INSTITUTE OF INTERNATIONAL ECONOMIC LAW
GEORGETOWN UNIVERSITY LAW CENTER

TradeLab

International Economic Law Practicum

SOUTH SUDAN'S ACCESSION TO THE EAST AFRICAN COMMUNITY: IMPLEMENTATION OF EAC TRADE AND TRADE RELATED INSTRUMENTS

Opportunities and Challenges for South Sudan under the EAC Customs Union

May 14, 2017 Washington D.C.

Submitted by

Jiawen Chen

Isabel Fressynet

Timothy Kalembo

To: Mou Mou Athian Kuol and Alex Lubajo Kajokole

Ministry of Trade, Commerce and Industry

Secretary General South Sudan EAC Secretariat

TradeLab output is prepared on a pro bono basis by students as a pedagogical exercise. It is not professional legal advice and in no way establishes a client-attorney relationship.

Institute of International Economic Law – Georgetown University Law Center
600 New Jersey Avenue, NW - Washington, DC 20001, USA

TradeLab

International rules on cross-border trade and investment are increasingly complex. There is the WTO, World Bank and UNCTAD, but also hundreds of bilateral investment treaties (BITs) and free trade arrangements ranging from GSP, EU EPAs and COMESA to ASEAN, CAFTA and TPP. Each has its own negotiation, implementation and dispute settlement system. Everyone is affected but few have the time and resources to fully engage. TradeLab aims to empower countries and smaller stakeholders to reap the full development benefits of global trade and investment rules. Through pro bono legal clinics and practica, TradeLab connects students and experienced legal professionals to public officials especially in developing countries, small and medium-sized enterprises and civil society to build lasting legal capacity. Through 'learning by doing' we want to train and promote the next generation of trade and investment lawyers. By providing information and support on negotiations, compliance and litigation, we strive to make WTO, preferential trade and bilateral investment treaties work for everyone.

More at: https://www.tradelab.org

What are Legal Practica

Legal practica are composed of small groups of highly qualified and carefully selected students. Faculty and other professionals with longstanding experience in the field act as Academic Supervisors and Mentors for the Practica and closely supervise the work. Practica are win-win for all involved: beneficiaries get expert work done for free and build capacity; students learn by doing, obtain academic credits and expand their network; faculty and expert mentors share their knowledge on cutting-edge issues and are able to attract or hire top students with proven skills.

Practicum projects are selected on the basis of need, available resources and practical relevance. Two to four students are assigned to each project. Students are teamed up with expert mentors from law firms or other organizations and carefully prepped and supervised by Academic Supervisors and Teaching Assistants. Students benefit from skills and expert sessions, do detailed legal research and work on several drafts shared with supervisors, mentors and the beneficiary for comments and feedback. The Practicum culminates in a polished legal memorandum, brief, draft law or treaty text or other output tailored to the project's needs. Practica deliver in three to four months. Work and output can be public or fully confidential, for example, when preparing legislative or treaty proposals or briefs in actual disputes.

Institute of International Economic Law (IIEL)

The Institute of International Economic Law (IIEL) is the focal point for the study of international economic law at Georgetown University and one of the leading centers for international economic law and policy in the world. Founded in 1999 by the late University Professor John H. Jackson, and now directed by Professor Chris Brummer, the IIEL's objective is to facilitate thoughtful and scholarly research on a broad range of subjects that concern the law of international economic activity. Originally focused on trade, the Institute now boasts leading capabilities and international renown in a range of areas including investment and arbitration, financial regulation, tax, business and monetary law. The Institute actively approaches these fields as interrelated and at times overlapping policy spheres that impact how law is devised, practiced and enforced.

With the largest array of courses in international economic law in the country, IIEL offers students and faculty the opportunity to routinely interact with top scholars, policymakers, law firms, and think tanks. As part of a top research university, IIEL strives to make available unparalleled opportunities for learning and study based on its location in the heart of Washington DC, and longstanding connections with international institutions and organizations like the IMF, European Union, World Bank, WTO, IFC, and US regulatory agencies and foreign embassies.

More at: http://iielaw.org/

Table of Content

Executive Summary

South Sudan joined the East African Community (EAC) in March 2016. Breaking free from forty years of political instability, South Sudan is now part of the Community along with five of its neighbour countries. To integrate into the EAC will bring about important changes for the country politically, socially, economically. South Sudan is now ready to weigh in the global value chain and the integration into the EAC is the first critical step.

The EAC is one of the most advanced economic community in Africa in term of implementation and economic development. EAC Partner States view South Sudan as a valuable partner for the overall development of the region. South Sudan's accession will open new markets for the Partner States and create economic opportunities. South Sudan enters the EAC with a different development status and vision from previous Partners States. To exploit benefits from the established regime, it is necessary for South Sudan to achieve a progressive and pondered integration.

This memorandum aims to analyse the overall impact of implementing the obligations, to identify potential challenges and to provide policy recommendations based on legal and comparative analysis of successful experiences. Having committed to implementing the EAC's obligations within three years, South Sudan is advised to plan its integration in a dynamic and profitable manner:

First, joining the EAC Customs Union will change South Sudan's economic landscape and customs autonomy. The Customs Union will bring States together to create one single market and, therefore, the Common External Tariff (CET) is applicable to all the Partner States. South Sudan's current tariff line will be changed (increase or decrease of tariff depending on the type of product) to align with other Partner States on imports coming from a third country. While the internal zero tariff for trade within the EAC Customs Union will open the markets for South Sudan and will strengthen the intra-EAC trade.

Especially the Sensitive Items (SI) list as an exception to the CET three-tariff band will significantly influence South Sudan. For items on the list, tariffs will raise up of specific agricultural and manufactured goods imported from countries outside the EAC. While the aim of the SI is to encourage growth of domestic industries within the EAC (including South Sudan), it is currently not suitable for the region. The idea of the SI is to impose high tariffs on targeted goods to avoid competition and to permit local industries to expand. However, the SI list did not achieve its goals because the region does not produce enough of these goods to fulfil the region’s demand. Therefore, the EAC Partner States still have to import products from outside but at a high price. The price hike increases poverty in the region and impact the domestic price that has to adapt to the competition. Overall, this slows down the region’s overall development to the benefit of the minority (the three founding EAC Partners that are net exporter) while increasing poverty for all Partner States. Thus, South Sudan should push for a tariff diminution as a net importer of these products. At the same time, South Sudan has a strong potential in areas such as agriculture, fishing and mining thanks to its vast natural resources and strategic geographic location. The logic is to introduce in the SI list goods South Sudan could produce sufficiently to become a net exporter in the region (and to boost some of its core sectors), while reducing the current tariffs on basic products South Sudan is forced to import from the outside (in order to avoid price hikes for South Sudan consumers). Because the EAC is currently renegotiating the CET, we therefore propose:

- South Sudan should push for a tariff diminution as a net importer of basic products for domestic needs.
- South Sudan should propose putting on the SI list of products with a strong export potential, in areas such as agriculture, fishing and mining.

Second, the key to implementing the tariff structure relies on the establishment of an effective Rule of Origin system. EAC Rule of Origin determines whether a good qualifies for duty-free treatment as an “EAC good”, or origins outside the EAC then is subject to CET. The Rule of Origin mechanism is the basis in all free trade areas and is essential to the functioning of an economic region. However, implementation is not that simple and Partner States have been facing challenges. The key border document, *i.e.* the Certificate of Origin, is sometimes not recognized among the Partner

States, or is issued by unqualified customs agencies, and falsified. South Sudan shall avoid the same mistakes and establish an efficient and transparent Rule of Origin system. An efficient Rule of Origin system will benefit traders by reducing cost and time across borders; ensure the collection of revenue on third country imports and establish South Sudan as a reliable Partner State:

- South Sudan shall establish EAC qualified customs authority in charge of issuance and recognition of the Certificate of Origin with equal treatment to all countries' imports.
- South Sudan shall enact and implement law to investigate and implement falsifying activities.

Third, customs administration is a critical to address the pressing concern of Non-Tariff Barriers (NTBs) and high trade costs in South Sudan. It includes customs cooperation, the simplification and harmonisation of trade documents and procedures, and is central to the Customs Union Protocol and the Customs Management Act. The cause and effect of administrative barriers are complex and interwoven. It is suggested that South Sudan should learn from past examples of successful domestic reforms (especially by Rwanda), trade facilitation tools and WTO initiatives. South Sudan can benefit from the WTO Trade Facilitation Agreement adopted in February 2013 which goal is precisely to give guidelines to ease the release and clearance of goods. There are also valuable EAC joint efforts and available help by private organization, such as TradeMark East Africa, that are committed to helping South Sudan in removing NTBs at its border. With the help of the EAC Partners and outside knowledge, South Sudan could improve its customs clearance and trading situation. The role of the government is now to promote investment in the country to move away from a highly concentrated economy to a diversified and global economy. Trade facilitation can only fully occur and flourish by bringing the private sector in the economy and changing the mentalities. It is essential to promote and incorporate small and medium-sized companies as a driving force in the economy.

- It is recommended for South Sudan to learn and acknowledge the successes of other Partner States' reforms, EAC joint operation and WTO initiative.

Fourth, our final point is the free movement of workers for the EAC and South Sudan. Thanks to the EAC Common Market, citizens of EAC Partner States benefit from free circulation among the Partner States. Workers are the basis for a healthy and solid economy and are essential for South Sudan. The country's goal is to allow free circulation for workers it needs and that are necessary for South Sudan's peaceful and successful development. This is the case, for instance, of teachers and health-care providers. South Sudan could create incentives to attract these kinds of workers, the aim being to attract highly qualified workers from Tanzania or Kenya. The free movement will also lead South Sudanese workers to leave the country for other Partner States. South Sudan should create incentives to maintain its workers and businesses, while attracting the workers it needs.

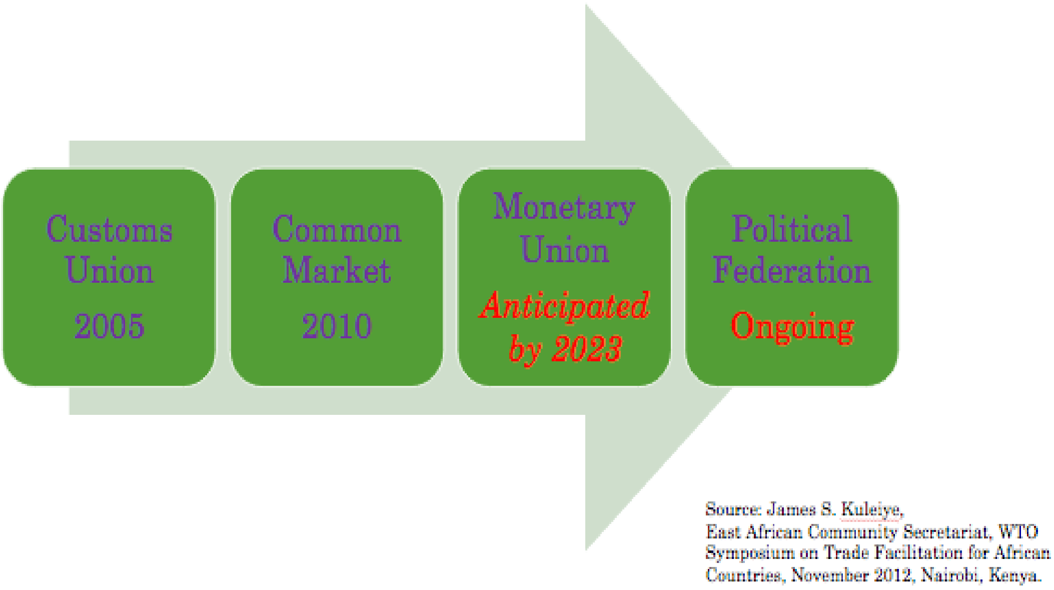
- South Sudan shall create incentives to attract these kind of workers, the aim being to attract highly qualified workers.
- South Sudan shall give limited access on selected areas of business to protect domestic employment.

1. Introduction

The East African Community [EAC] was originally founded in 1967 but was dissolved in 1977 due to the lack of a strong political will and weak participation from the private sector and civil society. After ten years of renegotiations, the original 3 Partner States (Tanzania, Kenya, Uganda) decided to re-launch the EAC with the signature of the Treaty for the Establishment of the EAC in 1999. According to the Treaty establishing the EAC, the goal of the community is to strengthen the “economic, social, cultural, political, technological and other ties” to attain sustainable growth and development of the region. The EAC seeks for a full-integration and a strong and wide partnership between the Partner States.

In order to achieve these goals, the EAC expanded to neighbour countries, including Rwanda and Burundi as Partner States in 2007. Therefore, South Sudan is not the first country to join the community and will be benefiting from Rwanda’s and Burundi’s past experiences. Despite the EAC being smaller compared to other African Regional Economic Communities (REC), it is today one of the most advanced regional communities in terms of legal instruments. The EAC implemented the Customs Union in 2005 and the Common Market in 2010; and Partner States expect to implement the Monetary Union by 2023 while still striving for a political federation.

Figure 1.1: The EAC Four Pillar Integration Timeline



The relationship between the Partner States revolves around two main legal instruments: (i) the EAC Protocol establishing the Customs Union and (ii) the Protocol establishing the Common Market.

