annex II.**

3.0 BENEFITS AND CHALLENGES ASSOCIATED WITH RTP

There are many benefits associated with a harmonised regional trade policy, including: increased technology and skills transfers to local companies from their multinational partners; boost in predictability of the trading and investment environment; enhanced collective bargaining power between a REC with third parties; enhanced economies of scale; stimulated regional investment particularly in infrastructure (corridors, ports, and high ways); and enhanced cross-border trade in goods and services among others.

On the other hand, there are a number of challenges and disadvantages associated with a regional trade policy. Free movement of labour may lead to increased job outsourcing especially for weaker REC members who may lack requisite skills needed to produce competitive products; some domestic industries may get crowded out especially for weaker economies whose production systems have not adopted modern farming and/or manufacturing technologies; reduced tax revenue may result for weaker economies of a REC; there are potential risks in theft of IPRs especially for weaker economies that lack strict laws to protect IPRs.

Additionally, there are potential conflicts between the regional policy and the national policies (such as on employment, export growth, priority sectors, poverty alleviation, government revenue, environmental protection, and protection of cultures); there are potential risks in resistance to change particularly for businesses which will fear increased external competition; there could be difficulties in coordinating the RTP implementation process (particularly given that EAC Secretariat is centralized and may therefore lack effective coordination mechanism at Partner States level); and in case of EAC there could be challenges in mobilizing sufficient financial and technical resources to ensure effective RTP implementation since the region is already having difficulties in this area with regard to implementation of planned programmes.

4.0 VISION AND MISSION STATEMENT

The RTP Vision is “An integrated and competitive regional economy with a harmonized approach to external trade promotion and investment attraction for mutual benefit of all Partner States; based on exportation of valued added and diversified products and services to new and traditional markets, and balanced inward investment attraction into the EAC region”.

Its Mission is “to facilitate application of an EAC common approach to trade and investment promotion in order to increase trade and investment competitiveness and value-added production for export markets; aimed to create balanced wealth and employment and to improve quality of life of the people of East Africa”.

5.0 OVER-ARCHING POLICY OBJECTIVE

The Long Term Goal of this policy is to achieve sustainable and inclusive economic growth for all Partner States, driven by high levels of growth in trade and investment activities, production of competitive goods and services, creation of decent jobs and incomes, reduced poverty, and high standards of living for EAC citizens.

The over-arching policy objective is premised on four strategic objectives: (i) to reinforce the Common Market aspirations through compatible external trade policies and regulations applied by EAC Partner States in trade and investment negotiations with third parties (ii) to facilitate Partner States to achieve balanced cross border trade and investment based on harmonised national trade and investment policies, laws and regulations (iii) to strengthen enterprise competitiveness and value added production of goods and services (iv) to facilitate strengthening of institutional mechanisms for collaboration and coordination between authorities and agencies responsible for trade and investment development functions.

6.0 GUIDING PRINCIPLES

The Regional Trade Policy will be guided by the following principles inferred from the SCTIFI report of June 2017 and the Regional Trade Policy Study Report:

- i) Harmonization and prioritization of overlapping membership to various RECs so that partner states can be party to the same FTAs.
- ii) Representation of all partner states in all platforms and for a intended for export promotion and attraction of foreign investment into the region.
- iii) Harmonised partner state positions in negotiations on trade and investment at regional, continental and global levels.
- iv) A common regional approach for applying trade remedies at EAC level to protect domestic industries from exposure to third country competition.
- v) Adherence to specified modalities for administering safeguards, anti-dumping and countervailing measures at regional and national levels.
- vi) A common regional approach to presenting trade and investment matters at WTO engagements.
- vii) A Common regional approach to promoting exports and attracting foreign direct investment.

7.0 PRIORITIES IN RTP

In implementing the Regional Trade Policy, the partner states will focus on the following priorities as captured in the various partner states' national reports:

1. EAC Partner States belong to multiple Regional Economic Communities (RECs). This implies that Partner States access target markets based on different market access provisions. The EAC Partner States therefore continue to apply different trade regimes in their external trade relations.

It is necessary for EAC Partner States to harmonise their REC membership to enable them to undertake future negotiations for new market access agreements with third parties under the EAC Customs Union. This would prevent future challenges emerging on free movement of goods; including preferential tariffs and rules of origin that an individual EAC Partner State should apply on imports from third parties.

2. Exports are concentrated on a small range of traditional products which are exported either in raw or semi-processed form due to inadequate adoption of modern technologies to produce value added goods. Limited value addition of agricultural products and other natural resources such as gold has contributed to low export earnings and high trade deficits for all EAC countries. Key regional products exported either in primary or semi-processed form include agricultural produce (coffee, tea, fruits and vegetables, wet blue hides and skins, cotton fibre, grains, live animals and animal products, fish products), semi-processed gold, and intermediate products such as iron/steel tubes and pipes among others.

It is necessary for EAC Partner states to ensure consistent supplies of their various export produce, to adopt modern production and storage technologies (including processing and warehousing), to adopt effective supply chain logistics, to ensure compliance with required official and demand driven quality requirements, and to use a coordinated regional export approach as opposed to current national export approaches (the latter approach makes EAC competitors for the same markets) in order to achieve efficient export promotion of EAC products in regional, continental and international markets. The region should equally implement measures to overcome its technology challenges; improve trade facilitation measures so as to increase competitiveness of manufactured goods in regional markets, increase intra-EAC trade, and reduce dependence on imported manufactured and intermediate goods.

3. Increased competition by EAC countries in production of similar goods targeting the EAC and COMESA/SADC regional markets, which are dominated by agricultural and manufactured goods which do not require sophisticated processes. This ends up limiting potential for intra-regional and intra-African trade, except for certain types of products such as grains (notably maize) and cereals where intra-regional and intra-continental trade potential occasionally increase during drought periods.

It is therefore necessary for EAC Partner States to pay more focused attention to specialisation in value added production of goods over which they have comparative

advantages so as to reduce exportation of primary goods in favour of value added goods while reducing competition in similar goods in the regional markets.

4. Persistent NTBs and other trade impediments between EAC partner states, that keep on arising from time to time contrary to the rights and obligations provided for under the Common Market Protocol, need to be eliminated. Such impediments act to limit the capacity of manufacturers to trade within the regional market on goods that are processed using local raw materials.

Additionally, the EAC region is yet to agree on the services to be commonly traded without restrictions as part of fast tracking implementation of Common Market provisions on free movement of services. This has led to inability to grow the regional services sector.

It necessary for Partner States to strictly implement the provisions of the Common Market Protocol on free movement of goods, persons, labour/workers, services and capital. It is equally important for the region to urgently agree on the services to be commonly traded within the Community without restrictions by way of fast tracking implementation of Common Market provisions on free movement of services.

5. Since the entry into force of the Customs Union in 2005, individual EAC countries' exports to the regional market have been declining due to slow implementation of the provisions of the EAC Customs Union and Common Market Protocols. This is evidenced by application of NTBs on goods traded between EAC countries, contrary to the Customs Union provisions which require free movement of goods within the Community subject to meeting rules of origin criteria.

Cumbersome customs and administrative documentation and procedures (such as import declarations); inspection requirements; police road blocks/check points; transit procedures; quality standards, and SPS measures, weights and measures specifications, axle loads, and immigration requirements on issuance of work permits are some of the common NTBs. The prevalence of NTBs undermines the potential to increase intra-regional trade and the region's aspiration to deepen the integration process. It is necessary for Partner States to implement the NTBs Act 2016 without delay, and to operationalise the Trade Remedies Committee so as to facilitate legal resolution of trade obstacles whenever they emerge.

6. The existence of NTBs is made worse by protectionist national policy measures characterised by constant Stays of Application (SOA), duty remissions and duty exemptions from CET. While these policy measures may seem justified by individual Partner States' needs to meet their socio-economic aspirations, all end up denying agricultural producers and manufacturers the chance to supply the regional market. They also discourage formation and/or strengthening of regional value chains, and also largely benefit large manufacturers to the detriment of small producers who are not aware about the provisions given through the schemes.

It is urgent to address the unending applications by Partner States for SOA, duty remissions and exemptions from CET by implementing the 34th meeting of the Council (June 2019) regarding principles to be used on applications that merit future approval in order to preserve the Common Market, while facilitating formation and/or strengthening of the eight

priority regional value chains that are critical to spurring intra-EAC trade and exports to Tripartite FTA, AfCFTA and international markets.

7. Coordination of trade functions is not sufficiently strong. This is made worse by the limited capacity of both public and private sector Trade Support Institutions (TSIs) to support export promotion activities. This is reflected in the high number of agencies involved in approving import and export documentation in partner states. In Kenya for instance, there are 26 such agencies located at Mombasa Port, all of which in one way or another, are involved in inspecting and/or approving imports and exports through the port.

The capacity of public and private sector Trade Support Institutions (TSIs) is limited by the fact that TSIs have insufficient financial and technical capacity to undertake targeted export promotion activities, such as potential market analysis, market and product segmentation, trade fairs and exhibitions, building of distribution networks with bulk buyers, and offering and sustaining specialized advisory services and relevant supply chain logistics for regional and international markets.

It is therefore important that trade functions handled by the numerous agencies involved in approving trade transactions are conducted using a coordinated approach. This entails designating a lead agency to coordinate trade matters. It is equally important to build the capacity of TSIs using a multi-agency approach to ensure their financial and technical needs are met, and to strengthen synergies between TSIs in both public and private sector in application of efficient measures that are supportive of export promotion activities.

8. Producers (farmers and manufacturers) and exporters face non-conducive business and investment environments in their daily business and trade transactions. In this regard, while requisite laws/regulations governing private sector activities exist (such as laws and regulations on investment, exports, business competition, national commerce and labour), they are not sufficiently applied by respective National and Local Government Authorities/Agencies. This leads to arbitrary implementation of the laws/regulations to the detriment of potential business beneficiaries.

The consequence is that business operations are adversely affected by the less supportive policy, legal and regulatory frameworks; inadequate provision of hard and soft infrastructure; inadequate provision of utilities (including unreliable and expensive electricity and water); and the ineffective handling of fiscal matters, characterised by multiplicity of high national government tax rates, lengthy period for getting VAT refunds from national governments, non-availability of one stop centres for ease of tax payments in some countries (such as Tanzania), and unpredictability in the number, types and rates of taxes payable to national and local (county) governments. These obstacles make EAC originating products uncompetitive in national, regional and international markets.

9. Demand-side constraints are also responsible for poor trade performance. A slowdown of the global economy is bound to affect EAC partner states in much the same way as trade wars between major global powers such as China and the USA. External shocks such as Brexit and global financial crises also impact businesses negatively.

It is important for Partner States to facilitate increased knowledge among producers and exporters about global economic and trade developments which impact business efficiency to enable forward business planning (including expansions and/or downsizing of operations whenever the need arises).

10. Some EAC businesses lack sufficient knowledge on how to apply international commerce terms (INCOTERMS), which ends up adversely impacting on their ability to undertake competitive international trade transactions. Good knowledge on proper application of INCOTERMS is an absolute requirement for firms venturing into exports, because the terms define trading rules and delivery terms for goods traded across borders. Seller and buyers need to agree on details of a sale in order to prevent future misunderstandings and/or legal disputes related to a trade transaction. It is important for EAC to prepare domestic/regional businesses to understand and apply the correct INCOTERMS to enable proper understanding of their responsibilities in international business transactions as part of measures to increase business efficiency and avoidance of unnecessary losses.
11. Some businesses lack sufficient knowledge about the content of trade and market access preferences in key regional and international trade agreements to enable access to regional and international markets. The key agreements in this regard include those governing intra-EAC and intra-COMESA and SADC trade, the EU Economic Partnership Agreements, and AGOA. Poor business knowledge about provisions of the regional and international trade agreements and how to apply such provisions in export transactions end up as obstacles to market access and expansion. EAC Partner States therefore need to strengthen business knowledge and awareness about provisions of the regional and international trade agreements and how to apply such knowledge in export transactions in order to increase market access and expansion, focusing particularly in facilitating full compliance with international market access requirements (notably quality, SPS, rules of origin and other customs formalities).
12. Inadequate managerial and technical skills and talents in all economic sectors (manufacturing, agriculture, ICT, transport, logistics, finance) is critical bottleneck especially for MSMEs. Additionally, MSMEs lack technical skills and modern technological capacity to produce high quality goods and to meet standards set by importers in both regional and international markets (notably European markets). They also lack access to market information and knowledge about international supply chain logistics. These factors adversely affect their ability and capacity to undertake efficient business operations, resulting to EAC's poor rating in international trade competitiveness.

It is important to address the inadequacies in managerial and technical skills and talents needed by businesses in all economic sectors, and the poor business environment which adversely affects business efficiency and trade competitiveness. It is necessary to address bottlenecks experienced particularly by SMEs in their daily operations.

13. There is increasingly stiff competition between regionally produced and imported goods originating from China for the regional markets, including competition from counterfeits and cheap substandard products. This situation is made worse by the fact that with the onset of the Customs Union, regional manufacturers have increasingly been unable to access

the regional market using export promotion schemes like the duty exemption, duty remission and the EPZ¹ programmes.

It is necessary for Partner States to conclude the regional trade remedies law for use in facilitating the fight against trade malpractices. It is also necessary for Partner States to build knowledge amongst producers and exports (particularly SMEs) about provisions of the duty exemption schemes so that they venture more aggressively into other exports markets while utilising the EAC rules of origin to undertake efficient intra-EAC trade as provided for in the EAC Single Customs Territory framework.

14. EAC partner states, like most African countries, have not maximised their production potential due to inadequate uptake of production models like subcontracting and partnership exchange schemes (SPX) and regional value chains. It is important for Partner States to ensure adoption of SPX as a production model aimed at maximizing economies of scale and increased firm competitiveness
15. Many public sector institutions do not have adequate capacity to negotiate with third parties in international trade and investment meetings/forums. In addition, coordination of international trade functions is not centralized. For instance, negotiations and agreements in some partner states are coordinated and handled by different line ministries. Partner States should designate lead ministries with responsibility for coordinating trade and investment negotiations, which as a minimum requirement should be mandated to receive technical advice from other competent government ministries, departments and agencies; and also from the private sector. This would lead to coordinated approach to building synergies on trade and investment negotiations between TSIs. It would also lead to efficient implementation of resultant commitments made by Partner States at regional and international levels, and to building adequate awareness in both public and private sector about the content and implications of regional and investment trade protocols so as to facilitate exploitation of potential benefits while implementing mitigation measures to address any foreseen risks.
16. While substantial potential exists to undertake cross border trade in grains and cereals at the regional, Tripartite² and international levels, this potential is diluted by several constraints including: unpredictability of trade policies characterised by prevalence of NTBs such as export bans on grains and cereals which lead to low intra-regional trade, climate change, which has resulted to occasional droughts and the consequent effects on production, limited acceptability of trade in grains and cereals due to lack of knowledge on how to comply with quality standards and SPS measures in the production process and inadequate capacity to comply with traceability requirements demanded in international markets, lack of presentable packaging and branding for grains and cereals, low uptake of international certification and standards on grains and cereals traded in international markets especially by SMEs, low access to affordable finance, all of which create a huge burden on SMEs to compete in the regional, continental and international markets.

¹ Export Promotion Zones

² EAC, COMESA and SADC Tripartite Free Trade Area

In addition, logistics of moving staple foods across the EAC region is a major challenge as traders struggle to identify logistics companies with haulage space for a specific route, with logistics costs on average constituting about one-third of the cost of a given grain shipment. Low levels of compliance with safety and quality standards by farmers as a result of farmers' inability to invest in aflatoxin testing infrastructure and related toxin control measures; poor uptake of modern marketing systems (such as the Warehouse Receipt System and commodity exchanges) necessary to facilitate structured trading in grains and cereal; poor systems for early diagnosis and warnings against the Maize Lethal Necrosis Disease; and inefficient flow of staple foods from surplus to deficit areas caused by proliferation of NTBs, are additional challenges.

EAC partner states have initiated policy responses to address the NTBs, with the most recent development being adoption of the EAC harmonised Staple Foods Standards gazetted in December 2013, aimed at promoting trade in staple foods by eliminating costs associated with compliance with multiple domestic standards. Implementation of these standards however has been made difficult by capacity constraints facing responsible public agencies, and limited awareness of the standards by value chain actors. EAC states have also not harmonised sampling and testing methodologies, which creates potential for discrepancies in testing and grading results.

It is therefore important for EAC States to implement relevant interventions to eliminate obstacles which hinder efficient intra-EAC trade in grains and cereals; including policy, regulatory, production, storage and warehousing, crop protection, packaging and branding, access certification, affordable finance, and transport and logistics among key areas where trade obstacles are experienced.

A comprehensive list of the harmonised policy priorities to unlock EAC's trade potential are attached hereto as Annex III. The list derives from the following three sources; EAC Economic Integration Pillars, Principles adopted by SCTIFI in February 2016 and the National Stakeholders Consultations that took place from September 2019 to February 2020.

8.0 RTP-SPECIFIC POLICY INTERVENTIONS

To attain the goals, objectives and principles of the RTP as prioritised in partner states' report, partner states shall implement specific policy interventions. Policy actions shall aim at: (i) achieving Common Market aspirations through compatible external trade policies and regulations applied by EAC Partner States in trade and investment negotiations with third parties (ii) Facilitating Partner States to achieve balanced cross border trade and investment (iii) Strengthening of enterprise competitiveness and value added production of goods and services (iv) Facilitating the strengthening of institutional mechanisms for collaboration and coordination between authorities and agencies responsible for trade and investment. More specifically, partner states shall:

Policy Actions

- i) Develop a legal framework to ensure balanced market access for trade in goods and services, and foreign direct investment, to support harmonization partner states'

approach to trade and investment related negotiations at Tripartite FTA, AfCFTA, bilateral, and multilateral levels.

- ii) Institute measures to address overlapping membership of EAC Partner States to various African based RECs; and specify collaboration modalities between EAC Common Market and other third party trading partners (incl. Tripartite FTA, AfCFTA, and other global FTAs).
- iii) Implement measures to increase intra-EAC and extra EAC trade in value added goods; driven by adoption of modern processing technologies, diversification of the export basket, expansion of potential markets (at Tripartite, AfCFTA, and global levels), and elimination of NTBs and trade wars experienced on EAC cross border trade.
- iv) Implement a harmonized EAC approach on application of CET to preserve Customs Union provisions; based on the principles agreed by the Council in its 34th meeting of June 2019.
- v) Implement harmonised approach to intra-EAC trade in services as part of fast-tracking implementation of the Common Market aspirations on free movement of services.
- vi) Develop EAC Trade Remedies Law to protect EAC domestic/ regional industries against unfair competition from imports and other trade malpractices (including trade in counterfeits, under invoicing, mis-declarations, and smuggling of uncustomed goods).
- vii) Develop a harmonised EAC law to protect Intellectual Property Rights holders from infringement of their creations and to encourage cross border trade in innovative products and service offers (**Proposed harmonized regional strategy to take advantage of the WTO TRIPS Agreement is attached hereto as Annex IV**)
- viii) Design and implement a capacity building program for public and private sector Trade Support Institutions to offer advisory services to producers and exporters.
- ix) Design and implement a programme to facilitate producers and exporters to build knowledge on bulking of produce for exports, formation of networking relationships with bulk buyers, and how to apply the International Commerce Trade Terms (INCOTERMS) in international trade transactions.
- x) Harmonise and apply SPS and public health measures on foods and horticultural produce traded by EAC countries at EAC, Tripartite FTA, AfCFTA and global markets in line with CADDP.
- xi) Implement intervention measures to improve industrial competitiveness and private sector environment to increase Partner States' trade performance at intra-EAC, Tripartite, AfCFTA, and global levels.
- xii) Implement priority export strategy and investment promotion interventions in line with EAC Export Promotion Strategy (2020-2025)

- xiii) Strengthen the capacity of institutions involved in export promotion
- xiv) Harmonise EAC Export Processing Zones (EPZ), SEZ and Free Zones schemes as provided in the EAC Customs Union Protocol.
- xv) Design a grains and cereals sector strategy and implement relevant measures in close consultation with East African Grain Council.
- xvi) Implement measures outlined in EAC Cotton Textile and Apparel(CTA) Strategy (2019-2029)
- xvii) Implement measures outlined in EAC Leather and Leather Products Strategy (2019-2029)
- xviii) Design appropriate mitigation measures to ensure potential challenges associated with implementation of RTP are efficiently and sufficiently addressed in order to create buy-in amongst public and private sector stakeholders.
- xix) Implement an outreach programme to sensitize RTP stakeholders about the potential benefits of implementing the RTP for purposes of buy-in and exploitation of potential trade and investment opportunities.
- xx) Establish regional and national RTP focal points and institutional framework with requisite financial and technical resources to support efficient implementation of RTP strategy interventions at regional and national levels.
- xxi) Develop and implement an RTP monitoring framework to facilitate periodic tracking of RTP measures and to disseminate results achieved to stakeholders.
- xxii) Implement EAC Trade Development Facility to mobilise resources to support implementation of the RTP.

These specific policy interventions are given context by experiences of mature Regional Economic Groupings in administering Regional Trade Policy. A record of these experiences is attached hereto as Annex V.

9.0 CROSS-CUTTING PRIORITIES

Critical cross-cutting priorities relate to Trade Remedies and E-Commerce among others.

9.1 Trade Remedies in EAC

EAC Partner States experience cases of stiff competition from dumped, under-invoiced, smuggled/uncustomed, subsidized imports; and also increased imports which end up causing injury to domestic producers. To achieve policy objectives relating to harmonised EAC Trade Remedies law, partner states shall:

Policy Actions

- i) Adopt the WTO trade policy instruments which allow countries to address cases of trade malpractices (dumped, under-invoiced, smuggled/uncustomed, subsidized imports), and import surges that cause or threaten to cause injury to the region's domestic industries.
- ii) Expedite the process of ratifying and depositing their instruments of ratification of the amended Article 24(2) (a) of the Protocol on the Establishment of the East African Customs Union.
- iii) Operationalise the EAC Competition Act of 2006 whose enabling regulations were adopted in 2010.
- iv) Facilitate the work of the regional Trade Remedies Committee by prioritising allocation of sufficient resources to enable detailed investigations on cases of alleged dumped, subsidised, under invoiced, smuggled and uncustomed, and other import surges which cause or threaten injury to domestic industries.
- v) Seek full regional membership and accreditation status at the WTO and other strategic international organisations; establish an official regional delegation for WTO forums; and establish an official EAC regional negotiation team with the mandate to present common negotiating positions at WTO and similar international forums where trade and investment matters are discussed.
- vi) Establish a regional multi-agency run sensitisation programme to educate the public about the adverse health, injury to industry and revenue loss related effects of consuming dumped, subsidised, under invoiced, smuggled and uncustomed goods, and other imported goods which may cause injury to or threaten regional/domestic industries.
- vii) Conclude a harmonised imports valuation system to eliminate under-invoicing and wrong declarations.
- viii) Fully implement the envisaged Pre-Export Verification of Conformity (PVoC) regulations requiring all imports (excluding the exempted list) to be inspected in their country of origin in conformity with the WTO Pre-Shipment Inspection (PSI) Agreement.

A proposed EAC Regional Model Law on Trade Remedies is attached hereto as Annex VI.

9.2 E-Commerce in Intra and Extra EAC Trade

The use of e-commerce platforms and marketplaces in trade is increasingly gaining importance worldwide as they catalyse increased trade flows at regional and global levels. EAC Partner States should therefore expedite the process of setting up their national e-commerce policies, legal, regulatory, institutional frameworks; implementation strategy, building and/or strengthening capacity of the ICT/web development community, and ensuring provision of reliable and affordable internet connectivity. Priority issues for implementation by partner states include the following:

- i) Establishment of consumer protection, competition rules and security for e-commerce.
- ii) Establishment of a harmonised regulatory regime for payment systems across the region.
- iii) Harmonization and strengthening of e-commerce and trade related standards
- iv) Harmonization and implementation of e-commerce policy legislation and regulation at both national and regional levels.

- v) Formulation, enactment and enforcement of online security laws.
- vi) Promotion and support for digitization of trade, business and logistical processes.
- vii) Development of electronic transferrable records.
- viii) Streamlining, harmonising and implementing customs procedures to support regional and international import and export of goods and services.
- ix) Enabling of logistics services to fulfil the requirements of the e-commerce sector in handling small packages with rapid delivery to individual premises.
- x) Implementing innovative online marketplace business models.
- xi) Conducting sensitization of the public on e-commerce and developing a framework for promoting digital skills through the educational systems, public sector and public agencies mandated with policy enforcement responsibilities.
- xii) Rolling out ICT infrastructural programs to further support e-commerce.
- xiii) Enhancing the operational and innovative capacity of postal service providers as enablers for e-commerce.
- xiv) Developing a stakeholder mapping and engagement framework at national and regional levels.
- xv) Harmonising and implementing e-commerce policy legislation and regulations at national and regional levels.

To achieve the policy objectives in relation to e-commerce, EAC Partner States shall:

Policy Actions

- i) Build new and/or strengthen existing e-commerce platforms to allow for participation of both public and private sector business players.
- ii) Build effective legal, regulatory, institutional frameworks, and capacities of regulatory and law enforcement agencies to support e-commerce transactions.
- iii) Enhance cyber security and data protection in e-commerce platforms.
- iv) Ratify convention on cyber security and personal data protection.
- v) Promote digital skills and support adoption of digitization of business processes.
- vi) Provide effective ICT infrastructure as a key ingredient for successful operation of e-commerce platforms.
- vii) Determine the optimal model for establishing an all-inclusive e-commerce platform to allow for active involvement of MSMEs and all other stakeholders (women, youth, persons living with disabilities) with the potential to trade across borders.
- viii) Provide fast, reliable and affordable internet connectivity (supported by reliable access to electricity and internet service providers).
- ix) Build and/or strengthen capacity for a competent ICT/web development community.
- x) Provide secure and trusted online communication and payment systems that support innovation in mobile payments.
- xi) Harmonise transaction costs of payment systems across the EAC partner states.
- xii) Develop guidelines for mobile payments that are interoperable across the partner states.
- xiii) Build and/or strengthen capacity of merchants/traders who can be trusted to undertake efficient supply of goods and services.
- xiv) Automate and inter-operationalize single window systems.

- xv) Establish requisite trading networks and relationships, and build efficient logistics and courier services coupled with a solid (physical) addressing system to facilitate delivery of goods ordered and paid for through online platforms.
- xvi) Support postal authorities to modernize and attain e-commerce readiness.
- xvii) Develop a framework for digital economy ready workforce.
- xviii) Enforce collaboration between national data centres
- xix) Develop infrastructure sharing policies and regulations
- xx) Strengthen collaboration and coordination of e-commerce ecosystem stakeholders through a digital platform.
- xxi) Support implementation of a regional body on e-commerce.

9.3 Other Cross-Cutting Priorities

Identification and exploitation of trade policy synergies and complementarities is an integral component of this Regional Trade Policy. Partner states will be guided by the objective of strengthening and ensuring optimal exploitation of policy synergies between the Regional Trade Policy and other regional sectoral policies including EAC Industrialization Policy, EAC Competition, Regulations and Model Investment Code 2006, EAC Competition Act 2006, Competition Regulations 2010 and EAC Agriculture and Rural Development Policy 2006.

Policy Actions

To achieve the policy objectives in relation to the other cross-cutting priorities, EAC Partner States shall:

- i) Set a macroeconomic framework for trade and export promotion and business development in each Partner State.
- ii) Establish harmonised mechanism for fair business competition, consumer welfare and protection.
- iii) Promote application of ICT in Commerce and application of digitalised manufacturing through the industry 4.0 model³.
- iv) Support business development through promotion of locally/regionally produced goods and services.
- v) Promote the development of Micro, Small and Medium Enterprises (MSMEs).
- vi) Define the roles of National and County/Local Governments in implementation of the Regional Trade Policy
- vii) Formulate the institutional framework for implementation of the RTP and export promotion.
- viii) Harmonise regional export and import procedures.
- ix) Facilitate access to export market information.
- x) Harmonise EAC Regional Trade Remedies Law.

³ Industrial transformation through digitalized manufacturing is referred to as Industry 4.0 as it represents the fourth industrial revolution; from the 1st industrial revolution (mechanization through water and steam power), 2nd industrial revolution (mass production and assembly lines using electricity), and the 3rd industrial revolution (adoption of computers and automation). Industry 4.0 aims to enhance industrial revolution through application of smart and autonomous systems fueled by automated data and digital industrial technology. It will facilitate gathering and analysis of manufacturing data using computerized machines; thus enabling faster, more flexible, and more efficient processes that produce higher-quality goods at reduced costs. The revolution will ultimately shift production economics, foster industrial growth, modify the profile of the workforce, and increase firm level productivity and industrial competitiveness.

10.0 REQUIREMENTS FOR IMPLEMENTATION OF RTP

To achieve the vision and policy objectives of the Regional Trade Policy, the partner states shall:

- i) Spell out a set of responsibilities and modalities for implementing RTP at the national and regional levels (the latter to include EAC policy making organs).
- ii) Identify funding sources to facilitate implementation of the RTP, based on clear modalities of implementing the envisaged EAC Trade Development Facility. **(Proposed EAC Trade Development Facility to mobilise resources to support implementation of the RTP is attached hereto as Annex VII).**
- iii) Design and implement an outreach programme for raising awareness amongst regional actors on the importance of a common external trade policy. **(RTP Outreach Programme is attached hereto as Annex VIII)**
- iv) Develop and employ a monitoring and evaluation mechanism to ensure coherence between planning and implementation of the RTP.

11.0 IMPLEMENTATION OF RTP

To ensure effective implementation of the RTP, an appropriate institutional coordination mechanism will be established incorporating a Regional Focal Point and National Focal Points without violating the key provisions and spirit of the EAC Treaty. This coordination mechanism will be built on the existing structures and frameworks at regional and national level, and will be responsible for overseeing efficient implementation of RTP interventions at the two levels.

11.1 Regional Level Responsibilities (Regional Focal Point)

- i) Coordinating participation of regional stakeholders during RTP implementation and Building trade capacities of regional stakeholders (such as EALA and EABC).
- ii) Coordinating mobilization of TDF financial and technical resources to support implementation of RTP strategy measures.
- iii) Identifying and following up progress in addressing critical regional-level supply-side constraints (such as corridor development and cross border access to energy).
- iv) Coordinating EAC engagements in multilateral level trade and investment related negotiations and discussions (including WTO, EPA, and AGOA).
- v) Coordinating establishment and functioning of the proposed EAC Tariff Board whose responsibilities will incorporate administration of a criteria for qualifying and approving stays of applications, duty remissions and exemptions from the CET; application of safeguards, anti-dumping and countervailing measures; and application of a harmonised imports valuation system that eliminates the need to lengthy and costly verifications prior to approving free duty provisions for EAC originating goods.
- vi) Coordinating implementation of the RTP regional outreach programme activities; and building regional networking platforms for purpose of disseminating information about existing/potential business opportunities, regional value chains; trade regulations in target export markets, and building linkages between producers and bulk buyers.

- vii) Monitoring progress of implementing RTP strategy measures by regional level organs (such as EALA with respect to formulation of regional laws) and reporting; aimed to enhance efficient coordination of the RTP implementation process.

11.2 National Level Responsibilities (National Focal Points)

- i) Coordinating participation of national stakeholders in RTP implementation.
- ii) Building trade capacities of relevant stakeholders (including Ministries, Departments and Agencies (MDAs), private sector/Business Market Organizations (BMOs), and civil society organisations).
- iii) Identifying and following up progress in addressing critical supply-side constraints (roads, rail, access to energy, ICT, and other utilities like water).
- iv) Engaging relevant development partners who support national-level trade and development programmes/projects.
- v) Coordinating establishment and efficient functioning of the proposed National Tariff Boards, whose responsibilities will incorporate administering the criteria for qualifying and approving SOA, duty remissions and exemptions from the CET; safeguards, anti-dumping and countervailing measures; and application of a harmonised imports valuation system.
- vi) Coordinating implementation of the RTP national outreach programme activities
- vii) Monitoring progress of implementing RTP by MDAs, and reporting to the RTP regional monitoring meetings.

12.0 CONCLUSION

This Regional Trade Policy presents the EAC partner states with an opportunity to expand intra and extra regional trade and enhance welfare of the region's citizens. In the past, the region has faced many problems relating to cross-border trade. This RTP picks up lessons from the past as well as experiences from other RECs, and uses these to propose appropriate corrective measures. It aims to achieve balanced cross-border trade and investment, enhance competitiveness and value-added production and strengthen institutional mechanism for collaboration and coordination. Policy linkages and synergies across various sectors that impact delivery of trade objectives is also emphasized.

Substantial resources accompanied by high levels of commitment will be required to surmount the many anticipated challenges. This notwithstanding, implementation of the policy is a worthy investment that will substantially expand trade in the region.

This RTP is the outcome of a widely consultative process involving a wide range of stakeholders. Consequently, the priority areas, the cross-cutting priorities and the policy actions contained herein, have been arrived at through consensus. The RTP therefore institutionalises regional consultations in the hope that this spirit will carry through to the implementation phase.

ANNEXES

ANNEX I

EAC REGIONAL TRADE POLICY STRATEGY IMPLEMENTATION MATRIX (2020-2030)

Problem Statement	Intervention Measures	Specific Actions	Timeframe	Budget (USD)	Responsible Institution	Means of Verification
STRATEGIC OBJECTIVE 1 :EAC Common Market aspirations reinforced through compatible external trade policies and regulations.						
Gains from intra-EAC trade not equitably distributed across partner states and is characterised by low trade and investment growth, and poor trade and investment competitiveness.	Harmonise Partner States approach to trade and investment related negotiations at Tripartite FTA, AfCFTA, bilateral, and multilateral levels to ensure balanced market access for trade in	a) Develop a legal framework to support a common approach to trade negotiations and investment related negotiations	2022-2023	20,000	EAC Secretariat	EAC Secretariat annual reports on trade and investment
		b) Enhance institutional capacity to fully implement the TFTA and AfCFTA agreements	2022-2024	200,000	National Focal Points (Ministries of EAC Affairs with technical assistance by Ministries of Trade and other competent MDAs ⁴)	EAC Secretariat bi-annual RTP Progress reports
Overlapping membership to multiple RECs with different FTA provisions, resulting to potential risk of diluting Customs Union and Common market provisions on market access for goods and services	Implement measures to address overlapping membership of EAC Partner States to various African based RECs; and specify collaboration modalities between EAC Common Market) and other third party trading partners (incl. Tripartite, AfCFTA, and global FTAs); aimed to prevent future challenges emerging	a) Design and implement EAC approach for negotiations with third parties on trade and investment related matters.	2022-2024	50,000	EAC Secretariat	EAC Secretariat annual reports on trade and investment
		b) Adopt use of harmonised trade and transport facilitation systems in EAC cross border trade.	2022-2025	50,000	National Focal Points (Ministries of EAC Affairs with technical assistance by Revenue Authorities (Customs Departments)	EAC Secretariat bi-annual RTP

⁴ Government Ministries, Departments and Agencies

Problem Statement	Intervention Measures	Specific Actions	Timeframe	Budget (USD)	Responsible Institution	Means of Verification
	on free movement of goods (including preferential tariffs and rules of origin that an individual EAC Partner State should apply on imports from third parties)	c) Implement inter-regional cooperation under Tripartite FTA based on a coordination mechanism.	2022-2023	70,000		Progress reports National Focal Points bi-annual RTP Progress reports
		d) Fastrack Domestication of EAC Common Market provisions in each Partner State and fast track improvement of infrastructural and communication links across the three Tripartite RECs.	2022-2025	150,000		
		e) Fast track the operationalisation of the envisaged Tripartite FTA ⁵ to ensure similar trading and investment rules across the three Tripartite RECs.	2021-2022	150,000		
		f) Implement the AfCFTA ⁶	2021-2022	150,000		
		g) Implement EAC export promotion strategy 2020-2025 and the subsequent annual work plans	2020-2025	150,000		
STRATEGIC OBJECTIVE 2: <i>To achieve balanced cross border trade and investment amongst Partner States based on harmonised national trade and investment policies, laws and regulations.</i>						
1. Low export earnings and high trade deficits due to concentration of exports on a small basket of traditional products with minimal value addition;	Implement measures to increase intra-EAC and extra EAC trade in value added goods driven by adoption of modern processing and storage technologies,	a) Set defined export growth targets for each Partner State relative to current intra-EAC, Tripartite, AfCFTA and global exports; based on the EAC	2022	10,000	EAC Secretariat with coordination by Directorate of Customs and Trade National Focal Points (Ministries of EAC Affairs with	EAC Secretariat annual reports on trade and investment

⁵ Tripartite FTA comprises EAC, COMESA, SADC

⁶ Africa Continental Free Trade Area

Problem Statement	Intervention Measures	Specific Actions	Timeframe	Budget (USD)	Responsible Institution	Means of Verification
and continued focus on traditional markets.	diversification of the export basket; expansion of potential markets (at Tripartite, AfCFTA, and global levels); elimination of NTBs and trade wars experienced on EAC cross border trade; and use of a coordinated regional as opposed to national export promotion approaches.	Export Promotion Strategy 2020-2022.			technical assistance by competent national authorities	EAC Secretariat bi-annual RTP Progress reports National Focal Points bi-annual RTP progress reports
2. Increased competition by EAC countries on similar goods targeting the EAC and COMESA/SADC regional markets; leading to export declines in the regional markets for some Partner States.		b) Specify and implement plan (with dates) for harmonisation of conformity assessment procedures related to inspections and certification of product standards and technical regulations, SPS measures, and public health measures which are applied on intra-EAC trade in goods.	2022	30,000	Regional and National Business Organisations/Associations	
3. Persistent trade wars between Partner States on goods and services traded across borders, and continued imposition of NTBs on EAC cross border trade contrary to rights and obligations provided for under the Customs Union and Common Market Protocols		c) Specify measures to increase collaboration between trade support institutions (TSI) in public and private sector.	2022	10,000		
		d) Implement programme for elimination of NTBs experienced on EAC cross border trade, including operationalization of the NTBs Act 2017.	2022	10,000		
4. Constant applications for SOA, duty remissions and exemptions from CET which discourage formation and/or strengthening of regional value chains.		e) Fully implement the Customs Union and Common Market provisions.	2022-2023	100,000		
		f) Eliminate intra-EAC trade tariffs and NTBs and strengthen the National NTB Committees and operationalise the Trade Remedies	2022-2025	60,000		
		g) Identify agricultural subsidies given by	2021-2029	10,000		

Problem Statement	Intervention Measures	Specific Actions	Timeframe	Budget (USD)	Responsible Institution	Means of Verification
		advanced countries on competing products.				
		h) Integrate harmonised customs and documentation requirements in intra-EAC trade.	2022-2023	10,000		
		i) Fast track ratification of various agreements that adversely impact ability to undertake efficient EAC trade (at Tripartite FTA, AfCFTA, bilateral and multilateral levels – WTO, EPA and AGOA).	2022-2025	20,000		
		j) Facilitate adoption of modern processing technologies.	2022-2024	60,000		
		k) Undertake targeted market analysis on potential products traded, market absorption capacities, market segmentation, market access requirements and requisite supply chain logistics.	2022-2029	20,000		
		l) Conduct sensitization and awareness building events for producers and exporters on requisite targeted market access requirements.	2021-2029	30,000		
	Implement a harmonized EAC approach in application of CET to preserve Customs Union and Common Market provisions based on the principles agreed by the	a) Implement the directive of the 34 th meeting of the Council (June 2019) on future approvals on SOA, duty remissions and exemptions from CET.	2022-2023	30,000	EAC Secretariat with coordination by Directorate of Customs and Trade National Focal Points (Ministries of EAC Affairs with	EAC Secretariat annual reports on trade and investment

Problem Statement	Intervention Measures	Specific Actions	Timeframe	Budget (USD)	Responsible Institution	Means of Verification
	<p>Council in its 34th meeting of June 2019; so as to allow for free movement of goods, persons, labour/workers, services and capital; and also fast track operationalisation of the right of establishment and right of residence in order to stem down constant trade wars.</p> <p>Partner States need to urgently agree on services to be commonly traded within the Community without restrictions as part of fast tracking implementation of Common Market provisions on free movement of services.</p>	b) Fast track conclusion of the CET tariff bands and rates based on recommendations of the 34 th Council meeting (June 2019).	2022-2023	30,000	technical assistance by Revenue Authorities (Customs Departments) and other competent national authorities	Reports of EAC policy organs
		c) Conclude decision on the yet-to-be-agreed duty rate of above 25%, on which the Council agreed to apply either 30% or 35% duty to encourage value added production in EAC.	2022-2023	10,000	Regional and National Business Organisations/Associations	
		d) Enforce strict application of the harmonised EAC ROO.	2022-2024	10,000		
		e) Enforce application of the ROO in a transparent, accountable, fair, predictable and consistent manner and ensure that products sourced from outside EAC are subject to applicable CET rates.	2022-2030	200,000		
		f) Enforce strict application of the EAC common customs rules and procedures as provided in the CMA Act ⁷ .	2022-2030	200,000		
		g) Adopt a harmonised common valuation method for goods traded with EAC SCT to eliminate cases of undervaluation/under-invoicing, and mis-declarations.	2022-2024	50,000		

⁷ EAC Customs Management Act

Problem Statement	Intervention Measures	Specific Actions	Timeframe	Budget (USD)	Responsible Institution	Means of Verification
		h) Introduce specific duties in the EAC import tax system as an alternative to the ad valorem (percentage) duty rate for products prone to undervaluation, subsidies, dumping and world price fluctuations.	2023-2024	10,000		
		i) Ensure use of detailed evidence to justify proposed Stays of Application, Exemptions and Duty Remissions.	2021-2029	50,000		
	Implement harmonised approach to promotion of intra-EAC trade in services as part of fast-tracking implementation of the Common Market aspirations on free movement of services	a) Harmonise measures for promoting competitive EAC cross border trade in priority services.	2022	20,000		
		b) Integrate EAC financial sector through harmonised financial regulation.	2022-2025	250,000		
		c) Develop an integrated EAC Regional Electronic Settlement System (SIRESS).	2023-2024	100,000		
		d) Strengthen TSIs institutional framework for management and implementation of provisions on services trade.	2023-2024	30,000		
	5. Less-conducive business and investment environment characterised by trade malpractices (dumped, counterfeited, uncustomed, mis-declared, under-	Use the WTO provisions on anti-dumping, subsidies and countervailing measures to develop EAC Trade Remedies Law; aimed to protect EAC domestic/regional industries against unfair competition from imports and other trade malpractices (including trade	a) Develop harmonised EAC anti-dumping, safeguard/ countervailing measures, based on relevant WTO provisions.	2022-2024	50,000	EAC Secretariat in coordination with Directorate of Customs and Trade National Focal Points (Ministries of EAC Affairs with technical assistance by competent national authorities
b) Develop harmonised measures to address trade malpractices not categorised under dumping and subsidies.			2022-2024	30,000		

Problem Statement	Intervention Measures	Specific Actions	Timeframe	Budget (USD)	Responsible Institution	Means of Verification
6. Less effective coordination between EAC government agencies and TSIs ⁸ responsible for inspecting and approving import/export transactions, coupled with insufficient financial and technical capacity of the agencies to perform their functions efficiently; leading to alleged “illegal imports originating from China and India”.	in counterfeits, under invoicing, mis-declarations, and smuggling of uncustomed goods)	c) Fully implement SCT system	2022-2025	50,000	Regional and National Business Organisations/Associations	RTP Progress reports National Focal Points bi-annual RTP progress reports
		d) Designate a lead agency in each Partner State to coordinate trade promotion and facilitation activities.	2022	10,000		
		e) Build the capacity of TSIs to apply efficient measures for supporting export promotion activities.	2022-2024	20,000		
		f) Implement the EAC Trade Remedies.	2022	10,000		
		g) Operationalise EAC Committee on Trade Remedies (EACTR) as provided in Article 24 of Customs Union Protocol.	2022	10,000		
		h) Conduct national and regional workshops to fast track adoption and implementation of the envisaged harmonised EAC Trade Remedies La.	2022	50,000		
7. Infringement of intellectual property rights of creators/innovators of goods and services, leading to unfair competition with counterfeits while discouraging creators to venture into production of innovative products	Use provisions of WTO TRIPs ⁹ Agreement to develop a harmonised EAC law to protect Intellectual Property Rights holders from infringement of their creations and to encourage cross border trade in innovative products and service offers	a) Develop a harmonised EAC IPR law based on WTO TRIPS Agreement	2022-2023	50,000	EAC Secretariat with coordination by competent national authorities National Focal Points (Ministries of EAC Affairs with technical assistance by competent national authorities	EAC Secretariat annual reports on trade and investment EAC Secretariat bi-annual RTP
		b) Strengthen initiatives pursued by Partner States to make use of the TRIPS flexibilities.	2022-2024	20,000		
		c) Reduce distortions and impediments to international trade on innovative products and services,	2022-2029	20,000		

⁸ Trade Support Institutions

⁹ Agreement on Trade-Related Aspects of Intellectual Property Rights

Problem Statement	Intervention Measures	Specific Actions	Timeframe	Budget (USD)	Responsible Institution	Means of Verification
and services with trade potential.		d) Fast-tracking conclusion and domestication of the EAC Anti-Counterfeit Bill.	2022-2024	30,000	Regional and National Business Organisations/Associations	Progress reports National Focal Points bi-annual RTP progress reports
		e) Support the promotion of technological innovations, transfer and dissemination of innovations.	2022-2029	20,000		
		f) Enhance capacity of Partner States to implement the envisaged harmonised IPR law.	2022-2024	50,000		
		g) Build capacity of enforcement agencies to coordinate compliance with international norms and legal frameworks.	2022-2029	50,000		
		h) Ensure the harmonised regional IPRs law incorporates: publication systems, examination systems, timeframes, awareness campaigns, reporting and enforcement mechanisms, infrastructure development, and capacity building	2024	10,000		
8. Insufficient knowledge by business and exporters on content of trade and market access preferences provided under regional, bilateral and multilateral trade agreements; necessary to facilitate access to	a) Design and implement a capacity building program for public and private sector TSIs ¹⁰ to offer advisory services to producers and exporters on how to apply trade facilitation systems and	a) Improve capacity of public and private sector TSIs to offer knowledge to EAC businesses and exporters on provisions of regional, bilateral and multilateral trade agreements.	2022-2029	30,000	EAC Secretariat with coordination by competent national authorities	EAC Secretariat annual reports on trade and investment EAC Secretariat
		b) Integrate all ongoing trade facilitations systems and	2022-2024	50,000	National Focal Points (Ministries of EAC Affairs with technical assistance by	

¹⁰Trade Support Institutions

Problem Statement	Intervention Measures	Specific Actions	Timeframe	Budget (USD)	Responsible Institution	Means of Verification
9. Insufficient knowledge about global economic, trade developments and financial trends and application of international commerce terms to increase competitiveness of trade transactions	<p>measures¹¹focusing on increasing trade efficiency and competitiveness of trading on value added goods in regional markets, and compliance with international quality standards and SPS measures.</p> <p>b) Design and implement a programme to facilitate producers and exporters to build knowledge on bulking of produce for exports, formation of networking relationships with bulk buyers, and how to apply INCOTERMS in international trade transactions.</p>	mechanisms into the EAC trade regime as provided in the EAC Trade Facilitation Agreement (TFA), and the WTO Trade Facilitation Agreement (TFA) ¹² .			competent national authorities	bi-annual RTP Progress reports
		c) Implement measures to boost compliance with customs requirements on imports and exports by traders.	2022-2023	30,000	Regional and National Business Organisations/Associations	National Focal Points bi-annual RTP progress reports
		d) Implement all provisions of SQMT Act, 2006 and subsequent SACA Protocol 2016 for goods produced and traded in the community.	2022-2025	100,000		
		e) Identify all domestic taxes applied on national commerce and design a strategy to speed up their harmonization into EAC domestic taxes.	2022-2025	20,000		
		f) Facilitate clustering of producers and exporters around sectors and products with export potential; and establish targeted interventions to build knowledge on bulking of produce for exports, formation of networking	2022-2023	50,000		

¹¹ Trade Facilitations Systems and measures include the Single Window Systems (SWS), One Stop Border Posts (OSBPs) and related Integrated Border Management (IBM) procedures, harmonised customs declarations and valuation methods; and Single Customs Territory Framework provisions,

¹²The WTO Trade Facilitation Agreement was adopted at the 9th Ministerial Conference held in Bali, Indonesia in December 2013. Once it enters into force, the TF Agreement is expected to reduce total trade costs by more than 14% for low-income countries and more than 13% for upper middle-income countries by streamlining the flow of trade across borders

Problem Statement	Intervention Measures	Specific Actions	Timeframe	Budget (USD)	Responsible Institution	Means of Verification
		relationships with bulk buyers, and application of INCOTERMS in international trade transactions.				
10. Insufficient knowledge about standards, SPS and public health measures required to undertake efficient intra-EAC trade	Harmonise and apply SPS and public health measures on foods and horticultural produce traded by EAC countries at EAC, Tripartite FTA, AfCFTA and global markets	a) Operationalize the EAC Protocol on SPS signed on 12 th July 2013 and enact the EAC protocol on SPS.	2022-2025	50,000	EAC Secretariat with coordination by competent national authorities	EAC Secretariat annual reports on trade and investment
		b) Prioritise elimination of NTBs related to SPS.	2022-2023	20,000	National Focal Points (Ministries of EAC Affairs with technical assistance by competent national authorities)	EAC Secretariat bi-annual RTP Progress reports
		c) Build capacity of SPS institutions to implement the provisions of the SPS Protocol and Act when the latter is concluded, and build capacity of producers to comply with SPS measures through farmers' and producers outreach programmes.	2022-2025	50,000	Regional and National Business Organisations/Associations	National Focal Points bi-annual RTP progress reports
STRATEGIC OBJECTIVE 3: Facilitate strengthened enterprise competitiveness and value added production of goods and services.						
Lack of effective measures to support growth of competitive EAC businesses (including MSMEs ¹³) to withstand stiff competition from imports	Implement intervention measures to improve industrial competitiveness as part of efforts to increase Partner States' trade performance at intra-EAC, Tripartite, AfCFTA, and global levels	a) Implement sector and product based interventions in line with recommendations of the 34 th meeting of the Council (June 2019);	2022-2029	200,000	EAC Secretariat in coordination with competent national authorities	EAC Secretariat annual reports on trade and investment
		b) Identify challenges and possible remedies in the EAC high growth sectors	2022-2023	20,000	National Focal Points (Ministries of EAC Affairs with technical assistance by competent national authorities)	EAC Secretariat

¹³ Micro, Small and Medium Enterprises

Problem Statement	Intervention Measures	Specific Actions	Timeframe	Budget (USD)	Responsible Institution	Means of Verification
	Continue implementing the ongoing focused business environment reforms aimed to improve the EAC business and investment climate and trade competitiveness in order to ensure reliable supplies, production of high poor quality goods, and to reduction of high transaction costs; thus ensuring production of competitive goods in national, regional and international markets	with potential regional value/supply chains.			Regional and National Business Organisations/Associations	bi-annual RTP Progress reports National Focal Points bi-annual RTP progress reports
		c) Design and implement an effective dialogue mechanism between public and private sectors.	2022-2024	50,000		
		d) Support MSMEs to access modern production technologies, knowledge about international supply chain logistics and access to market information.	2022-2024	30,000		
		e) Establish networking mechanisms between small producers/suppliers and bulk buyers.	2022-2024	20,000		
		f) Design a strategy for improved access to and adoption of modern processing and marketing technologies.	2022-2024	20,000		
		g) Facilitate building of knowledge and application of trade related regulations and procedures.	2022-2025	30,000		
		h) Promote consumption and use of regional products in EAC markets.	2020-2025	30,000		
		i) Expand trade and market access for manufactured products.	2022-2024	50,000		
		j) Build capacity of regional business associations ¹⁴ to formulate regional trade and investment development measures and to participate	2022	20,000		

¹⁴ Regional business associations include East African Business Council (EABC) and East African Chamber of Commerce, Industry and Agriculture (EACCIA)

Problem Statement	Intervention Measures	Specific Actions	Timeframe	Budget (USD)	Responsible Institution	Means of Verification
		effectively in RTP implementation.				
		k) Develop supportive infrastructure for industrialization along Selected Economic Corridors (EAC Northern and Central Corridors, LAPPSET).	2022-2030	500,000		
		l) Promote regional collaboration initiatives in areas of industrial R&D, technology and innovations.	2022-2023	20,000		
		m) Sensitize and create awareness among trade and investment stakeholders and the general public on various trade policies and procedures, import/export taxes, fees and charges, export market potentials, and trade facilitation systems and procedures applied at EAC, Tripartite FTA and AfCFTA and key international markets (EU under EPA and US under AGOA).	2022-2029	100,000		
		n) Formulate measures to fast track establishment of regional free zones and special economic zones.	2022	30,000		
		o) Design and implement a programme for sensitizing manufacturers on the Tripartite and AfCFTA Rules of Origin.	2022	20,000		

Problem Statement	Intervention Measures	Specific Actions	Timeframe	Budget (USD)	Responsible Institution	Means of Verification
		p) Facilitate full compliance with international market access requirements (notably quality, SPS, rules of origin and other customs formalities).	2022-2025	50,000		
		q) Implement the EAC AGOA Strategy 2015-2025 and support producers'/exporters to comply with AGOA market entry requirements and standards.	2022-2025	50,000		
		r) Facilitate enforcement of measures to achieve competitive ocean air freight costs and delivery time to the USA markets, and enhance institutional capacity to support exporters to utilize AGOA facility.	2022-2024	100,000		
		s) Design and implement value adding proposals through umbrella Private Sector Organisations (PSOs/ Business Membership Organisations (BMOs) for the six strategic regional sectors identified in EAC Industrial Development Strategy and the eight value chains adopted by the 34 th Council meeting of June 2019.	2022-2025	200,000		
		t) Support implementation of the blue economy development priorities for Tanzania	2022-2025	200,000		

Problem Statement	Intervention Measures	Specific Actions	Timeframe	Budget (USD)	Responsible Institution	Means of Verification
		u) Support implementation of the blue economy development priorities for Kenya.	2022-2025	200,000		
		v) Support implementation of the EAC COVID 19 Recovery Plan.	2022-2026	100,000		
		w) Establish requisite trading networks and relationships, and build efficient logistics and courier services coupled with a solid (physical) addressing system.	2022-2024	100,000		
Insufficient capacity to implement export promotion strategies amongst Partner States	a) Design and implement a programme to facilitate producers and exporters in partner states to build knowledge on export procedures, and how to apply INCOTERMS in international trade transactions. b) Sensitize and create awareness among trade and investment stakeholders and the general public on various trade policies and procedures, import/export taxes, fees and charges, export market potentials, and trade facilitation systems and procedures applied at EAC, Tripartite FTA and AfCFTA and key international markets	a) Formulate a regional agreement or protocol on investment between Partner States.	2022-2024	100,000	EAC Secretariat with coordination by competent national authorities	EAC Secretariat annual reports on trade and investment
		b) Coordinate regional market research activities and sharing of information between competent authorities involved in the administration of EPZs; SEZs and free zones at national and regional levels.	2022-2024	10,000	National Focal Points (Ministries of EAC Affairs with technical assistance by competent national authorities (Incl. Investment Promotion, EPZ, SSEZ and Free Zones Authorities)) Regional and National Business Organisations/Associations	EAC Secretariat bi-annual RTP Progress reports
		c) Implement EAC SEZ Policy.	2022-2024	20,000		
		d) Promote and market the investment and trading opportunities available in EPZs; SEZs and free zones among investors.	2022-2029	20,000		National Focal Points bi-annual RTP progress reports

Problem Statement	Intervention Measures	Specific Actions	Timeframe	Budget (USD)	Responsible Institution	Means of Verification	
Insufficient capacity of public and private sector TSIs to implement sector based strategies for growth and/or strengthening of potential regional value chains	Design and implement strategy for growth and/or strengthening of the eight regional value chains agreed by Council in its 34 th meeting of June 2019; starting with piloting of grains and cereals sector, CTA ¹⁵ value chain, and leather and leather goods value chain.	Fast track implementation of the EAC agricultural policy frameworks.			EAC Secretariat in coordination with competent national authorities	EAC Secretariat annual reports on trade and investment	
		a) Implement all outlined measures targeting to achieve the strategic objectives spelt out in the CTA Strategy.	2020-2030	2000,000	National Focal Points (Ministries of EAC Affairs with technical assistance by competent national authorities (including sector based business membership organisations))	EAC Secretariat bi-annual RTP Progress reports	
		b) Incorporate measures in EAC CET framework to facilitate EAC to take collective actions aimed at upholding the March 2016 EAC Summit decision to phase out importation of used clothes and promote a viable EAC CTA industry in collaboration and with technical assistance of the US AGOA facility and other development partners.	2022-2023	10,000	Regional and National Business Organisations/Associations	National Focal Points bi-annual RTP progress reports	
		Implement all outlined measures targeting to achieve the strategic objectives spelt out in the Leather and Leather Products Strategy (2019-2029) by 2029; namely:					
		a) Modernized livestock husbandry practices and processing infrastructure for sustainable supply of renewable resource for downstream industries	2022-2025	20,000			
		b) Increased investment in integrated tanneries and downstream manufacturing industries in order to achieve diversification and linkages in the sector:	2022-2024	20,000			
		c) Enhanced productivity of	2022-2025	20,000			

¹⁵ EAC Cotton-Textile-Apparel Strategy

Problem Statement	Intervention Measures	Specific Actions	Timeframe	Budget (USD)	Responsible Institution	Means of Verification
		footwear manufacturers and other leather goods producers for increased exports				
		d) Promote the leather sub-sector by taking local producers through study tours, national and international shows and exhibitions of leather and leather products as well as manage tariff on the export of wet blue and crust .	2022-2025	30,000		
		e) Strengthen governance, policy, regulatory systems, institutional coordination mechanisms and supporting services.	2022-2025	50,000		
		f) Mainstream best practices in environmental management technologies, corporate social responsibility principles and innovations in leather industries.	2022-2023	10,000		
STRATEGIC OBJECTIVE 4: <i>To achieve strengthened institutional mechanisms for collaboration and coordination between authorities and agencies responsible for trade and investment..</i>						
Lack of a sustainable outreach program to raise awareness and knowledge about benefits and challenges associated with regional and international economic integration.	a) Design appropriate mitigation measures to ensure potential challenges associated with implementation of RTP are efficiently and sufficiently addressed in order to create buy-in amongst public and private sector stakeholders.	a) Prepare a schedule of RTP outreach activities and priority messages to be communicated to RTP stakeholders.	2022	20,000		
		c) Create regional advocacy and sensitize national BMOs on importance and strategies for implementing RTP measures by enterprises.	2022-2026	30,000		

Problem Statement	Intervention Measures	Specific Actions	Timeframe	Budget (USD)	Responsible Institution	Means of Verification
	b) Implement an outreach programme to sensitize RTP stakeholders ¹⁶ about the potential benefits of implementing the RTP for purpose of buy-in and exploitation of potential trade and investment opportunities	d) Specify responsibilities and modalities for coordinating implementation of RTP strategy at national and regional levels	2020	10,000		
Insufficient capacity in public sector institutions to coordinate implementation and monitoring of regional and international economic integration programmes and relevant measures	Establish regional and national RTP focal points and institutional framework with requisite financial and technical resources to support efficient implementation of RTP strategy interventions at regional and national levels	a) Provide support to institutions involved in trade and investment development matters.	2022-2023	10,000		
		b) Implement measures to enhance Institutional capacity for RTP implementation.	2022-2025	100,000		
		c) Establish an RTP monitoring committee at EAC level charged with development of appropriate RTP indicators to be tracked using existing systems such as the East Africa Monitoring System (EAMS), and to coordinate monitoring of regional and national level actions, achievement of targeted results and dissemination of progress reports to RTP stakeholders.	2022	30,000		
	Develop and implement an RTP monitoring framework to facilitate periodic tracking of	a) Disseminate periodic information on progress of RTP implementation and	2022-2030	10,000		

¹⁶ RTP stakeholders include EALA, Government Ministries, Departments and Agencies; National Parliaments, Private Sector, Civil Society organizations, and the Academia.

Problem Statement	Intervention Measures	Specific Actions	Timeframe	Budget (USD)	Responsible Institution	Means of Verification
	RTP measures implementation progress in and results achieved, and to enable dissemination of progress results to stakeholders	results achieved to stakeholders and wider East African public				
		a) Establish an RTP monitoring committee at EAC level charged with development of appropriate RTP indicators to be tracked using existing systems such as the East Africa Monitoring System (EAMS), and to coordinate monitoring of regional and national level actions, achievement of targeted results and dissemination of progress reports to RTP stakeholders.	2022	30,000		
		b) Identify the main resource gaps (financial, managerial & technical) for successful RTP implementation.	2022-2023	10,000		
		c) Identify feasible and cost effective communication media and key messages for the outreach program based on RTP recommendations.	2020	10,000		

ANNEXES

ANNEX II

EAC PARTNER STATES' TRADE PERFORMANCE IN GOODS AND SERVICES

OVERALL EAC EXPORTS PERFORMANCE

EAC Merchandise Exports Performance

Total EAC exports of goods during the period 2009-2018 amounted to US\$ 133.1 billion, growing from US\$ 9.4 billion in 2009 to US\$ 14.13 billion in 2018 as shown in Figure 2 below. EAC exported more to non-African countries at 59% market share than to African countries at 41% market share. Total intra-EAC exports stood at an average 19% of total EAC exports to the world, while total EAC exports to COMESA and SADC stood at an average 24% and 16% respectively. The implication is that EAC Partner States trade more on goods with the rest of the world than between themselves. They also trade more with non-African countries than with African countries. This picture arises due to exports of unprocessed and semi-manufactured goods to developed countries (such as hides and skins, coffee, tea, and horticulture). While this scenario may be driven by price considerations and lack of processing technologies in the EAC region, the consequence is that it inhibits the growth and development of regional value chains. The end result is that EAC subsequently imports the finished goods manufactured from the unprocessed materials which had exported in the first place.

Further analysis shows that Kenya is the dominant exporter of merchandise goods, taking an average 43% of the combined EAC exports during the period 2009-2018, followed by Tanzania at 34%, Uganda at 17%, Rwanda at 4%, and Burundi trailing at 1% as shown in Figure 3 below.

On intra-EAC merchandise exports, Kenya took the largest market share at 50% of the combined intra-EAC exports during the period 2009-2018, followed by Uganda at 24% and Tanzania 19% as shown in Figure 4 below. The other two countries (Rwanda and Burundi) took an insignificant 7% of total intra-EAC merchandise exports, with Burundi trailing at 1%. This indicates that there is unbalanced intra-EAC merchandise exports, with Burundi and Rwanda taking insignificant market shares. The two countries therefore need to prioritise exports to EAC, which would be part of efforts to strengthen existing and potential regional value chains; particularly for goods currently exported in raw form or semi-processed form (including agricultural goods and semi-processed precious minerals such as gold). This would facilitate increased regional exports of value added goods to the rest of the world.

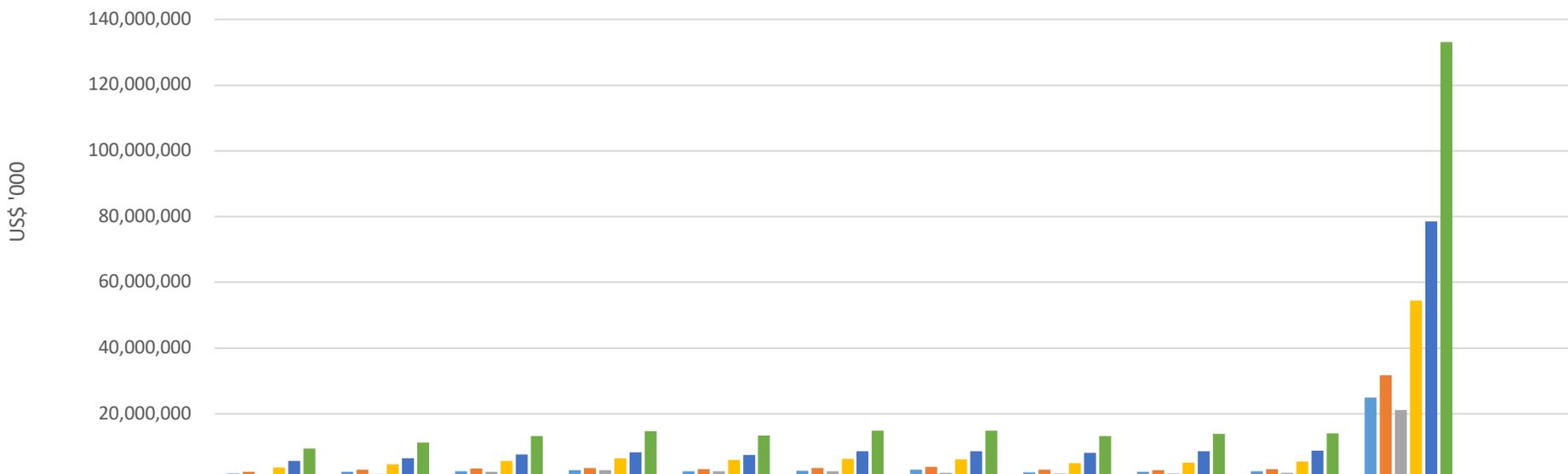
Export Performance in Services

EAC combined exports to the world amounted to US\$ 100.5 billion over the period 2009-2018, growing from US\$ 6.2 billion in 2009 to US\$ 12.24 billion in 2018 as shown in Figure 5 below. Kenya took the bulk of the region's service exports during the period at 44%, followed by Tanzania at 30% and Uganda at 18%. The other two Partner States performed poorly with Rwanda taking 7% and Burundi a mere 1%. The major EAC services traded during the period 2009-2018 are Commercial services, Travel, Transport, Government goods and services; Telecommunications, computer & information services; and Other business services¹⁷ as shown in Figure 6 below. A detailed elaboration of services under each of these categories is presented in Annex 38 to this report.

