International Economic Law Practicum

THE IMPACT OF NUMEROUS STAYS OF APPLICATION OF COMMON EXTERNAL TARIFFS IN EAC ON REGIONAL TRADE INTEGRATION

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<u>Definition of terms</u>

Word	**Definition**
Custom Union	trade agreement between two or more countries that establishes a free trade area, no tariffs or quotas are imposed on goods in that area
Common External Tariffs	all member States in a custom Union impose a similar tariffs on imports from non member States
Council of Ministers	Main decision making organ of the East Africa Community (EAC) composed of ministers from member States incharge of EAC affairs and mainly tasked with implementing decisions from the summit
Protocol	Supplementary agreement that modifies or clarifies a treaty of its provisions
Tariff	a tax imposed by a State on imported goods (and sometimes exports) entering or leaving a country. They serve to earn the government revenue and in some instances protect local industries
The Business Council	A private-sector body representing business interests in the EAC

1. Introduction

This memorandum seeks to analyse the factors that necessitate partner States to apply for Stay of Applications (SoA), the process of application for SoAs, and the adverse effects of numerous SoAs on regional integration and trade. It will also suggest policy and institutional recommendations on how the Partner States can exercise their discretion to seek for SoA of CET without disrupting regional trade and integration.

Custom Union is an integral part of the East African Community and one of the key pillars of regional integration.[1] Custom Union has its basis on the Treaty Establishing the EAC (EAC Treaty) as well as the Protocol Establishing the East Africa Custom Union (Customs Union Protocol).[2] The Protocol states that the Custom Union seeks to, among others, reduce trade imbalance among Partner States, accelerate economic growth and development of the Community, and strengthen regional trade.[3]

The establishment of the Customs Union requires the Partner States to eliminate tariffs and Non-tariff barriers to trade and introduces the Common External Tariff (CET) to be applied to imports from foreign countries.[4] In essence, Custom Union creates a single market for goods originating from the bloc.

CET is grounded under Article 12 of the Customs Protocol, which provides for a three-band tariff with a minimum rate of 0 per centum, a middle rate of 10 per centum, and a higher rate of 25 per centum. In 2022, the Protocol was revised to provide for the fourth band with a maximum rate of 35 per cent in respect of all products imported into the Community.[5] The percentage of tariff conferred to an imported product is dependent on demand and availability of the products within the region.[6]

The Protocol appreciates the different economic needs of the Partner State, therefore provides for exception to the application of the CET under Article 12(3). The provision empowers the Council to approve measures designed for any adverse effect the Partner State may experience due to the application of the CET. This is the exception to the

[1] The Treaty for the Establishment of East Africa Community, Article 2.
[2] Protocol for the Establishment of East Africa Custom Union, Article 2.
[3] The Custom Union Protocol, Article 1.
[4] Ibid note 3.
[5] EAC Gazzette, Legal Notice No. EAC/117/2022.
[6] Kenya Revenue Authority, EAC-CET 2022 Version < https://www.kra.go.ke/images/publications/EAC-CET-2022-VERSION-30TH-JUNE-Fn.pdf> Accessed on 17/2/2025.

application of the CET, and it is commonly referred to as the 'stay of application of CET'.

According to the East African Business Council,[7] in the 2024/25 financial year, there are 1,956 tariff lines under stays of application. The breakdown by country is as follows:

- Uganda: 901 tariff lines
- Kenya: 816 tariff lines
- Rwanda: 116 tariff lines
- Tanzania: 89 tariff lines
- Burundi: 24 tariff lines

The existence of these numerous stays of application sparks the question as to whether the stay of application is a rule or an exception to the application of the CET. This question informs our research and recommendations that the memorandum will provide.

2. Key Objectives behind requests for stays of application of CET

If one were to explain the operation of a stay of application in very simple terms, they would likely illustrate that, based on a country's application, the SoA allows for derogation from the CET. This derogation may either pave the way for an increase in the tariffs or for a reduction in them. Stays in the CET for the year 2023/2024 have been illustrated by Ernst & Young in a review of the tariff changes.[8] Intuitively, one could string out a couple of reasons why a country would wish to reorient its tariff structure:

> In 2024, for example, Kenya and Uganda opted to stay the application of the 0% EAC-CET on crude palm oil, and apply a duty of 10% for one year. An increment in the rate for baby diapers was also experienced, with the 25% CET stayed in favour of a 35% rate.