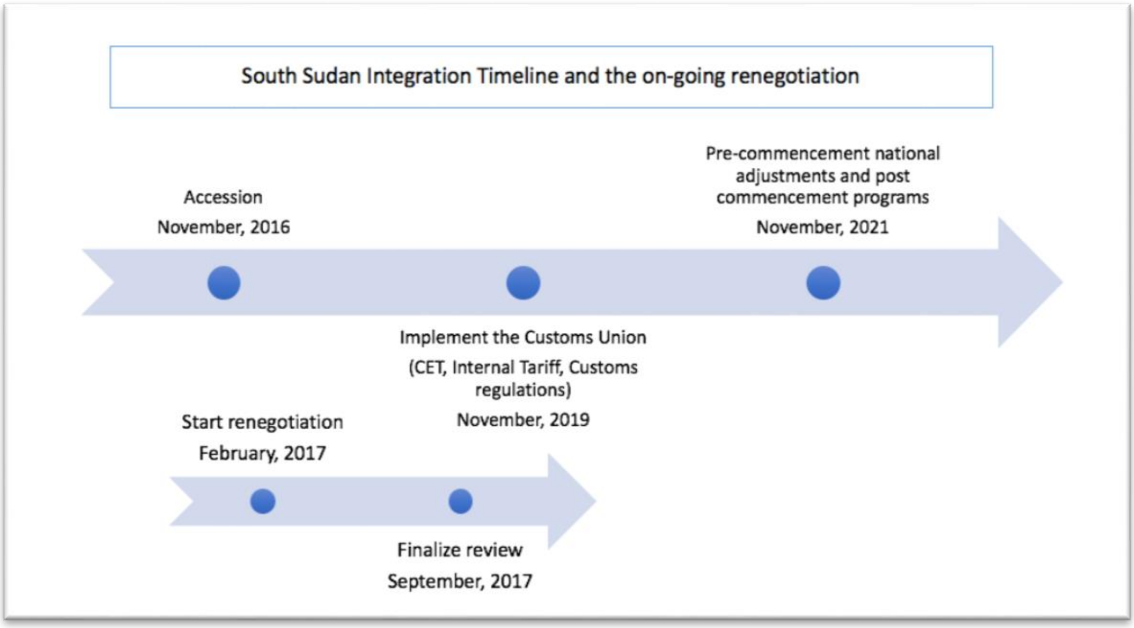
According to the Protocol on the Customs Union ratified in 2005, the EAC Partner States now belong to a Customs Union. A Customs Union is defined as a form of free trade agreement under which member countries preferentially grant tariff-free market access to each other's imports and agree to apply a common set of external tariffs to imports from the rest of the world. The Customs Union distinguishes itself from a basic Free Trade Agreement (such as NAFTA), because Partner States have a common policy regarding tariffs for product coming from non-Partner States. Hence, the Customs Union requires a deeper coordination between the Partners and a loss of autonomy regarding the collection of tariffs.

The admission of a country into a REC is mainly driven by political and economic interests, and the EAC Partner States saw in South Sudan an interesting Partner for their own development. South Sudan's accession will open new markets for the Partner States and enhance economic opportunities in the region. For instance, South Sudan is one of the most lucrative markets for Ugandan goods and services; it also offers an attractive market for Kenyan manufactured goods and labor.[1] South Sudan's geographic position also makes it a potential corridor for trade among EAC Partner States and neighbour countries such as Congo and Sudan. Finally, as a newly formed country, South Sudan also offers attractive investment opportunities for the entire region.

South Sudan's accession to the EAC was accompanied by a timeline for its full integration. Like Rwanda and Burundi before it, South Sudan will not be implementing everything at once and will have the time to progressively implement the EAC's obligations. Luckily, South Sudan's integration timeline also matches the re-negotiations of the Customs Union requirements. This leaves South Sudan with a chance to shape the new regulations. This is a real opportunity as South Sudan did not partake in the past negotiations as it was not a Partner State. Therefore, South Sudan will not be applying regulations that pre-existed before its integration. As the most pressing issue is the on-going renegotiation of the Customs Union and its subsequent implementation by 2019, the first part of this memo will address suggestions concerning tariff negotiations.

[1] Laura Nyantung Beny, Matthew Snyder, Analysis of the Republic of South Sudan's accession to the East African Community: Benefits, Detriments and Recommendations, Public Law and Legal Theory Research Paper Series, Paper No. 337, University of Michigan Law School (December 2012)

Figure 1.2: South Sudan Integration Timeline

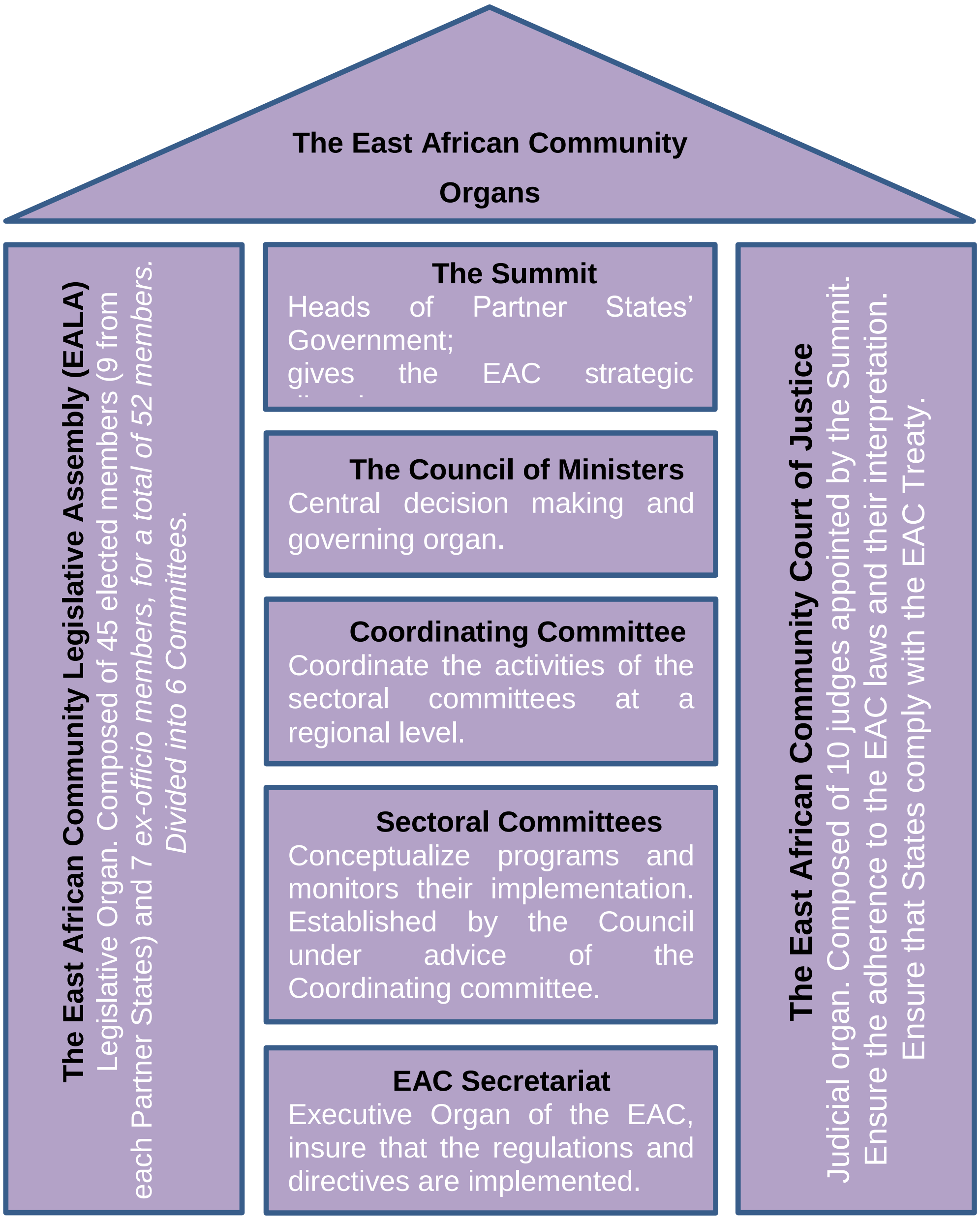


Source: Authors– IIEL/TradeLab

However, joining a REC is not limited to economic performance and partnerships. By joining the EAC, South Sudan also will have to comply with the institutional structure (see table below) and legal framework of the region. According to Article 8 of the EAC Treaty, legislations, directives and regulations of the Community should be given force of law in all Partner States. The Acts and Regulations are legally binding on Partner States on the day of their publication in the Gazette, unless otherwise indicated. Therefore, EAC acts are directly applicable and directly binding on all Partner States. Article 8 also provides for the supremacy of EAC regulations over national laws. Hence, in the case of conflict, the EAC laws prevail over national laws. More so, individuals and companies can raise claims based on EAC laws in front of national Courts and those Courts can apply EAC provisions to the dispute. The idea is that, in the matters delegated by the Partner States to the EAC, the EAC institutions have full authority to enact laws that are directly binding on all Partner States. Those laws override any pre-existing domestic law.

Further, the EAC Summit and/or Council can direct Partner States to implement their obligations under the EAC Treaty. Signing and ratifying the Treaty is not enough to achieve regional integration. The signature must be followed by a concrete implementation of the EAC obligations. It is the domestication process where Partner States are invited to take the necessary domestic legislations to implement the EAC provisions and harmonize their national laws.

Figure 1.3: The EAC Organs

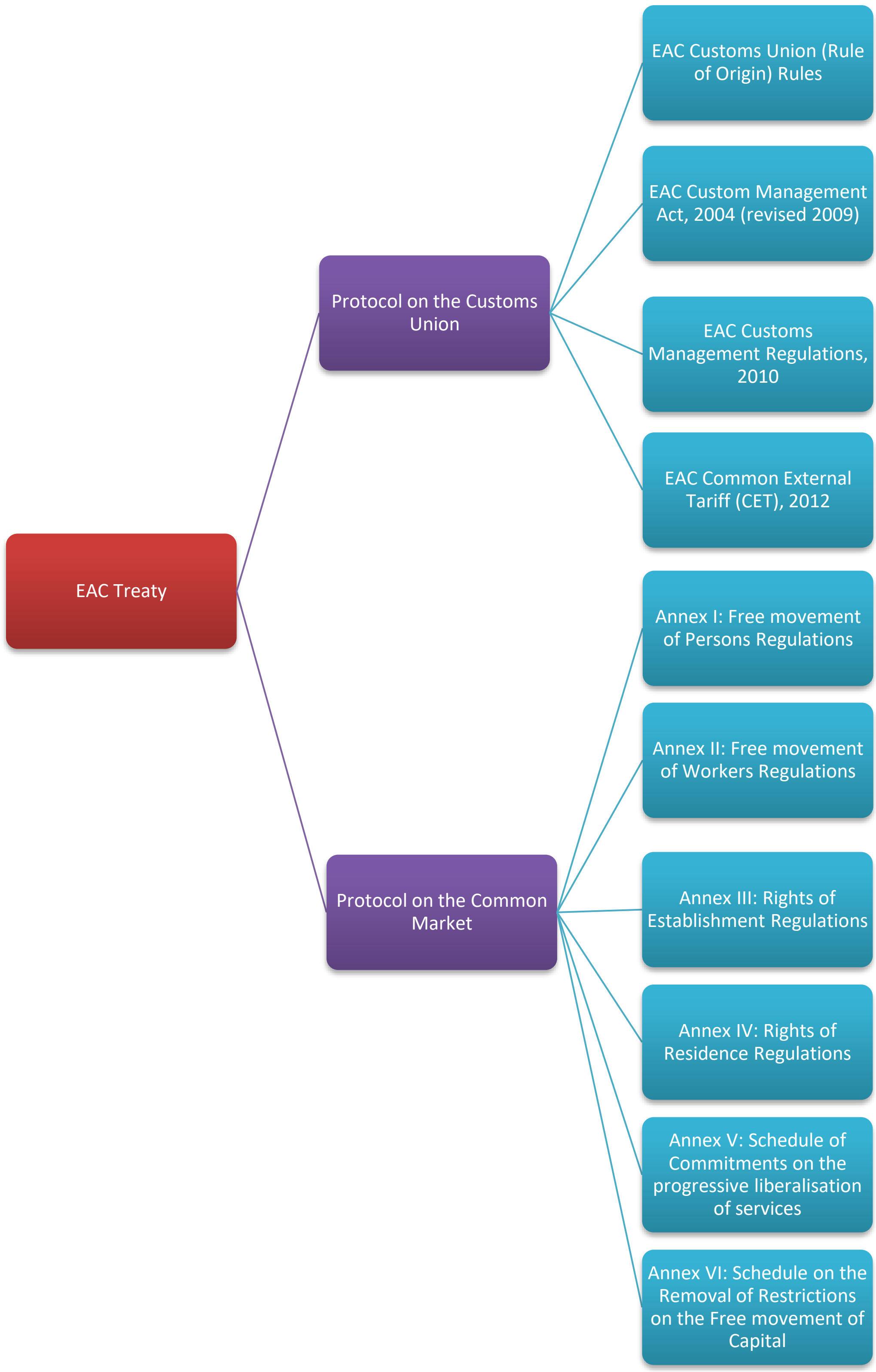


Source: Authors' – IIEL/TradeLab (based on http://eacgermany.org/east-african-community-eac)

Article 2.4 of the Protocol highlights the three main elements under the Customs Union as being “(a) customs duties and other charges of equivalent effect imposed on imports shall be eliminated save as is provided by the Protocol; (b) non-tariff barriers to trade among the Partner States shall be removed; and (c) a Common External Tariff in respect of all goods imported by Partner States from foreign countries shall be established and maintained.”

Numerous obligations will derive from South Sudan’s accession to the Customs Union Protocol. Similarly, South Sudan can expect to receive numerous benefits in the long run. Based on past experiences from Rwanda and Burundi, this memorandum will address the most pressing issues concerning South Sudan’s accession, namely (1) the establishment and effect of the Common External Tariff and the Sensitive Items list on South Sudan; (2) the creation of a Rule of Origin system and its implication for customs administration; (3) the EAC approach in tackling administrative challenges at the border and, finally, (4) the role of the free movement of labor for South Sudan’s full development in the EAC.