¹⁷Other business services include: R&D, management consulting services (legal, accounting, auditing, business development, public relations, and advertising); trade-related services; and other technical services.

Figure 2: EAC Merchandise Exports by Major Trading Blocs – Tripartite RECs (EAC, COMESA and SADC), African Continent and world 2009-2018 (US\$ '000)

EAC Merchandise Exports by Major Trading Blocs 2009-2018 (US\$ '000)

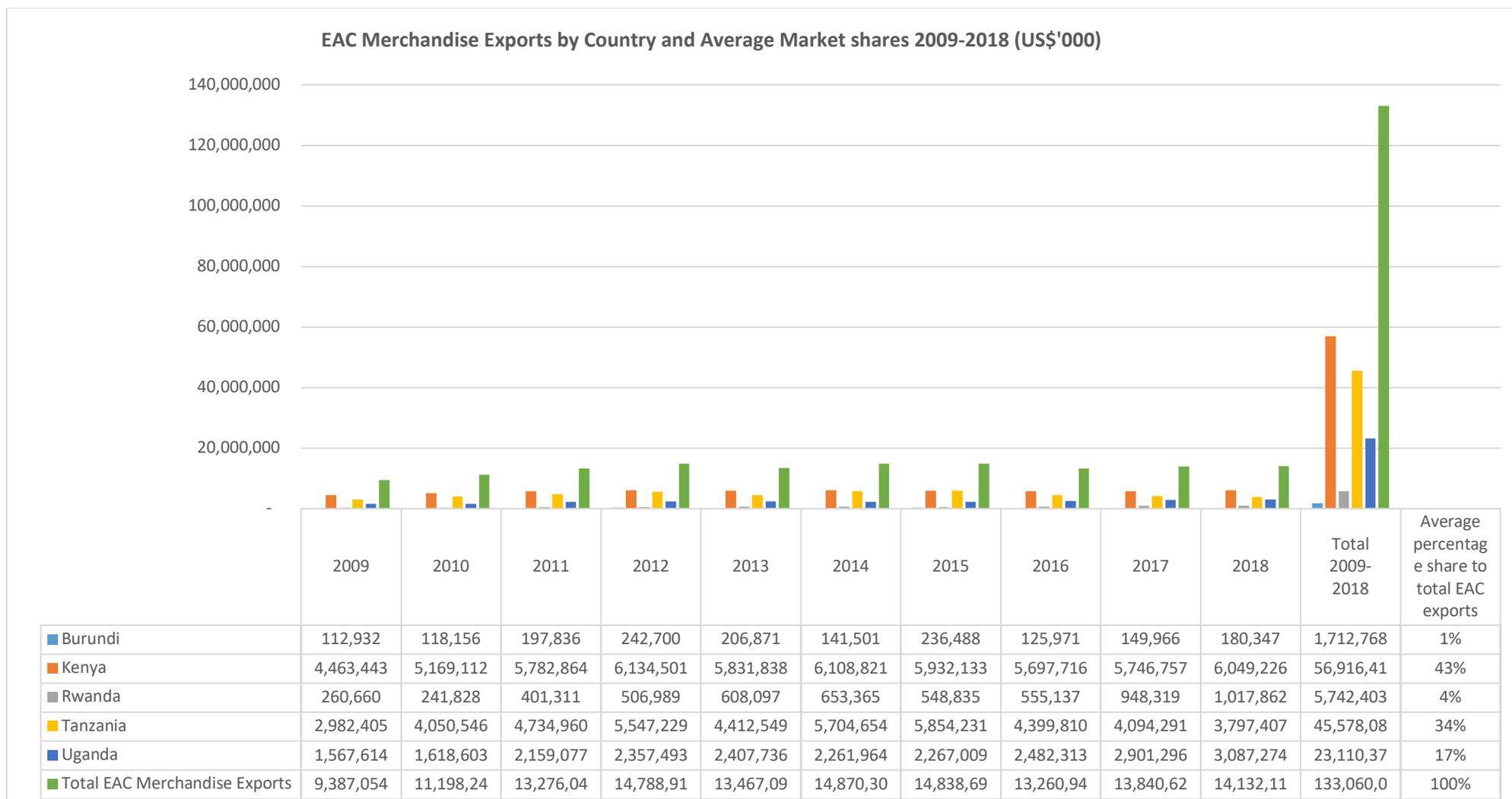


	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	Total 2009-2018	Average percentage share to total EAC exports
Intra-EAC Merchandise Exports	1,890,183	2,300,566	2,514,260	2,843,642	2,561,077	2,726,974	3,009,682	2,251,569	2,341,979	2,591,942	25,031,874	19%
Exports to COMESA	2,414,298	3,072,381	3,315,362	3,441,339	3,141,195	3,438,569	3,844,045	2,979,621	2,891,823	3,161,391	31,700,024	24%
Exports to SADC	1,377,187	1,766,700	2,397,452	2,816,306	2,498,766	2,505,783	2,005,478	1,924,145	1,876,194	1,988,234	21,156,245	16%
Exports to Africa continent	3,718,925	4,704,426	5,639,796	6,491,261	5,916,638	6,266,030	6,171,147	5,065,786	5,156,005	5,418,904	54,548,918	41%
Exports to Non-African countries	5,668,129	6,493,819	7,636,252	8,297,651	7,550,453	8,604,275	8,667,549	8,195,161	8,684,624	8,713,212	78,511,125	59%
Total Exports to World	9,387,054	11,198,245	13,276,048	14,788,912	13,467,091	14,870,305	14,838,696	13,260,947	13,840,629	14,132,116	133,060,043	

Axis Title

Source: Calculations from International Trade Centre database www.intracen.org

Figure 3: EAC Merchandise Exports by Country and Average Market shares 2009-2018 (US\$'000)



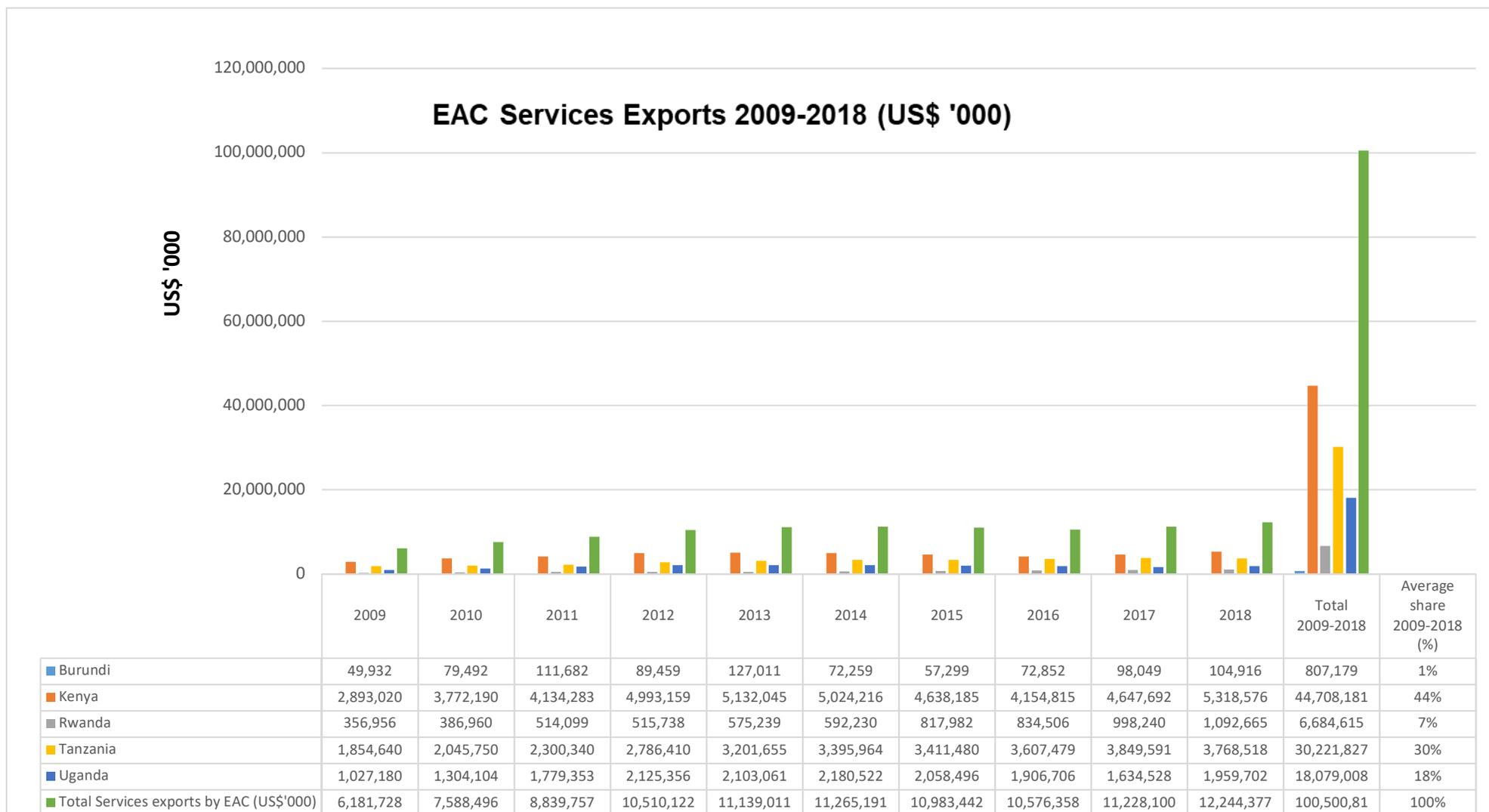
Source: Calculations from International Trade Centre database www.intracen.org

Figure 4: Intra-EAC Merchandise Exports and Market shares 2009-2018 (US\$ '000)



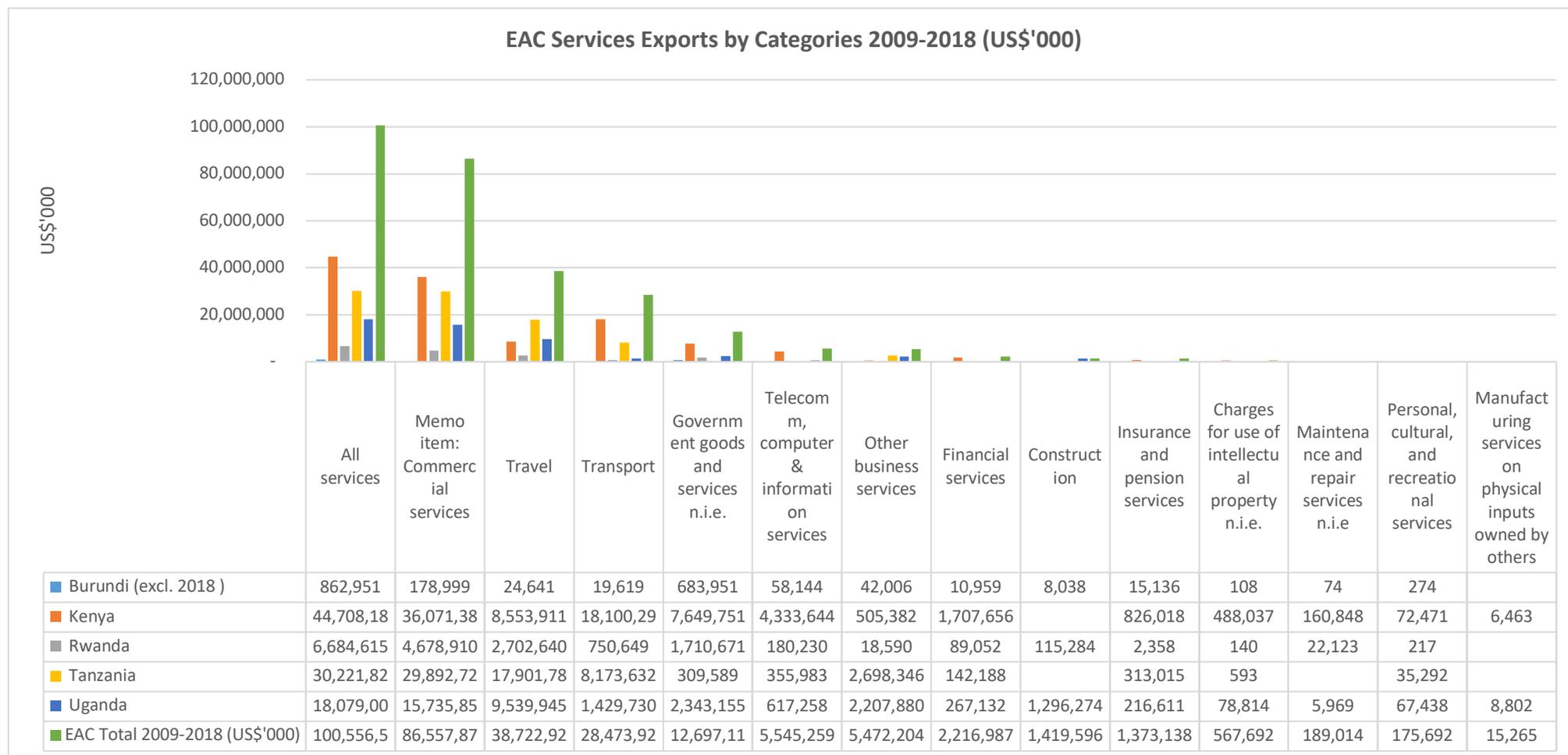
Source: Calculations from International Trade Centre database www.intracen.org

Figure 5: EAC Services Exports by Country 2009-2018 (US\$ '000)



Source: International Trade Centre database www.intracen.org

Figure 6: EAC Services Exports by Categories 2009-2018 (US\$ '000)



Source: International Trade Centre database www.intracen.org

OVERALL EAC IMPORTS PERFORMANCE

EAC Merchandise Imports Performance

As shown from Figure 7 below, total EAC imports of goods from the world during the period 2009-2018 amounted to US\$ 337.4 billion. During the period, intra-EAC imports stood at a mere 6% of the region's total imports from the world. Imports from non-African states dominated the region's imports taking an average 86% share, compared to total imports from African countries at only 14%, and total imports from SADC and COMESA at 8% and 7% respectively. This indicates that intra-EAC merchandise imports is very small, while Partner States also do not import much from the African continent including the regional trading blocs (COMESA and SADC) to which the five partner states belong. This indicates the urgent need to increase intra-EAC trade by strengthening potential regional chains and supporting production of value added goods, aimed particularly in manufacture of goods which are currently imported from outside the region while raw materials used to process such manufactures are available from the region. Regional potential in this regard exists to manufacture finished products using the regional raw materials; including among others leather goods, textiles and wearing apparel, paper and paperboard products, processed/packed coffee and tea, fruit juices and petroleum products.

As shown in Figure 8 below, the analysis further shows that out of the total global EAC merchandise imports during the period 2009-2018 (US\$ 337.4 billion), Kenya took the largest share at US\$ 152.6 billion or 45%, followed by Tanzania at US\$ 101.3 billion or 30% market share, Uganda at US\$ 55.2 billion or 16% share, Rwanda at US\$ 21 billion or 6%, and Burundi at US\$ 7.5 billion or a mere 2% share.

In addition, analysis shows that intra-EAC merchandise imports during the period 2009-2018 amounted to US\$ 20.1 billion as shown in Figure 9 below. Uganda was the lead intra-EAC importer taking 33% of intra-EAC imports, followed by Rwanda at 23%, Tanzania at 20% and Kenya at 19%, while Burundi trailed at 7%. Like in the case of intra-EAC exports, the analysis shows that EAC countries (particularly Burundi) import insignificant amounts of EAC originating goods, and thus the need to prioritise strengthen EAC regional value chains and part of measures to promote increased intra-EAC trade. The region also needs to support increased value addition of raw materials and semi-processed goods through enhanced investment in modern processing technologies with an aim of reducing import dependency of finished goods from outside the region, which would contribute to reducing the region's trade deficit, which amounted to US\$ 32,049,878 during the period 2009-2018 as shown in Figure 10 below.

EAC Services Imports Performance

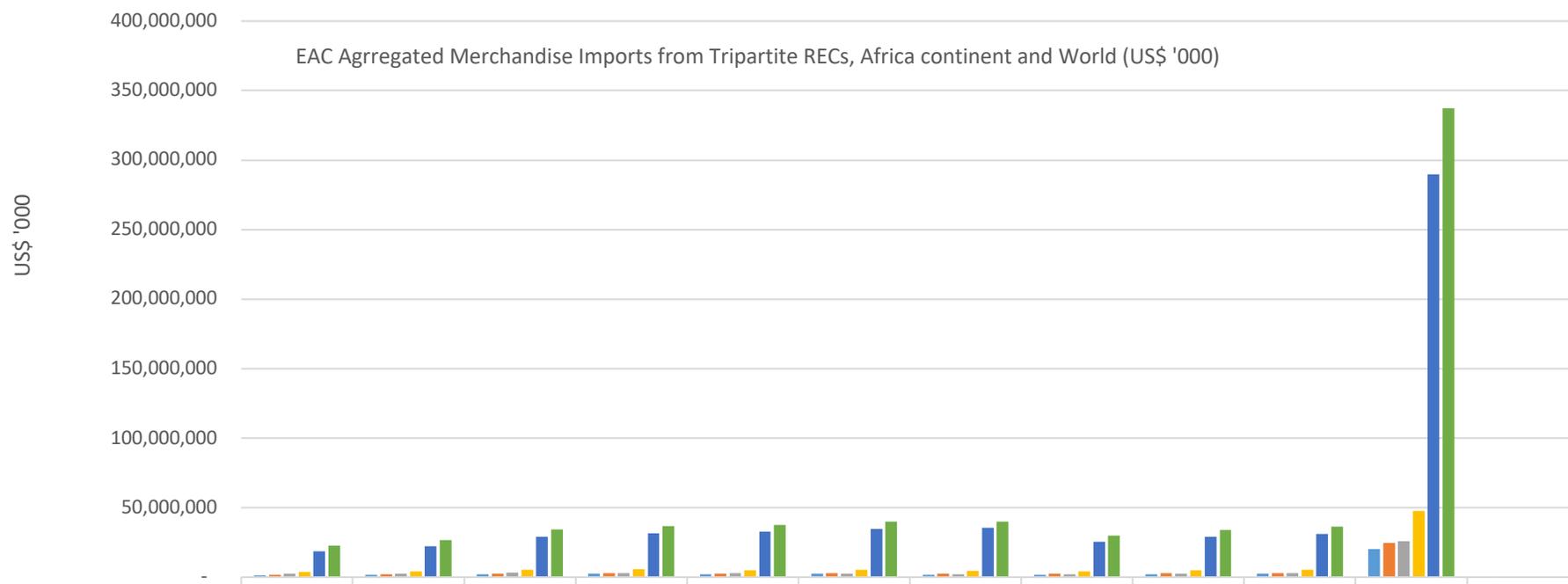
Total EAC imports of services amounted to US\$ 238 billion during the period 2009-2018, growing from US\$ 16.65 billion in 2009 to US\$ 24 billion in 2018 as shown in Figure 11 below. Kenya took the bulk of the services imported into the region at an average 33%, followed by Tanzania and Uganda at 28% each. Rwanda and Burundi took insignificant market shares at 9% and 2% respectively. As shown in Figure 12, services categories significantly imported by Partner States during the period 2009-2018 fall under Memo item: Commercial services¹⁸, Transport, Other business services, Travel, Government goods and services, Construction, Insurance and pension

¹⁸The term memo item: commercial services includes all service categories except government services not included in other service categories. Such services are offered by a commercial entity on behalf of a foreign commercial entity which may not have commercial presence in the country where the service is consumed. Examples include: Royalties and license fees, merchanting and trade-related services, and leasing; Agricultural, mining and on-site processing services; Administrative and support services; Rental and leasing services; Employment services; and security services.

services; and telecommunications, and computer and information services. Details of services categorisation under each of these classes is based on WTO¹⁹ classifications as presented in Annex 38 to this report.

¹⁹ World Trade Organisation

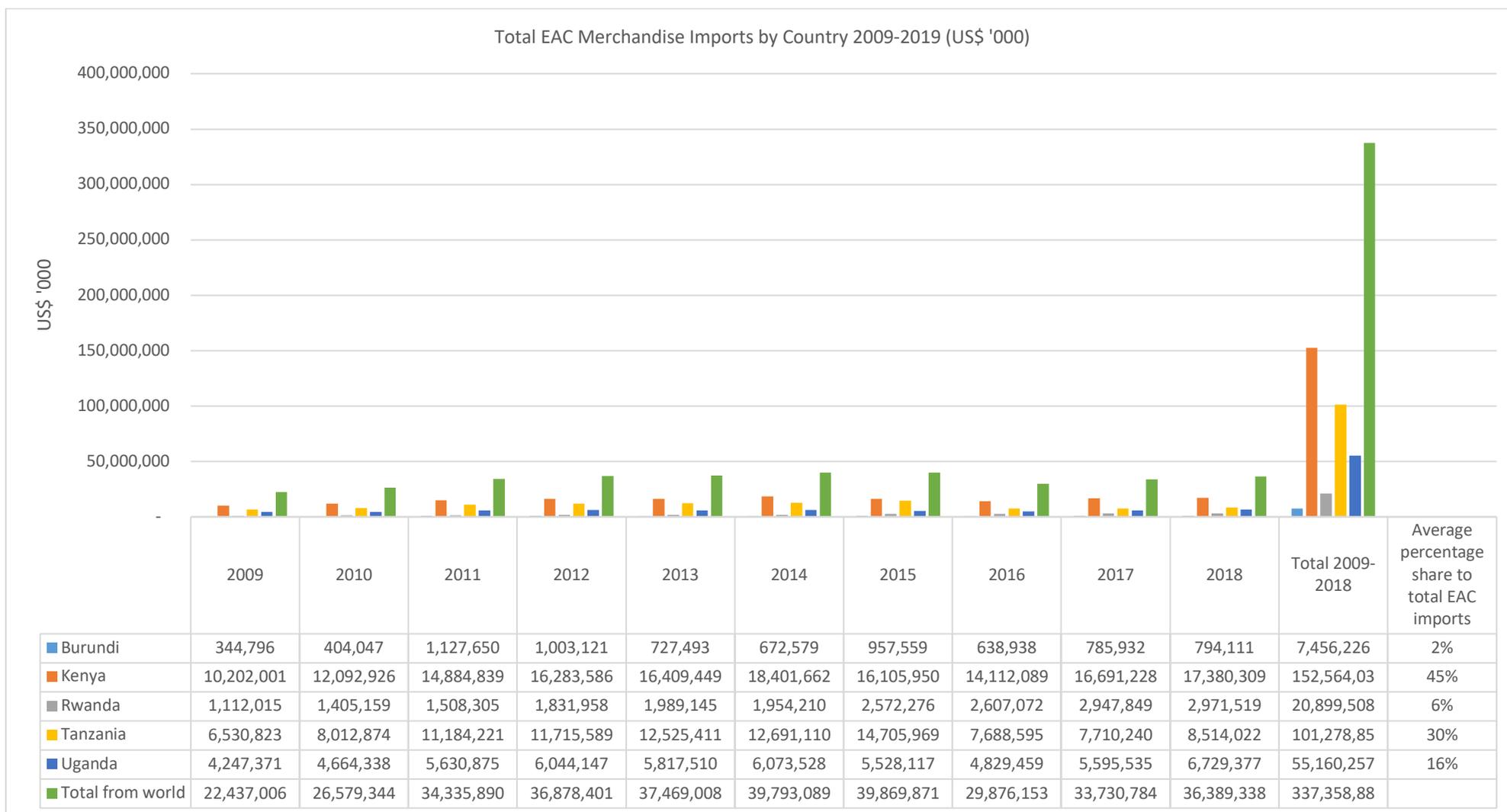
Figure 7: Total EAC merchandise imports by major trading blocs (Tripartite RECs, Africa and world 2009-2018 (US\$ '000))



	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	Total 2009-2018	Average percentage share to total EAC imports
Intra-EAC Merchandise Imports	1,430,288	1,611,116	2,082,818	2,378,191	2,001,732	2,467,913	1,812,429	1,790,961	2,055,217	2,454,920	20,085,585	6%
Imports from COMESA	1,714,998	2,049,718	2,532,531	2,906,572	2,458,850	2,883,133	2,266,017	2,312,564	2,687,437	2,952,958	24,764,778	7%
Imports from SADC	2,393,391	2,522,310	3,210,434	2,895,901	2,670,615	2,532,302	2,225,075	2,260,121	2,469,714	2,749,809	25,929,672	8%
Imports from Africa continent	3,873,095	4,269,848	5,404,389	5,512,774	4,911,450	5,100,205	4,369,756	4,243,305	4,690,347	5,343,657	47,718,826	14%
Imports from Non-African countries	18,563,911	22,309,496	28,931,501	31,365,627	32,557,558	34,692,884	35,500,115	25,632,848	29,040,437	31,045,681	289,640,058	86%
Total Merchandise Imports from World	22,437,006	26,579,344	34,335,890	36,878,401	37,469,008	39,793,089	39,869,871	29,876,153	33,730,784	36,389,338	337,358,884	

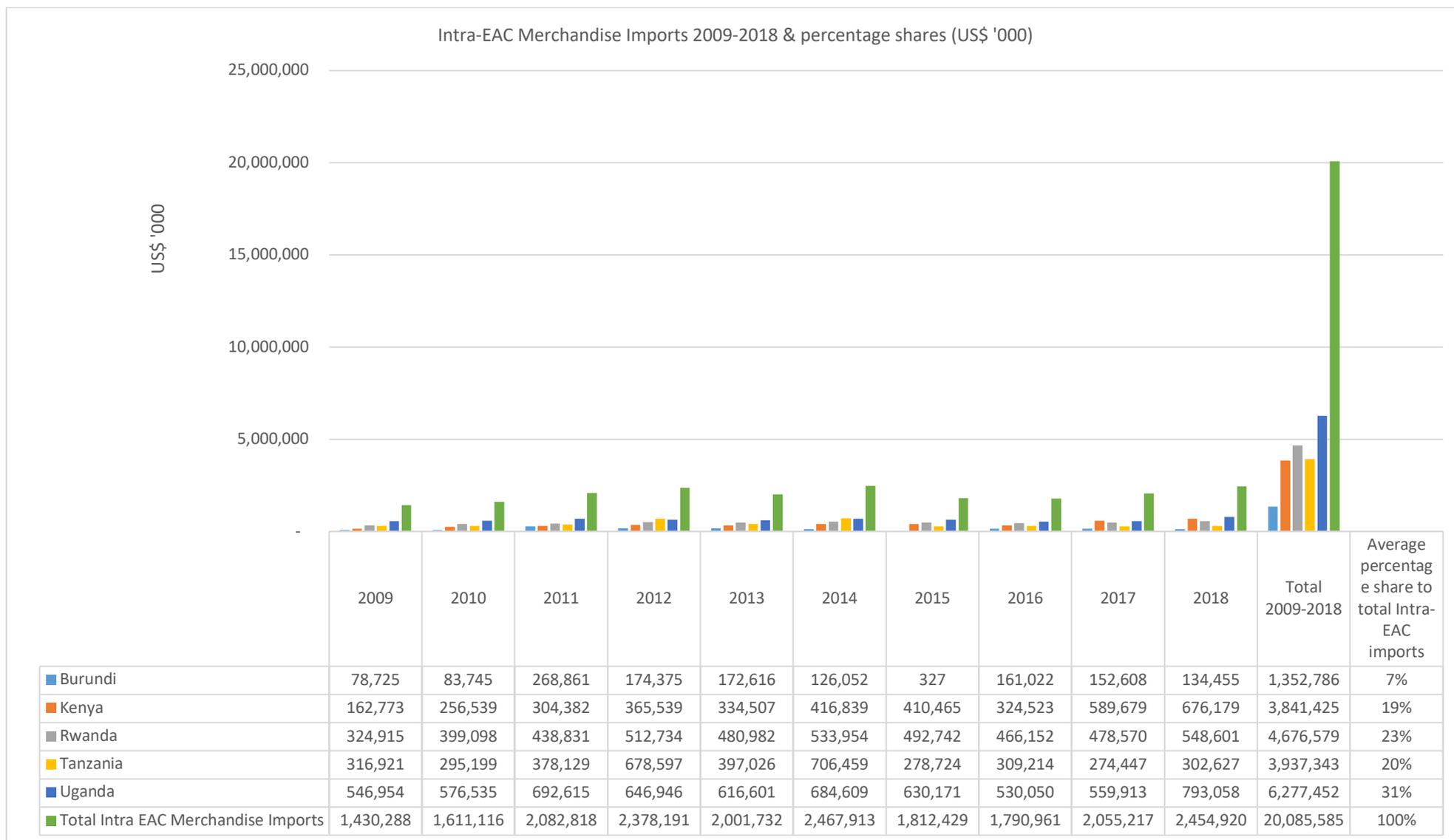
Source: International Trade Centre database www.intracen.org

Figure 8: Total EAC Merchandise Imports by Country 2009-2019 (US\$ '000)



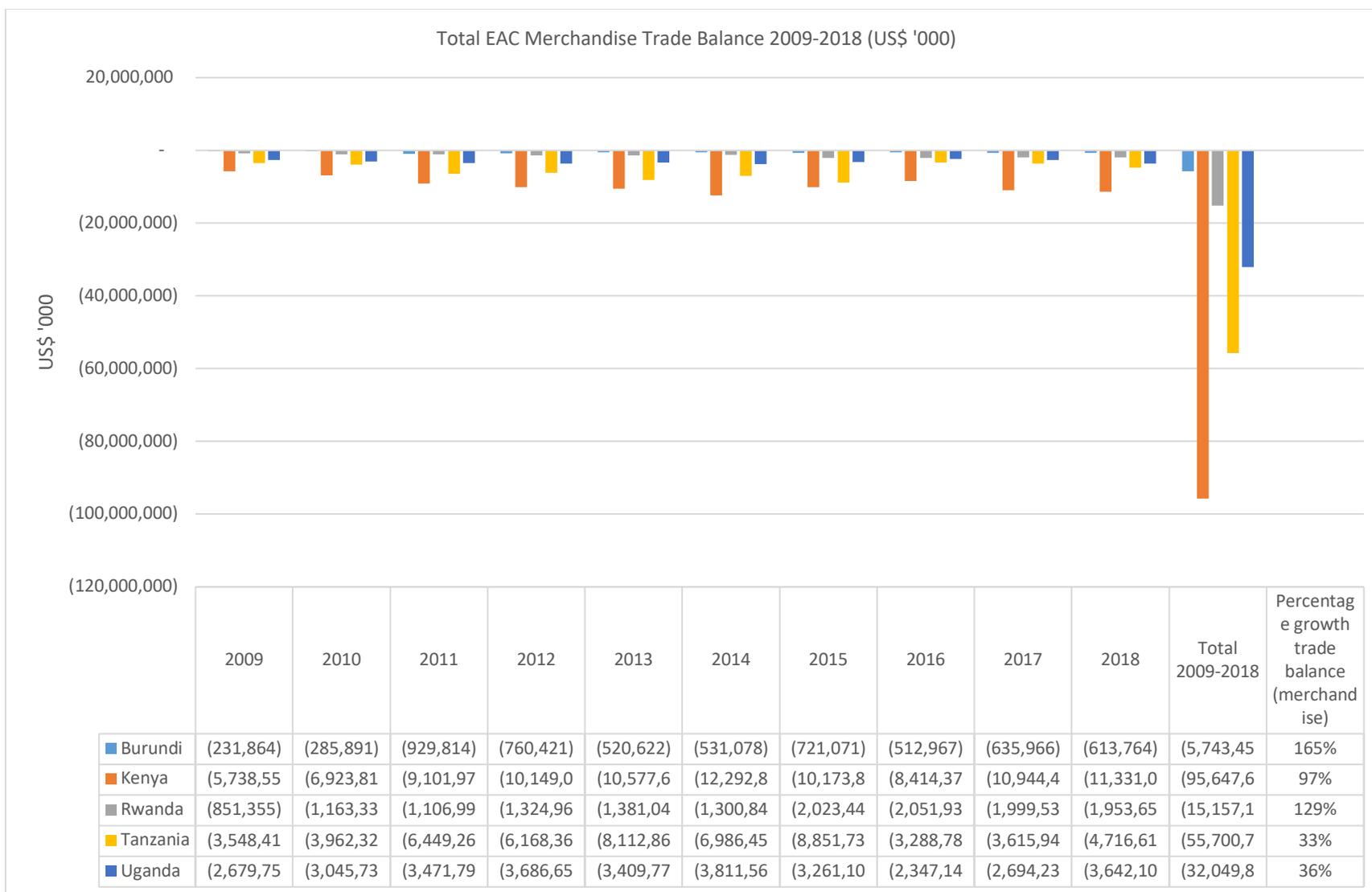
Source: International Trade Centre database www.intracen.org

Figure 9: Intra-EAC Merchandise Imports 2009-2018 (US\$ '000)



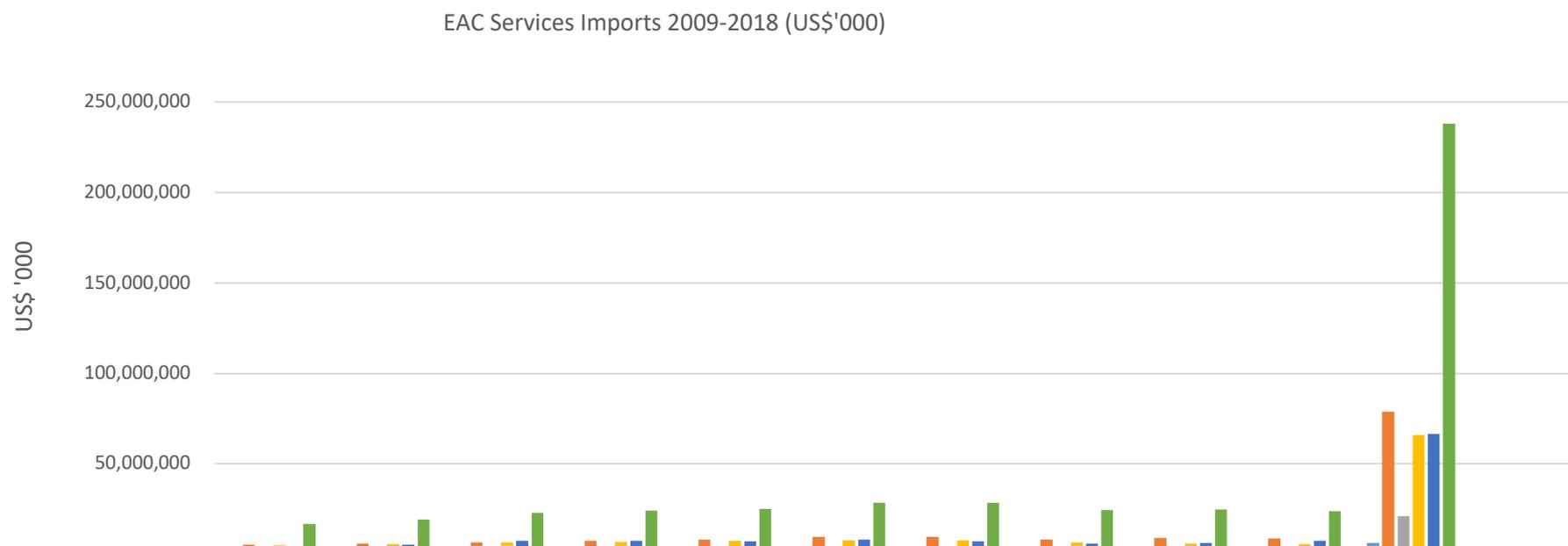
Source: Calculations from International Trade Centre database www.intracen.org

Figure 10: Total EAC Merchandise Trade Balance 2009-2018 (US\$ '000)



Source: Calculations from International Trade Centre database www.intracen.org

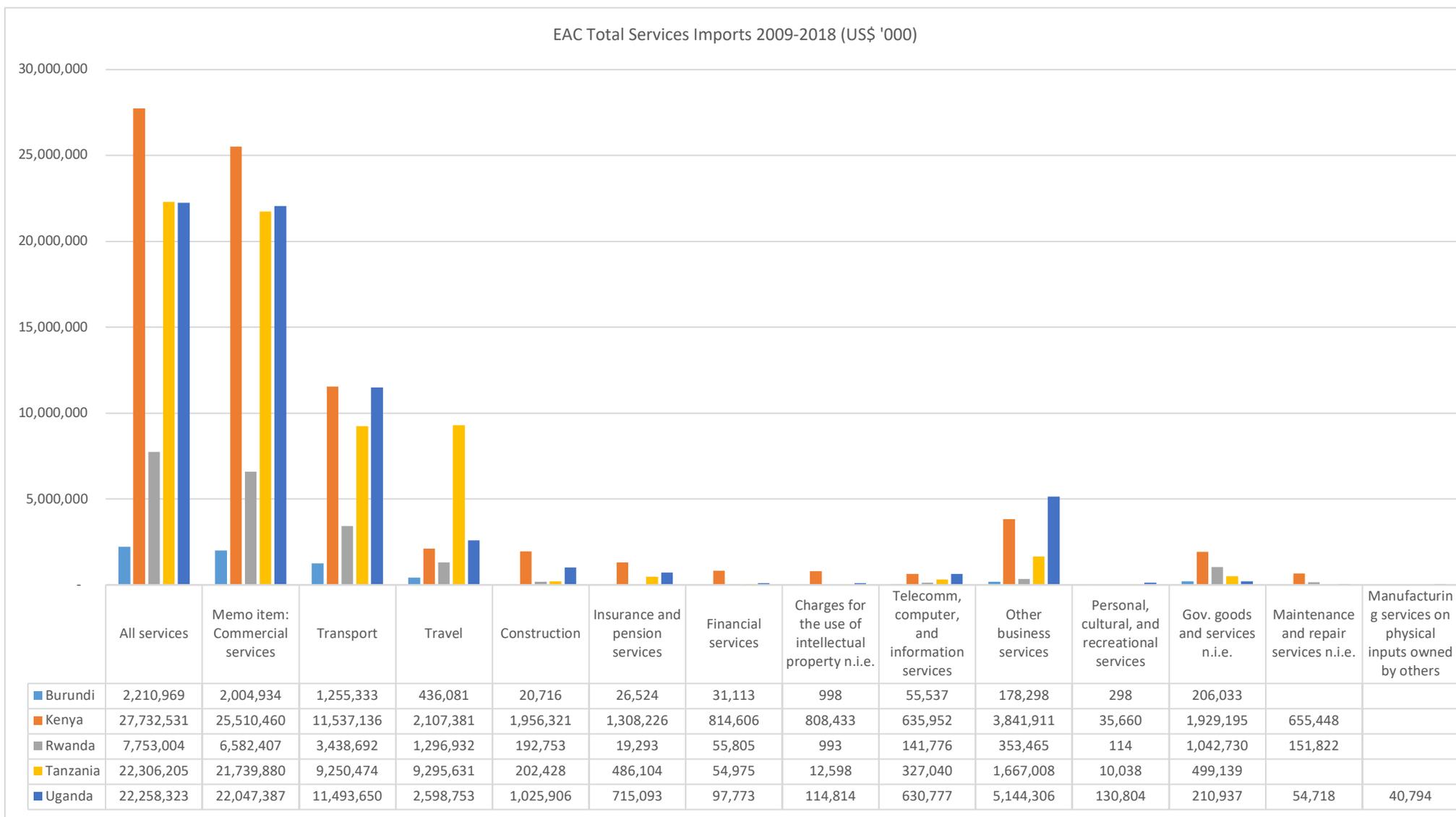
Figure 11: EAC Total Services Imports by Country 2009-2018 (US\$ '000)



	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	Total 2009-2018 (US\$ '000)	% share of total EAC services imports
Burundi	513,379	493,183	615,178	619,690	701,400	787,775	662,778	610,616	689,893	674,192	6,368,084	2%
Kenya	5,333,443	6,068,076	6,536,831	7,525,658	8,195,074	9,783,183	9,718,610	8,004,065	9,030,531	8,677,789	78,873,260	33%
Rwanda	1,507,454	1,555,384	1,766,826	1,462,458	1,651,780	1,855,703	3,127,392	3,153,511	2,959,882	1,989,396	21,029,786	9%
Tanzania	5,128,739	5,620,312	6,573,280	7,027,560	7,412,455	7,936,674	7,941,450	6,634,318	5,987,819	5,588,913	65,851,520	28%
Uganda	4,163,142	5,379,492	7,367,244	7,433,232	7,247,970	8,003,222	7,127,311	6,055,710	6,167,889	7,618,823	66,564,035	28%
EAC total services Imports (US\$ '000)	16,646,157	19,116,447	22,859,359	24,068,598	25,208,679	28,366,557	28,577,541	24,458,220	24,810,903	23,874,921	237,987,382	100%

Source: International Trade Centre database www.intracen.org

Figure 12: EAC Total Services Imports by Categories 2009-2018 (US\$'000)



Source: International Trade Centre database www.intracen.org

INDIVIDUAL PARTNER STATES' TRADE PERFORMANCE

Overall Trade Performance in Goods

The overall picture on trade performance in merchandise trade shows that all the EAC countries performed poorly, with each country posting an overall trade deficit over the period 2009-2019 as shown in table 1 below. In this respect, Kenya's overall trade deficit was the highest at US\$ 107 billion, followed by Tanzania at US\$ 62.3 billion, Uganda at US\$ 34.3 billion, Rwanda at US\$ 16 billion, and Burundi at US\$ 6.45 billion. The analysis as presented in table 2 further shows that Burundi's trade deficit grew at the highest rate of 205% from US\$ 231.2million in 2009 to US\$ 706,573million in 2019, followed by Kenya at 98%, and Tanzania at 86%. Uganda and Rwanda however performed much better in their trade deficits, with Uganda posting a 15% reduction in trade deficit from US\$ 2.68 billion in 2009 to US\$ 2.28 billion in 2019, while Rwanda's trade deficit reduced by 2% from US\$ 851.4 million in 2009 to US\$ 838.5 million in 2019.

Table 1: EAC Countries Merchandise Trade Balance in goods 2009-2018 (US\$'000)

Country	Total Merchandise Exports 2009-2019 (US\$ '000)	Total Merchandise Imports 2009-2019 (US\$ '000)	Total Merchandise Trade Balance 2009-2019 (US\$ '000)
Burundi	1,893,540	8,343,571	(6,450,031)
Kenya	62,752,438	169,784,418	(107,031,980)
Rwanda	6,041,474	22,037,112	(15,995,638)
Tanzania	48,952,294	111,263,464	(62,311,170)
Uganda	24,422,177	58,749,126	(34,326,949)

Source: Computations from ITC Trade Maps data www.intracen.org

Table 2: Annual Merchandise Trade Balance (US\$ '000)

Year	Burundi	Kenya	Rwanda	Tanzania	Uganda
2009	(231,864)	(5,738,558)	(851,355)	(3,548,418)	(2,679,757)
2010	(285,891)	(6,923,814)	(1,163,331)	(3,962,328)	(3,045,735)
2011	(929,814)	(9,101,975)	(1,106,994)	(6,449,261)	(3,471,798)
2012	(760,421)	(10,149,085)	(1,324,969)	(6,168,360)	(3,686,654)
2013	(520,622)	(10,577,611)	(1,381,048)	(8,112,862)	(3,409,774)
2014	(531,078)	(12,292,841)	(1,300,845)	(6,986,456)	(3,811,564)
2015	(721,071)	(10,173,817)	(2,023,441)	(8,851,738)	(3,261,108)
2016	(512,967)	(8,414,373)	(2,051,935)	(3,288,785)	(2,347,146)
2017	(635,966)	(10,944,471)	(1,999,530)	(3,615,949)	(2,694,239)
2018	(613,764)	(11,331,083)	(1,953,657)	(4,716,615)	(3,642,103)
2019	(706,573)	(11,384,352)	(838,533)	(6,610,398)	(2,277,071)
Total 2009-2019	(6,450,031)	(107,031,980)	(15,995,638)	(62,311,170)	(34,326,949)

Percentage growth of merchandise trade balance 2009-2019	-205%	-98%	2%	-86%	15%
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Overall Trade Performance in Services

The overall picture on trade in services shows that Kenya and Tanzania performed well with each posting a positive trade balance over the period 2009-2018 as shown in table3 below. Kenya posted an average positive growth of 50% while Tanzania was the best performer with a whopping 1340% growth in services trade balance over the period. The other three EAC countries performed poorly, with Burundi's services trade deficit declining slightly from US\$ (-ve) 588.2 million in 2007 to US (-ve) 519.8 million in 2017; Rwanda's trade deficit dropping by an average 81% from US\$ (-ve) 528.7 million in 2009 to US\$ (-ve) 99.1 million in 2018, and Uganda's trade deficit growing by an average 71% from US\$ (-ve) 1.25 billion in 2009 to US\$ 2.14 billion in 2018.

Table3: EAC Trade Balance in Services 2008-2018 (US\$'000)

Year	BURUNDI	RWANDA	KENYA	TANZANIA	UGANDA
2008	(588,154)				
2009	(411,049)	(528,722)	2,650,512	375,384	(1,252,005)
2010	(326,916)	(537,074)	4,492,537	472,620	(1,737,370)
2011	(372,227)	(382,880)	5,076,977	283,835	(2,193,284)
2012	(428,072)	(71,932)	6,472,800	1,298,763	(1,233,002)
2013	(419,273)	(114,349)	6,269,116	2,160,332	(1,164,810)
2014	(612,832)	(270,645)	4,381,345	2,235,288	(1,640,967)
2015	(528,889)	(924,318)	3,266,513	2,254,614	(1,207,693)
2016	(447,368)	(910,592)	3,663,775	4,165,911	(579,209)
2017	(519,768)	(234,698)	4,050,010	5,540,982	(1,524,214)
2018		(99,097)	3,987,197	5,405,728	(2,137,614)
% growth	(12%)	(81%)	50%	1340%	71%

Source: Computations from ITC Trade Maps data www.intracen.org

BURUNDI TRADE PERFORMANCE

Burundi Merchandise Trade Performance

Burundi's total merchandise trade grew from US\$ 551 million in 2009 to US\$ 830 million in 2018 or by 51%. Merchandise exports grew from US\$ 206.2 million in 2009 to US\$ 392.4 million in 2018 or by 90%, while imports grew from 344.8 million in 2009 to 437.6 million in 2018 or by 27%. There was a cyclical performance in the country's trade deficit over the period 2009-2018, but overall the merchandise trade deficit reduced from US\$ 138.6 million in 2009 to US\$ 45.15 million in 2018 as shown in table 4 below.

Table4: Burundi's Merchandise Trade Performance 2009-2018 (US\$'000)

Year	Merchandise exports	Merchandise imports	Total merchandise trade	Trade Balance 2009-2018
2009	206,193	344,795	550,988	(138,602)
2010	220,343	404,048	624,391	(183,705)
2011	373,066	1,127,649	1,500,715	(754,583)
2012	453,068	1,003,120	1,456,188	(550,052)
2013	379,693	727,593	1,107,286	(347,900)
2014	254,942	672,580	927,522	(417,638)
2015	198,318	560,586	758,904	(362,268)
2016	214,501	625,329	839,830	(410,828)
2017	263,562	783,295	1,046,857	(519,733)
2018	392,397	437,548	829,945	(45,151)
% growth	90%	27%	51%	-67%

Source: Computations from ITC Trade Maps data www.intracen.org

Among the country's major merchandise exports, three product categories emerge as the most significant as represented by total exports during the period 2009-2018; namely coffee which took 31% of the total export market share, semi-manufactured gold (29%), and tea (10%). Others are soaps and beer (3% each), tobacco and wheat (2% each); and mineral ores (3.3%). Combined, the top 10 merchandise exports took 85% of Burundi's total exports.

The major merchandise export markets as represented by average export market shares during the period 2009-2018 are United Arab Emirates which took 26%, Switzerland (12%), DR Congo (11%), Kenya (6%), Belgium (5%), Germany (4%), United Kingdom, Rwanda, and Uganda (each at 3%), and Singapore (2%). Combined, the 10 ten export destinations took 73% of Burundi's merchandise exports during the period of analysis.

The 10 major merchandise imports are petroleum products which took an average 19% market share of the country's total merchandise import bill during the period 2009-2018, medicaments (6%); soya beans, motor cars and cement (3% each); and fertilisers, telephone sets, wheat, motor vehicles, and flat-rolled iron and non-alloy steel products (2%).

The major merchandise import markets are Saudi Arabia and China each of which took 11% market share during the period 2009-2018, India (9%), Tanzania (8%), Belgium and Kenya (6% each), Uganda and UAE (5% each), and France and Japan (4% each).

Services Trade Performance

Burundi's total services exports decreased from US\$ 169.9 million in 2008 to US\$ 145 million in 2017 or by 15% between 2008 and 2017, while services imports also declined from US\$ 758 million in 2008 to US\$ 664.5 million in 2017 or by 12% during the period. Overall, the country's services trade deficit reduced from US\$ 588.15 million in 2008 to US\$ 519.8 million in 2017 as shown in table 5 below.

Table 5: Burundi's Trade in Services 2008-2017 (US\$'000)

Year	Service Exports	Service Imports	Total Services Trade	Trade balance
2008	169,899	758,053	927,952	-588,154

Year	Service Exports	Service Imports	Total Services Trade	Trade balance
2009	102,330	513,379	615,709	-411,049
2010	166,267	493,183	659,450	-326,916
2011	242,951	615,178	858,129	-372,227
2012	191,618	619,690	811,308	-428,072
2013	282,127	701,400	983,527	-419,273
2014	174,943	787,775	962,718	-612,832
2015	133,889	662,778	796,667	-528,889
2016	163,248	610,616	773,864	-447,368
2017	145,014	664,782	809,796	-519,768
% Growth	-15%	-12%	-12.73%	-12%

Source: ITC trade in services database based on IMF²⁰ statistics

Burundi's major services exports are professional services (*referred to under WTO GATs Agreement as all other services*)²¹ which took 46% of total services exports between 2008 and 2017, government goods and services²² (37%), and memo commercial services²³ (9%). The country's major services imports are: all other services (or professional services) which took 34% of total services imports between 2008 and 2017, memo commercial services (31%), and transport (20%).

Key Reasons for Burundi's Trade Performance on Goods and Services

Analysis of Burundi's trade performance shows poor performance over the period 2009-2018 as detailed in the country's RTP national report. Some key reasons associated with Burundi's poor trade performance include:

²⁰ International Monetary Fund

²¹ Under WTO (GATS Agreement), "*all other services*" which are actually professional services include research and development services, professional and management consulting services (legal services, accounting, auditing, business and management consulting, public relations services, advertising, business and technical services (such as architectural, engineering, waste treatment and de-pollution, agriculture, mining, and operational leasing services).

²² Under GATs, Government goods and services covers all government and international organizations' transactions. It is subdivided into services transacted by embassies and consulates, military units and agencies, and all other government services offered by the government of one country on behalf of another government.

²³The term memo item: commercial services includes all service categories except government services not included in other service categories. Such goods and services are offered by a commercial entity on behalf of a foreign commercial entity which may not have commercial presence in the country where the service is consumed. The memorandum items include:

- i) Freight transportation on merchandise, valued on a transaction basis (Sea freight, Air freight, Space freight, Rail freight, Road freight, Inland waterway freight, Pipeline freight, and other types of freight),
- ii) Travel (Expenditure on goods while on travel, Expenditure on accommodation and food and beverage serving services, and All other travel expenditures),
- iii) Gross insurance premiums (Gross premiums – life insurance, Gross premiums – freight insurance, and Gross premiums – other direct insurance),
- iv) Gross insurance claims (Gross claims – life insurance, Gross claims – freight insurance, and Gross claims – other direct insurance),
- v) Financial intermediation services indirectly measured (FISIM)
- vi) Financial services including FISIM, and
- vii) Merchanting gross flows and audio-visual transactions.

- a) Exports are concentrated on a small range of products with strong dependence on primary products with low value addition and use of modern processing technology. Although recent efforts have been made to introduce higher value addition for primary products as a priority through key policy documents, limited results have been achieved in export diversification and product specialisation. For example, efforts to increase coffee sector trade performance by improving the quantity, quality, marketing arrangements and prices offered have not borne significant results as Burundi remains insignificant and a price taker in world markets. However, Burundi coffee can qualify for the global specialty market if it is well promoted and consistently supplied.
- b) Burundi firms and exporters continue to face regulatory obstacles in their trade transactions. In this regard, while many laws governing private sector activities such as the investment code, commercial code and labour code have been updated and the competition law has been enacted, there is absence of appropriate accompanying regulations to facilitate application of these laws. This implies risks of arbitrary implementation of such laws to the detriment of businesses which are supposed to be beneficiaries. For example, the general business incentives given under the investment code are insufficient to attract foreign direct investment and encourage local entrepreneurs to expand their activities because of subsequent high transport²⁴ and energy costs for international transactions, coupled with poor quality services which end up as disincentives to business operations. Frequent power failures in this respect end up forcing businesses to invest in backup power sources, which consequently increase business operating costs, forcing businesses to produce uncompetitive products for regional and international markets.
- c) Businesses have poor knowledge by about the content of trade and market access preferences given through key international trade agreements to enable access to international markets. The key agreement in this regard is the EU Economic Partnership Agreements. Burundi businesses lack sufficient understanding about relevant provisions of this agreement and how to apply such provisions on their export transactions to EU countries; including rules-of-origin, quality standards, and SPS²⁵ measures. The absence of good knowledge ends up as an obstacle for Burundi exporters in accessing EU markets.
- d) Burundi is currently excluded from accessing the lucrative USA market for goods under the AGOA facility. The USA AGOA²⁶ provides duty-free market access into the United States for qualifying products produced in designated Sub-Saharan African beneficiary countries. It extends duty-free preferences previously available under the US *Generalised System of Preferences* (GSP), while also adding many additional tariff lines that were not previously GSP-eligible. Virtually all GSP tariff lines have received AGOA eligibility (i.e. duty-free preferences). In addition, AGOA also provides duty-free access to textiles and apparel subject to compliance with the specific rules of origin for wearing apparel. For example, textiles (HS chapter 50-60 and 63) are AGOA eligible only when produced and exported by a '*lesser developed*' AGOA beneficiary country. Wearing apparel (HS chapters 61 and 62) are granted duty-free status within a number of different rules of origin categories, each with their own special classification. In addition, to benefit from AGOA, a beneficiary country must be deemed to be making progress towards a market economy, a multiparty system and the rule of law, the elimination of discriminatory barriers to American trade and investment, intellectual property protection, combat against corruption, protection of human rights and labour

²⁴High transport costs are mostly as a result of Burundi being a land-locked country

²⁵ Sanitary and Phyto-Sanitary measures

²⁶ The US African Growth and Opportunity Act (AGOA), signed in May 2000, offers trade preferences (duty-free status) on virtually all marketable goods produced in AGOA-eligible countries upon entry into the US market, with intention of stimulating economic growth and facilitating sub-Saharan Africa's integration into the global economy.

standards, and the abolition of certain forms of child labour. Burundi does not currently meet the latter areas of eligibility criteria under AGOA (particularly the market economy, multiparty system, IPR, corruption, human rights and labor standards). Thus while Burundi is a potential beneficiary of AGOA as a Sub-Saharan African country, its exporters cannot access the US market on account of Burundi's non-eligibility under AGOA.

Measures to Unlock Burundi's Trade Potential

Key challenges that need to be addressed to unlock Burundi's trade potential include:

- a) Reducing high transport costs associated with Burundi being a landlocked country, characterised by high fuel costs and poor road conditions on some transport legs on central and northern corridor. Burundi entirely depends on sea shipment services at the ports of Dar es Salaam and Mombasa for its international transactions. These ports are situated at 1,200 km and 2,050 km respectively from Bujumbura, which translates to additional time and cost for Burundi importers and exporters. To improve on transport efficiency, it is important to continue improving trade facilitation measures as a combined effort of all EAC countries, focusing on improving access to imported production inputs and improving speed and cost of accessing regional and international markets.
- b) Reducing the high energy costs for producers
- c) Expanding the current narrow export base through value addition of available products that are exported in unprocessed and/or semi-processed form.
- d) Addressing NTBs on imports (including inputs), which adversely impact on ability to process goods for regional and international markets. Some notable NTBs include axle weight limits specified under weighbridge regulations, roadblocks and associated corruption incidences during transport, bureaucracy/ long procedures in clearing cargo at the port of Dar-es-Salaam, work permit requirement for Clearing & Forwarding agents at Dar es Salaam which affect imports, lack of quality standards and SPS laboratory facilities at border stations (such as Kobero and Mugina border-posts) which delay clearance by at least 2 days²⁷, Slow customs services, false customs declarations by Customs agents resulting to high fees, blocking of small cross-border traders from accessing clearance offices by Air and Border Police, poor availability of BCB bank at border posts (such as Mugina) forcing cross-border traders to travel long distances (for example to Makamba) to pay for cost of analysis, and prohibition of cross-border trade between Tanzania and Burundi at Mugina except for specified food products (rice, maize, cassava) originating from Tanzania; etc.

Rwanda Merchandise Trade Performance

Rwanda's total merchandise trade grew from US\$ 1.37 million in 2009 to US\$ 3.95 million in 2018, or by 191% over the period 2009-2018 as summarised in table6below. Exports grew from US\$ 260.7 million in 2009 to US\$ 1.02 billion in 2018 or by 290%, while imports grew from US\$1.112 million in 2009 to US\$ 2.97 million in 2018 or by 167%% over the period. Overall the country's trade deficit grew from US\$ 851.4 million in 2009 to US\$ 195 billion in 2018 or by 129% during the period.

Table6: Rwanda's merchandise trade with the world 2009-2018 (US\$ '000)

Year	Total Exports	Total Imports	Total merchandise trade	Trade Balance 2009-2018
2009	260,660	1,112,015	1,372,675	(851,355)

²⁷ For example samples of incoming goods have to be sent to Bujumbura for testing before clearing at Kobero or Mugina border posts

Year	Total Exports	Total Imports	Total merchandise trade	Trade Balance 2009-2018
2010	241,828	1,405,159	1,646,987	(1,163,331)
2011	401,311	1,508,305	1,909,616	(1,106,994)
2012	506,989	1,831,958	2,338,947	(1,324,969)
2013	608,097	1,989,145	2,597,242	(1,381,048)
2014	653,365	1,954,210	2,607,575	(1,300,845)
2015	548,835	2,572,276	3,121,111	(2,023,441)
2016	555,137	2,607,072	3,162,209	(2,051,935)
2017	948,319	2,947,849	3,896,168	(1,999,530)
2018	1,017,862	2,971,519	3,989,381	(1,953,657)
% growth	290%	167%	191%	129%

Source: Computations from ITC Trade Maps data www.intracen.org

Rwanda's top 10 merchandise exports are semi-processed/ manufactured gold which took 19% export market during the period 2009-2018, coffee and tea (11% each); niobium, tantalum, vanadium and zirconium ores and tin ores (10% each); tungsten ores (3%), raw hides and skins (1.5%), and vegetables (0.6%). Combined, these products contributed 65% of the country's merchandise exports during the period 2009-2018.

The Democratic Republic of Congo (DRC) is the largest destination of Rwanda exports, accounting for an average 26% of total exports during the period 2009-2018, followed by Tanzania (11%), Kenya (10%), Switzerland (7%), United Arab Emirates (9%), and Uganda (6), Belgium (4%), Burundi (3%), USA (2.6%) and UK (2.4%). Combined, these top 10 export destinations took the bulk of Rwanda exports at 81% export market share during the period 2009-2018.

The regional market mostly consumes non-traditional exports and re-exports (such as fuel products and textile/garments to DRC). On the other hand, exports to non-African markets comprise traditional commodities (tea, coffee and minerals) and horticultural products (still in low volume and value but slowly picking up).

Rwanda's major merchandise imports include: telephone sets, petroleum oils obtained from bituminous minerals, construction materials (cement, iron steel products), medicaments, sugarcane, wheat and meslin, palm oil, and motor vehicles. The share of these products to total imports averaged 23% during the period 2009-2018.

Rwanda's major import markets are China which took an average 16% market share of total merchandise imports during the period 2009-2018, Uganda (11%), India and UAE (9% each), Kenya (7%), Tanzania and Japan (4% each), Germany (3%), Belgium (2.7%), and South Africa (2.6%). Combined the top 10 import markets contributed 68% of Rwanda total imports during the period of analysis as summarised in Annex 12. Rwanda's imports from African countries (mainly EAC) are generally made of construction materials (cement, iron steel, tubes and pipes), food products (sugar cane, maize, fish, roots and tubers etc).

Rwanda Services Trade Performance

Rwanda's services exports grew impressively from US\$ 978.7 million in 2009 to US\$ 1.9 billion in 2018 or by 93% during the period 2009-2018, while the services imports increased from

US\$ 1.5 billion in 2009 to US\$ 2 billion in 2018 or by 35%. Overall, the country's services trade deficit decreased from US\$ 528.7 million in 2009 to US\$ 99.1 million in 2018 or by an impressive 81% as shown in table 7 below. Between 2014 and 2016, the services trade deficit had increased substantially from US\$ 270.6 million in 2014 to US\$ 924.3 million in 2015 and US\$ 910.6 million in 2016, but thereafter reduced to US\$ 234.7 million in 2017 and further to US\$ 99.1 million in 2018. Thus while the country still runs a trade deficit in services trade, there has been a marked increase in service exports over service imports during the decade.

Table 7: Rwanda's services trade 2009-2018 (US\$'000)

Year	Total service Exports	Total service Imports	Total services trade	Trade balance 2009-2018
2009	978,732	1,507,454	2,486,186	-528,722
2010	1,018,310	1,555,384	2,573,694	-537,074
2011	1,383,946	1,766,826	3,150,772	-382,880
2012	1,390,526	1,462,458	2,852,984	-71,932
2013	1,537,431	1,651,780	3,189,211	-114,349
2014	1,585,058	1,855,703	3,440,761	-270,645
2015	2,203,074	3,127,392	5,330,466	-924,318
2016	2,242,919	3,153,511	5,396,430	-910,592
2017	2,725,184	2,959,882	5,685,066	-234,698
2018	1,890,299	1,989,396	3,879,695	-99,097
Total 2009-2018	16,955,479	21,029,786	37,985,265	-4,074,307
% Growth	93%	32%	56.05%	-81%

Source: ITC trade in services database based on IMF statistics

The major services exports as represented by data for the period 2009-2018 were professional services (categorised as all other services)²⁸ which took 39% market share, memorandum commercial services (28%), travel (16%), and government goods and services (10%); which combined accounted for an average 93% of the country's service exports during the analysis period.

For services imports, the major categories comprise professional services (under all other services) which took a 37% market share of the country's total services imports during the period 2009-2018, commercial services (31%), and transportation (16%); which combined accounted for 84% of total service imports during the period of analysis.

Key Reasons for Rwanda's Trade Performance on Goods and Services

One of the factors explaining the country's high trade deficit in merchandise trade is continued dependence on traditional exports which are sold in unprocessed form, although semi-manufactured gold has emerged as the country's top export earner, peaking from US\$ 7.61 million in 2014 to US\$ 636 million in 2018. As summarised in table 6 above, Rwanda's merchandise exports grew by an average 290% while merchandise imports grew by 191% during the same period. On the other hand, services exports grew by an average 93% between

2009 and 2018. The good export performance for some major goods and services is attributed to greater trade openness, price liberalization, improved public financial management, financial reforms (including e-payments system), services liberalization, and substantial public investment in infrastructure.