[7] https://eabc-online.com/eabc-calls-for-uniform-application-of-eac-common-external-tariff-to-enhance-regional-trade-value-chains/

[8] 'East African Community implements tariff changes for the Financial Year 2023/24' EY Global — <https://www.ey.com/en_gl/technical/tax-alerts/east-african-community-implements-tariff-changes-for-the-financi> on 26 July 2023.

2.1. Protection of local industries:

From the operation of a tariff, an increment in tariffs for imports would result in a reduced influx of foreign products that would dominate the the local market[9] It is on this basis that countries employ the Stay of Applications mechanisms for purposes of promoting the growth of the local industry in light of the threat of cheaper economic alternatives from foreign industries.[10]

Kenya, in 2018, increased the tariff on a large number of processed steel products such as iron rods and flat-rolled steel given that the country produces large quantities of steel: An influx of steel would be detrimental to the local industry.

2.2. To address specific economic needs:[11]

Stays of application allows governments to temporarily adjust tariffs to stabilise the economy. In case where a local industry is reliant on another specific sector industry, a decline in the contribution of these local industries would create a gap that can be filled by import tariff reduction for products in dire shortage.[12]

An example of a reduction from the CET can be found in Kenya's stay of application for husked rice in 2023, where a rate of 25% was imposed down from the CET rate of 75%.

Collection of revenues is an additional factor that may be drawn from the framework of an SoA. These revenue stability concerns play a particular role in entrenching CET adjustment in fiscal domestic policies. For instance, in a gazette notice dated 30th June 2024, the EAC Council approved Kenya's application to raise the duty of crude palm oil to 10% instead of 0% indicated in the CET. This led to a hike in the price of cooking oil, soap, margarine, and some cosmetics with glycerine. This would in turn lead to the collection of more VAT and other forms of taxes related to the products affected.[13]

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[9] Artuc, E., G. Porto, and B. Rijkers, 'Household Impact of Tariffs: Data and Results from Agricultural Trade Protection' (2020) 00 World Bank Economic Review, 1–23.

[10] Jakob Rauschendorfer and Anna Twum, 'Unmaking of a Customs Union: Regional (Dis)integration in the East African Community' (2022) 21 World Trade Review 59, 64.

[11] Ibid.

[12] Garth Frazer and Jakob Rauschendorfer, 'The review of the Common External Tariff of the East African Community' (2019) International Growth Centre, 3.

[13] Luke Anami, 'Kenya faces new EAC tax pain amid uproar at home' Business Daily, 8th July 2024.

2.3. The influence of domestic interest groups:

Interest groups are a critical cog in the wheel of trade policy. Their interest in decision-making processes, read large, has been evidenced frequently via lobbying, donations and heavy political civic participation.[14] It would not, therefore, be absurd to hypothesise that they play a role in the decisions of States to apply for exemptions from the CET. In translating what it would mean for a government to take into account the public interest in setting tariff exemptions, domestic interest groups offer some insights.[15] Bünder, notably, tackles precisely this question: How do interest groups affect the conclusions of tariff negotiations?, Bünder utilises key informant interviews to tap into the effects of lobby groups, and, primarily, business groups whose advocacy is prevalent on the policy-making floors of government.[16]

For one, it appears the manufacturing sector in Kenya is highly influential in the decision to craft an exemption application. The sector is graced by the representation of the Kenya Association of Manufacturers (KAM), which has been lauded as being *politically well-connected, having strong technical capacities, and usually being the first private sector actor for the government to consult*.[17] This array of characteristics has been partially acknowledged for the benefits born by the iron and steel and paper manufacturing industries, consisting mainly of tariff increases. The Ugandan market, however, domiciled in a landlocked territory, increasingly benefits from importation. As such, reduction of tariff has held primacy for their SoAs. The Kampala City Traders' Association (KACITA) has been acknowledged as playing a persuasive role in securing lower tariff rates.[18]

> In 2016, the CET held a 25% duty on textiles. Pressure from KACITA insisted that Uganda's textile production was too small to meet domestic demand, and that the tariffs would make products unaffordable. They pushed for a stay, which Uganda applied for, imposing only 10% instead of 25%. The same was the case for rice in 2015.

