EXAMINING THE EFFICACY OF THE EXCEPTIONS AND DEVIATIONS TO THE EAST AFRICAN COMMUNITY (EAC) TRADE RULES AND THEIR IMPACT ON INTRA-EAC TRADE AND REGIONAL INTEGRATION

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DECLARATION

I, **Tenywa Joseph Micheal**, hereby declare that this work with the title **"Examining the Efficacy of the Exceptions and Deviations to The East African Community (EAC) Trade Rules and their Impact on Intra-EAC Trade and Regional Integration"** is my original work and has never been submitted in any institution for any award. I have read the regulations of the university with regard to plagiarism and here declare that I abided by all of them.

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APPROVAL

This is to acknowledge that this work with the title **"Examining the Efficacy of the Exceptions and Deviations to The East African Community (EAC) Trade Rules and their Impact on Intra-EAC Trade and Regional Integration"** has been done under my supervision and is now ready for submission to the School of Law of Uganda Christian University.

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ACCRONYMS

AfCFTA	African Continental Free Trade Area
AU	African Union
CET	Common External Tariff
CIF	Cost, Insurance and Freight
CIT	Common Internal Tariff
EAC	East African Community
EACJ	East African Court of Justice
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
KEBS	Kenya Bureau of Standards
KRA	Kenya Revenue Authority
MFN	Most Favoured Nation
NMC	National Monitoring Committee
NT	National Treatment
NTBs	Non-tariff Barriers
RMC	Regional Monitoring Committee
SCTIFI	Sectoral Council for Trade, Industry, Finance, and Investment
VAT	Value Added Tax
WTO	World Trade Organization

Abstract

This study examined the granular mechanics of the various trade rules in the EAC and how these are being implemented by the partner states to realize the aspirations of the EAC. Broadly, this study set out to examine the various exceptions to the EAC trade rules and the partner states' obligations before, during and after deviating from the trade rules and the implications for the deviation. Specifically, this study establishes the commonly implemented general exceptions and deviations, the compliance with treaty obligations in the imposition of the exceptions and restrictions. Lastly, this study assessed the effects of non-compliance with the obligations.

This study established that commonly, states deviate from trade obligations with protectionist intentions. These vary from protecting the growing domestic industries, markets or even the scarce agricultural produce to ensure food security in seasons of scarcity. Nonetheless, some EAC partner states deviate from the trade rules to ensure the protection of human, animal or plant life and health. Similarly, some states justify the deviation by the need to ensure compliance with the EAC rules of origin, their domestic regulations by ensuring payment of taxes and combating fraudulent practices.

The most fascinating discovery of this research is that even when some partner states rely on general exceptions to justify their deviation from the trade rules, they do not always follow the necessary procedure. From a strict legal standpoint, their justifications would fail. This study further established that despite the established mechanism for dispute settlement, states have always resorted to diplomatic negotiation which denies remedies to parties that suffer economic loss due to discriminatory restrictions.

This study draws a conclusion that the EAC trade rules have often been violated by partner states without lawful justification. Even where justification exists, partner states do not often comply with the established procedure for their implementation which undermines the efficacy of the exceptions to the trade rules.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Introduction

The East African Community was established with the primary object of developing policies and programmes aimed at widening and deepening co-operation which would be realised through establishing, a Customs Union, a Common Market, subsequently a Monetary Union and ultimately a Political Federation.[1] This would be based on the principles of non-discrimination of nationals of other partner states.[2] To the contrary, the EAC recognised some general exceptions when countries may undertake discriminatory practices or actions against goods, services and persons of other partner states. The law equally recognises restrictions which can be imposed against partner states; hence, the gist of this research is to examine their efficacy and their impact on regional integration of the EAC.

The framers of the EAC Treaty and the related protocols found it necessary to include the various restrictions and prohibitions to trade in goods[3] and the general exceptions to trade in services[4]. Exceptions to trade were to help member states retain a degree of autonomy and exercise their sovereignty without being unduly compelled by the treaty. As such, the exceptions to the trade law permit member states to deviate from the trade rules where their fundamental interests would be at stake; hence, a honest and ideal application of the trade exceptions fosters free trade, inter-state cooperation and regional integration of the East African Community (EAC).

Unfortunately, the efficacy of the implementation of such exceptions and trade restrictions largely lies at stake which has often resulted into boarder closure and

[1] Treaty for the Establishment of the East African Community 1999, Article 5.
[2] Protocol on the Establishment of the East African Common Market 2009, Article 3(2) a.
[3] Protocol on the Establishment of the East African Customs Union 2004, Article 22
[4] Protocol on the Establishment of the East African Common Market under Article 21 provides for the General exceptions to trade in services. Importantly however, Article 22 of the EAC Common Market Protocol also provides for security exceptions.

imposition of non-tariff barriers (NTBs). This not only compromises intra-East African Trade (hereinafter, intra-EAC Trade) but also cripples regional integration.

As such, this research shall examine the efficacy of the General Exceptions and Restrictions to trade in the East African Community and how they impact on regional integration. In so doing, this research will examine the commonly implemented general exceptions and restrictions to trade as well as their legality. This shall be achieved through considering their compliance with the set standards before their implementation such as notification to the General Secretary[5] and the Council[6], Non-discrimination [7] , Most Favoured Nation Treatment obligations, [8] the National Treatment[9] Obligations, compliance with the schedule of Concessions[10] as well as the Schedule of Specific commitments[11].

1.2. BACKGROUND OF THE STUDY

1.2.1. Historical background of the East African Community

Before colonialism, the current EAC partner states were organised into kingdoms and chiefdoms. However, with the coming of colonialists, new states were formed, administrative boundaries re-drawn and administrative structures were changed. Unfortunately, colonial boundaries separated homogeneous communities and families and compelled them to fall under different states, administrative structures and overall leadership; hence, the earliest efforts of integration were aimed at ensuring unity of the states the colonial boarders notwithstanding.[12]

Similarly, colonialists established dependent economies to produce raw materials for their home industries. Some communities especially in Uganda were encouraged to grow cotton, others had to produce coffee; hence, states needed a mutual

[5] Customs Union Protocol, Article 22
[6] Common Market Protocol, Article 19
[7] Common Market Protocol, Article 21(1)
[8] Ibid, Article 18
[9] Customs Union Protocol, Article 15; Common Market Protocol Article 17
[10] Ibid, Article 22(3)
[11] Common Market Protocol, Annex V, Schedule of Commitments on the Progressive Liberalisation of Services.
[12] Ssempebwa Edward, *East African Community Law*, (Lexis Nexis, 2015)

dependence on each other. The division into states that were known as Kenya, Tanganyika and Uganda which had tribes with shared language, culture, social ties, way of life, among others sought to re-unite by forming the EAC. Consequently, related communities that had a shared life across the colonial boarders remained united in their way of life.

Initially, the construction of the 1895-1901 Kenya- Uganda Railway acted as the first formal connection between the two independent states of Uganda and Kenya. This facilitated trade across the two states and finally for the raw materials to be shipped via the Indian ocean. While as Uganda's economy was largely subsistent relying largely on production of cash crops such as cotton, coffee and tobacco, these were collected and transported to Kenya through the Uganda-Kenya railway.

Consequently, due to growth of trade in cash crops and finished goods which were being imported into Kenya and Uganda during the colonial time, a Customs Collection Center was established in 1900 at Mombasa. In trade, in 1905, the East African Currency Board and the East African Postal Union were established to facilitate trade in the East African Community. Next was the establishment of the East African Court of Appeal in 1909 with its sit in Kenya and its jurisdiction extended to Uganda, Tanganyika, Zanzibar, Kenya, Seychelles and Aden and Somalia.

This led to the establishment of a formal regional integration between Uganda and Kenya in 1917 with Tanganyika joining in 1927.[13] This colonial-era agreement was signed between Kenya and Uganda to facilitate an intra-area trade as well as establishing a common external tariff.

On January 26th to February 1926, the East African Governors Conference was conducted in Nairobi Kenya. This conference was attended to by 7 major parties which included the heads of states of Kenya, Northern Rhodesia, Nyasaland, Uganda,

[13] East African Community; "Single Customs Territory", < https://www.eac.int/customs/single-customs-territory > accessed on 17th October 2025

Tanzania, Zanzibar and the Civil secretary of the Sudan government.[14] Besides the big number of numbers of participating states, the geographical areas that was brought together focused on formulating some common policy on the matters which affect the territories. The meeting agreed to build a railway from Dodoma into northern Rhodesia.

The 1940 economic needs created by World War II led to the imposition of a new income tax in Uganda and Tanganyika. To administer this new income tax, the EAST African Income Tax Board was established. Non the less, there was still a dire need to formalise economic cooperation and integration of the East African countries; hence, the establishment of the Joint Economic Council. In 1948, the East African High Commission (EAHC) was created to help in the administration of the shared services across Tanganyika, Kenya and Uganda. This was however short-lived as it was sooner replaced by in 1961.

The most immediate consequence of independence era was for African leaders to gain much control of their states and drive economic growth. As a result, in 1961, the East African Common Services Organisation (EACSO) was created to replace the EAHC. Beyond administering the common services, EACSO paved way for economic cooperation and integration giving raise to the East African Community in 1967. While as this seemed to be the greatest mail stone in the integration process of the East African states, the disparities in the political ideologies of the heads of states such as Idi Amin of Uganda led to the collapse of the East African Community.

The never-dying quest for economic cooperation and integration saw three presidents revive the East African Community by signing the Treaty for the Establishment of the East African Community signed in 1999 which came into force in the year 2000.[15] Currently, the EAC boasts of eight partner states which include Uganda, Kenya, Tanzania, Rwanda, Burundi, Congo and South Sudan. It has so far established three

[14] E. W. S., Conference of Governors of the East African Dependencies, *African Affairs*, Volume XXVI, Issue CI, October 1926, Pages 79–80, < https://doi.org/10.1093/oxfordjournals.afraf.a100584 > accessed on 20th October, 2025

[15] Treaty for the Establishment of the East African Community 1999, Article 153

protocols which include the Customs Union protocol, the Common market protocol and the monetary union Protocol.

1.2.2. Conceptual Background of the study

Understanding the conceptual background of the general exceptions is crucial in appreciating the rational for their inclusion in the EAC protocols on trade. Whereas this study is premised on four major concepts which are, i) general exceptions, ii) trade restrictions, iii) intra-EAC trade and iv) regional integration, the historical background above detailed on regional integration and the intra-EAC trade. The conceptual background shall therefore focus on general exceptions and trade restrictions in the EAC.

i) General Exceptions to trade

While as the general exceptions to trade as known today are well detailed in the WTO covered agreements, their historical background dates back to the post-world war I era. Having signed the Treaty of Versailles on June 28, 1919, there was an urgent need to find solutions to the economic problems of the world war. As such, in 1922, the Genoa conference which took place in Italy included 30 European countries. Despite other aims for the conference such as ensuring reparations, there were negotiations for trade liberalisation while striking a balance with public policy. Specifically, the Genoa conference discussed the need to balance trade liberalisation and public policy laying emphasis on "safeguarding public health, morals, or security".[16]

In 1923, the international Convention Relating to the Simplification of Customs Formalities [17] set a precedent as the first multilateral trade agreement to acknowledge the general exceptions. This agreement laid out that while as states had treaty obligations, national welfare concerns relating to the "preservation of the health of human beings, animals or plants, the protection of public morals or

[16] Safar Safarli & Sabina Mammadzadeh, 'Background of the Public Moral Exception' Baku State University Law Review, February (2019), Vol. 5.1, 163

[17] International Convention Relating to the Simplification of Customs Formalities, Nov. 3, 1923, 30 U. N. T. S. 371.

international security"[18] were of paramount importance and could not be derogated from due to treaty obligations whether in the present for even a future treaty.

The Breeton Woods Conference of 1944 established 3 pillars to ensure the restoration of an economic order in the post-World War II era. These were to include the International Monetary Fund (IMF), the International Bank for the Reconstruction and Development, also known as the World Bank and the International Trade Organization (ITO).

Consequently, at the end of the second world war on September 2, 1945, there was a need to work towards restoration of the economy which had been ravaged by the war. The protectionist policies of the 1930's and the great economic depression paved way for the General Agreement on Tariffs and Trade (GATT-1947). The historical background of the GATT was set in motion when the United States made the very first draft of the International Trade Organization Charter (ITO) in 1945 which included general exceptions. In 1946, the preparatory meeting in London acknowledged that there had to be general exceptions and these were included in the Charter.[19]

On October 30, 1947, 22 states signed a protocol of the Provisional Application of the General Agreement on Tariffs and Trade[20] and this came into force on January 1, 1948. However, the GATT was to operate under the Havana Charter of 1948 which established the ITO which was adopted by 52 United Nations member states. Unfortunately, it did not come into force because the US congress declined to ratify the Charter. This led to the provisional application of the GATT. This provisional application was a *defacto* application as there was no binding obligation but it later on became a global treaty and in 1994 upon the signing of the Marrakesh Agreement, it became a *de jure* agreement.[21]

[18] Ibid, 409
[19] Report of the Drafting Committee of the Preparatory Committee of the United Nations Conference on Trade and Employment, U.N. ESCOR, U.N. Doc. E/PC/T/34, 31 (Mar. 5, 1947).
[20] General Agreement on Tariffs and Trade, Article XXVI
[21] Wolfgang Benedek, *General Agreement on Tariffs and Trade-(1947 and 1994),*(Max Planck Institute for Comparative Public Law and International Law, 2015).