These macro-economic reforms have enabled the country to enjoy strong economic growth over the period of analysis, growing at an average of 7% between 2009 and 2018. The IMF²⁹ projects the country's GDP will grow by an average rate of between 7% and 8% in 2019 and 2020 respectively. In addition to good macro-economic reforms, the country's high economic growth is attributed to high and stable global prices for some traditional exports like tea and coffee, improved agricultural output, and growth in transport, tourism and construction activities; all which have contributed to enabling the country to recover from drought and the downturn experienced in 2016 (*whereby the GDP growth rate had declined from 8.9% in 2015 to 6% in 2016*³⁰).

Good macro-economic reforms have also enabled Rwanda to enjoy relatively high rankings in the World Bank's Ease of Doing Business Index, with the country ranking position 29 out of 190 economies in 2019³¹. This has resulted to increased attraction of FDI³² in key economic sectors like energy, agriculture, and services (trade, hospitality, financial, construction and tourism).

Although the country still faces a huge trade deficit, efforts are underway to resolve this challenge. A notable initiative in this regard is the "Made in Rwanda Policy" (MIRP) introduced in 2015, which has prioritised actions to increase domestic production of goods and exports of semi-manufactured gold. The policy has contributed to reducing the high trade deficit on merchandise goods, with some notable decline observed both in 2017 and 2018. In addition, the emergence of semi-manufactured gold as the country's major export earner since 2015 has contributed to reducing Rwanda's trade deficit as evidenced by export data for the period 2009-2018.

Specifically, good export performance on goods and services has been as a result of:

- a) Sustained high economic growth; with a strong growth in the average year-on-year GDP coupled with relatively low inflation;
- b) Low corruption: Rwanda is rated as one of Africa's four least corrupt nations and 48th in the world as per the Transparency International's 2018 Corruption Perception Index;
- c) Eases of starting a business: Rwanda is rated as a top global consistent reformer since 2008 (World Bank Doing Business Reports), and the 2nd easiest place to do business in Sub-Saharan Africa.
- d) Access to markets: Rwanda's market of 12.2 million people has a growing middle class, which is supported by the EAC Common Market which has a regional market potential estimated at 162 million consumers. Rwanda also has access to the eastern DRC market of approximately 35 million people.
- e) Untapped investment opportunities: Rwanda has potential investment opportunities which are particularly attractive to FDI in the following sectors: infrastructure, energy,

²⁹ The International Monetary Fund

³⁰ World Bank data (www.worldbank.org/GDP growth (annual %)

³¹ Rwanda was the second-best in sub-Saharan Africa after Mauritius on Ease of Doing Business in 2019

³² Foreign Direct Investment

agriculture, tourism, manufacturing, information and communication technology, mining, financial services, real estate, and construction. Sustained new investments in these sectors has been a key driver in the country's increased exports over the last decade.

Measures to Unlock Rwanda's Trade Potential

Key priorities to increase Rwanda's export trade performance and unlock trade potential include:

- i) **Providing firm-level support:** In efforts to enhance firm-level competitiveness, the government has prioritised measures to upgrade capacities of firms to enter and grow regional and global export markets. The Rwanda Development Board (RDB) in this respect supports an export capacity program aimed to grow the number of successful exporters and export volumes, and also administers the export advisor initiative (EIA) which offers advisory support to exporters through a cadre of qualified and experienced advisers, focusing on export and market entry strategies as part of business development measures.
- ii) **Establishment of the Export Growth Facility (EGF):** Rwanda exporters and potential exporters are supported financially through the Export Growth Facility, which has better credit terms compared to other traditional financial instruments. The EGF is designed as a single fund with three separate windows for funding: 1) an investment catalyst fund to encourage export focused investments, 2) a matching grant fund for medium sized exporters to meet specific requirements in target markets, and 3) an export guarantee facility to underwrite exports. Through these measures, EGF has facilitated increased exports by supporting and sustaining the efforts of exporters to venture into export markets.
- iii) **Support to SMEs development:** The SMEs policy in Rwanda supports the development of SMEs clusters, which have in turn enabled the building of supply and value chains that have been instrumental in improving firm-level productivity and efficiency, stimulating and enabling innovations, and facilitating commercialization and new business formations. All these dynamics have further boosted efforts to exploit export potentials.
- iv) **Continued focus on the "Made in Rwanda" initiative:** This Policy aims to boost local industries' contribution to economic growth, promote Rwandan brands locally and globally, reduce the country's import burden and boost consumption of locally made products. The key measures being implemented in efforts to achieve these goals include awareness drives, enhanced quality standards, and improved branding and packaging of products along the value chain.
- v) **Focused support to value addition:** Rwanda has prioritised value addition in order to raise products' competitiveness in export markets, particularly for agro processing and agribusiness. In this regard, the National Agricultural Export Development Board (NAEB) has given emphasis to expansion of coffee washing stations and provision of technical training to farmers, which has contributed to increasing the quality of coffee from 30% in 2013 to 60% in 2018. For tea, increased production has been driven by the construction of six new tea processing factories between 2013 and 2018.
- vi) **Provision of a business friendly environment:** Rwanda's has prioritised pro-business and investment friendly policy reforms, which are necessary for strong and sustained economic growth, low corruption ratings, conducive business environment, and export orientation. These efforts have already borne good results as evidenced by the country's high ranking in the World Bank's Ease of Doing Business Index.

- vii) Implementation of Rwanda Special Economic Zones (SEZs: Rwanda has prioritised the SEZs to address constraints facing businesses and investors. The Kigali SEZ has for example attracted investors in heavy and light manufacturing, large scale industrial plants, commercial wholesalers, chemicals, pharmacy and plastics; warehousing, tourism, ICT and logistics businesses. These investments have increased the country's export potential.
- viii) Continued support to products with emerging export potentials: The country has prioritised support to products with export potentials, such gold and gemstones which have emerged as major exports thus enabling the country to take advantage of the recovery of commodity prices in international markets in both 2017 and 2018. In addition, increased demand from neighbouring countries (mainly Eastern DRC) for clothing accessories and petroleum products has been identified as an area with export potential, and Rwanda has started increasing re-exports of such products to DRC.
- ix) Building capacity for collection of services sector trade data: The country has recognised that mechanisms to capture accurate and reliable services trade data (including values and destination countries and/or countries of origin) are weak, and has thus prioritised capacity building programs, including human resource development and institutional strengthening.
- x) Transformation of Rwanda into a regional trade hub: The government has prioritised construction of new international business class hotels, a convention center in downtown Kigali, a new inland container terminal and bonded warehouse in Kigali, and expansion of the national carrier RwandAir; all which will contribute to making Rwanda a regional trade, logistics, and conference hub.
- xi) Prioritisation of regional and international integration initiatives: In order to enhance export trade competitiveness in regional and global markets, Rwanda has embraced regional and international economic integration as an important aspect of the country's development agenda. In this respect, Rwanda as a member of EAC is committed to implementation of all the Customs Union³³ and Common Market³⁴ provisions. Rwanda is also a member of COMESA³⁵, and has also concluded a Bilateral Investment Treaty (BIT) and a Trade and Investment Framework Agreement (TIFA) with the United States. In 2009, Rwanda became a member of the Commonwealth and is scheduled to host the Commonwealth Heads of Government meeting in 2020. The country is also a member of WTO³⁶ since 1996, while at the continental level it has signed and ratified the African Continental Free Trade Agreement (AfCFTA) which aims to create an African single continental market.

KENYA TRADE PERFORMANCE

Kenya Merchandise Trade Performance

Kenya's total merchandise trade grew from US\$ 14.7 billion in 2009 to US\$ 24.43 billion in 2018 or by 60%. Merchandise exports grew from US\$ 4.46 billion in 2009 to US\$ 6.1 billion in 2018 or by 36%, while imports grew by a higher rate of 70% from 10.2 billion in 2009 to 17.38 billion in 2018. As a result the country's trade deficit increased from US\$ 5.74 billion in 2009 to US\$ 11.33 billion in 2018 as shown in table 8 below.

³³ The key provisions of the Customs Union include elimination of tariffs on goods originating from the EAC Partner States, implementation of the common external tariff on imports from non-EAC countries, application of harmonised Rules of Origin, and removal of non-tariff barriers (NTBs) on goods traded within the Community.

³⁴ The Common Market provisions are the four Freedoms of movement (Goods; Persons (Labour/ Workers); Services; and Capital); and the two Rights (establishment and residence).

³⁵ Common Market for Eastern and Southern Africa countries

³⁶ World Trade Organization

Table8: Kenya's Merchandise Trade Performance

Year	Total merchandise exports	Total merchandise imports	Total merchandise trade	Trade balance 2009-2018
2009	4,463,439	10,202,013	14,665,452	(5,738,574)
2010	5,169,114	12,092,909	17,262,023	(6,923,795)
2011	5,758,743	14,788,054	20,546,797	(9,029,311)
2012	6,134,362	16,282,129	22,416,491	(10,147,767)
2013	5,830,953	16,406,856	22,237,809	(10,575,903)
2014	6,111,947	18,386,142	24,498,089	(12,274,195)
2015	5,906,845	16,062,418	21,969,263	(10,155,573)
2016	5,697,566	14,113,744	19,811,310	(8,416,178)
2017	5,746,973	16,690,006	22,436,979	(10,943,033)
2018	6,050,421	17,376,721	23,427,142	(11,326,300)
Total 2009-2018	56,870,363	152,400,992	209,271,355	(95,530,629)
% Growth	36%	70 %	60%	97%

Source: Computations from ITC Trade Maps data www.intracen.org

The country's top 10 merchandise exports which combined took 49% of total exports during the period 2009-2018 as shown in Annex 15 are: tea which took 21%, cut flowers (9%), petroleum products (6%), coffee (4%); medicaments, tobacco products and ammonium carbonate (2% each); and fresh or chilled vegetables and iron or non-alloy steel products (1% each).

Kenya's major merchandise export markets as represented by average market shares during the period 2009-2018 are Uganda which took 12%, United Kingdom (8%), Tanzania and Netherlands (7% each), USA and Pakistan (6% each), United Arab Emirates (5%), Egypt (4%), DR Congo and Somalia (3% each). Combined, these 10 ten export destinations took 61% of the country's merchandise exports during the period.

The country's 10 major merchandise imports as shown in Annex 17 are petroleum products which took an average 20% market share of total merchandise imports during the period 2009-2018; palm oil, motor cars, aircraft, and medicaments (3% each); and telephone sets, wheat, and flat-rolled iron and non-alloy steel products (2% each).

The major import markets of merchandise goods are China which contributed 16% market share during the period 2009-2018, India (13%), UAE (9%); Japan, USA, Saudi Arabia and South Africa (5% each); and Indonesia, UK and Germany (3% each).

Kenya Services Trade Performance

Kenya's total services trade grew from US\$ 13.32 billion in 2009 to US\$ 21.34 billion in 2018 or by 60% during the period 2009-2018. Total services exports increased from US\$ 8 billion in 2009 to US\$ 12.7 billion in 2018 or by 59%, while services imports also increased from US\$ 5.3 billion in 2009 to US\$ 8.7 billion in 2018 or by 63% during the period. Overall, the country experienced a positive services trade balance during the period, increasing from US\$ 2.65 billion in 2009 to US\$ 4 billion in 2018 or by 50% as shown in table 9 below.

Table 9: Kenya's Trade in Services

Year	Total services exports	Total services imports	Total Services Trade	Trade balance 2009-2018
2009	7,983,955	5,333,443	13,317,398	2,650,512
2010	10,560,613	6,068,076	16,628,689	4,492,537
2011	11,613,808	6,536,831	18,150,639	5,076,977
2012	13,998,458	7,525,658	21,524,116	6,472,800
2013	14,464,190	8,195,074	22,659,264	6,269,116
2014	14,164,528	9,783,183	23,947,711	4,381,345
2015	12,985,123	9,718,610	22,703,733	3,266,513
2016	11,667,840	8,004,065	19,671,905	3,663,775
2017	13,080,541	9,030,531	22,111,072	4,050,010
2018	12,664,986	8,677,789	21,342,775	3,987,197
Total 2009-2018	123,184,042	78,873,260	202,057,302	44,310,782
% Growth	59%	63%	60%	50%

Source: ITC trade in services database based on IMF statistics

The major services exports are professional services (*all other services as per GATs Agreement*) which took 36% of total services exports between 2009 and 2018, memo commercial services (29%), transport (15%), travel (7%), government goods and services³⁷ (6%), and telecommunications, computer, and information services (4%).

The country's major services imports are: professional services (or all other services) which took 35% of total services imports between 2009 and 2018, memo commercial services (32%), transport (15%).

Key Reasons for Kenya's Trade Performance on Goods and Services

Some key reasons for Kenya's trade performance over the period 2009-2018 are elaborated below:

a) Application of a focused export strategy to USA under AGOA Facility

Kenya has entered into preferential trade agreements with USA under AGOA which offers quota free and duty free market access for a wide range of export products, subject to meeting the eligibility criteria such as rules of origin and product quality specifications. The AGOA facility, introduced in 2000 was to expire in July 2015 but was subsequently extended to 2025. It mostly benefits apparels but the range of eligible products has overtime been enhanced to include home decor and personal accessories, processed and speciality foods, flowers, coffee, tea, and fresh fruits and vegetables. While Kenya's efforts to exploit its export potential to US under the facility was initially constrained by several demand and supply side challenges, a strategic step was taken to understand and better manage the challenges by formulating the Kenya AGOA Strategy for the period 2012-2016. This strategy has enhanced Kenya's overall exports to the US, which over the period 2012-2016 grew by 41.6% from US\$

³⁷ Under GATs, Government goods and services covers all government and international organizations' transactions. It is subdivided into services transacted by embassies and consulates, military units and agencies, and all other government services offered by the government of one country on behalf of another government.

389.5 million in 2012 to US\$ 551.5 million in 2016, while AGOA/GSP specific exports grew by 34.1% from US\$ 293 million in 2012 to US\$ 393 million in 2016.

In efforts to sustain increased exports, Kenya with support of USAID through the East Africa Trade and Investment Hub, also formulated the Kenya National AGOA Strategy and Action Plan (2018-2023), whose goal is to increase exports to the US by 20% annually. This latter strategy provides strategies and actions for increasing exports to the US, and focusing specifically on expanding US market share and buyer diversification, trade facilitation, skills development, increased productivity, trade-support capacity building, and export supply development. Although Kenya apparel exports have been the main beneficiary of AGOA, there is room for increased exports other products, hence the need to diversify the portfolio of other potential AGOA eligible sectors through value-addition; such as home decor and personal accessories, tea, coffee, macadamia nuts, fresh produce, processed and specialty foods.

b) Challenges of exporting to EAC, African regional and wider African continent

As detailed in the Kenya RTP report, for the African market, particularly the regional market which has traditionally been the main export market for Kenyan manufactured goods (EAC, COMESA and SADC), exports have been declining in recent years because of:

- i) Lack of adherence to the EAC Customs Union and Common Market Protocols, particularly due to application of NTBs by other EAC countries on Kenyan goods contrary to the Customs Union provision which requires free movement of goods within the Community subject to meeting rules of origin criteria. Some known NTBs in this regard relate to quality standards, rules of origin, SPS measures, and weights and measures specifications, axle loads, police roadblocks, customs documentation and declarations, and immigration requirements on issuance of work permits.
- ii) Stiff competition between regionally produced and imported goods for the regional markets, including counterfeit and cheap substandard products originating from China
- iii) Increased production of goods by EAC countries which Kenya had previously maintained an edge over other regional countries. The result has been replacement of Kenyan originating goods in the regional market.
- iv) High Power tariffs, making Kenyan products uncompetitive in the regional markets.
- v) With the onset of the Customs Union, Kenyan manufacturers have increasingly been unable to access the regional market using export promotion schemes like the duty exception, duty remission and the EPZ³⁸ programme. These schemes had previously enabled manufacturers to import raw materials and other inputs free of duty for production of export oriented products. However under the EAC rules of origin, the final products can no longer qualify as Kenyan originating and are therefore disqualified for duty free trade within EAC. The result has been that the EAC as an export market for Kenya has to a large extent been lost and manufacturers should focus on competition for the regional market based on production and supply chain competencies but not on production based on imported duty free materials/inputs.
- vi) Protectionist national policy measures by other EAC Partner States against Kenyan goods, which is evidenced by application of NTBs and stays of application from CET; with the latter denying regional manufacturers the chance to supply the regional market.
- vii) Lack of product diversification by Kenyan manufacturers and poor adoption of modern technologies that suit production for the regional market, particularly EAC and COMESA countries. In this regard, there is inadequate value addition to agricultural sector products which have potential for intra-regional trade (particularly coffee, tea, hides and skins, and cotton), which ultimately affects potential to realise higher export prices. This is made

³⁸ Export Promotion Zones

worse by persistent trade wars between the counties, such as the intra-EAC trade wars on processed milk, which ends up limiting the capacity of manufacturers to enter the regional market for products that are produced from local raw materials.

- viii) Distance, communication and supply chain logistical challenges which limit market access particularly for the SADC countries
- ix) Relocation/migration of some companies from Kenya to the regional countries after onset of the Customs Union, which precipitated the loss of potential to produce for regional market using imported duty free materials. Relocation has also been catalysed by increased competition from stronger continental suppliers especially from South Africa, which has necessitated the need to locate production units close to intended markets in order to save on transport and distribution costs.
- x) For services sector, there are persistent trade wars especially with Tanzania, with Kenyan tour operators in 2018 being banned from accessing Serengeti national park, and Kenya retaliating by banning Tanzanian tour vans from accessing Maasai Mara game reserve. In addition, the EAC region has not yet agreed on services to be commonly traded without restrictions as part of fast tracking implementation of Common Market provisions on free movement of services. The result has been inability to grow the regional services sector.

c) Challenges of exporting to other international markets (excluding USA)

- i) There has been continued reliance on traditional non-value added agricultural products (tea, coffee, hides and skins, horticulture), due to inadequate adoption of technologies that would facilitate production of value added goods.
- ii) Hightechnical quality standard requirements, especially quality standards and SPS measures demanded by international markets has resulted to Kenyan products being uncompetitive in such markets, particularly the EU. Kenyan companies lack capacity to meet such high quality standard requirements.
- iii) While the rest of the world has well developed industrial sectors which enjoy economies of scale, African countries (Kenya included) has not maximised its production potential due to lack of proper uptake of production models like subcontracting and partnerships exchange schemes (SPX). Such models entails production of a single item by many players who specialize in production of parts that eventually go into assembly of the final good intended for the market. This enables mass production of parts contracted to each producer, thereby maximizing on economies of scale and facilitating specialisation and firm competitiveness.
- iv) Kenyan producers are constrained by high cost and unreliable power supply compared to many competitor countries, which ends up into production of goods that are not price competitive in international markets.
- v) Distance, transport/communication and logistical challenges also limit access to international markets.

TANZANIA TRADE PERFORMANCE

Tanzania Merchandise Trade Performance

Tanzania's total merchandise trade grew from US\$ 9.5 billion in 2009 to US\$ 12.3 billion in 2018 or by 29%. Merchandise exports grew from US\$ 3 billion in 2009 to US\$ 3.8 billion in 2018 or by 27%, while imports grew from 6.53 billion in 2009 to 8.5 billion in 2018 or by 30%. Overall the country's trade deficit increased from US\$ 3.55 billion in 2009 to US\$ 4.72 billion in 2018 or by 33% during the period of analysis as shown in table10 below.

Table10: Tanzania merchandise trade 2009-2018 (US\$'000)

Year	Total merchandise exports	Total merchandise imports	Total merchandise trade	Trade balance 2009-2018
2009	2,982,401	6,530,817	9,513,218	(3,548,416)
2010	4,050,545	8,012,855	12,063,400	(3,962,310)
2011	4,734,940	11,184,231	15,919,171	(6,449,291)
2012	5,547,231	11,715,584	17,262,815	(6,168,353)
2013	4,412,545	12,525,413	16,937,958	(8,112,868)
2014	5,704,648	12,691,088	18,395,736	(6,986,440)
2015	5,854,210	14,705,966	20,560,176	(8,851,756)
2016	4,741,898	7,876,098	12,617,996	(3,134,200)
2017	4,178,105	7,765,411	11,943,516	(3,587,306)
2018	3,795,723	8,510,639	12,306,362	(4,714,916)
Total 2009-2018	46,002,246	101,518,102	147,520,348	(55,515,856)
% Growth	27%	30%	29%	33%

Source: Computations from ITC Trade Maps data www.intracen.org

The country's top 10 merchandise exports during the period 2009-2018 as shown in Annex 21 are: semi-manufactured gold which took 31%, other precious-metal ores and concentrates (8%), nuts (e.g. coconuts, brazil and cashew nuts (5%), unmanufactured tobacco (4%), coffee (4%); coffee, fish, dried, leguminous vegetables, oil seeds and oleaginous fruits (3% each); Manganese ores and concentrates (2%)), and Cotton (1%). Combined, these top 10 products took 62% of total merchandise exports during the period 2009-2018.

Tanzania's major merchandise export markets as represented by average market shares during the period 2009-2018 are India which took 15%, South Africa (14%), Switzerland (11%), China (10%), Kenya (7%); Japan and DR Congo (4% each), Germany and Belgium (3% each), and Netherlands (2%). Combined, these 10 ten export destinations took 74% % of the country's merchandise exports during the period.

The country's 10 major merchandise imports are petroleum products which took an average 30% market share of total merchandise imports during the period 2009-2018; motor cars for the transport of persons and goods (4%); wheat, palm oil, and medicaments and flat-rolled iron and non-alloy steel products (2% each); telephone sets and tractors (1.5%); and rubber tyres (1.3%). Combined, the top 10 imports took 47% of total merchandise imports during the period 2009-2018.

The major merchandise import markets are China and India each of which contributed 14% market share during the period 2009-2018, UAE (9%), Saudi Arabia (8%), Switzerland (7%), South Africa (6%), Japan (5%), Kenya (3%); and USA and UK (2% each). Combined, these top 10 import markets contributed 70% of Tanzania's total merchandise imports during the period 2009-2018.

Tanzania Services Trade Performance

Tanzania's total services trade increased from US\$ 10.63 billion in 2009 to US\$ 16.6 billion in 2018 or by 56% during the period 2009-2018. Total services exports increased from US\$ 5.5 billion in 2009 to US\$ 11 billion in 2018 or by 100% between 2009 and 2018, while services imports increased from US\$ 5.13 billion in 2009 to US\$ 5.6 billion in 2018 or by 9% during the period. Overall, the country experienced an impressive positive services trade balance over

the analysis period, growing from US\$ 375 million in 2009 to US\$ 5.4 billion in 2018 or by 1340% as shown in table 11 below.

Table 11: Tanzania's Trade in Services

Year	Total service exports	Total service imports	Total services trade	Services Trade Balance 2009-2018
2009	5,504,123	5,128,739	10,632,862	375,384
2010	6,092,932	5,620,312	11,713,244	472,620
2011	6,857,115	6,573,280	13,430,395	283,835
2012	8,326,323	7,027,560	15,353,883	1,298,763
2013	9,572,787	7,412,455	16,985,242	2,160,332
2014	10,171,962	7,936,674	18,108,636	2,235,288
2015	10,196,064	7,941,450	18,137,514	2,254,614
2016	10,800,229	6,634,318	17,434,547	4,165,911
2017	11,528,801	5,987,819	17,516,620	5,540,982
2018	10,994,641	5,588,913	16,583,554	5,405,728
Total 2009-2018	90,044,977	65,851,520	155,896,497	24,193,457
% Growth	100%	9%	56%	1340%

Source: ITC trade in services database based on IMF statistics

The major services exports are professional services (*all other services as per GATs Agreement*) which took 33.6% of total services exports between 2009 and 2018, memo commercial services (33.2%), and transport (20%).

The country's major services imports are: professional services (*under all other services as per GATs Agreement*) which took 34% of total services imports between 2009 and 2018, and travel and transport (14% each).

Key Reasons for Tanzania's Trade Performance on Goods and Services

Factors attributed to Tanzania's export trade performance based on the period 2009-2018 include:

- a) For agricultural products, Tanzania experienced an increase in exports of some food items during the period 2009-2018 as a result of increased domestic production; which was catalysed by good weather conditions, increased access to subsidised agricultural inputs by farmers, and application of better agricultural technologies (including agricultural mechanization).
- b) Exports to the regional (EAC, COMESA and SADC), African continental, and global level markets experienced export decrease over the period of analysis as a result of the 2008 global financial and economic crisis, and the 2010 Euro Zone sovereign debt crisis, both which led to decreased global aggregate demand. In addition, cashew nuts experienced very significant export decline in 2018 due to government ban on private sector traders on account of low prices offered to farmers. Further, exports of manufactured goods to the EAC regional market decreased during the period of analysis due to stiff competition mainly from China.
- c) There are a number of supply side constraints which adversely affected exports to the region, African continental and global markets; including poor business environment (characterised by poor policy, legal and regulatory frameworks); poor and costly hard

and soft infrastructure; poor access to utilities (inadequate supply and unreliable access to electricity and water); multiplicity of high tax rates; length period of getting VAT refunds; and non-availability of one stop center for tax payments and unpredictable tax regime (types and rates of taxes). All these factors adversely affected the competitiveness of Tanzania producers in terms of unreliable supplies, poor quantity and quality, and high prices of goods and services.

- d) Inadequate quantity and quality of managerial and technical skills and talents needed by economic sectors (manufacturing, agriculture, ICT, transport logistics, finance, etc); inadequate availability and access to affordable long-term business finance; and poor business environment as articulated in the annual World Bank Ease of Doing Business publications (*particularly difficulties in getting construction permits, business premises; tariff and NTBs experienced in cross border trade, dealing with day to day businesses operations, enforcing contracts and cumbersome labour market regulations including work and residence permits for foreigners*). All these difficulties adversely affect supply side requirements for efficient business operations and thereby international trade competitiveness.
- e) Demand side constraints which lead to reduced trade performance. These include slowdown of the global economy, trade war between China and USA as well as the British Exit from European Union (BREXIT) which have led to declining demand for goods originating from developing countries including Tanzania. The 2008 global financial and economic crisis as well as the 2010 Euro Zone sovereign debt crisis have for example contributed to slow down in the world economy, thereby affecting demand for Tanzania's originating goods.
- f) Weak capacity to negotiate during international trade meetings/forums due to inadequate awareness of regional trade protocols that should guide negotiators to articulate national/regional trade priorities; preparations prior to negotiations arising from insufficient national consultations and coordination; and insufficient analytical work prior to negotiations have contributed to poor trade deals for Tanzania; as highlighted in "Essay in Economics – the Performance of Tanzania in International Trade"³⁹ (undated). In addition, the coordination of Tanzania international trade is not centralized. For instance, negotiations and agreements on EAC are handled by the Ministry of Foreign Affairs and International Cooperation while those on SADC are handled by the Ministry of Industry, Trade and Investment which is also responsible for all multilateral trade issues. This leads to loss of synergies on commitments made on regional and international trade matters.
- g) The Tanzania private sector is not adequately involved in formulation of international trade policies and international trade negotiations due to inadequate financial and human resources. This limits ability to gain experience and adequate awareness about international trade issues, and accrual of low benefits from international trade agreements.
- h) In the case of grains sector, there are several constraints that limit ability to participate effectively in international trade; including:

³⁹The Performance of Tanzania in International Trade: <https://www.ukessays.com/essays/economics/the-performance-of-tanzania-in-international-trade-economics-essay.php>

- i) Trade within the Tripartite regional trading bloc (EAC, COMESA and SADC) is constrained by unpredictability of trade policies which are characterised by prevalence of NTBs such as export bans that lead to tremendous decrease in intra-regional trade
- ii) At the global level, trade is limited by unacceptability of commodities/products due to lack of knowledge on how to apply quality standards in the production process, leading to inability to comply with required international standards. In addition, producers (manufacturers and farmers) have inadequate capacity to comply with traceability requirements demanded in international markets for commodities/products, and thus cannot enter into contractual trading arrangements with international buyers.
- iii) Most Tanzanian products lack presentable packaging and branding, which makes it difficult to compete in the international markets
- iv) Low awareness and uptake of international certification and standards on products traded in international markets: Most SME's products from Tanzania have no international certifications including bar coding from GS1 or ISO; leading to failure to qualify for entry into international markets.
- v) Poor access to affordable finance: Only about 5% of the total commercial bank loans portfolio is dedicated to agriculture, which creates a huge burden on SMEs to compete in the international markets due to lack of adequate working and investment capital.
- vi) Affordability of products: Due to high production costs associated with sourcing of raw materials and inputs, the result is high production cost per unit for majority of Tanzania grains, leading to high prices and uncompetitive processed products in regional and global markets.

Measures to unlocking Tanzania's Trade Potential

Measures to unlock Tanzania's trade potential in regional and international markets should focus in addressing all constraints associated with poor trade performance; including:

- a) Focused attention to improve the poor business environment.
- b) Enhancing the quantity and quality of managerial and technical skills and talents needed by the countries, key economic sectors.
- c) Design of strategy to enable access to affordable long-term business finance.
- d) Building public and private sector capacity for regional and international trade negotiations.
- e) Design of strategy to ensure the private sector is adequately involved in formulation of international trade policies and international trade negotiations.
- f) Design of strategy to address production constraints that adversely affect the grains sector.

UGANDA TRADE PERFORMAMNCE

Uganda's Merchandise Trade Performance

Uganda's total merchandise trade grew from US\$ 5.8 billion in 2009 to US\$ 9.8 billion in 2018 or by 69%. Merchandise exports grew from US\$ 1.58 billion in 2009 to US\$ 3.1 billion in 2018 or by 97%, while imports grew by a slower rate from US\$ 4.25 billion in 2009 to US\$ 6.73 billion in 2018 or by 58%. The country's trade deficit increased from US\$ 2.7 billion in 2009 to US\$ 3.64 billion in 2018 or by 36% during the period as shown in table 12 below.

Table 12: Uganda merchandise trade 2009-2018 (US\$'000)

Year	Merchandise exports	Merchandise Imports	Total merchandise Trade	Trade balance 2009-2018
2009	1,567,592	4,247,370	5,814,962	(2,679,778)
2010	1,618,606	4,664,327	6,282,933	(3,045,721)
2011	2,159,070	5,630,868	7,789,938	(3,471,798)
2012	2,357,505	6,044,147	8,401,652	(3,686,642)
2013	2,407,725	5,817,510	8,225,235	(3,409,785)
2014	2,261,953	6,073,520	8,335,473	(3,811,567)
2015	2,267,014	5,528,107	7,795,121	(3,261,093)
2016	2,482,299	4,829,455	7,311,754	(2,347,156)
2017	2,901,464	5,595,894	8,497,358	(2,694,430)
2018	3,087,264	6,729,359	9,816,623	(3,642,095)
Total2009-2018	23,110,492	55,160,557	78,271,049	(32,050,065)
% Growth	97%	58%	69%	36%

Source: Computations from ITC Trade Maps data www.intracen.org

The country's top 10 merchandise exports are: coffee which took 17% of total merchandise exports during the period 2009-2018, gold (6%), petroleum products (5%), fish (4%); cement, tea, cane and beet sugar, and unmanufactured tobacco (3% each); and horticulture (cut plants) and cocoa (2% each). Combined, the top 10 merchandise exports took 49% of Uganda's total merchandise exports.

Kenya's major merchandise export markets as represented by average market shares during the period 2009-2018 are Kenya which took 15%, Arab Emirates and Rwanda (9% each), DR Congo (8%), Sudan and South Sudan (6% each), Netherlands (4%); and Italy and Germany (3% each). Combined, the top 10 merchandise export markets took 49% of Uganda's total merchandise exports.

The country's 10 major merchandise imports are petroleum products which took an average 20% market share of total merchandise imports during the period 2009-2018; medicaments and palm oil and (4% each); motor vehicles for transport of persons and goods (5%), , telephone sets (3%); and wheat, cement, sugar and flat-rolled iron and non-alloy steel products (2% each). Combined the top 10 imports took 43% of the country's total merchandise imports over 2009-2018.

The major import markets for Uganda merchandise goods as summarised in annex 30 are India which contributed 18% market share during the period 2009-2018, China (13%), Kenya

(10%), UAE (8%); Japan (6%), Saudi Arabia and South Africa (5% each); Indonesia (3%), and UK and Germany (2% each).

Uganda Services Trade Performance

Uganda's total services trade increased from US\$ 7.1 billion in 2009 to US\$ 13.1 billion in 2018 or by 85%. Services exports increased from US\$ 2.9 billion in 2009 to US\$ 5.48 billion in 2018 or by 88% between 2009 and 2018, while services imports increased from US\$ 4.16 billion in 2009 to US\$ 7.62 billion in 2018 or by 83% during the period. Overall, the country experienced an increasing services trade deficit over the period 2009-2018 from US\$ 1.25 billion in 2009 to US\$ 2.14 billion in 2018 as shown in table 13 below.

Table 13: Uganda's Trade in Services

Year	Total Service Exports	Total Service Imports	Total Services Trade	Services Trade Balance 2009-2018
2009	2,911,137	4,163,142	7,074,279	(1,252,005)
2010	3,642,122	5,379,492	9,021,614	(1,737,370)
2011	5,173,960	7,367,244	12,541,204	(2,193,284)
2012	6,200,230	7,433,232	13,633,462	(1,233,002)
2013	6,083,160	7,247,970	13,331,130	(1,164,810)
2014	6,362,255	8,003,222	14,365,477	(1,640,967)
2015	5,919,618	7,127,311	13,046,929	(1,207,693)
2016	5,476,501	6,055,710	11,532,211	(579,209)
2017	4,643,675	6,167,889	10,811,564	(1,524,214)
2018	5,481,209	7,618,823	13,100,032	(2,137,614)
Total 2009-2018	51,893,867	66,564,035	118,457,902	(14,670,168)
% Growth	88%	83%	85%	71%

Source: ITC trade in services database based on IMF statistics

The major services exports are professional services (*all other services as per GATs Agreement*) which took 35% of total services exports between 2009 and 2018, memo commercial services (30%), and travel (18%).

The country's major services imports are: professional services (or all other services) which took 33% of total services imports between 2009 and 2018, memo commercial services (33%), and transport (17%).

Key Reasons for Uganda's Trade Performance on Goods and Services

Merchandise products which demonstrated increased export performance over the period 2009-2018 are largely raw materials and semi processed products with minimal transformation and value addition. Most of these products are exported to the developed countries like Netherlands, Italy and Germany. However some products which require limited technological inputs and sophistication are also emerging as export potentials (such as semi processed gold and also some final products like flat iron and steel bars); with emerging market being the neighboring COMESA and EAC countries. The emerging export trends to neighbouring countries implies that the regional integration process in EAC and COMESA is yielding positive

results for Uganda. The notable aspects of the integration process which have supported increased exports are reduction of tariffs on intra-EAC trade, application of trade facilitation measures (including OSBP and single window system), and adoption of EAC common external tariffs.

For services, analysis of export performance suggests an overall steady growth over the period 2009-2018, although services imports also demonstrated similar trend. The significant increase in services exports performance can partly be attributed to the positive impact of the EAC Common Market which provides a framework for eased services trade among EAC partner states.

Merchandise products which has suffered decreased exports over the period 2009-2018 are mainly those destined to African countries (such as) live animals and animal products, fish products, vegetable products, grains and some intermediate products such as iron/steel tubes and pipes). The major reason for such declines is that some of the target African countries have started producing similar products to those Uganda previously exported to their markets, thus reducing the need for imports. A typical example is Rwanda, which was previously a major importer of Uganda cement but which has started producing its own thus scaling down on imported cement from Uganda. Thus as industrial development takes shape at the regional level, there is likely to be reconfiguration of the market shares among EAC (and also COMESA) member states. China, India and South Africa are also making inroads into the Africa continent and therefore becoming major sources of imports, which is taking the previous market shares from EAC producers resulting to decreased sales within the regional market.

At the continental level, there is homogeneity among African countries in goods produced. This is because African economies are largely agro-based, meaning they largely produce and trade in similar agricultural commodities in addition to emerging albeit small quantities of industrial goods. This ends up limiting potential for intra-regional and intra-African trade, except for certain types of products such as grains (such as maize) and cereals during some drought periods. This explains why the sensitive list at both EAC level is composed of almost similar products as countries try to protect their producers from external competition, which however ends up limiting increased intra-EAC trade.

Regarding imports, analysis shows that Uganda imports have increased by double the value of exports during the period 2009-2018. The imports with significant increase are mainly intermediate and finished manufactured products which require high technology manufacturing process⁴⁰. This indicates that technology and sophistication deficiencies has had adverse impact on Uganda's import bill. The manufactured and semi-processed products in this regard are mainly sourced from Europe, Middle East, America and Asian countries; while a limited number originate from the EAC (largely Kenya and Tanzania). This implies that increased sourcing of manufactured and intermediate goods from the regional market will entail overcoming technology challenges and improving trade facilitation measures to ensure increased competitiveness of regionally produced goods. It will also require focused implementation of the existing national and regional industrialization policies and strategies in order to increase the regional capacity for supplying high quality manufactured products.

In addition to technological deficiencies, other notable factors which have limited Uganda's potential to increase export trade include:

- a) High costs of doing business due to high regulatory burden on producers.

⁴⁰Uganda's notable imported over the period 2009-2018 include flavoured teas, processed coffee, palm and olive oil, sugar confectionary, ceramics, processed petroleum products, beverages, medicaments and pharmaceuticals, polymers and plastics, wood and paper products, synthetic fibers and materials, apparel and clothing, glass products, steel products, assembled vehicles and parts, machinery and equipment, and electrical products.

- b) Increased competition from imports particularly from China and India. In November 2011, EAC and China signed a Framework Agreement on economy, trade, investment and technical cooperation. While the agreement has enabled China to promote trade in EAC, Uganda firms as well as other firms in EAC have found it quite challenging to compete with Chinese originating products since China offers production subsidies which enable firms to compete successfully in foreign markets (for example textiles and garments), which ends up adversely affecting competitiveness of EAC firms in the regional markets (EAC, COMESA, and SADC).
- c) Limited value addition of available domestic raw materials, particularly agricultural products; with Ugandan economy being highly concentrated in agro-processing activities
- d) Dominance of MSMEs⁴¹ in manufacturing activities as notable by WTO, 2019, which are constrained in producing high quality goods by inability to meet standards set by importers in both regional and international markets. In this regard, compliance to these international standards particularly in European markets entails additional costs which most SMEs are unable to meet. This explains why successful exporters in the Uganda (as well as EAC) are usually foreign players.
- e) Climate change has resulted to occasional droughts which affect production of grains (e.g. maize). This has led to volatility of grains exports.
- f) Uganda lacks an effective export strategy focused particularly in accessing international markets; a similar situation for the other EAC Partner States. In this regard, EAC countries have not performed well in penetrating international export markets on value added products. A case in point is the AGOA market which gives tariff and quota free preferences to Sub-Saharan African countries. Except in the case of Kenya for garments, the rest of the EAC beneficiary countries have performed dismally in utilising AGOA provisions to access the US market.
- g) The prevalence of NTBs have ended up undermining the potential to increase intra-regional trade. The WTO (2019) observes that reported NTBs are mainly experienced on customs and administrative documentation and procedures; inspection requirements; police road blocks/check points; transit procedures; quality standards, and SPS measures. NTBs have proved hard to eliminate, thus compromising the aspiration to deepen the integration process. This is despite the efforts made so far in establishing the NTBs elimination mechanism, the time-bound NTBs elimination mechanism, formation of NMCs, and conclusion of the NTBs Act 2016. Uganda in this respect has had trade disagreements with Tanzania on Ugandan sugar exports, while the ongoing political disagreements between Uganda and Rwanda have resulted into Rwanda closing its borders to Ugandan originating goods since early 2019, contrary to the rights and obligations provided for under the Common Market Protocol. Even before the border was closed, Uganda vegetable oil was being restricted in Rwanda on account of application of unclear Rules of Origin. In addition, Uganda rice exports to Kenya have for a long time been restricted. Also, Kenya which occasionally experiences maize shortages recently opted to import maize from Mexico instead of importing from the region which has surplus maize.

Measures to unlock Uganda's Trade Potential

Uganda has identified a number of trade and investment related priorities that need to be addressed in order to unlock the country's and EAC regions trade potential at the regional, continental and global level. The key priority areas in this regard include:

- a) Supporting fast tracking of the African Continental Integration
- b) Continued support to integrating the Single Customs Territory, One Stop Border Posts, and Integrated Border Management initiatives as part of the Customs Union

⁴¹Micro, Small and Medium Enterprises

- c) Creating awareness on the importance of IPR protection against piracy, counterfeits, and IPR non-compliant products
- d) Prioritising conclusion of the EAC Common External Tariff as part of measures to promote production of value added goods for export to regional and international markets; and consumer welfare and protection.
- e) Boost national investments in order to expand supply capacities; including establishing strategies for the removal of impediments to trade, offering incentives to producers for export oriented production in areas designated as export processing zones, and implementing marketing strategies for products with export potential
- f) Prioritising measures to increase intra-EAC grain trade as part of measures to ensure increased consumer welfare and cross border trade
- g) Implementing the EAC SQMT protocol provisions, facilitating acceptance of quality standards certification marks, and identifying and eliminating all NTBs related to technical barriers to trade as part of measures to promote intra-EAC trade
- h) Supporting producers to comply with Sanitary and Phytosanitary standards and certification requirements;enhancing implementation of theSPS Protocol focusing particularly on food safety measures, plant protection and animal health;and fast tracking implementation of the harmonized EAC SPS measures and policies in order to reduce SPS related NTBs which impeded ability to undertake intra-EAC, intra-regional and international trade.
- i) Fast tracking identification and implementation of measures aimed at addressing overlapping membership of EAC Partner States to Multiple RECs; particularly through conclusion of the Tripartite FTA, which focuses in harmonization of customs procedures, transit procedures, tariff liberalization and Rules of Origin.
- j) Elimination of Stays of Application and duty remission schemes in favour of Duty Exemption Schemes for export promotion purposes.
- k) Prioritising conclusion and adoption of an EAC Regional Trade Remedies Law aimed to protect vulnerable producers from competition with imported goods
- l) Fast tracking implementation of the Uganda Services Export Strategy, Apiculture Export Strategy and the National Development Export strategy; all which envisage positioning and branding Uganda on the world market as an exporter of good-quality and dependable services, based on models of international best practices.
- m) Prioritising business development through promotion of locally produced goods and services (under the Buy Uganda Build Uganda initiative)
- n) Supporting development of Micro, Small and Medium Enterprise (MSMEs) as part of measures to facilitate achievement of the country's industrialisation goals
- o) Supporting promotion of Sector-Based Products with high potential to promote production of value added goods for domestic, regional and international markets; including Leather Industry and Textile/Garments Industry.

ANNEX III

HARMONISED PRIORITIES TO UNLOCK EAC TRADE POTENTIAL

There are various trade and investment related priorities which cut across the region, and which would therefore potentially facilitate implementation of the EAC economic integration process as specified under the Customs Union, Common Market and sector/subject based protocols and strategies. These priorities will need to be addressed as part the EAC Regional Trade Policy in order to unlock and increase the region’s trade potential at the regional (EAC, COMESA and SADC), the African Continental and Global Levels. The relevant issues in this regard have been identified through four levels, namely:

- i) A review of the EAC Economic Integration Pillars,
- ii) A review of the RTP Principles Adopted by the SCTIFI in February 2016.
- iii) A review of Partner States’ national policy documents,
- iv) Findings from stakeholders’ consultations conducted as part of the RTP development process between October 2019 and February 2020.

RTP PRIORITIES PROVIDED IN EAC ECONOMIC INTEGRATION PILLARS

An exploration of the background to initiating the EAC economic integration agenda as articulated in the EAC Treaty and its accompanying instruments shows that the EAC economic integration process is based on clearly specified goals on trade and investment, monetary and fiscal policy, and labour and capital markets. As part of efforts to achieve the goals under these pillars, the Partner States at the outset adopted a phased approach to the regional integration process after concluding the EAC Treaty. This phased approach incorporates establishment of a Customs Union in 2005, a Common Market in 2010, and a Monetary Union in 2016. Negotiations towards achievement of the ultimate goal of establishing a Political Federation are underway. Figure 13 below illustrates the economic integration agenda stages which the Partner States adopted as in efforts to achieve the aspirations of the EAC Treaty.

Figure 13: EAC Economic Integration Stages/pillars



The specific provisions governing EAC intra- and extra regional trade under each of the above economic integration stages are summarised in Table 14 below.

Table 14: Key EAC Trade Provisions

Treaty/Legal Obligation	Intra- regional priorities	Extra- regional priorities
Customs Union Protocol (2005)	i) Trade Liberalization <ul style="list-style-type: none"> • Elimination of internal tariffs on intra-EAC traded goods (i.e. duty-free and quota-free movement of tradable goods among Partner States) • Elimination of NTBs on goods traded amongst Partner States 	Trade Liberalization Countries outside the EAC region shall not receive internal tariff reductions as provided by

Treaty/Legal Obligation	Intra- regional priorities	Extra- regional priorities
	<ul style="list-style-type: none"> ii) Common External Tariff (CET) for imports from third party countries iii) Common Rules of Origin (RoO) iv) Common safety measures for regulating importation of goods from third parties such as phyto-sanitary requirements and food standards; v) Common set of customs rules and procedures including documentation; vi) Common customs coding and description of tradable goods (common tariff nomenclature, CTN); vii) Common valuation method for tradable goods for tax (duty) purposes viii) A structure for collective administration of the Customs Union through the EAC Customs Management Act 2004 ix) A common trade policy to guide trading relationships with third countries/trading blocs outside the Customs Union (incl. guidelines for entering into preferential trading arrangements with third parties (such as Free Trade Areas). 	Articles 11 and 14 of the Protocol.
Customs Union Common External Tariff (CET)	<p>The Partner States agreed to remove internal tariffs by 2010 and set a 3-tariff band CET structure that provides:</p> <ul style="list-style-type: none"> i) 0% duty on agricultural goods, raw materials, capital goods, medicines, and certain medical equipment; ii) 10% duty on intermediate goods and other essential industrial inputs; iii) 25% duty on finished goods. <p>However, the goods traded under the CET structure must meet the rules of origin (see below).</p> <p>In addition, the CUP introduced a Sensitive-Goods list with the following provisions:</p> <ul style="list-style-type: none"> x) 59 tariff lines for all products in list xi) The rates are on average 25% higher than those on non-sensitive items 	<p>Common External Tariff (CET)</p> <p>The three band CET applies to goods imported from outside the EAC region.</p>
Customs Union Rules of Origin (RoO)	<p>The purpose of the RoO is to implement the provisions of Article 14 of the CUP, which provides for Partner States to ensure uniformity in application of rules of origin that are transparent, accountable, fair, predictable and consistent. Products manufactured or sourced from outside EAC are subject to applicable CET.</p>	<p>The exports of goods from EAC non-members to the EAC region will be subject to applicable tariffs, with the provisions of the RoO agreement specifications.</p>

Treaty/Legal Obligation	Intra- regional priorities	Extra- regional priorities
Common Market Protocol	<p>The CUP was established as part of measures to implement the EAC Treaty (Article 76 of the Treaty). The CMP aims to facilitate and guarantee implementation of 4 major freedoms:</p> <ul style="list-style-type: none"> i) Free trade in goods ii) Free trade in services iii) Freedom of movement of capital iv) Freedom of movement of labour, the right of Establishment and Residence 	Countries from outside the EAC will not receive the four freedoms spelt out in Article 76 of EAC Treaty.
Monetary Union	<p>The objective of the Monetary Union is to promote and maintain monetary and financial stability in EAC in order to facilitate economic integration and attain sustainable growth and development of EAC Partner States. The Monetary Union is subject to the following convergence criteria:</p> <p>Macroeconomic convergence criteria</p> <ul style="list-style-type: none"> i) Ceiling on headline inflation at 8%; ii) Ceiling on fiscal deficit, including grants at 3% of GDP; iii) Ceiling on GDP debt at 50% of GDP in Net Present Value; and iv) Reserve cover of 4.5 months of imports <p>Single Currency</p> <ul style="list-style-type: none"> i) The Partner States shall adopt a single currency. ii) The single currency will be adopted by at least 3 partner states in order to be used as legal tender. iii) The Partner States who adopt the currency shall form the single currency area. iv) The currency shall be used in the settlement and payment systems of the single currency area. 	After the implementation of the MU EAC non-members will be required to conduct further transactions as per the new single currency.
EAC Customs Management Act	Governs aspects of trade facilitation within the EAC as the major law on customs and revenue in EAC.	Applicable on CET for imports from third countries
NB: Other provisions of the integration process	<ul style="list-style-type: none"> i) NTBs ii) SQMT Protocol iii) Competition Policy iv) Trade remedies v) EPZs and SEZ operations 	<ul style="list-style-type: none"> i) WTO⁴² Agreement ii) AGOA⁴³ iii) EPA⁴⁴ with EU⁴⁵ iv) TFTA⁴⁶ v) Etc

⁴² World Trade Organisation

⁴³ African Growth and Opportunities Act, governing trade between African countries and the United States

⁴⁴ Economic Partnership Agreement

⁴⁵ European Union

⁴⁶ COMESA, SADC and EAC Tripartite Free Trade Area

Treaty/Legal Obligation	Intra- regional priorities	Extra- regional priorities
	vi) (NB: The Customs Union has 16 elements, all which are relevant to the envisaged trade policy and which need to be explored in the assignment)	

Some important milestones have been achieved in the EAC economic integration process as provided in the EAC Customs Union and Common Market as summarised in Table 2 above, which among others include:

- a) Clear elaboration of rules governing intra and extra EAC trade as provided for in the respective Protocols. In this regard, there is optimism that although some challenges still remain (especially the continued existence of NTBs and introduction of new ones since the establishment of the EAC Treaty), the economic integration agenda is underway and promising.
- b) Active participation by the private sector in the integration processes through regional institutions such as EABC⁴⁷ and EACCI⁴⁸.
- c) Conclusion and implementation of some key provisions of the Customs Union particularly on: Common External Tariff, internal tariff arrangements, and application of harmonised rules of origin.
- d) Conclusion of the Common Market Implementation Plan and mechanisms and continued tracking of the requirements by Partner States.
- e) Development of the EAC SQMT⁴⁹ Protocol in 2006, and its subsequent revision to SACA⁵⁰ in 2016; which has facilitated development and/or adoption of a wide range of quality standards and SPS measures
- f) Conclusion of the NTBs Act in 2016, which aims to facilitate elimination of NTBs experienced on intra-EAC trade, to facilitate periodic tracking of future trade obstacles through the NTBs Time-Bound Mechanism.
- g) Establishment of a number of OSBPs⁵¹ and related IBM⁵² systems and procedures with support by TMEA, World Bank and JICA⁵³, aimed to ease the time and cost of crossing EAC borders by goods and accompanying persons⁵⁴.

⁴⁷ East African Business Council

⁴⁸ East African Chamber of Commerce and Industry

⁴⁹ Standards, Quality Assurance, Metrology and Testing services

⁵⁰ Standardization, Accreditation and Conformity Assessment

⁵¹ One Stop Border Posts

⁵² Integrated Border Management

⁵³ Japan International Cooperation Agency

⁵⁴ The established OSBPs are listed below:

No.	OSBP	Border Area	No.	OSBP	Border Area
1	Elegu/Nimule	Uganda-South Sudan border	6	Kobero/Kabanga	Burundi-Tanzania border
2	Malaba	Uganda-Kenya border	7	Holili/Taveta	Tanzania-Kenya border
3	Busia	Uganda-Kenya border	8	Namanga	Tanzania-Kenya border
4	Mirama Hills/Kagitumba	Uganda-Rwanda border	9	Gatuna/Katuna	Uganda-Rwanda border
5	Mutukula	Uganda-Tanzania border	10	Tunduma-Nakonde	Tanzania-Zambia border

- h) Holding of pre-budget consultations between the EAC Ministries of Finance as a prerequisite for formulating national budgets that have similar market driven macro-economic policy objectives
- i) Agreement on the need for a comprehensive review of the CET and Rules of Origin to take into account the needs for value addition in selected sectors
- j) Continuous joint verification missions between Partner States, aimed to confirm the originating status of goods traded across EAC borders and adherence with the value addition and local content criteria as provide in the EAC Rules of Origin (ROO). This is a key requirement for according preferential market access to EAC originating products as provided for under the EAC internal trading arrangements.
- k) Establishment of a Single Customs Territory (SCT) Framework aimed to facilitate free flow of goods in the Community once applicable import duties and other taxes are collected at the first port of entry into the region; the roll out of an initial list of beneficiary products; and development of the SCT standard operating procedures.
- l) Introduction of an EAC Customs Bond, which is implemented as part of the SCT framework and in line with the provisions of the Regional Electronic Cargo Tracking System to prevent diversion of uncustomed goods into the territories of Partner States.
- m) Development of an EAC Plan on AGOA, aimed at increasing and diversifying exports, and improving production of value added tradable goods targeting the US market.
- n) Ongoing EAC negotiations for an EPA with EU and for conclusion of the Tripartite COMESA_EAC-SADC FTA Agreement based on an EAC joint approach.

The above examples clearly demonstrate that EAC Partner States have embraced regional economic integration as a central element in their national development strategies. The Regional Trade Policy will consolidate these gains under one roof, thus enabling them to contribute substantially to resolving challenges related to the trade and market expansion aspirations of the regional producers and manufacturers, and to the trade and investment related goals of Partner States at the national and regional level. The EAC region in this regard is characterized by small size and primary production structures which are dominated by agriculture sector activities with minimal value addition; and a small market size as evidenced by a small GDP base and small per capita incomes (refer to Tables 15 and 16 below). This limitations end up as bottlenecks to expansion and growth plans of national businesses.

Regarding the small market size, the combined EAC GDP grew from US\$ 154.5 million in 2016 to US\$ 170.4 million in 2017 and further to US\$185.4 million in 2018 as shown in Table 14 below. On the other hand, the EAC combined regional GDP per capita grew from an average US\$ 713 in 2016 to US\$ 852 in 2017 and further to US\$ 891 in 2018 as shown in Table 15 below. The small EAC regional market compares poorly with the mature economies which are major EAC trade partners, including the United Kingdom and USA, with USA having a GDP of US\$ 18.7 Trillion in 2016, US\$ 19.5 Trillion in 2017 and US\$ 20.5 Trillion in 2018; while UK had a GDP amounting to US\$ 2.66 Trillion in 2016, US\$ 2.64 Trillion in 2017 and US\$ 2.83 Trillion in 2018. On the other hand, the US recorded a PCI of US\$ 57,904 in 2016, US\$ 59,928 in 2017 and US\$ 62,641 in 2018; while the UK achieved a PCI of US\$ 40,540 in 2016, US\$ 39,932 in 2017, and US\$ 42,491 in 2018. Thus EAC countries combined trail these two mature economies on GDP and PCI by big margins, which could be reduced if the EAC Partner States approached their external trading arrangements jointly with a harmonised trading framework.

Tables 15: EAC GDP compared to USA and UK (current prices US\$)

Country	2016	2017	2018
Burundi	2,959,185,295	3,172,416,146	3,078,029,929
Rwanda	8,475,681,533	9,135,454,442	9,509,003,197
Kenya	69,188,755,511	78,757,391,333	87,908,262,520
Tanzania	49,774,021,003	53,320,625,959	57,437,073,927
Uganda	24,133,664,285	25,995,031,850	27,476,945,526
Total EAC	154,531,307,626	170,380,919,730	185,409,315,099
United States of America	18,707,188,235,000	19,485,393,853,000	20,494,099,845,390
United Kingdom	2,659,238,931,670	2,637,866,340,434	2,825,207,947,503

Source: World Bank database <https://data.worldbank.org>

Tables 16: EAC GDP Per Capita compared to USA and UK (current prices US\$)

Country	2016	2017	2018
Burundi	282	293	275
Kenya	1,411	1,568	1,711
Rwanda	726	762	773
Tanzania	966	1,005	1,051
Uganda	609	632	643
South Sudan	283		
EAC Average	713	852	891
United States of America	57,904	59,928	62,641
United Kingdom	40,540	39,932	42,491

Source: World Bank database <https://data.worldbank.org>

Effective implementation of outlined RTP interventions will enable EAC Partner States to pursue mutually beneficial economic cooperation measures, which will contribute to expanding the trade potentials and markets of the EAC regional producers, manufacturers and traders at the regional, African continental and global levels.

RTP PRIORITIES BASED ON PRINCIPLES ADOPTED BY SCTIFI IN FEB. 2016

The RTP study completed in 2015 made some key recommendation on development of the EAC RTP Strategy and implementation roadmap, which were subsequently adopted by the SCTIFI⁵⁵ on 26th February 2016 as principles of developing the EAC RTP. These principles incorporate provisions of the Customs Union and Common Market Protocols and their related subject specific protocols and accompanying measures. The principles primarily focus on regional harmonization of trade and investment related priorities as elaborated below.

Policy Related Priorities

a) Market Access for Trade in Goods

The RTP should articulate measures to harmonise and prioritise overlapping membership to various RECs so that Partner States can be party to the same Free Trade Area agreements.

⁵⁵ EAC Sectoral Council on Trade Industry Finance and Investment

This would enable each country to access target markets based on similar market access requirements, including tariff cuts, rules of origin, quality standards, SPS measures, etc. This entails that Partner States in future negotiate for new market access agreements with third parties on trade in goods and services under the EAC umbrella in order to prevent future challenges emerging on free movement of goods, including the preferential tariffs and rules of origin that an individual Partner State should apply on imports from another Partner State that may belong to other RECs. For example, Burundi, Kenya, Rwanda and Uganda all belong to EAC and COMESA, while Tanzania belongs to EAC and to SADC.

Since each of the three RECs has a Customs Union or FTA arrangements, the challenge lies as to which tariff regime and rules of origin to apply. In addition, harmonisation of market access arrangements will eliminate the potential risks associated with diversion of uncustomed goods into the territory of unintended Partner States. The latter challenge arises especially because Tanzania belongs to SADC in addition to EAC, and goods originating from the more developed SADC states such as South Africa under preferential trade arrangements can easily find their way into the other EAC States without payment of the applicable CET, thus bringing unfair competition to local producers. The RTP strategy will define the criteria for harmonisation of Partner States overlapping membership to different RECs.

b) Stays of Application, Remissions and Duty Exemptions

Partner States have continued to apply for stay of application, remissions and exemption from the EACT CET on products of interest, aimed at meeting their social and poverty alleviation goals. However these applications dilute the whole essence of the CET and ends up promoting trade with non-EAC trading partners at the expense of the region's producers and manufacturers. The RTP strategy should therefore specify measures to ensure increased discipline on use of the stay of application and exemptions. It will also set a strict process with clear criteria for approval of exemptions, and a sunset clause to phase out applications for stay of application, remissions and exemption from the CET based on agreed defined period.

c) Review of the CET

Before greater discipline is imposed on the use of applications for stay of application, remissions and exemption from the CET, Partner States should agree on review of the 3-tariff band CET structure so as to address its uneven impacts on manufacturers; including its limitations in promoting value addition for some manufacturing subsectors. This subject will be reflected in the RTP strategy based on the strategy agreed by Council on how to handle proposals for CET review which have been submitted by various regional manufacturers to their trade associations, to EAC governments and to EAC Secretariat. The goal of CET review will be to raise the number of CET bands for sectors that merit consideration, and to increase CET tariff rates for finished goods that can competitively be procured from within the region without contravening the WTO MFN⁵⁶ and NTR⁵⁷ clauses.

d) Export and investment promotion

The RTP strategy should prioritise representation of all Partner States whenever they undertake missions to promote their exports in new markets and to attract foreign investment. This would create efficiencies in allocation of resources and allow for presence of even the

⁵⁶ The WTO "Most-Favoured-Nation" (MFN) treatment — requires WTO Members to accord the most favourable tariff and regulatory treatment on products originating from any WTO members at the time of import/export. Imports must therefore enjoy the same treatment as "like products" from all other WTO members. Thus if WTO Member A agrees with Member B on preferential treatment including reduction of tariffs on products traded amongst themselves, such treatment must be applied on products originating from all other WTO Members.

⁵⁷ The WTO National Treatment Rule (NTR under GATT Article III) stands alongside the MFN treatment, and provides that WTO Members must not discriminate between imports and "like" domestic products (with the exception of the imposition of tariff applied as border measures). This rule aims to prevent countries from discriminating against imports and from offsetting the effects of tariffs through non-tariff measures.

weaker Partner States in any events/forums conducted by one given Partner State with the aim of promoting exports and attracting foreign investment.

e) Regulatory divergences at the multilateral level

A strategy on how to approach negotiations on trade and investment at the regional, continental and global arena under the EAC regional umbrella should be part of the RTP in order to avoid contradictions and divergences which may have adverse implications on the Common Market. In this regard, EAC will need to present harmonised Partner States positions in such fora, including under the TFTA⁵⁸, African Union FTA, EPA with EU, AGOA with US, WTO, and other regional, African Continental and global for a; where subjects related to market access, food safety and protection, trade restrictions, quality standards and SPS measures, trade remedies, export and investment promotion measures among others are discussed and relevant actions agreed.

f) Safeguards, anti-dumping and countervailing measures

The RTP strategy should specify a regional approach for applying trade remedies at the EAC level in order to protect domestic industries from injury emanating from exposure to third country external competition, while preserving the CET. The required institutional mechanism for administering such measures will be specified in the RTP strategy (see more on this below).

Institutional Development Related Priorities

a) Administration of Trade Remedies

The RTP strategy should specify modalities for administering safeguards, anti-dumping and countervailing measures at regional and national levels as part of measures to protect regional/domestic producers affected by incidences of dumping and other unfair trading practices.

b) Engagement at the WTO forums

To enable increased EAC presence and effectiveness in WTO forums where trade and investment matters are discussed and/or negotiated, the RTP strategy should set an appropriate approach that enables trade and investment matters to be presented under the EAC regional umbrella.

c) Export and Investment Promotion Priorities

The RTP strategy should define:

- i) Modalities of establishing an effective EAC joint approach to promoting regional exports to potential markets and attracting foreign direct investment; including the institutional framework for such a regional approach.
- ii) The role of Partner States and the EAC Organs (Secretariat, Council, Summit, EALA, and other subject specific institutions) in promoting the region's exports and attracting foreign investment at the regional level (TFTA and other African RECs), African Union level, and international level (WTO, EPA, AGOA).
- iii) Modalities of implementing a common EAC competition policy, and the need to define clear responsibilities of EAC organs vis-a-vis the national level organs (including MDAs⁵⁹)
- iv) National versus regional priorities on export promotion, modalities of harmonising existing national export promotion schemes and the incentives offered, and the role of Partner States versus the EAC organs in export promotion.

⁵⁸ Tripartite Free Trade Area under negotiation between EAC, COMESA and SADC

⁵⁹ Government Ministries, Departments and Agencies

- v) The national versus regional priorities in trade facilitation, the components of trade facilitation that need to be pursued under the regional umbrella, and the role of the Partner States versus the EAC organs in trade facilitation at regional and international levels.

RTP PRIORITIES IDENTIFIED THROUGH NATIONAL STAKEHOLDERS CONSULTATIONS BETWEEN SEPTEMBER 2019 AND FEBRUARY 2020

Based on the review of various national policy documents and the new round of stakeholders' consultations (September 2019 to February 2020), the overall findings show that conclusion of the Regional Trade Policy is crucial to facilitating achievement of the region's economic integration agenda. In this regard, the EAC mission is *"to widen and deepen economic, political, social and cultural integration in order to improve the quality of the people of East Africa, through increased competitiveness, value added production, trade and investment"*. Some key measures that need to be addressed to achieve this overall economic development mission include:

Elimination of NTBs experienced on intra-EAC trade

The elimination of NTBs experienced on cross border trade is perceived as a key priority to promotion of cross border trade by stakeholders consulted. In this regard, Partner States have prioritised removal of NTBs, but these obstacles continue to act as serious hindrances to increased cross border trade. The EAC landlocked countries (Burundi, Rwanda and Uganda) are particularly adversely affected by continued existence of NTBs because of the long distance to entry and exit ports⁶⁰, which implies additional transport costs and time for accessing imported inputs and external markets. The NTBs as defined by EAC include laws, regulations and administrative and technical requirements (other than tariffs) imposed by a Partner State, whose effect is to impede trade; resulting to escalating the cost and time for accessing imported inputs and final goods. The barriers also delay the efficiency of fulfilling international orders, which is a key requirement in international trade transactions.