Figure 1.4: EAC Treaty and Protocols



2. The EAC Customs Union: Common External Tariff and Importance of the Sensitive Items list

By joining the EAC Customs Union, South Sudan will have to comply with the tariffs set for all Partner States. There are two main aspects to consider, one external, another internal to the EAC: first, the Common External Tariff applicable to all goods imported into the EAC from non-Partner States, with the exception of the Sensitive Items list which set higher tariffs for certain products; second the internal tariff which set a duty-free quota-free for trade within the EAC. This first section (2.1) will explain and analyse the application of the Common External Tariff to South Sudan; section 2.2 the impact of the Sensitive Items lists on South Sudan. Finally, section 2.3 will address the industries South Sudan could develop and how to protect them.

2.1 The Common External Tariff

2.1.1 Definition of the CET

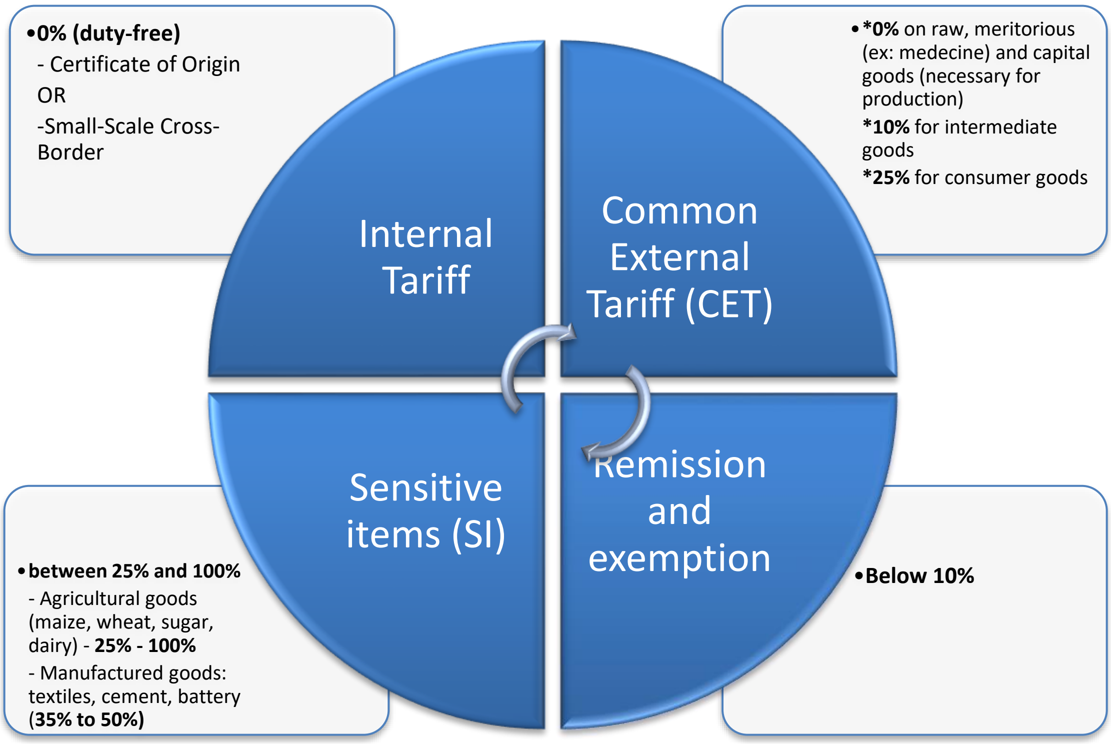
Article 12 of the Protocol establishes the Common External Tariff for all goods imported into the EAC. All goods imported into the EAC from a non-Partner country (say, the EU or South Africa) will be subject to the Common External Tariff. This common tariff is applied by all Partner States. The EAC community forms a single union in terms of tariff collection. Therefore, a good coming into the EAC will pay the tariff once regardless the Partner State of destination. Once in the EAC, the good circulates freely among the Partner States. For example, a good coming from Spain will pay the same tariff to enter into Kenya that it would do to enter into South Sudan. The Spanish product will pay the tariff applicable once and then circulate among the Partner States freely (say, between South Sudan and Kenya). To implement the CET, States agreed to use the Harmonized Customs Commodity Description and Coding System referred in Article 8 of the Protocol.

Unless there are exceptions, the CET tariff list is applicable to all Partner States. All the Partner States are bound by these tariffs for all goods listed. The degree of production of a certain product by a Partner State does not matter. Therefore, the tariff will be the same even if one of the Partner States produces more of the product compared to another Partner State. This is why there are intense negotiations when deciding which tariff to impose to goods coming into the EAC. During those negotiations, each Partner State can raise its interests and concerns regarding a particular tariff on a product. There is no difference between the Partners, except specific provisions. All the Partners had to modify their internal tariffs to adapt to the CET and South Sudan will also have to do the same.

The CET is separated into three bands: 0% for meritorious goods (that have humanitarian benefits such as medicines), raw materials and capital goods (products essential to production); 10% for intermediate goods (requires additional processing) and 25% for consumer goods (finished goods). The rationale behind the three-band is to impose no tariff on goods having humanitarian benefits and products essential to production while imposing higher tariffs on consumer goods to encourage their production in the EAC. The three-band structure's purpose is to protect domestic production. If products are expensive to import, then the Partner States will be more inclined to develop their own industry or import from the other Partner States at a lower price (because there is no tariff between the Partner States). The goal is to encourage the Partner States to reduce their imports from foreign countries and to buy instead from within the EAC.[2]

[2] Id.

Figure 2.1: The EAC Customs Union and tariff Structure



Source: Authors – IIEL/TradeLab

2.1.2 Implementation of the CET

2.2.3 Economic analysis of the CET

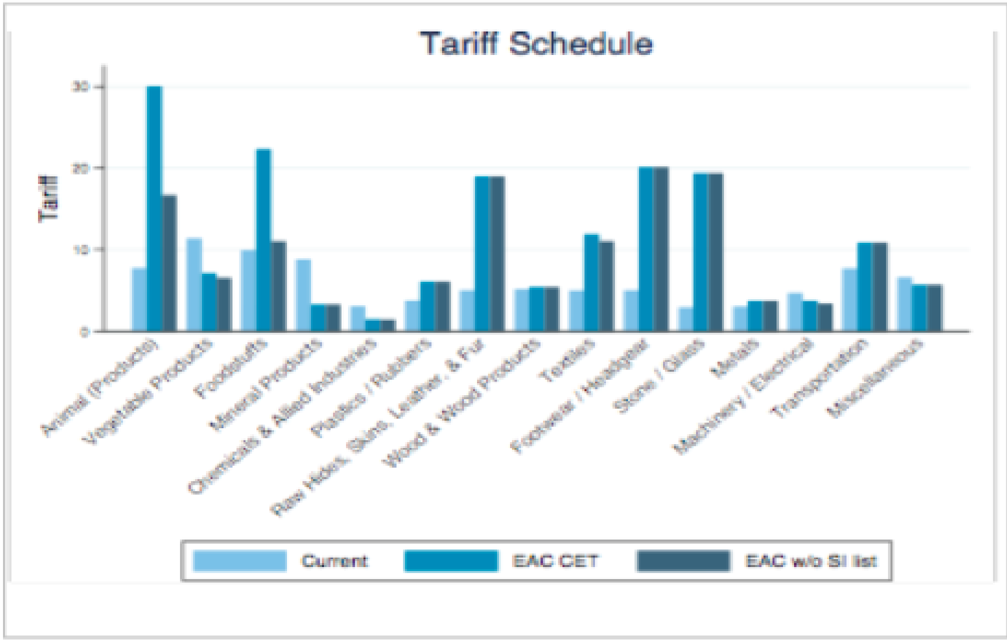
After implementing the CET three-band structure, South Sudan is going to witness some tariff changes on several of its major imports.

The CET is similar to the current tariffs of South Sudan. However, there will be large increases in animal products (30% against 8% currently), foodstuffs (22% against 10% currently), hides and skins (20% against 5% currently), footwear (20% against 5% currently), stone and glass (20% against 3% currently). Conversely, there will be a large decrease for vegetable products (8% against 11% currently), mineral products (3% against 8% currently).[3] The most significant increase in the tariff will be for raw sugar (from 5% to 100%) and rice (from 10% to 75%) as both these products are in

[3] Nicholas Aris Charalambides, A legal and economic assessment of South Sudan's possible accession to the East African Community, Working Paper No. *T17WP01/2017, February 2017*

the Sensitive Items list. Both the Sensitive Items list and the CET are harmonized and applicable equally to all Partner States.

Figure 2.2: Comparison between current tariff, EAC CET Tariff and EAC without the SI List[4]



Source: Word Bank 2014

All Partner States had to adapt their tariffs in response to the CET. This includes, for example, Uganda who was forced to increase most of its external tariffs; and Kenya, Tanzania, Rwanda who were forced to reduce many protective external tariffs in response to the CET. South Sudan will also have to adapt many of its current tariffs. On the one hand, the changes in tariffs could result in a loss of tariff revenue for South Sudan, as it will also lose the tariff previously applicable between the Partner States – for example, South Sudan will lose the 25% tariff benefit it used to impose on goods coming from the EAC. By joining the CET, the government revenue could decrease by USD 8. 4 million, which corresponds to 24% of customs revenue in 2012 and 4% of total non-oil revenue.[5]

---

[4] Charalambides, id.
[5] Charambalides, id.

Box 2.3: Comparative analysis – Impact of the CET on Rwanda Tariff Revenue
After implementing the CET, Rwanda witnessed a drop in tariff revenue of USD 33 million. Of the 33 million, USD 17 million of the reduction in tariff revenue was for goods coming from the EAC. The remaining 16 million was from goods outside the EAC. A significant portion of this revenue loss was in the petroleum sector. However, the government partially offset this loss by replacing the tariff on petroleum by an excise tax. [6]

On the other hand, the increase in many tariffs that South Sudan will need to implement as against third country imports is likely to increase prices for consumers in South Sudan including prices for basic consumer goods and food. More than the decrease in revenue, the application of the CET is going to impact South Sudan's welfare as it has been the case for Rwanda and Burundi. Because South Sudan is still at an early stage of industrial development, it has to import - partly from other EAC countries, but mostly from third countries - all the products of the SI list, as well as the products with higher tariffs (consumer goods). South Sudan does not have the capacity to buy raw materials and process them. It has to buy directly manufactured products for direct consumption. Moreover, the presence of a 100% tariff on sugar will make it difficult to develop manufacturers using this commodity. Therefore, because of the SI list, the CET will impact South Sudan's welfare (see below, section on sensitive items list).

The Protocol provides for a review by the Council to remedy the adverse effect of the application of the CET on a Partner State, such as the decrease in revenue mentioned above.

2.1.3 Correlation of the CET and the Internal Tariff

In counterpart, joining the EAC Customs Union will also open the EAC Partner States' market to South Sudan. The internal tariff will provide tariff-free access to the Ugandan and Kenyan markets for agricultural products. Currently, the tariff is at 25% and higher. South Sudan will also be able to

[6] Garth Frazer, The EAC Common External Tariff (CET) and Rwanda, International Growth Center, (February 18, 2012)

export to Partner States without tariff. It will allow South Sudan's products to be competitive in all Partner States' markets. A recent study by Tralac estimated that exports to Kenya could increase to USD 50 million, and exports to Uganda could increase to USD 45 million in a medium-term horizon.[7] In the long run, "the EAC will make it easier for agricultural and value-added exports to be accepted in EAC markets, and at much lower cost and with greater certainty". [8]

Thanks to the removal of internal tariffs South Sudan will be able to export easily in the region. However, by a symmetric effect, South Sudan will also open its own market to goods coming from the EAC region, replacing the previous exports coming from outside the EAC. This can also increase the competition for South Sudan producers.

2.2 The Sensitive Items (SI) list

2.2.1 Definition of the Sensitive Items list

However, the CET is not absolute and some items, known as "sensitive items" are not covered by the CET three-band structure. These items have rates set at levels above 25% in order to protect local industries. The tariff applicable to the imports of these items from a non-EAC Partner State will be higher. The Sensitive Items list is divided between agricultural commodities and manufactured commodities. Whereas Sensitive Items in the agricultural sector can be traded duty-free within the EAC, this is not always the case for manufactured goods on the SI list where some tariffs are applicable to foreign imports but also to intra-EAC trade (only real exception to the internal tariff).

The Sensitive Items list is binding on all Partner States regardless of their level of production. Once a product is in the Sensitive Items list, the list applies to every import into the EAC, even if, for example, only Tanzania but not South Sudan has local producers of the product. Therefore, this list impacts more certain States than others, depending on the level of production of a particular product included in the list. For example, sugar is rated at 100%

---

[7] Id.
[8] Charalambides, id.