The Uruguay Round of 1994 adopted an amended version of the GATT and upon the coming into force of the Marrakesh Agreement adopted on 15 April 1994 established the World Trade Organization (WTO), the GATT 1994 became a covered document under the WTO.[22] Under Article XX of the GATT (1994) 10 General Exceptions are listed. Article XXI provides for a security exception. Similarly, among other covered documents were the General Agreement on Trade in Services of 1994 which under Article XIV provides for General Exceptions. Just like in the GATT, the GATS equally details security exceptions under Article XIV *bis*.[23]

General Exceptions to trade among the East African Community do not have a very clear historical background but they generally stem from the desire to balance the strict free-trade liberalisation and the vital national interests. These general exceptions are derived directly from the obligations under the WTO covered agreements. The EAC member states are were primarily members of the WTO before the Customs union and the Common Market Protocol came into force in 2004 and 2009 respectively.

As such, the preamble to the Customs Union Protocol sets out that, "Conscious of their obligations, as contracting parties to the Marrakesh Agreement Establishing the World Trade Organization, 1994 (the WTO Agreement) …". Similarly, under the preamble to the Common Market protocol, it states that "Conscious of their individual obligations and commitments under the Treaty and under the regional and international agreements". The import of the phrase, 'international agreements' carries with it the obligations under the GATS and the GATT. It is upon this premise that the General Exceptions in under Article 21 of the Common Market Protocol as well as Restrictions and Prohibitions under article 22 of the Customs union protocol are a direct replica of those in the WTO covered agreements.

[22] The Dispute Settlement Understanding, of the WTO Appendix 1.
[23] General Agreement on Trade in Services 1994, Article XIV and XIV *bis,*

1.3. STATEMENT OF THE PROBLEM

Non-compliance with Treaty obligations and international law principles in the implementation of the general exceptions and deviations from the EAC trade rules is a core problem and barrier to free trade and smooth regional integration in the East African Community. While as the EAC Common Market Protocol and the EAC Customs Union acknowledge such general exceptions to treaty-based strict free-trade obligations within the region with the view of striking a balance with vital national interests, [24] and their implementation has often been motivated by unfair competition; hence, lacked legal merit, ignored due process and have been used to settle political argy-bargy and diplomatic bickering often premised on individual sentiments of the leaders.

Additionally, several restrictions to trade in the EAC Community have been based on individualist attitudes of states and their leaders which has gravely undermined the spirit of regional integration; hence, leapfrogging the process of regional integration. As such, this crisis has hampered the process of regional integration in the East African Community. This has been attested to by various international and regional reports as further detailed.

To begin with, since 2007 until March 2025, 274 Non-Tariff Barriers (NTBs) to trade have been resolved among East African Community member states.[25] While as the high number of resolved NTBs may seem an effort towards integration, it speaks volumes to the never-ending restrictions to intra-EAC trade that partner states keep imposing. Similarly, by March 2025, there were 27 unresolved NTBs. This is further worsened by various tariff barriers and other trade restrictions imposed by different states in the guise of general exceptions.

[24] Common Market Protocol, Article 21 provides for General Exceptions to Trade in Services and Article 22 of the Customs Union provides for Restrictions and Prohibitions to Trade.

[25] EABC Trade and Investment Policy Update, "Overview of Policy Directives and Decisions of the EAC 46th Sectoral Council for Trade, Industry, Finance, and Investment (SCTIF) Issued at the 46th SCTIF Meeting, 13th June 2025, available at< https://eabc-online.com/download/eabc-trade-and-investment-policy-update-overview-of-policy-directives-and-decisions-of-the-eac-46th-sectoral-council-for-trade-industry-finance-and-investment-sctifi-13th-june-2025/ > accessed on October 10 2025

Similarly, from 26th to 30th May 2025, the 46th Meeting of the Sectoral Council for Trade, Industry, Finance, and Investment (SCTIFI) was held from in Arusha, Tanzania Strategic Retreat which brought together Permanent/Principal/Under Secretaries to deliberate on matters that affect Intra-EAC trade. The SCTIFI meeting established that the 45th Meeting had laid down 84 directives to be implemented in the EAC. Unfortunately, by their 46th Meeting, only 21 (25%) of the directives had been implemented.

If this crisis is not fast trodden to eliminate NTBs, harmonise customs and tax procedures, and improve logistics by adopting a matrix of strategic interventions, the spirit behind the East African Regional integration shall not yield the desired outcome of a political federation and a monetary union as the last stages of regional integration.

1.4. Objectives of the Study

1.4.1. General Objective of the Study

To examine the efficacy of the exceptions and deviations to trade rules in the East African Community and their impact on regional integration.

1.4.2. Specific Objective of the Study

1. To establish the commonly implemented general exceptions and deviations to trade in the East African Community
2. To examine the compliance with treaty obligations and international principles in the imposition of the general exceptions and restrictions implemented in the East African Community.
3. To assess the effects of non-compliance with treaty obligations and international principles in the imposition of the general exceptions and restrictions to trade on regional integration of the East African Community.

1.4.3. Research Questions

1. What are the commonly implemented exceptions and deviations to trade rules in the East African Community?

2. Do EAC member states comply with treaty obligations and international law principles in the imposition of the general exceptions and restrictions implemented in the East African Community?

3. How does non-compliance with treaty obligations and international principles in the implementation of the general exceptions and restrictions to trade affect regional integration of the East African Community?

1.5. Justification of the study

Trade in the EAC is one of the primary areas of cooperation.[26] This means that any undertakings by the partner states that directly or by necessary implication affect trade in the region have a direct bearing on regional integration of the EAC. Integrating the partner states' markets into a single market has been faced with serious setbacks largely owing to the open-endedness of the Treaty for the Establishment of the East African Community (herein after 'the EAC Treaty'). As such, the enforceability of the Treaty (and Protocol) provisions has been problematic and inefficient.[27]

The EAC Treaty, Customs Union and Common market protocol of the EAC aim at gradually fostering trade liberalisation. Nonetheless, the general exceptions are included to provide for the balancing act between strict free-trade with the protection of vital national interests such as public morals, protection of human, animal and plant life, safety, national security or even securing compliance with a state's laws.[28]

[26] Treaty for the Establishment of the East African Community 1999, Article 2
[27] Kanywanyi L. et al (Eds.), *Regional Integration and Law; East African and European Perspectives, (*Tanzanian-German Center for Postgraduate Studies in Law, Dar es Salaam University Press, 2014)
[28] Common Market Protocol, Article 2; Customs Union Protocol, Article 22

The presence of general exceptions to the overall treaty obligations of opening up markets for goods and services does not give a lee way to blatant disregard and abuse of treaty obligations. Consequently, even in the face of alluding to general exceptions and restrictions to trade, member states must comply with the obligations and due process relating to the implementation of a given general exception or restriction which is a lawful and permissible divergence or deviation from the treaty obligations of non-discrimination and free trade between states.

The members states' failure to comply with the obligations accruing with the implementation of general exceptions or even trade restrictions create much more conflict between state parties which undermines the efficacy of the general exceptions as well as stifling the overall goal of regional integration. Persistent cross boarder restrictions and government participation in trade where there is unfair competition in bidding for government equally undermine the efficacy of the general exceptions and restrictions to trade.[29]

Additionally, the justification for this study to examine the efficacy has been detailed by various national and international reports. A case in a point,

> *"The main challenges lie in … nationalistic tendencies impacting negatively on competition, …underutilisation of available markets, and imposition of NTBs limiting cross border trade, divergent policy and regulatory frameworks, skills gaps, and limitations on cross border infrastructure connectivity."*[30]

This therefore implies that if the efficacy of the general exceptions and restrictions to trade are not fast tracked, it will gravely frustrate the efforts of integration of the EAC.

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[29] Report on Ease of Doing Business in the East African Community (EAC), East African Business Council, Arusha Tanzania, 2023, p.29 <https://strapi.eacgermany.org/uploads/230908_Ease_of_Doing_Business_Report_Final_PDF_1_13bbc9e303.pdf> accessed on 29th September 2025

[30] Sixth EAC Development Strategy 2021/22– 2025/26 at p.50 <https://repository.eac.int/server/api/core/bitstreams/27e0320d-976a-457e-87f6-8db6b4f2539b/content > accessed on 5th October 2025

Regularly invoking legally baseless general exceptions and restrictions to trade which do not comply with the chapeau to the general exception, treaty procedural obligations or even internationally recognised principles that vary in severity by country and market size is a serious barrier to regional integration.

1.6. Significance of the Study

This study aims at examining the efficacy of the general exceptions and restrictions to intra EAC trade; hence, it will be relevant to policy makers, influencers such as the EAC organs, civil society organisations, among others. Guided by the findings of this study, they shall develop policies, mechanisms and other interventions to ensure member states' compliance with the treaty obligations to ensure the realisation of the overall object of the general exceptions to trade without stifling regional integration.

The findings of this study shall spell out the member states' obligations and gaps in compliance with treaty obligations, procedural rules as well as international law principles. This will greatly be a benchmark for states that wish to impose such restrictions to ensure compliance with the treaty obligations. This shall facilitate a harmonious process of integration of the EAC.

This study shall avail knowledge to individual business people, companies and the overall population in the EAC to clearly appreciate the state's obligations, their rights as persons within the member states and the procedures which must be followed by states while imposing such restrictions. It will also enable them to know the procedure of seeking redress when states act arbitrarily to the treaty obligations.

The findings of this study shall contribute to the general body of knowledge relating to the application of the general exceptions and restrictions to trade. This will facilitate further studies by other researchers to carry out advanced research regarding the compliance with treaty obligations in the enforcement of the general exceptions and restrictions and how this can support the overall efforts of regional integration of the EAC.

The study will contribute to the development of guidelines and recommendations for effective implementation of general exceptions and restrictions to trade. These guidelines can inform institutions within the EAC and provide them with evidence-based strategies to support regional integration and to adequately address the endless non-tariff barriers (NTBs) to trade imposed by states.

1.7. Scope of the Study

1.7.1. Conceptual Scope

The research topic undertakes a multi-disciplinary approach putting together aspects of "International trade law and regional integration". Specifically, key concepts that will form the hinges of this study include General Exceptions, Trade Restrictions, Regional integration and the intra-EAC Trade.

i. **Exceptions and deviations to EAC trade rules:** The research shall focus on the general exceptions and security exceptions to the trade rules. Under the deviations, this study shall focus on the restrictions and prohibitions to the trade rules. Furthermore, it shall examine the waivers which many be countervailing measures, safeguard measures, among others.

ii. **Regional Integration**: The study shall focus on the four main pillars of regional integration which are - Political, Economic, Infrastructural, Human and Social integration. Furthermore, regional integration shall be assessed through specific dimensions which relate to the efficacy of the exceptions to the trade rules.

iii. **Intra-EAC Trade**: The study shall examine the progress of trade in the EAC and other underlying factors other than the exceptions and deviations from the trade rules.

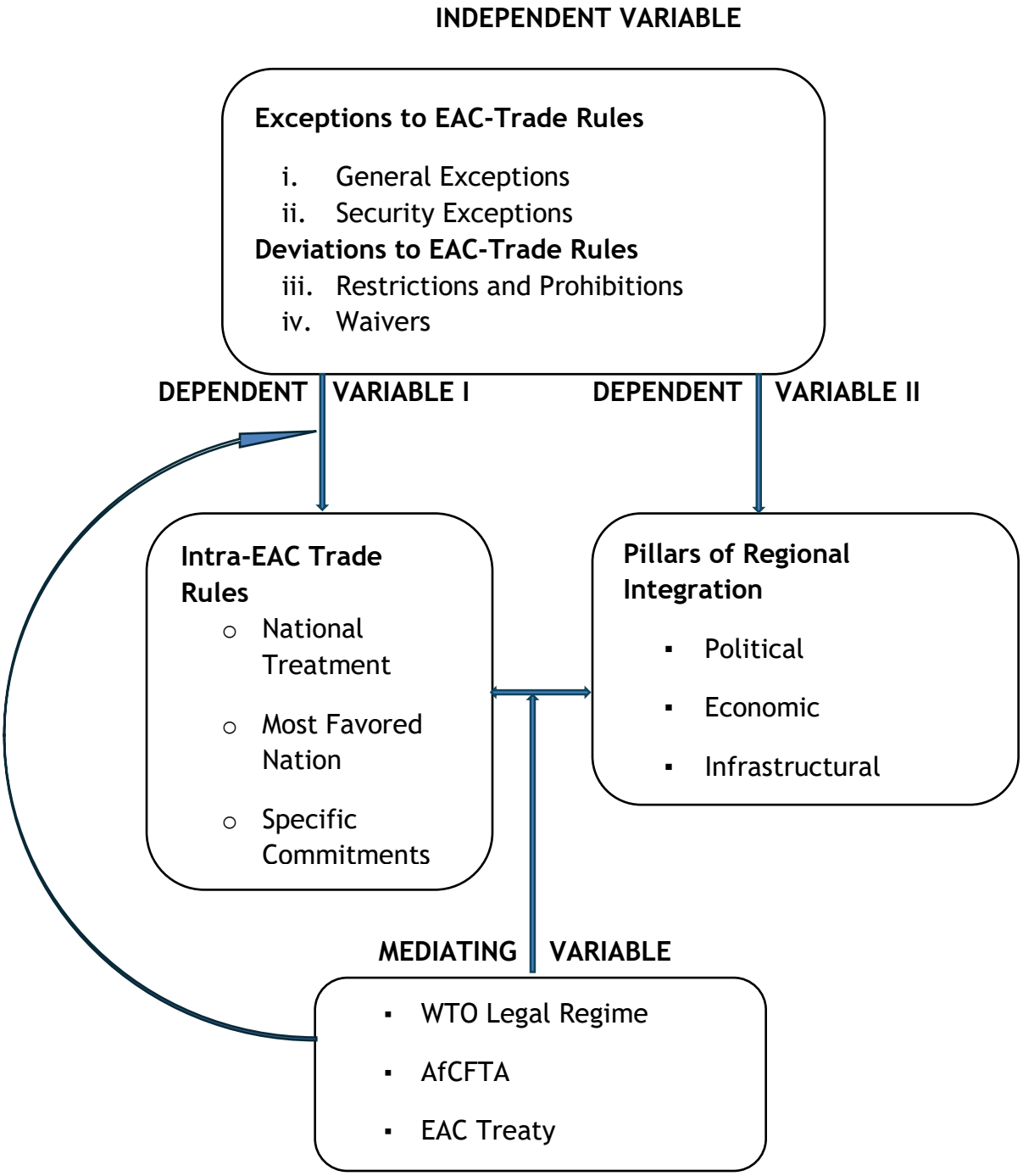
1.7.2. Temporal Scope

This research shall cover a period from 15 years from 2010 to 2025. This is because the Common Market protocol had just come in force; hence, this study shall examine