[14] Andreas Dür, Robert A. Huber, Gemma Mateo, Gabriele Spilker, 'Interest group preferences towards trade agreements: institutional design matters' (2023) 12 Interest Groups & Advocacy 48, 49.
[15] Gary Banks, 'Vested interests, domestic transparency and international trade policy' (1984) 19 Intereconomics 3, 133-136.
[16] Tobias Bünder, 'How Common Is the East African Community's Common External Tariff Really? The Influence of Interest Groups on the EAC's Tariff Negotiations' (2018) Sage Open.
[17] Ibid, 8.
[18] Ibid, 9.

2.4. Vested interests of governments/policy-makers:

In an intuitively negative turn of phrase, the interest being represented in CET negotiations does not stop at that of business advocacy groups. Vested interest of the political classes has also been observed to play a role.[19] This has been seen to manifest in two particular ways: (i) The preservation of personal business through tariff manipulation, and (ii) politicised policy-making with a view to securing the interests of an electorate.[20] The first is significantly more malign. Regarding the Kenyan context in particular, one finds that the realm of policymakers is filled with personalities engaging in the industries whose policies they craft.[21] Bunder study alludes to the same, referencing the difficulty endured by negotiators in distinguishing between the interests of private sector players and governmental actors.

There are, however, some other nuanced reasons for the application for an exemption under the CET is primarily context-specific - misclassification of the EAC-CET.

2.5. Misclassification:

Countries may apply for these CET exemptions to decrease tariff rates for products for purposes of rectifying the erroneous classification of products· The structure for the original CET entailed a differentiated framework of 0% rate applied to raw materials (otherwise characterised as capital goods), with the 10% applying to intermediate inputs, and finally, the 25% applying to final or consumption goods.

The distinction is, however, not as cut-and-dry as it appears. The determination of which products fall into a certain category is based on an assumption of what the use of that product is. For example, if one considers steel imports in a general manner, they intuitively seem classifiable as capital inputs e.g. in the construction industry. If, however, you break the categorization into smaller components, you may find processed steel products in the form of iron sheets, which would be intermediate.

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[19] Ibid, 7.

[20] While the agricultural sector is not as organised and influential to drive policy on tariff negotiations, the heavy public impact that agriculture has is sufficient to sway policy-makers bidding the support of an electorate.

[21] Gerrishon Ikiara, Joshua Olewe-Nyunya and Walter Odhiambo, 'Kenya: Formulation and Implementation of Strategic Trade and Industrial Policies' in Charles Solubo, Osita Ogbu and Ha-Joon Chang (eds) *The Policy of Trade and Industrial Policy in Africa: Forced Consensus?* (Africa World Press 2002) International Development Research Centre 205, 222.

This process of generalist assumption has been considered to be '*seriously flawed*'.[22] Data from Uganda suggests that, while the majority of capital and consumption goods are categorised accurately, a sizeable portion of capital goods fall under higher brackets (> 10%).[23] This 'misclassification' is even more apparent via the sample of intermediate inputs, as they appear to occupy all three bands in near-equal measure.[24] Comparing CET classification with that of BEC, Rauschendorfer reveals that 76% of the products that are subject to SoAs were misclassified.

3. Legal Framework.

3.1. The Treaty for the Establishment of the East African Community

The Treaty for the Establishment of the East African Community provides a foundational genesis in discussing the community's trade regime and all the developments thereto. It is the focal point upon which every aspect of the community finds its origin.[25] Centered around widening and deepening cooperation amongst partner states, the Treaty points to development of policies and programmes aimed at boosting among other things economic growth through regional trade.[26]

A key objective under Article 5 of the Treaty is the need to establish a Customs Union and Common Market in order to strengthen and regulate commercial, industrial and infrastructural relations to the extent that there shall be born accelerated, harmonious and balanced development and sustained expansion of economic activities.[27] This extends to activities advanced to further community objectives as they may be agreed from time to time by partner states.[28] Notably, cooperation for mutual benefit housed under Article 6(f) of the Treaty is heavily stressed throughout the provisions of the

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[22] Ibid note 10, 65.
[23] Garth Frazer, 'Examining the impact of the Common External Tariff of the East African Community in Uganda' (2017) International Growth Centre, 7.
[24] Ibid.
[25] *Treaty for the Establishment of the East African Community* (adopted 30 November 1999, entered into force 7 July 2000), [The Treaty], The Preamble
[26] East African Community, *Regional Trade Policy Study 2020* (EAC 2020) [pg 74]
[27]The Treaty, Article 5
[28] Ibid.