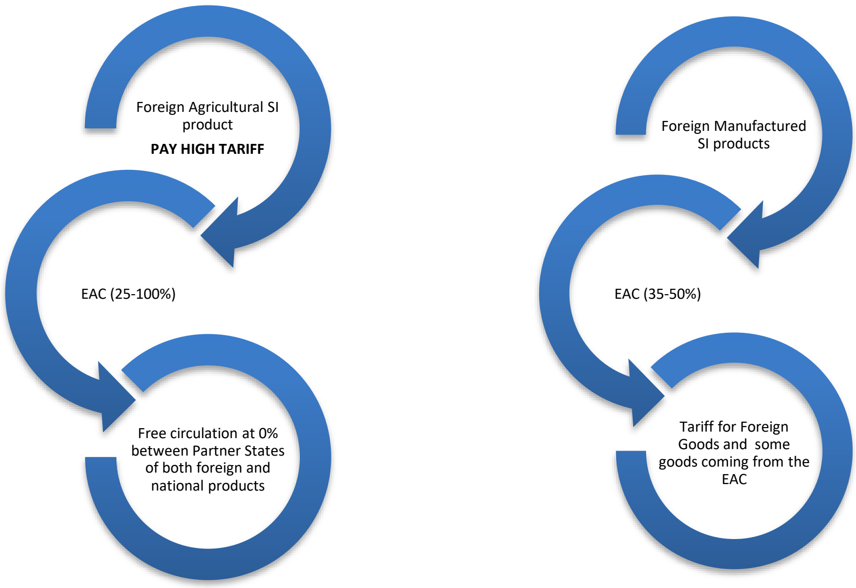
under the Sensitive Items List (the current tariff line for South Sudan is 5%). The goal of the list is to prevent Partner States from importing from outside the EAC and encourage them to develop their industries or import from other Partner States (Sensitive agricultural Items traded within the EAC remain free of duties). Even if South Sudan does not produce sugar, it is still bound by the Sensitive List and therefore all sugar coming into South Sudan from a non-Partner State will be charged 100% at the border. Therefore, the price of sugar coming from outside the EAC region will be really high. The aim is to force South Sudan to either develop its own sugar industry, or to import sugar (duty-free) from another Partner State who produces it (mostly Kenya but Tanzania and Uganda are developing at fast-pace their industries). A Partner State that produces sugar will benefit from the SI list because it will be a net exporter, but South Sudan will not gain a specific benefit from it (see table Annex 1, 2 and 3).

Table 2.4: The SI preferential treatment

	Extra-EAC (goods coming from outside countries)	Intra-EAC (good coming from the EAC)
Agricultural sensitive items	25% to 100%	0% (preferential treatment)
Manufactured sensitive items	Between 35 and 50%	Preferential treatment, depends on the product and the Partner State (but more than 0%)

Source: Authors – IIEL/TradeLab

Figure 2.5: Functioning of the Sensitive Items list



Source: Authors, IIEL/TradeLab

The increased tariff has an impact on the price of good imported from outside the EAC, which will be much higher than local products. The Sensitive Items list serves to protect EAC industries and local farmers by avoiding the competition from external products at lower prices.

However, the agricultural products are more heavily impacted than the manufactured commodities with tariffs approaching 60% and higher. Among agricultural products, the sensitive items list covers basic farming products such as rice, wheat, sugar, maize and milk. Those products are basic for consumers as well. Unless South Sudan can produce those products locally or import them duty free from other EAC countries, the price of these products will go up which can have a real negative impact on poverty. Prices get higher, and poor households cannot afford anymore to buy some basic consumption products such as rice or sugar.[9]

At the same time, the products placed on the SI list are also those that bring the most income to poor households relying on farming. The aim is to enrich farmers by allowing them to develop their land without suffering from outside competition.

[9] Garth Frazer, Imports, sensitive items, and Ugandan trade policy, International Growth Centre, Policy Brief 43402, February 2017

Therefore, in order to benefit from the Sensitive Items list, it is necessary to strike a balance between the need of growth and development and necessity to protect the population from extreme poverty.

Box 2.6: Impact of the sensitive items list on poverty – Case study of Rwanda[10]
How the SI list impacts poor households? The SI list is applicable to some basic consumption products such as agricultural products, meat products, bakery products, dairy products. Those products are typical products bought by low-income households. After implementation of the CET by Rwanda basic consumption products tariff rates increased dramatically: - 380% increase for agricultural products; - 147% increase for grain mill products; - 188% increase for sugar; - 106% increase for dairy products and; - 322% increase for fruit and vegetables However, the impact in % on overall income was not as dramatic for high-income households. For example, agricultural products had a -1.2% impact on overall income for poor households but only 0.2% for high-income. The price will be the same for poor or high-income households but the buying power is not the same. Rich-household will not be impacted by the change in price, whereas poor household will see the difference for basic products. In contrary, the high-income household will see a difference in products they are likely to purchase. Therefore, for poor-household the impact will be on agricultural products, grain, sugar and dairy whereas for the rich-household it would be in motor vehicles, petroleum products, meat, beverage and tobacco products. Therefore, tariff changes under the CET advantage wealthy households at the expense of poor consumers (the products covered by the SI list are not in the top sector of high-income households). More so, **the impact of the changes in tariff also has a consequence on the pricing of products produced domestically**. The price of domestic products is affected by the price of the imported product with which it competes. This means, for example, that domestic firms will now be able to charge a price for sugar which is close to the tariff-inflated price charged by those who import sugar. Therefore, sugar keeps being really expensive even if it comes from a domestic company. Even if there is no import, the domestic sugar producers will charge a price strongly influenced by their potential competitor. This helps domestic sugar

[10] Id.

producers, but not domestic sugar consumers.

2.2.2 Implementation of the Sensitive Items list

2.2.2.1 Economic analysis of the Sensitive Items

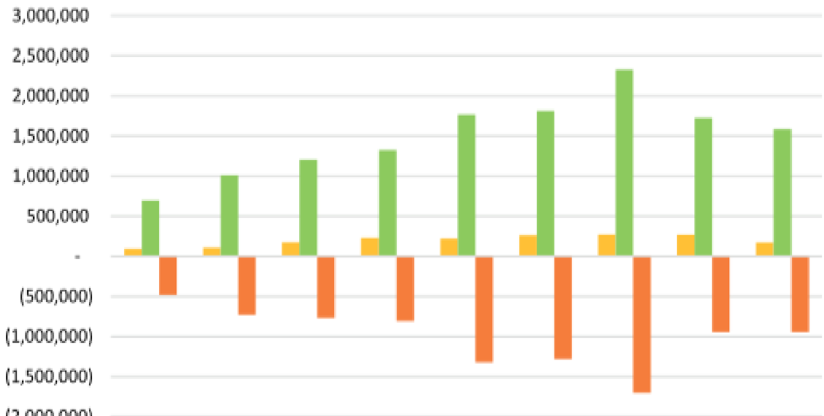
The Sensitive Items list is of great importance to South Sudan. The list is composed of goods taxed above 25% which is supposed to be the maximum under the CET. The goal of the Sensitive Items list is to protect domestic industries and boost the commerce intra-EAC. Imposing a higher tariff on a certain type of goods coming from the outside will increase the price of these imported goods and therefore the consumer will be more inclined to consume locally as mentioned above.

However, as there is no import substitution for all products and intra-EAC imports may not be enough to meet demand, South Sudan still will need to import products from outside the EAC at a higher price.[11] Since 2005, the extra-EAC imports of SI into South Sudan have always been superior to the intra-EAC imports of SI into South Sudan. The statistics suggest that the demand for SI products exceeds the production capacity of the EAC region. This has a welfare impact since everything that is imported suffers high tariffs and therefore increases in price. The increase in price affects the products' local price, which has to adapt to the competition. Therefore, the EAC has yet to achieve the goal of building regional capacity and competitiveness to significantly reduce imports of the same products from outside the region.[12] Thus, the CET and Sensitive Items list do not really benefit South Sudan as a net food importer. South Sudan will have to continue to import from outside

[11] Laura Nyantung Beny, Matthew Snyder, Id.
[12] Id.

the EAC but at a higher price due to the increase in tariff rate. While sensitive items products comprise less than 1% of tariff lines, these products would account for 20% of South Sudan's imports compared to less than 6% for the founding EAC Partners. The impact of the SI list is therefore stronger on the new Partner States then it is for the founding Partners which have a more developed economy.[13] (see Annex 1,2 and 3).

Figure 2.7: Export and import trade performance of EAC sensitive product[14]



	2005	2006	2007	2008	2009	2010	2011	2013	2014
Intra-EAC export	93,114	109,440	174,408	230,445	220,945	262,753	270,063	269,110	171,838
Import from outiside EAC	697,145	1,013,00	1,205,42	1,326,42	1,766,82	1,815,57	2,328,51	1,727,32	1,588,43
Trade Balance	(482,770	(729,936	(767,451	(810,107	(1,325,4	(1,280,0	(1,701,5	(947,097	(946,467

Data source: COMTRADE

This situation is striking when looking at the statistics per product. The statistics show clearly that in areas protected by the Sensitive Items list, the region still imports more then it produces. Therefore, if the goal was to protect these areas to boost domestic production, the goal is not achieved. Being aware of these data is of help for South Sudan in the re-negotiation of the CET and the Sensitive Items list. For example, cement is in the sensitive items list for manufactured goods at 35%. It is in the Sensitive Items list because it is an area with potential for growth. Therefore, the rationale is respected. Meanwhile, it is also not logical to put cement on the SI list since the EAC is in the process of infrastructure development and needs to import

[13] Id.
[14] Id.

cement (from outside the EAC) at a higher price thus slowing down its development.[15] There is here a striking evidence on the necessity to reach a balance between development goals and eradicate poverty. South Sudan – and the EAC – should determine what are the key priorities and then assess the tariffs accordingly. Putting every product that need to be protected at high tariff in the Sensitive Items list is not the solution and will backlash by slowing down the development of the entire region.

In areas such as wheat and sugar that are essential for production and consumption and where EAC countries are far from being auto-sufficient the tariff should be lowered. It is clear that the SI list is not reaching the goal of developing those industries and their impact on consumers and producers is too high.

[15] Id.

Figure 2.8: Balance between intra-EAC imports and exports analysis of sensitive items products [16]

Consequently, the renegotiation of the list is important for South Sudan because it is the opportunity to push for a tariff reduction on basic products such as sugar, rice, wheat, maize and dairy. However, countries like Uganda, Kenya and Tanzania who are net producers of these products will most certainly object to the reduction or removal of these items from the list.

2.2.2.2 Rationale behind the Sensitive Items list

In sum, South Sudan should push for the removal of some items from the SI list, or at least a tariff decrease. South Sudan should also be aware of

[16] Id.

its strengths and weaknesses in order to negotiate at arm-length the new CET and Sensitive Items list (negotiations on-going).

The questions are what to put in the Sensitive Items list and why? What is the rationale behind the classification of one good in the list? To answer this question, we will first refer to what has been done by the other Partner States in the two areas covered by the list: (1) agriculture and (2) manufactured goods. The goal is to explain the rationale used by the other Partner States and to apply them to the South Sudan economy. The aim is for South Sudan to include in this list the items where it has a strong production advantage in order to protect its industries from foreign competition and become a net exporter among the EAC Partner States. In contrast, it is highly recommended for South Sudan to push for the exclusion of the goods it does not produce and has to import from the outside. The high tariff makes life more expensive and does not help the industries' development.

The EAC does not give proper guidelines on how to classify a good as sensitive. However, the issue received some attention from the World Trade Organization [WTO] who issued a "draft" modalities in 2008 containing formulas for cutting tariffs. [17] The 2008 Revised Drafted Modalities, December 9th 2008 provided the basis for WTO members to designate a good as sensitive and authorized developing countries to designate "up to one-third of tariff lines as sensitive products".[18]

The Draft was born after intense negotiations started in 2000 and is a blueprint aiming at reforming agricultural trade, especially regarding market access, domestic support and export subsidies. The draft concerns all the WTO members and is part of the Doha Rounds.

---

[17] https://www.wto.org/english/tratop_e/agric_e/chair_texts08_e.htm

[18] Charambalides, id. - "Each developed country Member shall have the right to designate up to [4] [6] per cent of [dutiable] tariff lines as "Sensitive Products". Where such Members have more than 30 per cent of their tariff lines in the top band, they may increase the number of Sensitive Products to [6] [8] per cent, subject also to the conditions outlined in paragraph below.

Where application of this methodology would impose a disproportionate constraint in absolute number of tariff lines because tariff concessions are scheduled at the 6-digit level, the Member concerned may also increase its entitlement to [6] [8] per cent.

Developing country Members shall have the right to designate up to one-third more of tariff lines as "Sensitive Products".

For agricultural goods [19]

The table in Annex 1 explains the rationale per country for five major sensitive items in the agricultural sector: (1) Rice; (2) Sugar; (3) Wheat; (4) Dairy; (5) Maize for each of the five Partner States.[20] The goal is to determine why some products are classified as sensitive.

From the analysis we can conclude that the products put in the sensitive items list are those that are produced locally (ex: Maize and Rice in Kenya, Maize in Tanzania and Uganda); products that bring an important source of income to the households or to the government in case of net exports (ex: Maize in Uganda, Rice in Tanzania); that are supported by the government (ex: dairy politics in Rwanda; Rice in Tanzania); and that could boost regional development by bringing jobs and new processing industries (ex: dairy industry in general).

Those examples can be really valuable for South Sudan, as the renegotiation of the CET and sensitive items list is presently on-going. Since countries have to explain why a particular product has to be among the Sensitive Items, the rationale used by other Partners could help South Sudan in determining its own needs. Therefore, the goal is to determine what South Sudan produces locally, is an important source of income, is supported by the government or could boost regional development. It can be a prospective analysis as the SI list is not revised annually.