the implementation of the general exceptions and restrictions. This period of time is important to examine not only the actions taken by states but also how it has impacted intra-EAC trade and the overall regional integration.

1.8. Conceptual Framework of the Study

Figure 1. Conceptual Framework



The figure above is a conceptual framework which illustrates the independent variable, dependent variable and the mediating variables. The independent variable includes the exceptions to trade which are either general exceptions or security exceptions. It also includes the deviations which may either be restrictions and prohibitions or waivers which may include safeguard measures, countervailing measures, among others.

On the other hand, this study examines two dependent variable which include Intra-EAC Trade Rules and regional integration. Under the first dependent variable, trade rules considered by this study include; - National Treatment, Most Favoured Nation, Specific Commitments, and Schedule of Concessions. The effectiveness of these trade rules depends on how the exceptions and deviations are being implemented. Where the general exceptions are implemented in a discriminatory manner outside the set threshold, they frustrate the implementation of the trade rules.

Similarly, regional integration depends on the efficacy of the exceptions and deviations as well as the effectiveness of the trade rules. Regional integration is therefore the second dependent variable. This shall be examined through its four main pillars which include; - Political, Economic, Infrastructural, Human and Social integration. These are further broken down into various dimensions through which regional integration can be assessed. The manner in which the trade exceptions and deviations are implemented has a direct impact on regional integration. In the same manner, the implementation of the trade rules affects regional integration and where there is no effective and smooth regional integration, even the trade rules are affected as indicated by the arrows in the figure above.

Lastly, the figure illustrates the possible mediating variables which can bring harmony to the relationship between the independent and the dependent variables. These include the WTO Legal Regime, African Continental Free Trade Area Agreement, EAC Treaty as well as the respective EAC organs. In a nutshell, the conceptual framework above illustrates the rational why examining the efficacy of the exceptions and

deviations from the trade rules is relevant as it can impact on the enforcement of the EAC trade rules which has a direct impact on regional integration.

1.9. LITERATURE REVIEW

In examining the efficacy of the exceptions to the EAC trade rules and their impact on intra-EAC trade and regional integration, this section of the literature review shall examine key treaty obligations which enshrine the EAC trade rules. More specifically, this section shall examine the NT Obligations, MFN obligations, Schedule of Specific Commitments, Common external tariff and common internal tariff.

Additionally, despite the aforementioned treaty obligations that seek to ensure liberalisation of markets for a free trade, there are some exceptions outlined to strike a balance between national interests and the need for a free market economy beyond the boundaries of a state. Such exceptions may be broadly categorised as General Exceptions, Security Exceptions, Safe guard measures, Restrictions and Prohibitions.

Finally, the literature review shall juxtapose the efficacy of the general exceptions and how these impact on regional integration. This shall be done through examine the pillars and dimensions of regional integration of the East African Community and assessing each of the pillars. This assessment shall be based on the existing literature even in a global context from the WTO rules and exceptions since they form a bedrock of the EAC trade rules and exceptions.

1.9.1. Intra-EAC Trade Rules

The EAC trade rules are provided for under the different protocols. The essay shall review the existing protocols, ministerial declarations, international and national reports from within partner states, among other forms of scholarly publications to make an informed analysis of the EAC trade rules. I shall examine the National Treatment, Most Favoured Nation treatment, Schedule of Specific Commitments, Common external tariff (CET) and common internal tariff. Well aware of the fact that the general exceptions have not been studied widely within the context of EAC, I will rely partly on the WTO interpretations of the trade exceptions.

1.9.2. East African Community Regional Integration

While as there is no universally agreed definition of regional integration, regional integration is generally defined as "a multifaceted process, whereby sovereign nation-states establish common political, legal, economic, and social institutions for collective governance"[31]. Particularly, from the standpoint of the aims and objectives of regional integration, it can be defined as a process where different nation-states come to a mutual agreement to eliminate trade barriers, create a common market for their goods, and cooperate in areas of peace and security, infrastructure and innovation and social services delivery, business and industry as well as development of shared natural resources.

There are four main pillars of the EAC regional integration and these include; Political, Economic, Infrastructural, Human and Social pillars of integration. These pillars are the main thematic areas through which integration takes place. They are not only unique to the EAC but they cut across various Regional Economic Communities. In the Context of the EAC, they are further broken down into dimensions through which the progress of regional integration is measured.

1.9.3. The Changing dimensions of regional integration.

There is a general consensus that RECs have a meagre contribution towards the development of African states.[32] However to the contrary, the EAC has since 2016 until 2025 been ranked among the most successful and growing Regional Economic Community (REC).[33] It has been highly commended for addressing the restrictive NTBs, rules of origin, high transport costs, border inefficiencies and behind-the-border costs, among other significant achievements in infrastructure development.

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[31] S.J.Hix, *Regional Integration Pergamon,* (2001), P.12922, (Neil J. Smelser, Paul B. Baltes, Eds., in International Encyclopedia of Social & Behavioral Sciences, https://doi.org/10.1016/B0-08-043076-7/01274-2. Accessed on November 3 2025

[32] Ferreira, L. & Steenkamp, E.A., 'Identifying regional trade potential between selected countries in the African tripartite free trade area', (2020), South African Journal of Economic and Management Sciences 23(1).

[33] African Union, *African Integration Report*, June 2025 <https://au.int/sites/default/files/documents/45243-doc-20250722_African_Integration_Report_main_report_EN_1_1.pdf> accessed on October 30 2025

The fast-paced progress of the EAC has equally been attested to by the ever-changing dimensions of regional integration as detailed.

In the years ranging from 2016 through 2020, the EAC had five dimensions and indicators of regional integration and these included, trade integration, productive integration, macroeconomic integration, infrastructural integration and free movement of persons.[34][35] However due to the robust pace of regional integration, such dimensions have been found inefficient in effectively measuring the rate of regional integration, This led to the formulation of many dimensions and indicators of EAC regional integration as discussed.[36]

a. Institutional integration

The different legislation in the EAC show a clear political will to build string institutions. There are well established structures through the creation of the various organs such as the secretariat in Arusha. This represents the executive arm of the community, the EAC Court of Justice serves a judicial function through the interpretation of the treaty and other related protocols and acts made by the East African Legislative Assembly which plays a legislative function. Similarly, there are other specialised institutions which include the East African Health Research Commission (EAHRC), Lake Victoria Basin Commission (LVBC), and the Inter-University Council for East Africa (IUCEA).

Unfortunately, despite such well-structured institutions, endless imposition of non-tariff barriers and discriminatory application of the general exceptions to trade frustrates the efforts towards integration of the East African community. A case in a point, the East African Court of Justice has not been given jurisdiction over human rights violations. Consequently, in the face of human rights violations, the EACJ is

[34] The Africa Regional Integration Index: 2016 Report, cited in Ferreira, L. & Steenkamp, E.A., 2020, 'Identifying regional trade potential between selected countries in the African tripartite free trade area', South African Journal of Economic and Management Sciences 23(1).

[35] Africa Regional Integration Index Report 2019, < https://archive.uneca.org/publications/africa-regional-integration-index-report-2019 >accessed on November 5 2025

[36] African Union, *African Integration Report,* June 2025 available at https://au.int/sites/default/files/documents/45243-doc-20250722_African_Integration_Report_main_report_EN_1_1.pdf accessed on October 30, 2025

merely a while elephant. Worst of all, it lacks an enforcement mechanism of its decisions; hence, where partner states lack the political will to enforce its decisions, they remain on paper and can never be executed. This directly affects regional integration.

b. Peace and Security

In the context of this study, national security is one of the general exceptions the reason of which a partner state can derogate from the obligations imposed by the treaty. The EAC has well established early warning mechanisms, conflict prevention and peace promotion mechanisms, the East African Standby force as well as post conflict reconstruction and development mechanisms. Between 2023-2024, the EAC concluded five regional peace agreements which included the Rwanda-Uganda reconciliation and the transition agreement in South Sudan which strengthened peace and security efforts in the region.[37]

Despite the above regional security architecture, there still remain key security concerns. In December, a 2019 report of the UN Group of Experts on DRC pointed out that minerals are smuggled through Bujumbura, Kigali and Kampala to Dubai.[38] Allegations that Rwanda has always wished to annex the mineral rich areas of Eastern DRC have been documented yet all these remain allegations for lack of proof or even the political will of the government to ensure legal responsibility for the crisis.

Additionally, 6.9 million People have been internally displaced[39]. It further notes that in a period of 30 days in the month of October 2023, 200,000 people fled their homes into IDP camps. This conflict is based on ethnic and geopolitical competition among DRC, Rwanda, Uganda, Burundi and other non-state armed rebel groups. Even with continuous denial of Rwanda's involvement in the crisis and a lack of the political will to bring the perpetrators to book, it is inferable that it has to some degree contributed to the conflict since its hand in the conflict has been visible since the

[37] Ibid
[38] UN Group of Experts on DRC 2019 < https://reliefweb.int/report/democratic-republic-congo/final-report-group-experts-democratic-republic-congo-s2019469 > accessed on October 4th 2025
[39] International Organization for Migration < https://www.france24.com/en/africa/20231030-record-6-9-million-internally-displaced-in-dr-congo-un-says > accessed on September 27th 2025

beginning of the conflict until this day. According to the Early Warning Project, there is a likelihood of 2.7% chances of a new mass killing in the Democratic Republic of Congo in 2023 or 2024. The recent capture of the Eastern DRC by the M23 rebels spoke greatly to Rwanda's involvement in the Congo crisis.[40]

c. Market Integration

With the establishment of the Common Market protocol and the Customs Union Protocol, there has been a significant improvement in the market integration. Non the less, the endless non-tariff barriers, disparities in investment laws, uneven implementation of protocols, and disparities in investment regulation still hinder full economic convergence. This speaks to the fact that while as there is legislation in place, there is need for enforcement. While legal frameworks are mostly in place, practical enforcement and infrastructure constraints continue to slow down the seamless movement of goods, services, and investments across borders largely through the wrongful imposition of measures which do not fall under the exceptions.[41]

Non-Tariff Barriers (NTB) monitoring mechanism, where more than 90% of reported NTBs have been resolved via an online reporting platform. With a moderate score, this sub-dimension indicates that while trade facilitation programs exist, bottlenecks persist. These include border delays, infrastructure deficiencies, and inconsistent application of trade policies, which affect the fluidity and efficiency of cross-border trade.[42]

1.10. METHODOLOGY OF THE STUDY

1.10.1. Research Design

This study shall employ a descriptive research design. Descriptive research is a design where the researcher investigates the population of the study by selecting samples to

[40] Human Rights Watch, 'DR Congo: Rwanda-backed M23 Executed Civilians in Goma', June 3, 2025 <https://www.hrw.org/news/2025/06/03/dr-congo-rwanda-backed-m23-executed-civilians-goma > accessed on November 14 2025

[41] African Union, *African Integration Report*, June 2025 available at https://au.int/sites/default/files/documents/45243-doc-20250722_African_Integration_Report_main_report_EN_1_1.pdf accessed on October 30, 2025

[42] Ibid

analyze and discover occurrences.[43] Consequently, a descriptive survey is used when collecting information about attitudes of the people, opinions, habits or any of the variety of social issues. In the instant case, the opinions from various scholars, reports shall be reflected in the study. Hence, it is important for this study to use a descriptive research design.