Treaty as a fundamental principle in community operations. Cooperation is taken to be people and market driven.

In order to realize the objectives set out under Article 5 of the Treaty and in furtherance of Article 2 of the Treaty, Article 74 of the Treaty calls upon States to establish and adopt an East African Trade Regime and cooperate in trade liberalization and development in accordance therewith. For purposes of Article 74, Article 75 of the Treaty sees partner states agreeing to establish a Customs Union which calls for establishment of a Common External Tariff (CET) under Article 75(1)(d). A Common External Tariff is defined under Article 1 of the Treaty to mean an identical rate of tariffs imposed on goods imported from third countries.

3.2. The Protocol on the Establishment of the East African Customs Union

Prior to the establishment of the Protocol, Partner states undertook to resolve the existing trade imbalances and foster accelerated and sustained Community development. Article 2(4)(c) of the Customs Union Protocol advocates for the establishment and maintenance of a CET within the Customs Union, in respect of all goods imported into the partner states from foreign countries.[29]

Similarly, Article 12 of the Customs Union Protocol establishes the CET with the following guiding principles; ***First***, a three band CET with a minimum rate of 0 per centum on raw materials, capital goods and agricultural inputs; a middle rate of 10 per centum on intermediate goods and essential industrial inputs; and a maximum rate of 25 per centum in respect of all finished consumer products imported into the community.[30] ***Second***, the maximum rate of the CET to be revised after a period of 5 years from its coming into force. ***Lastly***, the revision of the CET structure by the council of ministers and their approval of measures should be aimed at remedying any adverse effects which are consequences of the implementation of the revision.[31]True to the vision of the Customs Union Protocol, the CET structure has undergone a number of

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[29] *Protocol on the Establishment of the East African Community Customs Union* (adopted 2 March 2004, entered into force 1 January 2005), [Customs Union Protocol]Article 2 (4) (c)

[30] Felix Nicholas Bukachi, Abakuk Kasibo, and Job Kavoya, '*A Comparative Evaluation of the Impact of Stays of Applications and Duty Remission Schemes on Customs Revenue at KRA*' (2021) ATCR Publishing African Tax and Customs Review

[31] Customs Union Protocol, Article 12

modifications in a bid to align it with the ever changing needs of partner states. Recently, a fourth band with a rate of 35% was added to the three band structure making it a four band structure as from 1st July 2022.[32]

Additionally, as part of appreciating the diversity of states in the trading sphere, the Customs Union Protocol under Article 33 (1) welcomes exemption regimes in respect of imported goods excluded from payment of import duties.[33] Further, the Council of Ministers relies on Articles 12 (3) and 39 (1) (c) of the CU Protocol to grant review of the CET structure. An example is the Legal Notice No. EAC/117/2022 which paved the way for commencement of the four band CET structure.[34] Another one is the EAC Gazette Notice No. 18 dated 30th June 2024 which approved a number of measures in relation to import duty rates including stays of application of CET on certain equipment and Duty Remission on listed inputs.[35]

The EAC Customs Management Act of 2004 governs the administration of customs duties which includes exemptions and special tariff treatment such as Stays of application.[36] To this end the Act provides that tariff changes, including Stay of Application of the CET, must be approved by the council of ministers, subject to the application being made through the requisite procedures.[37]

4. The Process and factors for issuance of Stay of Application of CET

The application and reasons for application for the stay of application of CET are at the discretion of the Partner States (Article 12(2)(3) of the Customs Union Protocol). The role of the Council appears to be that of just approving the applications. Further, Article 39(1)(c) of the Customs Union Protocol recognizes directives and regulations passed by the Council as one of the Customs laws applicable in the region. Of importance is that all the decisions, directives, including the decisions on stay of application of CET, or regulations of the Council, must be published in the EAC Gazette.