For manufactured goods [21]

Article 79 of the EAC treaty promotes regional cooperation in industrial development and sets the priority areas. Partner States should focus on promoting sectors with high potential for growth where the countries have a comparative advantage. This includes, for example, industries such as textiles, processing of horticultural products, hides, skins and leather, tea,

[19] Miriam W. O. Omolo, Implications of sensitive products exclusions on intra-regional trade: A case study of the East African Community, Tralac Trade Law Centre, Working paper no. US16WP07/2016, August 2016
[20] Id.
[21] Id.

coffee and sugar.[22] The industrialization strategy stresses the importance of product quality and the need to deal with the challenges of competition from sub-standard and counterfeit goods, illicit goods and illegal trade.[23] Some manufactured commodities are in the SI list as they need to be protected because:

- Textiles (50% tariff): suffers from outside competition and local textile factory and tailors are unable to compete
- Batteries (50% tariff): cheap imports from China and counterfeits have seen the collapse of battery manufacturing firms
- Cement (35% tariff): the cement industry faces a threat of cheap imports, but it is one of the sectors with a higher opportunity for growth (as explained before, this is questionable as cement is necessary for development)

Despite the fact that there is supposed to be no tariff amongst the Partner States, this is not the case for the Sensitive Items list for some manufactured goods. Indeed, there are applicable tariffs among the Partner States, on a preferential treatment basis. The tariffs are not 0% so it is an exception to the duty-free regime. The rate applicable is personal to each Partner States and does not apply to all Partner States. It depends on the level of production and the massive export impact of goods coming from another Partner.[24]

2.2.3 Prospective areas of growth for South Sudan

According to the African Development Bank (AfDB), it appears that South Sudan does not have a clear comparative advantage over its trading partners for now. However, some areas could potentially become a growth engine for South Sudan, and therefore should be considered for the CET and Sensitive Items list re-negotiation.[25]

---

[22] Id.
[23] Id.
[24] Id.
[25] South Sudan, a Study on Competitiveness and Cross Border Trade with Neighboring Countries, African Development Bank Group, 2013

First, South Sudan has vast natural resources, including fertile lands, forests, fresh water and minerals, a variety of livestock and native flora and fauna. Therefore, the agricultural sector could suit a wide range of agricultural and natural resource based production activities. Overall, agriculture plays already a big part in South Sudan's economy as 85% of the households cultivate land and 79% of the total households' consumption is spent on food.[26] The development of the agricultural sector will allow South Sudan to diversify its economy. It would also reduce poverty and food insecurity and help South Sudan to shift away from an oil dependent economy. As mentioned earlier, it is necessary to strike a balance between protection of industry and population welfare. South Sudan has potential to develop its agricultural industry and should be protective. However, the protection should not be as high as to impact poor household in a really detrimental way. South Sudan could ask to be excused from applying the CET and internal tariff for a while in order to adjust from the new tariffs.

Thanks to a diverse soil and favourable climatic conditions, South Sudan could diversify its production of crops such as maize, millet, rice, nuts, beans, fruits, vegetables, coffee, tea, cotton and sugarcane. According to the AfDB, South Sudan has over 30 million hectares of arable land but only 4.2% are currently under production.

Still according to the AfDB,[27] presently the food requirement for the 10 million people of South Sudan is estimated at 1.04 million tons of cereal. But if South Sudan exploited its full capacity, it could reach a maximum of 2,5 million tons. This would allow South Sudan to produce a surplus of 1,5 million tons for exportation. Irrigation agriculture has great potential but in order to develop this sector, South Sudan needs first to develop its irrigation infrastructures and inputs provisions (seeds, fertilizers etc.).

Second, South Sudan has 1,2 million hectares of forest reserves and another 1,5 million hectares of potential natural forest is economically harvestable. There is a huge potential of commercially utilizing the Hashaab

[26] Id.
[27] Id.

trees to produce gum acacia. South Sudan could become a leader in the international market and have a comparative advantage compared to its Partner States. For now, the gum acacia commercial production and marketing has not been adequately exploited. It is one of the key products that South Sudan could look into that will help the development of poor rural communities, improve livelihoods, generate income, and employment.

Third, South Sudan has a big potential in fisheries centered around the river Nile. According to the AfDB, it is conceivable that by simply improving the fishing methods the annual fish capture could range between 100,000 and 300,000 metric tons (instead of 75,000 now). Over time, and with the necessary infrastructure, the fisheries could even go into millions of tons per year.

Finally, the last source of non-oil revenue could be the mining sector. Indeed, South Sudan has a huge but untapped mineral potential including gold, diamonds, marble, zinc, uranium, and iron.

The next step is now for South Sudan to establish sectoral structures and research to unlock its potential in the sectors mentioned above.[28] The government could consider ways of supporting these industries with high potential. Through developing its sectors with potential, South Sudan could mitigate the loss of revenues due to the tariff reduction of the CET. Overall, South Sudan should push for a reduction of the current SI list and add in the list the above-mentioned products, granting 0% preferential treatment to Partner States. This will allow South Sudan to be protected from outside competition and develop its potential. It will also allow South Sudan to be a net exporter in the Partner States, especially in the areas where South Sudan has a comparative advantage. Thanks to its fertile soil, South Sudan is in a good position to become a leader in producing agricultural products to neighbouring countries such as Congo or Sudan. South Sudan has five years to implement the EAC obligations and therefore has five years to develop its industries.

[28] Id.

However, South Sudan's development must be accompanied by a reduction of non-tariff barriers to trade. The existence of bottlenecks in trade slows down the region's development and all Partner States should work toward more efficient regional and extra-regional trade corridors. The priority is to develop roads, checkpoints, simplification of customs clearance, harmonized customs regulation, regional security. All these changes could dramatically increase South Sudan's export capacity. Therefore, the potential for growth depends largely on the removal of non-tariff barriers and training of qualified workers. Both these aspects are discussed in later sections of this memorandum.

Box 2.7: Overview on the Sensitive Items list

There are clearly two opposing factors regarding the Sensitive Items list. First, a business-like approach where the Sensitive Items list is seen as a tool to protect domestic industry and a shield against foreign competition. However, and second, the Sensitive Items list has a real downfall as it plays an important role in increasing poverty within the EAC. The poverty factor concerns all the Partner States, even the ones that are net exporters and do benefit from the tariffs.

The offensive approach is for South Sudan to negotiate lower tariffs on the current list. To do that, South Sudan can find good allies in Rwanda and Burundi. Indeed, those two countries do not benefit from the Sensitive Items list either and their experience is valuable. The three countries could ally to push for a general diminution of the tariff line or the introduction of a fourth tariff line in the CET (at 35% for example).

2.2 The Duty remission exception

Another exception to the three-band structure is the EAC duty remission scheme.

According to Section 140 of the Customs Union Management Act, “the council may grant remission of duty on good imported for the manufactured good in a Partner State”.[29] Remission of goods is meant to be applied only to goods imported for use in manufacture goods, but the Council may choose to include good for home consumption at its discretion. The tariff applicable is 10% or lower.

The logic under the scheme is to allow Partner States to charge lower tariffs on goods necessary for production in order to enable them to develop their industries. The final good, made with the help of the remission scheme, is meant to be exported. All the EAC Partners have been awarded duty remission in 2016 in a serious number of items. Therefore, South Sudan could ask for such remission with a likelihood of success. To qualify for the duty remission scheme, 80 % of the total output shall be exported outside the EAC by the company, or else subject to full duties, levies and other charges provided by the CET. The remission scheme is made to help EAC Partner States in their foreign exports.

The application for duty remission is analysed by the Duty Remission Committee composed of the ministry responsible for Finance; the ministry responsible for Trade and Industry; the body representative of manufacturers; the customs and any other person the Commissioner may deem fit. The final decision is made by the Council. [30]

[29] Article 140, The East African Community Customs Management Act, 2004
[30] Article 4, The East African Community Customs Management (Duty Remission) Regulation, 2008

The duty remission is granted for twelve months from the date of the publication of the grant in the Gazette, renewable once for six months.[31]

A manufacturer of goods for exports shall pay the duty for any goods that are not used in the manufacture goods or where the goods so manufactured are not exported. For the case of manufacturer of goods for domestic production, they also have to pay the duty for any good that is not used in the manufacture goods.[32]

According to the June 2016 Gazette, the Council granted remission to Uganda in products such as orange juice (from 25% under the CET to 10% for a year), cement (10% under the CET to 0% for a year), kraft paper (25% under the CET to 10% for a year). The same year, the Council granted 0% tariff for Rwanda on goods such as wheat, vegetable fat and oil, other sugar for industrial use, tobacco not stemmed. Those are only examples and the list is really long and concern every Partner States. [33]

Proposed policy options

In essence, the idea is to offer inputs at lower price to able cheaper cost of production and cheaper products for export. The goods produced have to be for foreign exports and not intra-EAC exports, or else the remission scheme does not apply.

The purpose for South Sudan in using the scheme is to assist manufacturers who are already established and are exporting, and manufacturers that have sufficient production to export. The goal is to provide them cheaper goods to help them produce in larger quantity.

We propose that South Sudan to apply for duty remission for selected manufacturers, especially in the area of exporting potentials as discussed above. This will provide time for manufacturers to find alternative export markets, improve productivity and competitiveness.[34].The goal is to facilitate a

[31] Article 6, id.
[32] Article 7, id.
[33] EAC Gazette, Vol. AT1 – No.5, 30 June 2016
[34] Options for Duty Remission Schemes For Users After 2010 http://www.businessadvocacy.org/dloads/brief%20KAM%20Duty%20remission.pdf

smooth transition for South Sudan, having trade policy leeway out of the rigid CET three band tariff structure. More, the duty remission could be a good solution to fight the high tariffs in the Sensitive Items list. However, the manufacturer has to commit to export at least 80% of its production.

3. The EAC Customs Union: Establishing the EAC Rule of Origin System

The implementation of the EAC customs structure requires the establishment of a Rule of Origin regime at the border. As explained in section 3.1, Rule of Origin is key to the EAC tariff administration. Therefore, section 3.2 will deal with the method laid down in the CU Protocol to determine the origin and section 3.3 will address the situation in South Sudan in the implementation and administration of the EAC Origin criteria at its border. However, Partner States have been facing several major administrative challenges, failing to meet the EAC requirements. Section 3.4 will address this issue as knowing these challenges could be valuable for South Sudan in its implementation process. To tackle these challenges and streamline customs administration, there are EAC initiatives or trade facilitation tools. Adopting these trade facilitation tools is fundamental to avoid the administrative problems, which are currently hampering intra-EAC trade.

3.1 The EAC Rule of Origin as a Key to Tariff Administration

Within three years of its accession, South Sudan will have to be able to differentiate goods coming from inside the EAC to goods coming from the outside. Only the goods produced or obtained within the EAC will be duty-free (charged 0%); the others will have to pay the CET. In order to determine which good comes from the EAC and which good comes from the outside, South Sudan will use the EAC Rule of Origin. In other words, the internal zero tariff applies only if goods meet the EAC Rules of Origin.[35] The EAC Rule of Origin is an annex to the Customs Union Protocol and was last updated in 2015.

The Rule of Origin gives Partner States the steps to follow in order to determine the eligibility of a product to be qualified as originating from the EAC and lays down the common procedures for granting the tariff. As Rule of Origin applies, the EAC internal tariff operates as followed:

Table 3.1: Internal Tariff Scenarios under the Rule of Origin

Source Products	Rate
Valued at **above USD 2,000** (included) + meet Origin criteria with proper **Certificate of Origin** [CoO]	0%
Valued at **below USD 2,000** with **Simplified Certificate of Origin**	0%
Valued **less than USD 500** with **no certificate requirement**	0%
Others products within the EAC (does not qualify for the Rule of Origin)	CET

Source: Authors – IIEL/TradeLab

This is extremely important as not all the goods imported into South Sudan will benefit the duty-free quota-free regime. Indeed, the Rule of Origin

[35] Article 14, EAC Customs Union Protocol

requires the issuance by the trader of a Certificate of origin or/and the reaching of a certain value as a condition for the granting of zero tariff.

Therefore, South Sudan needs a system to determine the country of origin of the products it imports. Reciprocally, it also needs a system to certify the origin of its own products when it exports them to the other Partner States.

3.2 Methods and Procedures of Determining the Origin

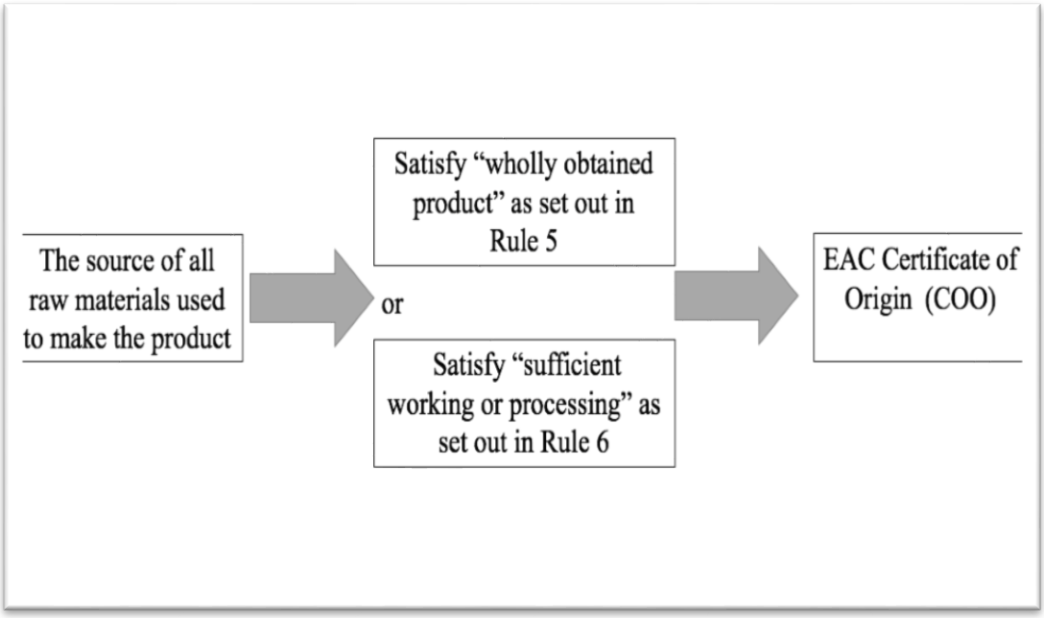
Rule of Origin requires Partner States to verify (for imports) or certify (for exports) the EAC origin of the products. As shown in Table 3.1, criteria and procedural requirements are different depending on the value of the goods.

3.2.1 Goods valued at USD 2,000 and above

Goods valued at USD 2,000 and above must come from or be produced within the EAC so as to qualify under the EAC Rule of Origin. The criterion used is based on how the goods have been produced.