1.10.2. Research approach

Data collection and analysis for this study shall be done by using a qualitative desk review. The qualitative approach is appropriate for this study because of the various advantages of this method in terms of the way it looks at the settings of the documentary evidence being examined. In qualitative methodology, the researcher looks at the settings and holistically where the documents under review, are not reduced to variables, but are viewed as a whole taking into consideration the temporal and geographical scope of the documents as well as the context of the concepts therein. This method shall enable the researcher to know, institutions/ organs of government and the state as a whole and in regards to the imposition of general exceptions and restrictions to intra-EAC trade and their impact on regional integration of the EAC.

i. Document analysis

This approach shall involve examining a variety of documents, such as treaties, Acts of the East African Legislative Assembly, Ministerial decrees and orders, conference papers, minutes of heads of states, institutional reports from EAC departments and line agencies, books, newspaper articles, academic journals, among others. Any text-containing document holds potential for qualitative analysis. The term "document" encompasses a wide array of materials, including visual sources like photographs, videos, and films. Importantly, employing document review shall provide sting data alongside other data sources is a common practice aimed at enhancing the credibility of a study through triangulation. Triangulation serves to validate findings and deepen the understanding of the research topic.

[43] Oso, Y.W. and Onen, D. *A general guide to writing research proposals and Report; A handbook for beginning researchers,* (Makerere University Publishing Press, 2008)

1.11. Conclusion

This chapter has stated and explained the research topic, research problem and the background for the research problem as well as the rational for the research which speak to its objectives, justification and significance. Additionally, it outlines the conceptual framework, methodology to be used in data collection. The research design exposed different ways used by the researcher in the process of collecting data, to answer the research questions. The next chapter that is chapter two will present the intra EAC trade rules and treaty obligations of partner states.

CHAPTER TWO:

INTRA EAC TRADE RULES AND TREATY OBLIGATIONS

2.1 Introduction

In this chapter, I will consider the Treaty obligations under the EAC together with the relevant protocols and the legal aspects relating to the general exceptions to the EAC trade rules. It shall focus on the EAC Treaty, related protocols, Acts of the East African Legislative Assembly, decisions and decrees of the various organs of the EAC[44] since these form part of the law governing the EAC. Importantly, it shall include annexes to the various protocols since they contain important legal provisions that form part of the trade rules.[45] In so doing, this chapter shall delve deep into the law relating to the trade obligations of EAC partner states zooming deeper into the elements/ ingredients of the trade rules and where applicable, the researcher shall give reference and interpretation of the WTO jurisprudence.

2.2. EAC MAJOR TRADE RULES

Looking at the Treaty establishing the EAC, the relevant protocols, annexes, acts of the EALA, regulations, decisions and decrees of the Council of Ministers, relevant principles of international law, it is inferable that there are enormous trade rules. However, if examined keenly, it there are few major trade rules and the rest only give effect to the major trade rules. This chapter shall pay attention to the major trade rules and shall only be juxtaposing with other provisions to either explain or give context to the major rules.

The major trade rules to be examined include; -

1. Free movement of Goods
2. Free movement of Persons and Labour

[44] Treaty for the Establishment of the East African Community 1999, Article 9; Customs Union Protocol, Article 39; Common Market Protocol, Article 51.
[45] EAC Treaty Article 151; Customs Union Protocol Article 40; Common Market Protocol, Article 52.

3. Free movement of services
4. Free movement of Capital
5. National Treatment Obligations
6. Most Favoured Nation Treatment
7. Schedules of Specific Commitments

2.2.1. Rule 1. Free movement of Goods

It was the vision of the founders of the EAC to establish a customs union, a common market, a monetary union and ultimately a political federation.[46] The Treaty further defines a Common Market to mean "the Partner States' markets integrated into a single market in which there is free movement of capital, labour, goods and services"[47].

The Common Market Protocol provides that "free movement of goods between the Partner States shall be governed by the Customs Law of the Community as specified in Article 39 of the Protocol on the Establishment of the East African Community Customs Union" [48] . By reference to the Customs law, the free movement of goods incorporates the various provisions on an internal tariff [49] and a common external tariff [50]. It equally includes the prohibition against the use of non-tariff barriers.[51]

A case in a point was the decision of the East African Court of Justice in **British American Tobacco Limited v A.G of Uganda**.[52] The facts of the case were that Uganda enacted the Excise Duty (Amendment)Act of 2017 which imposed a discriminatory tax against imported cigarettes compared to the locally manufactured

[46] Treaty for the Establishment of the East African Community 1999, Article 5.
[47] Ibid, Article 1
[48] Common Market Protocol, Article 6.
[49] Customs Union Protocol, Article 10.
[50] Ibid, Article 12.
[51] Ibid, Article 13.
[52] Reference No. 7 of 2017

cigarettes. The contention resulted from cigarettes which were being manufactured in Kenya by the Applicant company and imported to Uganda. The East African Court of Justice held that such discriminatory taxes were against the customs regime of the EAC and directly affected the free movement of goods and spirit of the EAC Treaty.

Other relevant provisions that necessitate the free movement of goods include the EAC Protocol on Standardisation, Quality Assurance, Metrology and Testing; East African Community Standardisation, Quality Assurance, Metrology and Testing Act , 2006; among other protocols, regulations and acts of the EALA. These impose an obligation on the partner states to open their boarders for the free movement of goods giving due regard to all the relevant customs laws.

2.2.2. Rule 2. Free Movement of Persons and Labour

This trade rule involves provides for free movement of persons and labour.[53] To facilitate the free movement of persons, there have been other significant provisions and domestic legislations to provide for a standard identification system such as the East African Community passport.[54]

To ensure free movement of labour, there have been efforts to ensure harmonisation and mutual recognition of Academic and professional qualifications. The Ugandan High Court decision in **Katungi Tony v A.G** [55] is very instructive on professionalism. The facts of the case were that Katungi Tony graduated with a Bachelor of Laws degree from Uganda Christian University in 2011 and was admitted to the Kenya Law School for the bar course, which he completed in 2013. He was admitted to the Kenyan bar in 2014 as an advocate of the High Court of Kenya. Upon his return to Uganda, he sought to have a certificate of eligibility to practice in Uganda as an advocate. The Uganda Law Council required the applicant to serve one year at the Justice Centres Uganda.

[53] Common Market Protocol, Article 7.
[54] Ibid Article 9
[55] Miscellaneous Cause No. 204 of 2017

Upon an application for Judicial review which was ruled in the applicant's favour, Lady Justice H. Wolayo who delivered the leading judgment had this to say; -

> *"Uganda as a Partner State is enjoined to harmonise the national laws in respect of the legal profession. Uganda as a member country signed the East African Community Common Market Protocol (EAC CMP) and undertook to provide free legal practice by 2015. Although we may have some varied academic routes and professional qualification requirements and owing to quality assurance or protectionist reasons, access to a number of professions including law is regulated. Uganda is bound to open up the space for workers through the East African Integration or devise a better approach to allow Free Movement of Workers in order to be compliant with the EAC Common Market Protocol* [56]

Similarly, in 2013, in a motion moved by Hon. Benard Mulengani, the East African Legislative Assembly passed a resolution urging partner states to eliminate work permit fees on citizens of the EAC partner states.[57] This commended the government of Kenya and Rwanda who had already eliminated the work permits and invited all other partner states to comply with Article 10 of the Common Market Protocol. In the spirit of facilitating free movement of persons and labour, the right to establishment and residence subsequently arises.[58]

2.2.3. Rule 3. Free movement of services

Another significant trade rule relates to the free movement of services which is the epicentre of the Common Market protocol. It provides that "Partner States hereby guarantee the free movement of services supplied by nationals of Partner States and the free movement of service suppliers who are nationals of the Partner States within the Community".[59]

[56] Justice H. Woloyo in Katungi Tony v A.G., Miscellaneous Cause No. 204 of 2017 at para. 44
[57] EALA/Res/3/07/2013
[58] Common Market Protocol, Article 13.
[59] Ibid, Article 16

The protocol further defines the free movement of services in four distinct modes which include;

a. from the territory of a Partner State into the territory of another Partner St ate;

b. in the territory of a Partner State to service consumers from another Partne r State;

c. by a service supplier of a Partner State, through commercial presence of th e service supplier in the territory of another Partner State; and

d. by the presence of a service supplier, who is a citizen of a Partner State, in the territory of another Partner State.[60]

The protocol further imposes an obligation on the partner states to ensure that all local governments, local authorities and even on governmental bodies in the partner states comply with the obligations under this trade rule. Such measures include legislative and administrative actions which can be taken to ensure free movement of services. Unlike the rule on free movement of goods which gives reference to the customs regime, the rule on free movement of services is further expounded on in the common Market protocol and the subsequent annexes, regulations and Acts of EALA.

2.2.4. Rule 4. Free movement of Capital

One significant trade rule obliges partner states to eliminate all restrictions that hinder free movement of capita across the EAC.[61] It is however important to note that such capital should be belonging to persons resident in the EAC. As such, there should be no discrimination on the basis of nationality, on the basis of where the capital is invested or even where the person resides as long as they are within the partner states.

[60] Ibid.
[61] Common Market Protocol, Article 24.

Furthermore, this rule bars any further introduction of new restrictions on the free movement of capital or even charges on transfers and current payments or other regulations which are overly restrictive. In a landmark decision in **Ham Enterprises Ltd and 2 Others v Diamond Trust Bank (U) LTD and Anor**, [62] the Supreme Court held that there was no law which barred DTB Kenya from extending a credit facility to any financial institution or person in Uganda. Chief Justice Owiny Dollo who delivered the leading judgment noted that "If anything in furtherance of International trade and investment, financial institutions the world over are known to engage in global financial business transactions through financial institutions based in other jurisdictions".

2.2.5. Rule 5. National Treatment Obligations

The National Treatment obligation is enshrined both in the EAC Common Market protocol[63] and the EAC Customs Union Protocol[64]. It requires that EAC partner states do not accord a less favourable treatment to services and service suppliers from other partner states compared to that it accords its domestic like services and service suppliers. More particularly, it sets out that "Each Partner State shall accord to services and service suppliers of other Partner Sta tes, treatment not less favourable than that accorded to similar services and service s uppliers of the Partner State".[65]

To give it context, if Uganda as a partner state to the EAC has domestic services or service suppliers of a similar/like service to that service being supplied by a partner state, such domestic services or service suppliers should not be given a much favourable treatment compared to suppliers of a similar services who are based or originally from another partner state. Where such a favourable treatment is accorded to domestic suppliers, Uganda would be in breach of this treaty obligation.

[62] Supreme Court, Civil Appeal No. 13 of 2021 at page 54 lines 15-21
[63] Common Market Protocol, Article 17
[64] Customs Union Protocol, Article 15
[65] Common Market Protocol, Article 17.

Similarly, article 15 of the EAC Customs union protocol prohibits partner states from enacting legislation or applying administrative measures which directly or indirectly discriminate against same or like products from other partner states. This prohibition also extends to discriminatory taxation of products from other partner states.[66]

> 1.The Partner States shall not:
>
> > (a) enact legislation or apply administrative measures which directly or indirectly discriminate against the same or like products of other Partner States; or
> >
> > (b) impose on each other's products any internal taxation of such a nature as to afford indirect protection to other products.
>
> 2. No Partner State shall impose, directly or indirectly, on the products of other Partner States any internal taxation of any kind in excess of that imposed, directly or indirectly, on similar domestic products.
>
> 3. Where products are exported to the territory of any Partner State, any repayment of internal taxation shall not exceed the internal taxation imposed on them, whether directly or indirectly[67]

Indirect discrimination may take on more abstruse approaches which accord a less favourable treatment to foreign suppliers and this may be through various administrative decisions.[68] Such technical specifications have a distortional effect where foreign suppliers are compelled to lower their prices or hike them or even be kicked out of the market completely which undermines free trade.[69]

Similarly, national treatment may include both *de jure* and *defacto* discrimination. The measures are de jure if they are clear from the reading of a text of the law of a

[66] Customs Union Protocol, Article 15
[67] Customs Union Protocol, Article 15.
[68] Omolo J. A., & Akinyi E., "The National Treatment Rule and the Regulation of Public Procurement under the East African Community Common Market Protocol', (Journal of Corporate and Commercial Law & Practice, Juta & Company (Pty) Ltd, 2019, 5(1).
[69] John H Jackson 'National treatment obligations and non-tariff barriers' (1989) 10 Michigan Journal of International Law 2007, 209.

partner state and they are *defacto* if they do not discriminate from the face but upon the examination of the measure imposed against a foreign supplier, the facts lead to a conclusion that there is discrimination.[70]Arguably, in developing countries which are characterised by weak and ineffective institutions, according a less favourable treatment opens up for the awards of contracts to those closer to government officials which creates room for corruption. The EAC put in place the Common market protocol to ensure market liberalisation and an end to discrimination between local and foreign suppliers.

a. Elements of the National Treatment Obligation

Case law plays a significant role in either laying down or elucidating the elements of a given legal provision. Unfortunately, in the EAC, there has been no court/tribunal decision laid down in relation to the National Treatment obligation, the Most Favoured Nation treatment or even the obligations under the Schedule of Specific commitments.