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[32] EAC Ministers adopt 35% as the EAC CET 4th Band, https://www.eac.int/press-releases/157-trade/2424-eac-ministers-adopt-35-as-the-eac-cet-4th-band last accessed on 18th February 2025

[33] Customs Union Protocol, Article 33 (1)

[34] Legal Notice No. EAC/117/2022

[35] https://archive.gazettes.africa/archive/aa-eac/2024/aa-eac-gazette-dated-2024-06-30-no-18.pdf

[36] East African Community Customs Management Act 2004

[37] East African Community Customs Management Act, Section 251

The process of application of the CET stay commences with the Partner states submitting a formal request to the EAC Secretariat to deviate from the standard CET rates for specific goods or tariff lines. These reasons include the need to boost revenue collection and promote the development of local industries, among others, as identified by trade, industry and finance state organs.[38] The request includes the Specific tariff lines to be affected as well as the change to be implemented, that is, the reduced or increased rates.[39]

Upon receiving the application, the Secretariat proceeds to conduct a preliminary assessment of the reasons furnished, its alignment with the objective of establishing Custom Union and the EAC and the implications of the application for Stay on regional integration and trade. The Secretariat may make recommendations and forward the application to the EAC Council.

The EAC Council of Ministers will hence exercise its duty under Article 12(3) of the Customs Union Protocol. The Council assesses these measures vis-à-vis the possible implications on trade and regional integration, among other factors. The Council may approve, modify, or reject the application.
In instances when the Council approves the measure, it proceeds to cause the changes or the specific stay of application to be gazetted in accordance with Article 14(5) of the Treaty Establishing the EAC. The Partner State will proceed to apply the newly approved tariff rates instead of the standard CET rates for one year.[40]

Significant gaps exist in the process for the Application of CET. This is in terms of the existence of a policy guideline addressing several issues including the steps to be followed, consultation among partner states and relevant stakeholders, justifiable reasons upon which stay application should be based, and limitations in terms of the number of tariff lines that a state can be allowed in a period. It is for the above reason

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[38] Garth Frazer, (2017)
[39] Luke Anani, 'Tax application stays are distorting intra-EAC trade, Nduva cautions' , (2024) The East African Newspaper (Nairobi 14th August 2024)
[40] John Kabochi & others, Tax Alert ; East African Community Gazette Notice, 27 August 2021 < https://www.pwc.com/ke/en/assets/pdf/tax-alert-ea-community-gazette-notice-27-august-2021.pdf > Accessed on 19/2/2025.

that the community has ended up with numerous stays crippling the application of the CET.

5. The Impacts of Numerous Stay of Application of the CET.

The impact of Stay of Applications will be evaluated from different facets with particular emphasis on the impact on; business opportunities, Intra-regional trade, Competition within the EAC, Legal frameworks of EAC Partner States, and Development policies of EAC Partner States.

5.1. Business opportunities

For import-dependent Businesses, the Stay of application enables them to benefit from cost-effective production for short-term growth prospects.[41]Furthermore, a stay of applications essentially lowers the tariffs, thereby incentivising investment in certain industries for specific finished products that would otherwise be subjected to high tariffs.[42] While this offers short-term relief for some businesses and industries, the long-term effect on business opportunities in the region is more catastrophic. An argument can be made that through the SoAs, we have more trade, therefore more investment in the region. For instance, an establishment applying for SoA sells its product in the EAC, carving out a niche for its brand in the market. The increased demand prompts the establishment of additional factories, driven by low production costs, to meet the surge in demand. This argument, however, fails to account for the impact the SoA has on the preexisting local industries and businesses.

The SoA stifles the growth of local businesses, effectively curtailing their ability to compete. Take sugar, for example, the EAC CET imposes a 35% duty on imported sugar.[43] However, due to domestic shortages, Kenya has frequently requested SoA to

[41] Frazer, G. (2018). Evaluation of the Addition of a 35% Tariff Band in the Common External Tariff' Unpublished Report

[42] Luke Anami,'*Tax application stays are distorting intra-EAC trade, Nduva caution*s' The East African Newspaper (Nairobi 14th August 2024)

[43] 'Sugar Dumping: Uganda, Tanzania Want 150pc Tariff' *The EastAfrican* (1 February 2019) https://www.theeastafrican.co.ke/tea/business-tech/sugar-dumping-uganda-tanzania-want-150pc-tariff-1400196 accessed 28th April 2025

allow cheaper sugar imports at lower or zero duty.[44] This has seen the collapse of local factories such as Mumias Sugar Factory as cheap sugar is flooding the market.