In order to verify or certify the product’s origin, South Sudan administrators shall look into the source of all the raw materials used to make the product. The Rule of Origin points to two alternate criteria (meaning the product only needs to satisfy either one of the two):

Figure 3.2: EAC Rule of Origin criteria



Source: Authors – IIEL/TradeLab

The first criterion is the "wholly produced goods": goods that are produced from exclusively locally sourced products. Those goods are entirely produced within the EAC region. There is a comprehensive list of such goods in Rule 5 of the Rule of Origin. The administrators have to look at the list and if the good is listed then it qualifies immediately for EAC Origin. For example, goods covered by the list are the minerals, vegetable products, animals and animals' products that have their origin in the region.

Alternatively, the products must be "sufficiently worked or processed" in the region: even if the good is not fully produced within the region, it must have been sufficiently transformed in the region to qualify for a certificate. The minimum operations or processes required to be carried out on non-originating goods are contained in Part 1 of the First Schedule. Different rules and minimum operations requirements apply under different tariff headings in the Harmonized System.[36] Therefore, there are as many rules as there are tariffs. To suffice "sufficient working or processing", an item shall reach (1) value addition percentage requirement and/or; (2) tariff heading change

[36] The Harmonized Commodity Description and Coding System

and/or; (3) specific means. More specific requirements can be found under each heading (see example below).

In practice, a customs official will first find the tariff heading and then apply the specific rules to the product to see whether it qualifies the origin. Calculating the requirements is technical and is the key for establishing a Rule of origin system in South Sudan. South Sudan may seek technical assistance from the EAC or with pro-trade organizations like TradeMark East Africa. [37]

Box 3.3 An example of sufficiently worked or processed goods under the EAC Rule of Origin
Heading 40 – Rubber Origin criteria (working or processing carried out on non-originating materials that confer originating status) - Manufacture from materials of any heading, except the product OR - Manufacture in which the value of all the non-originating materials used does not exceed 70% of the ex-works price of the product

3.2.2 Goods valued at below USD 2,000 and above USD 500

Huge EAC cross-border trade of products originating from the EAC Partner States are done by small-scale traders. In order to facilitate small-scale trade, the rule provides for a simplified procedure for valuable goods under USD 2,000.[38]

If the good values under USD 2,000 and is on the common list agreed by the Partner States, then the Simplified Certificate of Origin will be used instead of the Certificate of Origin (CoO).

---

[37] Building the Future : a Look At The Economic Potential Of East Africa, https://www.uschamber.com/sites/default/files/documents/files/022958_intl_east_africa_trade_summary_final.pdf

[38] Manual on The Application of The East African Community Customs Union (Rules Of Origin) Rules, 2015

The Simplified Certificate of Origin is a single entry and less complicated document. Customs officials at the point of exit will find the product on the common list and simply stamp and sign the certificate. In comparison, Certificate of Origin normally requires evidence proving the originating status, the processing of materials. That means the exporter has the burden to provide the evidence of origin and the customs officials shall take a close examination.

3.2.3 Goods valued at below USD 500

The Rule also provides exemption from the Certificate of Origin to goods of less than $500 in value from any EAC Partner State.[39] There is no requirement of origin. The Rule strongly favours farmers or small businesses, meaning they can use wherever materials they can acquire and then export to other Partner States with free market access.

3.3 Maximizing benefits under the EAC Rule of Origin for South Sudan

As discussed before, the Rule of Origin is key to determine the granting of zero tariff, and therefore can benefit and encourage certain industries in South Sudan involving in intra-EAC trade.

First, agricultural products are made easier to be accepted within EAC markets. The comprehensive list of many agricultural goods in Rule 5 of the Rule of Origin immediately qualify for the EAC Origin. That is to say, agriculture products like live animals, plants, seeds, fruits and cereals (other than those packed), fish and poultry obtained within the territory are almost certain to be recognized under the rule.

For South Sudan, the Rule of Origin will encourage investment in agriculture.[40] Under the new "wholly produced" criterion, a EAC Origin product requires not only for the processing to be done within the EAC but also that

---

[39] Rule 22 Exemptions from certificate of origin. "A product sent as a small package from a private person in a Partner State to a private person in another Partner State, whose value does not exceed USD 500…"

[40] Fred Nuwagaba, a senior customs officer at Rwanda Revenue Authority (RRA), http://www.newtimes.co.rw/section/article/2016-10-03/204089/

the raw material used be grown in the land of a Partner State. In the case of cooking oil from seeds, for instance, the seeds shall be planted locally and not imported from outside the EAC to qualifies for Rule of Origin. The idea is to produce the community own oil by investing in growing sunflower, soya, groundnuts, oil palms on a large scale.[41] The new Rules of Origin seek to encourage people to invest in agriculture to plant these seeds in their land.[42]

Second, value-added exporters and small traders are the shareholders who get the most benefit from duty free market access. The manufactured goods that have gone through substantial processing within the region are accepted and enjoy duty free access. The greater the extent that the product has been manufactured, the more likely it is to be recognized under the rule. This poses a good opportunity for South Sudan's private sector especially manufacturing enterprises.

Small-scale trade is the most common scenario in South Sudan. Small traders can benefit from reduced burden of documentation. Simplified Certificate of Origin applies instead of classic Certificate of Origin, requiring domestic certification of only stamping and signing. Especially for goods valued less than $500, there is no requirement on origin at all, greatly favouring small traders. Some even say that having the proper paperwork and getting it processed and approved is often the most frustrating factor in trade as it increases risks, leads to delays and extra costs, or even prevents a deal from being completed.[43] Thus, small traders in South Sudan can benefit from a minimum requirement of paper work.

To sum-up, under the Rule of Origin, South Sudan is encouraged to develop agriculture (especially on a larger scale for exporting) and to support small traders (i.e. providing guidelines and customs clearance information).

---

[41] Id.
[42] Id.
[43] https://www.trademarkea.com/news/editorial-chambers-can-issue-certificates-of-origin/

3.4 Challenges in implementing the Rule of Origin

Although the Rules of Origin is clear to administrators, enforcing it has been hampered by several problems at the borders.[44] The EAC Community is now facing several challenges in the application of the EAC Rule of Origin. Implementation challenges can be found in the East African Common Market Scorecard launched two years ago to monitor regional integration.[45]

1) The Certificate of Origin lack of recognition

First, the lack of recognition of the Certificate of Origin is the most pressing challenge for the Community. This is the scenario where an exporter selling products within the EAC region is denied the preference as customs officials at the border fail to recognized the Certificate. Non-recognition significantly denies to businesses the duty-free market access guaranteed under the Customs Union. It also significantly delays trade and was reported by business in the Common Market Scorecard as one of the most problematic Non-Tariff Barriers in the region. [46]

Here is one scenario of non-recognition of the Certificate of Origin: this happens when a Partner States (importing State) questions the Certificate of Origin on a product certified by another Partner States (exporting State) and challenges the certifying of the EAC Origin. Because the product does not come from inside the EAC according to the importing State, the CET shall be applied and tariff should be levied on the good.

This scenario corresponds to the re-export issue, namely when an external imported good is re-exported into the market of another Partner States. This means the good come from outside the EAC, enters the EAC where it is transformed but not sufficiently to be originating in the EAC and is then re-

[44]Anticipating Regional Integration in Africa. http://www.theigc.org/blog/anticipating-regional-integration-in-africa/

[45] "The EAC Common Market Scorecard measures the degree of Partner States' legal compliance with their obligations to liberalize the cross-border movement of capital, services and goods." See https://www.tralac.org/news/article/5657-east-african-common-market-scorecard-2014.html

[46] To identify the key issues implementing the Rule of Origin, EAC Common Market Scorecard (CMS) was developed under the supervision of the EAC Secretariat and Partner States. It evaluates implementation of the EAC Common Market Protocol.

exporter into another Partner State under the EAC Rule of Origin. Partner State receiving this re-import usually refuse to recognize the EAC origin, leading to disputes among the Partner States. The case study below is an example of such dispute.

Box 3.4: Case Study of EAC Tariff Dispute – Re-exporting
Background:
The Community currently considers rice as a "sensitive product" levying a 75% tariff. Rice is included in the Sensitive Items list to protect East African rice producers from competing with advanced Asian producers. However, Tanzania had initially been granted a zero percent duty for rice imports, under the EAC duty remission scheme. This temporary suspension is allowed by the EAC council due to high domestic prices in Tanzania. Therefore, Tanzania could import rice at a cheaper price compared to the rest of the EAC.
Dispute:
The other Partner States became aware that some Tanzanian's business men were buying cheap rice from Asia, mixing it with small proportions of Tanzanian rice and exporting it duty-free within the EAC as a Tanzanian product.[47]
Tanzania was accused of exporting to other Partner States rice which was imported from outside the region.
Result:
Rwanda, Uganda, and Kenya unilaterally imposed 75% duty on rice imported from Tanzania, despite the Customs Union. Tanzania reported these actions and the Sectoral Council nominated experts to undertake verification on the trade practice of rice in 2015. Due to lack of evidence, Tanzania was not found to be re-exporting rice. In the end, Council issued directives directing Partner States to comply with EAC Rule of Origin and recognize the rice for its Tanzania origin. [48]

[47] Théophile Niyitegeka, Tanzania may lose its market in Rwanda if rice farmers continue to export a mixture of rice, (June 25, 2015) - http://www.en.igihe.com/business/tanzania-may-lose-its-market-in-rwanda-if-rice.html

[48] EAC Secretariat, Report of the 30th Meeting of the Council Of Ministers. http://mineacom.gov.rw/fileadmin/templates/Documents/Council_Reports/28TH%20Nov%202014__%20FINAL%20SIGNED%20REPORT%20OF%20THE%2030TH%20COUNCIL.pdf

This case may as well happen to South Sudan. Other Partner State may use imports to export to South Sudan, challenging the correct application of Rule of Origin. Important imports like rice can easily lead to this diffusion, because they are frequently subjected to exceptions to the CET (i.e. the duty remission). This case shows a lack of communication between the Partner States. To solve this problem, South Sudan and the Partner States should harmonize clearance procedure and establish a monitoring system. Trade facilitation tools like the One Stop Border Post and Electronic Single Window (explained in next chapter) will be able to promote exchange of information and cooperation.

2) The issuance of a proper certificate by customs authorities

Second, proper issuance of the certificate by customs authorities. The issuance procedure of Certificate has to be reviewed in light of the boundless discretion given to the customs authorities over the validity of the certificate. The problem lies in the disorganisation amongst the various customs agencies. Each Partner State has its own agencies and the administrative operations are not clear to other EAC traders. It is raised as one of the major issues to the EAC development by the Scorecard.

Organizational requirements are found in the Rule of Origin Application Manual, which is an EAC guideline provided for administrators.[49] Partner States should establish two types of customs authorities: (1) a headquarter that assumes overall responsibility and; (2) zonal/regional/local offices that facilitate the issuance and verification of Certificate of Origin. When establishing the customs authorities, South Sudan shall follow this hierarchical structure and make each agency’s mandate clear and transparent. Also, the on-going negotiations over the CET targeted this as one of the major issues. From the negotiation, South Sudan could expect clearer guidelines to tackle the problem.

3) The obligation to impose penalties on falsifying activities

---

[49] Chapter Five, Manual On The Application Of The East African Community Customs Union (Rules Of Origin) Rules,2015.

Third, obligation to impose penalties on people who provide false documentation for certificates of origin. Subject to Rule 26 of the CU Protocol and the EAC Customs Management Act, Partner States shall lawfully punish the making and use of false document. The offence shall be punished by imprisonment for a term not exceeding three years or to a fine not exceeding ten thousand dollars, as stipulated in Customs Management Act.[50] South Sudan shall enact or amend the law to impose fines on making false CoO according to the Customs Management requirements.

Apart from legislation, enforcing penalties have been a difficult task for the Council. The Scorecard 2016 found that Partner States failed to enact or enforce domestic laws to penalize falsifying activities. Therefore, South Sudan shall have administrative procedures to investigate and punish false certificate documents.

To sum-up, the challenges shared by the EAC provides a good heads-up to South Sudan in the establishment of its Rule of Origin system. South Sudan shall focus on the recognition of Certificate of Origin, establish EAC qualified, transparent and accountable issuing authorities with the power to impose penalties on the making of false certificate documents.

4. The EAC Customs Union: Eliminating administrative Non-Tariff Barriers at the Border

Trade facilitation is a critical issue for South Sudan. It includes customs cooperation, and the simplification and harmonisation of trade documents and procedures.[51] Customs administration is central to the Custom Union Protocol and the Customs Management Act. It will be in the interest of South Sudan to improve customs administration, to address the pressing concern of Non-

[50] Section 203, PART XVII, East African Community Customs Management Act, 2009
[51] http://imanidevelopment.com/wp-content/uploads/2017/03/Legal-and-Economic-Assessment-South-Sudan.pdf

Tariff Barriers and high trade costs. The first part of this chapter analyses the cause and effect of administrative barriers. Part 4.2 will provide a comprehensive approach and framework for policy makers, using examples of successful domestic reforms, trade facilitation tools and WTO initiatives.

4.1 Customs administrative procedures are the main Non-Tariff Barriers [NTB] on intra-EAC trade.

By definition, NTB can be any restriction imposed on the free flow of trade, other than tariff barriers/levy of ordinary customs duties. An NTB can come from the existence of several import/export documents, several different agencies, no clear and transparent rules, creations of extra-charges.[52]

In the EAC, Partner States are obliged to remove with immediate effect all the existing NTBs existing within their territories and prevent the apparition of new ones.[53] Pursuant to Article 13 of the CU Protocol, Partner States have concluded the East African Community Elimination of Non-Tariff Barriers Act in April 2015. The above constitutes a legal framework to help Partner States to eliminate NTBs.