However, from the wording of Article 17 of the EAC Common Market protocol and Article 15 of the EAC Customs Union Protocol, it is inferable that the National Treatment Obligation prohibits discrimination wither between services, service suppliers or even products through taxation or legislation which would accord a less favourable treatment to those from other partner states compared to those which are domestic in nature.

From the wording of protocols, three elements are expressly stated and require that a measure which undermines the National Treatment obligation should; -

1. Affect a supply of services, service suppliers or products
2. The services/products from a partner state should be similar (Likeness Test)
3. Accord a less favourable treatment to services/ products from a partner state.

[70] United Nations, *Dispute Settlement; World Trade Organization, 3.23 GATS,* New York and Geneva, 2003, PP. 29-30

In appreciating the tests for the National Treatment obligation, it is relevant to contrast with the WTO General Agreement on Trade in Services (GATS). This is largely because there is sufficient case law which has interpreted these elements.

b. National Treatment under the World Trade Organization GATS

Under Article 17 of the GATS, the WTO provided for the National Treatment Obligation and it provides that;-

> *In the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Member shall accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.*[71]

While as under the GATS and the EAC Common Market Protocol, both provisions on National Treatment are under article 17 with nearly a similar wording, the two provisions are distinguishable. An element peculiar to the National Treatment obligation under the WTO is that it gives consideration to the sectors inscribed in a members' schedule of specific commitments and subject to other conditions and qualifications. This is however absent in the EAC National Treatment Obligation.

Unlike that GATS which provides that "Schedules of specific commitments shall be annexed to this Agreement and shall form an integral part thereof"[72], the EAC Common Market Protocol does not make any express mention of the Schedule of Specific commitments. However, the Common Market protocol notes that "The Partner States shall conclude such annexes to this Protocol as shall be deemed n ecessary and such annexes shall form an integral part of this Protocol" [73] . Consequently, Annex 5 of 2009 to the EAC Common Market Protocol provides for the Schedule of Specific Commitments.

[71] GATS, Article 17.
[72] GATS, Article 20.
[73] Common Market Protocol, Article 52; Customs Union Protocol Article 40.

However, what is not clear is whether it is also taken into consideration while interpreting the National Treatment obligation given the fact that there is neither an express provision nor case law that has accorded it interpretation.

While as it is true that the EAC Customs Union Protocol under its preamble notes that "Conscious of their obligations, as contracting parties to the Marrakesh Agreement establishing the World Trade Organization, 1994 (the WTO Agreement)". Similarly, the preamble to the Common Market Protocol acknowledges other regional and international agreements.

For the purposes of this study since there is a paucity of information as to the application of the schedule of specific commitments in the interpretation of the national treatment obligation, this study shall limit the National Treatment obligation to the three expressly stated elements. However, in recognition of the fact that Annex 5 imposes an obligation, the Schedule of Specific Commitments shall be handled separately as a distinct trade obligation. Sincere there is no case law in the EAC that has interpreted the elements of the National Treatment Obligation, this study shall borrow similar provisions and interpretation under the WTO jurisprudence.

WTO jurisprudence has established a **4- tier test** for a violation of the National Treatment Obligation to succeed and the WTO Appellate Body Report in **Canada Autos**[74] explained the 4 elements in depth though this study shall limit them to three as earlier explained.

i. The measure affects a supply of services

ii. The respondent state undertook a National Commitment in its schedule of Specific commitments (This element shall however be handled separately)

iii. The services and Service Suppliers are alike

iv. The measure accords a less favourable commitment in comparison to like services and service suppliers in the respondent state.

[74] Report of the Appellate Body, Canada – *Certain Measures Affecting the Automotive Industry*, WT/DS139/AB/R, 31 May 2000, Adopted on 19 June 2000, para. 6.996

1. The Measure Affects a Supply of Services

For there to be a claim that a measure imposed undermines the National Treatment Obligation, the measure at issue must be falling within the scope of Article XVII of the EAC Common Market Protocol. Trade in services is the supply of a service from the territory of one Member into the territory of any other Member, by a service supplier of one Member, through commercial presence in the territory of any other Member. [75] However, there are generally 4 modes of supply of services both in the WTO and EAC jurisprudence.[76]

More specifically, Article XXVIII(b) of the GATS defines "supply of a service" to include the production, distribution, marketing, sale and delivery of a service. In EC – Bananas III, the Appellate Body considered that no measures are excluded a priori from the scope of the GATS because the scope of the GATS encompasses any measure of a member to the extent that it affects the supply of a service regardless of whether such measure directly governs the supply of a service or whether it regulates other matters but nevertheless affects trade in services.[77]

The Appellate Body in EC- Bananas explained that the literal interpretation of the term ''affect' refers to a measure having "an effect on" the sale of goods and services.[78]

The WTO panel in **China Audiovisual** clarified that "As long as the measure has any bearing upon conditions of competition in supply of a service", or it governs or regulates a supply of services, then it meets the standard of affecting a supply of

[75] GATS, Article I:2.
[76] Article 16 of the Common Market Protocol provides for the different modes of supply of services. These include a supply of services from the territory of a partner state into the territory of another partner state; in the territory of a partner state to service consumers from another partner state; by a service supplier of a partner state, through commercial presence of the service supplier in the territory of another partner state; and by the presence of a service supplier, who is a citizen of a partner state, in the territory of another partner state. These different modes can modify the definition of a supply of services; hence, it need not be limited to the definition by the WTO Appellate Body Report in Canada Autos, 2000.
[77] Report of the Appellate Body, in *European Communities-Regime for the Importation, Sale and Distribution of Bananas*, WT/DS27/AB/R, para. 217 (citing Panel Reports, EC – Bananas III (Ecuador), para. 7.285; EC – Bananas III (Mexico), para 7.285; and EC – Bananas III (United States), para. 7.285.
[78] ABR, EC – Bananas III, para. 220

services.[79] In the EAC, this is so much evident as partner states have consistently imposed such measures which affect a supply of services and products in favour of the domestic services and products.

The word "affecting" covers not only measures which directly regulate or govern the sale of domestic and imported like products, but also measures which create incentives or disincentives with respect to the sale, offering for sale, purchase, and use of an imported product "affect" those activities.[80] In the context of the EAC, partner states have from time-to-time implemented measures which directly and indirectly affect a supply of services as shall be expounded further in the next chapter.

2. The Similarity/ Likeness Test

Similarly, the WTO jurisprudence has laid down the tests for likeness and particularly the Appellate Body Report in **Argentina Financial Services**[81] clarified that both the domestic services and those from a partner state must share; -

i. Similar physical properties of the Products

ii. Are capable of serving a similar end use

iii. Consumers perceive and treat the products as alternatives and

iv. Have similar international Classification.

In establishing 'Likeness', both the foreign and domestic services and service suppliers must be the same in all material respects except for origin. Appellate Body in **EC – Asbestos**[82] also stated that not all products that are in some competitive relationships are "like products", and that it is difficult, if not impossible, in the abstract, to

[79] Panel Report- *China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products*, WT/DS363/R, 12 August 2009, para. 7.1450
[80] Panel Report, China-Audio Visual, para. 7.1449
[81] Report of Appellate Body, *Argentina — Measures Relating to Trade in Goods and Services*, WT/DS453/AB/R, 14 April, 2016, para. 6.30,
[82] Appellate Body Report, European Communities — Measures Affecting Asbestos and Asbestos Containing Products, WT/DS135/AB/R, adopted 5 April 2001, DSR 2001: VII, 3243, para. 99

indicate precisely where on this spectrum the word "like" falls. The panel concluded that services must be similar in all material aspects.

Regarding the international classification, the United Nations designed the "United Nations Central Product Classification", also known as the CPC and this was adopted by the WTO. Similarly, the "Explanatory Notes" on the EAC Schedule of Specific Commitments notes that "CPC: means the United Nations Central Product Classification Codes for services" [83] . Consequently, where an EAC partner state alleges that the services meet the likeness test, they must be having a similar CPC classification.

3. The Measure accords a Less Favourable Treatment in relation to Like Services and Service Suppliers

The EAC Common Market Protocol expressly sets out that "Formally identical or formally different treatment shall be considered to be considered less favourable if it modifies the conditions of competition of a partner state compared to like services or service suppliers of other partner states".[84]

A similar express provision is enshrined under Article 17(3) of the GATS and modifying the conditions of competition has been given context by various WTO Appellate Body and Panel reports such as the Panel in **EU-energy sector** to refer to a situation where "a measure creates an advantage for domestic suppliers over the foreign suppliers or creates a detriment for foreign service suppliers".[85] It was further emphasised in **Argentina Financial Services**[86] that if the measure at issue modifies the conditions of competition to the detriment of services and service suppliers of any other Member, it will be inconsistent with Article XVII.

A measure may modify the conditions of competition where it increases the cost of production through unfair taxation or imposition of a given class of workforce and

[83] EAC Common Market, Schedule of Specific Commitments, para. 5.
[84] Common Market Protocol, Article 17.
[85] Report of the Pane*; - European Union and its Member States – Certain Measures Relating to the Energy Sector*, WT/DS476/R 10 August 2018, para. 7.751
[86] Report of Appellate Body, *Argentina — Measures Relating to Trade in Goods and Services*, WT/DS453/AB/R, 14 April, 2016, Para. 6.106

minimum payment, imposition of technology levels local content requirement which undermine the quality of the final service or product, undermining consumer preferences and its overall restriction to international commerce, among others. Within the EAC context, various Non-Tariff Barriers (NTBs) have modified the conditions of competition to the detriment of services and products from partner states which has greatly affected both intra-EAC trade, economic development and overall regional integration.

2.2.6. Rule 6. Most Favoured Nation Treatment (MFN)

This is another trade rule within the WTO[87] and the EAC. It requires each partner state to accord unconditionally to services and service suppliers of other partner states, treatment no less favourable that it accords to like services and service suppliers of other partner states or any third party or customs territory.[88] Unlike the National Treatment obligation which appears both in the Customs Union protocol and Common Market protocol, the MFN only appears under the Common Market protocol and states as follows; -

> *Each Partner State shall upon the coming into force of this Protocol, accord un conditionally, to services and service suppliers of the other Partner States, tre atment no less favourable than that it accords to like services and service supp liers of other Partner States or any third party or a customs territory.*[89]

The MFN obligations apply to every service and service suppliers across the various modes of services. However, where a partner state undertakes an exception in their schedule of specific commitments under the MFN obligation, such an MFN obligation cannot be imposed.[90] The MFN has been described differently and given different attributes but in the view of Marvroids, the MFN is the "insurance policy that

[87] GATS, Article 2.
[88] Common Market Protocol, Article 18
[89] Ibid
[90] United Nations, *Dispute Settlement; World Trade Organization, 3.23 GATS,* New York and Geneva, 2003, PP. 14-15.

negotiators bought to avoid concession erosion".[91] It further requires that where an advantage is created for a service or service supplier from one partner state, it must be unconditionally and immediately be extended to another partner state.

a. Elements of the MFN Obligation

Just like with the National Treatment Obligation, there is a paucity of data relating to the MFN in the context of the EAC as there have been no court decisions to test the legal provisions. Non the less, the WTO jurisprudence has richly explained the elements of the MFN obligation which has a similar wording like that enshrined in the EAC Common Market Protocol.

Generally, the MFN imposes a general and unconditional obligation on its members,[92] to ensure equality in treatment afforded to "like" services and service suppliers of all members. This entails equality for opportunity to import from or export to all EAC Members.[93] The elements of the MFN have been explained by the WTO appellate body and panel reports to include; -

1. The measure at issue affects a supply of services
2. The "Likeness" Test.
3. No Less-Favourable treatment

For purposes of clarity, the above elements have been explained in a similar manner to those in the National Treatment Obligation. The key distinction is however between the National Treatment and the MFN where the National Treatment looks at according a less favourable treatment to services and services of other partner states compared to the domestic services and service suppliers. To the contrary, the MFN, it is concerned with according a less favourable treatment between the services and

[91] Marvroids P., The Regulation of International Trade: The General Agreement on Trade in Serices", (MIT Press 2020). P.349

[92] Report of Appellate Body, *Argentina — Measures Relating to Trade in Goods and Services*, WT/DS453/AB/R, 14 April, 2016, para. 7.148

[93] Fotoh, Alexander Achia, "Exception to and the fate of the Most-Favoured-Nation Treatment Obligation under the GATT and GATS", MPRA Paper No. 41237 posted on 12th September, 2012. < https://mpra.ub.uni-muenchen.de/41237/1/MPRA_paper_41237.pdf > accessed on 12th December 2025

service suppliers of one partner state over those of another partner state or even a third-party state who is not a party to the EAC Common Market Protocol.

2.2.7. Rule 7. Schedules of Specific Commitments

In the EAC Community, the schedule of specific commitments is not expressly stated within the Common Market Protocol but it is annexed to it as annex V[94]. A commitment is a contractual promise to liberalise a specific sector or sub-sector.[95] For the fact that member states are always at different levels of development and they uphold differing national interests, having an entirely liberalised and a free common market would be virtually unrealistic.

Consequently, in trade agreements that seek to liberalise trade, states undertake specific commitments that they would be bound with. These commitments may be in relation to market access or national treatment or additional commitments.[96] Importantly, while as states willfully take up commitments that may bind them, where such commitments are undertaken, states are under a duty to uphold them; hence, the Specific commitment obligations.