According to a 2021 report by the Kenya Revenue Authority on the impact of stay of applications and duties remission schemes (systems that allow partial or full exemption from customs duties, VAT, or other taxes on imported goods under specific conditions) at the Kenya Revenue Authority, Stay of Application create an uneven playing field for businesses; Whereas some business and industries enjoy the benefit emanating from lower tariffs others are subjected to the standard CET rates, leading to market distortions.[45]Further, the sustainability of any business is predicated on being able to make a long-term plan; however, frequent SoA approvals create uncertainty, making it harder for businesses to plan investments or expansions, shrinking both prospects of business growth and business opportunities.[46]

Similarly, in the long run, businesses which are heavily reliant on CET-protected industries will struggle due to the increased competition from imported products, effectively defeating the rationale for coming up with the CETs for the imported products.[47]This was the situation that Kakira Sugar company in Uganda found itself in, due to SoAs from both Uganda and Kenya, they found themselves unable to compete with the cheap imported sugar. The company is estimated to have lost $28 million in revenue, the ripple effect of this being job cuts and reduced economic growth.[48]

5.2. Distortion of Competition in Intra-Regional Trade

The EAC CET is a key instrument in levelling the playing field of the region's trade by providing a uniform tariff structure on goods imported from outside the Customs

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44 Fresh Push for Review of EAC Rules of Origin' *The EastAfrican* (15 July 2023) https://www.theeastafrican.co.ke/tea/business-tech/fresh-push-for-review-of-eac-rules-of-origin-4927710 accessed 28th April 2025

45 Felix Nicholas Bukachi, Abakuk Kasibo, and Job Kavoy,a, '*A Comparative Evaluation of the Impact of Stays of Applications and Duty Remission Schemes on Customs Revenue at KRA*' (2021) ATCR Publishing African Tax and Customs Review

46 Ibid

47 Ibid

48 'Government Loses Shs93b in Revenue as Kakira Sugar Production Falls' *Daily Monitor* (Uganda, 10 September 2020) https://www.monitor.co.ug/uganda/business/finance/government-loses-shs93b-in-revenue-as-kakira-sugar-production-falls-1649100 accessed 28th April 2025

Union.[49] Disparities in the application of EAC CETs have brought worrisome implications for competition in trade among EAC partner states. The uneven applications of CETs confer advantages to some firms' products over similar products within the Customs Union.[50]

Notably, some countries, because of low tariff rates, import more than others. In the long run, products imported at lower tariff rates are affordable and fetch more revenue and profits while those imported at higher rates fight to have space in the market due to their expensive nature. This imbalance distorts the market competition and makes the CET lose its objective of creating uniformity in trade opportunities.

In 2014, countries within the EAC applied unilateral exemptions on more than a hundred tariff lines on goods including rice, vehicles and cement. Peter Kiguta, the Union's Director General for Customs and Trade, expressed concern over this action noting that it brought unpredictability of the EAC trade regime on investors and trade.[51] He took a dive into what transpires in the manufacturing industry by demonstrating how increased SoAs distorted fair competition and intra-EAC trade. For example, a product of Producer A may be an input for Producer B. On one hand, Producer A is interested in higher tariffs to protect it from imports. On the other hand, Producer B is interested in cheap importation through lower tariffs. This arose in the regional paper industry when a small number of paper producers in Kenya and Tanzania secured high tariffs on imports of raw paper while paper converters had to champion for derogation from the CET by applying lower tariffs.[52] These competing interests not only disrupt competition but also make it difficult to make long term plans in trade.

5.3. Increased Cost of Business

Take, for example, Producer Z within State A relies on imported raw materials from State B for manufacturing purposes. State B is the only producer of the raw materials

[49] `EABC Calls For Uniform Application Of Eac Common External Tariff To Enhance Regional Trade & Value Chains` 2024 <https://eabc-online.com/eabc-calls-for-uniform-application-of-eac-common-external-tariff-to-enhance-regional-trade-value-chains >Accessed 18th February 2025

[50] ibid

[51] (PDF) How Common Is the East African Community's Common External Tariff Really? The Influence of Interest Groups on the EAC's Tariff Negotiations Accessed 28th April 2025

[52] ibid

and has been relied upon by Producer Z for a considerable number of years. Importation of the products has been historically on a set tariff. Temporarily, if State A applies for a stay of application of the set tariff and consequently imposes a new tariff which is higher than the original set tariff, the raw materials become expensive. Subsequently, Producer Z undergoes an import shock calling for rearrangements in its operations. To ensure uninterrupted importation based on the new tariff, adjustment costs will drive up the operational expenses.