At the entry into force of the EAC Customs Union Protocol in 2005, Partner States were required to remove all existing NTBs that inhibit the importation into their respective territories of goods originating from the other Partner States and thereafter not to impose any new ones. This undertaking was perceived as part of measures to facilitate effective implementation of the Customs Union. Partner States have consequently formulated the NTBs mechanism for identifying, monitoring and eliminating NTBs; and have also established National NTBs Monitoring Committees on NTBs (NMCs) and the EAC NTBs Time-Bound Program to facilitate the NTBs elimination process. Further, Partner States have concluded the Non-Tariff Barriers Act 2017, which provides the legal framework for enforcing the removal of NTBs through dispute resolution mechanisms with the possibility of sanctions against offending states. Despite these commendable efforts, NTBs continue to affect the free flow of goods and services amongst EAC states. As of 2019, the following categories of NTBs were reported to affecting trade within the EAC: Unnecessary delays in clearing goods through the entry/exit ports and border stations due to administrative requirements imposed by governments' approval/clearing agencies⁶¹; Delays in checking conformity with axle load regulations at weighbridges; Delays in getting clearance at police roadblocks; Delays during inspection of conformity with axle load requirements at weighbridge stations; Import/ export bans (particularly on grains), Failure to endorse certificates of origin for EAC originating goods by

⁶⁰ Rwanda for example is 1,740 km from the Port of Mombasa and 1,480 km from Dar es Salaam, which translates to high transport costs estimated at 40 per cent of the cost of the value of an export and/or import.

⁶¹ Such as customs, bureaus of standards, sanitary and phytosanitary agencies, port authorities, port/border health authorities, etc.

some Partner States; Failure to accept standard marks issued by competent authorities; Failure by some Partner States to issue imports approvals for food and plant materials originating from the region; and Corruption incidences associated with these procedures. For the NTBs elimination process to work efficiently as envisaged, there is need for:

- i) Continued support to making the online and SMS-based NTBs reporting tools work effectively in facilitating reporting of identified NTBs, undertake detailed NTBs impact analysis based on initial reports submitted by businesses through their membership organisations, and to continue supporting the logistical and capacity needs of the NMCs as the watchdogs of NTBs elimination process. It is also crucial that Partner States domesticate the Non-Tariff Barriers Act 2017 in order to enforce dispute resolution mechanisms and sanctions against offending states whenever NTBs dispute resolution fails. The eventual goal should be that all Partner States stop imposing any new NTBs on intra-EAC trade. It also appears necessary that an independent and non-political regional NTBs organ of the community be established with the principal aim of coordinating, monitoring, and facilitating resolution of all reported NTBs. Such an organ would be responsible for coordinating detailed research of reported NTBs, coordinating bilateral dispute resolution meetings between affected Partner States, adjudicating⁶² on reported NTBs if bilateral negotiations fail to produce the desired effect, and making final decision on cases that may require sanctions.
- ii) Traders/businesses to provide evidence on NTBs encountered in the course of cross border transactions to enable the National Monitoring Committees to begin the process of bilateral discussions for the elimination process.
- iii) Creating a permanent regional Public and Private forum to coordinate the NTBs discussions (impact and elimination processes).
- iv) Wide publicity of the national NTBs websites and reporting telephone numbers.
- v) Creating national WhatsApp/ SMS groups for cross-border traders so that wider sharing of information on newly identified NTBs can take place as a means of creating public pressure on the need for elimination.
- vi) Periodic field visits by NMCs to all EAC border stations with large volumes of cross border transactions as part of evidence gathering on the NTBs reported during national and regional NTBs forums.
- vii) Support capacity building needs of the NMCs which are mandated to coordinate the NTBs elimination process at national levels.

Review of the Common External Tariff (CET)

All Partner States perceive the EAC CET as a crucial tool for furthering the EAC integration agenda, enhancing the growth potential of key economic sectors like manufacturing and agriculture, and for spurring the region's industrial growth and development aspirations. For these goals to be achieved, the production capacity of manufacturing companies needs to be supported through an effective CET that enhances access to affordable raw materials and inputs which may not be available within the region. The ongoing initiative to review the CET structure is therefore lauded as a necessary approach that will enable all Partner States to access the larger regional market as part of efforts to achieve the region's industrialisation agenda. The process should culminate into a CE structure that correctly classifies raw materials and capital items, intermediate goods, and final goods while also giving a window for protection of goods considered as sensitive in each Partner State in order to protect vulnerable producers like farmers. However the sensitive products list should only be accorded protection on intra-EAC trade during a defined transition period, after which they should eventually be phased out in order to ensure achievement of consumer welfare and to catalyse

⁶² This will entail agreeing on the legal process of resolving NTBs disputes, the procedures for formal pronouncement of a judgment or decree made in the EA Court of Justice (EACJ), and the entry into force of any judgement made by EACJ on NTBs cases.

increases in firm level efficiencies. On the other hand, in line with WTO provisions and in efforts to protect sensitive producers from unfair competition and trade malpractices, Partner States should advocate for defined sensitive producers to be exempted from competition with third country imports even in the long run, based on specific socio-economic and political considerations. The EAC states should in this regard prepare well researched positions which define clear legal process of settling any potential disputes that may be raised by third parties, since the WTO does not provide a legal mechanism to settle trade disputes.

The CET structure when concluded will eliminate the current misclassifications of some goods into wrong tariff numbers so that the correct duties are charged particularly on raw materials, capital goods and intermediate items as part of efforts to promote value added production in the region. It will also need firm commitments by all Partner States as it will be presented as the EAC Customs Union tariff structure at the multilateral (WTO) level. Partner States will further need to agree on target dates for full achievement of their commitments, and a sunset clause for elimination of the current use of Stays of Application (SOAs) so as to enhance consistency between the CET and the Customs Union.

It is expected that the envisaged CET will recognize application of EAC Rules of Origin as supportive instrument for enhancing intra-EAC of export trade. This requires that the Community adopts a common valuation method on imported goods as part of measures to ensure similar regional local content and value added criteria is used to qualify goods traded across EAC borders under zero rate of duty status. The measure will eliminate the need for constant verification missions between countries which contest that EAC originating goods targeting EAC markets have not met the rules of origin criteria in order to be accorded duty free status. The verification process ends up denying some genuine manufacturers access to target markets. Efficient application of the local content and value added criteria will also promote regional value chains, and value addition of regional raw materials. Additionally, with a well-designed CET structure, the region will only need to retain duty exemption schemes as part of instruments for promoting exports to third country markets; thus phasing out current duty remission schemes. If incorporated into the Regional Trade Policy, these measures will effectively enhance intra-EAC trade as envisaged by the Customs Union Protocol. In summary, the CET review should aim to achieve:

- i) Reform of the CET structure a tool for enhancing achievement of consistent and balanced trade between Partner States, and facilitating industrial development in the Community through value added production. This will increase Partner States exports by enhancing the value of raw materials which are currently exported either in raw or semi-processed form. In this regard, the CET review should focus on achieving low or no tariffs on imported inputs/raw materials and capital goods used to produce final goods for the regional, African continental and global markets. This is crucial to enabling production of cost competitive products and promotion of value addition in key sectors like manufacturing and agriculture.
- ii) A CET structure which enables some comfortable level of protection for regional produces against competing equivalent imports. This will contribute to the region's goal of achieving socio-economic development, based on the fact that tariffs are directly linked with firm level performance, consumer welfare, job creation and poverty reduction.
- iii) Access to the regional market by manufacturers as part of the Customs Union goals.
- iv) Resolution of notable trade distortions, such as misclassification of some product lines, and disproportionate favoritism of larger firms through the Duty Remission Scheme as opposed to supporting smaller firms. This is because the DRS has high potential for misuse by large firms who make applications for duty remissions in presence that they intend to export while in the end the final items are sold into the domestic market duty free.

- v) Appropriate tariff bands and rates especially for products with potential to facilitate the region's industrial development goals, increase domestic production and exports, exploitation of business opportunities; access to affordable inputs for manufactures, enhanced consumer goods, and attraction of foreign direct investment.
- vi) The eventual goal of reserving the sensitive item list for only second hand imported items (such as textiles and footwear). This will eliminate the adverse effects which the current long list of sensitive items have on consumer welfare⁶³, particularly for items from key priority sectors/products like agriculture and agri-business, which denies regional consumers the chance to access products that may be available from within the region at cheaper prices. Protection of sensitive items also translates to protection of producers in their domestic markets, but denies them opportunity to penetrate the markets of other Partner States; thus eventually implying obstruction to potential for enterprise growth.
- vii) Recognition of EAC Rules of Origin and application procedures as supportive instrument for enhancing intra-EAC of export trade. This will require adoption of a common valuation method on imported goods as part of measures to ensure similar regional local content and value added criteria is used to qualify goods traded across EAC borders under zero rate of duty. In addition to promoting regional value chains and encouraging value addition, this will eliminate the need for constant and lengthy verification missions between countries based on contention that EAC originating goods targeting the EAC markets have not met the rules of origin criteria in order to be accorded duty free status.

Quality Standards and SPS Measures

Partner States concluded the Standardization, Quality Assurance, Metrology and Testing (SQMT) Protocol in 2001, the SQMT Act, 2006, in facilitating regional trade. Over the years, the Act has been strengthened through development of EAC standards, and through development of regulations for facilitating application and enforcement of these standards; including (i) The EAC SQMT (Product Certification) Regulations, 2013; (ii) The EAC SQMT (Designation of Testing Laboratories) Regulations, 2013; and (iii) The EAC SQMT (Enforcement of Technical Regulations in Partner States) Regulations, 2013. In addition, Partner States have established the East African Standards Committee (EASC) as a Sectoral Committee with mandate to conceptualise and monitor the implementation of harmonized standardization activities in the Community; develop and establish frameworks and programmes for advancing compliance by the Partner States with their obligations under the Act; establish procedures for the development, approval, gazetting and adoption of these standards at the national levels; establish liaison mechanisms with other regional and international organizations which are consistent with the objectives of the Act; constantly review the effectiveness of the national WTO TBT Agreement enquiry points; and hear appeals with regard to administrative measures for Compulsory Standards implemented in the Partner States.

Despite these commendable efforts, businesses/traders continue to experience cross border trade obstacles attributed to refusal to recognise standard marks issued by competent standard bodies. The RTP will therefore need to address obstacles related to application of harmonised EAC quality standards and recognition of quality standard markets as a key imperative for facilitating increased cross border trade. Some key issues that need to be taken into account in this respect include: (i) provision of adequate funding for national quality institutions in some Partner States; (ii) creating awareness about SQMT regulations among producers and standards bureaus; (iii) strengthening capacity for compliance with set quality

⁶³ As noted by Anna Twum; International Growth Center (IGC): Negotiating the EAC Common External Tariff: Options to strengthen Rwanda's Competitiveness; Policy Note, 2018

standards amongst producers/manufacturers; and (iv) creating awareness about international standards applied in key target markets such as the EU and USA among producers.

In addition, SPS measures are cited as serious obstacles which obstruct ability to undertake efficient cross border movement of food items and horticultural goods. Varying Phytosanitary Standards between Partner States particularly restrict movement of plant materials (horticulture), while the lack or insufficient Phytosanitary Standards in some Partner States such as Burundi act as hindrances to accessing international markets. This should be a major area that the RTP should put emphasis on; focusing on facilitating effective application of SPS measures and certification with a view to increasing target regional and international markets. EAC Partner States' particularly need to harmonize and implement SPS measures and policies in order to increase competitiveness of EAC originating products with demonstrated potential to access international markets. In this regard, Partner States should operationalize the EAC Protocol on SPS signed on 12th July 2013; and enact the Draft EAC SPS Bill of September 2016 into an Act so as to enable its domestication into Partner States laws. This will enable Partner States to build and/or strengthen demonstrated institutional capacity and facilities for testing, traceability and compliance with international standards; and also enable the region to contain major threats to human, animal or plant life or health which are associated with imports (such as attacks on food items by aflatoxin and pests). Operationalisation of the Protocol and Act when the latter concluded will facilitate elimination of SPS related NTBs on intra-EAC trade, such as mutual recognition of SPS certification marks issued by competent SPS institutions in each Partner State, and certification of EAC agricultural producers. These measures would facilitate increased access to the regional and international markets.

Strengthening/building strong IPR regulations

Although the CMP requires Partner States to cooperate and coordinate during enforcement of Intellectual Property Rights (IPRs), EAC countries continue to apply different levels of intellectual property protection. Thus although the Council in 2013 adopted the regional IP Protocol and Policy on the Utilization of Public Health Related WTO-TRIPS flexibilities, and while EAC secretariat is in the process of undertaking consultations related to development of harmonised IPR regulations to support implementation of the TRIPS Agreement, this process is yet to be concluded, which translates to denying regional creators of their IP rights. Partner States should therefore strengthen ongoing initiatives to make use of the TRIPS flexibilities by fast tracking conclusion of harmonised IPR laws based on WTO TRIPS Agreement, aimed to protect regional creators from infringement of their intellectual rights. The areas of focus of such regulations include: patents and trademarks; utility models, industrial designs, and technology innovations (including traditional knowledge). This would boost potential monetary gains of the intellectual rights holders, including EAC domestic industries that develop innovative products.

Industrial development

The EAC Industrialisation Policy and Strategy 2012-2013 focuses in addressing the region's industrial challenges and to scale-up industrialisation. The policy and strategy has specifically identified six strategic sectors in which the region has potential comparative advantages based its vast natural resources endowments. The six identified strategic regional industries are:

- i) Agro-processing;
- ii) Energy and Bio-fuels;
- iii) Fertilisers and agrochemicals;
- iv) Iron-ore and other mineral processing;
- v) Petro-chemicals and gas processing; and;
- vi) Pharmaceuticals

Key issues which have been proposed as important in fast tracking the implementation of the policy and strategy include:

- i) Strengthening and exploiting policy synergies between the EAC Industrial Policy and other regional sectoral policies (such as the EAC Competition, Regulations and Model Investment Code 2006; The EAC Competition Act 2006 and Competition Regulations 2010, and the EAC Agriculture and Rural Development Policy 2006).
- ii) Promoting targeted regional industry value chains which have widespread linkages with other economic sectors (*such as agriculture, transport, hotels and hospitality industry, and tourism among others*), and in which the region has substantial comparative advantages. Notable industries with substantial potential value chains in this respect include the CTA⁶⁴, leather goods, horticulture, tea, coffee, grains, cereals, fishery products, petroleum, and minerals (such as gold produced in Rwanda) among others.
- iii) Fast tracking implementation of the concluded Model Investment Code 2006 as part of measures to encourage investments in six identified strategic regional industries with potential to improve production of value added goods for regional and international markets, which can be appropriately manufactured in the region's export processing zones, free zones, and special economic zones.
- iv) Strengthening the capacity of industry support institutions (ISIs) to develop and sustain a competitive regional industrial sector.
- v) Developing harmonised laws and enforcement regulations on trade remedies, anti-piracy and counterfeit, which where existing are usually very weakly enforced; aimed to protect regional producers/manufacturers from unfair competition with imports.
- vi) Developing supportive infrastructures to spur industrialisation along Selected Economic Corridors; particularly the EAC northern and central corridors.

Trade facilitation

In pursuit of the Customs Union, the EAC should continue to support integration of the Single Customs Territory (SCT) in intra-EAC transactions and imports of goods from third countries. There is a need to harmonize Partner States duty exemption schemes, facilitate traders' compliance with customs rules, enhance uniformity in application of the CET tariffs, resolve misclassification of products in tariff lines, harmonise Partner States import valuation schemes, harmonize domestic tax regimes, eliminate misalignment between EAC ROO and Tripartite FTA and AfCFTA provisions.

Overlapping membership of Partner States to multiple RECs

To address overlapping membership of the EAC Partner States to various RECs, the EAC needs to urgently conclude of the CET review aimed at eliminating Stays of Application, use of Duty Remission Schemes, and to have a CET that promotes value added production. In addition, the Community needs to harmonize trade remedies laws; products certification procedures; standards testing systems; quality assurance and conformity procedures; and also to adopt the Tripartite rules of origin as the basis for fast tracking harmonisation of AfCFTA rules of origin⁶⁵. The policy on overlapping membership should also prioritize:

⁶⁴ Cotton Textile and Apparel value chain

⁶⁵For products to qualify as African originating, they have to qualify under the African RECs rules of origin criteria, which specifically focus on proof of local content and value added achieved on finished products in the country of origin> this enables the products to benefit from tariff preferences in the target export country. Rules of origin are therefore important in determining the percentage of local raw materials used in the country of manufacture, and "act like a passport for a product to enter a free trade area and circulate without imposition of duty" (UNCTAD 2019), "The rules of origin are used as an important trade measure. They do not constitute a trade instrument by themselves and are not to be used to pursue trade objectives directly or indirectly or as a policy measure. According to the World Customs Organization, rules of origin are used to address different commercial policy measures aimed to attain specific purposes that appear in national or international policies.

- i) Programs that address trade and transport facilitation so as to lower the costs of doing business and improve the competitiveness of products originating from the EAC region;
- ii) Implementation of governance systems on inter-regional cooperation focusing principally on the Tripartite region;
- iii) Fast tracking implementation of the Common Market Protocol focusing on enhanced market integration, free movement of goods, services, labour/skills and capital across borders
- iv) Establishment of mechanisms to handle cross border disputes and trade spillovers;
- v) Increasing resources to strengthen weak public institutions involved in administration of long land borders where trade diversion and entry of uncustomed goods take place;
- vi) Improving infrastructural and communication links across the Tripartite RECs.
- vii) Supporting the Tripartite to establish strong supranational institutions that have legal and institutional capacity to boost Tripartite RECS decision-making powers; and establishment of effective frameworks for enforcing compliance with cross border trade rules and procedures; and
- viii) The merger of the three RECs into the envisaged Tripartite FTA, and eventual integration of African continent into the envisaged AfCFTA (Africa Continental Free Trade Area).

Promoting Blue Economy Priorities

The **blue economy** recognises that while seeking to achieve faster economic development and market opportunities, a country should also provide for the protection and development of the more intangible 'blue' resources such as traditional ways of life, carbon reduction, and coastal resilience to help vulnerable states mitigate the often devastating effects of climate change. The blue economy also encompasses the "sustainable use of ocean resources for economic growth, improved livelihoods, and jobs creation while preserving the health of the ocean ecosystem. Thus, pursuance of blue economy focuses in achieving sustainable development by safeguarding socio-economic activities and development from environmental degradation, while at the same time optimizing the benefits which may be derived from marine resources. The model further aims to achieve improvement of human wellbeing and social equity, while significantly reducing environmental risks and ecological scarcities, and while ensuring participation of all affected social groups and sectors.

The governance framework for the blue economy (and particularly the delineation of maritime zones) is anchored on the United Nations Convention on the Law of the Sea (UNCLOS); which provide certainty with regard to the extent of the sovereignty or sovereign rights and jurisdiction of coastal States, thereby creating a fundamental precondition to attracting investments for exploration and exploitation of potential investment activities. UNCLOS assists coastal States in the sustainable use of nonliving resources, including those in the sea floor and subsoil, which are crucial in the development of a sustainable ocean-based economy, particularly for developing coastal States. This contributes to the strengthening of peace, security, cooperation, and friendly relations among all nations that share oceans, and to the sustainable development of activities that depend of existence of oceans and seas. Many African States have ratified the Convention, and have additionally signed the African Convention on the Conservation of Nature and Natural Resources, and also the African Maritime Transport Charter (as part of efforts to achieve the AU agenda 2063). However, there remains considerable challenges with regard to implementation of UNCLOS provisions, including harmonization of national laws for application of the UNCLOS provisions, development of domestic legal, policy, and institutional frameworks; and design and implementation of strategies for linkages with other sectors.

Nearer home, EAC Partner States are party to the “Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region (Nairobi Convention)”, which sets out provisions for the development and exploitation of the Blue Economic sectors.

Based on the fact that two EAC countries (United Republic of Tanzania and Kenya) are coastal states which are strategic gateways for the region’s imports and exports, and also given the fact that the two countries have developed their tourism sectors as part of efforts to build a sustainable source of foreign exchange earnings, employment and livelihoods, it is important to pursue economic development while preserving marine life, cultures and environment, and while ensuring effective measures are implemented to mitigate the potential devastating effects of climate change. The two Partner States have therefore prioritised the promotion of blue economy in the following respects:

- a) Support implementation of the blue economy development priorities for United Republic of Tanzania; focusing in facilitating Zanzibar to Effectively coordinating and managing the development of the ocean and its endowments for significant contribution to economic prosperity by:-
 - i. Supporting the Industrial value addition, including the commercialisation of fisheries and aquaculture, in line with domestic and export market demand,
 - ii. Expansion of sustainable marine tourism to include undeveloped markets for ecotourism⁷ to promote job creation,
 - iii. Efficient and reliable maritime infrastructure network and services, including seaports and undersea pipelines, to facilitate trade and passenger flows as well as strengthening tourism demand;
 - iv. Support the availability of High expertise in managing blue economy-related technologies through capacity building and investment in R&D to ensure local ownership and greater contribution to the general economy;
 - v. Support a Sustainable exploitation of marine-related resources and products within an operational blue economy framework guided by marine spatial planning, environmental preservation and clear investment procedures;
 - vi. Continued adherence to and support for regional and international blue economy institutions and initiatives in order to preserve the marine environment and promote economic cooperation
 - vii. support sustainable artisanal fisheries businesses, b. allow artisanal and deep sea fishing to expand by developing market infrastructure,
 - viii. Developing human resource capacity for fisheries, energy, mining, seafaring, logistics and marine science, aimed to meet domestic, regional and global demand,
 - ix. Develop the Maritime Trade and Infrastructure(both hard and soft) including seaports, and container storage space, and soft infrastructure support the use of the ICT (electronic methods) so as to facilitate the inflow and outflow of goods,

- x. Support the establishment sufficient provision of other port related services such as dry port and Bunkering services and ship maintenance (Marine and offshore Repairs).
 - xi. Support the development of Zanzibar Natural Heritage and marine tourism,
 - xii. Support a safe and secure maritime transportation network in Zanzibar's area of jurisdiction;
- a) Kenya has prioritised development of the blue economy as a vital and integral part of its trade and economic development strategy. This is in recognition that the maritime industry presents considerable economic opportunities for enhancing and consolidating the country's strategic potential as a regional, continental and global trading and investment hub. Kenya has in this regard encompassed various economic activities as part of its blue economy development approach in the following five economic sectors:
- i) Maritime transport, ports and logistical services,
 - ii) Fisheries and aquaculture,
 - iii) Tourism, leisure and recreational lifestyle services,
 - iv) Extractive industries for energy and minerals,
 - v) Ship/boat building, repairs and maintenance industry.

As at 2015, Kenya's three most active Blue Economic sectors contributed a total of US\$ 1.83 billion to the country's GDP as follows:

- a. Maritime transport, ports and logistics, US\$ 0.73 billion,
- b. Fisheries, US\$ 0.5 billion,
- c. Tourism, US\$ 0.6 billion.

In recognition of the realizable potential of economic sectors imbedded in the maritime industry, both oceanic and inland lakes-based, Kenya constituted the Presidential Task Force on the Blue Economy in 2016 with the following principal objectives:

- a. To develop a Master Operational Plan for identification of the economic sectors to be prioritized and likely constraining factors,
- b. To develop priority programmes and projects necessary to unlock growth of the Blue Economy,
- c. To formulate enabling policy and institutional infrastructure for the Blue Economy,
- d. To develop fishing ports in Shimoni, Kilifi and Lamu areas of the coastal strip,
- e. To develop human resource capacity for fisheries, energy, mining, seafaring, logistics and marine science, aimed to meet domestic, regional and global demand,
- f. To develop a unified framework for oceanic and inland lakes beach management,
- g. To organize structures for execution of the Blue Economy master operational plan, including preparation of development priorities and budget proposals.

Kenya has additionally identified interventions in pursuit of development of the inland waters, fisheries and aquaculture; including:

- a. Construction of 48, 0000 fish ponds, and promotion of cage fish culture,
- b. Institution of a framework for aquaculture fish farmers cluster formation,
- c. Improved fish farming extension services,
- d. Establishment of 4 mini-fish processing and cold storage facilities, and
 - Design of an elaborate capacity building programme for actors, including required institutional and policy frameworks for beach management that incorporates sanitary and phytosanitary protocols.

The EAC RTP should take on board these aspirations and accordingly support requisite implementation measures

Other cross cutting trade and investment priorities to unlock EA trade potential

Other priorities center around the themes summarised below

- xi) Setting a macroeconomic framework on trade and export promotion and business development in each Partner State
- xii) Establishing harmonised mechanism for fair business competition, consumer welfare and protection
- xiii) Application of ICT in Commerce and application of digitalised manufacturing through the industry 4.0 model⁶⁶.
- xiv) Business Development through promotion of locally/regionally produced goods and services
- xv) Development of Micro, Small and Medium Enterprises (MSMEs)
- xvi) Defining the roles of National and County/Local Governments in implementation of Regional Trade Policy
- xvii) Institutional framework for implementation of the RTP and export promotion
- xviii) Harmonisation of export/import procedures
- xix) Facilitating access to export market information
- xx) EAC Grain Trade
- xxi) Specific focus on a harmonised EAC Regional Trade Remedies Law

SUMMARY OF PROBLEMS AND PRIORITIES TO BE ADDRESSED TO UNLOCK EAC TRADE POTENTIAL

Based on the review of priorities contained in the EAC integration pillars, a review of RTP Principles adopted by SCTIFI in February 2016, analysis of Partner States trade performance in goods and services, a review of trade and investment priorities elaborated in Partner States' policy documents, and stakeholder consultations in Partner State between October 2019 and February 2020, the following summary amply elaborates the problems and priorities that need to be addressed in order to unlock EAC trade potential.

17. EAC Partner States belong to multiple Regional Economic Communities (RECs) with varying Free Trade Area (FTA) agreements and related market access requirements, which ends into confusion as to which REC FTA provisions to apply on incoming imports. Membership to multiple RECs also implies that Partner States access target markets based on different market access provisions. These varied approaches to external trade dilutes the purpose of the Customs Union and Common Market Protocols. For example, Burundi, Kenya, Rwanda and Uganda all belong to EAC and COMESA, while Tanzania belongs to EAC and to SADC. COMESA and SADC have not yet harmonised their FTA provisions; although efforts are underway to harmonise EAC, COMESA and SADC trade regime through the Tripartite FTA; including applied tariffs, rules of origin, quality standards, and SPS measures. However until this goal is achieved, the implication is

⁶⁶ Industrial transformation through digitalized manufacturing is referred to as Industry 4.0 as it represents the fourth industrial revolution; from the 1st industrial revolution (mechanization through water and steam power), 2nd industrial revolution (mass production and assembly lines using electricity), and the 3rd industrial revolution (adoption of computers and automation). Industry 4.0 aims to enhance industrial revolution through application of smart and autonomous systems fueled by automated data and digital industrial technology. It will facilitate gathering and analysis of manufacturing data using computerized machines; thus enabling faster, more flexible, and more efficient processes that produce higher-quality goods at reduced costs. The revolution will ultimately shift production economics, foster industrial growth, modify the profile of the workforce, and increase firm level productivity and industrial competitiveness.

that EAC Partner States will continue to apply different trade regimes in their external trade relations.

It is therefore necessary for EAC Partner States to urgently harmonise their REC membership to enable them to undertake future negotiations for new market access agreements with third parties under the EAC Customs Union. This would prevent future challenges emerging on free movement of goods; including preferential tariffs and rules of origin that an individual EAC Partner State should apply on imports from third parties.

18. Exports are concentrated on a small range of traditional products which are exported either in primary or semi-processed form due to inadequate adoption of modern technologies to produce value added goods. Limited value addition of agricultural products and other natural resources such as gold has contributed to low export earnings and high trade deficits for all EAC countries. Key regional products exported either in primary or semi-processed form include agricultural produce (coffee, tea, fruits and vegetables, wet blue hides and skins, cotton fibre, grains, live animals and animal products, fish products), semi-processed gold, and intermediate products such as iron/steel tubes and pipes among others. Although there have been efforts to introduce higher value addition for primary products in some EAC countries (such as fruits, coffee and tea) as articulated in national policy documents, limited results have been achieved in export diversification and product specialisation. For example, efforts to increase trade performance in coffee and tea sub-sectors by improving the quantity, quality, marketing and prices offered to farmers have not borne significant results as all EAC countries remain price takers in world markets. It is to be noted that coffee and tea are significant sectors for all EAC countries in terms of employment and export earnings. EAC countries could however increase value addition and export earnings by targeting exports of specialty products for niche global markets.

Analysis of EAC imports shows that all countries imports have substantially increased more than exports during the period 2009-2018, translating to increasing Individual countries trade deficit. The imports with significant increase are mainly finished manufactured products which require high technology manufacturing processes⁶⁷. This indicates that the region's technology and sophistication deficiencies has had adverse impact on the region's import bill. The manufactured products in this regard are mainly sourced from Europe, Middle East, America and Asian countries (notably China and India); while only a limited number originate from the EAC (largely Kenya and Tanzania).

It is therefore necessary for EAC Partner States to implement measures to enable bulking of individual countries' produce into regional produce as part of efforts to ensure consistent supplies, to adopt modern production and storage technologies (including processing and warehousing), to adopt effective supply chain logistics, to ensure compliance with required official and demand driven quality requirements, and to use a coordinated regional export approach as opposed to current national export approaches (*the latter approach makes EAC competitors for the same markets*) in order to achieve efficient export promotion of EAC products in regional, African continental and international markets.

It is also important for the region to implement measures to overcome its technology challenges; improve trade facilitation measures so as to increase competitiveness of manufactured goods in regional markets, increase intra-EAC trade, and reduce dependence on imported manufactured and intermediate goods. Implementation of these measures requires focused implementation of the existing national and regional industrialization policies and strategies, and effective implementation of all provisions of

⁶⁷ Notable imported goods include processed petroleum products, beverages, pharmaceuticals, polymers and plastics, synthetic fibers, apparel and clothing, glass products, steel products, assembled vehicles and parts, machinery and equipment, and electrical products.

the Customs Union and Common Market protocols aimed to increase free flow of goods and other factors of production (labour and capital) within regional market.

19. Increased competition by EAC countries in similar goods targeting the EAC and COMESA/SADC regional markets, which are dominated by agricultural and manufactured goods which do not require sophisticated processes. Kenya and Uganda have particularly suffered export declines in some African countries which have started producing similar products to those Kenya/Uganda previously exported to their markets, thus reducing the need for imports. Kenyan exports of manufactured goods (such as iron and steel, plastics items, paperboard, polythene, soaps and detergents) to Uganda and Tanzania have substantially declined on this account, while Uganda cement exports to Rwanda has suffered similar fate as Rwanda, which was previously a major importer of Uganda cement has started producing its own thus scaling down imported cement. Even at the continental level, there is homogeneity among African countries in goods produced because African economies are largely agro-based, and thus largely produce and trade in similar agricultural commodities in addition to emerging albeit small quantities of industrial goods. This ends up limiting potential for intra-regional and intra-African trade, except for certain types of products such as grains (notably maize) and cereals where intra-regional and intra-continental trade potential occasionally increase during drought periods. This explains why the sensitive goods list at EAC level is composed of almost similar products as Partner States attempt to protect their producers from external competition, which however ends up limiting increased intra-EAC trade. The implication of trade in similar goods is that as industrial development takes shape at the regional and African continental level, there is likely to be reconfiguration of the market shares among EAC Partner States (and also among COMESA/SADC and African Member States). China, India and South Africa are also making significant inroads into the Africa continent and therefore becoming major sources of imports, which has consequently reduced the previous market shares for EAC producers in the regional market. A related challenge which has adversely affected competitiveness of domestic/regional firms to trade in the regional market is that in November 2011, EAC and China signed a Framework Agreement on economy, trade, investment and technical cooperation. This has enabled China to penetrate the EAC regional trade in goods at the expense of regional firms which are unable to compete in their own countries and the wider regional market. A major reason for heightened Chinese competition is that China offers production subsidies to its producers, thus enabling them to compete successfully in foreign markets (for example on textiles and garments, electrical and electronic items, machinery and equipment among key products exported to EAC). This has ended up adversely affecting competitiveness of EAC firms in the regional markets (EAC, COMESA, and SADC).

It is therefore necessary for EAC Partner States to pay more focused attention to specialisation in value added production of goods over which they have comparative advantages so as to reduce exportation of primary goods in favour of value added goods while reducing competition in similar goods in the regional markets. It is also important for Partner States to constantly be on the look-out for Chinese products which receive production subsidies in order to institute requisite investigations necessary to build evidence on the need for anti-subsidies (countervailing) measures aimed to protect domestic/regional industries from injury that emanate from competition with imports. This would contribute to reducing importation of value added products and individual country's high trade deficit.

20. Persistent trade wars between EAC countries, such as the trade wars between Kenyan and Uganda on processed milk; Uganda trade disagreements with Tanzania on Uganda sugar exports; and the ongoing political disagreements between Uganda and Rwanda which have resulted into Rwanda closing its borders to Ugandan originating goods since early 2019, contrary to the rights and obligations provided for under the Common Market

Protocol. Even before the border was closed, Uganda vegetable oil was being restricted in Rwanda on account of application of unclear Rules of Origin. In addition, Uganda rice exports to Kenya have for a long time been restricted for unclear reasons. Also, Kenya occasionally experiences maize shortages and opts to source the product from Mexico instead of importing from Rwanda, Tanzania and Uganda; all which report surplus maize. This ends up limiting the capacity of manufacturers to trade within the regional market on goods that are processed using local raw materials. For services sector, persistent trade wars have occurred between Kenya and Tanzania in the tourism industry, with Kenyan tour operators in 2018 being banned from accessing Serengeti national park, and Kenya retaliating by banning Tanzanian tour vans from accessing Maasai Mara game reserve. In addition, the EAC region has not yet agreed on services to be commonly traded without restrictions as part of fast tracking implementation of Common Market provisions on free movement of services. This has led to inability to grow the regional services sector.

It necessary for Partner States to strictly implement the provisions of the Common Market Protocol on free movement of goods, persons, labour/workers, services and capital; and also fast track operationalisation of the right of establishment and right of residence in order to stem down constant trade wars. It is also necessary for the region to urgently agree on services to be commonly traded within the Community without restrictions as part of fast tracking implementation of Common Market provisions on free movement of services.

21. Since the entry of the Customs Union in 2005, individual EAC countries' exports to the regional market have been declining due to lack of adherence to provisions of the EAC Customs Union and Common Market Protocols. This is evidenced by application of NTBs on goods traded between EAC countries, contrary to the Customs Union provisions which require free movement of goods within the Community subject to meeting rules of origin criteria. The WTO (2019) observes that reported NTBs which adversely impact of ability to undertake efficient cross border trade in EAC are categorised under cumbersome customs and administrative documentation and procedures (such as import declarations); inspection requirements; police road blocks/check points; transit procedures; quality standards, and SPS measures. Other notable NTBs are experienced under procedures for checking compliance with EAC rules of origin, weights and measures specifications, axle loads, and immigration requirements on issuance of work permits. The prevalence of NTBs have ended up undermining the potential to increase intra-regional trade and the region's aspiration to deepen the integration process. This is despite the efforts made so far in establishing the NTBs elimination mechanism, the time-bound NTBs elimination mechanism, formation of NMCs, and conclusion of the NTBs Act 2016.

It is necessary for Partner States to implement the NTBs Act 2016 without delay, and to operationalise the Trade Remedies Committee so as to facilitate legal resolution of trade obstacles whenever they emerge.

22. The existence of NTBs is made worse by protectionist national policy measures characterised by constant Stays of Application (SOA), duty remissions and duty exemptions from CET. While these policy measures may seem justified by individual Partner States' needs to meet their socio-economic aspirations, all end up denying agricultural producers and manufacturers the chance to supply the regional market. They also discourage formation and/or strengthening of regional value chains, and also largely benefit large manufacturers to the detriment of small producers who are not aware about the provisions given through the schemes. To address the problems associated with unending applications by Partner States for SOA, duty remissions and exemptions from CET, the 34th meeting of the Council (June 2019) directed that future approvals will be given to applications which demonstrate adherence to the following principles:

- i) Degree of processing;
- ii) Minimized lists of exemption and duty remission;
- iii) Adherence to international commitments (WTO Commitments);
- iv) Compliance with global commitments- e.g. SDGs⁶⁸, carbon tax.
- v) Commitments under the multilateral agreements;
- vi) Harmonization across other agreements (TRIPARTITE, AfCFTA, etc.)
- vii) Elimination of stays of application;
- viii) Need to review duty rate for products that Partner States have consistently requested for a stay of application
- ix) Promotion of Industrialization

If implemented efficiently, future approvals for SOA, duty remissions and exemptions from CET should facilitate formation and/or strengthening of the eight (8) priority regional value chains which Partner States have already agreed are critical to spurring intra-EAC trade and to building a sustainable foundation for increasing exports to Tripartite FTA, AfCFTA and international markets. The 8 priority regional value chains are:

- i) Cotton, textile and apparel sectors;
- ii) Leather and footwear;
- iii) Argo-processing (tea, coffee, livestock, fisheries, meat & meat products, sugar, grains-rice, maize, fruits & juices, vegetable oils, etc.)
- iv) Wood & wood products
- v) Iron & steel, iron ore, & other mineral processing
- vi) Energy, renewable energy, bio-fuels, Coal, oil, natural gas and gas producers (power plants, factories, refineries and other CO₂ gas emitters)
- vii) Petro-chemicals (fertilizers, agro-chemicals, pharmaceuticals)
- viii) Automobile industry with emphasis on parts

It is urgent to address the unending applications by Partner States for SOA, duty remissions and exemptions from CET by implementing the 34th meeting of the Council (June 2019) regarding principles to be used on applications that merit future approval in order to preserve the Common Market, while facilitating formation and/or strengthening of the eight priority regional value chains that are critical to spurring intra-EAC trade and exports to Tripartite FTA, AfCFTA and international markets.

23. Weak coordination of trade functions coupled by weak capacity of public and private sector Trade Support Institutions to support export promotion activities. The poor coordination of trade functions is demonstrated by a count of Kenya government agencies involved in approving an import and export. In this regard, there are 26 agencies located at Mombasa Port, all which in one way or another are involved in inspecting and/or approving imports and exports through the port; namely: (1) Kenya Ports Authority (2) Kenya Revenue Authority (3) Kenya Railways (4) Kenya Bureau of Standards (5) Kenya Plant Health Inspectorate Service (6) Horticultural Crops Development Authority (7) Pharmacy and Poisons Board (8) Directorate of Veterinary Services (9) Public Health Services (10) Tea Directorate (11) Coffee Directorate (12) National Environmental Management Authority (13) National Bio Safety Authority (14) Pest Control Products Board (15) Sugar Directorate (16) Kenya Dairy Board (17) Radiation Protection Board (18) Anti Counterfeit Agency (19) Kenya Wildlife Service (20) Kenya Police Service (21) Ministry of Foreign Affairs (22) Nursing Council of

⁶⁸Sustainable Development Goals

Kenya (23) Kenya Medical Laboratories, Technicians & Technologists Board (24) Department of Fisheries (25) Directorate of Criminal Investigations (26) National Intelligence Service. While the functions of the agencies depends on the nature and products involved in a trade transaction, the problem is that a lot of time may be spent in the approval process, whether the transaction is an export or import. In the interest of speeding up the approval process, traders are likely to offer bribes, translating to high risk of illegal goods (such as uncustomed, counterfeits, substandard, mis-declared, undervalued and under-invoiced goods) getting entry into the Kenyan market and subsequently overflowing into the wider EAC market, which results into unfair competition with regional producers. This ends adversely affecting the market shares of regional producers and the region's manufacturing base and stability; with subsequent effects on capacity to produce competitively for export markets. Regarding weak public and private sector trade support institutions (TSIs), the challenge is that the TSIs have insufficient financial and technical capacity to undertake targeted export promotion activities, such as potential market analysis, market and product segmentation, trade fairs and exhibitions, building of distribution networks with bulk buyers, and offering and sustaining specialized advisory services to exporters such as bulking of small produce to ensure consistent supplies, and relevant supply chain logistics for regional and international markets.

It is therefore important that trade functions handled by the numerous agencies involved in approving trade transactions are conducted using a coordinated approach. This entails the need to designate a lead agency to coordinate trade matters, and to continue improving the functions of Partner States' Single Window Systems to enhance knowledge about incoming imports and outgoing exports among the TSIs in order to prepare for timely inspections and related approvals, while ensuring that illegal imports are eliminated from accessing the EAC markets. It is also important to build the capacity of TSIs using a multi-agency approach to ensure their financial and technical needs are met, and to strengthen synergies between TSIs in both public and private sector in application of efficient measures that are supportive of export promotion activities.

24. Producers (farmers and manufacturers) and exporters face poor business and investment environment in their daily business and trade transactions. In this regard, while requisite laws/regulations governing private sector activities exist (such as laws and regulations on investment, exports, business competition, national commerce and labour), they are inefficiently applied by respective National and Local Government Authorities/Agencies (in the case of Kenya by County Governments). In some EAC countries such as Burundi, there is lack of appropriate accompanying regulations to facilitate application of such business laws and regulations. This ends up into arbitrary implementation of the laws/regulations to the detriment of potential business beneficiaries. In addition, business operations are adversely affected by unfriendly policy, legal and regulatory frameworks; poor provision of hard and soft infrastructure; poor provision of utilities (including unreliable and expensive electricity and water); and poor handling of fiscal matters, characterised by multiplicity of high national government tax rates, lengthy period for getting VAT refunds from national governments, non-availability of one stop centres for ease of tax payments in some countries (such as Tanzania), and unpredictability in the number, types and rates of taxes payable to national and local (county) governments. The poor business and investment environment is made worse by high transport costs for EAC landlocked countries such as Burundi, Rwanda and Uganda, where transport costs contribute an average 40% of the cost of the final product due to entire dependence on sea shipment through the ports of Dar es Salaam and Mombasa for international transactions. Long distances to markets, poor transport logistics, communication and supply chain logistical challenges, and insufficient networking between small producers/suppliers and bulk buyers also limit access to regional (particularly SADC) and international

markets (such as EU and USA markets). In addition, high energy costs and frequent power failures (disruptions) in the region forces businesses to invest in backup diesel powered generators, which increases business operating costs due to high cost of diesel; while the alternative solar powered generators are too expensive. These obstacles end up discouraging entry of foreign direct investment into the region and also adversely affect business transactions of domestic/regional entrepreneurs. The end result is that EAC originating products are uncompetitive in national, regional and international markets due to unreliable supplies, poor quality, and high transaction costs which translate to high prices.

It is therefore important to continue implementing the ongoing focused reforms aimed to improve the EAC business and investment climate and trade facilitation measures to ensure reliable supplies, production of high poor quality goods, and reduction of high transaction costs; thus enabling trade competitive goods in national, regional and international markets.

25. Demand-side constraints are also responsible for poor trade performance, including slowdown of the global economy due to a number of factors such as recent trade wars between USA and China, EU, Mexico, Turkey and India. It is noted that the trade wars are have been characterised by increased US tariffs on imports from the largest world economies, and have ended up causing business uncertainty in the entire world economy over the period 2018-2019, in addition to lowering investor confidence and increasing business losses. The International Monetary Fund (IMF) for example indicated in 2019 that the escalation of US-China trade tension had contributed to a "significantly weakened global expansion" in 2018, and that third countries may also be indirectly impacted, especially countries that are important trading partners for the US or China, or which play key roles in the US/China supply chains, including developing countries which supply manufacturing inputs to China (such as textiles, wood, copper wire, etc), which would face downstream impacts including reduced employment, incomes and government revenue as a direct result of reduced supplies to China. On the other hand, imposition of higher US tariffs on imports from the EU may affect imports of materials sourced from developing countries to manufacture goods for eventual exports to US. The 2020 Brexit and corona virus global pandemic are also likely to contribute to poor trade performance for EAC countries, particularly in terms of disrupting regional and domestic value chains which may have been established with the eventual goal of utilising duty free imports to process goods for exports to regional and international markets. Some of the Partner States' exports to global markets have also experienced export declines over the 2009-2018 period as a result of the 2008 global financial and economic crisis, and the 2010 Euro Zone sovereign debt crisis, both which led to decreased global aggregate demand. In addition, some products such as Tanzania cashew nuts experienced very significant export decline in 2018 due to the government ban on private traders purchases from farmers on account of low prices offered to farmers.

It is important for Partner States to facilitate increased knowledge among producers and exports about global economic and trade developments which end up impacting on business efficiency to enable forward business planning (including expansions and/or downsizing of operations whenever the need arises).

26. EAC businesses lack knowledge on how to apply international commerce terms, which ends up adversely impacting on ability to undertake competitive international trade transactions. Goods knowledge on proper application of INCOTERMS is an absolute requirement for firms venturing into exports, because the terms define trading rules and delivery terms for goods traded across borders. Seller and buyers need to agree on details of a sale in order to prevent future misunderstandings and/or legal disputes related to a trade transaction. INCOTERMS also define responsibilities on cost of transporting goods, insurance, taxes or duties, pick up points, destinations, and

responsibility for the goods at each stage. There are 11 INCOTERMS used in international trade transactions in this regard, and when each is applied in commercial invoice, it becomes a binding agreement on purchase and shipping of goods internationally, documentation required for the transaction, and the responsibilities of the seller and the buyer during movement of goods from the seller's premises until formal receipt by the buyer. A small misunderstanding on which INCOTERMS to apply can therefore have a major impact on all aspects of a commercial invoice.

It is important for EAC to prepare domestic/regional businesses to understand and apply the correct INCOTERMS to enable proper understanding of their responsibilities in international business transactions as part of measures to increase business efficiency and avoidance of unnecessary losses.

27. Businesses lack sufficient knowledge about the content of trade and market access preferences given through key regional and international trade agreements to enable access to regional and international markets. The key agreements in this regard include those governing intra-EAC and intra-COMESA and SADC trade, the EU Economic Partnership Agreements, and AGOA. Poor business knowledge about provisions of the regional and international trade agreements and how to apply such provisions in export transactions end up as obstacles to market access and expansion. The relevant market access provisions in this regard include Rules of Origin, standards, and SPS⁶⁹ measures. Exports to the international markets (notably European Union) have particularly been hindered by high quality standards and SPS measures which act as market entry barriers since EAC producers (farmers and manufacturers) and exporters lack sufficient knowledge and capacity to meet such high standard requirements. An additional obstacle for Burundi is that the country is currently excluded from accessing the lucrative USA market for goods under the AGOA⁷⁰ facility, which provides duty-free market access into US for qualifying products originating from designated Sub-Saharan African countries. AGOA extends duty-free preferences previously available under the US Generalised System of Preferences (GSP), while also adding additional tariff lines that were not previously GSP-eligible. Virtually all GSP tariff lines have received duty-free preferences under AGOA. For textiles and apparel covered under HS chapters 50-60 and 63, AGOA provides duty-free access subject to compliance with specific rules of origin if such products originate from and are exported by a '*least developed*' AGOA beneficiary country. Wearing apparel falling under HS chapters 61 and 62 are granted duty-free status within a number of different rules of origin categories, each with their own special classifications. It is notable however that EAC countries have not performed well in utilising the AGOA facility to penetrate the US market on value added products. Except for Kenya for apparel, the rest of the EAC beneficiary countries have performed dismally in utilising AGOA provisions in this regard. This is made difficult by some of the AGOA eligibility criteria, including the requirement that a beneficiary country must be perceived to be making progress towards a market economy, a multiparty system and the rule of law; the elimination of discriminatory barriers to American trade and investment; evidence of measures to protect intellectual property rights, combat corruption, protect human rights and labour standards; and evidence of measures to abolish child labour. Burundi is currently perceived as not meeting these latter areas of AGOA eligibility criteria by US and is therefore excluded from utilising AGOA provisions.

⁶⁹ Sanitary and Phyto-Sanitary measures

⁷⁰ The United States African Growth and Opportunity Act (AGOA), was signed into law by President Clinton in May 2000 with the objective of expanding U.S. trade and investment with sub-Saharan African countries, and to stimulate economic growth, encourage economic integration, and facilitate sub-Saharan Africa's integration into the global economy. The Act provides substantial trade preferences that allow virtually all marketable goods produced in AGOA-eligible countries to enter the US market duty-free.

EAC Partner States therefore need to strengthen business knowledge and awareness about provisions of the regional and international trade agreements and how to apply such knowledge in export transactions in order to increase market access and expansion, focusing particularly in facilitating full compliance with international market access requirements (notably quality, SPS, rules of origin and other customs formalities). Partner States also need to implement the EAC AGOA Strategy 2015 – 2025, whose theme is to “*harness the power of EA unity to transform doing business with USA*”. The Strategy builds on the EAC Development Plan (2011/12 to 2105/16), the EAC Export Promotion Strategy (2013 – 2016) and the EAC Industrialization Policy (2012 to 2032) among other policy blueprints, and takes cognizance of the constraints and challenges experienced by EAC Partner States in doing business with the US. It also identifies existing potentials and capacities that would lead to more diversified and value-added exports to the US while encouraging the inflow of direct investments from the US and other parts of the world. The Strategy is intended to enhance the synergy among the Partner States the ongoing initiatives being pursued under the EAC Common Market Protocol and the numerous ongoing projects and programs under the EAC Customs Union Protocol; which aim to develop EAC into a single destination for investments and single source for exportable goods. This would increase capacity of EAC businesses to comply with the AGOA eligibility requirements, thus enable them to exploit the potential benefits provided under the Facility.

28. Inadequate managerial and technical skills and talents in all economic sectors (manufacturing, agriculture, ICT, transport logistics, finance, etc). This bottleneck is more serious for MSMEs⁷¹ as notable by WTO, 2019. In addition, businesses operate under conditions of inadequate availability and access to affordable long-term business finance; and poor business environment (characterised by unfriendly legal and regulatory frameworks, poorly maintained physical infrastructure (roads and rail network); poor access to utilities (inadequate supply and unreliable access to electricity and water); multiplicity of high tax rates; length period of getting VAT refunds; and unpredictable tax regime (types and rates of taxes). Additionally, MSMEs lack technical skills and modern technologies capacity to produce high quality goods and to meet standards set by importers in both regional and international markets (notably European markets), and also lack access to market information and knowledge about international supply chain logistics. These factors have adversely affect ability and capacity to undertake efficient business operations, resulting to EAC’s poor rating in international trade competitiveness as articulated in the annual World Bank Ease of Doing Business publications; where only Rwanda emerges as a best case performer. Other key impediments as sited in the World Bank Doing Business publications relate to difficulties in getting construction permits and acquiring business premises; NTBs experienced in international trade transactions and cross border trade; difficulties in enforcing commercial contracts; and cumbersome labour market regulations including work and residence permits for foreign technical experts.

It is important to address the inadequacies in managerial and technical skills and talents needed by businesses in all economic sectors, and the poor business environment which adversely affects business efficiency and trade competitiveness. It is necessary to address bottlenecks experienced particularly by SMEs in their daily operations, access to modern production technologies, compliance with quality/SPS measures, knowledge bout international supply chain logistics and access to market information.

⁷¹Micro, Small and Medium Enterprises

29. There has been increasing stiff competition between regionally produced and imported goods originating from China for the regional markets, including competition from counterfeits and cheap substandard products. This situation is made worse by the fact that with the onset of the Customs Union, regional manufacturers have increasingly been unable to access the regional market using export promotion schemes like the duty exception, duty remission and the EPZ⁷² programmes. These schemes had previously enabled manufacturers to import duty free raw materials and inputs for production of exports targeting the regional market. However under the EAC rules of origin, the final products can no longer qualify as EAC originating unless they meet the local content of value added criteria required under the EAC rules of origin in order to qualify for intra-EAC duty free trade. The Customs Union provisions principally makes the EAC a domestic market, thus translating into loss of previous export markets for regional manufacturers, who have to henceforth compete in the regional market based on competencies in production and supply chain logistics but not on the basis of using duty free imported materials/inputs to process final goods for the regional market. In this regard, after onset of the Customs Union, some countries such as Kenya have suffered relocation/migration of some companies to the regional countries in order to be closer to the market. Relocation has also been catalysed by increased competition from stronger continental suppliers from South Africa, which has necessitated the need to locate production units closer to intended markets in order to save on transport and distribution costs.

It is necessary for Partner States to conclude its regional trade remedies law for use in facilitating the fight against trade malpractices. It is also necessary for Partner States to build knowledge amongst producers and exports (particularly SMEs) about provisions of the duty exemption schemes so that they venture more aggressively into other exports markets while utilising the EAC rules of origin to undertake efficient intra-EAC trade as provided in the EAC Single Customs Territory framework.

30. While developed world economies have well developed industrial sectors which enjoy economies of scale, African countries (EAC included) have not maximised their production potential due to lack of proper uptake of production models like subcontracting and partnership exchange schemes (SPX) and regional value chains. The SPX model entails production of a single item by many players who specialize in production of parts which eventually go into assembly of the final good intended for the market, thus enabling mass production, and maximization of economies of scale and increased firm competitiveness.

On the other hand, formation and strengthening of regional value chains would facilitate access to raw materials/inputs from surplus to deficit areas, and from technology deficient to the more technology endowed regions, thus catalyzing value added production, specialisation and increased earnings to all business actors.

It is important for Partner States to uptake adoption of SPX as a production models aimed to maximize economies of scale and increased firm competitiveness.

31. Poor capacity of public sector institutions to negotiate with third parties during international trade and investment meetings/forums. This is due to inadequate awareness about the content and implications of regional and investment trade protocols, poor preparations before negotiations due to poor national consultations and coordination, and insufficient analytical work prior to the negotiations process. The result is poor trade and investment deals for EAC countries, as highlighted in “Essay in Economics – the Performance of Tanzania in International Trade”⁷³ (undated). In addition, coordination of international trade functions is not centralized. For instance,

⁷² Export Promotion Zones

⁷³The Performance of Tanzania in International Trade: <https://www.ukessays.com/essays/economics/the-performance-of-tanzania-in-international-trade-economics-essay.php>

negotiations and agreements on EAC in Tanzania are handled by Ministry of Foreign Affairs and International Cooperation while those on SADC are handled by the Ministry of Industry, Trade and Investment which is also responsible for all multilateral trade issues. In Kenya EAC negotiations are coordinated by Ministry of EAC with technical expertise by Ministry of Trade, Industry and Cooperatives; while negotiations on Tripartite FTA, AfCFTA and international trade agreements are handled by Ministry of Foreign Affairs and International Trade. In addition to this uncoordinated trade negotiations approach, the EAC private sector is not adequately involved in regional and international trade negotiations (such as on multilateral trade issues under WTO, EPA, AGOA, and also EAC, COMESA and Tripartite FTA and AfCFTA); due to inadequate financial and human resources to participate in respective negotiation forums. This limits ability to gain experience and adequate awareness about the impacts of regional and international trade and investment issues, and how to access potential benefits provided in such subsequent agreements.

It is important for Partner States to designate lead ministries with responsibility for coordinating trade and investment negotiations, which as a minimum requirement should be mandated to receive technical advice from other competent government ministries, departments and agencies; and also from the private sector. This would lead to coordinated approach to building synergies on trade and investment negotiations between TSIs, efficient implementation of resultant commitments made by Partner States at regional and international levels, and to building adequate awareness in both public and private sector about the content and implications of regional and investment trade protocols so as to facilitate exploitation of potential benefits while implementing mitigation measures to address any foreseen risks.

32. While substantial potential exists to undertake cross border trade in grains and cereals at EAC, Tripartite⁷⁴ and also international level, this potential is diluted by several constraints; including:
- a) Trade within the Tripartite FTA is constrained by unpredictability of trade policies characterised by prevalence of NTBs such as export bans on grains and cereals which lead to low intra-regional trade.
 - b) Climate change, which has resulted to occasional droughts and consequent affects in production and exports volatility of most agricultural products including grains and cereals.
 - c) At the wider African and global level, trade in grains and cereals is limited by unacceptability of commodities/products due to lack of knowledge on how to comply quality standards and SPS measures in the production process. In addition, producers (manufacturers and farmers) have inadequate capacity to comply with traceability requirements demanded in international markets, thus limiting ability to enter into contractual trading arrangements with international bulk buyers.
 - d) Most EAC grains and cereals traded lack presentable packaging and branding, making it difficult to compete in the regional, continental and international markets
 - e) Low awareness and uptake of international certification and standards on grains and cereals traded in international markets. In this regard, most

⁷⁴ EAC, COMESA and SADC Tripartite Free Trade Area

SMEs lack international certifications, including bar coding from GS1 or ISO; leading to failure to qualify for entry into international markets.

- f) Poor access to affordable finance, with a low percentage of the total commercial bank loans portfolio being dedicated to agriculture (for example in Tanzania it is about 5%), which creates a huge burden on SMEs to compete in the regional, continental and international markets. Most SMEs thus spend their meagre resources in paying rent, salaries, water and electricity instead of developing new products and servicing existing customer orders⁷⁵.
- g) Most grains and cereals are unaffordable due to high production costs associated with sourcing of raw materials and inputs (including cost of seeds, agricultural chemicals and labour), resulting to high production cost per unit. This bottleneck is made worse by high transport costs which account for between 60% and 90% of the costs of marketing according to the FAO and World Bank estimates (2019). Transport costs for farmers particularly increase due to the informal fees farmers have to pay to avoid delays, overload charges, and other problems experienced during delivery from farm to market. In addition, logistics of moving staple foods across the EAC region is a major challenge according to the USAID East Africa Trade and Investment Hub (June 2019). In this regard, traders struggle to identify logistics companies with haulage space for a specific route, with logistics costs on average constituting about one-third of the cost of a given grain shipment. Logistics cost are high due to the lack of linkages between supply and demand, which often leads to backhaul trucks returning empty from markets to produce areas. To ease challenges associated with transportation and insufficient storage facilities for grains, EAC governments have ongoing interventions to facilitate trade in grains and by-products through construction of storage, drying and warehousing facilities. USAID has also partnered with IBM Labs Africa and Alliance for a Green Revolution in Africa (AGRA) to develop “a modern technology-driven logistics platform”, which will link grain traders and transporters in EAC as part of measures to address logistics impediments. Poor compliance with safety and quality standards by farmers as a result of farmers’ inability to invest in aflatoxin testing infrastructure and related toxin control measures; poor uptake of modern marketing systems (such as the Warehouse Receipt System and commodity exchanges) necessary to facilitate structured trading in grains and cereals; and poor systems for early diagnosis and warnings against the Maize Lethal Necrosis Disease⁷⁶ are additional challenges. Also, efficient flow of staple foods from surplus to deficit areas is impeded by proliferation of NTBs, characterised by ad-hoc changes in government policies and inefficient SPS controls. EAC

⁷⁵ As evidenced by a recent 2019 survey in Kenya conducted by Viffa Consult Ltd.

⁷⁶ As noted by the Eastern Africa Grain Council (EAGC)

governments have initiated policy responses to address the NTBs, with the most recent development being adoption of the EAC harmonised Staple Foods Standards gazetted in December 2013, aimed to promote trade in staple foods by eliminating costs associated with compliance with multiple domestic standards. Implementation of these standards however has been made difficult by capacity constraints facing responsible public agencies, and limited awareness of the standards by value chain actors. EAC states have also not harmonised sampling and testing methodologies, which creates potentials for discrepancies in testing and grading results. Elimination of NTBs could facilitate increased cross border trade particularly in maize and cereals, for which Tanzania, Uganda and Rwanda periodically report surplus production that is mostly exported to Kenya which is supply deficient.

It is important therefore important for EAC States to implement relevant interventions to eliminate obstacles which hinder efficient intra-EAC trade in grains and cereals; including policy, regulatory, production, storage and warehousing, crop protection, packaging and branding, access certification, affordable finance, and transport and logistics among key areas where trade obstacles are experienced. Relevant measures are prioritised in the EAC CAADP⁷⁷ Compact concluded in Kigali in August 2025. This would contribute to improving the region's food security and enable farmers to earn commensurate monetary benefits from their investment in grains and cereals farming.

⁷⁷The Comprehensive African Agriculture. CAADP is an Africa-owned and Africa-driven development initiative designed to boost agricultural productivity, increase the quantity and quality of food supply and eradicate extreme poverty and hunger. It aims at achieving the AU/NEPAD pillars that include: (1) Extending the area under sustainable land management and reliable water control systems; (2) Improving rural infrastructure and trade related capacities for market access; (3) Increasing food supply, reducing hunger, and improving responses to food emergency crises; (4) Improving agricultural research, technology dissemination and adoption. The Compact is also aligned with the AU Malabo Declaration declaration goals on Accelerated Agricultural Growth and Transformation for Shared Prosperity and Improved Livelihood; which include: (1) African countries increase annual funding of agriculture to 10% and sustain annual sector growth in the Agricultural by at least 6%, (2) Agricultural productivity doubles by 2025, (3) Increased African farms resilience to climate change and weather by 30%, (4) Reduced post-harvest losses by 50% by 2025, (5) Intra-African agricultural trade tripled by 2025, (6) Reduced stunting in children by 10% by 2025, and (7) Reduced underweight children to 5% by 2025. CAADP Compact also defines expectations from all stakeholders on their investments and contributions towards successful implementation of the EAC Food Security Action Plan and Climate Change Policy and Master Plan. It also specifies sector policies, investment niches and commitments of stakeholders to align their long term development goals to the agricultural sector programmes.

ANNEX IV

PROPOSED HARMONISED REGIONAL STRATEGY TO TAKE ADVANTAGE OF WTO TRIPS AGREEMENT

PROVISIONS OF THE WTO TRIPS AGREEMENT

The WTO Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement came into effect on 1 January 1995, and is to-date the most comprehensive multilateral agreement governing intellectual property rights. Its main goals are to reduce distortions and impediments to international trade, promote effective and adequate protection of intellectual property rights, and ensure that measures and procedures used by countries to enforce intellectual property rights do not themselves become barriers to legitimate trade. The TRIPS Agreement goals additionally aim to contribute to the promotion of technological innovation, transfer and dissemination of technology, and to promote mutual advantage for producers and users of technological knowledge in a manner that is conducive to social and economic welfare. The agreement recognizes the rights of WTO member countries to adopt measures on reasons of public health and other public interest, and to prevent the abuse of intellectual property rights.

The TRIPS Agreement covers seven (7) areas of intellectual property rights, namely: (i) Copyrights and related rights, (ii) Trademarks, (iii) Geographical Indications, (iv) Industrial designs, (v) Patents, (vi) Layout designs of integrated circuits, and (vii) Undisclosed and/or Confidential Information; as elaborated below.

- a) **Copyrights and Related Rights:** These are exclusive rights given to the creator of a creative work. The categories of works that can be protected by copyright laws include paintings, literary works, live performances, photographs, movies and computer software. A country's laws targeting protection of copyrights should thus provide for terms of protection (duration of protection) and the limitations or exceptions for certain cases which may not conflict with a normal exploitation of the work, or which may not unreasonably prejudice the legitimate interests of the copyright holder.
- b) **Trademarks:** These include signs or combination of signs that are capable of distinguishing a good or service of one undertaking from those of other undertakings. Such signs may include personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs. Where signs are not inherently capable of distinguishing the relevant good or service, WTO members are allowed to design features which can be used to distinguish the product or service from those of other undertakings. The owner of a registered trademark must be granted the exclusive right to prevent all third parties who do not have the owner's consent from using identical or similar signs for goods or services in the course of their trade, which are identical or similar to those in respect of which the trademark is registered; if such use is likely to result in confusion. A country's laws on trademarks should in summary outline: the rights conferred by the trademark, limited exceptions to the rights conferred, terms of protection (initial registration, duration of protection and renewal of registration), necessity to maintain a registration, and the conditions on the licensing of a trademark.

Cancellation of a trademark on the grounds of non-use is not allowed before three years of uninterrupted non-use has elapsed, unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner. Circumstances which may arise to merit cancellation of a trademark, such as import restrictions or other government restrictions, are however recognized as valid reasons of non-use. Use of a trademark by another person while it is still in the control of its owner are nevertheless recognized as use of the trademark, which thus allows maintenance of the registration. It is further required that use of the trademark in the course of trade should not be unjustifiably encumbered by special requirements, such as use with another trademark, use in a special form, or use of the trademark in a manner which

may be detrimental to its capability to distinguish the goods or services from those of other parties.