The specific commitments may spell out which kind of services shall be liberalised by a partner stated. Additionally, they can state the minimum treatment that a foreign service or service supplier must be accorded by an EAC partner state. The specific commitment therefore indicates the lowest or the worst permissible treatment that can be accorded to a partner state but a given state is at liberty to accord a much favourable treatment that that it committed to in the schedule of specific commitments.[97]

Where a member state undertakes specific commitments whether in relation to national treatment or market access, such a commitment may be subject to specific

[94] The EAC Common Market Schedule of Commitments on the Progressive Liberalization of services, Annex V.
[95] Marvroids P., The Regulation of International Trade: The General Agreement on Trade in Serices", (MIT Press 2020). P.349
[96] United Nations, *Dispute Settlement; World Trade Organization*, *3.23 GATS*, New York and Geneva, 2003, P. 25
[97] Ibid, p.25

limitations, conditions or qualifications as each member things fit. However, it is paramount that each member state makes such conditions, qualifications and limitations very clear while undertaking the specific commitments in its schedule.[98] Classification may be based on the W/120 document or on the United nation's Central Product Classification (CPC).[99]

More specifically, the schedule of specific commitments is provided for under Annex V to the Common Market protocol and it sets the dates of elimination of restrictions on market access and national treatment for each listed service. Unlike WTO's GATS schedule of Specific commitments, the EAC separately provides for removal of restrictions on the free movement of capital under annex V to the Common Market protocol. However, the endless NTBs imposed by partner states are tangible evidence that the obligations are rich in documentary yet thin in reality as this research shall elucidate further.

2.2.8. Other Relevant Schedules of Specific Commitments

Due to overlapping membership to Regional Economic Blocks (RECs), the African Continental Free Trade Area Agreement (AfCFTA) sought to create a free trade area in Africa. As such, besides the EAC Common Market Schedule of Commitments on the Progressive Liberalization of services and the Structure of the East African Community Common External Tariff (CET) which accompanies the Custom Union Protocol, the EAC partner states have undertaken other specific commitments.

These additional schedules of commitments were made by the partner states to AfCFTA and these include the East African Community Provisional Schedule of Specific Commitments on Trade in Services for the African Continental Free Trade Area (AFCFTA). This seeks to align the Common Market Protocol with the AfCFTA.

[98] Ibid, p.25
[99] Marvroids P., The Regulation of International Trade: The General Agreement on Trade in Serices", (MIT Press 2020). P.352

Similarly, the EAC partner states have also undertaken specific commitments to the AfCFTA in relation to the customs regime. The EAC Schedule of Tariff Concessions for the African Continental Free Trade Area (AFCFTA) for Category A Products seeks to align tariffs with those envisaged in the AfCFTA.

2.3. Conclusion

Chapter two has examined the various trade rules ranging from the free movement of goods, services, persons and labour as well as free movement of capital. Additionally, this chapter has examined the National Treatment obligation under the Common Market Protocol while juxtaposing with the WTO legal regime especially in explaining the elements. Similarly, this chapter utilized the wide interpretation of the WTO law on the MFN obligations while giving it context in the EAC. Lastly, this chapter examined the schedule of specific commitments, the schedule of concessions as well as other schedules.

CHAPTER THREE:

EXCEPTIONS AND DEVIATIONS TO THE EAC TRADE RULES AND THEIR PROCEDURE

3.1 Introduction

This chapter examines the exceptions and deviations to the EAC trade rules. This chapter will demonstrate that the exceptions and exceptions in the EAC trade rules are extensive and multi-layered in their structure. Broadly, these shall be categorised as general exceptions, general exceptions to the free movement of capital, security exceptions, restrictions and prohibitions and safeguard measures. This chapter shall juxtapose these exceptions and deviations with the WTO jurisprudence to establish points of similarity and points of departure. Lastly, this chapter shall discuss the procedure through which EAC partner states can follow before, during and after the implementation of the exceptions and deviations to intra-EAC trade.

Exceptions to EAC-Trade Rules

In the EAC, there are many exceptions to trade and these may include the General exceptions[100], Security exceptions[101]. These exceptions give a member state a right to take measures which are inconsistent with the trade rules under the EAC treaty and the relevant protocols. These different exceptions to the trade rules impose different obligations and require varying levels of burden and standard of proof for the complainant party to prove a derogation.

Key among the obligations which may be derogated from are the Most-Favoured-Nation (MFN) treatment obligation which prohibits discrimination of imported products from other Members and the national treatment obligation requires Members not to accord a less favourable treatment to imported products compared to those it accords like products from its domestic suppliers.

[100] Common Market Protocol Article 21 outlines general exceptions to trade in services while Article 25 of the Common market protocol provides for general exceptions to free movement of capital.
[101] Ibid, Article 22

Given the fact that partners states undertake commitments in their respective schedule of specific commitments, they are obliged to adhere to their commitments. In addition, EAC partner states should not impose quantitative restrictions on goods in or out of the partner state as well as other non-tariff barriers which would frustrate trade liberalisation and a free market amongst the partner states. Non the less, there are such instances where member states have derogated from the trade rules without paying due regard to procedural requirements and set standards to be complied with before, during and after the derogation which undermine the efficacy of the trade exceptions.

3.2. General Exceptions

Article 21 of the Common Market protocol provides for various general exceptions to the EAC Trade rules. General exceptions allow members have to take measures otherwise inconsistent with the obligations under the EAC protocols, if such measures are taken in order to protect certain values or provide for certain policies. These include measures for the protection of public morals, necessary to protect human, animal or plant life or health, or necessary to secure compliance with laws and regulations, prevention of fraudulent practices, protection of privacy of individuals, safety, among others.

While as the general exceptions under the EAC protocols have not been tested before a tribunal or court of law, the general exceptions under the GATT and GATS have been tested by various WTO panels. It is however crucial to note that even the "WTO's 26 years of existence, there have been only two successful uses (U.S. – Shrimp and U.S. – Tuna-Dolphin) of the general exceptions of the GATT (Article XX) and the General Agreement on Trade in Services (GATS Article XIV) out of 48 attempts to defend domestic policies challenged as illegal under WTO rules"[102] which translates into a failure rate of 96%. If 46 of the parties that attempted to use trade exceptions failed, it implies that the measures they imposed were injurious to trade of the claimant states. As such, the efficacy of the general exceptions hangs in balance.

[102] Rangel Daniel, *WTO General Exceptions; Trade Law's Faulty Ivory Tower*, (Public Citizen's watch, Washington DC., February 2022) < https://www.citizen.org/wp-content/uploads/WTO-General-Exceptions-Paper_.pdf > accessed on 15th December 2025

Importantly, the various general exceptions have different elements if the efficacy of their implementation is to be met. The general exceptions include; -

i. *Protection of public morals or to maintain public Order*

ii. *Protection of human, animal or plant life or health*

iii. *Secure compliance with laws or regulations*

iv. *Ensure the Collection of Taxes*

v. *Ensure avoidance of Double Taxation*

These general exceptions can be expounded with a greater focus on their elements or what partner states that may want to rely on the general exceptions must prove. Unfortunately, there has been no court decision of the East African Court of Justice that has tested any of the general exceptions. Similarly, there is a general paucity of scholarly literature to give life to the general exceptions.

However, the WTO jurisprudence has made various panel and appellate body decisions which has expounded these general exceptions. Based on the same rational as expounded in the previous chapter, I will rely on the WTO jurisprudence to explain the general exceptions while maintaining the wording and context of the EAC as detailed below; -

3.2.1. Protection of public morals or to maintain public Order

In the EAC Common market protocol, the public moral exception as provided under Article 21(1)a has a similar wording with that enshrined in the WTO GATS article XIV. The public moral exception is one of the most critical general exceptions that even in the history of the WTO jurisprudence, no single country has successfully relied on the public moral exception. While as the United States tried hard to rely on the public moral exception in the **US-Gambling case**[103], it only succeeded in proving some of the elements but not all. While as African Countries are so much grounded into their

[103] Report of the Panel, *United States-Measures affecting Cross-Border Supply of Gambling and Betting Services*, WT/DS285/R, 10 November 2004.

social life and cultural heritage, no country has relied on it. The complexity and failure of success of the public moral exception can be best appreciated from its elements as expounded below.

Article XIV of the GATS and Article 21(1)a of the EAC Common Market Protocol provides that a member can adopt and enforce measures necessary to protect public morals or maintain public order as long as it is applied in a manner which does not constitute a means of arbitrary or unjustifiable discrimination. The Panel in **US-Gambling** defined Public morals as a standard of right and wrong that can be described as 'belonging to, affecting or concerning the community or nation.[104] Similarly, the same panel defined Public order to refer to the preservation of fundamental interests of society, as reflected in public policy and law. These fundamental interests can relate to standards of law, security and morality[105]

The panel further cited **Judge Lauterpacht,** a distinguished scholar[106] in international law noting that "public order" as the "fundamental national conceptions of law, decency and morality". While as the two terms are distinct, some overlap may exist.[107] The WTO jurisprudence has laid down 3 elements to prove reliance on the public moral exception to the trade rules.

Elements of the Public Moral Exception to the Trade Rules

These were enunciated by the panel in **EU- Energy Package**[108] which also gave reference to the Appellate Body Report in US- Gambling[109].

1. "Designed" to protect public morals or to maintain public order;

[104] Ibid, para. 6.458
[105] Ibid, para.4.467
[106] Panel Report on *Colombia- Points of Entry* noted that "a panel's analysis should be complemented whenever necessary with additional sources which may include pronouncements of domestic courts, opinions of legal experts and the writings of realised scholars. Hence it was appropriate to rely on the definition of a Judge Lauterpacht
[107] Report of the Panel, *United States-Measures affecting Cross-Border Supply of Gambling and Betting Services*, WT/DS285/R, 10 November 2004, para. 6.468
[108] Report of the Pane*; - European Union and its Member States – Certain Measures Relating to the Energy Sector*, WT/DS476/R 10 August 2018, at para. 7.1140
[109] Appellate Body Report, *United States-Measures affecting Cross-Border Supply of Gambling and Betting Services*, WT/DS285/AB/R, adopted 20 April 2005, Para. 292

2. "Necessary" to protect public morals or to maintain public order.
3. The measure is “not applied in an arbitrary or discriminatory manner” contrary to the Chapeau.

i) Designed to protect public morals or maintain public order

The Panel in **US-Gambling**[110] further clarified that members should be given some scope to define and apply for themselves the concepts of “public morals” and “public order” in their respective territories, according to their own systems and scales of values. In establishing whether a measure was designed to protect public morals and public order, the panel in **EU- Energy sector**[111] laid out 2 tests which a state must prove to demonstrate that the measure in contention was designed to protect public morals or maintain public order; -

a. Whether the policy objective falls within those meant to maintain public order
b. Whether the measure is designed to realize the intended objective

a) Whether the policy objective falls within those meant to maintain public order

The panel followed the standard laid down in footnote 5 to article XIV a of the GATS. This provides that “the public order exception may be invoked where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society”. Even in the context of the EAC, a member state intending to rely on this exception must demonstrate that its people’s culture is a fundamental interest and too much foreign content may pose a genuine and sufficiently serious threat to this fundamental interest.

[110] Report of the Panel, *United States-Measures affecting Cross-Border Supply of Gambling and Betting Services*, WT/DS285/R, 10 November 2004, at para. 6.468
[111] Panel Report, *European Union and its Member States- Certain Measures relating to the Energy Sector*, WT/DS476/R ,10 August, 2018 at para. 7.1142

The panel **EU-Energy Package**[112] further provided that in proving the standard in footnote 5, there are 2 tests which must be met; -

- Whether the protection of the culture is a fundamental interest of society
- Whether too much foreign content poses a serious threat to a member's interest.

A "fundamental interest" must be considered an interest which lies at the core of a society and which that society constantly strives to achieve and maintain.[113] It must therefore be a basic necessity in society and it must be reflected in its laws and policies. To a developing country like the EAC partner states, public morals and public order are a basic necessity. Additionally, the protection of culture is a fundamental interest and while as this exception has not been pleaded, it is inferable that the colonial boarders only divided communities with a shared culture, values and common heritage. Consequently, EAC partner states would not violate the moral order of neighbouring partner states since these are shared values.

b) Whether the measure is designed to realise the intended objective

The **ABR on Colombia – Textiles,**[114] clarified that the analysis of a challenged measure's design is only a threshold examination, which is not "a particularly demanding step. We are only required to demonstrate that the measure is not "incapable" of realising the intended objective.

In the EAC context, a partner state which imposes a measure which violates the trade rules must demonstrate that the measure is capable of realising the intended objective. A case in a point is that if an EAC partner states imposes a measure that violates trade rules with a claim that it is to prevent cultural erosion or maintain public morals, the measure must be directly gearing or focusing towards the realisation of that particular objective. There must be a direct link or nexus between

[112] Ibid, para. 7.1144
[113] Panel Report, *European Union and its Member States- Certain Measures relating to the Energy Sector*, WT/DS476/R ,10 August, 2018, para. 7.1148
[114] Appellate Body Report, *Colombia – Method of Impounding and Applying Customs Measures to Textiles, Apparel and Footwear*, WT/DS461/AB/R, adopted 22 June 2016, paras. 5.68 and 5.70

the measure being implemented and the objective being pursued, or else such a measure shall be deemed a non-justifiable contravention of the EAC trade rules.

ii) The measure is Necessary to Protect public morals or maintain Public Order

The necessity test cuts across all the general exceptions and it is often a hard nut to crack for states that seek to rely on the general exceptions to derogate the trade rules. As such, the WTO panel and appellate body reports have developed a water tight test for any state to satisfy that a general exception was indeed necessary to deviate from the trade rules enshrined in the WTO Covered agreements.