In practice, customs and administrative procedures at the border are the main intra-EAC trade NTB (see charts below).[54] Customs administrative procedures include the existence of diverse systems for imports declaration and payment of applicable duty rates; limited customs working hours; variation in the interpretation of the Rules of Origin; cumbersome procedures

---

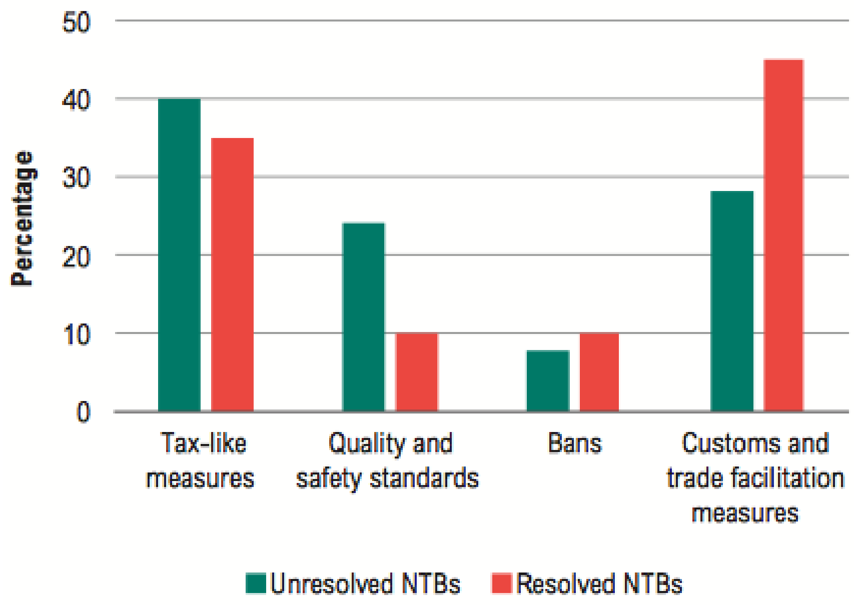
[52] Nicholas A. Charalambides, A legal and economic assessment of South Sudan's possible accession to the East African Community, Tralac Working Paper, No. T17WP01/2017, Feb. 2017

[53] Article 13, EAC Customs Union Protocol, the removal of non-tariff barrier to trade (NTBs).

[54] "Non-Tariff Barriers on intra-EAC trade are categorised under the following categories: customs and administrative documentation procedures, Immigration procedures, Cumbersome inspection requirements, Police road blocks, Duplicated functions of agencies involved in verifying quality, quantity and dutiable value of imports and exports, Business registration and licensing, Varying trade regulations" See http://www.cuts-geneva.org/pdf/BIEAC-RP10-The_Non-Tariff_Barriers_in_Trading_Within_the_EAC.pdf

for verifying containerized imports; and diversion of transit goods into the region.[55]

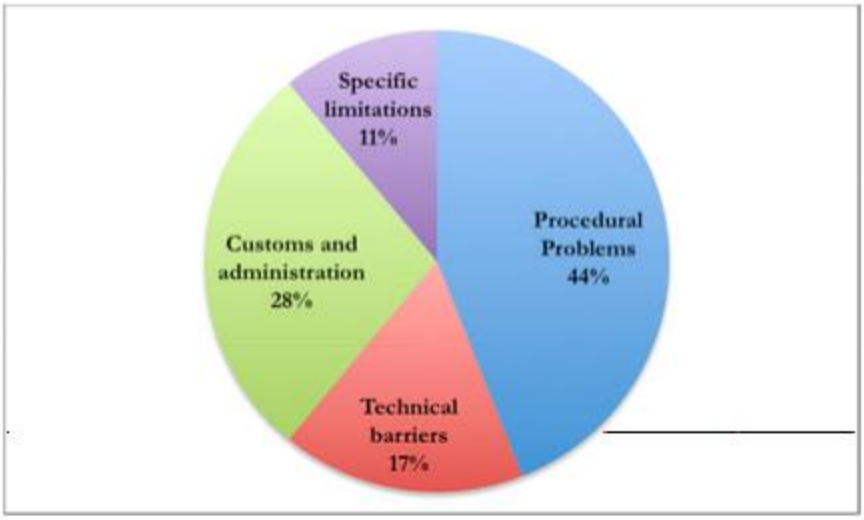
Figure 4.1 Solved and unsolved classified NTBs in the EAC



Source: odi.org[56]

[55] Id.
[56] What types of non-tariff barriers affect the East African Community? http://www.earesearchfund.org/sites/default/files/Publications/Policy%20Brief%20%20What%20types%20of%20non-tariff%20barriers%20affect%20the%20East%20African%20Community.pdf

Figure 4.2: Percentage of NTBs[57]



Source: EAC 2014

For South Sudan, it is urgent to reduce the cost and burden to trade. At the present, the cost to trade is already high compared to other Partner States. Statistics have shown that the cost at border accounts for the very large gap in the prices of goods between South Sudan and other Partner States.[58] The high cost comes from administrative procedural issues, unsatisfying transport infrastructure and corruption. However, administrative procedure at the border, compared to the corruption and infrastructure factors is easier to tackle and improve.

Further, the multiplication of administrative and legal requirements at the border will easily increase time and trade costs for South Sudan. Therefore, the need to address the possible high cost by customs administration is urgent in order to be competitive and a driving force in the EAC. South Sudan shall take measures, alongside the implementation of the Customs Union, to remove of procedural bottlenecks that delays the trade and increases the cost.

[57] Miriam W.O. Omolo, Id.
[58] Jaime de Melo, Trade Strategy Pillars for South Sudan, International Growth Center, May 2013

4.2 A comprehensive approach to improve customs administration

It is suggested that South Sudan should develop a comprehensive approach in terms of trade facilitation. A comprehensive approach is to carefully choose and borrow successful experiences of domestic reforms, of the cooperative efforts of EAC Partner States and of world-wide initiatives like WTO measures.

Since 2009, Rwanda took unilateral measures to reduce non-tariffs barriers and improve trade facilitation (see table below). [59] Those reforms have proven to be successful, as Rwanda has clocked one of the fastest growth rates in Africa over the last decade. Rwanda's successful customs administration reforms provide good example for South Sudan. As a latecomer into the EAC and a landlocked country with similar economy situation, the example of Rwanda provides valuable experiences for South Sudan. The table below summarizes the areas in which Rwanda took the reform.

Table 4.3: Unilateral effort on the removal of NTBs by Rwanda

	Domestic Reforms Suggestions (in the example of Rwanda reform)

[59] https://www.theigc.org/wp-content/uploads/2015/03/De-Melo-2013-Working-Paper-1.pdf

Border infrastructure	• Increase operating hours and enhanced cooperation at the border • Increase customs declaration points
Simplified procedure	• Remove of documentation requirements (such as importation bank declaration and arrival notice) for importers and exporters • Liberalize the warehouse services sector to reduce cost at the border
Electronic development	• Computerize main borders customs offices
Monitoring system	• Establish risk assessment system with automatic channeling system based on the importer's track record and the type of shipment • Monitor aid allocating to public investment program to avoid corruption

Source: Authors - IIEL/TradeLab

For each measure, South Sudan can work alongside pro-trade organizations such as TradeMark East Africa and work with other Partner States under the EAC initiatives.

First, working with TradeMark East Africa (TMEA) and related organizations will provide personalized support and guidance for a successful integration. As suggested by U.S. Africa Business Center,[60] South Sudan and other EAC Partner States need to develop "soft" infrastructure projects to reduce trade impediments.[61]

Second, within the EAC, there are a range of practical and technologically minded solutions at South Sudan's disposal, such as expanding digitalization of customs processes, creating single customs windows (see chart below). These are the EAC Trade Facilitation[62] tools jointly initiated by Partner States to simplify, standardize and harmonise trade information and documentation. As a latecomer to the EAC, South Sudan can free ride existing initiatives without making the effort to create them from

[60] U.S.-Africa Business Center, U.S. Chamber of Commerce East African

[61] https://www.uschamber.com/sites/default/files/documents/files/022958_intl_east_africa_trade_summary_final.pdf

[62] Part C of the CU Protocol; "Trade Facilitation is the process of removing obstacles to the swift movement of goods across borders, thereby reducing the cost of trade and enhancing trade performance of the region."

scratch, following examples of joint EAC initiatives. These processes will help streamline the clearance process and further advance customs administration.

Table 4.4: Example of EAC Trade Facilitation tools to improve the customs administration

One Stop Border Post	It allows Partner States to apply joint controls to minimize routine activities and multiplications. It eases customs clearance and reduces the journey time for transporter and travellers. It simplifies and harmonizes the procedure through the exchange of data but it requires the construction of hard infrastructure. South Sudan already committed to creating an OSBP with Uganda.
Electronic Single Window	It improves trade logistics through paperless procedure. Paperless procedure permits improvement to trade logistics, process and reduction in the cost of doing business. All documentations furnished by the traders are registered once in the database and easily accessible by the agencies. It was launched in 2014 by Tanzania, Rwanda, Burundi and Uganda.
Electronic Cargo Clearance	It is a most recent development (March 2017) within Uganda, Rwanda and Kenya to ease the monitoring of transit of cargo under customs control in the Northern corridor. It will track cargo on transit from end to end (port to destination) including satellite monitoring and rapid response units.
SMS from the private sector	It is a system permitting to every trader to send an SMS to a central line informing the location of the existing non-tariff measure. The central line sends it to the national Focal point in charge. This tool allows to report instantaneously the existence of NTBs and encourages the accountability of agencies. The SMS system exists in Tanzania, Uganda and Rwanda and brings the private sector in the fight against NTBs.

Third, WTO acknowledged that trade facilitation (the simplification, modernization and harmonization of export and import processes) has emerged as an important issue for the world trading system, especially for developing and less developed countries.

A number of agreements[63] deal with various bureaucratic or legal issues that could involve hindrances to trade. GATT principles and obligations applicable to customs administration are, for instance: to provide freedom of transit to other members (GATT Article V); to value imports based on the price paid or payable in the market rather than using arbitrary or fictitious values (Article VII); to publish all regulations, laws, judicial decisions; and to provide independent tribunals for appealing customs decisions (Article X).

In 2013, the World Trade Organization members reached a consensus on a Trade Facilitation Agreement (TFA) at the Bali Ministerial Conference. It is a significant opportunity to improve the speed and efficiency of border procedures, thereby reducing trade costs. The newly signed agreement provide for guidelines regarding customs administration. [64]

South Sudan could organize its customs administration taking into account the WTO guidelines. South Sudan is not a WTO member but it can use the observer status and prepare for a future accession.[65] The purpose is to better acquaint itself with the WTO and its activities, and to prepare and initiate negotiations for accession to the WTO Agreement. The observer status will give South Sudan access to trade facilitation issues, as Rwanda before it. It is important to note that WTO accession will not be urgent. However, to prepare its customs administration satisfying the related WTO obligations will help address the high trade cost while preparing South Sudan future application to the WTO.

Improving customs administration to facilitate trade calls for a comprehensive, inclusive and coordinated approach. NTBs in South Sudan are a multifaceted phenomenon. Because of the many causes leading to

[63] Agreement on Import Licensing Procedures; Preshipment Inspection Agreement; Rules of Origin Agreement; Trade-Related Investment Measures (TRIMs) Agreement.

[64] For example, section 1 article 10 – formalities connected with importation, exportation and transit; article 12 on customs cooperation; article 6 on disciplines on fees and charges imposed on or in connection with importation and exportation and penalties

[65] The status is granted initially for five years and observer governments are expected to take a decision on accession within that period of time. South Sudan will have an obligation to make a financial contribution for the services provided to them of 0.015 percent of the total WTO budget, which is the same as the minimum annual contribution made by the smallest WTO Members.

barriers, those cannot be addressed by a single panacea. For instance, the WTO TFA measures have limited impact on corruption.[66] Therefore, domestic reforms and regional cooperation are often called for reach the goals relating to trade facilitation. It is in South Sudan's interest to establish a framework considering domestic reforms, trade facilitation tools and WTO initiatives.

5. The EAC Common Market: Free Movement of Workers

The right to freedom of movement of workers in EAC is guaranteed under the EAC Common Market Protocol (CMP) and is based on the principle of national treatment in relation to all conditions of employment.[67] This right entails free entry, right to residence in the country of any Partner State, right to establishment and implied rights to family members. Section 4.1 will assess the fact that each Partner State made commitments in the Schedule of the CMP, after thorough negotiations, to liberalize circulation and grant free movement for workers between the Partner State. The subsequent liberalization of workers will bring good changes for South Sudan but also challenges. The chances will be addressed in section 4.2 and the challenges in section 4.3. In any case, the liberalization should be progressive and targeted to certain categories of workers as the freedom of movement is limited to the workers contained in the Schedule of Commitments made by the Partner States. Finally, section 4.4 will make some recommendations regarding which categories shall or not be liberalized.

---

[66] Dhunraj Kassee & Hema Bhunjun-Kassee, Will implementation of the WTO Trade Facilitation Agreement promote integrity in Africa? https://www.oecd.org/cleangovbiz/Integrity-Forum-16-Dhunraj-Kassee.pdf

[67] Charalambides, id.

5.1 EAC Free Movement of Workers

EAC citizens are permitted to work in any EAC Partner State, that is, they may freely choose where to pursue their economic activities. This right derives from the freedom of movement for workers.[68] According to this right, it is not permitted to discriminate against EAC citizens based on their nationality with regard to employment, remuneration or other working conditions. The prohibition of discrimination applies both to Partner States and their employers. The freedom of movement for workers also implicitly prohibits restrictions, i.e. measures that, while not discriminating *per se* based on citizenship, make it difficult or less attractive to exercise the right of freedom of movement.[69]

In scheduling under the EAC Common Market Protocol, the Partner States have adopted the progressive liberalization under the GATS. The Partner States agree to progressively remove existing restrictions and not introduce any new restrictions on the labor market.[70] Below is a table illustrating some commitments made by EAC Partner States. [71]

Table 5.1 Summary of Commitments made in Schedules for Free Movement of Workers

Major Group of Workers	Implementation date				
	Burundi	Kenya	Rwanda	Tanzania	Uganda
Administrators and	X	2010	X	x	2010

[68] See Article 1 of the CMP.
[69] Annex 2 regulates entry and stay of workers in another Partner State.
[70] Partners undertake to remove existing restrictions and not introduce new restrictions.
[71] Annex II of the East African Community Common Market (Free Movement of Workers Regulations).