- c) **Geographical Indications:** These are indications which identify a good as originating in the territory, region or locality of a country. In this regard, a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin. This definition thus specifies that the quality, reputation or other characteristics of a good can each be a sufficient basis for eligibility as a geographical indication, where they are essentially attributable to the geographical origin of the good. WTO members are thus required to provide the legal means for interested parties to prevent the use or presentation of a good that indicates or suggests that it originates in a geographical area other its true place of origin. This is because such use or presentation may end up misleading the public (or consumers) as to the true geographical origin, resulting to unfair competition between the good in question and others that compete for a similar market. The registration of a trademark which uses a geographical indication in a way that misleads the public as to the true place of origin must be invalidated through legislation or at the request of an interested party. A country's laws should thus outline goods targeted under geographical indications for purpose of protecting prone areas (such as wines and spirits, certain foods (e.g. staples), works of art, etc) and provisions for exceptions. Interested parties (countries and/or producers) for example must have the legal means to identify wines categorized under a geographical indication from other wines not originating in the place indicated by the geographical indication. This applies even where the public is not being misled and there is no unfair competition.
- d) **Industrial Designs:** WTO members are required to provide for the protection of independently created industrial designs that are new or original. Such designs should significantly differ from known designs or combinations of known design features. The required protection should not extend to designs which are dictated essentially by technical or functional considerations. Special provision for textile sector is also incorporated in industrial designs, aimed at taking into account the short life cycle and sheer number of new designs for the sector. Thus even though there is short life of such designs, they are still given protection in order to take into account the cost of design, examination and/or marketing. Each WTO member is also required to ensure that measures for securing protection are clearly laid down in an industrial design law or copyright law, so that the owner of a protected industrial design can prevent third parties from making, selling or importing articles bearing or embodying a design which is already protected in law. The Agreements requires Members to grant the owner of a protected industrial design the right to prevent third parties not having the owner's consent from making, selling or importing articles bearing or embodying a design which is a copy of the protected design, if the action of third parties are undertaken for commercial purposes. Members are however allowed to provide limited exceptions to the protection of industrial designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design. The duration of protection is at least 10 years.
- e) **Patents:** These include any inventions (products or processes) in all fields of technology, provided that the inventions are new or involve an inventive step, and are capable of industrial application (whether such products are imported or locally produced). Patents and patent rights should be available and enjoyable without discrimination as to the place of invention, whether the products are imported or locally produced. A patent confers exclusive rights to the owner in the making, using, offering for sale, selling, importing, and the transfer by succession of the invented product of process. WTO members however are required to exclude the following areas from patents:

- i) Inventions and the commercial exploitation of patented products which are considered dangerous to public morality; including patents considered dangerous to human, animal or plant life or health; or which may cause serious prejudice to the environment.
- ii) Diagnostic, therapeutic and surgical methods for the treatment of humans or animals.
- iii) Plants and animals other than micro-organisms and biological processes produced through non-biological and microbiological processes

However, any country excluding plant varieties from patent protection must provide an effective system of protecting human, animal or plant life or health and the environment. The term of protection should not be less than 20 years from the date of application.

As provided for in the TRIPS agreement, a country's law on patents should provide conditions on patents applicants, exceptions to rights conferred by the patent, provisions for use of the patent, revocation of a patent, terms of protection, and the burden of proof that the process to obtain an identical product is different from the patented process. WTO members are also required to ensure applicants for a patent disclose the invention in a manner that is sufficiently clear and complete, and which distinguishes from the process of obtaining an identical product.

Compulsory licensing and government use without the authorization of the right holder are allowed, but should aim at protecting the legitimate interests of the right holder.

1. **Layout Designs (Topographies) of Integrated Circuits:** The TRIPS Agreement requires member countries to protect the layout-designs of integrated circuits in accordance with the provisions of the Treaty on Intellectual Property in Respect of Integrated Circuits (IPIC Treaty), negotiated under the auspices of WIPO in 1989. These provisions deal with inter alia, the definitions of "integrated circuit" and "layout-design (topography)", requirements for protection, exclusive rights, and limitations, as well as exploitation, registration and disclosure of integrated circuits. An "integrated circuit" refers to a product, in its final form or an intermediate form, in which the elements are integrally formed with intension of performing an electronic function. A "layout-design (topography)" on the other hand refers to the three-dimensional disposition of the elements of an integrated circuit which is intended for manufacture of an integrated circuit. The obligation to protect layout-designs applies to such layout-designs that are the result of a creators' own intellectual effort and are not commonplace among creators of layout-designs and manufacturers of integrated circuits at the time of their creation. The exclusive rights include the right of reproduction and the right of importation, sale and distribution for commercial purposes.

In addition to requiring Member countries to protect the layout-designs of integrated circuits in accordance with the IPIC Treaty, the TRIPS Agreement builds on four points; including: term of protection (ten years), the applicability of the protection, the treatment of innocent infringers, and compulsory or non-voluntary licensing of a layout-design or its use by the government without the authorization of the right holder.

2. **Protection of Undisclosed/Confidential Information:** The TRIPS Agreement requires undisclosed information such as trade secrets or know-how to benefit from protection. WTO members are thus required to protect undisclosed information (including data submitted to governments or government agencies, trade secrets and test data) if such information has commercial value but is secret. Persons are therefore allowed to prevent information lawfully within their control from being disclosed to, acquired by, or used by third parties without their consent if such information is considered secret and used for commercial purposes. The Agreement also contains provisions on undisclosed test data whose submission is required by governments as

a condition of approving the marketing of pharmaceutical or agricultural chemical products. In such a situation the Member government concerned must protect the data against unfair commercial use. In addition, Members must protect such data against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the data is protected against unfair commercial use.

In addition the TRIPS Agreement covers three additional areas of interest to intellectual property rights holders, namely:

- a) **Control of anti-competitive practices in contractual licenses:** The Agreement recognizes that some licensing practices or conditions related to intellectual property rights which restrain competition may have adverse effects on trade and/or may impede the transfer and dissemination of technology. Member countries are therefore required to adopt appropriate measures to prevent or control practices in the licensing of intellectual property rights which are abusive and anti-competitive. The Agreement provides for a mechanism whereby a country seeking to take action against such abusive and anti-competitive practices may enter into consultations with the affected country and exchange publicly available non-confidential information relevant to the abusive and anti-competitive practice, subject to domestic law and to the conclusion of mutually satisfactory agreements related to safeguarding of confidential information. Similarly, a country whose companies may be affected by actions related to prevention or control of abusive and anti-competitive practices imposed by another Member can enter into consultations with that Member through their country government.
- b) **Most Favoured Nation (MFN) Clause and National Treatment Rule (NTR):** The Agreement provides for inclusion of the MFN and NTR principles in their IPR laws. The MFN requires that with regard to the protection of intellectual property, any advantage, favor, privilege or immunity granted by a WTO Member country to the nationals of another country should be accorded unconditionally to the nationals of all other WTO Members. The NTR on the other hand requires that each WTO Member should accord nationals of other Members treatment no less favorable than that it accords to its own nationals with regard to the protection of intellectual property, subject to specified and clearly explained exceptions, for example those related to judicial and administrative procedures.
- c) **Acquisition and/or maintenance of IPRs:** The Agreement provides that procedural difficulties experienced in acquiring or maintaining IPRs should not nullify the substantive benefits that should flow from the Agreement to IPR holders. The obligations under the Agreement apply equally to all WTO member countries, but developing countries are given special transition arrangements in the form of a longer period to apply the provisions, for example where a developing country may not have laws to provide product patent protection for pharmaceuticals.

The TRIPS Agreement contains three main features that apply across all subject areas under intellectual property rights, namely:

- a) **Standards:** For each of the main areas of intellectual property covered, the Agreement sets out minimum standards of protection to be provided by each WTO member country. Each of the main elements of protection covers the subject-matter to be protected, the rights to be conferred, permissible exceptions to those rights, and the minimum duration of protection. The Agreement requires that the substantive obligations of the main conventions of WIPO⁷⁸, the Paris Convention for the Protection of Industrial Property (Paris Convention), and the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention) must be complied with. With the exception of the provisions of the Berne Convention on moral rights, all provisions of

⁷⁸ World Intellectual Property Office

the Paris and Berne conventions are incorporated under Agreement. The TRIPS Agreement is thus alternatively referred to as the Berne and Paris-plus agreement.

- b) **Enforcement:** This covers provisions on domestic procedures and remedies for the enforcement of intellectual property rights. The Agreement lays down certain general principles applicable to all IPR enforcement procedures, and provisions on civil and administrative procedures, remedies, provisional measures, border measures, and criminal procedures. These principles and provisions specify the procedures and remedies that can be applied so that IP right holders can effectively enforce their rights.
- c) **Dispute settlement:** The Agreement provides that any disputes between WTO members on IPRs should be dealt with through the WTO's dispute settlement procedures.

Broadly, the TRIPS Agreement is a minimum standards agreement, which allows WTO members to provide more extensive protection of intellectual property if they so wish. Members are thus given freedom to determine the appropriate method of implementing the provisions of the Agreement within their own legal system and practice.

EAC Partner States' experiences with application of IPRs are elaborated below.

BURUNDI EXPERIENCE WITH INTELLECTUAL PROPERTY RIGHTS

Burundi has put in place the necessary legal framework on IPRs in order to meet the obligations of the WTO TRIPS. In this regard:

- a) Law n° 1/021 of 30th December 2005 on Intellectual Protection aims to protect the rights on literary and artistic works; including authors and traditional creators.
- b) Law N° 1/13 of 28th July 2009 on Industrial Protection covers the organization and the protection of innovations, patent, utility model, industrial designs, layout designs for integrated circuits, handicrafts and distinctive signs; and certificates on these processes.

The objective of the two laws is to protect intellectual innovations, stimulate innovations, and contribute to the dissemination of knowledge. It also intends to enable Burundian inventors, businesses and creators to prevent unauthorized exploitation of their creations. In addition to the two laws, the Government has enacted the following Regulations/Ministerial Enforcement Orders, which specify requirements to be fulfilled by the inventors while making requests for protection, applications for protection certificates:

- a) Regulation n° 540/2042 dated on 24th December 2012 on Terms of filling and Registration of industrial designs;
- b) Regulation n° 540/2043 dated on 24th December 2012 on Terms of filling and registration of invention patents;
- c) Regulation n° 540/2046 dated 24th December 2012 on Terms of Filling and Registration of product bands, service marks, collective marks, trade names and certification signs;
- d) Regulation n° 540/2047 dated on 24th December 2012 on Modalities of deposit and registration of Geographical indications.
- e) Regulation n° 540/750/1582 dated on 14th September 2011 on Fees for Services rendered in respect of industrial protection.

Regarding the institutional framework for enforcing the IPRs, the Burundian Office of Author Rights and Neighbouring Rights (OBDEA)⁷⁹, and the Directorate of Industrial Protection (in the Ministry of Trade, Industry and Tourism) are mandated to oversee implementation of Law n° 1/021 (and Law N° 1/13 respectively). Implementation of both laws has been hampered by a number of constraints, including:

⁷⁹Office Burundais des Droits d'Auteurs et Droits Voisins

- a) Limited number of staff at OBDEA and the Directorate of Industrial Protection, inadequate trainings on technical skills in order for staff to effectively monitor incidences of IP infringements and compliance with the legal and regulatory framework, and enforce corrective measures.
- b) Weak sensitization of the IPR laws targeting potential beneficiaries. However, some campaigns have been undertaken with the aim of encouraging inventors and creators to register and acquire certificates of registration of their intellectual properties. So far, a number of certificates have been issued, namely: 609 for author rights; 369 for Patents; 86 for Industrial designs; and 9241 for trademarks.

RWANDA EXPERIENCE WITH INTELLECTUAL PROPERTY RIGHTS

Rwanda has established the legal framework on Intellectual Property through Law N° 31/2009 of 26/10/2009, whose overall aim is to promote protection of intellectual property rights. The specific objectives of the law according to the Ministry of Trade and Industry (MINICOM) are:

- a) To contribute to the promotion of technological innovation and the transfer and dissemination of technology to producers and users of technological knowledge in a manner that is conducive to social-economic welfare of the population in order to ensure balanced rights.
- b) To create a fair and equitable commercial environment through the reduction and prevention of distortions and impediments to free trade, and to set up the principles, rules and disciplines on trade in counterfeit goods.

In addition to the law, the Government of Rwanda has facilitated artists to in set up an organization for collective management of their intellectual property rights. The IPR law in this regard provides that; *“the use and management of copyrights; and rights of performers, phonogram producers of broadcasting organizations shall be entrusted to one or many private companies of collective management of copyrights and related rights.”* In addition, the Rwandan Society of Authors (RSAU) is already registered under the Rwanda Development Board (No.1538 /10/NYR). Sensitization campaigns have also been carried out to motivate creators and inventors at different levels to get their properties registered. So far the following certificates have been granted by the Office of the Registrar General: 232 Patents of invention, 45 Industrial designs, 7025 trademarks, and 291 Copyrights.

According to the Rwanda Standards Board (RSB), there have been incidents of substandard products traded in the domestic market, especially locally originating products. The commonly affected sectors are food products, and the creative industry (especially music and film industry). However, both MINICOM and RSB confirm that there are no serious reported cases on infringement of IPRs, but there is need to undertake sensitization of the public so that affected parties can inform relevant authorities about such incidences.

Beyond the borders, Rwanda is interested with the regional and international integration in the field of intellectual property. Rwanda has in this respect signed up for membership to the Africa Regional Intellectual Property Organization (ARIPO). Furthermore, the ratification laws authorizing Rwanda to become a member of The Madrid Agreement, The Hague Agreement and the Patent Cooperation Treaty (PCT) have been approved and are already published in Official gazette.

According to the RDB, there is still much to be done in regard to introducing detailed obligations to facilitate enforcement of the minimum IPR standards. For Rwanda to fully exploit the potential advantages of the WTO TRIPS agreement, the following measures should therefore be considered for implementation:

- a) **Monitoring infringements:** There is a need to put in place measures to monitor infringements of IPRs with a view of protecting the IP owners. This is will prevent free riders from benefiting in the works of the original innovators, inventors and creators (such as brands, design, original works and invention) without following proper legal

procedures and processes. Some of the steps that need to be taken to effectively monitor IPRs are: market surveillance specially among competitors of goods, sensitizing innovators to constantly search for pending and granted IP applications which are listed in the IP gazette (available on the RDB website as well as the Official Gazette), and monitoring through the internet and social media sites for any online IPR infringements.

- b) **Reporting the infringements:** There is a need to have a centralized place or system for reporting of IPR infringements. Generally, there are different types of infringements depending on the type of intellectual property rights one holds.

Example of such infringements include:

- On industrial property (patents, utility models, and industrial designs), infringement occurs through unauthorized manufacture, sale and use of the protected innovations.
 - On trademarks, there are two types of infringements: (i) Counterfeiting/Piracy occurs where one knowingly manufactures, distributes or sells goods that bear trademark without the permission of the owner, or the trademark has been illegally copied; and (ii) Use of a mark on goods that is confusingly similar to that of a registered trademark.
 - On copyrights, infringement comprises unauthorized reproduction/copying, distributing and selling of copyright protected works. Copyright infringement is most rampant in the musical and audiovisual works; which has further been amplified with the onset of the digital and internet era which has allowed for unlawful reproduction and distribution of original works by multiple users.
- c) **Ensuring effective enforcement:** Generally, copyright and related rights present a unique case of IP management and enforcement. This is because it is impractical for copyright owners such as musicians, authors and artists to individually manage their IP rights. An artist in this case cannot reach every single radio or television station to negotiate for licenses and royalties for the use of their works. On the other hand, it is also not practical for all users to seek permission from every single artist for the use of every copyrighted work. In light of these challenges, there is a need to create and put in place measures and/or systems through which all IPR related issues can effectively be addressed.
- d) **Awareness public campaigns:** Awareness campaigns should widely be carried at the national level to ensure effective public involvement and awareness on the need for IPR protection. This is important because while IP owners have a primary role in monitoring the use of their rights, IP rights still need a supportive ecosystem in order to thrive. In this regard, there is need for the Government to conduct awareness campaigns for the general public focusing on the fundamental principles of respect for IPR holders.
- e) **The need for regional level measures on IPRs:** For the EAC to fully take advantage of the WTO TRIPS agreement, the following measures should be considered and implemented as part of an EAC Regional Law:
- i) Compliance with international norms: There is a need to ensure compliance with the relevant international norms and legal frameworks on IPRs as provided by the TRIPS Agreement. The EAC law in this respect should incorporate three main features: standards, enforcement and dispute settlement.
 - ii) Regional harmonization: There is a need to harmonize relevant measures, laws and regulations at the regional level; including: publication systems, examination systems, timeframes, awareness campaigns, reporting and enforcement mechanisms, infrastructure development and capacity building.

- iii) Emerging issues: There is a need to consider emerging issues, such as: IPRs in the digital economy given the rise in online businesses; protection of traditional knowledge, genetic resources and traditional cultural expressions; and geographical indications for products that owe their uniqueness to a given geographical area.

KENYA EXPERIENCE WITH INTELLECTUAL PROPERTY RIGHTS

In Kenya, relevant laws on intellectual property rights and copyrights are implemented by the Kenya Intellectual Property Institute (KIPI) and the Kenya Copyrights Board (KECOBO) respectively as elaborated below.

Industrial Property Rights IPRs are protected under the Industrial Property Act 2001, which is administered by the Kenya Industrial Property Institute (KIPI), a government parastatal established on 2nd May 2002 under the Ministry of Industry, Trade and Cooperatives, which took over from the former Kenya Industrial Property Office (KIPO). The KIPI mandate is to protect and promote industrial property rights, foster innovation for sustainable industrial development in Kenya and to implement the Trademarks Act Cap 506 which deals with registration of trade and service marks. Its core functions are to:

- a) Administer industrial property rights;
- b) Provide technological information to the public;
- c) Promote inventiveness and innovativeness in Kenya; and
- d) Provide training on industrial property.

The Industrial Property Act specifically protects four elements of intellectual property rights namely: (i) patents and trademarks, (ii) utility models, (iii) industrial designs, and (iv) Technovations (which also incorporates traditional knowledge). The Act also provides for registration of technology transfer agreements and licenses.

The Kenya IPR Act lays great emphasis on Invention, which refers to a solution to a specific problem in the field of technology, or a new and useful art (whether producing a physical effect or not), process, machine, manufacture or composition of matter, or any new and useful improvement that is capable of being used or applied in trade or industry. An invention may therefore relate to a product or a process, and therefore when properly protected and applied contributes to fueling technological progress and economic strength of any nation by promoting trade and stimulating innovative activities. Thus without patent protection, many people might not take the risks or invest their time and money to devise and perfect new products. There have been perceptions in Kenya that many innovators would have benefited greatly if Kenyan products such as the *kiondo*⁸⁰, Maasai *shuka*⁸¹ (kikoy), and even certain vaccines used to treat livestock diseases had patented. There have also been allegations that the *kiondo* innovation was 'stolen' by Japanese, but this has been disapproved because *kiondo* is a basket which as a product or even its design cannot be protected. Nevertheless, Kenya needs to locally protect the process of making the *kiondo* (according to KIPI) and to commercialize the product and other cultural products whose production processes have been passed over generations as part of traditional knowledge. This would enable new innovative products that are based on traditional knowledge to become available in the national, regional and global markets on a wider scale; thus enabling the creators to produce them commercially and to realise monetary benefits.

New technology invented in the following areas can be included in patents protection:

- a) Human Necessities: Agriculture, foodstuff, personal or domestic articles, health and amusements.

⁸⁰ Traditional Kenyan hand-woven handbags made from sisal and leather trimmings which is popularly used by women to carry light loads.

⁸¹ A textile wrap that appears in bright colors popularly used by Maasai community

- b) Performing operations and transportation: separating, mixing, shaping, printing and transportation.
- c) Chemistry and metallurgy.
- d) Textiles and paper.
- e) Fixed Construction: building, earth moving machinery, and mining.
- f) Mechanical engineering, lighting, heating, weapons, blasting including engines, pumps and engineering in general
- g) Physics: instruments and nucleonic.
- h) Electricity

However the following are not regarded as inventions and are excluded from patent protection:

- a) Discoveries or findings that are products or processes of nature where mankind has not participated in their creation (including, plants and microorganisms).
- b) Scientific and mathematical methods and theories.
- c) Schemes e.g. investment, methods of bookkeeping or insurance schemes.
- d) Business methods e.g. credit or stock methods
- e) Rules for playing games (although the games equipment are patentable).
- f) Methods for treatment of human or animal body by surgery or therapy, as well as diagnostic methods; excluding products for use in any of those methods, such as substances, compositions or apparatus;
- g) Public Health related methods used for the prevention or treatment of any diseases designated as a serious health hazard or as a life threatening disease.
- h) Mere presentation of information.
- i) Non-functional details of shape, configuration, pattern or ornamentation
- j) Inventions related to plant varieties
- k) Inventions and the commercial exploitation of patented products which are considered dangerous to public morality; including patents that may be dangerous to human, animal or plant life or health, or the environment.

In efforts to facilitate implementation of the IPR Act, and particularly provisions on patents and trademarks, service mark and/or a distinguishing guise, Kenya enacted the supportive Trademarks Act (2001), which aims to distinguish good or service of one person, organization, industrial or a commercial enterprise from those of other parties when the good or service is offered for sale. Kenya has also joined membership of African Regional Industrial Property Office (ARIPO); a regional organization of 12 African countries that assists inventors wishing to protect their inventions at continental level⁸². In this regard, if an applicant files for invention protection in Kenya, the provisions of the protection are designated in all the other ARIPO member countries. Kenya is also a member of the World Intellectual Property Organization (WIPO), which at global level administers the Patent Cooperation Treaty (PCT). Kenya also acceded to the 1978 International Union for the Protection of New Varieties of Plants (UPOV) Convention in 1999.

Registration of a trade mark is direct evidence of exclusive ownership of the mark in Kenya, which helps to keep off potential infringers who may be tempted to ride on the goodwill of the original owner of the mark. It enables the mark owner to protect his/her rights more easily in case someone else challenges the origin of such a mark. The law puts the burden of proving any ownership rights in a dispute on the challenger. The process of registration requires thorough checks for conflicting trademarks, thus avoiding infringement of trademark rights and ensuring a good or service has a unique mark that does not resemble those of any other parties. Registration of a trademark is

⁸² The 12 ARIPO members are namely Kenya, Zimbabwe, Gambia, Ghana, Lesotho, Botswana, Somalia, Sudan, Tanzania, Uganda, Swaziland, Malawi and Zambia.

not mandatory although KIPi advises businesses to register trade marks on their goods/services since registration is direct evidence of one's ownership and enables a business to more easily protect their rights should someone challenge them. Using a mark for a certain length of time can also establish ownership of a trademark through Common Law, based on the provision that the burden is on the challenger of the registered trade mark to prove ownership should a dispute arise. Use of an unregistered trade mark can also lead to lengthy and expensive legal disputes over who has the right to use the mark. A registered trade mark is also a valuable asset for business expansion especially through licensing franchises.

From early 2000, a new trade malpractice emerged in protecting IPRs in the form of competition from counterfeited goods, where original trademarks have been infringed through copying and imitations. In efforts to deal with this challenge, Kenya enacted the Anti-Counterfeit Act No. 13 of 2008. This law prohibits trade in counterfeit goods, and also established the Anti-Counterfeit Authority (ACA) to enforce its provisions. It specifically prohibits the manufacture, production, packaging, re-packaging and labelling of any protected goods in Kenya through imitations that are identical or substantially similar copies of the protected goods. However, enforcement of this law has been beset with a lot of challenges. In this regard, during the process of the RTP development, consulted public and private sector stakeholders pointed out that there has been negative and almost outright hostility towards ACA by both buyers (consumers) and sellers (traders); who perceive the agency as an inhibitor and interferer in matters related to trade and consumer freedom, rather than a promoter of fair trade. This negative attitude may be attributed to lack of public understanding and appreciation of the legal mandate given to ACA. This is exacerbated by ACA's tendency to target the wrong parties, such as retail traders and customers of counterfeited goods. In many instances, traders and consumers are arrested if found dealing with or purchasing counterfeits by ACA officers. Consequently, subsequent legal prosecution may lead to jail terms and monetary charges by courts. This gives rise to the perception that the 'real perpetrators', namely the counterfeiters and large scale importers and distributors of counterfeit goods are hardly ever netted by the Agency; leaving them to continue with this trade malpractice. Such counterfeiters often sell the goods to unsuspecting or ignorant retail traders, who end up bearing the burden of the trade in counterfeits, while often they don't know the origin of goods and therefore cannot assist in the fight against the malpractice.

Copyrights on the other hand are protected through the Copyright Act 2001, which is applicable on music, arts, literary works, publishing works, films broadcasting and the digital environment among others. The law recognizes that new digital services are gaining momentum around the world, thus offering radio and TV listeners, film viewers and lovers of artistic works unprecedented opportunities to discover new artistic and literary works of their choice. Thus as global levels of internet and mobile phone penetration increases, worldwide access to artistic works is expanding, but which unfortunately denies creators of such works the opportunity to gain monetary benefits. However, subscription-based streaming model has the potential to ensure users of artistic works pay the creators competitive remuneration, thus guaranteeing sustainability of the artistic creative industry. However this model can only work effectively if domestic laws covering subscriptions for use of creative arts are comprehensive and strictly enforced. Thus the current loopholes which allow users of artistic works to choose content from various sources (such as YouTube, broadcasting and other media) ends up denying the creators and developers of their rightful monetary benefits in form of royalties.

KECOBO has taken note of these challenges by introducing legislation through which the rights holders are also entitled to royalties from transmissions made in radio and television and public performances. Three categories of rights holders can claim royalties in this respect, namely:

- a) Composers, authors and publishers (copyright)
- b) Performers (related right)
- c) Producers of sound recordings (related right)

To protect and promote the rights of owners of creative arts (performers and creators of crafts, film makers, song writers, dramatists, creators of radio and television programs, etc), KECOBO organizes arts festivals as a platform for display of artistic works. Festival managers and organisers of such events are required to strategically manage the copyright and related rights of the creative artists, since without appropriate and effective copyright and related rights management, the owners of creative arts often become vulnerable to illicit exploitation, which ends up demotivating them. The festivals have increasingly become arenas that allow freedom of expression on a wide range of cultural, religious, social and political issues and diversity. In certain cases, the festivals have been used to promote peaceful coexistence among communities. Balancing between defending this public good and protecting individual property rights in arts festivals however is not always easy; and thus in an effort to create a balance, the copyright law provides for exemptions and limitations; which while applied in the public interest allows the public to perform any of the artistic acts exclusively reserved for the copyright owner without requiring authorisation for fair dealing. This exception allows the public to use the artistic works for scientific research, private use, criticism or review, and/or reporting of current events subject to acknowledgement of the source.

The Kenya copyright law further acknowledges that while exclusive rights are conferred to the author of the protected work, such rights are not intended to stop others from using or from being inspired by the general idea behind the protected works. This means the copyright law protects the way the creator of the original work has expressed the idea but not the idea itself. In addition, the Kenya copyright law allows performers in arts festivals the right to control the recording, dissemination of performances, and to exploit such performance for commercial gains; including the right to broadcast the performance, communicate the performance to the public, rent the original and copies of fixed performances to the public for commercial purposes. To ensure that the arts festival copyright policy is effective, organisers are encouraged to establish written contracts with all parties involved in the festival; based on recognition that effective contracts can be used as a means of sealing commercial deals. Such parties include members of the public that may patronise the festival, photographers, audio and videos recorders, journalists, and festival performers and exhibitors.

Kenya also has enacted the Seed and Plant Varieties Act (1975), which is administered by the Kenya Health Plant Inspectorate Services (KEPHIS). KEPHIS was established in 1996 to regulate importation and exportation of plant materials and the trade in bio-safety control organisms. This Act is to a large extent in conformity with the requirements of the 1978 International Convention for the Protection of Plant Varieties (UPOV), of which KEPHIS is the liaison office in Kenya. Part of the mandate of KEPHIS is to examine, approve and register new varieties of plants and seeds. A Plant Breeders Rights office was created in 1997 under KEPHIS to handle matters related to plant breeders' rights.

In summary, Kenya has established various IPRs related laws; namely:

- The Industrial Property Act 2001 Industrial Property Act 2001; which aims to protect patents and trademarks, utility models, industrial designs, and technovations (including traditional knowledge).
- The Trademarks Act Cap 506); which aims to protect trademarks, service marks, certification marks, and distinguishing guises.
- The Counterfeit Act No. 13 of 2008, which prohibits and seeks to combat counterfeiting trade in Kenya. The Act is administered by the Anti-Counterfeit Agency (ACA). Whereas IPR related laws may be seen as protecting inventions/creators against

counterfeits, these laws were not deemed adequate at the time of enacting the Counterfeit Act, which further provides for severe penalties for those convicted of promoting counterfeit trade. In addition, the Act empowers state agents to search premises and seize counterfeit goods. In this respect, the Customs and Excise Department supports ACA functions by seizing counterfeit goods at the point of entry into Kenya.

- The Copyright Act 2001, which protects creative arts including music, arts, literary works, publishing works, films broadcasting and the digital services.
- The Seeds and Plant Varieties Act of 1975 (revised in 1978 and 1991), which deals with seed and plant certification. The Act protects new plant varieties in Kenya through Plant Breeders' Rights (PBRs). In this respect, the UPOV Convention recognises that plants and seeds are not patentable but allows states to provide for special forms of protection for such material on behalf of plant breeders for 25 years. This Act also recognizes a farmer's privilege to save and re-use seed of the protected variety.

Despite the establishment of the legal framework with clear mandate on the fight against infringement of IPRs, and the supportive institutional framework to support enforcement of the laws, infringement of IPRs continues to be key challenges which have adverse impacts on IP holders, particularly manufacturers whose business viability has suffered through declining sales and market shares. Additionally, owners of creative arts such as musicians and film owners have continued to suffer infringement of their IP rights even though the relevant law to protect their creations exist. In this regard:

- a) Key products which have been adversely affected by competition from counterfeits include alcohol & beverages, batteries, cement, cosmetics, electrical and electronic items, footwear, glass products, motor vehicle assembly, milk powder, paper and paper products, pharmaceutical products, cosmetics, plastics, printing products (toners and cartridges), textiles and garments, stationery, steel products, wines and spirits.
- b) Stakeholders (particularly manufacturers) clearly point out that broadly, they are quite aware of the policy and legislative measures that the Government of Kenya has put in place to address and manage various issues related to IPRs in accordance with the WTO established frameworks for the same. They are also aware that Kenya has met the required obligations under the WTO TRIPs Agreement by establishing laws and regulations, while others are in the process of being worked on, including measures on border controls for use by Government Agencies. However, the legislative frameworks have not helped much in fighting the infringement of their IP rights, especially with the onslaught from counterfeits.

In light of the above challenges, Kenya needs to:

- a) Sensitize stakeholders on existing legislative and administrative obligations under national and international laws and their implications to Kenyan businesses, creative arts, and general trade.
- b) Learn from the Champions on how to deal with counterfeits, and to adopt and adapt technology in production of cheaper goods, which may be one of the key factors that drive consumers to opt for consumption of counterfeit goods. Several countries (such as India and China) that are currently world leaders in the manufacture and marketing of generic medicines and other pharmaceutical products, agricultural and industrial machinery, electrical and electronic domestic and commercial

appliance have utilised modern technology to produce cheaper goods in efforts to meet their consumers' needs.

NB: The ongoing Kenya baseline survey (2019) aimed to measure the level, magnitude, prevalence and impact of trade in counterfeits and other illicit goods will shed more light on which specific products and sectors have been adversely affected, the forms of such effects (including declines in sales and market shares), and the measures which Kenya should take in order to effectively deal with these vices.

TANZANIA EXPERIENCE WITH INTELLECTUAL PROPERTY RIGHTS

The Intellectual Property Rights laws in Tanzania are covered under distinct legislation for each form of Intellectual Property. The laws broadly aim at safeguarding intellectual creators and other producers of intellectual goods and services by granting them certain time-limited rights to own their creations. The laws also control the use, reference and possession of those creations. These rights however do not apply to the physical object in which the creation may be embodied but apply only to the intellectual creation itself. The laws are:

- a) Copyrights are regulated by the Copyright and Neighbouring Rights Act, which is administered by the Copyright Society of Tanzania (COSOTA). Copyright protection covers works of authors, who could either be Tanzania nationals or residents. The law also provides for remedies in case of copyright infringement. Where there is an imminent danger of a copyright infringement or continued breach of a copyright, the proprietor is required to apply for injunctive orders in a court of law. Tanzania ratified the Berne Convention for protection of literary and Artistic works which became effective on the 25th July, 1994. To this end, copyrights in Tanzania are territorial in the sense that all works done in the country and those that are first published in Tanzania enjoy protection under the law notwithstanding the nationality of the authors. The law also provides for exceptions on protection of copyrights and related rights including folklore; and further for protection of performers' rights.
- b) Trademarks are governed by the Trade and Service Marks Act, administered by the Business Registration and Licensing Agency (BRELA). The Act applies on goods and services that bear trademarks. Both Tanzania and Zanzibar apply International Classification of Goods and Services (Nice Classification) as provided by WIPO⁸³.
- c) Patents are protected under the Patent (Registration) Act.17. A patent in this case may be registered for inventions (other than a discovery, scientific theory, mathematical method, aesthetic creation, computer program or presentation of information) after meeting specified requirements relating to novelty, utility and inventiveness. An invention is considered new if it is not anticipated by prior art. A utility model must not be made available to the public through a written description in Tanzania before filing for protection, and cannot form part of the patent and application, unless the national phase of its application in Tanzania has been properly entered into (and an English translation of the international application has been filed). The law further provides that some inventions may be excluded from being patented for the purpose of protecting public order or morality, life, health and environment; and that diagnostic, therapeutic and surgical methods for treatment of humans or animals, plants, animals and the biological processes used in their productions are not patentable.

⁸³ World Intellectual Property Organization. The Nice Agreement for the registration of marks was established at the Nice Diplomatic Conference, on June 15, 1957, and was revised at Stockholm, in 1967, and at Geneva, in 1977.

- d) For Designs, there is no system for registration of designs in Tanzania. However, the country has ratified the 1979 Agreement on Creation of African Regional Industrial Property Organization (effective for Tanzania as from 12 October 1983); and the Protocol on Patent and Industrial Designs within the Framework of African Region Industrial Property Organization (the Harare Protocol), 1982) (effective for Tanzania as from 01 September 1999). Despite this statutory limitation, the Patents (Registration) Act has provisions which recognize designs registered in the United Kingdom. Accordingly, designs can be protected in Tanzania even by registration in the United Kingdom. The Patents (Registration) Act provides that rights and privileges of proprietors of designs registered in the United Kingdom are extended to Tanzania and Zanzibar during the term of design registration.

Despite the existence of laws on protection of IPRs and the institutional framework to enforce them, there have been widespread trade in counterfeited goods, which normally infringe on IPRs through imitations and copying. According to the Confederation of Tanzania Industries (2018), counterfeiting is a growing challenge in Tanzania and a wide range of sectors and products have been adversely affected by competition from counterfeits and infringements of IPRs. The main counterfeited products in this regard include electrical products, motor vehicles spare parts, building materials, mobile phones, TV set, clothing, medicaments/pharmaceuticals, toothpaste, mosquito coils, razor blades, salts, corn oil, engine oil, aerosols, brake fluids, tooth brushes, toilet soap, detergents, CDs, DVDs and baby formula among others.

Thus Tanzania needs to learn from international best practices (like China and India) on how to deal with unjustified competition which her domestic manufacturers and genuine importers are facing counterfeits. The country should in this respect adopt and adapt modern technology in production of cheaper goods, which may be one of the key factors that drive consumers to opt for consumption of counterfeit goods. Tanzania also needs to put in place sensitization measures to enable the public to differentiate between counterfeits and genuinely manufactured goods including IPRs as some of the counterfeited goods could be substandard and dangerous to human, animal and plant health and the environment.

UGANDA EXPERIENCE WITH INTELLECTUAL PROPERTY RIGHTS

Based on the WTO TRIPS Agreement standards for setting of IPRs laws by WTO member countries, Uganda has used provisions of the Agreement to modernize its legal framework on IPRs protection. Uganda has also joined membership of the Paris Convention for the Protection of Industrial Property, the Convention establishing the World Intellectual Property Organization (WIPO), the Patent Cooperation Treaty, and the Nairobi Treaty⁸⁴. It is also a member of the African Regional Intellectual Property Organization (ARIPO). The Uganda Registration Services Bureau (URSB) is the main competent authority in the area of IPR protection. The country has enacted various legislations to enhance IPR protection, including:

- a) The Industrial Property Act, 2014 (replacing the Patents Act, 1993). The legislation covers patents, utility models, industrial designs, and tech-innovations. Under the Act, inventions, products or processes which are applicable to industrial activities may be protected. In the event of infringement, the IP rights holder can file a case in the High Court for damages, an injunction (including border measures), and/or other remedies. The Industrial Property Act also contains provisions on the enforcement of patent rights.

⁸⁴The Nairobi Treaty provided protection to the five interlaced rings of Olympic symbol against use for commercial purposes (in advertisements, on goods, as a mark, etc.) without the authorization of the International Olympic Committee.

- b) The Trademarks Act, 2010 provides for the registration of trademarks that meet the criterion of uniqueness for goods or services. The Act provides for penalties for offences such as the falsifying and/or counterfeiting of trademarks, the alteration of entries in the register, and the unlawful removal of a registered trade mark. A person whose rights are infringed may seek civil remedies. The Act further provides for the appointment of inspectors who assist in enforcement of its provisions in collaboration with the police.
- c) The Geographic Indications Act, 2013 protects Geographic Indications (GIs). Provisions regarding remedies against violations are similar to those under trademarks.
- d) The Trade Secrets Protection Act, 2009 protects trade secrets or undisclosed information in commercial transactions and other related matters. In the occurrence of improper disclosure, acquisition or the use of a trade secret, the High Court can order an injunction, a grant of damages, and an account of profits or an adjustment order.
- e) The Copyright and Neighbouring Rights Act, 2006 protects literary, scientific, and artistic intellectual works. These include audio-visual works, computer programs, electronic data banks, and derivative works for example translations. In the event of infringements of copyright or neighbouring rights, the offender is punished through court of law either through monetary fines or imprisonment.
- f) The Plant Varieties Act, 2014 aims to protect plant varieties and to promote appropriate mechanisms for fair and equitable sharing of benefits as a result of the use of plant varieties, knowledge and technologies. The act also provides suitable institutional mechanisms for the effective implementation and enforcement of the rights of breeders, and promotes increases in the productivity, profitability, stability and sustainability of cropping systems through yield enhancement and maintenance of plant varieties and the supply of good quality seed or planting material to farmers in order to strengthen the food security of the nation.

Uganda however has not established the relevant legislation to provide protection of layout design of integrated circuits, and does not have any provisions on parallel imports.

The Uganda National Bureau of Standards (UNBS), Uganda Revenue Authority (URA), and Uganda Police Force (UPF) are responsible for enforcing the laws on IPRs. In 2016, the Uganda Registration Services Bureau (URSB), in cooperation with the Uganda Private sector Foundation (PSF) instituted the Intellectual Property Enforcement Unit, whose mandate is to enforce the law against trademark counterfeiting and copyright piracy. The Commercial Court is tasked with hearing cases on IPRs infringements, including grievances by artists and musicians in Uganda's Performing Arts Rights Society. However, enforcement efforts are weak due to financial constraints. The IPR laws also require that proceeds from IPR related penalties should be used as a fund to compensate those who have lost through importation of counterfeits.

Of note is that the TRIPS Agreement does not oblige member countries to enforce the TRIPS Agreement in a manner which is different from enforcement of their national law in general. In this regard, TRIPS requires that member countries' enforcement procedures must "*not be unnecessarily complicated or costly, or entail unreasonable time limits or unwarranted delays*". This implies that there is no requirement to deploy resources for enforcement of IPR laws; a weakness which could have triggered the increased challenge of trade in counterfeit goods.

Trade Related Intellectual Property Rights (TRIPs) Agreement incorporates certain flexibilities which give developing and least-developed countries the right to use TRIPS-compatible norms in a manner that enables them to pursue their own public policies. These flexibilities are generally with regard to enhancing access to pharmaceutical products or protection of their

biodiversity as well as establishing macroeconomic and institutional conditions that support economic development. There are a number of measures which Uganda needs to undertake to enable exploitation of the potential advantages of the TRIPS Agreement centered on the flexibilities provided for in the agreement, which include:

- a) Compulsory license whereby public authorities authorize use of a patent-protected invention by the government or third parties without the consent of the patent holder;
- b) Parallel import in which companies are allowed to charge lower prices for a medicine in one country than in another, taking into account a range of market factors; and
- c) Bolar provision/regular exception which permits the use of a patented invention without authorization from the patent owner in order to obtain marketing approval of a generic product before the patent expires.

There is also need to raise awareness and capacity building for agencies to know of the availability of TRIPs flexibilities in order to apply them to benefit consumers. This is because the TRIPS agreement is complex and likely to be misinterpreted and misunderstood by the public.

Although all sectors in Uganda have experienced some adverse effects of competition from counterfeits, the health and agriculture sectors are more pronounced. A study by the International Growth Center (Bold, Tet. al. (2015))ⁱ investigated the factors which contribute to low agricultural output and found out that fertilizers traded on the Ugandan market were lacking 30% of nutrients, while hybrid maize seed contained less than 50% authentic seeds. Also, according to World Health Organisation (WHO (2017))⁸⁵, up to one-third of anti-malarial drugs are fake (Uganda has the world's highest malaria incidence at 478 cases per 1,000 people per year). In addition, a survey by Stockholm University, and Harvard University showed that approximately 36.8 % of drug outlets sampled in Uganda sell fake artemisinin-based combination therapy (ACT) for the treatment of malaria where 19.4% of all anti-malarial drugs failed the authenticity test (Martina Bjorkman-Nyqvist et. al. (2013)).ⁱⁱ

Other products which are adversely affected include; Food and beverages, toiletries, watches, perfumes, medicines, cosmetics and lightening creams, toys, iron sheets, electrical products, mattresses, weighing scales, paints, diapers, sanitary towels, steel bars, cigarettes, medical instruments, vehicle parts, veterinary drugs, drugs for humans, motor oil, condoms, computers, mobile phones, refrigerators and agro-inputs among others. Uganda has had cases of fake rice and eggs on the market reported in the press. The textile and leather subsector has had tough time owing to the imports of used clothing and leather products. The innovations by the two main textile companies have been wiped away by stiff competition from imported second hand materials and extremely cheap apparel made from synthetic materials. This has kept the cotton textile/apparel sector behind its potential

According to New Vision Newspaper, Nov. 22, 2019. *"In 2017, 232 metric tonnes of counterfeit goods worth Ush1.7b were seized by UNBS and 48 metric tons of substandard goods worth about 950 million were destroyed between July and December 2017"*⁸⁶. Additionally, according to Monitor Newspaper, August 1, 2018 *"A report by Uganda's national standards agency for 2017 and 2018 indicated that more than 54% of goods on the market are fake."*ⁱⁱⁱ

IMPLICATIONS OF WTO TRIPS AGREEMENT FOR EAC COUNTRIES

Partner States' experiences with IPRs shows that:

- 1) Currently, IPR laws, institutional enforcement frameworks and mechanisms are not yet harmonized in the EAC, although efforts are underway to assist EAC Partner States to implement the WTO TRIPS Agreement with a view to promoting copyright and cultural

⁸⁵WHO (2017) A study on the Public Health and Socio economic impact of substandard and falsified medical products. Geneva: World Health Organization.

⁸⁶ The New Vision Newspaper, November 22, 2019 <https://www.newvision.co.ug/new-vision/news/1486435/combating-counterfeits>

industries, traditional knowledge, geographical indications, and technology transfer⁸⁷. A regional IP Protocol and Policy were adopted by the Council of Ministers in 2013 to maximize the benefits of TRIPS flexibilities. An EAC Anti-Counterfeit Bill is also being drafted to provide the legal framework for EAC to deal with counterfeit goods. However, the protection of IPR remains a challenge in all EAC Partner States; and apart from Kenya, the other Partner States have not established the legal and institutional frameworks on protection against counterfeit trade. It is therefore necessary that each Partner State concludes its national counterfeit law for subsequent harmonisation into the regional law.

- 2) The EAC Secretariat is in the process of undertaking consultations with a view to developing an IPR agenda to support Partner States in the implementation of the TRIPS Agreement. At the same time, Partner States have pursued initiatives aimed to make the best use of the TRIPS flexibilities. For example, through the Technical Committee on TRIPS and Access to Medicines (TECTAM), a regional IP Protocol and Policy on the Utilization of Public Health Related WTO-TRIPS Flexibilities was adopted by the Council of Ministers in 2013. This particular initiative is geared towards facilitating production of essential medicines, which is a priority trade agenda for Partner States. This initiative has improved the regulation of the region's pharmaceutical industry and aided in the promotion of domestic production for a number of essential medicines (UNCTAD 2016). To ensure the initiative achieves the intended purpose of facilitating access to essential medicines by the EAC public, it should be widely publicized in the region. Further, the initiative should incorporate the priority standards on African traditional medicines developed by the ARSO Technical Harmonisation Committee (THC 13)⁸⁸.
- 3) Each Partner State has established clear legal and related institutional framework to facilitate implementation of IPRs related challenges. However despite the existence of this structure, each country has been facing challenges related especially to competition from counterfeited goods and piracy. It is therefore necessary that the EAC harmonised law which would enable Partner States to take advantage of the TRIPs Agreement should incorporate measures to deal with counterfeits and piracy, which adversely affects IP holders of goods and services and the creative arts industry.
- 4) While each Partner State has clear legal and institutional framework for enforcement of IPR related laws, the public (including IPR holders) is inadequately unaware about the content and implications of such laws (such as in the case of Burundi), and how to report cases of infringement. This could be part of the reasons why there has been almost outright hostility by the public (particularly buyers/consumers and sellers/traders) towards agencies mandated to enforce the laws aimed to fight trade in counterfeits (as in the case of Kenya), where such agencies are regarded as inhibitors and interferers in matters related to trade and consumer freedom, rather than promoters of fair trade. This explains why trade in counterfeits has flourished despite the existence of clear legal and institutional framework to fight the menace. It is therefore necessary that an outreach programme is developed to inform the public about protection of IPRs coverage and the positive implications for the IP holders. Such a programme should be supported with effective elaboration materials and establishment of an EAC Trade Support Web-portal to promote knowledge on IPR targeting various sectors and the wider public.
- 5) As global levels of internet and mobile phone penetration increases, worldwide access to artistic works is expanding, but unfortunately this positive development has led to denial of artistic creators of the opportunity to gain monetary benefits from their creations. It therefore seems necessary that EAC widely adopts and implements subscription-based streaming model where royalties are legally payable. Application

⁸⁷WTO: Joint Trade Review – Burundi, Kenya, Rwanda, Tanzania and Uganda, 2019

⁸⁸ ARSO (*African Organization for Standardisation*) is in charge of developing and/or adoption of relevant international standards for goods and for developing standards that suite the needs of the African market.

of the model has the potential to ensure users of artistic works pay the creators competitive remuneration, thus guaranteeing sustainability and morale to continue participating in the artistic creative industry. This model would work effectively if domestic laws covering subscriptions for use of creative arts are comprehensive and strictly enforced. The current loopholes which allow users of artistic works to choose content from various sources (such as YouTube, broadcasting and other media) should thus be amended to require payment of user-based subscriptions or royalties to ensure the creators and developers gain the rightful monetary benefits from their creations.

6) Although the CMP explicitly requires Partner States to cooperate and coordinate on administration of IPRs laws; a similar requirement as in other trade and integration obligations and agreements; the EAC countries have different levels of intellectual property (IP) protection. This implies that EAC needs to harmonise Partner States laws into a regional law, which should as a minimum incorporate all provisions of the TRIPs Agreement; including:

- i) Protection of Copyrights and Related Rights
- ii) Protection of Trademarks
- iii) Protection of Geographical Indications
- iv) Protection of Industrial Designs
- v) Protection of Patents
- vi) Protection of Layout Designs (Topographies) of Integrated Circuits
- vii) Protection of Undisclosed/Confidential Information
- viii) Control of anti-competitive practices in contractual licenses
- ix) Inclusion of the Most Favoured Nation (MFN) Clause and National Treatment Rule (NTR) principles in the design of national IPR laws
- x) Taking account of procedural difficulties experienced in acquiring or maintaining IPR, which as per TRIPs Agreement should not nullify the substantive benefits that should flow from the Agreement to IPR holders:
- xi) Utilising the three main features required in the design of laws, namely: Standards, Enforcement, and Dispute settlement

In addition, the regional harmonised law on IPRs should incorporate effective measures to deal with counterfeits and piracy; including monitoring of all imports into the region, cross border trade, and creative arts. The main aim should be to detect and take timely action on cases of infringements to registered IPRs, counterfeited and pirated goods.

7) Despite all Partner States being party to WIPO, the overall participation in and implantation of WIPO-administered treaties is varied across the region as illustrated in table 27 below.

Table 27: Entry year of EAC countries to selected international IP treaties

Convention	Burundi	Kenya	Rwanda	Tanzania	Uganda
Berne Convention for the Protection of Literary and Artistic Works	2016	1993	1984	1994	N/A.
International Convention for the Protection of New Varieties of Plants	N/A.	1993	N/A.	2015	N/A.
Madrid Agreement concerning the International Registration of Marks	N/A.	1998	N/A.	N/A.	N/A.
Paris Convention for the Protection of Industrial Property	1977	1965	1984	1963	1965
Patent Cooperation Treaty	N/A.	1994	2011	1999	1995
Phonograms Convention	N/A.	1976	N/A.	N/A.	N/A.
WIPO Copyright Treaty	2016	N/A.	N/A.	N/A.	N/A.

N/A: Not applicable;
Source: WIPO online information.

Regionally, Kenya, Rwanda, Tanzania and Uganda are members of the African Regional Intellectual Property Organization (ARIPO), while Burundi has observer status.⁸⁹ Within the ARIPO membership, patents and designs are protected for a period of 20 years through the necessary implementation regulations based on the Harare Protocol, which provides administrative instructions for implementing the Protocol on Patents and Industrial Designs within the Framework of ARIPO; including online filing of industrial property applications, online payment of applicable fees, sending and receiving of notifications, and general tracking of applications. In addition, Uganda and Tanzania are also parties to the Banjul Protocol (on the protection of trademarks); while Tanzania is thus far the only EAC Partner State to have signed the Arusha Protocol for the Protection of New Varieties of Plants, aimed to provide Partner States with a regional protection system for the varieties of plants that they develop.

At the same time, counterfeiting and piracy of trademarks and copyrights remains serious challenges across the region. On the ground, the awareness, respect and implementation of IPR protection still has a long way to go. In this regard, while there are numerous efforts across Partner States to address pirated and counterfeited and IPR non-compliant products; these efforts have only culminated in the seizure of non-compliant products as provided for by the EAC Policy on Anti-Counterfeiting (EAC Anti-Counterfeit Bill 2013); but not in eliminating the counterfeits menace. IPR holders therefore continue to suffer loss of business. Therefore, the proposed EAC harmonized regional strategy to take advantage of the WTO TRIPS Agreement should aim to:

- a) Design and implement effective measures to address the counterfeit trade as a key priority for promoting development of EAC industry. The strategy should emphasize that it is a serious criminal offense to trade in counterfeited goods by requiring allocation of sufficient resources for enforcement of the existing national laws, and building capacity of enforcement agencies to detect any IPR infringements.
- b) Encourage all Partner States to join the membership of ARIPO, WIPO and other international IPR treaties as summarised in table 23 above; and to implement the IPR commitments required from such treaties and memberships.

⁸⁹ ARIPO was established in 1976 under the Lusaka Agreement to promote, harmonize and develop IP systems in African countries.

ANNEX V

EXPERIENCES OF MATURE REGIONAL ECONOMIC GROUPINGS IN ADMINISTERING REGIONAL TRADE POLICIES

OVERVIEW OF REGIONAL INTEGRATION AND REGIONAL ECONOMIC COMMUNITIES

Regional Integration refers to process in which countries that mostly share geographical borders, history, language, culture and infrastructure enter into an agreement to cooperate and pursue commonly shared socio economic and political goals based on defined rules. However the objectives of such cooperation agreement has typically taken the form of pursuing commercial interests, where greater production and trade are perceived as the means for achieving broader socio-political and security objectives. Regional integration has been organized worldwide either via a supranational union or through intergovernmental decision-making, or a combination of both. In this regard, a supranational union refers to the situation where negotiated power is delegated to a defined authority by governments of member states that enter into the cooperation agreement. Intergovernmental decision making on the other hand leaves the states or national governments as the primary actors in the integration process.

Regional integration efforts have often focused on removing barriers to free trade among states that enter into the cooperation agreement; increased free movement of people, labour, goods and capital across national borders; reduced possibilities of regional armed conflicts; and adoption of cohesive regional stances on policy issues such as the environment, climate change and migration. Regional integration has also focused in facilitating states to expand markets and trade of their producers beyond national borders, attract Foreign Direct Investment (FDI), and increase bargaining power with third parties. Measures to achieve trade and market expansion goals normally incorporates facilitating the free movement of people and goods across borders. The grouping of states which enter into a cooperating agreement so as to pursue commonly shared socio economic and political goals are often referred to as a regional economic community (REC).

Since it is not possible to achieve all goals of a REC at the same time, regional integration is often pursued through five main stages; namely: (i) Free Trade Area, (ii) Customs Union, (iii) Common Market, (iv) Monetary Union, and (v) Political Federation

The Free Trade Area as the first stage of regional integration primarily involves trade integration. The stage entails the reduction and/or elimination of trade barriers (customs tariffs, technical and non-technical barriers) on goods traded between the states that join together, while maintaining tariffs and other trade barriers against the rest of the world (third countries). Trade barriers in this regard mostly cut across rules of origin, technical barriers to trade (or technical standards), and sanitary and phytosanitary standards (SPS).

The Customs Union is the second integration stage and provides for liberalization of intra-regional trade in goods, promotion of efficiency in production through integration of regional value chains, enhancement of domestic, cross-border and foreign investment; and promotion of economic development and industrial diversification. The stage thus entails elimination of tariffs and non-tariff barriers on goods traded amongst REC member countries. In addition, the customs union provides for free movement (free circulation) of goods amongst REC members based on commonly agreed tariff bands and tariff rates, and adoption of a common

external tariff against third countries. Also, among other measures the customs union provides for common anti-dumping measures, subsidies and countervailing duties, competition rules, duty drawback regulations, refund and remission of duties and taxes on inputs used to process exports to third countries outside the REC; trade documentation, tariff exemption regimes, strengthened customs co-operation, and harmonised commodity description and coding systems amongst REC members.

The Common Market as the this stage of regional integration encompasses all elements of the Customs Union, while adding mobility of factors of production as a fourth distinguishing characteristic; whose principal features are freedom of movement of goods, capital, persons and labour, services, and the right of establishment and residence.

The Monetary Union encompasses provisions of the Customs Union and Common Market; and also adds common macroeconomic, legal and institutional framework for conducting fiscal policy, operation of a single currency as the legal tender for settlement of payments on all transactions within a REC, cooperation in monetary and financial matters (including development of an exchange rate policy, interest rates policy, monetary and financial policies).

The Political Federation as the last stage of regional integration entails that REC member states adopt similar approaches to their political affairs, regional peace and security and defense matters. None of the world RECs have fully achieved this last stage of regional integration.

CRITERIA FOR DEFINING A SUCCESSFUL REGIONAL ECONOMIC COMMUNITY

Based on the fact that there is no international definition of a successful REC, the study has used the following factors, which can be used as the criteria to define successful RECs from which EAC can learn lessons as it pursues development of its Regional Trade Policy:

- a) A minimum of at least 0.5% share of total world merchandise trade by each member state of a REC.
- b) Defined and clear rules for intra-REC trade and trade with 3rd countries
- c) Demonstrated impact for REC member states out of their REC membership as evidenced by high ranking in the World Bank's World Development Indicators, and ability to capture significant world merchandise trade (as indicated in the International Trade Centre database).

Based on the 3 factors, the study has summarised 16 indicators for one of the best known RECs in each of the four Continents where EAC has a significant trade interest, either in terms of exports or imports; namely Africa, Europe, North America and Asia. The detailed indicators (sourced from the World Bank and ITC databases for the period 2010-2019), have been averaged with an intention to demonstrate how each of the four RECs have performed as economic models from which EAC can gain insights in efforts to develop its Regional Trade Policy. In summary, the indicators have significant implications to any REC's efforts to develop a good business environment and the potential to attract foreign direct investment; which are both necessary imperatives for increasing business and export tradecompetitiveness at national and regional levels. The summary of implications of the 16 indicators shows they affect either the level and/or ability to facilitate:

- i) Efficient, transparent and predictable international trade transactions
- ii) Foreign exchange earnings
- iii) Economic growth
- iv) Growth in value added goods
- v) Competitive business operations and attract FDI
- vi) Export growth and export orientation

- vii) Jobs creation
- viii) Value addition of available materials & economic diversification
- ix) High standard of living

Taken together, the 16 indicators can help in answering the extent to which regional integration initiatives have helped in catalyzing achievement of economic development objectives and targets of individual member of a REC. The performance of the four RECs (SACU, EU, NAFTA, ASEAN) on the 16 indicators are summarised in table 17 below.

Table 17: Selected RECs economic indicators: Average 2010-2019

No.	Indicator Name	SACU	EU	NAFTA	ASEAN	Implication of Indicator
1	Burden of customs procedures (World Economic Forum) (1=extremely inefficient; 7=extremely efficient) 2010-2017	4	5	5	4	Ability to conduct efficient international trade transactions
2	Ease of doing business score (0 = lowest performance; 100 = best performance) - 2015-2019	62	76	78	65	Level of business competitiveness and ability to attract FDI
3	Exports of goods and services as % of GDP 2010-2019	39	45	26	63	Level of export orientation
4	Exports of goods and services annual growth (%) 2010-2019	3	5	1	7	Level of export growth
5	GDP annual growth (I%) 2010-2019	3	2	2	5	Economic growth
6	GDP per capita (current US\$) 2010-2019	4,905	33,678	37,955	12,395	Standard of living
7	Manufacturing value added as % of GDP) 2010-2019	15	15	3	18	Level of value addition to available materials & economic diversification
8	Manufacturing value added % growth (annual) 2010-2019	2	3	1	6	Growth in value added goods
9	Time to export, border compliance (hours) - 2014-2019	45	8	8	58	Ability to conduct efficient international trade transactions
10	Time to import, border compliance (hours) - 2014-2019	21	2	16	65	Ability to conduct efficient international trade transactions
11	Trade as % of GDP 2010-2019	94	86	54	122	Ability to earn foreign exchange
12	Unemployed total as % of total labor force (ILO estimate) 2010-2019	23	9	6	3	Level of standard of living
13	Unemployed youth as % of total labor force (ages 15-24) (ILO estimate) 2010-2019	42	23	11	7	Level of jobs creation
14	Average exports by each REC member state 2014-2018 (US\$ billion)	20,413,648	1,054,849,444	3,980,700,376	638,601,717	Level of export growth

No.	Indicator Name	SACU	EU	NAFTA	ASEAN	Implication of Indicator
15	Share of total global exports 2014-2018 by each REC member state (%)	0.02	1.2	4.5	0.7	Level of export growth
16	Clear and transparent policies and regulations governing intra-REC trade and trade with 3 rd countries	SACU has over the years concentrated on Common External Tariff (CET) on imported goods and free movement of manufactured goods within the SACU customs area	Clear rules and regulations on intra-EU trade and trade with 3 rd countries exist ⁹⁰	Clear rules and regulations on intra-NAFTA trade and trade with 3 rd countries exist, although the NAFTA agreement is under review to culminate into USMCA. However, although NAFTA has not progressed beyond FTA stage, it has significant impact to world trade.	Clear rules and regulations on intra-ASEAN trade and trade with 3 rd countries exist. Although ASEAN has not progressed beyond FTA stage, it has significant impact to world trade.	Transparency and predictability of international trade transactions

⁹⁰ EU has very detailed policies and regulations governing intra-REC trade and trade with 3rd countries are covered under: Custom Duties and taxes on imports; trading arrangements with third countries; quality standards; Sanitary and Phytosanitary Standards; Anti-Dumping, Anti-Subsidies and Safeguard Measures; and treatment of sensitive products among other areas..

Source: Source: World Bank (World Development Indicators) www.worldbank.org Aug 2020; ITC database www.intracen.org

The summary of the 16 indicators show that all the four RECs have performed well on most of the 16 indicators, with the most significant ones being the Ease of doing business and the composition of trade as a percentage of GDP. In this respect, each of the four RECs have achieved way above average on these two notable indicators (*with ASEAN achieving above 100% on trade as a percentage of GDP, implying the REC heavily relies on trade to meet its economic development needs*). However, SACU is way below the records achieved by the other three RECs on the following six indicators:

- i) GDP per capita (current US\$) 2010-201
- ii) Unemployed total as % of total labor force (ILO estimate) 2010-2019
- iii) Unemployed youth as % of total labor force (ages 15-24) (ILO estimate) 2010-2019
- iv) Average exports by each REC member state 2014-2018 (US\$ billion)
- v) Share of total global exports 2014-2018 by each REC member state (%)
- vi) Clear and transparent policies and regulations governing intra-REC trade and trade with 3rd countries

The implications for SACU on the six indicators with low performance is that the REC has not facilitated achievement of its member states economic aspirations in the following respects:

- The quality of life of its citizens is much lower compared to the other three RECs as indicated by GDP per capita
- Unemployment for the total population and the youth is still very high
- Exports by each member state of SACU is minimal compared to the record achieved for member states of the other three RECs
- SACU has not been successful in facilitating its member states to increase their share of global exports as the record is low compared to that achieved by the other four RECs, although SACU is the world's oldest REC (established in 1889)
- Clear and transparent policies and regulations governing intra-REC trade and trade with 3rd countries are restricted to the CET and movement of SACU manufactured goods within SACU customs area. The other three RECs have clearly elaborated rules and regulations on custom Duties and taxes on imports; trading arrangements with third countries; quality standards; Sanitary and Phytosanitary Standards; Anti-Dumping, Anti-Subsidies and Safeguard Measures; and treatment of sensitive products. EU as the model global REC has gone further to develop mechanisms for domestic consultations with the civil society, and to organise scheduled consultations with trade stakeholders aimed to address specific areas of concern (such as on customs cooperation, rules of origin, and trade frauds (imports value, customs tariff, forging of documents, etc).

With respect to the last indicator (policies and regulations governing intra-REC trade and trade with 3rd countries), this is key to the success of any REC and particularly to the success of the Customs Union and Common Market. Thus SACU has not performed well on this indicator, based on its long history and experience with the Customs Union. In this regard, SACU history dates back to the 1889 Customs Union Convention between the British Colony of Cape of Good Hope and the Orange Free State Boer Republic. In June 29, 1910, a new Agreement was signed and extended to the Union of South Africa and the British High Commission Territories (HCTs), i.e. Basutoland (Lesotho), Bechuanaland (Botswana), Swaziland (Eswatini), and South West Africa (Namibia). Namibia however was administered as part of South Africa" before it later became a *de jure* member after gaining independence on 21st March 1990. The revised SACU 1910 agreement created the following structures:

- i) A Common External Tariff (CET) on all goods imported into the region from the rest of the world; characterised by a common pool of customs duties based on the total production and consumption of excisable goods.

- ii) Free movement of SACU manufactured goods within SACU customs area without any duties or quantitative restrictions.
- iii) A Revenue-Sharing Formula for the distribution of customs and excise revenues collected by the union.

It is noteworthy that only South Africa has a developed manufacturing base within the union despite the long history of integration, meaning that the country has over the years been the main beneficiary of the provision on “free movement of SACU manufactured goods within SACU customs area”.

In addition, in 1925, South Africa adopted Import Substitution Industrialization (ISI) policies, backed by the common external tariffs on non-SACU products, while relegating the other four member states (Lesotho, Botswana, Swaziland and Namibia) to producing primary commodities. Further, during the apartheid era, South Africa was the sole administrator of the common SACU revenue pool, including setting SACU import duties and setting excise policy. Due to the structural issues of CET management and decision-making processes and issues arising from the inequitable revenue sharing, the four member states constantly called for a revision of the 1910 agreement, whose negotiations effectively began after they gained their independence in the early 1960s, resulting in the 1969 SACU Agreement. **The new agreement**, signed by the five sovereign states provided two major changes to the 1910 agreement, namely:

- i) The inclusion of excise duties in the revenue pool
- ii) Multiplier in the revenue sharing formula, which enhanced Lesotho, Botswana and Swaziland revenues annually by 42 percent.