The appellate Body Report in **US - Gambling,** at paragraph 306 while quoting **Appellate Body Report, Korea - Various Measures on Beef,** at paragraph 162 established 3 tests for the necessity requirement.

a) The 'relative importance' of the interests or values protected by the measure

b) The contribution of the measure to the realisation of the ends pursued by it

c) The restrictive impact of the measure on international commerce.

a) The 'relative importance' of the interests or values protected by the measure

Relative importance refers to the basic-value weight of the culture, interest, heritage, morals, among other elements that a partner state seeks to protect. In **Korea - Beef**[115], the appellate body found that if the importance of the interests and values the measure seeks to protect is satisfied and the legislative history of such a measure at issue shows the societal interests that the measure satisfies, then the measure is "vital and important in the highest degree".

[115] Appellate Body Reports, *Korea — Measures Affecting Imports of Fresh, Chilled a Frozen Beef*, WT/DS16, para. 166

In the context of the EAC, where the people cherish a shared culture, cultural and historical preservation exceeds its 'relative importance' since it is essential for the protection of morals and public order. Assuming it is Uganda which seeks to rely on a public moral exception to prove why a given service should not be allowed in Uganda, Uganda would have to prove that such a culture or public moral is of relative importance. In determining whether a given culture, moral or historic heritage is of so much importance to the people of Uganda, the court will look at the legislative history of Uganda to see if such a moral, cultural heritage or value has been contemplated by the legislators of Uganda. This would speak to a prior intention to protect and preserve the moral value in perspective.

b) The contribution of the measure to the realisation of the ends pursued

The measure may not be entirely correcting the damage, loss or erosion caused by the actions of a partner state, the measure may only be contributing towards the correction of the loss created by the trade of another partner state. The panel on **EU-Energy Package**[116] clarified that a measure need not be necessary to prevent all potential threats to a fundamental interest of society in order to be justified under Article XIV(a) of the GATS. The panel further noted that the "design and expected operation" of the measure is "manifestly apt to make a material contribution"[117]

The Panel in EU-E. Sector[118] gave context to this test when it clarified that in assessing the contribution of the measure, panels should take a qualitative approach. The Appellate Body Report on **Korea Beef** [119] noted that the greater the extent to which the measure contributes to the end pursued, the more likely that the measure is necessary. To give this test context in the EAC, where Uganda alleges that the measure it undertook to violate a trade rule was contributing towards the protection of public morals, such a contribution should only be examined in a qualitative not in a quantitative nature. Courts need not examine how many people have been

[116] Panel Report, *European Union and its Member States- Certain Measures relating to the Energy Sector*, WT/DS476/R ,10 August, 2018, para. 7.1221
[117] Ibid, para. 7.1214
[118] Ibid, para. 7.1213
[119] Appellate Body Reports, *Korea — Measures Affecting Imports of Fresh, Chilled a Frozen Beef*, WT/DS16, para. 163

transformed or how many values have been protected but will look at the non-quantifiable factors. If such a measure has a great contribution towards the protection of public morals, then it will be deemed necessary.

c) The restrictive impact of the measure on international commerce.

In the EAC just like all other Regional Economic Blocks, economic interests of states lie at the core of the treaties. Consequently, where a measure is overly trade restrictive, it undermines the primary purpose of the treaty. To limit a direct attack on the primary object of the WTO Covered agreements, the panels have demonstrated that a restrictive impact of the measure refers to imposing a barrier to international commerce.

The panel in **EU- Energy Sector** [120] noted that "where there is limited trade restrictiveness of international commerce, this test is met". To give this test context, where an EAC partner state is implementing a measure that violates the EAC trade rules, for such a measure to be justifiable under the public moral exception, the measure should not be overly restricting international trade.

iii) Requirements under the Chapeau to article 21 of the EAC Common Market Protocol.

Article 21 of the EAC Common Market Protocol sets out that; "Subject to the requirement that measures are not applied in a manner which would c onstitute a means of arbitrary or unjustifiable discrimination between Partner States where like conditions prevail, or a disguised restriction on trade in services…" In the WTO jurisprudence, this similar provision within the general exceptions both in the GATT and the GATS is largely known as the Chapeau.

Relatedly, the Chapeau to Article 21 of the EAC Common Market Protocol requires that a measure should not be applied in a discriminatory or unjustifiable manner. In US- Gambling, the AB examined evidence of discriminatory application and found that

[120] Panel Report, *European Union and its Member States- Certain Measures relating to the Energy Sector*, WT/DS476/R ,10 August, 2018, Para. 7.1226

the statute in question was prima facie justifiable.[121] Consequently, for a measure to be discriminatory, it may be prima facie discriminatory or indirectly where it is merely a disguised restriction to trade. It may therefore be *defacto* discriminatory where from the wording it is not discriminatory but all facts stand to attest to its discriminatory nature or *dejure* discriminatory it is expressly intended to discriminate against a like service or service supplier or another partner state.

3.2.2. Protection of human, animal or plant life or health

The protection of human, animal or plant life or health is by far the most alluded to general exception in the WTO jurisprudence and the only two instances where WTO panels have successfully accepted a defence of this exception relate to this particular general exception. The successful use of this general exception was successful in the **U.S. – Shrimp**[122] and **U.S. – Tuna-Dolphin**[123] cases which came up under the general exceptions of the GATT (Article XX) and the General Agreement on Trade in Services (GATS Article XIV) out of 48 attempts to defend domestic policies challenged as illegal under WTO rules".[124]

In 1998, the Appellate Body of the WTO handed down a landmark decision in the **U.S. – Shrimp case** where various countries like Pakistan, India, Thailand and Malaysia challenged the United State's ban on the importation of shrimp. The basis for the United States's ban was that the harvest of the shrimps was not using good technology which made sea turtles to be caught in the fishing nets. The US argued that there was a need to use a turtle excluder device which was being used by the US domestic shrimpers. When the claim was made before the WTO panel, the US conceded to the ban and put a defense that the ban was to protect animal life under the GATT and the GATS which was upheld both by the panel and the appellate body.

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[121] Irem Dogan, Taking Gamble on Public Morals: Invoking the Article XIV Exception, line 2-4 to GATS, Brooklyn Journal of International LAW, Volume 32, Issue 3 Page 1141

[122] Appellate Body Report, *United States – Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS58/AB/R, 12 October 1998, at paras. 166-172.

[123] Appellate Body Report, *United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products*, WT/DS381/AB/R, 16 May 2012, at paras. 407-408.

[124] Rangel Daniel, *WTO General Exceptions; Trade Law's Faulty Ivory Tower*, (Public Citizen's watch, Washington DC., February 2022) < https://www.citizen.org/wp-content/uploads/WTO-General-Exceptions-Paper_.pdf > accessed on 15th December 2025

A second landmark decision was in the famous **US. -Tuna-Dolphines Case** where the U.S invoked its Marine Mammal Protection Act to impose a ban on the sale of tuna and its products in the U.S. The prohibited mode of fishing was also called encirclement seine netting which was done by "setting on dolphins". This mode injured millions of dolphins. While as the US conceded to the band and put up a defense of protecting animal life, the WTO panel and appellate body found the US justified under the GATT and the GATS exceptions.

The other case which brought out the concept of general exception was the **EC Asbestos case,** where France imposed a ban on the manufacture, sale, import or even exportation of asbestos. This was because asbestos had a proven carcinogenic effect which endangered both human and animal life. While as Canada filed a complaint under the National treatment obligation to the WTO, the panel's ruling was in favour of France but not on the basis of the general exception but owing to the fact that the claim did not meet the likeness requirement to prove national treatment. Upon appeal, the appellate body upheld the position of the panel that France was justified but the reasoning was not on the likeness test but on the general exception on the need to protect human and animal life. It is for this reason that the decision in the Asbestos case is not regarded as a successful use of the defense.

In light of the above 3 cases, the elements for the success of this general exception are largely 3 where the two are the common necessity test and compliance with the chapeau which are common to the other general exceptions. In this case however, there must also be an intention to protect human, plant or animal life or health as the distinguishing element. In the EAC, while as countries have imposed bans and measures with the intention to protect human, animal and plant life and health, such measures have not been challenged to necessitate the development of the EAC jurisprudence on this particular justification.

3.2.3. Secure compliance with laws or regulations

Article 21(1)c of the EAC Common Market Protocol provides for this particular exception where EAC partner states may derogate their treaty trade obligations is

such a derogation is to secure compliance with the laws or regulations. More specifically, this article does not include all the laws of a partner state or local government laws and regulations, it lists the nature of laws that must be put into perspective. These include laws which are aimed at preventing deception and fraudulent practices in services contracts, the protection of privacy and confidentiality of individuals, their records and accounts or their safety.[125]

This therefore makes this general exception to have unifying elements as listed below; -

i. Accordance with the Chapeau to article 21 of the EAC Common Market protocol

ii. Necessity to secure compliance with the laws or regulations

iii. The prior existence of such laws

In explaining the above elements which are directly extracted from the wording Article 21 (1)c of the EAC Common Market Protocol, I will rely on the wise counsel of the WTO panel and appellate body decisions. This is because there are no decisions in the EAC which have given context to these elements yet there is largely a paucity of scholarly data to inform the same. Owing to the fact that the wording is the same but also the preamble of the Common Market Protocol and the Custom Union Protocol acknowledge the application of the WTO Covered agreements and international law.

i. Accordance with the Chapeau to article 21 of the EAC Common Market protocol

For any EAC partner state to rely on this particular general exception as proof for the violation of the trade rules, it must demonstrate that the challenged measure under is consistent with the Chapeau of Article 21 of the EAC Common Market Protocol. Consequently, such a measure must have been implemented in a manner which is non-discriminatory in nature. The burden of proof however, rests on the party

[125] A similar provision is contained in Article XIV(c)(ii) of the GATS and the WTO jurisprudence has interpreted this general exception in various decisions.

challenging the reliance on this defence to demonstrate that the partner states which evokes this general exception as a defence imposed a measure which was arbitrary, unjustifiably discriminatory, or it was merely a disguised restriction on trade in services.

The tests for compliance with the Chapeau cut across all the general exceptions and having demonstrated the same in the public moral exception, there is no need to regurgitate the same. However, to give it context in the EAC setting, where a partner state implements a measure which violates the trade rules and intends to justify such a measure using the compliance exception, such a partner state must demonstrate that the measure was not aiming at discriminating against one partner state over the other or even discriminating against one service or service provider over the other.

ii. Necessity to secure compliance with the laws or regulations

The necessity test cuts across all the general exceptions to the trade rules; hence, the elements for the necessity test are the same as discussed in detail in the public moral exception. Summarily, in the light of the compliance exception, a measure will be deemed necessary to ensure compliance if the laws to be protected are of 'relative importance' or interest to a given state or community. Secondly, the measure must be contributing towards the realisation of the ends pursued by it which would be to secure such compliance. Lastly, it will be deemed necessary to secure compliance where it is not to cause a restrictive impact to international commerce.

In the light of the EAC partner states, a measure will be deemed necessary if it is to prevent any use of fraudulent or deceptive practices in service contacts or to protect the individual privacy of the people. This takes into context all the personal data and protection of all confidential information of an individual relating to their personal records and accounts as well as their safety as persons.

Where a partner state seeks to satisfy the necessity test, it will take into consideration the nature of the listed laws and regulations since not all laws and regulations give a lee way for a deviation from the trade rules. When these elements are put into context, then the partner states are able to prove whether their

violations of the trade rules are justifiable and the researcher can base on this to establish the efficacy of such exceptions.

iii. The prior existence of laws or regulations

One last element of the compliance exception would be to prove that the laws that a partner state seeks to protect have been into existence before the implementation of the contested measure. These laws must be in line with the laws listed in the general exception where such laws should be relating to safety of the individual, ensuring personal privacy and the protection of confidentiality of their records and accounts or to prevent deceptive and fraudulent practices.

Additionally, such laws must have been in existence by the time the measure was imposed. This helps to bar partner states from imposing a trade distractive measure which is discriminatory or arbitrary and then enact laws then allege that the measure was to ensure compliance with the domestic law. Where a partner state first imposes the measure then passes a law or a regulation, it will not be a justification to allege that the measure was aimed at ensuring compliance with the laws and the regulations.