5.4. Legal Framework

Stay of applications encourages policy flexibility; with the mechanism being legally provided for within the EAC laws and regulations. Invoking a stay of applications provides room for the Partner States to adjust their trade policies based on national needs within the EAC framework.[53] This extends to targeted protectionism, where Partner States can shield certain industries or even their citizens from shocks without offending the EAC laws.[54] For instance, in 2024 in the aftermath of the country wide demonstration against the Finance Bill which proposed punitive taxes in Kenya coincided with the gazettment of the EAC taxes under the CET which reversed gains made by withdrawal of the Finance Bill.

In that context, the East African Business Council was of the opinion that Kenya should seek a stay on the new EAC taxes to cushion its financially strained citizens.[55]This is a prime example of targeted protectionism.

While this offers a short-term reprieve, a stay of application is supposed to be an exception and not the rule. With the EAC countries increasingly seeking refuge behind a stay of applications, they bring about legal inconsistencies, compliance and enforcement challenges. Moreover, increased SoA creates disparities in tariff policies

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[53] A Vitale, J Morrison and R Sharma, *The East African Community Common External Tariff on Cereals: An Analysis of Stakeholder Perceptions* (2013, FAO)

[54] Ibid

[55] Luke Anami,'*Kenya faces new EAC tax pain amid uproar at home',* Business Daily (Nairobi July 2024) https://www.businessdailyafrica.com/bd/economy/kenya-faces-new-eac-tax-pain-amid-uproar-at-home-4683202 last accessed 19th February 2025

across Partner States and brings about conflict in regulating trade. This essence frustrates the realization of integration in the region.[56]

5.5. Developmental Policies

Lower tariffs on essential raw materials can facilitate the development of industries aligned with national development plans. This will accelerate industrial growth in Partner States and stabilize economies by addressing economic crises or trade disruptions.[57] .[58]

On the flip side, excessive application of stay of CET undermines EAC's economic integration objectives. This, in turn, is delaying the progress towards a unified regional market.[59]

6. Policy Recommendations

Partner States to EAC have continued to apply for a stay of application of CET on products of interest in a bid to meet their social and economic needs. However, it is obvious that the numerous applications negate the essence of CET and promote trade with third-party states at the expense of the goods produced and manufactured within the region. To enhance the achievement of Customs Union objectives, this paper recommends as following -

6.1. Development and Implementation of Stay of Application Guidelines.

The paper recommends that Partner States should cooperate in developing guidelines that would instil discipline in the use of the stay of application. The guidelines should set a strict process with precise and harmonised criteria for approval of any request for

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[56] Felix Nicholas Bukachi, Abakuk Kasibo, and Job Kavoya, '*A Comparative Evaluation of the Impact of Stays of Applications and Duty Remission Schemes on Customs Revenue at KRA*' (2021) ATCR Publishing African Tax and Customs Review

[57] Frazer, G. (2017). Examining the Impact of the Common External Tariff of the East African Community in Uganda", Unpublished Report

[58] Ibid

[59] Felix Nicholas Bukachi, Abakuk Kasibo, and Job Kavoya, '*A Comparative Evaluation of the Impact of Stays of Applications and Duty Remission Schemes on Customs Revenue at KRA*' (2021) ATCR Publishing African Tax and Customs Review

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Stays. The guideline should also provide for extensive consultations between the EAC Secretariat and Partner states involving trade experts from the public and private sectors. This will enable the Secretariat to recommend to the Council a detailed analysis of the stays of application of CET.

The guideline should also address the overlapping membership of Partner States to be accommodative in rules and not an exception. Alternatively, the regions ought to give impetus to the TFTA that came into force in July 2024 to address challenges of multiplicity in Regional Economic Community (REC) membership. In the long term, the Partner State should develop a framework for a phased-out period for stay of application of CET. This will strengthen full regional integration and ensure the realisation of a working Customs Union regime.

6.2. Review of the Common External Tariff

Arguably, numerous stays of application are triggered by the existing nature of the CET. The CET on various tariff lines is based on its availability of products within the region. Raw materials are considered essential and, as such, attract the lowest tariff, while the finished products, especially ones that are readily available in the region, have the highest tariff. Moreover, goods may be misclassified, where intermediate or raw materials in some partner states are classified differently in other partner states. The other issue is the tariff escalation, where CET increases with the level of processing of a product progressively. This implies that raw materials face low or no tariffs while higher tariffs are imposed on finished goods. It is, however, worth noting that the region is still not capable of producing most of the finished products.