However, similar to the 1910 Agreement, South Africa retained the sole decision-making power over customs and excise policies. It also retained open access to the Lesotho, Botswana and Swaziland markets, while the high CET raised barriers for goods originating from SACU neighbouring countries into SACU territory. These trade-diverting effects ended up benefiting South African manufacturers.

Additionally due to absence of a joint decision-making process”, Lesotho, Botswana and Swaziland requested a factoring compensation into the revenue sharing formula in order to address the loss of fiscal discretion (From 1969 onwards). Three key issues were expressed as priority concerns in this regard.

- i) **Non-joint decision making processes** - Prior to 2002, SACU was administered on a part-time basis by annual meetings of the Customs Union Commission but there were no effective procedures to ensure compliance or to resolve disputes.
- ii) **Revenue sharing formula** - The issue of most concern in the 1969 Agreement was the Revenue Sharing Formula (RSF), which determined each country’s share of the Common Revenue Pool. Following negotiations, the RSF was amended in 1976 to include a stabilization factor that ensured that Lesotho, Botswana and Swaziland received at least 17 percent, and at most 23 percent, of the value of their imports and excise duties.
- iii) **Question of external (outside SACU) trade** - Lesotho, Botswana and Swaziland continued to argue that South Africa consistently entered into preferential agreements with 3rd parties which only benefited itself.

As seen above, the RSF continued to benefit South Africa with about 77% of imports and excise duties collected, while there were no effective procedures to ensure compliance with agreed decisions or to resolve disputes, and South Africa consistently entered into preferential agreements with 3rd parties which only benefited itself while jeopardizing the economies of the smaller states.

With the independence of Namibia in 1990 and the end of apartheid in South Africa in 1994, SACU members embarked on new negotiations in November 1994, which culminated in a new SACU Agreement in 2002.

However, South Africa's previous dominance in SACU affairs has resulted to a much more developed economy compared to its neighbouring SACU partners; which means EAC does not have much to learn from SACU regarding measures which could be applied to successfully achieve increased intra and extra-REC trade and investment.

Based on the above considerations, the European Union (EU), North Africa Free Trade Agreement (NAFTA), and the Association of Southeastern Asian Nations (ASEAN) have been used as the successful RECs from which EAC can learn from as it aspires to establish its Regional Trade Policy.

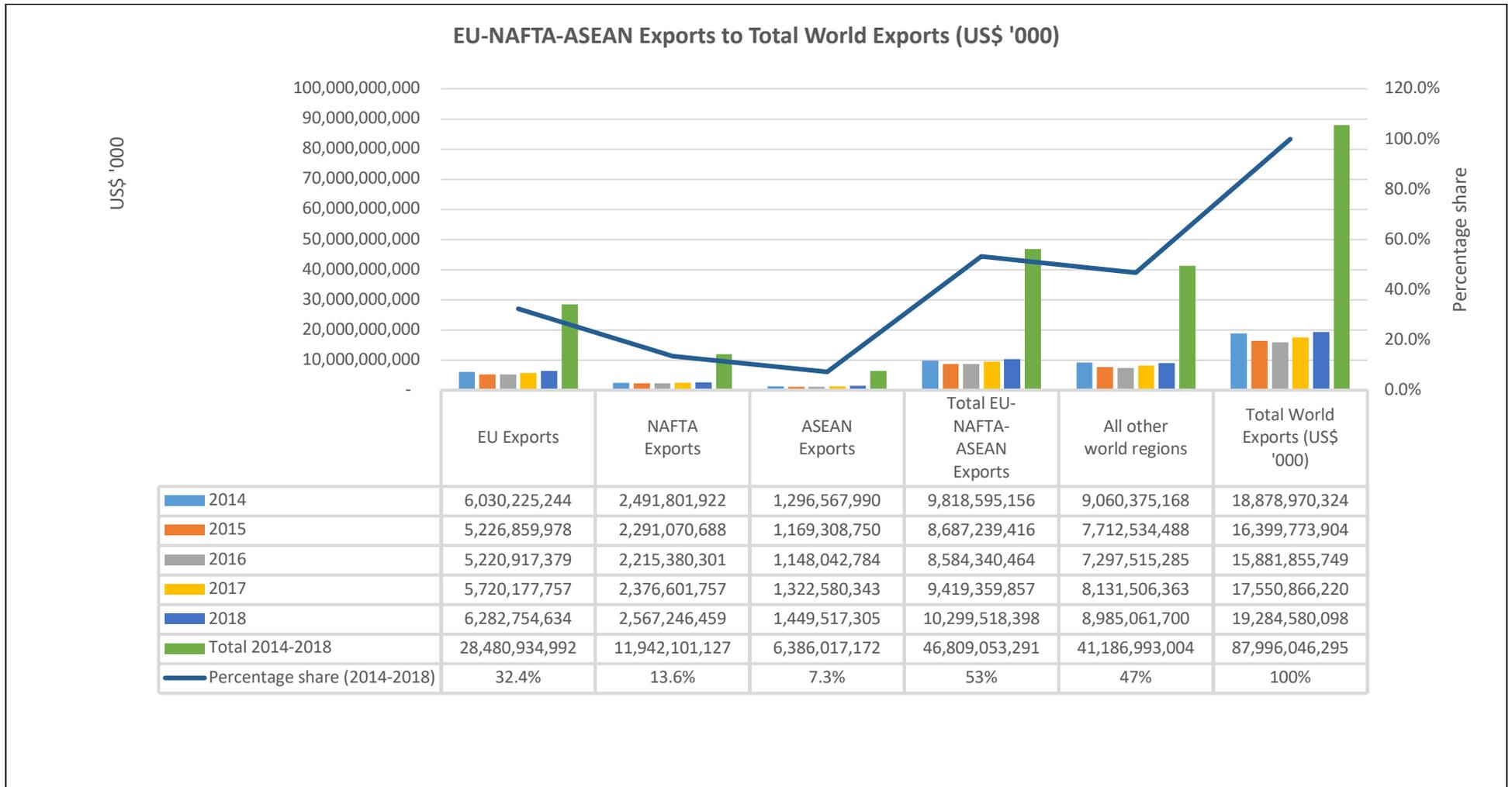
OVERVIEW OF TRADE PERFORMANCE OF MATURE REGIONAL ECONOMIC GROUPINGS

The RECs being use as case studies on development of a Regional Trade Policy (RTP) have each achieved at least the first stage of regional integration (i.e. Free Trade Area). Thus they merit being used as benchmarks for development of the EAC RTP based on their qualification in the above criteria.

Analysis of global trade (exports and imports) during the period 2014-2018 show that combined, the three RECs contributed significantly to world trade at US\$ 46.89 trillion or 53% of total world exports of goods which amounted to US\$ 88 trillion during this period as summarised in Figure 14 below. They additionally contributed US\$ 50.37 trillion or 57% of total world imports of goods which amounted to US\$ 88.93 trillion during the same period as summarised in Figure 15 below.

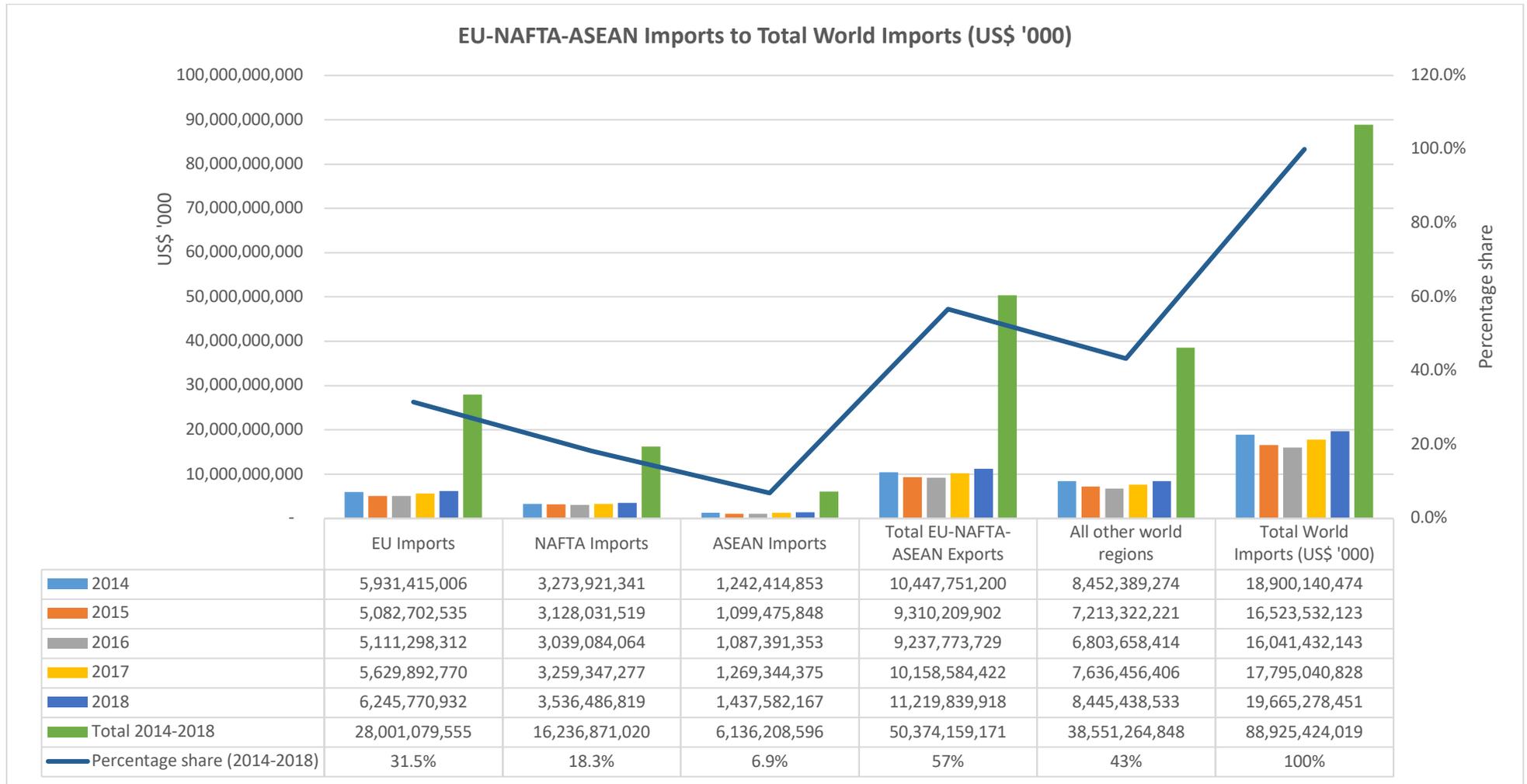
The EU emerges as the most significant contributor to world exports among the three RECs/FTAs, taking 32.4% of the combined world exports during the period 2014-2018, followed by NAFTA at 13.6% and ASEAN at 7.3%. The EU also emerges as the most significant player in world imports, taking 31.5% of combined world imports during the same period, followed by NAFTA at 18.3% and ASEAN at 6.9%. Thus based on their significant importance to world trade, EAC can borrow from experiences of the three RECs/FTAs to understand the role of a common regional trade policy in promoting trade, improving trade competitiveness and economic growth, and in promoting trade-oriented investment.

Figure 14: EU-NAFTA-ASEAN exports compared to total world exports 2014-2018 (US\$ '000)



Source: Computation from International Trade Center data www.intracen.org

Figure 15: EU-NAFTA-ASEAN imports compared to total world imports 2014-2018 (US\$ '000)



Source: Computation from International Trade Center data www.intracen.org

THE EUROPEAN UNION EXPERIENCE WITH REGIONAL TRADE POLICY

OVERVIEW OF EU

The EU is a unified trade and monetary body currently comprised of 28 European member states, which seeks to attain sustainable development based on balanced economic growth, price stability, highly competitive market economies with full employment and social progress, and environmental protection for all member states. The Union initially started as the European Coal and Steel Community (ECSC) in 1951, when six neighboring countries (West Germany, Belgium, France, Holland/ Netherlands, Italy, and Luxembourg) came together through "The Treaty of Paris", with the aim of creating economic and political stability in Europe after the economic ravages brought about by the Second World War to the region's economies. The European Union as it is referred today was however formally established through the Maastricht Treaty of 1st November 1993 on the basis of three pillars: the European Communities, the Common Foreign and Security Policy (CFSP), and the Police and Judicial Cooperation in Criminal Matters (JHA).

Since its formation through the Paris Treaty of 1951 and through its various progressions, EU membership has expanded to 28 countries, namely: Austria, Belgium Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and United Kingdom which enjoys a common market.

The EU integration process has progressed over the years from an FTA up to the global economic integration standard of a Single Market (or alternatively an Internal Market or Common Market), which guarantees borderless trade amongst its members. The EU Single Market is characterised by free movement of goods, capital, services and labour (the "four freedoms") within the territories of member states. It is also characterised by use of the Euro as a single **currency**, which was introduced in 2002 to **replace the currencies** of individual member states as the medium for conducting intra-EU trade. The Single Market benefits have been extended, with exceptions, to Iceland, Liechtenstein and Norway through the European Economic Area Agreement, and to Switzerland through bilateral treaties with individual EU countries.

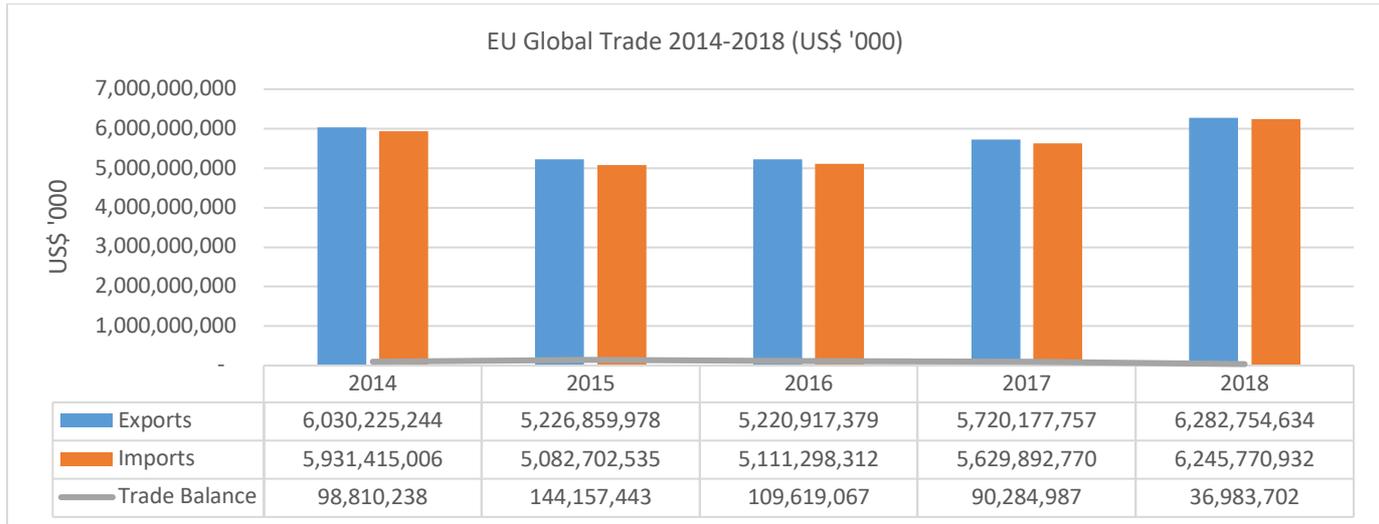
EU GLOBAL TRADE

Total EU exports to the world declined from 6.03 trillion in 2014 to US\$ 5.227 trillion in 2015 and further to US\$ 5.22 trillion in 2016, and thereafter picked to US\$ 5.72 trillion in 2017 to close at US\$ 6.283 trillion in 2018. Total imports from the world on the other hand declined from US\$ 5.93 trillion in 2014 to US\$ 5.083 trillion in 2015 and thereafter increased to US\$ 5.111 in 2016, US\$ 5.63 trillion in 2017 to close at US\$ 6.25 trillion in 2018 as shown in figure 16 below.

Overall the region had a positive trade balance over the period of analysis as shown in Figure 16, although the amounts declined from US\$ 98.8 billion in 2014 to US\$ 36.98 billion in 2018. Germany was the dominant exporting country as shown in table 18 below, taking 25% of total EU exports between 2014 and 2018, followed Netherlands, France, and Italy with each taking 9%, United Kingdom and Belgium each taking 8%, and Spain (5%) and Poland (4%).

Similar patterns were repeated for imports as shown in table 19 below, with Germany being the dominant importer at 21%, followed by United Kingdom at 12%, France at 11%, Netherlands and Italy each at 8%, Belgium (7%), Spain (6%) and Poland (4%).

Figure 16: EU Global Trade 2014-2018 (US\$ '000)



Source: Computation from International Trade Center data www.intracen.org

Table 18: EU Exports to World 2014-2018 (US\$ '000)

Exporter	2014	2015	2016	2017	2018	Total 2014-2018	Average Share (%)
Germany	1,498,157,800	1,323,665,116	1,340,752,046	1,446,642,435	1,556,744,351	7,165,961,748	25%
Netherlands	571,347,542	437,329,137	444,867,363	505,941,305	585,622,815	2,545,108,162	9%
France	569,086,275	495,148,752	490,008,030	524,009,722	568,974,863	2,647,227,642	9%
Italy	529,528,733	456,988,626	461,667,625	507,430,236	543,466,795	2,499,082,015	9%
United Kingdom	511,145,443	466,295,683	411,463,356	442,065,707	487,069,299	2,318,039,488	8%
Belgium	472,201,274	397,739,157	398,033,265	429,980,168	466,653,580	2,164,607,444	8%
Spain	318,649,312	278,122,010	281,776,674	319,621,896	328,527,654	1,526,697,546	5%
Poland	214,476,794	194,461,157	196,455,270	221,307,621	261,815,269	1,088,516,111	4%
All other EU members	1,345,632,071	1,177,110,340	1,195,893,750	1,323,178,667	1,483,880,008	6,525,694,836	23%
Total EU 28 members)	6,030,225,244	5,226,859,978	5,220,917,379	5,720,177,757	6,282,754,634	28,480,934,992	100%

Source: Computation from International Trade Center data www.intracen.org

Table 19: EU Imports from World 2014-2018 (US\$ '000)

Importer	2,014	2,015	2,016	2017	2018	2014-2018	Average share (%)
Germany	1,214,955,700	1,053,388,444	1,060,672,017	1,167,753,355	1,287,378,667	5,784,148,183	21%
United Kingdom	694,344,323	630,251,058	636,367,936	641,332,436	669,640,211	3,271,935,964	12%
France	667,578,294	562,937,510	559,139,133	608,818,589	660,117,344	3,058,590,870	11%
Netherlands	508,032,877	393,728,344	398,336,339	450,075,698	521,452,417	2,271,625,675	8%
Italy	474,082,559	410,933,398	406,670,670	453,583,034	499,339,662	2,244,609,323	8%

Importer	2,014	2,015	2,016	2017	2018	2014-2018	Average share (%)
Belgium	452,772,541	371,025,047	372,712,713	406,412,281	450,388,977	2,053,311,559	7%
Spain	350,977,773	305,266,032	302,538,874	350,921,562	376,185,086	1,685,889,327	6%
Poland	216,687,292	189,696,474	188,517,819	217,978,576	267,699,887	1,080,580,048	4%
All other EU members	1,568,670,939	1,355,172,702	1,374,860,630	1,550,995,815	1,781,268,568	7,630,968,654	23%
Total EU 28 members)	5,931,415,006	5,082,702,535	5,111,298,312	5,629,892,770	6,245,770,932	28,001,079,555	100%

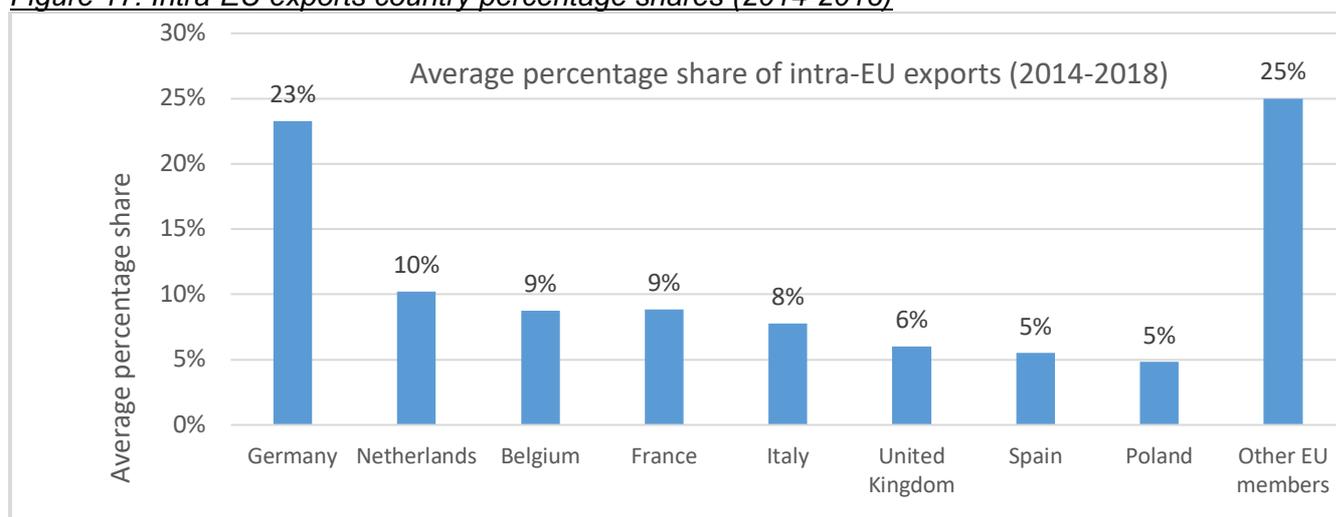
Source: Computation from International Trade Center data www.intracen.org

INTRA-EU TRADE

Total intra-EU exports decreased from US\$ 3.63 trillion in 2014 to US\$3.12 trillion in 2013, and thereafter picked to 3.17 trillion in 2016, US\$ 3.46 trillion in 2017 and to US\$ 3.83 trillion in 2018. Overall, intra-EU exports increased by 5.6% over the period 2014-2018. On the other hand, intra-EU imports decreased from US\$3.53 trillion in 2014 to US\$ 3.045 trillion in 2015, and then rose to US\$ 3.09 billion in 2016, US\$ 3.37 trillion in 2017 and to US\$ 3.72 trillion in 2018. Overall, intra-EU exports increased by 5.6% while imports increased by 5.4% over the period 2014 to 2018.

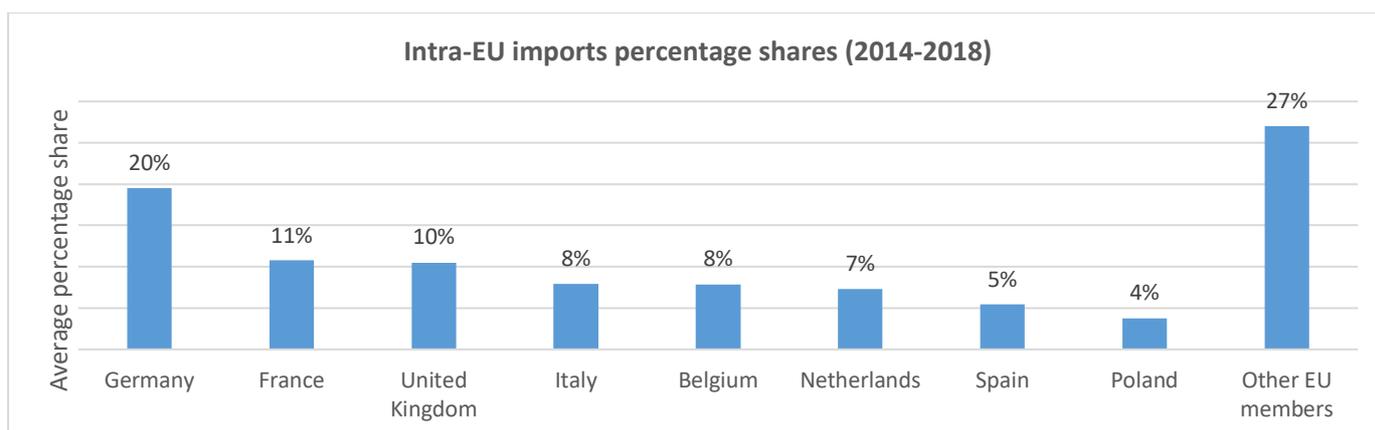
Like in the case of EU global trade, the main players in intra-EU trade during the period 2014-2018 were Germany, France, Netherlands, Belgium, Italy, United Kingdom, Spain and Poland, which combined took 75% of intra-EU exports and 74% of intra-EU imports. Germany is the dominant trade partner in EU trade, taking 23% of intra-EU exports and 20% of intra-EU imports. Figures 17 and 18 below show the shares of EU countries in intra-EU exports and exports during the period 2014-2018, while Tables 20 and 21 shows the value of intra-EU exports and imports respectively during the same period of analysis.

Figure 17: Intra-EU exports country percentage shares (2014-2018)



Source: Computation from International Trade Center data www.intracen.org

Figure 18: Intra-EU imports country percentage shares (2014-2018)



Source: Computation from International Trade Center data www.intracen.org

Table 20: Intra-EU exports (EU 28): 2014-2018 (US\$ '000)

Country	2014	2015	2016	2017	2018	Total 2014-2018
Germany	861,123,172	758,474,234	777,682,073	836,390,609	909,105,672	4,142,775,760
Netherlands	415,597,991	311,826,309	318,826,338	356,326,945	413,164,914	1,815,742,497
Belgium	333,975,335	286,212,950	287,908,705	309,770,393	339,915,029	1,557,782,412
France	344,278,976	293,407,671	293,574,841	309,557,311	338,315,745	1,579,134,544
Italy	289,811,936	250,104,127	257,828,786	282,283,980	304,286,417	1,384,315,246
United Kingdom	241,568,561	204,326,281	193,562,604	209,661,642	224,804,267	1,073,923,355
Spain	198,368,973	177,603,989	184,501,089	202,626,539	215,838,942	978,939,532
Poland	164,276,897	153,271,523	155,091,400	174,969,431	210,348,856	857,958,107
Czech Rep.	143,254,793	130,850,205	135,611,368	152,795,057	170,436,165	732,947,588
Austria	114,028,082	98,129,456	98,317,064	109,114,306	122,939,757	542,528,665
Hungary	87,904,725	79,322,188	81,876,372	90,271,874	100,054,440	439,429,599
Sweden	93,813,885	80,020,558	80,566,101	88,237,102	96,462,188	439,099,834
Ireland	65,509,610	64,429,401	64,171,556	67,842,426	83,972,946	345,925,939
Slovakia	72,925,232	64,311,397	66,217,895	72,294,181	80,757,654	356,506,359
Romania	49,435,569	44,527,587	47,521,795	53,448,803	61,265,491	256,199,245
Denmark	63,836,538	52,474,439	53,411,756	55,332,859	58,416,339	283,471,931
Portugal	44,681,650	39,609,914	41,281,252	45,542,650	55,666,925	226,782,391
Finland	41,205,697	34,090,881	32,873,832	39,269,474	43,280,267	190,720,151
Others	120,278,683	106,642,212	109,334,273	121,895,531	138,937,515	597,088,214
Total Intra-EU Exports	3,625,597,622	3,122,993,110	3,170,824,827	3,455,735,582	3,829,032,014	17,801,271,370

Source: International Trade Centre Data www.intracen.org

Table 21: Intra-EU Imports (EU 28): 2014-2018 (US\$ '000)

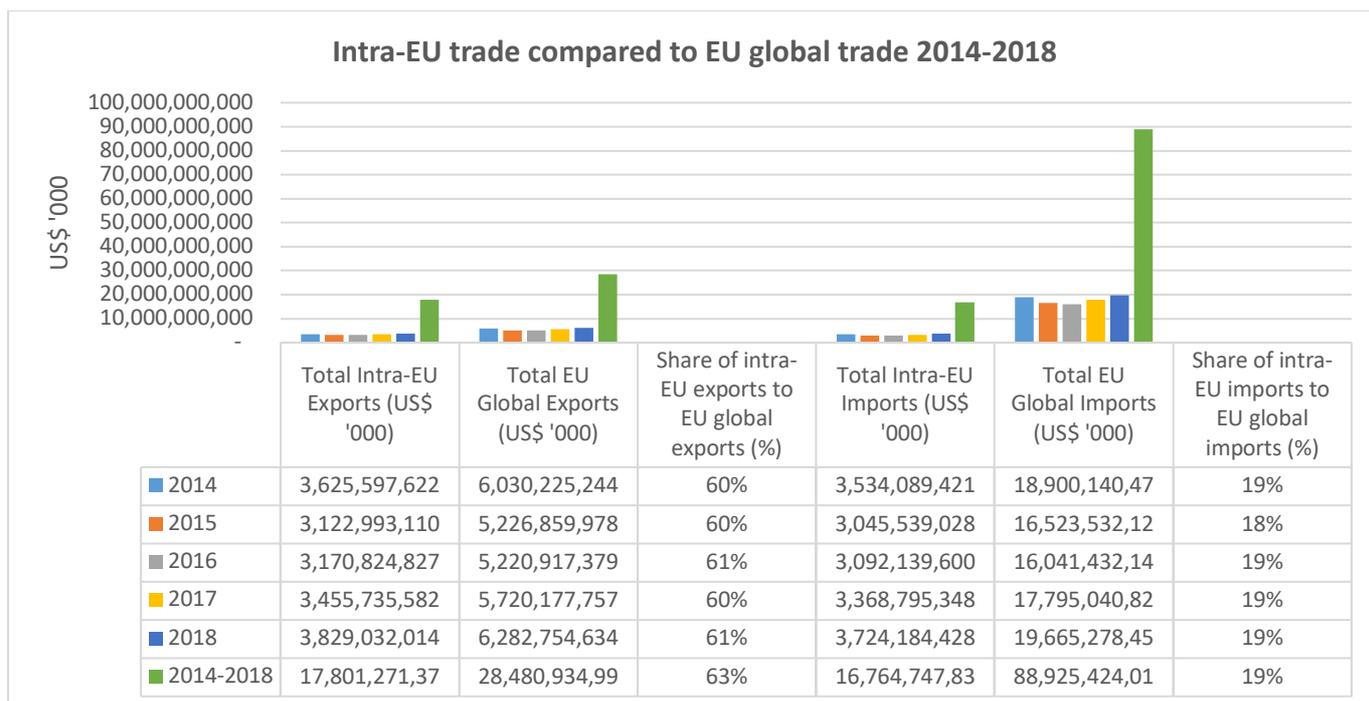
Country	2014	2015	2016	2017	2018	Total (2014-2018)
Germany	700,370,915	588,935,478	611,179,793	650,792,970	721,913,282	3,273,192,438
France	395,638,257	332,326,805	332,510,084	359,513,550	385,333,406	1,805,322,102
United Kingdom	379,268,578	347,485,519	330,606,073	340,678,282	359,753,809	1,757,792,261
Italy	270,326,381	240,681,763	246,783,654	272,571,585	294,421,284	1,324,784,667
Belgium	296,497,573	232,646,968	236,281,862	261,312,574	290,026,185	1,316,765,162
Netherlands	263,049,765	216,683,216	219,201,616	247,580,806	278,177,640	1,224,693,043
Spain	184,188,660	168,286,824	170,511,418	185,014,158	200,023,247	908,024,307
Poland	125,301,629	111,820,643	112,307,585	128,328,852	156,169,741	633,928,450
Austria	120,897,464	102,888,582	106,120,219	116,828,712	129,431,070	576,166,047
Sweden	112,318,880	97,482,124	100,953,353	110,196,772	119,343,292	540,294,421
Czech Rep.	101,901,667	92,327,696	95,823,528	107,372,993	119,122,625	516,548,509
Hungary	78,225,452	69,772,353	71,822,274	80,037,789	88,702,171	388,560,039
Slovakia	62,242,999	57,657,930	60,382,620	66,298,647	75,275,212	321,857,408
Romania	58,480,464	53,785,308	57,329,248	64,457,805	72,843,092	306,895,917
Portugal	58,622,648	51,210,650	52,898,747	60,108,422	72,345,102	295,185,569
Denmark	68,473,816	59,082,564	59,868,581	64,150,686	71,194,446	322,770,093
Ireland	49,568,052	45,803,894	47,107,036	50,485,552	63,490,631	256,455,165
Finland	43,151,564	36,256,906	36,349,888	41,229,423	45,100,893	202,088,674
Others	165,564,657	140,403,805	144,102,021	161,835,770	181,517,300	793,423,553
Total Intra-EU Imports	3,534,089,421	3,045,539,028	3,092,139,600	3,368,795,348	3,724,184,428	16,764,747,830

Source: International Trade Centre Data www.intracen.org

INTRA-EU TRADE RELATIVE TO EU GLOBAL TRADE

As shown in Figure 19 below, intra-EU trade is quite significant, with intra-EU exports taking between 60%-61% of EU global exports during the period 2014-2018, while intra-EU imports took an average 19% of EU global imports during the same period.

Figure 19: Intra-EU trade compared with EU global trade 2014-2018



Source: Computation from International Trade Center data www.intracen.org

POLICIES AND REGULATIONS GOVERNING INTRA-EU TRADE AND TRADE WITH THIRD COUNTRIES

EU has laid down policies and regulations governing trade between its member states and with third countries as elaborated below.

EU Custom Duties and taxes on imports

Goods entering into EU from third countries are subject to customs control before they are released for free circulation within the EU, whereas custom duties are abolished for products originating from amongst EU member states and circulating in the regional trading bloc. The EU has over 600 Tariff Rate Quotas (TRQs), which allow specified products imported from designated regions that have bilateral Free Trade Agreements (FTAs) with EU to enter into the regional market at a lower tariff rate than equivalent products originating from outside such FTA regions. The TRQs specify the maximum quota which can be allowed into EU for a given period (mostly annual). Such FTAs are in line with WTO GATT provisions. Although allowed to benefit from reduced tariffs, imports into EU are subject to internal taxes (VAT and exercise duties) levied by individual EU states

EU trading arrangements with third countries

The EU has 69 free trade agreements (FTAs) with third countries worldwide, signed either with individual countries or through their regional trading blocs, whose main aim are to spur European economic growth and jobs creation through increased trade growth and competitiveness. In this regard, on average 31 million European jobs depend on exports, with each additional €1 billion worth of exports estimated to support 14,000 European jobs. Few examples of the FTAs include: The ongoing EU-USA free trade negotiations based on directives given by EU Council in April 2019; The EU-Canada Comprehensive Economic and Trade Agreement (CETA) which provisionally entered into force on 21st September 2017; The ongoing negotiations for an EU-China Comprehensive Agreement on Investment (CAI), The

ongoing/or concluded Economic Partnership Agreements (EPAs) between the EU and African, Caribbean and Pacific (ACP) countries.

EU Quality standards

The EU overall legislation on quality standards is EU Regulation 1025/2012, which provides the legal basis to use European standards for products and services, identify ICT technical specifications, and to finance the European standardization process. The quality standards are developed through collaboration between EU interested parties such as manufacturers, users, consumers and regulators of a particular material, product, process or services. The broad EU interests on quality standards are specified in seven distinct legislations namely; Food and Feed safety Requirements, Animal Health Requirements, Plant Health Requirements, Public Health Requirements, Product safety Requirements, Technical standardization Requirements, and Packaging Requirements. The EU technical standards aim to maintain consumer confidence in EU and export markets that EU originating goods are safe to use, which consequently ensure market access and maintenance of EU reputation as a producer of safe to use products. Ultimately this confers a competitive advantage over competitors both in EU single market as well as in export markets, in addition to enabling avoidance of import bans in third countries.

EU Sanitary and Phytosanitary Standards

EU Sanitary and Phytosanitary Standards (SPS) aim to protect the environment, human, animal and plant health; and are developed and enforced by competent EU authorities. The SPS rules are broken down into specific requirements related to food and feed safety, animal and plant health, trade in endangered species (CITES), and public health requirements. As in the case of quality standards, maintenance of high standards on EU originating agricultural products are intended to maintain consumer confidence in export markets that the goods are safe to use, thus enabling the market access and contributing to the reputation of EU as a producer of safe to use goods. Ultimately, this confers EU originating goods a competitive advantage over competitors in the EU single market as well as in export markets.

EU Anti-Dumping, Anti-Subsidies and Safeguard Measures

EU anti-dumping, anti-subsidies and safeguard measures are Trade Remedies Laws that allow EU governments to take remedial and protective actions against trading activities which may be causing material injury to an EU domestic industry. The measures are in line with WTO GATT⁹¹ provisions, which broadly recognize that although WTO members are required to bind their tariffs, and to apply them equally on goods originating from all trading partners in order to achieve smooth global trade flow in goods, there are exceptions to this rule, where WTO member countries can be allowed to deviate from applying the MFN⁹² treatment provision. Such exceptions include:

- a) **Anti-dumping measures:** Anti-Dumping measures are provided for in Article VI of GATT, under which a company is considered to be dumping if it exports a product at a price lower than its 'normal value'. In cases where dumping is proofed to be taking place, the affected country is allowed under WTO to introduce anti-dumping measures, which are normally applied by the importing country as an anti-dumping duty on affected products. The measures take the form of:
 - i) Ad valorem or value-based duty, calculated on the value of the invoice, with 15% being the most common form of value based duty;

⁹¹WTO General Agreement on Trade and Tariffs

⁹²WTO Most Favoured Nation treatment

- ii) A specific duty calculated on a parameter other than the value, such as weight, for example €15 per ton; and
 - iii) A price undertaking, where the exporter agrees not to sell products in the EU at prices below a minimum amount. If EC agrees to an undertaking, then anti-dumping duties will not be collected on imports.
- b) **Anti-subsidy measures:** The WTO Agreement on Subsidies and Countervailing Measures aims to discourage use of subsidies, and to regulate actions countries can take to counter the effects of subsidies. Under the Agreement, a country can use the WTO dispute settlement procedure to seek withdrawal of the subsidy or the removal of its adverse effects. Alternatively, the affected country can launch its own investigation and ultimately charge an extra duty (countervailing duty) on the subsidised imports found to be causing injury to its domestic producers.
- c) **Safeguard measures:** GATT allows WTO members to restrict imports of a given product temporarily (or take “safeguard” actions) if a domestic industry producing equivalent products is injured or threatened with injury caused by a surge in imports. The injury must however be proofed to be serious.

EU treatment of sensitive products

EU Trade Agreements provide safeguards for EU producers of certain sensitive agricultural products such as dairy products, animal products (e.g. beef), poultry, sugar, fruits and vegetables. The provisions either fully exclude sensitive products from EU tariff cuts or limit the quantity imported. The potential impact of every new trade agreement between EU and third countries on EU agriculture is carefully assessed through impact assessments and sustainability impact assessments before and during the negotiations with third countries in order to indicate products that may be adversely affected through liberalization provisions and which therefore need to be excluded from external competition.

Other measures on trade with third countries

Other measures used by EU to ensure full implementation of trade agreements with third countries include:

- a) **Countervailing measures:** These can be applied whenever an investigation by the EC or the investigating authority of an EU member state determines that imported goods are benefiting from subsidies, and that such subsidies result in injury to an EU industry/ies.
- b) **Domestic consultations:** The EU Civil Society Consultation mechanism (Domestic Advisory Group) meets regularly with the European Economic and Social Committee to discuss and make recommendations on the implementation of the Trade and Sustainable Development (TSD) Chapter of any trade agreement with third countries.
- c) **Civil Society Mechanism:** The EU has initiated an approach to modernizing FTAs, which requires that any FTAs will have to contain a fully-fledged TSD chapter in which partners commit to effectively implement labour and environmental standards and agreements. Future FTAs will also incorporate an annex on anti-corruption aimed to fight against bribery and money-laundering. The civil society consultation mechanism which was previously limited to the TSD chapter will also be extended to all provisions of an FTA, thus allowing the civil societies on both sides of an FTA to make their voice heard.
- d) **Workshops on sensitization, strategizing and opinion taking:** The EU organizes workshops to address specific areas of concern, including those on customs cooperation, rules of origin, and trade frauds (e.g. on value, customs tariff, forging of documents, etc).

KEY BENEFITS ARISING FROM EU FTA

As a result of the EU FTAs, EU member states have realized substantial benefits from trading with third countries as well as amongst themselves. These include:

- a) Continuous increase and growth in exports
- b) Creation of employment opportunities
- c) Trade promotion and entry into new markets
- d) Access to high quality European products
- e) Protection against copies and imitations in trading partner countries
- f) Increased awareness of opportunities linked to trade agreements amongst EU companies thus promoting expansion and diversification of SMEs
- g) Elimination of technical barriers to trade and an improved business climate
- h) Tariff cuts for EU traders on goods imported from third countries with which EU has entered into preferential trade arrangements, some of which are used as raw materials by EU manufacturers
- i) Safeguards for EU producers of certain sensitive agricultural products such as dairy products, animal products, fruits and vegetables.

MAIN CHALLENGES OF IMPLEMENTING THE EU FTAs WITH THIRD COUNTRIES

The EU has faced various challenges in implementing its FTAs with third countries, including:

- a) Non-compliance with labour and environmental rights provisions, especially in South Korea
- b) Lack of transparency in implementing procurement rules, Intellectual Property Rights, protection of Geographical Indications (GIs), ownership, and copyright issues when trading with third countries
- c) Regional instability, mainly experienced with the Mediterranean regional partners, making it difficult for the region to attract and retain foreign investors from EU
- d) Difficulties in registration and approval of health and agro-chemical products, especially in Mexico, making it difficult for the existing EU-Mexico Global Agreement of 2000 to facilitate EU originating FDI especially in chemical substances and related products
- e) Significant trade barriers and restrictive policies remain on imports from third countries, notably technical barriers to trade (TBT), due to enforcement of high EU standards related to health and safety requirements as well as packaging and labeling requirements.
- f) Trade war challenges introduced by the current United States administration. The first half of 2018 saw the start of bilateral trade wars between the US and her trading partners, including the EU bloc. Starting with China and later the EU and even the NAFTA⁹³ members, many US trading partners are today confronted with high import tariffs on selected goods exported to the US. The current US administration has also suspended the negotiated EU-US Transatlantic Trade and Investment Partnership (TTIP), which had been launched in 2013 but ended without conclusion at the end of 2016 after US withdrawal. The frustration in dealing with the current US administration has forced EU to result to the next best option for damage control; namely to defend the international multilateral system and to maintain open and free trade with the rest of the world. At

⁹³ North America Free Trade Area

stake however is the fact that US has been and remains EU's main trading partner, but the potential to increase and/or retain this major market is under serious risk.

- g) Climate Change and environment, which according to the August 2019 Standard Eurobarometer survey are among the top concerns at EU and national level of EU member states. In efforts to deal with increases in global average temperatures and consequent adverse impacts on terrestrial and aquatic ecosystems individual EU member states have increased budgets on global warming mitigation measures, with consequent decreases in budgets allocated for trade promotion and trade facilitation measures at EU regional and national levels of member states.
- h) The potential challenges posed by the Brexit, which could cause disruption and severe negative economic impacts particularly for EU SMEs and exporting sectors in agri-food, indigenous manufacturing and tourism, particularly those that have established regional supply chains with UK based suppliers/buyers. While no concrete evidence has yet been established on impacts on Brexit on EU businesses, immediate predictions show EU businesses that source goods from UK will have to go through customs formalities, including payment of third country customs duty, checks for quality, SPS, rules of origin, labelling, and weights and measures among others. With regard to customs duty, since no trade FTA between EU and UK have been concluded, there will be no immediate trade preferences for goods originating from UK after Brexit. This means EU importers of UK originating goods will have to pay EU third country customs tariff, resulting to uncompetitive businesses particularly where regional value chains have already been established with UK businesses on the basis of duty free imports under EU single market provisions.

PLANS BY EU TO DEAL WITH CHALLENGES OF IMPLEMENTING ITS FTA WITH THIRD COUNTRIES

EU has put in place the following measures to deal with challenges of implementing FTAs with third countries:

- a) Establishment of joint committees, sub-committees and bilateral dialogues on trade-related issues to facilitate implementation of Comprehensive Economic and Trade Agreements (CETA) with third countries.
- b) Collaboration and consultation with the civil society organizations: CETA has established a Civil Society Forum as a consultation mechanism to deal with Trade and Sustainable Development (TSD) chapters of trade agreements between EU and its trade partner countries, including offering advisory opinions on commitments related to multilateral labour and environmental agreements. The EU has also established FTA coordinators, networks and expert groups on trade, which constantly monitor trade obstacles experienced under FTAs.
- c) Modernization of customs unions. EU plans to upgrade most FTAs with which it has signed with third parties aimed to make them more responsive to the emerging complex economic dynamics of trading under the multilateral system. Negotiations to upgrade the FTA with Mexico are ongoing, and similar initiatives have also started with Morocco, Tunisia, Turkey and Chile. The FTAs modernization aims to improve their functionality and scope.

- d) The EU has pursued two parallel courses of action to deal with current US administration threats; namely (i) Making attempts to negotiate a settlement through the WTO mechanism in order to uphold a rules-based international trading order, and (ii) Strengthening trade ties with like-minded trading partners, including promoting and accelerating new EU trade deals with existing and prospective trading partners.
- e) Adoption of the Paris Agreement to help deal with climate change. The European Parliament approved ratification of the Paris Agreement on 4th October 2016, and the EC consequently deposited its instruments of ratification on 5th October 2016, along with several individual EU member states.

THE NORTH AMERICA FREE TRADE AREA EXPERIENCE

OVERVIEW OF NAFTA

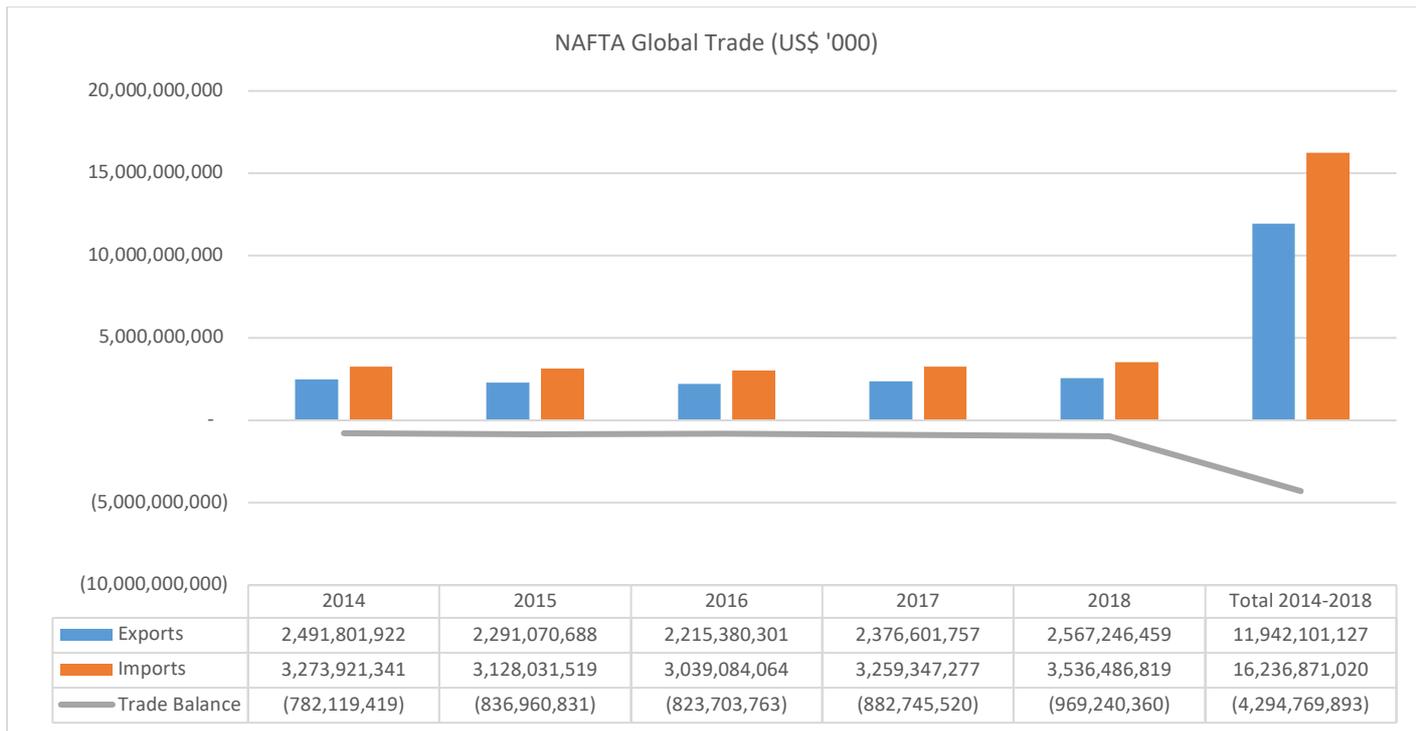
The North American Free Trade Agreement (NAFTA) is a trilateral trade agreement between Canada, Mexico and United States, which was initially started through bilateral trade negotiations between US and Canada, resulting in the US-Canada Free Trade Agreement of January 1989. Mexico later joined the trading bloc in 1994, culminating into NAFTA. On 30th September 2018, the three nations agreed to replace NAFTA with the United States-Mexico-Canada Agreement (USMCA), based on concerns raised by US to the effect that NAFTA had not enabled mutual trade gains by the three members states. However, USMCA has not yet come into force, and NAFTA provisions therefore continue to be the guiding framework of trade relations between the three countries, including trade policies and measures.

NAFTA GLOBAL TRADE

NAFTA total exports declined slightly from US\$ 2.49 trillion in 2014 to US\$ 2.29 trillion in 2015 and further to US\$ 2.22 trillion in 2016 and thereafter picked to US\$ 2.38 trillion in 2017 and closed at US\$ 2.57 trillion in 2018 as shown in figure 20 below. Total NAFTA imports also declined from US\$ 3.27 trillion in 2014 to US\$ 3.13 trillion in 2015 and further to US\$ 3.04 trillion in 2016 before rising to US\$ 3.26 trillion in 2017 and further to US\$ 3.54 trillion in 2018.

Overall, NAFTA had a negative trade balance throughout the period of analysis, rising from US\$ 782.12 billion in 2014 to US\$ 969.24 billion in 2018. The USA contributed the largest share of the trading bloc's total trade with the world during the period 2014-2018. In this regard, as shown in Table 22 below, USA contributed an average 65% of total exports by the region and 74% of total imports, followed by Canada at 18% of total exports and 13% of total imports, and Mexico at 17% of total exports and 13% of total imports.

Figure 20: NAFTA Global Trade 2014-2018 (US'000)



Source: Computation from International Trade Center data www.intracen.org

Table 22: Total NAFTA Global Trade 2014-2018 (US\$ '000)

Country	2014	2015	2016	2017	2018	Total 2014-2018	Average share (%)
NAFTA EXPORTS (US\$ '000)							
United States	1,619,742,900	1,501,845,864	1,451,459,684	1,546,462,344	1,665,992,032	7,785,502,824	65%
Canada	475,177,176	408,697,324	390,020,604	420,688,035	450,722,776	2,145,305,915	18%
Mexico	396,881,846	380,527,500	373,900,013	409,451,378	450,531,651	2,011,292,388	17%
Total NAFTA Exports (US\$ '000)	2,491,801,922	2,291,070,688	2,215,380,301	2,376,601,757	2,567,246,459	11,942,101,127	100%
NAFTA IMPORTS (US\$ '000)							
United States	2,410,855,500	2,313,424,569	2,249,113,117	2,406,362,556	2,612,379,157	11,992,134,899	74%
Canada	463,088,977	419,374,729	402,906,596	432,615,608	459,839,192	2,177,825,102	13%
Mexico	399,976,864	395,232,221	387,064,351	420,369,113	464,268,470	2,066,911,019	13%
Total NAFTA imports (US\$ '000)	3,273,921,341	3,128,031,519	3,039,084,064	3,259,347,277	3,536,486,819	16,236,871,020	100%

Source: Computation from International Trade Center data www.intracen.org

INTRA-NAFTA TRADE

Intra-NAFTA exports decreased from US\$ 1.25 trillion in 2014 to US\$ 1.16 trillion in 2015 and further to US\$ 1.11 trillion in 2016 and thereafter increased to US\$ 1.19 trillion in 2017 and to 1.27 trillion in 2018. On the other hand, intra-NAFTA imports declined from US\$ 1.14 trillion in 2014 to US\$ 1.05 trillion in 2015 and further to US\$ 1.01 trillion in 2016 and thereafter rose to US\$ 1.08 trillion in 2017 and further to US\$ 1.17 trillion in 2018.

Like in the case of NAFTA global trade, the US dominated intra-NAFTA trade as shown in table 23 below, taking 44% of total intra-NAFTA exports and 57% of intra-NAFTA imports; followed by Canada at 28% of intra-NAFTA exports and 24% of intra-NAFTA imports. Mexico trailed with 28% intra-NAFTA exports and 19% of intra-NAFTA imports.

Table 23: Intra-NAFTA trade (US\$ '000)

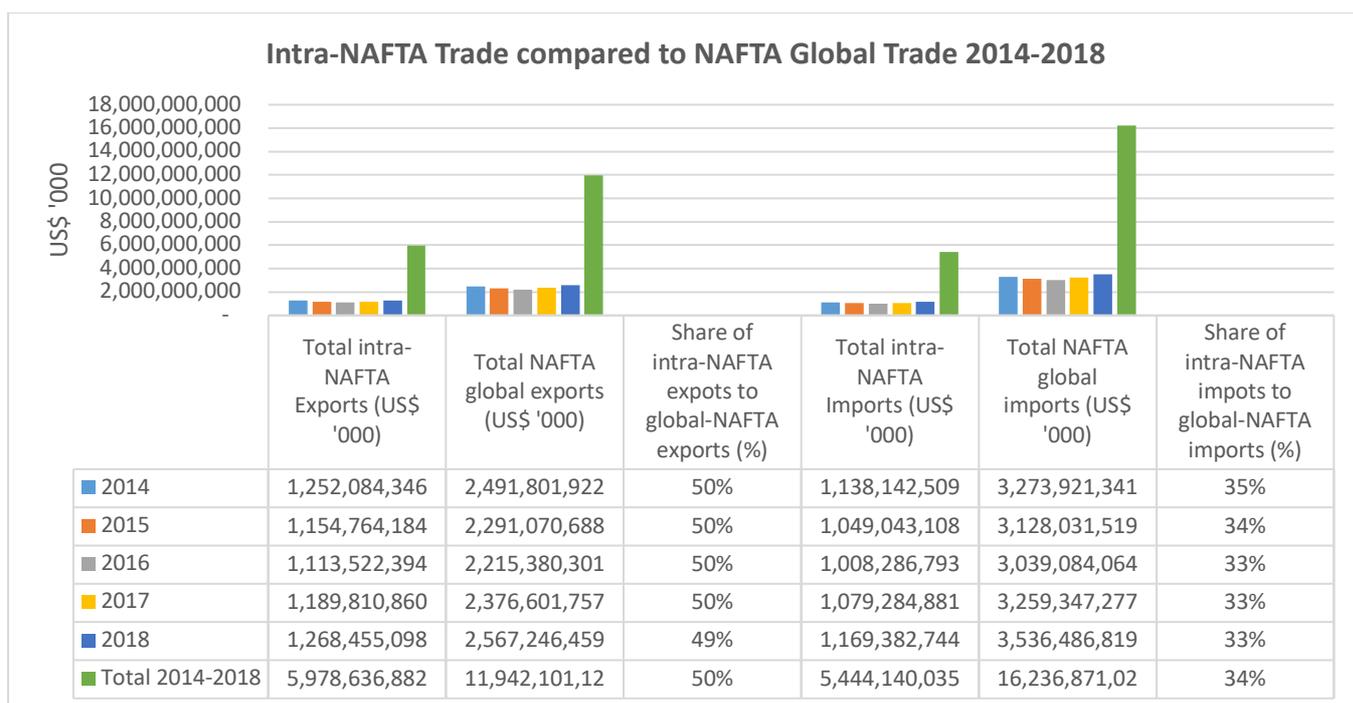
Country	2014	2015	2016	2017	2018	Total 2014-2018	Average share (%)
INTRA-NAFTA EXPORTS (US\$ '000)							
USA	552,618,561	516,327,535	496,963,299	525,957,288	565,211,289	2,657,077,972	44%
Canada	329,395,228	319,731,393	313,294,633	338,734,430	358,667,050	1,659,822,734	28%
Mexico	370,070,557	318,705,256	303,264,462	325,119,142	344,576,759	1,661,736,176	28%
TOTAL intra-NAFTA exports	1,252,084,346	1,154,764,184	1,113,522,394	1,189,810,860	1,268,455,098	5,978,636,882	100%
INTRA-NAFTA IMPORTS (US\$ '000)							
USA	651,027,584	601,124,525	580,404,943	621,976,209	675,408,320	3,129,941,581	57%
Canada	281,212,446	250,669,235	238,241,216	252,528,681	266,920,553	1,289,572,131	24%
Mexico	205,902,479	197,249,348	189,640,634	204,779,991	227,053,871	1,024,626,323	19%
Total Intra-NAFTA imports (US\$ '000)	1,138,142,509	1,049,043,108	1,008,286,793	1,079,284,881	1,169,382,744	5,444,140,035	100%

Source: Computation from International Trade Center data www.intracen.org

INTRA-NAFTA TRADE RELATIVE TO NAFTA GLOBAL TRADE

Intra-NAFTA trade compared with global NAFTA trade is quite significant as shown in Figure 21 below. In this respect, intra-NAFTA exports took an average 50% of NAFTA global trade during the period 2014-2018 while imports took between 33% and 35% of global NAFTA imports during the period. This means NAFTA countries trade significantly with each other, and that goods originating from amongst NAFTA countries are heavily consumed in the region.

Figure 21: Intra-NAFTA trade compared with NAFTA global trade



Source: Computation from International Trade Center data www.intracen.org

POLICIES AND REGULATIONS GOVERNING INTRA-NAFTA TRADE AND TRADE WITH THIRD COUNTRIES

NAFTA has established clear trade policies and regulations between its member states and with third countries as summarised below.

NAFTA Custom duties

NAFTA was principally created to eliminate tariff barriers and investment restrictions on agricultural and manufacturing products, and services. Before NAFTA, tariffs of 30% or higher applied on Mexico imports of goods from US. There were also long delays caused by customs and other agencies' related paperwork. NAFTA addressed this by phasing out tariffs over a 15-year period. Approximately 50% of the tariffs were abolished immediately the agreement took effect in 1994, while the remaining tariffs were targeted for gradual elimination over the next 15 years. NAFTA has laid down customs policy measures which it applies under the NAFTA National Treatment and market access provisions on goods. The newly renegotiated USMCA which is yet to come into force is expected to give even better customs regulations for the three trading partners. For the services sector, specific services targeted for liberalisation by NAFTA are construction, engineering, accounting, advertising, consulting/management, architecture, health-care management, commercial education, and tourism. The new USMCA concluded in September 2018 which will come into effect after completion of transitional procedures and ratification by the three partner states is rated as a better and modernized trade agreement than NAFTA, which is expected to mutually benefit North American workers, farmers, ranchers, and businesses. It is expected that the agreement will create more balanced and reciprocal trade, and will provide support to high-paying jobs by using trade rules to drive higher wages (for example by requiring that 40-45% of auto content be made by workers earning at least \$16 per hour). The USMCA aims to:

- a) Create a better level playing field for businesses, including improved rules of origin for automobiles, trucks and other products.
- b) Improve disciplines in dealing with currency manipulation.

- c) Benefit farmers, ranchers, and agribusinesses by modernizing and strengthening food and agriculture trade in North America.
- d) Support creation of 21st Century economies in North America by protecting intellectual property rights in addition to improving opportunities for trade in services in the region.
- e) Contain new chapters covering digital trade, anticorruption, and good regulatory practices, as well as a chapter devoted to ensuring that SMEs⁹⁴ benefit from the Agreement.
- f) Create stronger rules of origin than those under NAFTA and the Trans-Pacific Partnership (TPP) agreement, including rules for assembled automobiles and automobile parts, and other industrial products such as chemicals, steel-intensive products, glass, and optical fiber.
- g) Establish procedures for streamlining certification and verification of rules of origin, aimed to promote strong enforcement; including new cooperation and enforcement provisions to prevent duty evasion.
- h) Help to ensure only producers of goods traded between the partner states using sufficient and significant North American parts and materials receive preferential tariff benefits.
- i) Contain new commitments on easier market access between the partner states

NAFTA trading arrangement with third countries

NAFTA partners have individual trade deals with non-members, notably the European Union, with agreements with which it has the following agreements; some of which are under negotiation:

- a) The EU-USA Agreement (*under negotiation*): Based on EU negotiating directives obtained in April 2019, the EU Council approved two mandates in April 2019 for an agreement with US, namely: (1) the elimination of tariffs for industrial goods, and (2) conformity assessment procedures.
- b) The EU-Canada Agreement: Based on EU negotiating directives obtained in April 2009, the European Commission in July 2016 agreed to develop draft proposals on conclusion of the EU-Canada Comprehensive Economic and Trade Agreement (CETA), which was adopted in October 2016 and consented to by the European Parliament in February 2017. In September 2017, the agreement provisionally became operational, but will enter into full force when all EU Member States parliaments have ratified the Agreement.
- c) EU Trade with Mexico: The initial EU and Mexico was the EU-Mexico Global Agreement which entered into force in 2000, which however was criticized on reasons of obstructing EU originating FDI into Mexico. Renewed negotiations started for a revised agreement in 2016, and a political agreement was reached in April 2018. Technical issues on bilateral trade and investment between the two partners were resolved and the revised agreement including the full legal text was finalized at the end of 2018.

NAFTA Quality standards

The NAFTA Rules of Origin outline rules on quality standards in order for a good to be considered NAFTA originating such as: The purification rule, Mixtures and blends rule,

⁹⁴ Small and Medium Enterprises

Change in particle size rule, Standards material rule, Biotechnological rule and Separation prohibition rule.

NAFTA's Sanitary and Phytosanitary Standards

NAFTA provisions on Sanitary and Phytosanitary Standards (SPS) closely resemble the WTO agreement on the application of SPS measures. Each of the 3 NAFTA parties retain their rights to implement and maintain SPS measures required to protect human, animal or plant life, including measures that may be more stringent than international standards, subject to certain agreed rules and the obligations to base national measures on scientific principles, taking into account geographical conditions and basing measures on a risk assessment appropriate to the circumstances.

Dumping and Safeguard Measures applied by NAFTA

NAFTA largely aligns its antidumping and countervailing duties to the WTO provisions on Trade Remedies, notably, the creation of bi-national panels that review antidumping determinations made by national authorities. Safeguard measures can be broadly categorized into two areas:

- a) Global safeguards: These provisions allow preferential trade areas to exclude some countries from global safeguard actions that have received considerable attention.
- b) Bilateral safeguards: There are two types of bilateral safeguards: (i) transition safeguards and (ii) special safeguards. Transition safeguards are designed to mitigate the costs incurred as industries adjust to preferential tariffs, and are often imposed during the transition period. Special safeguards are provisions for products or sectors that are considered politically sensitive.

NAFTA Treatment of Sensitive Products

NAFTA accords special treatment to various products considered sensitive such as: meat and edible meat offal, fish and crustaceans, molluscs and other aquatic invertebrates, dairy produce, birds' eggs, natural honey, edible products of animal origin, products of animal origin, live trees, bulbs, roots; cut flowers and ornamental foliage, edible fruit and nuts; peel of citrus fruit or melons, coffee, tea, maté and spices among others.

ECONOMIC BENEFITS ACCRUED BY NAFTA MEMBER STATES.