Major Group of Workers	Implementation date				
	Burundi	Kenya	Rwanda	Tanzania	Uganda
Managers					
Professionals	X	2010	2010	2010-2015	2010
Technicians and Associate Professionals	2010	2010	2010	2012	X
Craft and Related Trades Workers	X	2010	X	x	2010

Source: Authors, IIEL/TradeLab

Rationale for the commitments

As shown above, market access commitments have been undertaken by Partner States in different categories of workers including managers and administrators; professionals; technicians and associate professionals; craft and related trades workers.

From the above Table 5.1, it can be seen that 4 (Kenya, Tanzania, Rwanda and Uganda) out of 5 Partner States have allowed free entry of professionals and associate professionals. This is due to the knowledge and technological transfer which the professional come with. It is also very likely that South Sudan will benefit if it allows free entry of professionals in certain sectors. It can also be seen that the category of crafters and other low skilled labor in the fourth row are only allowed entry in 2 (Kenya and Uganda) out of 5 Partner States. This is because this category of workers is more common and less valued. Likewise, South Sudan should open up more for the professionals but at the same time limit the entry of low skilled categories.

5.2 The position of South Sudan in the EAC Labor Market

South Sudan will have to resolve several challenges before benefiting from the EAC liberalization of labor. First, the country is really young as it was established in 2011. Therefore, its legal system is still under developed.

Restrictive laws and regulations have been identified.[72] The country needs more time to fully implement the EAC rules. Second, South Sudan joined the EAC in March 2016 and has the obligation to give force to the EAC Treaty within one year through a national Treaty of Accession. The likelihood is that South Sudan will seek special and differential treatment relating to the implementation of the obligations.[73] This memo proposes an implementation period of seven years based on Tanzanian experience, who had five years (2010-2015) to implement its obligations (see table A above). Tanzanian finalized its liberalization by according free movement to doctors, secondary school teachers and agricultural field officers in 2015.[74]

There is no need for South Sudan to restrict freedom of movement of workers but it must clearly formulate its policies to allow this right while negotiating for selected categories of workers. Pursuant to Article 11 of the CMP, South Sudan is likely to benefit from the Common Market if it allows free entry of professional lecturers from Kenya, Rwanda and Uganda (in that order of preference). South Sudan is also more likely to benefit from medical doctors from Tanzania and Kenya. These professionals are necessary to South Sudan considering that due to wars and civil strife, South Sudanese employees did not have an opportunity to pursue tertiary education in South Sudan. Therefore, the cost of skilled labor is very high in South Sudan and allowing entry of these professionals will lower the cost and enhance the availability of skilled labor. It is further suggested that South Sudan should negotiate for progressive liberalisation.

In a nutshell, the above challenges indicate that South Sudan is in a dilemma. Freedom of movement of workers is a potentially beneficial but politically sensitive question. South Sudan needs better access to skilled labor but at the same time it has to protect its local employees. Unfortunately, the majority of the local employees are mere school leavers and holders of

---

[72] In September 2014, South Sudan issued a circular that companies and Non-Government organizations (NGO's) should employ South Sudanese unless they are unable to find locals with necessary skills. Uk.reuters.com/article/uk-southsudan-employment

[73] Refer to the Labor Policy which the country passed in 2016 limiting foreigners working in the country.

[74] See CMP Annex II Schedule for Tanzania

diplomas. Most foreign businesses in the EAC like Equity, KCB and UAP Insurance are the major source of employment in South Sudan. If South Sudan unconditionally permits the free movement of skilled and experienced graduates from other EAC Partner States, the local South Sudan low skilled employees will be jobless which would end up worsening the already high unemployment levels.

5.3 Analyzing important categories of workers for South Sudan

Having observed the above dilemma, we still have not lost sight of the fact that South Sudan may benefit immensely if labor is liberalized according to the provisions laid down in the CMP. What is required is for South Sudan government to conduct a thorough survey to find out which critical sectors would require foreign expertise. In other words, opening-up South Sudan borders should carefully be done based on categories of workers. Below is an analysis on how policies can be directed based on some sectors.

Education: allow lecturers and secondary school teachers from other EAC Partner States. Free movement of these experts from the other Partner States will bring into South Sudan new skills and technologies.[75] Educating South Sudanese citizens is the most important thing to develop the country in the long run.

Health: allow unconditional entry of medical doctors and nurses from other EAC Partner States.

Oil: allow unconditional entry for highly skilled mechanical engineers but the Government should formulate clear policies regarding profit repatriation by foreign companies headed by such professional engineers.

Agriculture: limits technicians to come in South Sudan but allow professionals like agricultural engineers, veterinarians and agricultural economists from other EAC Partner States unconditional entry.

Disaster and relief: workers must be allowed unconditional entry as mandated under the CMP.

[75] For example; the rail links, http://www.gossussels.com/index.php?option=com_content&view=article&id=2964: east_africa:great opportunities_await_sudan-uganda _route&catid=34:news&Itemid

Wholesale Business: limitations which are permitted in open and democratic societies may be invoked on businessmen from the other EAC Partner States. The Government of South Sudan should put those limitations which are within Article 13 of the CMP which permits free movement of self-employed persons

Box 5.2: Recommendations for South Sudan

Recommendations for South Sudan
• South Sudan must strategically target certain industries (e.g. agricultural companies) to then give incentive like subsidies or credits if they employ a certain minimum percentage of domestic labor. • Professionals must be granted work permits unconditionally so long as they have the requisite academic qualifications required under the Mutual Recognition Requirements. • Movement of self-employed persons should be negotiated so that seasonal migrants aiming to graze their cattle should be unconditionally allowed entry while businessmen carrying out merchandise which can also be done by local South Sudanese must be given reasonable limitations upon entry of South Sudan (i.e. visa less than the provided 2 years). • Oil industry- In as far as Government should allow free entry of professional mechanical engineers and other professionals in this industry, policies should be put in place to protect this industry because the majority of the Government's revenue comes from this sector.

From the above, it has been shown that free movement of natural persons in the EAC can bring enormous benefits to the intra and inter trade of South Sudan if properly implemented within the provisions of the CMP.

CONCLUSION

South Sudan acceded into the EAC in a situation different from previous Partner States in terms of its development goals and needs. The well-developed EAC framework has the potential to unleash tremendous economic growth. It is in the interest of South Sudan to utilize the framework, incorporate the new customs regime, and exploit the policy flexibility.

This memorandum provides analysis of EAC framework relating to customs and labour, heightens the pressing issues for South Sudan's implementation. We propose strategies and policy options in the initial stage of integration. We hope this will set the right step for South Sudan on its way towards great integration achievements, becoming another proven success of the EAC regime.

ANNEXES

Annex 1: Table of Agricultural Sensitive Item rationale per country

	Uganda	Rwanda	Tanzania	Burundi	Kenya
Rice	The government wants to move to a state of self-sufficiency	Low production, deficit trade balance.	Net exporter. Farmers and producers are exempted of the VAT	Trade balance declined between 2014 and 2015.	Aim at protecting farmers from competition
Maize	Top cereal exported. 90% of farmers rely on maize.	Planted by 79% of agricultural household.	Grown by more than 50% of farmers. Net exporter.	Net importer.	Represent 17% of the total agricultural commodity consumption
Dairy	Wants to develop the industry. Employs many people.	Government's policy of "one household, one cow". Strategic sector for the country.	Infancy stage.	Net importer, negative trade balance	The dairy sector offers a lot of jobs and opportunities.
Wheat	Low production.	Low production.	Low production.	Low production.	Low production
Sugar		Wants to cover 100% raw sugar by 2020.	Net importer.	Net importer.	25% of the population rely on the sugar industry.

Source: Authors – IIEL/TradeLab

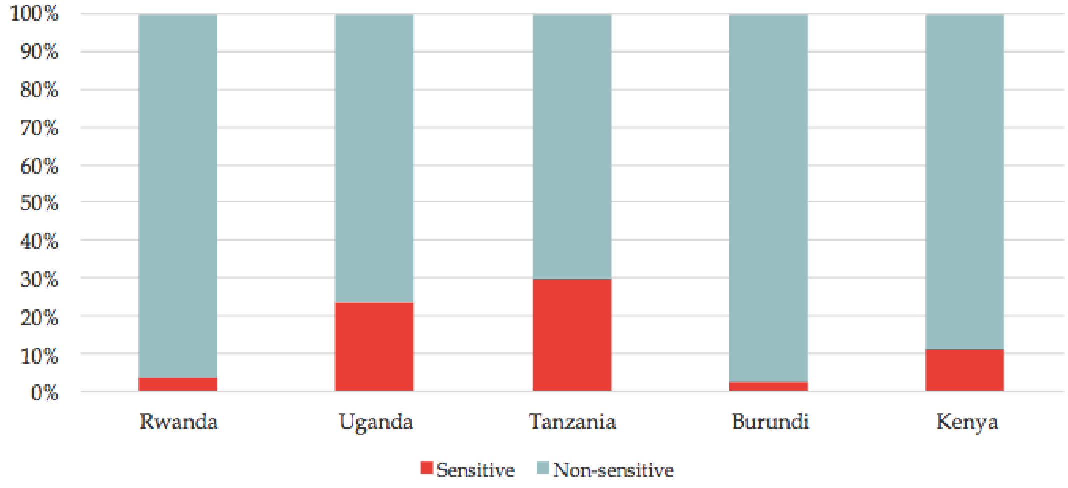
Annex 2: Trade in sensitive products within the EAC considering only the top five exports for each trading partner (2014) [76]

Sensitive product	**Rwanda**	**Kenya**	**Uganda**	**Tanzania**	**Burundi**
Rice	Tanzania (2%)			Uganda (13%) Burundi (6%)	
Construction materials including cement	Burundi (7%)	Uganda (12%)	Rwanda (29%) Burundi (12%)	Rwanda (11%) Burundi (24%)	
Sugar			Rwanda (3%)		
Maize			Tanzania (8%)	Kenya (21%)	
Tobacco (manufactured)		Rwanda (2%) Uganda (2%)			Tanzania (14%)
Milk, cream and milk products			Kenya (7%)		
Textiles				Kenya (21%) Uganda (14%) Burundi (8%)	Kenya (1%)

Source: ECA analysis of UNCTAD data. Classification of products: *http://unstats.un.org/unsd/cr/registry/regcs.asp?Cl=14&Lg=1&Co=658*

[76] Stephen Karingi, Ottavia Pesce and Lily Sommer, Regional Opportunities in East Africa, Uni-wider

Annex 3: Exports of sensitive and non-sensitive products within the EAC (2014)[77]



Source: ECA calculations base on UCTAD STAT

[77] Id.

Bibliography

1) Nicholas A. Charalambides, A Legal And Economic Assessment Of South Sudan's Possible Accession To The East African Community, Tralac Working Paper, No. T17wp01/2017 (February, 2017)

2) South Sudan, A Study on Competitiveness And Cross Border Trade With Neighbouring Countries, African Development Bank Group (2013)

3) Laura Nyantung Beny & Matthew Snyder, Analysis of the Republic of South Sudan's Accession to the East African Community: Benefits, Detriments and Recommendations, Public Law and Legal Theory Research Paper Series, No 227, University of Michigan Law School (December 2012)

4) Miriam W. O. Omolo, Implications of sensitive products exclusions on intra-regional trade: A case study of the East African Community, Tralac Working Paper No. US16WP07/2016 (August 2016)

5) Isaac M.B. Shinyekwa, Miriam Katunze, Assessment of the Effect of the EAC Common External Tariff Sensitive Products list on the Performance of Domestic Industries, Welfare, Trade and Revenue, Economic Policy Research Centre (EPRC), Research Series No. 129 (October 2016)

6) Garth Frazer, The EAC Common External Tariff (CET) and Rwanda, International Growth Center (February 18, 2012)

7) Information Pack, East African Community Trade Rules and Procedures - A Guide for Women Cross Border Traders (2013)

8) EAC Secretariat, Report Of 30th Meeting Of The Council Of Ministers (2014)

9) Adam Elhiraika, UNECA: Industrializing Through Trade, (2015)

10) International Growth Center, Blurred Lines: East African Community Integrates in Fits and Starts (September, 2015)

11) USIDA, Information Booklet on the 2015 Revised EAC Rules Of Origin (2015)

12) Manual on The Application of The East African Community Customs Union (Rules of Origin) Rules (2015)

13) Herrmann Christoph, European Yearbook of International Economic Law (2012)

14) UNCTAD, Elements of Modalities for The African Continental Free Trade Agreement Market Access Negotiations on Tariffs: Some Key Issues for Consideration (2015)

15) Jaime de Melo, Trade Strategy Pillars for South Sudan, (May 11, 2013)

16) Anne Laski, Anticipating regional integration in Africa, International Growth Center (January, 2015)

17) Bamidele Adekunle & Glen Filson, Trade Facilitation: Understanding the Political Economy of Non-Tariff Barriers in Sub- Saharan Africa, 9th TRAPCA Annual Trade Conference (November 2, 2014)

18) U.S. International Trade Commission, Trade Facilitation in the East African Community: Recent developments and Potential Benefits (July, 2012)

19) Stephen Karingi, Ottavia Pesce and Lily Sommer, Regional Opportunities in East Africa, Uni-wider