To remedy the above issues, member states should review the CET to raise the number of CET bands based on necessity and merit consideration. Additionally, there is a need to review duty rates for products which frequently receive applications for stay requests. This will offer a variety of choices applicable to Partner States, which can address the economic and social needs that may arise. Also, the Partner States ought to finalise the review of tariff lines to eliminate misclassification. and the appropriate application of CET

6.3. Stay of Application guidelines and standards should mirror the requirements for instituting trade remedies.

The EAC recognises trade remedies similar to those guaranteed under the World Trade Organisation laws. Trade remedies refer to those measures that member states adopt to counter unfair trade practices. These remedies include anti-dumping duties, countervailing duties, and safeguarding measures.[60] For a State to apply trade remedies, strict requirements must be met. For example, for safeguard measures which are meant to counter a surge in imports that cause or threaten serious harm to a domestic industry, import limits or increased duties beyond agreed levels must be non-discriminatory (MFN-based). These measures must be justified by proven injury, gradually relaxed over time, and may require compensation to affected trading partners.[61]

Safeguard measures can only be imposed after an investigation by competent authorities, following pre-established procedures. The process must involve stakeholders' engagement (importers, exporters, producers, etc.) to present and respond to views, especially on whether the measure serves the public interest. Confidential information must be handled in line with specific rules in the Agreement.[62]

To prove serious injury, independent competent authorities must assess all relevant industry conditions, including import trends, market share, sales, production, profitability, and employment, ensuring that injury caused by other factors is not wrongly attributed to imports. These findings will also be essential in assessing the necessity for a stay of the CET application. Given that safeguard measures are temporary and should be lifted once the conditions cease to exist, so should the stays of CET.

Therefore, to ensure that Partner States are not taking advantage of the stay of application of CET, the above standard for applying trade remedies like safeguard measures should be adopted.

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[60] Peter Van den Bossche and Werner Zdouc, *The Law and Policy of the World Trade Organization: Text, Cases and Materials* (4th edn, Cambridge University Press, 2017)

[61] Agreement on Safeguards (15 April 1994) Marrakesh Agreement Establishing the WTO, Annex 1A, 1869 UNTS 154.

[62] Ibidthe .

6.4. The EAC Partner States Should Operationalize the Trade Remedies Committee

Despite its long-standing provision, the Trade Remedies Committee within the EAC has never been operationalized. This is due to the slow ratification of Article 24 of the EAC Customs Union Protocol, This committee will complement the Non-Tariff Barriers resolution Mechanism in resolving trade disputes, reviewing findings of investigations by competent authorities and processing of stay of application.

This memorandum recommends the ratification of Article 24 of EAC Customs Union to operationalize the Committee.

6.5. Value Addition and Innovation

A stay of application of a CET to lower tariffs aims at maximising importation of goods from high-producing states outside the customs union to bridge the domestic deficits.

Such states with deficits should embrace value addition on imported primary products to meet market needs. In the long run, the state should innovate and strengthen production, subsidize agriculture to increase local production for self-sufficiency, and diversify production of related products to eliminate frequent tariff adjustments, which may be distortive.

7. CONCLUSION

Elimination of frequent SoAs is key in creating a level playing field, guaranteeing predictability of trade policies, boosting investor confidence and bolstering intra-EAC trade.

In that regard, therefore, the stay of application of the Common External Tariff (CET) in the East African Community (EAC), which should be an exception to address varying economic needs, should be moderated so as not to weaken the uniformity and predictability of the regional customs regime. SoA ought to be applied with the aim of offering short-term relief without undermining intra-regional trade, economic integration, and industrial growth.

Overreliance on stays has been found to cause trade distortions, market imbalances, legal inconsistencies and weak regional competitiveness. Additionally, interest group influences and misclassification of goods further compound these challenges.

To safeguard the CET's integrity, Partner States must adopt structured reforms, including clear guidelines on applications of stay, phased reductions of stays, CET revisions, review of tariff lines to address misclassification of products, expanding the tariff bands and revising duty rates for products with high stay requests and stronger commitments to industrialization. Without these, the EAC risks further fragmentation, jeopardizing its economic integration goals