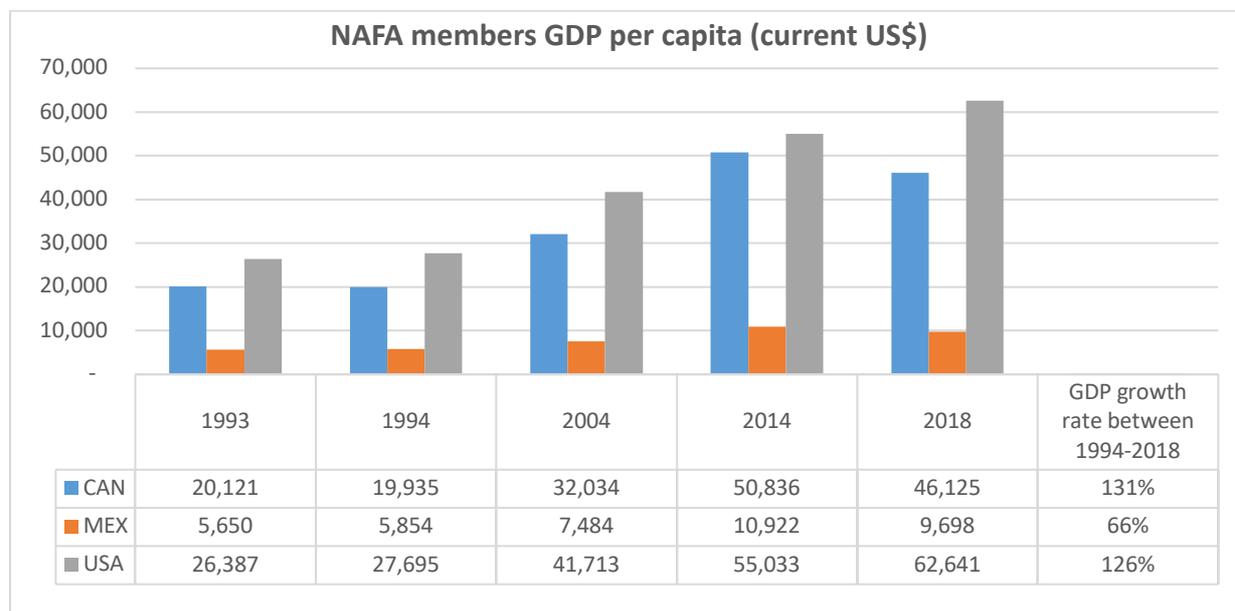
Since coming into force in 1994, NAFTA has facilitated trade integration between the three member states, which has resulted into the following benefits:

- a) Tariff elimination for qualifying products. Before NAFTA, US tariffs on Mexican originating products were on average 30% or higher, while Mexican tariffs on US originating imports were as high as 75% or 250% higher US tariffs on Mexican products. In addition long delays were experienced in clearing US originating goods in Mexico due to cumbersome paperwork. NAFTA addressed these challenges by phasing out tariffs over a 15 years period, including tariffs on sensitive goods. Approximately 50% of the tariffs were abolished immediately the agreement took effect, and the remaining tariffs were targeted for gradual elimination over a period of 15 years from 1994.

- b) Booming trade: Available figures⁹⁵ show that intra-NAFTA exports doubled from US\$633.37 billion in 2001 to US\$1.27 trillion in 2018. This has boosted economic growth, profits, and jobs for all three countries.
- c) Lower consumer prices brought about by the lower tariffs: Lower tariffs on goods traded between NAFTA countries has overtime reduced import prices, thus lessening the risk of inflation and allowing the Federal Reserves of the three countries to keep interest rates low. This has especially been important for prices of oil, machinery and medicines, all which contribute substantially to the region's import bill and are important to meeting economic and social needs of the region.
- d) Increased Economic Growth

NAFTA has boosted economic growth for the three partner states. In this regard, as shown in Figure 22 below, in 1993 prior to signing of NAFTA, the US real per capita GDP stood at US\$ 26,387, Canada at US\$ 20,121 and Mexico at US\$ 5,650. On the year of signing of NAFTA, the GDP per capital for the three countries had dropped, but thereafter increased substantially to close at US\$ 62,641 GDP per capita for US in 2018 (or by 126%), US\$ 46,125 GDP per capita for Canada (or by 131%) and US\$ 9,698 GDP per capita for Mexico (or by 66%). This implies all the three countries have recorded tremendous GDP per capita growth over the NAFTA implementation period, although Canada and Mexico experienced a decline in their 2018 GDP per capita from the 2014 record; and notwithstanding the fact that Mexico's output per person before entry of NAFTA was and is still much lower than that of US and Canada.

Figure 22: GDP per capita (current US\$) for NAFTA countries 1993-2018



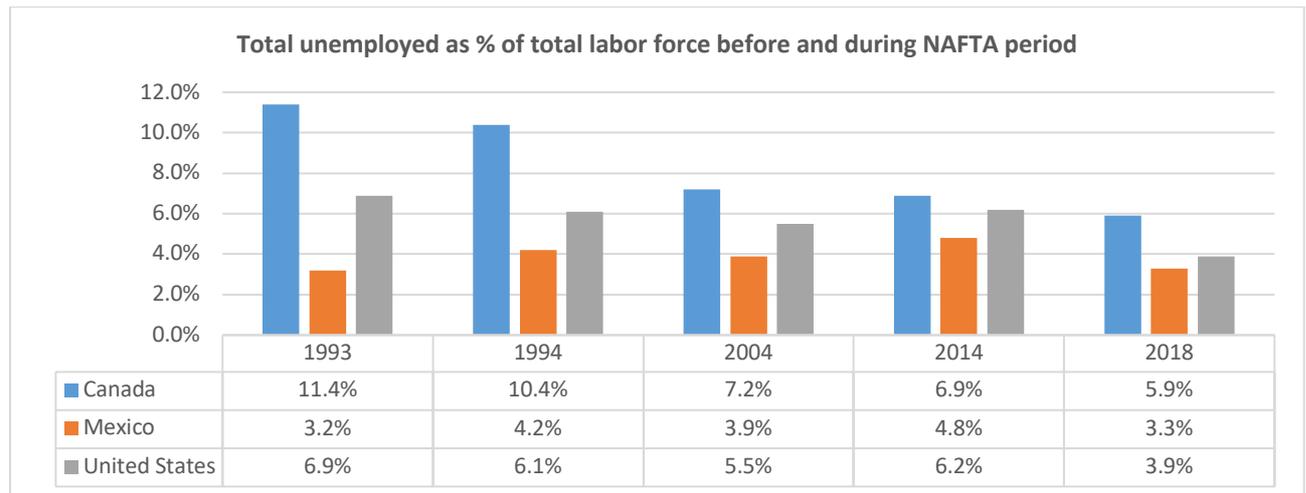
Source: World Bank data www.worldbank.org

After entry into force, NAFTA's immediate aim was to increase cross-border commerce amongst the three North American countries, and in that respect, it undoubtedly succeeded by lowering or eliminating tariffs and reducing some NTBs (such as trade barriers associated with previous Mexican local-content requirements). The reduced tariffs and NTBs have spurred trade and investment, with most of the trade increase benefiting US as shown in table 20 above.

⁹⁵ International Trade Centre data www.intracen.org

When NAFTA was signed in 1994, there was much hope of increased and good-paying jobs. This has largely come true, since at the end of 2018, the unemployment rate in US stood at 3.9%, Canada at 5.9% and Mexico at 3.3%, lower than the 6.9% unemployment rate recorded at the end of 1993 in US and 11.4% in Canada, although in Mexico the unemployment rate was slightly lower in 1993. However over the NAFTA implementation period, the overall unemployment in the region declined as shown in Figure 23 below, which is credited to the cross border supply chains created through NAFTA for various economic sectors (manufacturing with notably of automobile parts, agriculture and services).

Figure 23: Total unemployment in NAFTA before and during NAFTA period (1993-2018)



Source: World Bank data www.worldbank.org

- e) NAFTA has been credited with helping US manufacturing industries, especially the US automobile industry, to become more globally competitive through the development of regional supply chains. Carmakers therefore do not have to move their entire operations to Mexico or Canada, they can straddle the border by outsourcing parts under subcontracting arrangements. Most cars made in North America additionally now have parts sourced from all three countries. This has increased the regional automobile industry competitiveness, which has contributed to enabling the industry to fend off competition from Japanese imports. Mexico for example exports more cars to the US than Japan. By 2020, Mexico targets to manufacture 25% of all North American cars due to preferential trading arrangements brought by NAFTA. Similar regional supply chains that apply for automobile industry also are true for many other manufactured products and also for agriculture and services sectors. In this regard, Mexico is today the top export destination for US beef, rice, soybean meal, corn sweeteners, apples, and beans; and also petroleum oils. A 2011 working paper by the Hong Kong Institute for Monetary Research for example estimates that a US import from Mexico already contains 40% of US content, while the corresponding figure for Canada stands at 25%. These benefits have been made possible by the elimination of previously high tariffs applicable on goods traded between the three countries. Increased Foreign Direct Investment: Since 1994 after NAFTA was enacted, combined US FDI to Canada and Mexico has more than tripled to US\$500.9 billion. Combined Canadian and Mexican FDI into the US on the other hand has grown from US\$219.2 billion in 2007 to US\$471.1 billion in 2017. The FDI has benefited mostly manufacturing

(notably the automobile industry), insurance, and banking companies, and has consequently boosted business profits in the three countries.

- f) Reduced Government spending and increased participation by private companies: NAFTA has enabled firms in member countries to bid on government contracts, which has created a level-playing field for all companies in the region.
- g) Establishment of regional standards. The three NAFTA countries agreed to toughen health, safety, and industrial standards by using the highest existing standards on goods traded between the three member states (which were always US or Canadian). In effect, reference to national standards could no longer be used as a barrier to free trade. This speeded up the process of export-product inspections and certifications.
- h) Protection of goods and services produced by NAFTA companies and manufacturers: Intellectual Property Rights by NAFTA has assisted in protecting new products, businesses and services from infringement by counterfeits and piracy, thus reducing foreign investors' risk by guaranteeing them the same legal rights as local investors. Through NAFTA, investors can make legal claims against any of the three governments should they nationalizes industries or take their property through compulsory acquisition.
- i) Use of supplementary agreements. To ease concerns that Mexico's low wage scale would cause US companies to shift production to Mexico, and to ensure that Mexico's increasing industrialization would not lead to rampant pollution, special side agreements were included in NAFTA. Under those agreements, the three countries agreed to establish commissions to handle labor and environmental issues. The commissions have the power to impose steep fines against any of the three governments that failed to impose its laws consistently. Environmental and labor groups from both the United States and Canada, however, have repeatedly charged that the regulations and guidelines detailed in these supplemental agreements have not been enforced.
- j) Some small businesses were affected directly by NAFTA. Before the coming into force of NAFTA, US larger firms had an advantage over small ones because the large companies could afford to build and maintain overseas offices and/or manufacturing plants in Mexico and Canada, thereby avoiding many trade restrictions on imports into the latter two countries. In addition, pre-NAFTA laws stipulated that US service providers wanting to do business in Mexico had to establish a physical presence in the latter country, which was too expensive for small firms. The effect was that US small firms could not access the Mexican market. NAFTA leveled the playing field by letting US small firms export to Mexico at the same cost as the large firms by eliminating the requirement that a business had to establish a physical presence in Mexico in order to do business in the latter country. The lifting of these restrictions meant that vast new markets were suddenly open to US businesses that had previously done business only in the US.

CHALLENGES EXPERIENCED BY NAFTA IN IMPLEMENTING THEIR FTAS

Transatlantic trade disputes

In June 2018, the US took advantage of Section 232 of its 1962 Trade Expansion Act to impose new tariffs on imports of steel and aluminum from the EU. This section authorizes the US President to adjust imports of goods or materials from other countries through tariffs or other means if such imports are of sufficient quantity to threaten national security. This action was taken by EU as a trade provocation, and EU consequently reacted by imposing compensating tariffs, claiming that the US tariffs could not be justified on national security grounds. The higher EU tariffs have consequences for all NAFTA countries as US exporters to EU cannot continue outsourcing the same amount of inputs and raw materials from Canada and Mexico as before, hence threatening NAFTA businesses with downsizing and job losses.

Strained Political Relations between US and Mexico

Both USA and Mexico went through a change in political leadership in 2016 and 2018, with the new leaders being quite critical of each other's trade policies. This has created trade tensions between the two countries, especially after the US announcement that the US would build a wall across the US-Mexican border to be funded by Mexico through punitive tariffs on Mexican imports starting in June 2019, if Mexico did not halt the flow of illegal immigration into US, which largely originate from Central America and through Mexico. This ultimatum was perceived as a big foreign policy threat for Mexico and a challenge for Mexican security forces who were already struggling to combat migrant flows and to fight high levels of gang violence and homicide. Mexico's economy, which is heavily reliant on exports to the US (estimated at about 80% of total exports), immediately shrank in the first quarter of 2019. There have been fears of continued economic struggle if the proposed US tariffs were to be implemented, since the tariffs could be expected to reach as high as 25%. The threat also rattled companies across North America, including automakers, electronics (e.g. refrigerators) and agricultural firms, which have built supply chains across Mexico, the US and Canada. US industry groups also feared the US proposal would hurt not only Mexico but also American businesses, farmers and consumers who were already struggling with similar US-China trade disputes.

While the two threats of US-Mexico border wall and high tariffs on Mexico originating imports into US were finally abandoned, they demonstrate the great risk that NAFTA faces as it seeks to strengthen trade relationships between the three partner states.

Threats to growth of motor vehicle industry

In May 2018, the US President ordered a new investigation into whether car imports threaten US national security, and that if the investigation was in the affirmative, he would impose new tariffs on auto imports at 25% of value. This action was perceived as a cause of substantial business harm because it would affect competitiveness of worldwide suppliers and producers of automobiles and automobile parts, such as those originating from Germany and even Mexico.

Potential for embarrassing discrepancies in current account data

US statistics show the bilateral EU-US current account has been in balance since 2008. Eurostat statistics on the other hand indicate that there is a large current account surplus in favour of EU, which puts the EU into a strategic disadvantage due to the potential threat of trade wars with US. Clarifying the facts should be a top priority for both the EU and the US before entering into new trade negotiations.

PLANS BY NAFTA TO DEAL WITH THE FTA CHALLENGES

NAFTA has established proposals and measures to address the trade related challenges, notably:

- a) Strengthening the longstanding and strong economic cooperation that has developed over the NAFTA period particularly on trade and investment pillars. The USMCA is an effort in this direction as it will support mutually beneficial trade for the three member

states, leading to more stable, freer and fairer markets and to robust economic growth in the NAFTA region.

- b) Preserving and expanding regional trade and production by further incentivizing the production and sourcing of goods and materials from within the region.
- c) Enhancing and promoting the competitiveness of regional exports and firms in global markets, and conditions of fair competition in the region.
- d) Supporting the growth and development of MSMEs⁹⁶ by enhancing their ability to participate in and benefit from the opportunities created by the new USMCA Agreement.
- e) Eliminating obstacles to international trade which are more trade-restrictive than necessary; and promoting high levels of environmental protection through effective enforcement of environmental laws, enhanced environmental cooperation, and sustainable development.

THE ASSOCIATION OF SOUTHEAST ASIAN NATIONS

OVERVIEW OF ASEAN

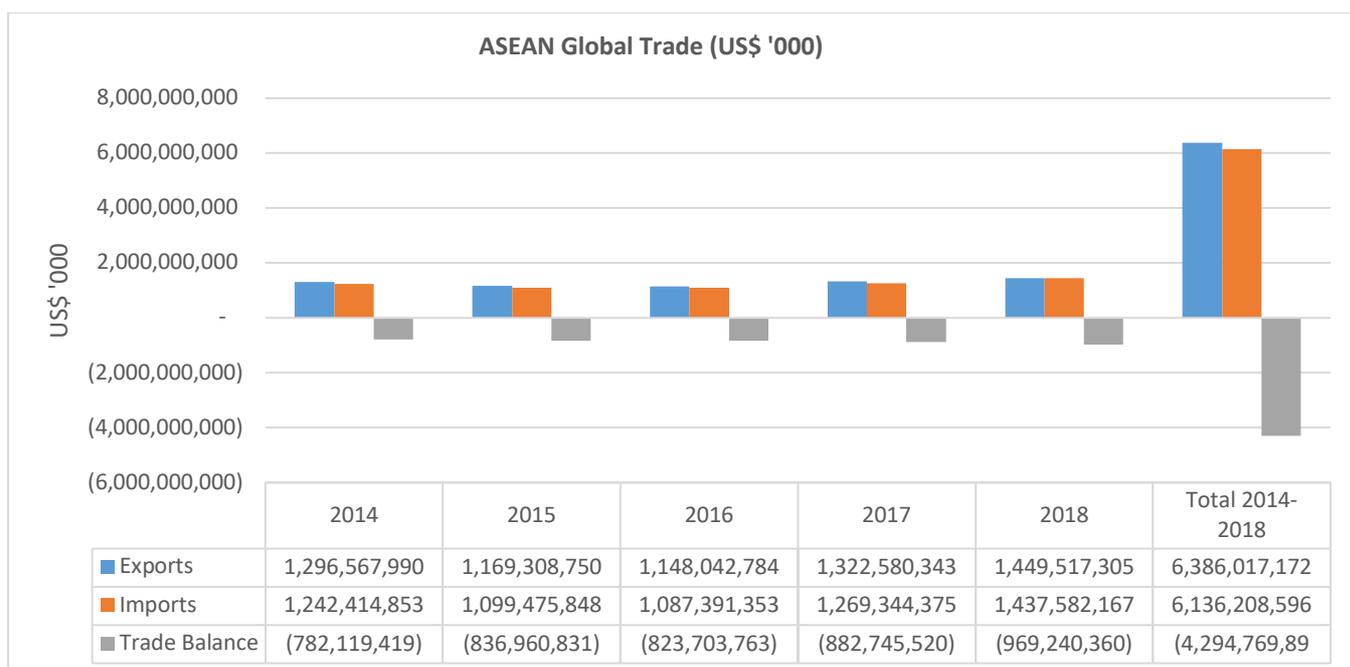
The Association of Southeast Asian Nations (ASEAN) was established in 1967, while the ASEAN Free Trade Area (AFTA) came into force in January 1992. The agreement provides for elimination of import quotas and significant reduction of import tariffs among the ten (10) signatory countries located in Southeastern part of Asia namely: Brunei Darussalam, Cambodia, Indonesia, Laos Pdr, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam. The principle aim of ASEAN FTA is to promote economic growth, political and security cooperation among the member states.

ASEAN GLOBAL TRADE

Total ASEAN exports to the world declined slightly from US\$ 1.3 trillion in 2014 to US\$ 1.17 trillion in 2015 and further to US\$ 1.15 trillion in 2016, and thereafter increased to US\$ 1.32 trillion in 2017 and to US\$ 1.45 trillion in 2018 as shown in figure 24 below. Total ASEAN imports on the other hand declined from US\$ 1.24 trillion in 2014 to US\$ 1.1 trillion in 2015 and further to US\$ 1.09 trillion in 2016. Thereafter imports increased to US\$ 1.27 trillion in 2017 and further to US\$ 1.44 trillion in 2018. The region therefore experienced a negative trade balance through the period 2014-2018; growing from US\$ (-ve) 7.82 billion in 2014 to (-ve) US\$ 9.69 billion in 2018.

Figure 24: ASEAN Global Trade 2014-2018 (US\$ '000)

⁹⁶Micro, small and medium-sized enterprises



Source: Computation from International Trade Center data www.intracen.org

INTRA-ASEAN TRADE

As shown in Table 24 below, total intra-ASEAN exports declined from US\$ 327.65 billion in 2014 to US\$ 282.94 billion in 2015 and further to US\$ 271.74 billion in 2016, and thereafter grew to US\$ 305.36 billion in 2017 and further to US\$ 341.8 billion in 2018. Intra-ASEAN imports on the other hand declined from US\$ 278.08 billion in 2014 to US\$ 247.1 billion in 2015, and thereafter picked to US\$ 285.77 billion in 2017 and further to US\$ 321.35 billion in 2018.

As shown in figure 26 below, the main beneficiaries of intra-ASEAN exports during the period 2014-2018 were Singapore which took 36% of goods traded between ASEAN member states, Malaysia which took 20%, Thailand (19%), and Indonesia (12%). All other six member states combined took the balance of 13%.

A similar pattern of beneficiaries of intra-ASEAN imports is evident as shown in figure 27 below, with the main beneficiaries being Singapore which took 26%, Malaysia (18%), Thailand (16%), and Indonesia (15%), while all the other six countries took the balance of 25%.

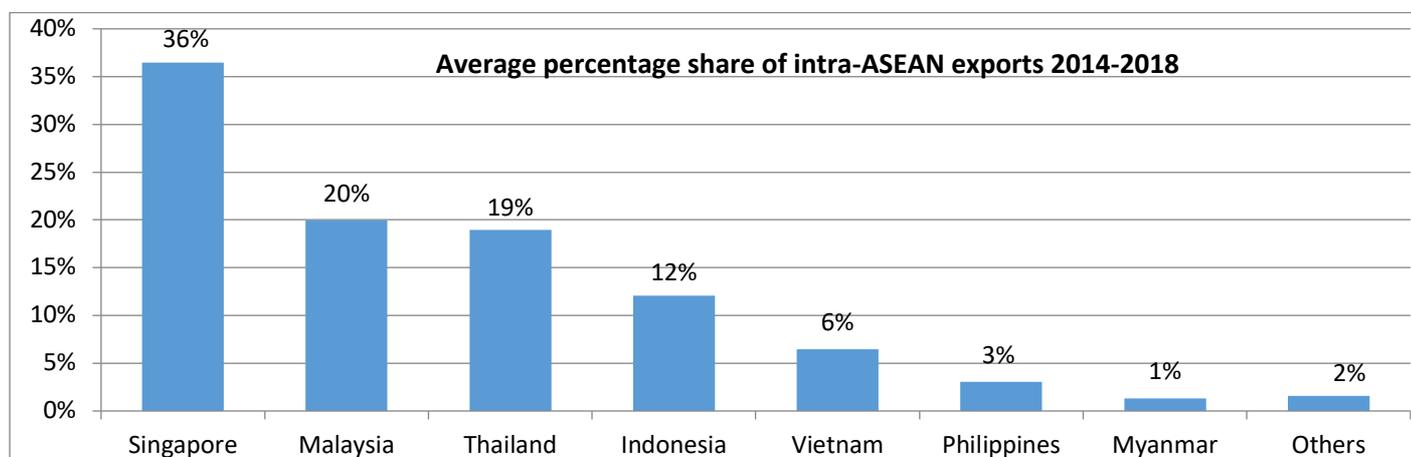
Table 24: Intra-ASEAN trade 2014-2018 (US\$ '000)

Country	2014	2015	2016	2017	2018	Total 2014-2018
Intra-ASEAN Exports for all products: 2014-2018 (US\$ '000)						
Singapore	130,187,299	107,820,166	99,434,160	108,078,732	121,827,004	567,347,361
Malaysia	65,273,441	56,292,291	55,655,276	62,869,272	70,675,459	310,765,739
Thailand	59,425,652	54,224,580	54,089,555	59,382,176	67,700,294	294,822,257
Indonesia	39,695,195	33,576,993	33,202,854	39,323,687	42,148,009	187,946,738
Vietnam	19,106,768	18,195,135	17,449,167	21,680,243	24,476,640	100,907,953
Philippines	9,211,243	8,536,878	8,400,633	10,128,521	10,771,412	47,048,687
Myanmar	4,750,450	4,289,181	3,511,373	3,892,406	4,198,039	20,641,449

Country	2014	2015	2016	2017	2018	Total 2014-2018
Others (Cambodia, Lao and Brunei)	33,068,461	31,021,194	29,361,173	35,701,170	39,446,091	24,974,471
Total Intra-ASEAN Exports	327,650,048	282,935,224	271,743,018	305,355,037	341,796,857	1,554,454,655
Intra-ASEAN Imports for all products: 2014-2018 (US\$ '000)						
Singapore	75,770,074	64,860,576	62,682,274	70,940,049	78,445,356	352,698,329
Malaysia	53,767,309	46,824,067	41,421,144	50,003,459	55,529,552	247,545,531
Thailand	43,294,300	40,915,161	39,826,851	45,245,953	49,204,737	218,487,002
Indonesia	50,903,584	38,912,770	34,817,277	39,299,719	46,013,852	209,947,202
Vietnam	22,918,500	23,759,280	24,085,902	28,363,288	31,707,766	130,834,736
Philippines	16,158,755	17,042,208	22,494,822	26,607,533	28,664,156	110,967,474
Cambodia	2,915,612	3,592,281	4,605,807	11,843,282	17,028,061	39,985,043
Myanmar	7,095,390	7,025,941	5,909,630	7,619,917	8,670,341	36,321,219
Lao & Brunei (combined)	5,252,298	4,167,652	4,344,514	5,844,052	6,081,453	25,689,969
Total Intra-ASEAN Imports	278,075,822	247,099,936	240,188,221	285,767,252	321,345,274	1,372,476,505

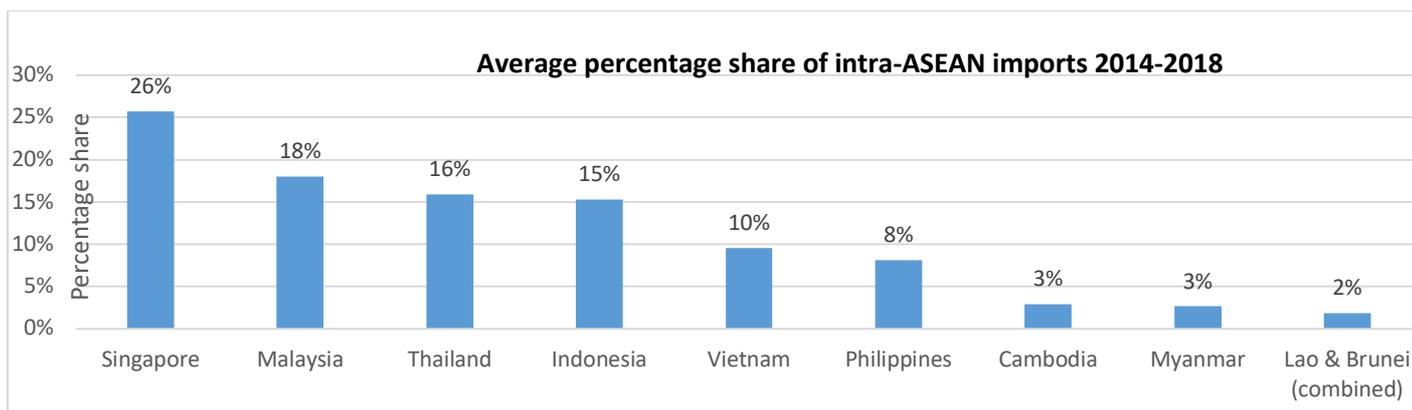
Source: Computation from International Trade Center data www.intracen.org

Figure 26: Intra-ASEAN exports



Source: Computation from International Trade Center data www.intracen.org

Figure 27: Intra-ASEAN Imports

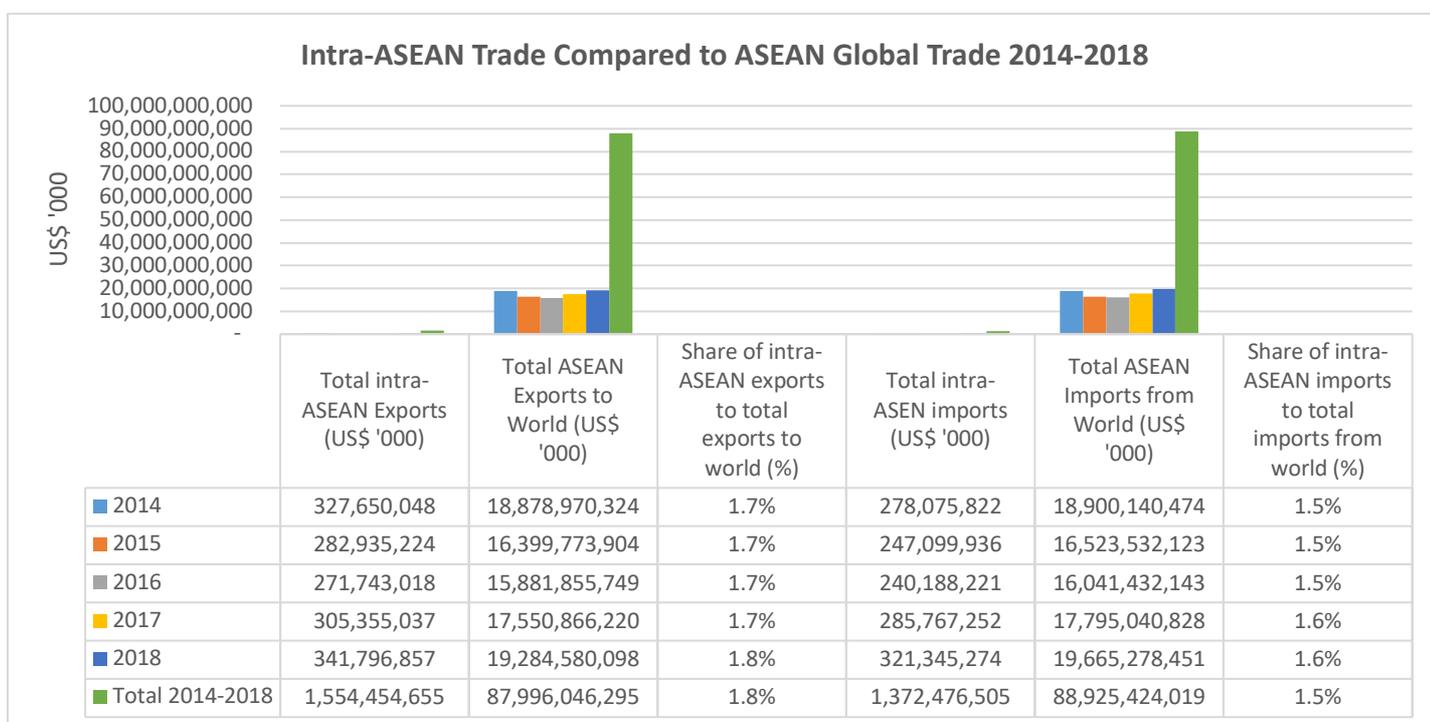


Source: Computation from International Trade Center data www.intracen.org

INTRA-SEAN TRADE COMPARED TO GLOBAL ASEAN TRADE

Intra-ASEAN trade has gone through cyclical fluctuations as shown in table 21 above, decreasing between 2014 and 2016 and picking up again steadily between 2016 and 2018. On the other hand, total intra-ASEAN trade is very small, taking less than 2% of global ASEAN trade (both exports and imports) as shown in Figure 28 below. This means ASEAN originating goods are consumed more in other countries than within the region, which makes them vulnerable to any international shocks such as trade wars, unforeseen hikes in oil prices, political crises and currency fluctuations that could happen without notice amongst the region's trading partners. During the 34th ASEAN summit held in Bangkok on 22nd June 2019, concerns were raised over the sluggish and small share of intra-ASEAN trade compared to global ASEAN trade.

Figure 28: Intra-ASEAN trade Compared to global ASEAN trade 2014-2018



Source: Computation from International Trade Center data www.intracen.org

POLICIES AND REGULATIONS GOVERNING INTRA-ASEAN TRADE AND TRADE WITH THIRD COUNTRIES

Intra-ASEAN trade is governed by the ASEAN Trade in Goods Agreement (ATIGA), which covers all goods traded between ASEAN countries, with only a few exceptions which are allowed in cases where trade restrictions are deemed necessary to protect public morals; human, animal, or plant life and health; or to preserve national cultural treasures. The ASEAN trade policies are elaborated below.

ASEAN custom duties and taxes on imports

ASEAN has made efforts to create a single market and production base through progressive reduction of trade barriers, with the eventual aim of capitalizing on each country's strengths and to promote free export and import activities within the region without having to deal with different trade rules, customs procedures and high taxes. This is aimed to reduce unnecessary trading costs which are ultimately passed on to the consumer. In January 2010, ASEAN became a full free-trade area, with duties on most products abolished. However some tariffs remain on staples which is intended to encourage local producers to continue production for local markets. According to the ASEAN Community Progress Monitoring System 2017 on Tariff Liberalization, pursuant to the commitments made in the Common Effective Preferential Tariff (CEPT) Scheme of the ASEAN Free Trade Area (AFTA) agreed in 1992, and later in the ASEAN Trade in Goods Agreement (ATIGA) in 2010, ASEAN continues to make progress in integrating into the global economy through FTAs and Comprehensive Economic Partnerships (CEPs), as reflected in the liberalization of tariffs on extra-ASEAN imports from its FTA Partners. According to the ASEAN Rules of Origin, if the goods are "originating" (with a 40% ASEAN value content), they can be treated as locally produced and therefore duty free. In case the goods do not qualify as "originating", normal rates of duty continue to apply.

Application of Information and Communication Technology (ICT) in trade

ASEAN countries have invested heavily on Information and Communication Technology (ICT) to help curb production inefficiencies and promote honesty of producers and traders. Two of the ICT systems in place are:

- a) ASEAN e-Customs and an ASEAN Single Window (ASW)
- b) Regional Transit System to handle mostly with custom clearance

ASEAN Quality Standards

ASEAN prioritizes regulatory excellence by setting up a harmonized set of standards and regulations to ensure seamless trade and investment flows within the region. The Master Plan on ASEAN Connectivity (MPAC) 2025 has been established to support the harmonization of standards and development of mutual recognition agreements, in addition to addressing technical regulations in ASEAN Member States. To promote transparency and support the region's trade growth, MPAC 2025 has adopted the "develop quantification and benchmarking approach", aimed to encourage producers in member states to achieve production excellence, and to adopt good regulatory practices to address non-tariff measures (NTMs).

ASEAN Sanitary and Phytosanitary Standards

The ASEAN Community Vision 2025 and specifically the ASEAN Socio-Cultural Community (ASCC) Blueprint 2025 on Conservation and Sustainable Management of Biodiversity and Natural Resources requires ASEAN member states to commit themselves to strategic measures aimed to "promote cooperation in protection, restoration and sustainable use of coastal and marine environment, and to respond and deal with the risk of environmental

pollution, threats to marine ecosystem and coastal environment by respecting ecologically sensitive areas”.

ASEAN Dumping and Safeguard Measures

Anti-dumping duties can be imposed once an investigation demonstrates evidence of the following situations: A product is being dumped into a domestic market; Injury is experienced by a domestic industry that produces a like product; or a causal link exists between the dumped product and material injury.

Safeguards on the other hand focus on application of transitional and/or provisional safeguard measures to mitigate the negative impact of sudden import surges in the domestic industry's market, which can cause serious injury or threat to cause serious injury to domestic producers of like products.

ASEAN trading arrangements with third countries

ASEAN countries have individual trade arrangements with the EU, which are based on bilateral FTA negotiations, such as negotiations between EU and Singapore/ Malaysia launched in 2010, negotiations between EU and Vietnam launched in June 2012, negotiations between EU and Thailand launched in March 2013, and negotiations between EU and Philippines/ Indonesia launched in 2016. The parameters of a future ASEAN-EU agreement were launched in March 2017 and discussions on implementation arrangements are ongoing. The EU can be considered as the main trading partner for the ASEAN as a group and also for individual member states. Other major ASEAN trading partners are China, Australia, India, US, South Korea and Japan

ASEAN Subsidies on selected Exports

In 2015, ASEAN exempted animal and animal products, vegetable products, foodstuffs, mineral products, and wood and wood products from tariff cuts in efforts to protect domestic producers from foreign competition. The region however reduced tariffs on chemicals and allied products, plastic and rubber, textiles, metals, machinery/electrical and transportation equipment.

Other measures for promoting Intra-ASEAN trade

Other measures considered important in promoting Intra-ASEAN trade are dispute resolution measures, and anti-subsidies and countervailing measures; in addition to identifying products that ASEAN countries can import from amongst themselves.

ECONOMIC BENEFITS ACCRUED BY ASEAN MEMBER STATES

The key benefits that have emerged from implementation of the ASEAN FTA include:

- a) Tariff cuts and elimination: By the end of 2015, six of the more developed ASEAN members had implemented tariff cuts on nearly 8,000 items; namely Malaysia, Indonesia, Singapore, Philippines, Brunei and Thailand. The ASEAN common effective preferential tariff (CEPT) on intra-ASEAN trade has in effect fallen to 0-5% for all products since the coming into force of the agreement, including products previously deferred on countries' sensitive and highly sensitive lists. The elimination of tariffs is expected to: reduce product price reductions throughout the ASEAN region, encourage higher market competition, facilitate ASEAN products to gain access in the regional market, and generate higher potential for exports and imports in the long term.
- b) With the lowering of trade barriers, movement of people, ideas, business expansion and capital across borders has become easier. In addition, the ASEAN Economic

Community is expected to attract new FDI, enabling the region's 584 million population to gain as new jobs will be created.

- c) ASEAN countries have prioritised social development, and millions of people across the region have already been lifted out of poverty through the region's remarkable high economic growth. More than 100 million people are estimated to have joined ASEAN's workforce since mid-1990s, and an additional 59 million are expected to join the labour force by 2030.
- d) ASEAN countries have adopted new technologies in business processes; with Indonesia, Malaysia, Philippines, Singapore, Thailand and Vietnam being on course to run digitalized economies by 2025.
- e) Some ASEAN countries have already joined the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), one of the largest Free Trade Agreements in the world accounting for almost 13.5% of global GDP. The Agreement brings together Australia, Brunei, Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam; offering these countries investment access and freer trade. The integration of Brunei, Darussalam, Singapore and Vietnam into CPTPP will enable the entire ASEAN region to benefit from multiplier effects that emerge from these investment and trade opportunities; Vietnam's GDP expected for example to be boosted by 2% over the next decade as a result of new trading opportunities created by the CPTPP Agreement.
- f) The Asian Development Bank estimates that at least US\$60 billion will be spent each year on improvement of current infrastructure and on new infrastructure projects, which will benefit the financial sector through PPPs⁹⁷ investment in infrastructure.
- g) ASEAN countries have strengthened and widened the use of Qualifications Reference Framework to facilitate cross border movement of skilled labour between member countries. Additionally, the move towards a Single Aviation Market continues, which will allow airlines to operate freely throughout the ASEAN region, thus creating better connectivity, enhancing competition, and increasing the range of air transport services.
- h) The developing ASEAN Economic Community (AEC) provides an opportunity to create a seamless intra-regional market and to build an integrated manufacturing and production base in the region.

CHALLENGES EXPERIENCED DURING IMPLEMENTATION OF ASEAN TRADEPOLICIES

Creation of a level playing field

ASEAN nations have been struggling to create a level playing field in the following areas:

- a) Regulations on consumer protection, health and safety of goods produced and sold in the region,
- b) Alignment of national standards to relevant international standards, and
- c) Implementation of mutual recognition arrangements between Member States. Work on this area has progressed the furthest in the cosmetics sector.

Prioritization of trade with third countries rather than intra-ASEAN trade

There have been concerns over sluggish intra-ASEAN trade, with intra-ASEAN exports and imports taking only an average 2% of total ASEAN trade, which implies the bulk of goods produced by ASEAN states are consumed more in export markets rather than in ASEAN

⁹⁷ Public-Private Partnerships

markets. Thus the ASEAN trade integration process has a long way to go in achieving trade integration of member states.

Instability, civil and border wars

The ASEAN economic integration experiences constant instability due to political upheavals in bordering countries such as Syria. ASEAN member states are also enmeshed in territorial disputes with external powers, with China claiming territories in the South China Sea, which overlaps with competing claims by Brunei, Darussalam, Malaysia, Philippines and Viet Nam. These potential instabilities are a threat to the expressed aspiration of increased trade and investment for the region.

Governance challenges for businesses

ASEAN region faces governance challenges which affect business operations, including:

- a) Entrenched individual interests and widespread corruption, which is undermining the region's business environment particularly for small enterprises.
- b) Consumers in the region are price-sensitive and demanding, resulting in local businesses realizing low profit margins and being forced to pay low labour costs in order to compete with formidable foreign rivals competing for ASEAN markets.

PLANS BY ASEAN FTA TO DEAL WITH TRADE RELATED CHALLENGES

ASEAN has proposed to apply the following measures in efforts to address challenges related to intra-ASEAN trade and trade relationships with third countries:

- a) Encouraging strengthened trade and investment related dialogue amongst member states and with third countries. This is the most significant tool being employed by ASEAN in efforts to combat its trade related challenges such as tariff hikes in target markets, non-conformity to trading rules, and terrorism among others.
- b) Continued investment in technology, focusing particularly on:
 - Incorporating majority of the youthful and digitized population within the ASEAN region in trade and investment activities
 - Replacing the human malice which has been prevalent during determination and levying of customs duties and penalty measures
- a) Conclusion of bilateral trade agreements with major trading partners in order to expand trade potentials within the region and in markets of global trading partners.
- d) Cooperation in the field of energy security, climate change/environment and minerals amongst ASEAN states.
- e) Promotion of socio-cultural cooperation through: improved education and people-to-people contacts, improvement of public health, and women empowerment.
- f) Follow up mechanisms, including constructive efforts to ensure implementation of trade promotion plans and measures agreed upon by member states.
- g) Deepened security cooperation (including crisis management and conflict prevention, as well as capacity building).

LESSONS FROM MATURE REGIONAL ECONOMIC GROUPINGS IN ADMINISTERING REGIONAL TRADE POLICY

The experiences of EU, NAFTA and ASEAN show that their regional trade policies are enshrined in the Single Market/ Common Market provisions, which specify clear trade priorities and related measures to facilitate implementation of trade commitments made by the REC

members. Development and implementation of the EAC Regional Trade Policy should therefore prioritize agreement on RTP priorities (provisions) as summarised in Table 26 below, which include the need to define:

- a) Scope of EAC Regional Trade Policy.
- b) Scheduling of EAC partner states tariff elimination commitments at EAC and multilateral (WTO) level.
- c) Feasible and clear measures for promoting increased intra-regional trade
- d) Measures to protect domestic industries from unfair competition and trade malpractices based on WTO provisions. Measures should include anti-dumping, anti-subsidies, safeguards, and actions to deal with trade malpractices (counterfeits, uncustomed, under-invoiced/ undervalued goods); and the need for a harmonised import valuation system.
- e) Measures to protect IPRs from infringement based on WTO TRIPS provisions
- f) Trade relationships and modalities of collaboration between EAC as a Customs Union with other RECs (FTAs) and other third party trading partners.
- g) Measures for improving participation of EAC businesses and civil society in intra-EAC, African level, and global trading activities.
- h) RTP implementation modalities, including responsibilities and commitments at regional and national levels.

Table 26: Summary of Provisions of a Regional Trade Policy as applied in mature RECs

No.	RTP Themes	RTP Theme Priorities
1	Scope of EAC Regional Trade Policy	<p>EAC Regional Trade Policy Priorities are spelt out in the earlier RTP study report developed in 2015 and approved by EAC Sectoral Council on Trade Industry Finance and Investment (SCTIFI) on 26th February 2016; namely:</p> <ul style="list-style-type: none"> • Harmonisation of partner states' approaches on market access at regional and international level, focusing specifically on trade in goods • Spell out procedures for stays of application, remissions and other exemptions; and sunset clause to phase out such exemptions • Review of the CET bands and rates • Harmonised export and investment promotion approaches • Harmonisation of partner states negotiating positions at multilateral level to avoid regulatory divergences • Development of regional approach on application of safeguards, anti-dumping and countervailing measures • Development of institutional framework for (i) administering safeguards, anti-dumping and countervailing measures as part of trade remedies for protecting regional producers; (ii) facilitating CET reviews; (iii) monitoring tariff elimination commitments at regional and multilateral levels; (iv) leading FTA negotiations with third parties; (v) defining and coordinating implementation of export and investment promotion measures.
2	Scheduling of EAC partner states tariff elimination commitments at EAC and multilateral (WTO) level.	<ul style="list-style-type: none"> • Develop a plan for phased tariff elimination process on goods traded between partner states of a REC (FTA) with target dates to achieve commitments by each partner state. • Provide a longer period to achieve tariffs elimination commitments for weaker economies of a REC.

No.	RTP Themes	RTP Theme Priorities
		<ul style="list-style-type: none"> Plan for tariff elimination by a REC should make reference to GATT provisions, particularly MFN⁹⁸ and NTR⁹⁹ provisions; and also commitments made by WTO members on tariff bindings (i.e. commitments on tariff ceilings for specified products).
3	Measures for increasing intra-regional trade, responsibilities and commitments at regional and national levels	<ul style="list-style-type: none"> Set defined targets to achieve increased intra-regional trade relative to global trade (i.e. target dates for achieving defined percentages for both intra-regional exports and imports relative to global exports/imports) Specify measures to facilitate achievement of defined targets for increased intra-regional trade relative to global trade. Specify plan for harmonisation of quality standards, SPS, collaboration between trade support institutions (TSI), roles of TSIs, and trade support measures. Specify plans for harmonisation of conformity assessment procedures (e.g. inspection and certification on quality standards and SPS) Specify plan and target dates for elimination of all identified trade obstacles (NTBs) and measures to facilitate the elimination process (institutional, financial, human/technical needs and implementation arrangements incl. monitoring)
4	Application of WTO provisions to protect EAC domestic industries from unfair competition and trade malpractices	<ul style="list-style-type: none"> Develop harmonised anti-dumping, safeguards, and anti-subsidy measures based on relevant WTO provisions to protect struggling industries which may suffer injury from competition with foreign imports of like/equivalent products. The measures should be applied by an affected partner state only after sufficient evidence of injury to domestic industries is provided through an investigation as provided for under relevant WTO provisions Develop harmonised measures to address other trade malpractices (counterfeits, uncustomed, under-invoiced/ undervalued goods) based on provisions of WTO anti-dumping, anti-subsidy and safeguards agreements. Prioritise sensitive products to be exempted from intra-regional duty free provisions and from competition with third country imports. The categorization of such products should be based on specific socio-economic and/or political considerations, aimed to protect specific domestic producers from regional/foreign competition during a defined transition period. Such products could include animal and animal products, vegetable products, foodstuffs (e.g. staples and cereals), mineral products, and wood and wood products among others depending on the situation of each REC member country. Use WTO dispute settlement mechanism and peer pressure whenever there are deviations from integration commitments (e.g. on customs tariffs, mutual recognition of quality and SPS standards), since WTO does not provide legal mechanism to settle trade disputes.
5	Application of WTO TRIPs provisions to protect EAC domestic industries from infringement of IPR	<ul style="list-style-type: none"> Develop harmonised IPR laws based on WTO TRIPs¹⁰⁰ Agreement, aimed to protect intellectual rights of regional creators in the areas of: (i) patents and trademarks, (ii) utility models, (iii) industrial designs, and (iv) technology innovations (including traditional knowledge) from infringement; and to boost the monetary gains of the rights holders from their creations
6	Modalities of collaboration	<ul style="list-style-type: none"> Develop an EAC harmonised approach for negotiations with third parties in matters related to trade and investment

⁹⁸ The WTO “Most-Favoured-Nation” (“MFN”) treatment rule requires WTO Members to accord the most favourable tariff and regulatory treatment to products of other WTO Member at the time of import or export of “like products”. Under the rule, if a WTO Member A agrees during trade negotiations with country B to reduce the tariff on a specified product, this same “tariff rate” must also be applied on imports from all other WTO Members. In other words, if a country gives favourable tariff treatment to one country, it must give the same treatment to all WTO Members. Developing countries who are members of a REC are however exempted from the rule.

⁹⁹ The WTO National treatment rule (GATT Article III) stands alongside MFN treatment as one of the central principles of the WTO Agreements. Under the rule, WTO Members must not accord discriminatory treatment between imports and “like” domestic products (with the exception of the imposition of tariffs, which is a border measure). The rule prevents countries from taking discriminatory measures on imports and from offsetting the effects of tariffs through non-tariff measures.

¹⁰⁰ Agreement on Trade-Related Aspects of Intellectual Property Rights

No.	RTP Themes	RTP Theme Priorities
	between EAC Common Market and other RECs (FTAs) and other third party trading partners	<ul style="list-style-type: none"> • Develop a criteria for harmonising Partner States overlapping membership to different RECs • Develop a criteria for harmonising Partner States' applications for stay of application from CET, remissions and exemptions from CET; aimed at enabling Partner States to meet their social and poverty alleviation goals while preserving the CET • Specify criteria for a sunset clause (end date) for phasing out stays of application from CET, remissions and exemptions from CET
7	Measures to improve participation of EAC businesses and civil society in intra-EAC, African continental and global trading activities	<ul style="list-style-type: none"> • Promote regional value chains based on analysis of comparative advantages of each Partner State in production of specified goods and services (manufactured, agricultural, natural resources, service categories, EAC ports). • Undertake a critical analysis of EAC high growth sectors with potential for establishing/strengthening regional value/supply chains, and weak points in the value chain which need to be addressed through technical assistance (including product innovation, manufacturing expertise, standards improvements, marketing improvements, managerial and technical skills enhancements for SMEs, networking between producers and buyers, improved supply chain logistics, etc). This would incorporate critical assessment of economic contributions of key sectors identified through national/regional stakeholders such as regional and national manufacturers associations and regional/national chambers of commerce.
8	Implementation arrangements for the EAC RTP	<ul style="list-style-type: none"> • Specify responsibilities and modalities for implementing RTP strategy at national and regional levels (the latter to include EAC policy making organs). • Identify funding sources to facilitate implementation of the RTP strategy, based on clear modalities of implementing the envisaged EAC Trade Development Facility (as per the TORs) • Design an outreach programme for raising awareness amongst regional actors on the importance of a common external trade policy

ANNEX VI

PROPOSED EAC REGIONAL MODEL LAW ON TRADE REMEDIES

In developing an EAC Regional Model Law that can be utilised to design national laws for Burundi, Rwanda, Uganda and Tanzania, it is important to take into account the WTO provisions on Anti-dumping measures, Countervailing measures and Safeguard measures; all which are intended to allow governments to take remedial and protective actions against trading activities which are causing or which have potential to cause material injury to a domestic industry.

WTO Provisions on Dumping Measures

Dumping according to Article VI of the WTO GATT refers to the introduction of a product into the commerce of a country at an export price that is less than its normal value in the country of origin. A company is therefore considered to be dumping if it exports a product at a price lower than the comparable price of a like/equivalent product which is destined for consumption in the home market of the exporting company. Antidumping measures are applied in the form of a duty which is equal to or less than the margin of dumping of the imported goods alleged to be dumped.

WTO Provisions on Countervailing Measures

Countervailing Measures are applied in the form of special duties (or countervailing duties) levied on imports for the purpose of offsetting any subsidies given directly or indirectly upon the manufacture, production or export of any merchandise. Such duties are applied in an amount equal to or less than the amount of subsidy given to goods imported by the affected country. The WTO Agreement on Subsidies and Countervailing Measures aim to discourage the use of subsidies, and to regulate the actions countries can take to counter the effects of subsidies.

WTO Provisions on Safeguard Measures

Safeguard Measures are temporary impositions of a tariff or quantitative restrictions or other necessary permissible measures applied with the principal aim of preventing or remedying serious injury to a domestic industry, and to facilitate adjustments of the concerned industry. The GATT allows WTO members to restrict imports of a given product temporarily (or take “safeguard” actions) if a domestic industry producing an equivalent product is injured or threatened with injury caused by a surge in imports. The injury must however be proofed to be serious, while safeguard measures applied must have time limit (a “sunset clause”) after which they should be phased out. The period during which the mandated Agency/Office of the importing country is required to take action by imposing a safeguard measure is normally set as 60 days.

For anti-dumping, countervailing and safeguard measures to be applied, an investigation must be carried out on the alleged dumping or import of subsidized goods, aimed to provide evidence of increased imports that have caused or threaten to cause serious injury to domestic industry. Such application may be made by the manufacturer of a like product. The law backing such measures should categorically provide for appointment of investigating officers, response to investigation by those approached by the officers for information, power to enter and search under a warrant for products alleged to be causing injury, provision for legal representation of culprits, validation of information and ways of handling uncooperative and/or misleading information/informants.

The Kenyan experience with the Trade Remedies Law

In EAC, only Kenya has developed a Trade Remedies Law, through the Trade Remedies Act enacted on 21st July 2017 and which came into force on 16th August 2017. The Act provides for the establishment of the Kenya Trade Remedies Agency to investigate and impose anti-dumping, countervailing and trade safeguard measures. The specific functions of the Trade Remedies Agency are to:

- a) Investigate and evaluate allegations of dumping and subsidization of imported products in Kenya;
- b) Investigate and evaluate requests, and adjudicate procedures for application of safeguard measures on any product imported in Kenya;
- c) Advise the government through the Cabinet Secretary on the results and recommendations of its investigations;
- d) Initiate and conduct public awareness and the training of stakeholders on trade remedies; and
- e) Publish and disseminate manuals, codes, guidelines, and decisions relating to its functions

Specifically, the Act provides for imposition of anti-dumping, countervailing and safeguard measures. The law defines anti-dumping, countervailing and safeguard measures as follows:

- a) Countervailing measures means a special duty levied for the purpose of offsetting any subsidy bestowed, directly, or indirectly, upon the manufacture, production or export of any merchandise. The Cabinet Secretary is in a case of subsidized goods imported in Kenya, issues a countervailing duty in an amount equal to or less than the amount of subsidy on the imported goods.

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- b) Dumping means the introduction of a product into the commerce of the country at an export price that is less than its normal value. The dumping margin means the difference between the export price and the normal value as it results from the comparison of the two. The Cabinet Secretary is expected to impose, in the case of goods dumped in Kenya, an anti-dumping duty in an amount equal to or less than the margin of dumping of the imported goods.
 - c) Safeguard measures means the temporary imposition of a tariff or quantitative restrictions or other necessary permissible measures to prevent or remedy serious injury and to facilitate adjustments of the concerned industry;

The Act also provides for the following types of investigations:

- a) Investigations on alleged cases of dumping or subsidized imports in Kenya.
- b) Investigations on alleged imports that have caused or which threaten to cause serious injury to an industry in Kenya.

Investigation officers are appointed by the Trade Remedies Agency Board with mandate to carry out investigations. Such officers are given powers to enter and search under warrant any premises that may be undertaking trade in alleged dumped and/or subsidised goods.

The Kenya Trade Remedies Agency (KTRA) has powers to obtain information and/or direct any person to provide any information relating to an investigation or evaluation. A written request for such information sets out the grounds for the investigation and restricts the Agency from disclosing any confidential information. The Act also creates offences for disclosure of information that has been declared confidential, persons who may hinder, obstruct or unduly influence an investigation; any person who fails to appear before an investigation; and any person who may refuse to produce books, documents or any other items that can be used as evidence in an ongoing investigation. KETRA however faces a number of institutional deficiencies and external threats which hinder efficient discharge of its mandates; including:

- a) Low technical and professional capacity for intelligence gathering, analysis and evaluation of the size of the market of imported goods which can be categorised as dumped, subsidised, under invoiced, smuggled and uncustomed, and other imported consignments which cause or threaten to injury to domestic industries. KTRA also lacks capacity to identify and document the perpetrators; the products and economic sectors most affected, and the various technologies and strategies which the perpetrators use to evade detection and capture. All these details are required as provided by the WTO Agreement of dumping and countervailing measures as justification for subsequent actions that a country should take in efforts to provide safeguards for its domestic industries.
- b) Insufficient financial resources to implement programmes relevant to building stakeholders awareness about the adverse effects of dumped, subsidised, under invoiced, smuggled and uncustomed, and other goods which are imported in large consignments thereby causing threats to continued existence and competitiveness and profitability of domestic industries.
- a) Poor inter-agency coordination and collaboration in the fight against trade malpractices (including dumped, subsidised, under invoiced, smuggled and uncustomed and trade in counterfeited goods). A case in point of poor coordination is demonstrated by implementation of the Pre-Export Verification of Conformity (PVoC) programme, implemented by the Kenya Bureau of Standards (KEBS). PVoC is intended to assure Kenyan consumers of the safety and quality of imported goods, and to protect Kenyan manufacturers from unfair competition from ports. Under the programme, all imported goods into Kenya must be inspected in the country of origin and issued with a certificate of conformity (COC) prior to exportation to Kenya, excluding the following products:

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- i) Goods already regulated by other government agencies such as the Pharmacy and Poisons Board (PPB), Kenya Plant Health Inspectorate (KEPHIS), Pest Control and Products Board (PCPB).
 - ii) CKD for vehicles imported by registered manufacturers
 - iii) Primary inputs imported by registered manufacturers subject to proof that the materials are direct inputs to the manufacturing process and the finished products made out of the said raw materials are certified by KEBS.
 - iv) Manufacturing plants and industrial spares for own use imported by registered manufacturers.
 - v) Printed matter (textbook, magazines)
 - vi) Products certified by KEBS under the Diamond Mark Scheme
 - vii) Courier shipments through JKIA (Airport) which are currently cleared under the Memorandum of Understanding (MoU) between KEBS and Courier Industry Association of Kenya (CIAK).

The COC is the legal documents that proofs the imported goods conform with specified Kenyan quality standards, and must therefore be availed to KRAⁱⁱⁱ (Customs Department) before customs declaration and levying of applicable duty before goods are release to the importer. While implementation of PVoC is well intended and looks easy and straight forward, it has been beset with problems. In this regard, a cartel of counterfeiters is alleged to work with Mombasa Port officials to create artificial crises at the port, and then influence favourable rules to open entry of goods awaiting clearance into the Kenyan market, some of which include counterfeits, substandard, under-invoiced and mis-declared goods. In mid-2019, the Government was even forced to intervene to clear the backlog of un-cleared imported goods which had clogged the port and the Internal Container Depot in Nairobi in efforts to facilitate faster clearance. In addition, many government agencies mandated to clear imports were in 2019 forced out of the port on grounds their approval procedures were responsible for slow clearance of imports. However, the real reasons for poor efficiency in imports clearance is that many importers don not go through the PVoC regulation but make direct imports, a good percentage of which incorporates products that can be categorised under illegal imports (counterfeits, substandard, and dumped goods (under-invoiced and mis-declared); all which end up unfairly competing with genuine domestic manufactures. One of the key agencies kicked out of the port was the Anti-Counterfeits Agency (ACA), which is mandated to fight counterfeits trade. This has forced ACA to wait until the goods are already in the market before starting the hunt for fake goods and enforcing the required crack down measures. The situation has been made worse poor collaboration between key agencies involved in approving an import (KRA Customs, KPA, KeBS, and ACA among others), all which are required to share information on incoming imports in order to determine genuine from fake and/or unauthorised imports. Thus for KETRA to effectively in discharging its mandate, all Trade Support Institutions (TSIs) must work under the envisaged trade multi-agency team so that early information is available to KETRA to facilitate required investigation on any alleged trade malpractice before requisite trade remedial measures are introduced in the form of anti-dumping duties, countervailing and/or safeguard measures. Further, it is imperative that Kenya fully implements the PVoC regulations that all imports (excluding the exempted list above) must be inspected in their country of origin, which actually conforms with the WTP Pres-Shipment Inspection (PSI) Agreement, so that cases of forced circumsppection of imports rules are eliminated. Failure to comply with the PSI requirement should attract hefty penalties in order to discourage forced local inspection which ends up clogging the port and the high risk of

forcing illegal imports into the country. The coordinated multi-agency team would comprise KETRA, ACA, KeBS, KRA (Customs), KEPHIS and other Port/Border Control Agencies. Such an approach would support the country to efficiently comply with the provisions of the WTO Agreements on Trade Remedies (the Anti-dumping Agreement, Agreement on Subsidies and Countervailing Measures, and Safeguards Agreement).

- b) Corruption and porosity of Kenya's extensive borders, with at least five countries sharing land borders with Kenya (Tanzania, Uganda, South Sudan, Somalia and Ethiopia) and with Tanzania and Somalia additionally sharing the Indian Ocean with Kenya. The long land and ocean borders allow entry and transit of smuggled, under invoiced, uncustomed and counterfeit goods despite relevant Government Agencies having offices and personnel at all key border points and the Port of Mombasa.
- c) Pervasive consumer attitudes towards goods that are categorised under trade malpractices, partly because of inadequate awareness of the provisions of existing laws, and lack of knowledge to detect product quality differences between original and counterfeits/substandard, and financial inability of consumers to purchase the more expensive original brands. However, this exposes consumers to the potential danger of consuming substandard goods.
- d) The rise and entrenchment of e-commerce trading platforms amongst Kenya's techno-savvy sellers and buyers, who opt to trade on-line thus by-passing conventional trading channels; hence further complicating the work of the Trade Remedy Agency and Anti-Counterfeit Agency.
- e) Negative and hostile attitude towards the Trade Remedy Agency by both buyers (consumers) and sellers (traders) who perceive the Agency as an inhibitor and interferer in matters of trade and consumer freedom of choice, rather than a promoter of fair trade; just as in the case of the Anti-Counterfeit Agency (ACA). This negative attitude is due to lack of public understanding and appreciation of the work of the Agency in protecting consumers from consumption of goods that may be dangerous to human, animal, plant health and the environment. The attitude is exacerbated by the Agency's tendency to lay the burden of trade malpractices on retail traders and their customers rather than the large scale importers and distributors of the goods. The real perpetrators end up going scotch free; thereby continuing with their malpractices.
- f) Misuse of Safeguard Measures, as evidenced by grant of approvals for application of remedial, countervailing and safeguard measures to industries/sectors based on political considerations rather than demonstrated long term potential to produce competitive goods. The Kenya sugar industry serves as a good case in point, which since 2004 has continued to benefit from COMESA Safeguard Measures. In this regard Kenya has since 2004 sought extensions of safeguards to limit importation of duty free sugar from the COMESA region by invoking Article 61 of the COMESA Treaty, which provides for the protection of emerging sectors until they are considered mature for competition. However, the facility has been misused, with influential importers with political connections and massive financial resources have continued to import duty free sugar based on justification that Kenya lacks sufficient supply capacity to meet her domestic demand. Other challenges which have been cited by policy makers (principally the Ministry of Trade) is that the planned privatisation of the country's ailing state owned sugar millersⁱⁱⁱ has been hampered by numerous court cases, low uptake of new cane varieties by farmers, and slow implementation of a new method of cane payment based on sucrose content. The massive duty free sugar imports have adversely affected even the privately owned sugar millsⁱⁱⁱ which have been made uncompetitive. Ultimately, the envisaged goal of the COMESA safeguards facility has not been achieved; namely to enable Kenya to protect her sugar farmers with high tariffs as it seeks to fully stabilise her sugar industry in order to open up

her market to sugar imports. The sugar industry actually seems to be in a worse off condition currently than it was at the time the COMESA Safeguard Measures were first granted in 2004, with stakeholders pointing out the industry is near collapse.

The Kenyan experience with the Trade Remedies law serves as a good foundation for lessons learned as EAC pursues the design of a regional trade remedies law. Kenyan stakeholders consulted during the course of the RTP study were generally well aware about the provisions of the law. However, the institutional framework governing the functioning of the law is not fully developed, and KTRA is therefore yet to be operationalized. Stakeholders further pointed out that steps should be taken to sensitize stakeholders and the general public on the various legislative and administrative obligations under the law and their implications to businesses and consumers. In regard to a harmonized EAC approach to Trade Remedies and preservation of the Common External Tariff, CET, the Kenyan experience shows that EAC should adopt a region-wide legal regime on investigations and remedy. The EAC Secretariat should in this regard ensure enactment of enforceable laws and by-laws that would apply at various governance levels, including common remedial actions by courts, and enforcement at both the National and County government levels. It is also important for the regional law to provide for the EAC to present itself as one integrated region at critical regional and global trade and investment negotiations and promotion forums; necessary to build a stronger negotiation leverage and enhanced attractiveness as a single trade and investment destination. To facilitate a harmonised approach to trade and investment negotiations at the regional, African continental and global levels, the Kenyan experience shows that three measures need to be taken as part of the envisaged EAC Regional Trade Policy, namely:

- a. EAC should enrol and obtain full regional membership and accreditation status at the WTO and other strategic international organisations;
- b. EAC should establish an official regional delegation for WTO forums; and
- c. An official EAC regional negotiation team should be established so as to present common negotiating positions at WTO and similar international forums where trade and investment matters are discussed.

Based on the above experiences, it is clear that Kenya needs to:

- a) Allocate sufficient resources to ACA for detailed investigations on cases of alleged dumped, subsidised, under invoiced, smuggled and uncustomed, and other imported goods which cause or threaten to injury to domestic industries. This is a key requirement under the WTO for applying any proposed safeguard measures.
- b) Establish a sensitisation programme targeting to effectively educate the public about the health, injury to industry and revenue loss related effects of consuming dumped, subsidised, under invoiced, smuggled and uncustomed goods, and other imported goods which may cause or threaten to injury to domestic industries when imported in large consignments.
- c) Fully implement the PVoC regulations that require all imports (excluding the exempted list) must be inspected in their country of origin, which conforms with the WTO PSI Agreement, so that cases of forced circumvention of imports rules and consequent entry of illegal goods are eliminated. Failure to comply with the PSI requirement should attract hefty penalties in order to discourage forced local inspection which ends up clogging the port, forcing illegal imports into the country which compete unfairly with genuine manufactures. The envisaged multi-agency team comprising KETRA, ACA, KeBS, KRA (Customs), KEPHIS and other Port/Border Control Agencies should also be allowed to perform its mandate of inspecting all suspected imports without political influence as part of efforts to eliminate trade malpractices. Such an approach would be in conformity with provisions of the WTO Agreements on Trade Remedies (the Anti-dumping Agreement, Agreement on Subsidies and Countervailing Measures, and Safeguards Agreement).

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- d) Take a combination of political goodwill, sound economic and industrial policies, committed industry captains and dedicated nationalistic technocrats to implement necessary interventions in order to achieve desired outcomes of the trade remedies measures as provided under the WTO Trade Remedy Protocols.
 - e) Learn from past failures to construct sustainable approaches in the fight against trade malpractices. The failure of the COMESA Safeguard Measures to protect her sugar industry from imports provides sufficient evidence in this respect.

The Kenya's experience thus provides good learning lessons for design of the envisaged EAC Trade Remedy Law and institutional frameworks; particularly with regard to the basic parameters, operational strategy, design of the operational processes, and the legislative and institutional framework.

Additionally, the Kenya experience shows that adequate and sustainable funding of institutions mandated to enforce the trade remedies law is of paramount importance in enabling such institutions to effectively deliver on their mandates. This is because under-financing of the institutions has potential to compel them to solicit and accept donations from third parties, including perpetrators of trade malpractices, which ends up defeating the purpose of the law and setting up enforcement institutions. The level of funding also impacts organisational integrity and institutional ability to recruit, train and retain qualified staff needed to investigate and prosecute trade malpractices, including dumping and subsidies. It also impacts the institutional capacity to undertake detailed investigations, intelligence gathering, analysis, and evaluation of alleged cases of dumping, subsidies and under-invoicing; necessary to justify applications for countervailing and safeguard measures as required by the WTO Anti-Dumping, Subsidies; Countervailing Measures and Safeguards Agreement.

EAC also need to establish proactive measures to mitigate operational risk factors likely to impinge on capability to detect trade malpractices. In this regard, the use of e-commerce platforms needs to be closely observed to ensure sellers and buyers trading on-line do not bypass official import entry points since this would make it difficult to detect possible trade malpractices, including dumped, subsidised and under-invoiced goods.

In addition, EAC needs to address the possible risk of low technical and professional capacity of its envisaged Trade Remedy Agency. This risk as evidenced by Kenya's experience is exacerbated by likely pervasive and permissive consumer attitudes towards introduction of measures to guard against trade in dumped, subsidised and under-invoiced goods. The consumer attitude arises due to unawareness of the content and intention of the law prohibiting trade malpractices, and also due to consumers' reluctance and financial inability to purchase genuine products and to instead opt for the less expensive dumped, subsidised and under-invoiced goods. In Kenya, there was also hostility by sellers and consumers of counterfeit goods against application and enforcement of the Trade Remedies law since they were not given ample notice to adjust and comply, which they argued should have been provided for at least a 6-months intervention period to enable full compliance. However, allowing such period would mean domestic industries would continue to suffer injury arising from competition with goods which are intentionally under-priced with the aim of outcompeting genuinely manufactured goods.

Based on the WTO provisions and Kenya's experience with Trade Remedies Law, the EAC Regional Trade Remedies Law and national laws for Burundi, Rwanda, Tanzania and Uganda should thus take the following issues into consideration:

- a) The definition, terms and conditions of the regional and national laws should in line with the provisions of WTO Agreements on Anti-dumping measures, Countervailing measures, and Safeguard measures.
- b) The laws should provide for mechanisms of intergovernmental and inter-departmental relations, and relations between different trade stakeholders (public and private sector)

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- c) The management of the bodies/ agencies responsible for implementation of the regional and the national laws should target members from amongst special groups such as business community, consumers, universities and research institutions. The justification for inclusion of these groups in decision making is to encourage access to real-time information on goods which may be dumped into the EAC national markets and/or subsidised in the countries of origin. Such goods have high potential to consequently overflow into neighboring partner states under the disguise of EAC originating goods or through the region's porous borders. Involvement of the categorized stakeholders would also ensure anti-dumping and countervailing measures are not entirely governmental driven, thus ensuring ownership of enforced measures by stakeholders (particularly private sector producers and consumers) who bear the primary adverse effects of dumping and/or sale of subsidised goods. In addition, involvement of universities and research institutions would ensure effective investigations are conducted on alleged cases of dumping and subsidised goods in order to provide evidence based information necessary for enactment of required counter-measures.
 - d) To ensure balance between the interests of producers, traders/ and consumers, it is necessary to introduce specific public interest tests before anti-dumping, anti-subsidy and countervailing measures are introduced. This is because the subsequent application for these measures may not always be balanced, particularly when applied purely to protect domestic producers who use subsidised imports as inputs for manufacture of final products. A mandatory public interest test would balance interests of producers and consumers before imposing safeguard measures. This would entail inclusion of a detailed legal clause within the regional and national laws that ensures any applied safeguard measures are in the public interest. A sunset clause to phase out the measures should also be incorporated in any applied measures to ensure tracking of whether the objectives of imposing the measures are being met as required by the WTO provisions.
 - e) Although the WTO Anti-dumping Agreement provides that the imposed anti-dumping duty should be less than the dumping margin, some cases may merit imposition of higher than the dumping margin. This would be justified by the fact that a higher anti-dumping duty than the dumping margin would ease the harm already caused to domestic/regional producers during the lifespan of a dumped product.
 - f) Sufficient public participation should be accorded in line with the regional and national values and in line with WTO requirements in order to allow adequate time for the public to study any proposed safeguard measures. This would ensure ownership and sustainability of the measures during their lifespan.

Experiences by the other EAC Partner States with Trade Malpractices

Other EAC Partner States experiences with cases on dumping, subsidies, and protection of domestic industries through countervailing measures show the scenario elaborated below:

Burundi Experience

Burundi does not have a national trade remedies law and regulation on anti-dumping, countervailing and safeguard measures. However, Law n° 1/06 of 25th March 2010 provides the legal framework to deal with issues related to competition and pricing. Specifically the law specifies obligations for producers, traders, service providers and all other intermediaries involved in trade, aimed to prevent any anti-competitive practices and to ensure transactions ensure fairness and transparent pricing as part of measures in the fight against restrictive practices. Thus the Competition law is the one that provides the closest measures on anti-dumping, subsidies and protection of domestic industries through countervailing measures.

The law specifies anti-dumping as practices which restrict competition. Such practices "consist of an undertaking or group of foreign undertakings selling products or services in Burundi at prices lower than those applied in the territories from which they originate". The law also

provides for offenses and sanctions related to infringement of competition requirements; including punishment of offenders in accordance with the provisions of the country's Criminal Code.

The Competition law provides some of the institutional framework elements to guide its enforcement, namely:

- a) It mandates the Ministry of Trade to provide supervision in matters related to fair competition, including undertaking sectoral studies, restoring competition in case of distortions, and identifying any practices contrary to fair competition;
- b) It establishes an Independent Competition Commission comprising 9 members selected from amongst the public sector, private sector and civil society; with the mandate to advice on matters related to competition, resolving disputes, and deciding on necessary sanctions. The Commission acts as the focal point of the COMESA and EAC Competition Commissions.

However the law has not established a defined institution to manage the implementation process, since the Competition Commission is a governance but not a management organ, while the Ministry of Trade only provides supervision but not implementation roles. The implementation organ was expected at the time the Competition Commission was established. In addressing emerging cases which merit application of trade remedies, Burundi therefore proposes:

- a) The need for a legally defined organ to drive implementation of the Competition law.
- b) That formulation of a national law on Trade Remedies should apply provisions of the WTO Anti-dumping Agreement as the reference point for application of international best practices to deal with cases related to dumping, subsidies and safeguards (through countervailing measures).
- c) The need to adopt the Kenyan Trade Remedies law in formulating the Burundi Trade Remedies law, paying particular attention to establishment of an Authority with similar powers as the Kenya Trade Remedies Agency. This would facilitate effective management of reported cases on dumping, subsidies, and application of countervailing measures to protect domestic industries against imports that cause or threaten to cause injury. The authority should be mandated to investigate and impose measures and penalties on cases related to dumping, subsidies and safeguards (through countervailing measures) whenever evidence is provided to justify the need for such actions.

Rwanda Experience

Currently, Rwanda does not have a consolidated law or a specific legal framework on trade remedies; which would enable actions against imports which are causing material injury to domestic industries, such as anti-dumping, anti-subsidies, and safeguards/ countervailing duties. Measures that would enable the country to respond to trade related malpractices are therefore based on relevant trade agreements and protocols with third countries, as well as relevant domestic laws and regulations. However, with continued trade liberalization policies and increased trading partners (regionally and multilaterally), it has been recommended that there is a need for a legal framework that provides appropriate measures on cases related to dumping, subsidies and safeguards. Rwanda therefore needs to enact a national Trade Remedies Law in accordance to the international best practices as provided by the WTO.

Tanzania Experience

Tanzania does not have a national Trade Remedies law, although mainland Tanzania enacted its Anti-dumping and Countervailing Measures Act in 2004, borrowing on the EAC Treaty which provides the basis for enacting measures on contingency trade remedies at the regional level. While the country has not yet applied contingency trade remedies, a number of such measures can be implemented as part of the 2004 Anti-dumping and Countervailing Measures

Act to enable the country to deal with cases of dumping, subsidies, under-invoicing and smuggled/uncustomed goods which unfairly compete with domestically produced equivalents. The starting point is to take into account the WTO provisions on Anti-dumping measures, Countervailing measures and Safeguard measures, which provide the framework for governments to take remedial and protective actions against trading activities with potential to harm and injure domestic industries.

An example of how unfair competition from imports affects domestic industries is demonstrated by the case of textiles and garment/apparel industry. In this regard, the Tanzania part of the EAC CTAⁱⁱⁱ Strategy and Implementation Roadmap (May 2019) points out that there is serious and stiff competition between Tanzania manufactured textiles and garments with smuggled, wrongly declared and under-invoiced imported equivalents. While Tanzania Revenue Authority (Customs Department) has started employing textile technologists as part of efforts to improve imports valuation process, the problem of wrong declarations and under-invoicing of fabrics/apparel continues to be a serious challenge. Such wrongly declared and under-invoiced imports end up costing less than locally manufactured products in the local markets. TEGAMATⁱⁱⁱ for example estimates that the international average ex-factory price of a cotton fabric is US\$ 0.36 per metre (as recorded in China). However, the cost of an imported cotton fabric in Tanzania is US\$ 0.4 per metre. This price differential is too small to account for the cost of insurance, freight and clearing for the delivered cotton fabric in Dar es Salaam, and the cost for transporting such an item to inland towns in Tanzania. On the other hand, textile/apparel manufacturers suspect that many imported fabrics/apparel are wrongly declared (i.e. into incorrect tariff codes) in order to attract lower customs duty. The under-invoicing and wrong declarations end up making the ex-factory price of a cotton fabric imported from China almost the same as when delivered to Dar es Salaam. The result is massive loss of customs duty and unfair competition for local textile/garment manufacturers, most of whom are now operating way below their installed capacity. The textile mills actually point out that competition with second hand imports would not be a problem if there was strict enforcement of imports valuation.

In addition, the undervalued, under-invoiced, smuggled/uncustomed, dumped and subsidised imports end up overflowing into other EAC countries that border Tanzania due to the long porous borders and insufficient capacity of Customs to control the trade malpractices. The harmonised EAC Trade Remedies law should therefore provide effective measures that ensure no EAC country is negatively affected by trade malpractices, either through direct imports or through smuggling through the porous borders. Among other things, the law should provide punishments for offenders and rewards for law abiding businesses/traders. The Authorized Economic Operators Scheme (AEO) for example could be used to reward law abiding importers/traders/businesses by facilitating them to use the green channel system which allows fast track importation without the need for full inspection of their imports, thus enabling cost and time savings. Efficient implementation of the scheme would encourage more businesses to declare their imports under the correct tariffs, thus contributing to reduction and/or elimination of smuggling, under-invoicing and intentional wrong declarations.

Uganda Experience

Currently, Uganda does not have a defined legislation on trade remedies, and to-date has not initiated or applied any such measures against other WTO Members. Stakeholders however point out that a number of such measures can be implemented as part of a national law on trade remedies to enable the country to protect its domestic industry from unfair competition from imports. The starting point would be to take into account the WTO provisions on Anti-dumping measures, Countervailing measures and Safeguard measures; which provide the framework for governments to take remedial and protective actions against trading activities with potential to harm and injure domestic industries. Some of the measures which Uganda could adopt in the short to medium term is respect include:

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- a) Public awareness and sensitization about the harmful effects of trade malpractices on domestic producers (including manufacturers, farmers and agri-producers). This would require a multi-agency approach that involves all trade facilitation institutions (customs, Ministry of Trade, police, business membership organisations, main importers).
 - b) Establishing a Trade Remedies Agency with adequate enforcement powers and capacity to network with other enforcement agencies (such as customs). Establishing an effective enforcement regime presents sizeable institutional challenges for customs authorities (regarding border enforcement measures), the police and judiciary (regarding criminal investigations and prosecutions). This entails building sufficient capacity amongst the enforcement agencies and allocating sufficient human and financial resources for management of the proposed Trade Remedies Agency; in addition to resources for public awareness sensitisation, surveillance, investigations, and prosecutions; and for building and computerizing a database of trade malpractices.
 - c) Establishing a fund for compensation of national businesses that lose business as a result of competition from specified trade malpractices (dumped, under-invoiced, smuggled/uncustomed, subsidized imports) and also surge in imports which end up causing injury to domestic producers. The fund could be built through a one-off government injection which would overtime be boosted by proceeds from penalties on trade malpractices. The key aim of the government injection will be to assist struggling sectors/industries to stabilize and have a stable platform that guarantees a sustainable long term future growth for the public good (increased employment and economic growth).

The Proposed EAC Trade Remedies Law

Based on the Partner States experiences with cases of stiff competition from dumped, under-invoiced, smuggled/uncustomed, subsidized imports; and also increased imports which end up causing injury to domestic producers, the harmonised Trade Remedies law should prioritise implementation of the following measures:

- a) In accordance with the WTO Agreements on anti-dumping measures, countervailing duties, and safeguards, all EAC countries should adopt the WTO trade policy instruments which allow countries to address cases of trade malpractices (dumped, under-invoiced, smuggled/uncustomed, subsidized imports), and import surges that cause or threaten to cause injury to the region's domestic industries. This approach is further supported by the provisions of EAC Customs Union Protocol (Article 24), which requires Partner States to expedite the process of contributing to the strengthening of the regional Trade Remedies Committee, support the Committee's mandate, and strengthen the domestic policy and legal framework on Trade Remedies. The Trade Remedies Committee in this respect is supposed to handle any matters pertaining to Rules of Origin, Anti-Dumping Measures, Subsidies and Countervailing Measures; Safeguard Measures; and Dispute Settlements. However, the relevant provisions on functions of the Committee are not yet fully implemented and the Committee is not functional, as has been pointed out by various parties including EALAⁱⁱⁱ. Partner States should therefore expedite the process of establishing the Committee as part of measures to stem down the negative effects that trade malpractices and massive imports have on the business community and genuine traders. This would also make it possible for the region to address elimination of NTBs which the Committee is also responsible for as provided in the NTBs Act 2016, in addition to facilitating investigations on industry disputes, and recommending measures to prevent industry injury. This implies that all trade malpractices which are externally generated and those which emanate from within the region would be effectively addressed through a coordinated regional mechanism.
- b) In light of the directive of the Sectoral Council of Trade, Industry, Finance and Investment (SCTIFI) of 27th February 2016, the EAC Partner States are required to expedite the process of ratifying and depositing their instruments of ratification of the amended Article

24(2) (a) of the Protocol on the Establishment of the East African Customs Union. This article is very important as it serves as a basis for the establishing the Trade Remedies Committee.

- c) Partner States need to operationalise the EAC Competition Act of 2006 whose enabling regulations were adopted in 2010. The Act came into force in 2014, and was amended in 2015. The Act establishes the EAC Competition Authority, which has jurisdiction over all mergers and enforcement matters that have cross-border effects. The commissioners were sworn in November 2016. The Act applies on all economic activities and sectors which have cross-border effects, aimed to promote fair trade and consumer welfare in the region. Thus operationalising the Act and the Competition Authority would contribute substantially to promoting elimination of trade malpractices in order to achieve mutual gains for all Partner States which is a key goal of the integration process.
- d) Partner States need to facilitate the work of the regional Trade Remedies Committee by prioritising allocation of sufficient resources to enable detailed investigations on cases of alleged dumped, subsidised, under invoiced, smuggled and uncustomed, and other import surges which cause or threaten to injury to domestic industries.
- e) EAC should enrol and obtain full regional membership and accreditation status at the WTO and other strategic international organisations; establish an official regional delegation for WTO forums; and establish an official EAC regional negotiation team with the mandate to present common negotiating positions at WTO and similar international forums where trade and investment matters are discussed.
- f) Partner States need to establish a regional sensitisation programme targeting to effectively educate the public about the adverse health, injury to industry and revenue loss related effects of consuming dumped, subsidised, under invoiced, smuggled and uncustomed goods, and other imported goods which may cause or threaten to injury to regional/domestic industries. This would require a multi-agency approach that involves all trade facilitation institutions at national and regional level (customs, Ministries of Trade, police, bureaus of standards, border agencies, business membership organisations, and the main importers).
- g) The harmonised EAC Trade Remedies law should provide effective measures that ensure punishments for offenders and rewards for law abiding businesses/traders. The EAC Authorized Economic Operators Scheme (AEO) could be used to reward law abiding importers/traders/businesses by facilitating them to use the green channel system which allows fast track importation without full inspection of their imports, thus enabling cost and time savings. Efficient implementation of the scheme would encourage more businesses to legally declare their imports under the correct tariffs, thus contributing to reduction and/or elimination of smuggling, under-invoicing and intentional wrong declarations.
- h) Partner States will need to conclude a harmonised imports valuation system which aims to eliminate under-invoicing and wrong declarations which end up making the ex-factory price of domestically/regionally produced goods appear almost similar to sales prices of imported goods. This would contribute to fair competition between imported and regionally/domestically manufactured goods traded in the regional market and therefore to enabling regional/domestic manufacturers to operate more competitively and at reasonable levels of their installed capacities.
- i) Burundi, Rwanda, Tanzania and Uganda could adopt the Kenya law on Trade Remedies to design their national Trade Remedies laws, paying particular attention to establishment of an Authority with similar powers as the Kenya Trade Remedies Agency. This would facilitate effective management of reported cases on dumping, subsidies, and application of countervailing measures to protect domestic industries against imports that cause or threaten to cause injury. However, the mandate of national

authorities should be expanded to investigate and impose measures and penalties on cases related to under-invoicing, smuggling, mis and under-declarations.

- j) The harmonised region trade remedies law should provide that safeguards applied at the national level for beneficiary sectors/industries should be for a defined period based on detailed justification such as current and/or foreseen injury to domestic sectors/industries, including loss of market share, declining sales; and loss of employment, incomes and government revenue. After the initial period (5 years as provided under WTO), a review should be carried out to determine whether the safeguards have had any positive effects in reviving the sector/industry that suffered losses, after which another but terminal safeguards extension can be given for a period of 5 years. This would eliminate the misuse of safeguards provisions as has been experienced in the Kenya sugar sector case.
- k) To ensure balance between the interests of producers, traders/ and consumers, it is necessary to introduce specific public interest tests before anti-dumping, anti-subsidy and countervailing measures are introduced. This is because application for these measures may not always be balanced when applied purely to protect domestic producers. A mandatory public interest test would balance interests of producers and consumers before imposing safeguard measures. This entails the need for including a legal clause within the regional law requiring safeguard measures to be in the public interest, and a sunset clause to phase out the measures after achieving the intended objectives as required by the WTO provisions.
- l) Kenya will need to revise its Trade Remedies law to incorporate provisions on under-invoicing, smuggling, mis and under-declarations, terminal safeguards measures, imports valuation system, imports clearance for Authorised Economic Operators, and prioritisation of allocation of sufficient resources to enable detailed investigations on trade malpractices and import surges that cause or threaten to cause injury to domestic industry.
- m) Based on the Kenyan experience, fully implement the envisaged PVoC regulations to require all imports (excluding the exempted list) must be inspected in their country of origin, which conforms with the WTO PSI Agreement, so that cases of forced circumsppection of imports rules and consequent entry of illegal goods are eliminated. Failure to comply with the PSI requirement should attract hefty penalties in order to discourage forced local inspection which ends up clogging the EAC port, forcing illegal imports into the region which consequently compete unfairly with genuine domestic/regional manufactures. A multi-agency team comprising all public Trade Support Institutions and other Port/Border Control Agencies should also be allowed to perform its mandate of inspecting all suspected imports without political influence as part of efforts to eliminate trade malpractices. Such as approach would be in conformity with provisions of the WTO Agreements on Trade Remedies (the Anti-dumping Agreement, Agreement on Subsidies and Countervailing Measures, and Safeguards Agreement).

ANNEX VII

PROPOSED EAC TRADE DEVELOPMENT FACILITY TO MOBILIZE RESOURCES TO SUPPORT RTP STRATEGY IMPLEMENTATION

Objectives of the Trade Development Facility (TDF)

The process of implementing the EAC Customs Union Protocol, the Common Market Protocol, subject related protocols and measures (such as SQMT, SPS, and trade facilitation among others); the elimination of internal tariffs and establishment of CET, and ongoing negotiations for FTAs at Tripartite, African continental (under AfCFTA), and international levels (particularly EPA with EU and AGOA with USA) among other developments have entailed new dynamics in the EAC trade and investment regimes.

As the EAC Partner States conclude the EAC Regional Trade Policy, it is necessary to mobilize sufficient financial resources to facilitate implementation of the outlined measures. The Trade Development Facility (TDF) is therefore proposed as the main tool that will be used to mobilize resources for supporting the RTP implementation processes part of efforts to improve Partner States' trade performance at the Tripartite, African continental and global levels. TDF is proposed as a multi-donor program to ensure Aid for Trade Initiatives are efficiently coordinated and have better chances of enabling all Partner States to realize mutual gains from the integration process while minimizing duplication of effort in donor funding. Achievement of the TDF goal will entail efficient implementation of trade and investment related measures, which can broadly be categorised under: market access for trade in goods and services; trade and investment negotiations with third parties; challenges arising from stays of application, duty remissions and exemptions; the CET review; a harmonised approach for applying trade remedies; a common position for Partner States engagement and increased presence in WTO forums; firm competitiveness; and production of value added products for export markets. At an institutional level the TDF will facilitate the establishment of an EAC Tariff Board and National Level Tariff Boards with responsibilities for administering a criteria for qualifying and approving stays of applications, duty remissions and exemptions from the CET; application of safeguards, anti-dumping and countervailing measures by Partner States; and application of a harmonised imports valuation system. The specific objectives of TDF are to:

- a) Facilitate mobilisation of sufficient financial and technical resources that support Partner States to pursue national and regional trade and investment related goals using a regionally harmonised approach without duplicating efforts and resources;
- b) Facilitate Partner States to negotiate external trade agreements as a regional block with third parties.
- c) Facilitate Partner States to adopt a common position and to increase their presence during WTO forums where trade and investment matters are discussed;
- d) Enable Development Partners to channel their financial and technical resources to EAC countries for trade facilitation, trade promotion, enterprise development, and other trade related development measures (such as improvement of physical infrastructure and access to energy), using internationally accepted funding channels, such as the WTO initiated Aid for Trade (AFT) Strategy;
- e) Facilitate businesses (including SMEs) to access business development and growth needs; including access to affordable business finance for expansions, diversification, standards development and improvement of management and technical skills; and increased competitiveness and value addition of goods and services originating from EAC region.

The TDF Functions

The main functions of TDF resources will focus in facilitating effective implementation of measures outlined under the RTP strategy and implementation roadmap, namely:

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- a) To offset losses incurred by Partner States during implementation of their commitments under regional and international trade agreements,
 - b) To assist Partner States to undertake effective trade and investment negotiations with third parties at Tripartite regional level, African continental level under the AfCFTA, and global level; based on a regionally harmonised approach;
 - c) To facilitate Partner States to harmonize their trade related laws (including quality standards and SPS measures and related certification processes, imports valuation systems, and competition laws);
 - d) To facilitate application of a harmonised criteria for qualifying and approving Partner States applications related to stays of application from CET, duty remissions and exemptions; application of safeguards, anti-dumping and countervailing measures; and application of a harmonised imports valuation system; and a harmonised approach to addressing under-invoicing, smuggling, and imports mis-declarations.
 - e) To enable Partner States to support their producers/manufacturers to comply with regional and international market access and quality standards;
 - f) To support domestic/regional enterprises to improve their firm level competitivenessⁱⁱⁱ for export markets Tripartite regional level, African continental level under the AfCFTA, and global level;
 - g) To support enterprises in efforts to expand and diversify available goods that target the Tripartite, African continental (under the AfCFTA), and global level export markets;
 - h) To support enterprises to undertake value addition of available products with export potential, which are currently exported in raw form;
 - i) To support Partner States' aspirations of pursuing effective industrialization, supply chain logistics (including trade facilitation), and improved business environment as part of the region's enterprise development goals;
 - j) To support partner States efforts to harmonize their domestic trade regulations and tax regimes in order to achieve free movement of goods, services, capital and labour; and the right of establishment and residence as enshrined in the Common Market Protocol;
 - k) To enable Partner States to harmonise the corridor and transit procedures applied in the region; and transport infrastructure development programmes that support trade development in the region;
 - l) To enable Partner States to harmonise their export development and promotion schemes (including duty exemption schemes such as SEZ, EPZ, and free zones);
 - m) To support the region's businesses to access affordable energy, business credit, export related market information, and firm level skills (management and technical skills).
 - n) To strengthen existing EAC structures on governance and resource mobilization frameworks; including accommodating the TDF as the main AFT channel through which trade and investment related resources will be accessed and directed to either regional level of national level focal points for coordination of RTP strategy implementation.
 - o) To support implementation of a regional outreach and communication strategy for regular exchange of knowledge, experiences and good practices on trade and investment and RTP implementation process. This approach will enable Partner States buy-in and goodwill to implement the RTP strategy measures efficiently and effectively focused in achieving defined results.

Modalities for Accessing TDF Financial Resources

The establishment of the TDF should be enshrined in the existing EAC Aid for Trade (AFT) Strategy (2017-2021), which aims to channel aid for trade development in the EAC region. The EAC AFT in this regard has been designed an effective approach for the mobilization, utilization, and tracking of aid for trade resources through EAC' regional programmes; and has strong collaboration with Development Partners. As part of efforts to kick-start the TDF, initial activities should focus in:

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- a) Establishing entry points for the TDF in the AFT strategy;
 - b) Ensuring early conclusion of the RTP strategy and implementation roadmap, which will form the basis of establishing the TDF; and
 - c) Establishing appropriate institutional framework for administering the TDF, including:
 - i) Defining the facility's governance and management structures and implementation responsibilities at regional and national levels,
 - ii) Defining interventions/activities and programmes to be funded at national and regional levels through the Facility,
 - iii) Defining roles of Partner States and EAC Secretariat in monitoring performance of the Facility at national and regional levels in terms of budget absorption and implementation of outlined activities as per set timelines,
 - iv) Defining requirements for periodic assessments and reporting to ensure the Facility remains relevant to the overall regional trade and investment goals.

The EAC AFT Strategy is an appropriate fund mobilization channel as it was adapted from the global AFT initiative launched by the World Trade Organization (WTO) at its Hong Kong Ministerial Conference in 2005. Future funding for EAC trade and investment activities availed through the EAC AFT will in this regard be clearly earmarked as financial resources for TDF if they are intended to support the RTP strategy implementation process. According to the Global AFT strategy, funds to EAC through the AFT channel have steadily increased since 2005, and accounted for 20% to 46% of the total funds from ODA in 2010. The amounts were contributed by the World Bank, DFID, EU, AfDB, USAID TMEA JICA, and HOLLAND among others. The global AFT model aims to provide a structured and enhanced approach to trade-related development assistance (WTO, 2006). The WTO AFT review (2013) estimates that AFT accounted for 20%-46% of the total EAC Official Development Assistance in 2010, and that the assistance was concentrated in trade-related infrastructure, trade facilitation and trade capacity building.

Specifically, the Vision of the EAC AFT Strategy is to achieve an upper-middle income region that is secure and politically united, based on principles of inclusiveness and accountability (EAC Vision 2050). Its overall objective is to alleviate trade constraints that prevent EAC firms from connecting with regional, continental and global value chains in promising sectors/subsectors. The Strategy defines the framework to be used to guide the design and delivery of existing and/or future AFT initiatives in EAC in a coherent and coordinated manner to enable the region to mobilize resources needed to support realization of maximum possible benefits from the integration process. The Strategy is to be used in complementarity with other EAC policy frameworks to develop multi-year and annual AFT plans that are aligned to respective development plans. The Strategy is to be used by development partners to support evolution and strengthening of export oriented regional and global value chains in EAC, with the eventual goal of boosting the trade competitiveness of EAC in global markets. This is to be achieved through expanded and more diversified trade in value-added products and services and increased foreign investment inflows into EAC.

The EAC AFT Strategy is linked with the EAC Treaty, which under Article 130 on International Organisations and Development Partners provides that the Community will foster co-operative arrangements with other regional and international organisationsⁱⁱⁱ whose activities have a bearing on the objectives of the Community and the Partner States. It is also aligned with EAC vision 2050, whose ultimate goal is to have a developed, stable and competitive regional bloc; and whose strategic priorities are expressed in 6 Pillars; Infrastructure Development, Agriculture, Food Security and Rural Development, Industrialization, Natural Resources and Environment Management, Tourism, Trade and Services Development and Human Capital Development. In addition, the Strategy is linked with the 4th EAC Development Strategy (2011/12-2015/16), which prioritises enhanced market access and trade competitiveness, implementation of the Common Market, and conclusion of the Monetary Union while laying the foundation for a Political Federation.

A key justification for using the global AFT model to support implementation of the RTP Strategy is provided in WTO reviews, which clearly indicate that AFT interventions, including those in African countries, have been instrumental cost-effective approaches for supporting regional integration. In this regard, regional AFT instruments play a critical role in boosting integration of FTA members in regional production networks and facilitating moving up of producers in regional and global value chains. More specifically, regional AFT instruments ultimately facilitate trade expansion, sophistication and diversification; which in turn, enhances opportunities to achieve industrialization, economic transformation, sustained development, and social and geo-political cooperation goals; all which are part and parcel of the aspirations of EAC Treaty.

Therefore using the EAC AFT Strategy to mobilize resources for the RTP Strategy implementation would significantly contribute to addressing trade constraints experienced by EAC Partner States, including trade facilitation, trade policy, harmonization of trade regulatory environment, corridor and transit procedures, export development and promotion, transport infrastructure development, access to energy, and access to credit and skills among other supply constraints experienced by producers and traders (including exporters). On the other hand, the EAC AFT Strategy will be complemented by national AFT strategies, which will specifically focus more in addressing country-specific constraints including small national market sizes, varying levels of social-economic development, land-locked nature of some EAC countries (Burundi, Rwanda, Uganda), and macroeconomic and political instability experienced by some of the Partner States.

It is also important for EAC to mobilize resources for RTP Strategy implementation using the global EAC AFT Strategy, as its global AFT model has already been tested and accepted by development partners as an important channel for availing financial and technical resources needed for building capacity to address trade facilitation and other development related constraints (such as physical infrastructure and access to energy). In this regard, the 2001 WTO Doha **Ministerial Conference made a declaration** to use the WTO Enhanced Integrated Framework (EIF) for Trade-Related Technical Assistance as a viable model to support Least-Developed Countries (LDCs) to achieve their trade development goals. This declaration was reaffirmed through the Hong Kong Ministerial Declaration of December 2005, which made a commitment to better integrate LDCs into the multilateral trading system through the EIF. Development partners were urged at the two Ministerial Conferences to significantly increase their contributions to the EIF Trust Fund and WTO extra-budgetary trust funds to support LDCs to address supply-side constraints, which have direct effects on their production and export competitiveness.

The WTO EIF in this regard is regarded as the only multilateral partnership dedicated exclusively to assisting LDCs in their use of trade as an engine for growth, sustainable development and poverty reduction. The EIF partnership has 51 countries, 24 donors and 8 partner agencies, all which work closely under the global AFT model to support trade-for-development needs of LDCs as part of efforts to achieve the UN Sustainable Development Goal 8 (which specifically aims to promote sustained, inclusive and sustainable economic growth, full and productive employment, and decent work for all by year 2030). Thus the EIF supports trade promotion as part of efforts to improve sustainable growth and the reduction of poverty through appropriate national policies and institutional frameworks. The EIF multi-agency coordination is chaired by WTO and incorporates the International Monetary Fund (IMF), the International Trade Centre (ITC), the UN Conference for Trade and Development (UNCTAD), the UN Development Programme (UNDP), and the World Bank. On the other hand the EIF process consists of four phases: (1) Awareness-building on the importance of trade for development; (2) Preparation of a Diagnostic Trade Integration Study (DTIS) to formulate a plan of action to integrate the target country more fully into the global trading system while identifying sectors with greatest export potential and constraints that may impede trade; (3) Ensuring that the plan of action becomes part of the broader national development

plan; and (4) Facilitating implementation of action plan in partnership with the development cooperation community who provide financial resources for identified measures.

To date, 36 LDCs (out of a total 49 LDCS) have benefited under the EIF trust fund to undertake their Diagnostic Trade Integration Studies; and most are implementing their plans of action. Among some of the priority include streamlining customs processes so as to avoid overly long and costly processes, building the necessary architecture to satisfy complex food security standards, and building capacity at the Ministries of Trade to facilitate exports.

In addition to supporting Diagnostic Trade Integration Studies for LDCs, the EIF also supports regional projects under its EIF Phase Two, and modalities for this support window were issued in May 2019. The Compendium for EIF Phase Two lays the overall Programme Framework for implementation of regional projects and the development of stronger relationships with regional partners. Both the EIF Strategic Plan 2016-2018 and the EIF Strategic Plan 2019-2022 indicate the importance that the EIF should accord to develop and implement the regional dimension of the EIF programme in order to address the needs of LDCs. Based on the approved principles governing regional projects approved by the 26th EIF Board meeting held on 11-12 June 2018, a regional project is defined as a project financed through the EIF Trust Fund (EIFTF) to help the LDCs benefit from regional economic opportunities as well as address regional challenges. The regional project idea should be identified through national or regional cooperation and/or proactive consultation processes, and should be firmly anchored as priorities in regional strategic documents and national DTIS. Such regional projects should focus on:

- a) Diagnostics of regional trade policy-related measures, regional analytical studies, and capacity-building initiatives that aim to address common priority areas for beneficiary countries, or which contribute to cross-cutting global or regional goals and other sectoral focus areas.
- b) Trade facilitation through reduction in trade costs and transport time to access markets.
- c) Improved connectivity, regional integration, cross-border trade, and inclusive trade.
- d) Development of regional value chains and mainstreaming of trade into regional priority sectors or national sectors with a regional dimension.

EIFTF supports individual regional projects based on the following budget ceilings:

- a) Up to a maximum of US\$500,000 contribution for regional studies, trade policy facilitation, analytical work and capacity-building initiatives; with a limit of a maximum budget of US\$100,000 per participating country.
- b) Up to a maximum of US\$2 million contribution for a project targeting production diversification, value chain promotion and sector promotion, and based on clearly demonstrated value for money.
- c) Up to a maximum of US\$3 million contribution in case of projects that have total budgets exceeding the maximum limit of US\$2 million (under (b) above). In such cases, 50% of the remaining budget balance exceeding the US\$2 million threshold has to be matched by a written pledge for funding from other donors and/or partners.

Thus the EAC AFT Strategy can access resources from the EIFTF to support the RTP Strategy implementation based on well elaborated justification, including the DTIS. The EAC AFT should thus be the key channel used to access financial resources from within EAC region and from development partners, which can then be channeled into the Trade Development Facility to support implementation of measures and activities specified in the RTP Implementation roadmap. Some of the internal funding sources and development partners' programmes from which funding can be availed for AFT are elaborated below.

Funding from EAC Partner States

As the primary beneficiaries of TDF funds, EAC Partner States will be expected to contribute part of the required financial resources, which could be availed from the following sources:

- a) General budget of the EAC
- b) Contribution from Development partners

The 11th EDF Regional Indicative Programme (RIP) for Eastern Africa, Southern African and Indian Ocean 2014-2020

The 11th RIP funded by EU allocates a total of Euro 85 million for EAC to support. The RIP specifically allocates Euro 45 million for EAC Regional Economic Integration with the overall objective of contributing to inclusive and sustainable economic development through promotion of integrated markets, and development of investment and productive capacities in the region. This overall objective is broken into two main specific objectives:

- a) Specific Objective 1: Foster the implementation of the Common Market and Monitoring of the Customs Union and Common Market Protocols. This objective is allocated Euro 10 million. Specific activities relevant to RTP include: supporting full attainment of the Single Customs Territory, regional monitoring and evaluation of the SCT, interconnectivity of Partner States customs systems, change management interventions, amendment of customs laws, and removal of NTBs experienced on the region's transport corridors.
- b) Specific Objective 2: Develop EAC industries and private sector, and facilitate regional trade. This objective is allocated Euro 5 million. Specific activities relevant to RTP include: supporting the EAC Industrialization Strategy aimed to stimulate inclusive economic growth and generate high value added products; development of a trade related window aimed to improve Partner States' participation in regional and international trade, compliance with regional and international commitments, and private sector development through increased regional trade flows.

The European Fund for Sustainable Development (EFSD)

The EFSD was launched in September 2016 to support investment in Africa and European Neighbourhood countries. The fund has a total budget of EUR 4.1 billion, to be used to provide guarantees on loans and to leverage EU foreign direct investments in Africa and EU Neighbourhood countries until 2020. The loan guarantees will underwrite loans and other forms of funding or credit enhancement offered by trusted institutions such as development banks to governments and/or private companies in African and EU Neighbourhood countries that intend to invest in development projects. Local or foreign firms including MSMEsⁱⁱⁱ may seek support under the fund through trusted institutions, provided they demonstrate that the projects meet a set of public-interest criteria. Potential projects inter alia cover investment grants to companies or governments and technical assistance (for example to cover costs of technical experts).

The EFSD could therefore be used to leverage funds availed by development partners directly into the EAC AFT Strategy, of which the RTP strategy will be part. Such EFSD funding will however be earmarked for the Trade Development Facility, and could principally focus on creating and/or strengthening regional and global value chains for EAC producers, funding of investment upgrades/diversification, enhancing improvement and compliance with quality standards/SPS measures, and facilitating skills upgrades among other firm level specific and trade improvement interventions.

The Market Access Upgrade Program (MARKUP)

MARKUP is a four year EAC regional program (2018-2022) funded from the EU Regional Indicative Programme for EAC under the 11th European Development Fund (EDF). It is implemented by GIZ on behalf of the German Federal Ministry for Economic Cooperation and Development, ITC, United Nations Industrial Development Organization (UNIDO). The programme provides support to SMEs in Burundi, Kenya, Rwanda, Tanzania and Uganda with the aim of increasing exports of specific agri-business and horticulture products (such as cocoa, coffee, spices, tea, avocado, and horticulture), promoting regional integration, and access to the European markets. The total MARKUP budget is Euros 35 Million, broken down into Euros 3.6 Million for each country.

The programme directs its support through 2 windows, namely: EAC window and Partner states window in the following respects.

- a) **The EAC Window** supports efforts to increase regional trade and exports to international markets. This includes strengthening EAC Secretariat to facilitate implementation of regional policy and to build an enabling environment for SMEs, focusing in identifying and addressing critical barriers to trade and to maximizing trade opportunities. Specifically, the window supports the following components:
 - Coordination and steering evolution of an enabling environment for SME operations;
 - Standards and SPS harmonisation;
 - Communication and information needs of SMEs;
 - Advocacy for the removal of trade barriers; and,
 - Capacity development of SMEs.
- b) **The Partner States Window** is tailored to the specific SME needs of each Partner State, sector based associations and government institutions, targeting to address supply side constraints and to enhance SME competitiveness. Specifically, the window supports the following components:
 - Improving compliance to quality standards;
 - Increasing value addition and export diversification;
 - Improving access to market information; and,
 - Strengthening SME business capacities

Trademark East Africa (TMEA)

TMEA is a multi-purpose donor funded, not -for-profit Aid for Trade organisation, established in 2010 to support the growth of trade at both regional and international level in In East Africa. TMEA is funded by the development agencies of a number of countries: Belgium, Canada, Denmark, Finland, Netherlands, Norway, UK, and USA. The organisation supports a number of trade and investment related activities through EAC Secretariat, national governments, the private sector and civil society organisations. The first programme phase completed in December 2017 focused in supporting measures aimed to achieve the following key results among others:

- a) Reduction of cost and time of corridor transit (Northern and Central Corridors);
- b) Reduction of time and cost of clearing import/export transactions at the main EAC Ports of Mombasa and Dar es Salaam;
- c) Improved efficiency of import/export transactions through the region's border stations;
- d) Better trade infrastructure (mainly at Port Reitz and Ntungamano road);
- e) Improve use of ICT to facilitate trade (mainly through establishment of electronic single window systems and improved customs management systems);
- f) Improved private sector engagement in trade matters, including participation in identification and implementation of measures to reduce NTBs experienced in the course of trade, improvement in the business environment, Standards Harmonisation, and increased knowledge and application of INCOTERMS.

TMEA is now in its second strategic phase for the period 2017/18 to 2022/23, which seeks to increase trade by unlocking economic potential anchored on: reduced barriers to trade, and improving business competitiveness.

It is to be noted that TMEA is funding the development of the Regional Trade Policy, and is therefore a key potential donor for required TDF, which will principally be used to support technical assistance needs of the RTP implementation process. Some potential areas which TMEA through its Strategy 2 could support include:

- a) Facilitating training of producers on implementation and/or compliance with EAC quality standards and SPS measures (as well as consumer driven standards in specific markets such as EU and US).
- b) Designing and facilitating implementation of a regionally harmonised system for imports valuation, including training of customs officials and agents.
- c) Facilitating application of the proposed EAC regional trade remedies law, incorporating anti-dumping, safeguards, and anti-subsidy measures based on relevant WTO provisions; and harmonised measures to protect the region against mis-declarations/misclassifications, smuggling, under-invoicing, counterfeit trade, and other trade malpractices; aimed to protect struggling industries against injury from imported products.
- d) Development of an appropriate institutional framework to administer the regional trade remedies law in collaboration with the competent national authorities.
- e) Development of a regionally harmonised IPR law and regulations based on WTO TRIPS Agreement, aimed to protect intellectual rights of regional creators in the areas

USAID

USAID has been supporting establishment of the EAC Single Customs Territory (SCT) as a key element of fast tracking the operationalising the Customs Union. This support has focused in developing and implementing the SCT framework through studies and updating the SWS policy framework; and establishing SCT operational instruments including revising the Rules of Origin (ROO). Five TWGs have been established to review the partner states' laws and procedures, to propose amendments for harmonizing the laws and procedures, and to spearhead sensitization, and capacity building of stakeholders on the SCT framework and operational proceduresⁱⁱⁱ. Key SCT framework documents so far supported by USAID include:

- a) Customs Strategy (adopted by the EAC Council)
- b) Bills and an amendment of the EAC CMA
- c) Development of operational instruments to support the SCT
- d) Updates on the SCT procedures manual (2014)
- e) The SCT monitoring and evaluation tools
- f) SCT compliance and enforcement framework
- g) Guidelines for deployment/exchange of staff between partner states to facilitate SCT implementation
- h) Rights for clearing and forwarding agents to access customs systems of other revenue authorities.

USAID is therefore a potential partner that can be expected to provide continued support to the RTP implementation process, particularly on areas related to increased stakeholders' knowledge about content and measures to enhance increased utilisation of AGOA facility; harmonisation of trade related documents, procedures, and systems (such as customs documentation, quality standards and SPS), duty exemption schemes for export promotion purposes, harmonisation and application of import valuation methods, harmonisation of trade remedies laws, and sensitisation of the public about the usefulness and content of the RTP **among others**.

African Development Bank

The AfDB Regional Integration Strategy Paper for Eastern Africa (EA RISP) 2018-2022 articulates strategic priorities and a corresponding indicative operational program for the Bank's support to regional economic integration in Eastern Africa. The Strategy acknowledges that regional integration is critical for expanding the size of EA markets, and that integrating Africa is necessary in order to break down the trade barriers that separate the continent. The Strategy was prepared in the larger context of the Bank's strategic direction and recent regional, continental and global developments; including the adoption of the African Union (AU) Agenda 2063, the Tripartite Free Trade Area (TFTA), and the Continental Free Trade Area (CFTA), with the CFTA aiming to consolidate Africa's market regimes. The Strategy builds on the thrusts and orientation of the previous AfDB RISP (2011-2016) whose strategic pillars were Regional Infrastructure and Capacity Building. While implementing the previous RISP, the Bank has left a strong footprint in terms of financing regional integration in the Region. The completion report (CR) of the previous EA RISP notes that the Bank invested UA1.82 billion on regional operations by December 2016, of which UA1.678 billion supported the regional infrastructure pillar.

In 2015, AfDB adopted a new strategic framework focusing on five (5) priorities- the High-5s, aimed to accelerate the implementation of its Ten Year Strategy (TYS, 2013-22). These pillars are: Light Up and Power Africa, Feed Africa, Industrialize Africa, Integrate Africa, and Improve the Quality of Life for the People of Africa. The Bank "Regional Integration Strategic Framework (RISF, 2018- 2025)" provides the broader strategic context for the RISP 2018-2022; whose scope of activities are aligned with three RISF pillars, namely: (i) infrastructure connectivity (iii) trade and investment, and (iii) financial integration. The EA RISP focuses on two Pillars, namely (i) Regional Infrastructure Development for competitiveness and transformation and (ii) Strengthening the policy and institutional frameworks for market integration, investment and value chains development. However, the EA RISP will also support all the High-5s, taking into account regional specificities; which implies the Bank will also support access to energy by industrial producers among other energy users. In addition, a new Development and Business Delivery Model (DBDM) with a corresponding revamped organizational structure will enhance delivery effectiveness of AfDB resources, and also entails strong dialogue with RECs and key regional stakeholders.

The implication of the new AfDB strategic focus as specified in EA RISP is that there is high potential to access need TDF resources to support the RTP strategy implementation in a number of areas elaborated under the TDF functions (refer to section 7.2 above), including:

- a) Assisting Partner States to undertake effective trade and investment negotiations with third parties at Tripartite, African continental, and global levels; based on a regionally harmonised approach;
- b) Facilitating Partner States to harmonize their trade related laws (including quality standards and SPS measures and related certification processes, imports valuation systems, and competition laws);
- c) Facilitating application of a harmonised criteria for qualifying and approving Partner States applications related to stays of application from CET, duty remissions and exemptions; application of safeguards, anti-dumping and countervailing measures; and application of a harmonised approach to addressing under-invoicing, smuggling, and imports mis-declarations.
- d) Facilitating Partner States to support their producers/manufacturers to comply with regional and international market access and quality standards;
- e) Supporting enterprises to improve their firm level competitivenessⁱⁱⁱ for export markets Tripartite regional level, African continental level under the AfCFTA, and global level;
- f) Support enterprises to expand and diversify available goods for the Tripartite, African continental, and global level export markets;
- g) Supporting enterprises to undertake value addition of available products with export potential.

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- h) Supporting Partner States to pursue effective industrialization, supply chain logistics (including trade facilitation), and improved business environment as part of the region's enterprise development goals

The World Bank Group

In 2018, the World Bank Group endorsed a new strategy to partner with Sub-Saharan African countries and regional bodies to deepen regional integration. The strategy aims to reposition World Bank Group support to help the continent realize fuller benefits from integration over the period 2018-2023. Titled "supporting Africa's transformation: Regional Integration and Cooperation Assistance Strategy", the strategy will promote economic diversification and strengthening of regional value chains, build sub-regional energy and digital markets, help create productive jobs for the youth, and tackle cross-border health and climate change risks. The World Bank Group's existing commitments for regional integration initiatives in Sub-Saharan Africa are to the tune of over \$10 billion, which is set to increase by over \$6 billion over the period 2018-2023, focused in financing measures that will assist the continent to address barriers to integration. In addition, the provision of technical assistance and better analytics will help facilitate collective action by countries in priority areas, such as regional integration and infrastructure as the backbone to enhanced intra-African and regional trade. Thus, the World Bank through its current strategy can be relied upon as a key potential partner that will provide TDF resources focusing among others on:

- a) Facilitating increased private sector participation in the regional integration agenda.
- b) Facilitating expansion of regional markets and the diseconomies of scale which are holding back rapid development of the private sector.
- c) Facilitating improved enterprise competitiveness through regional value chains and firm level modernisation (increased access to modern production technologies, improvement of management and technical skills, access to market information, and application of ICT in ecommerce transactions among others)
- d) Harmonisation of trade and investment laws and regulations
- e) Harmonisation of quality standards
- f) Measures to improve the investment and business environment
- g) Supporting improvements in physical and soft infrastructure, particularly roads, energy, communications as a necessary ingredients to efficient trade promotion.

JICA

The Japanese Government Grant Aid is an important component of Official Development Assistance (ODA) implemented through JICA. For the Eastern and Central African region, on-going grant aid projects are formulated in collaboration with recipient governments' line Ministries/Agencies, taking into cognizance individual country development strategies and plans. Other overarching criteria considered in the process of developing the projects include the universally agreed Millennium Development Goals (MDGs) as well as TICAD IV's Yokohama Action Planⁱⁱⁱ. The projects implemented in the region fall in different categories including roads, bridges, urban and rural water supply, building works on hospitals and equipment supply.

The TICAD IV particularly set out regional integration as one of its key areas of focus for broadening partnership with Africa, in line with African Union's recognition of the eight African Regional Economic Communities (RECs) as the building blocks of African integration. The Yokohama Action Plan therefore envisages support for capacity building of RECs to plan, finance and execute regional infrastructure investment programs.

TICAD IV will also support plans to address challenges emanating from the overlapping membership of African countries to multiple RECs based on the African Union Minimum Integration Programme (MIP), which embodies programmes, projects and activities which the RECs need to implement to speed up and ensure the successful conclusion of the regional and continental integration process. Notably, TICAD IV will support the COMESA-EAC-SADC

Tripartite Integration process to achieve the envisaged market integration, infrastructure development to enhance connectivity and reduce costs of doing business, and Industrial development aimed to address productive capacity constraints.

Additionally, TICAD IV will continue supporting application of harmonized vehicle overload controls and regulations in EAC as part of measures to address infrastructural, institutional, and legal/policy challenges that hamper efficient cross border trade; including related cost implications on cargo transportation especially for the landlocked countries of Burundi, Rwanda and Uganda. This component will entail support to Partner States to domesticate the harmonised vehicle overload controls and regulations into their respective national laws.

The Great Lakes Trade Facilitation Project (GLTFP)

GLTFP is a four years project (2017- 2020) funded by the World Bank with a budget of USD 60 Million. The project covers the following 3 COMESA countries and COMESA Secretariat:

- i) DRC: allocated USD27 Million
- ii) Zambia: allocated USD10 Million
- iii) Burundi: allocated USD20 Million
- iv) COMESA Secretariat: allocated USD3 Million.

Thus although the project covers only one EAC country, it is part of funding sources which can support the TDF work. The project objective is to enhance the capacity for commerce and improve processes and conditions of cross-border trade at targeted border locations in the Great Lakes Region. The main beneficiaries of the project include small-scale cross-border traders, trade service providers (e.g. transporters, boat operators), market vendors in the border areas, and border agencies officials. The project components are:

- i) Component 1: Improving core trade infrastructure and facilities in the border areas (USD 42 million)
- ii) Component 2: Implementation of Policy and Procedural Reforms and Capacity Building to
- iii) Facilitate Cross Border Trade in Goods and Services (USD 6.5 million)
- iv) Component 3: Improving service delivery by agencies at the border/port and citizen engagement (USD4.5 million)
- v) (USD4.5 million)
- vi) Component 4: Implementation support, Communication, Monitoring and Evaluation (USD 7 million)

UNIDO and ITC Trade related technical assistance

While both UNIDO and ITC do not have financial resources of their own, they can be regarded as important partners in the RTP strategy implementation process, because of the international expertise and experience that they can bring to the EAC region in areas of trade development and sustainable investment attraction. UNIDOⁱⁱⁱ is currently a key implementation partner (in addition to GIZ) in the MARKUP programme funded by the European Union. ITC is also an important partner in the MARKUP programme as it supports EAC efforts to improve regional trade and the business environment for selected commodities; including advocating for the removal of sectoral trade barriers as well as strengthening SME export competitiveness and business development. At the country level, ITC will train small enterprises in Burundi and Tanzania on market analysis, quality standard compliance and certification conformity under the MARKUP programme.

Other TDF Funding Sources

Other key sources of funding which could be targeted to provide TDF resources for RTP strategy implementation include investment finance providers. While this channel is not strictly speaking part of AFT financial resources, the investment finance providers could be targeted

as part of TDF as they would contribute substantially to building competitiveness of regional enterprises and to prepare them to undertake successful export promotion activities. Known investment finance providers in this regard include:

- a) **Venture capital funds (VCF):** These are investment funds made by investors who seek private equity stakes in start-ups and SMEs with strong growth potential. The investments made through venture capital are generally characterized as high-risk/high-return opportunities. The VCF pool normally focuses in committing money for an investment in its early-stage, with the VCF investors being designated as limited partners for a defined period of time (typically five years). The decision on which early-stage companies to invest VCF in is based on criteria established by the fund partners, which typically include: (i) Growth and liquidityⁱⁱⁱ benchmarks; (ii) Strategic measures such as market position and the distinctness of a company's products or services; and (iii) The strength of the company's management team. Most VCFs typically have an initial active investment period of five years, after which the fund partners can choose to re-invest capital earned through the fund's investments based on performance. At the end of a VCF life, the profits are divided among the limited partners or invested in other potentially profitable businesses. VCFs are typically distinguished by the industrial sector and segment in which funds are invested.
- b) **Business Angles:** These are independent wealthy individuals/ private investors who provides capital for business development. Their main aim is to help entrepreneurial individuals to succeed with a business idea by providing investment capital based on conviction that the business idea is viable. The infusion of such capital often helps a business idea to develop into a viable company with a sustainable base for producing a good or service. The business angel provides money, and is also generally interested in being involved in the project development by acting as a guide or mentor. He/she thus invests his/her time and provides connections to larger business networks (such as potential markets and technical expertise) in order to guide the entrepreneur to operate efficiently and grow the new business venture.
- c) **Investment Foundations:** Investment foundations refer to vehicles or companies set up by philanthropists with the sole purpose of investing in business enterprises. They support establishment of new SME companies (start-ups), and also diversification and expansion of existing SMES up to maturity stage. Under the TDF, particular focus should be in accessing venture capital to select businesses with high growth potential, such as those in agriculture and agri-business, manufacturing, transport, ICT, wholesale, and export/import businesses among others. The foundations will also support entrepreneurs and new business owners in market and technology research, planning and development, as well as establishment of enterprise incubator programmes which aim to facilitate access to technical expertise and plant modernisation through adoption of modern technologies, compliance with quality standards/SPS, and building of knowledge in supply chain logistics.
- d) **International investors:** These investors help to diversify the investment finance portfolio by purchasing various financial instruments like shares and mutual funds. The investor in this case acquires part or full ownership or collaboration in different companies with the aim of maximizing his/her investment returns and/or reducing exposure to various investment risks. By providing financial resources to businesses, this enables beneficiary businesses to capitalize on the good performance of their domestic economy and/or comparative advantages in natural resources, labour (low costs and good skills), and supply chain logistics among other factors. Since foreign investors are mostly driven by good macro-economic performance notably in emerging economies, EAC SMEs would particularly benefit from such investment financing sources if they position themselves with requisite information that foreign investors look for as the basis of making investment decisions. The relevant information in this regard includes a country's macro-economic indicators, inventory of potentially available

natural resources (e.g. *minerals, endowments in agricultural products, climatic conditions, geographical location relative to access to raw materials/industrial inputs and potential markets, and proximity to sea ports and harbours, etc*), existing supply chain logistics and related costs, labour supply and costs, labour laws, evolution of business and export culture, and general business environment (*taxation regime, business regulations, availability and cost of utilities*), trade policy and regulations, government support (e.g. *provision of security and business support services*), and general ease of doing businessⁱⁱⁱ.

Funding for enterprise development by investment finance providers will be availed based on specific assistance requests, and will be accounted for by EAC as part of TDF resources. Some of the areas which could be funded by the investment finance providers among others include:

- a) Supporting increased access to and application of modern manufacturing/agriculture technologies, focused on specific sectors and products.
- b) Facilitating networking with major global brand drivers and retailers, and compliance with market demand requirements (particularly quality standards, SPS measures, packaging and labelling, and product presentation).
- c) Supporting enterprises/producers to diversify their potential export products by availing relevant investment capital for value addition
- d) Supporting enterprises to expand their export markets through targeted market segmentation and application of penetration strategies.
- e) Supporting increased firm level competitiveness and productivity through improvements in management and technical skills, and plant utilisation capacities.
- f) Supporting uptake of modern ICT applications used increasingly in ecommerce transactions.

ANNEX VIII

RTP OUTREACH PROGRAMME

Overview of the RTP outreach programme

It is important to establish a sustainable outreach programme for the RTP aimed to create awareness and knowledge, endorsement and buy-in amongst stakeholders on the importance of a harmonised approach to trade promotion, trade and investment relationships between the EAC Partner States and third parties, identification of trade and investment opportunities, and resolution of common trade and investment related challenges that face or are likely to face the region. The outreach programme will target key EAC trade and investment related stakeholders including East African Legislative Assembly (EALA), Partner States MDAsⁱⁱⁱ mandated to deal with in trade and investment matters, National Parliaments, private sector, civil society organizations, the academia, politicians and the general public.

Key Priorities of the RTP Outreach Programme

The key priorities to be incorporated in the RTP outreach programme include a communication strategy, media engagement and advertisements aimed to create RTP visibility, stakeholders' sensitisation and education activities, sponsorship of outreach events. It will be very important to sensitize key decision makers.

Vision of the RTP Outreach Program

The Vision of the RTP outreach program is mutual understanding on the principles and priorities of the RTP amongst stakeholders who participate and are interested in the EAC trade and investment agenda. This will facilitate effective identification of opportunities and challenges implementing the EAC RTP, necessary to enable Partner States and national/regional businesses to take maximum advantage of potential benefits associated with the RTP implementation process.

Goal and Objectives of the RTP Outreach Program

In line with the principles of the EAC integration agenda as provided in the EAC Treaty, the Community envisages a people-centered and private sector driven approach to widening and deepening the integration agenda. The RTP outreach program is therefore expected to increase awareness among the East African population about the goal, objectives, potential benefits, and progress of implementing outlined RTP measures. This will enable increased EAC citizens' participation and interest in supporting the RTP implementation measures.

The **Long Term Goal** of the RTP outreach programme is therefore to ensure the RTP is widely known, accepted and successfully implemented through national and regional level measures. On the other hand, the **Specific Objectives** of the RTP outreach program are to:

- a) Continuously update the EAC trade and investment related stakeholders and the wider public about the potential benefits that are likely to emerge from implementation of a harmonised regional trade policy,
- b) Ensure the EAC trade and investment related stakeholders fully understand the challenges associated with the RTP implementation process so as to buy-in their interest, participation and contributions to resolving such challenges,
- c) Ensure the EAC trade and investment related stakeholders are periodically updated on progress of implementing outlined RTP measures and impacts created at the regional and national level of Partner States.

Priority Messages for the Outreach Programme

Key messages that will help to increase the knowledge about the EAC Regional Trade Policy in order for stakeholders to support the implementation process and facilitate exploitation of potential benefits that will emerge from the integration process include:

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- a) The meaning, contents, implications/relevance, and challenges of RTP for each country
 - b) The product diversification potentials for export markets
 - c) Export market expansion potentials for EAC producers
 - d) Potential regional value chains for EAC economic sectors and products
 - e) Required quality standards of products exported
 - f) Required SPS and public health measures for exporting food and agricultural products
 - g) The content and benefits of protecting Intellectual Property Rights
 - h) Existing Non-Tariff Barriers for cross border trade in specific products and progress with elimination
 - i) The dangers of trading in counterfeited and pirated goods for consumers, the economy and domestic enterprises
 - j) Education/ capacity building and sensitization activities and programmes outlined under the RTP implementation process
 - k) The RTP institutional coordination mechanism
 - l) Advocacy
 - m) Sponsorships for RTP events

The Outreach Programme Communication Medium

The outreach programme will incorporate feasible and cost effective communication media, including traditional media outlets such as newspapers, radios, television, business publications, workshops, and seminars; and the modern communication channels that include social media handles, sms, internet windows, and emails. All forms of communication will target the EAC trade and investment related stakeholders. Specifically, channels of communication will include:

- a) A dedicated window of the EAC Regional Trade Policy in the EAC Website and selected websites in EAC Partner States (Government, National Investment Promotion Agencies, National Exports Promotion Agencies, business membership associations (BMOs), and links with key international websites including those of development partners).
- b) A face book page (plus other social media)
- c) Use of classic email communication on need basis with RTP stakeholders
- d) Posters, brochures and booklets, and distribution of publicity T-shirts for key stakeholders' (East African Legislative Assembly (EALA), MDAs, National Parliaments, regional and national BMOsⁱⁱⁱ, Civil Society organizations and the Academia).
- e) Group workshops and seminars where invited guests/ specialists and beneficiaries discuss subjects relevant to EAC trade and investment integration agenda
- f) Period talk shows through EAC TV and radio stations on topical issues related to EAC economic integration agenda
- g) Periodic articles in EAC newspapers on subjects relevant to EAC trade and investment related integration agenda
- h) Periodically scheduled internal communication within MDAs through
 - i) Regular meetings with the RTP monitoring team coordinated by the Ministries in charge of EAC Affairs with technical assistance by Ministry of Trade in each Partner State; and comprising MDAs, BMOs, civil society and academia
 - ii) Regional EAC RTP monitoring meetings comprising: Directorate of Customs and Trade; Sectoral Committee on Trade, Industry, Finance and Investment; and EALA -Committee on Communication, Trade and Investment (CCTI); aimed to enhance high level involvement in the RTP implementation process.
 - iii) Intranet for internal communications within EAC Secretariat and with Partner States MDAs and BMOs;

For efficient communication with stakeholders, all Partner State should prioritise good internet connection amongst MDAs and BMOs among key stakeholders in the RTP implementation process so that urgent messages are communicated on timely basis, for example regarding invitations to meetings and sharing of RTP implementation progress reports.

Outreach Programme Implementation Responsibilities

Two levels of applying the outreach programme are foreseen which will ensure effective communication with stakeholders, namely:

- a) Communication through EAC Secretariat, EALA and EABC and EACCIA: The EAC Secretariat as the executive arm of the EAC will take the overall responsibility of coordination and implementation of the programme; including planning for all communication activities. EALA will take responsibility for enacting legislations necessary to facilitate implementation of RTP and creating goodwill within EAC National Parliaments to ensure relevant legislations are domesticated into national laws. EABC and EACCIA will create regional advocacy and also sensitize national BMOs on importance and strategies for implementing level RTP measures particularly by enterprises (*such as on product quality standards, SPS measures, compliance with customs regulations and documentation, rules of origin (local trade and value added criteria to ensure products are qualified to access EAC markets under zero rate of duty, how to apply trade facilitation systems such as single window system and single customs territory procedures on regional and international trade transactions, overload control regulations (weighbridge and axle load regulations), and also firm level strategies for creating product efficiency and sector competitiveness*).
- b) Communications through designated Partner States' Focal Points, namely the Ministries in charge of EAC Affairs. The EAC Ministries will coordinate with technical support by Ministry in charge of Trade in each country will be responsible for national level communication with key RTP stakeholders to ensure important messages are disseminated on timely basis.

For an effective communication process, the EAC Secretariat will produce standard materials to be used in the outreach program by each Partner State; such as booklets, brochures, fliers, TV/radio messages, and workshops/seminars dissemination materials. Trained trainers from the private sector, academic institutions, and trade experts will be co-opted to conduct scheduled workshops and seminars where matters related to the RTP will be discussed.

Sources of Funding for the Outreach Programme

The Trade Development Facility which has been proposed as the main channel for mobilizing resources to support the RTP implementation will be among the main source of funding for the outreach programme. Other sources include Partner State contributions and media houses, which could host relevant RTP programmes on EAC trade and investment integration agenda as part of their regular talk show programmes.