3.2.4. Ensure the Collection of Taxes

This general exception sets out that the measure may be inconsistent with Article 17 of the EAC Common Market Protocol which is focused on the National Treatment obligation provided the difference in treatment is to ensure an equitable and effective imposition or collection of taxes.[126]

While as the general exceptions in the WTO jurisprudence and the EAC jurisprudence are similar even in the letter of the law, the other 2 general exceptions which are on collection of taxes and prevention of double taxation have distinct elements. Even when it is still the case that these general exceptions have not been tested before the East African Court of Justice, their elements which a partner state that wishes to rely

[126] Common Market Protocol, Article 21(1)d.

on the general exception must prove can be inferred from the wording of the text as below; -

Elements of the Collection of Taxes Exception

i. Compliance with the Chapeau to Article 21 of the EAC Common Market Protocol

ii. The contested measure must infringe the National Treatment Obligation

iii. The measure to be based on collection of taxes.

i. Compliance with the Chapeau to Article 21 of the EAC Common Market Protocol

The requirement to comply with the chapeau has been expounded in previous in the previous general exceptions, however to give it context in light of the foregoing general exception and the EAC tax regime, the contested measure should not be applied in a manner which could be arbitrary, unjustifiably discriminate between partner states where there are similar conditions.

The Ugandan case of **British American Tobacco v A.G of Uganda**[127] which was before the East African Court of Justice would be a leading example on arbitrary taxation. The court noted that the discriminatory taxation of the cigarettes from Kenya to Uganda was not justifiable since like conditions prevailed in both countries. Uganda was not thus justified in imposing a hefty tax on cigarettes imported from other countries including the partner states of the EAC.

ii. The contested measure must infringe the National Treatment Obligation

Unlike other general exceptions which can be invoked generally across various measures, this particular exception is restricted to a violation of the national treatment obligation. A case in a point, Uganda cannot implement a measure which

[127] Reference No. 7 of 2017

affects other trade obligations such as free movement of people, capital, services, among others and allege that it was aimed at ensuring compliance with equitable and effective collection of taxes. The trade rule which was violated must have been the National Treatment Obligation and it must be the trade rule in dispute for Uganda to rise this particular justification for the derogation from the National Treatment Obligation.

iii. The measure to be based on collection of taxes.

Another very important element is that the measure must have been implemented to ensure the equitable or effective imposition or collection of direct services. The standard set in this exception is that the taxes to be collected must be direct taxes not indirect taxes. The measure must be aiming at making the companies from the partner states pay their taxes other than alleging that it imposed a measure on the country or companies such that the individual residents can pay taxes, this would amount to indirect taxation which does not meet the admissibility criteria.

Importantly, such a tax must be an equitable one; hence, it must be imposed depending on the financial status of the direct tax payer. Relatedly, it must be based on a partner state's tax system for it to impose a tax which can apply to non-resident service suppliers taking into cognizance the fact that taxes are only imposed depending on the taxable items in a member's territory. Additionally, such an imposition of a measure may be aimed at preventing tax avoidance or evasion. Lastly, such a measure may be imposed to safeguard a member's tax base. This is where the measure can help determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches with the overall goal of ensuring tax compliance.

3.2.5. Ensure avoidance of Double Taxation

Lastly, the least commonly invoked general exception is where the measure is aimed at preventing double taxation. Article 21 (1)e sets out that a partner state can enforce a measure "inconsistent with Article 18 of this protocol, provided that the difference in treatment is the result of an agreement on the avoidance of double

taxation or provisions on the avoidance of double taxation in any international agreement or arrangement by which a partner state is bound".

The wording of this provision stems from an angle of multiple membership to various international treaties. While aware that the MFN obligation prohibits discrimination between different states, where a state like Uganda undertook an agreement with another state like South Sudan, to permit merchandise from Tanzania and Kenya to cross through Uganda to South Sudan, where Tanzania imposes a tax on goods it exports to Uganda, Uganda may not impose another tax on the same goods that go through it to South Sudan to a void double taxing them before they reach South Sudan.

Key elements to prove the exception of avoidance of Double Taxation

i. Must be in accordance with the Chapeau

ii. The contention must be based on the MFN obligation

iii. Must be based on an agreement in avoidance of double taxation

The above discussion has focused on laying bare the general exceptions enshrined in the EAC trade law. While as there is limited scholarly work on the efficacy of the general exceptions, this study has focused on partly relying on the wording of the law and partly on the WTO Panel and appellate body decisions to give context and expound on the general exceptions. With this exposition, it offers a good platform to examine whether indeed the derogations of the set trade rules is justifiable and whether the EAC partner states always ensure the efficacy of the general exceptions. I therefore proceed to examine the security exceptions and the other permissible deviations from the trade rules.

3.3. General Exceptions to Free Movement of Capital

In the first instance, this research examined the general exceptions to the EAC trade rules. However, the Common Market protocol also lays down specific general exceptions to the free movement of capital. Following the *Lex Specialis* rule which

requires that in the presence of a specific rule, the general rule does not apply, where a derogation of the trade rule affects the free movement of capital, the appropriate justification should be under Article 25 and not Article 21 of the Common Market Protocol.

This sets out that "The free movement of capital may be restricted upon justified reasons related to prudential supervision, public policy, money laundering and financial sanctions agreed by the partner states".

The procedure for the implementation of the general exception to the free movement of capital requires notice to the secretariat and other partner states with proof that the action taken was appropriate, reasonable and justified.[128]

3.4. Security Exceptions

Similarly, article 22 of the same protocol provides for the security exceptions on trade in services. Just like the provision on the general exceptions, the security exception is a direct copy and paste with the WTO GATS; hence, it can be inferable that the framers of the EAC Common Market Protocol sought to have a similar legal regime with the WTO since the EAC partner states are also members of the WTO.[129] This would necessitate harmony in the law both at regional and international level.

The security exception simply spells out the fact that where the national security interests of a partner state are at stake, such a partner state can derogate or deviate from the treaty obligations of a liberalised trade without discrimination. Members have the right to take measures otherwise inconsistent with the obligations under the Common market protocol, if they consider these measures necessary for the protection of their essential security interests.

The security exception does not have elements that need to be proved like in the case of the general exceptions, however the security exception has modes which relate to security interests upon which a partner state can undertake a measure.

[128] EAC Common Market Protocol, Article 25 (2).
[129] GATS, Article XIV *bis*.

The five modes of the Security Exception

These are extracted from the security exception under Article 22 of the EAC Common Market Protocol which bears a literal similarity with Article XIV *bis* of the GATS.

i. Furnish information contrary to the security interests

The security exception under this mode gives a partner state the liberty not to furnish any information or disclose anything which in the opinion of the state would be detrimental to its security interests. Even where such non-disclosure contravenes any of the laws of the community relating to trade in services.

ii. Taking an action for the purpose of provisioning of a military establishment

The second mode of the security exception is where a partner state may not take any action which in the opinion of that particular state would relate to the supply of services to its military establishment. Such actions may relate to any supplies such as ammunition, or any equipment necessary for the military operations of a partner state.

iii. Taking an action relating to fissionable and fusionable materials

Fissionable and fusionable materials are largely employed in ballistics, ammunition and other war related weapons. Consequently, a partner state can take any action to block or accord a discriminatory treatment to services that relate to ant materials of a fusionable or a fissionable nature. This can also be expanded to include any materials from which fissionable and fusionable materials can be made as these can be of primary security interest to the country. Under such circumstances, the security exception can suffice.

iv. Action taken in war time or emergency

The EAC legal regime realises that under times of war or emergency in international relations, partner states can take such actions which can derogate from the EAC trade rules and these shall be justifiable under the security exception. The same is realised under the WTO jurisprudence. A case in a point, if Uganda is at war with Kenya,

Uganda can put a ban on the importation of some items which it considers detrimental to its security interests.

During the COVID 19 outbreak in 2019 and the subsequent lockdown in 2020, it was realised as an international emergency and under such circumstances, states including those in the EAC imposed measures which directly affected the free movement of goods, services and even people. These measures included a mandatory lockdown in Uganda where only essential services and goods were being cleared into the country.

While as air transport was not closed completely, there were restrictions on movement from some countries and restrictions included mandatory COVID 19 vaccination, mandatory medical examination, mandatory quarantine at the individuals own cost, among other restrictions which derogated from the rule of free movement of goods, persons and services. Non the less, these were justified under the security exception; hence, there were no claims brought against Uganda on the basis of the violation of the treaty obligations.

v. Actions in pursuance of obligations under the UN Charter.

The UN Charter imposes obligations upon states to ensure the maintenance of peace and security. All EAC partner states are party to the UN charter and where a partner state has obligations to fulfil under the Charter, it can derogate from the EAC trade rules under the security exception.

Demonstrably, EAC partner states under the UN Charter have a duty to welcome refuges. Consequently, where there is a war in the DRC, Uganda is under an obligation to welcome refugees from the Congo even when it is against the trade rules of any partner states. Where there is an urgent need to address the refugee crisis in Western Uganda or in the West Nile sub-region, Uganda can accord tax waivers or create discriminatory treatment contrary to the EAC trade rules and would be justified under the security exception as a move to address the refugee crisis in response to the UN Charter.

3.5. Restrictions and Prohibitions

While as the EAC Common Market Protocol provided for the general exceptions, Article 22 of the Customs union provides for Restrictions and Prohibitions to trade with almost a similar wording yet with totally different legal implications. Restrictions and prohibitions can be categorised as waivers which are subject to various conditions.

The provision on the Restrictions and Prohibitions sets out that; -

> *"a partner state may, after giving notice to the Secretary General of her intention to do so, introduce or continue to execute restrictions or prohibitions affecting: the application of security laws and regulations; the control of arms, ammunition and other military equipment or items; the protection of human life, the environment and natural resources, public safety, public health or public morality; and the protection of animals and plants".*[130]

While as some of these restrictions and prohibitions are similar to the general exceptions, the threshold in proving the restriction and prohibition is much easier than the evidence needed in proving the general exceptions. Additionally, while as the general exceptions come in as justifications or defences for a derogation which took place, the Restrictions and Prohibitions come in as grounds to give notice to the Secretary General for before the implementation of a measure. It is important to note that a partner state cannot enjoy this right to impose a restriction or prohibition to trade where it is aimed at restricting the free movement of goods within the EAC.

The procedure for imposition of Restrictions and Prohibitions only requires prior notice to the Secretary General before the imposition of the restriction. This is equally a distinguishing factor between the prohibition and the safeguard measure.

3.6. Safeguard Measures

A safeguard measure is also a waiver which is a temporary permission by partner states to deviate from the trade obligations. This is subject to the consent of the

[130] Customs Union Protocol, Article 22.

members through the notification of the EAC Secretary General and these must cease as soon as the mischief they intended to cure has ceased. A partner state must explain the reasons for requesting a waiver, but the reasons could be highly idiosyncratic and specific to that member; hence, these are not strictly laid down in the statute but they depend on the partner state's needs.

The distinguishing characteristics between waivers and general exceptions is that waivers are temporary and the burden of proof never shifts as it is entirely a duty of the complaining state to prove that it deserves a waiver. It will also be upon that specific state to show that the terms and conditions of the waiver have been respected.

Safeguard measures may either be general safeguard measures under Article 48 of the EAC Common Market protocol or may be particular safeguard measures to the free movement of capita. The Common Market Protocol sets out that "In the event of serious injury, where prompt and immediate action is deemed necessary, the partner state concerned shall take necessary safeguard measures after informing the Council and the other partner states through the Secretary General".[131] This is a general safeguard measure as it can be evoked in where there is a serious injury to the economy of a state following the application of the Common Market Protocol.

Steps for Implementation of a Safeguard Measure[132]

i. Informing the Secretary General

ii. The intending partner state consults the Council

iii. The Council Examines the Basis for the safeguard measure.

iv. Councils Considers the Method and effect of application of the safeguard measure

v. Council takes appropriate Decision

[131] Common Market Protocol, Article 48(2).
[132] The procedure is laid down under Article 48 (2)(3)(4) of the Common Market Protocol

3.7. PROCEDURE FOR IMPLEMENTING A MEASURE OF GENERAL APPLICATION

While as there is the aforementioned procedure to be followed while implementing a safeguard measure, the EAC Common Market Protocol also establishes a procedure for the implementation of measures of general application.[133] The steps are as follows; -

Step 1: Notification of the Council

Where a partner state intends to impose a measure of general application, it ought to promptly notify the Council of Ministers about the intention to impose such a measure which affects the free movement of services. This could also be arising from international agreements relating to third parties. Similarly, where a state undertakes an amendment into its state laws or administrative guidelines or even makes new ones which are to affect trade in services, such changes must be communicated to the council.

Step 2: Notification of the Secretariat

While notifying the Council, the partner state shall also notify the Secretariat through the Secretary General. This notification must spell out the reasons for the implementation of a measure of general application.

Step 3: Transiting of Notification to Partner States

The Secretary general shall then transmit the notification to all other partner states informing them of the looming or anticipated measure of general application.

Step 4: Immediate Response from the receiving Partner State

Where a partner state has been duly notified by the secretary general, such a partner state is under an obligation to ensure a prompt response to the secretary general. This response can be based on its perception towards the measure being implemented.

[133] Common Market Protocol, Article 19.

Step 4: Council may make appropriate Decision

The Council may make decisions on the measures or international agreements referre d to in this Article.

3.8. Conclusion

This chapter set out to examine the exceptions to the trade rules while paying kin attention to the elements of each exception as this is the best way to create a good surface for each exception to me assed as against its efficacy. The exceptions included the general exceptions which include the public moral exception, protection of human, animal and plat life and health exception, the need to secure compliance with the laws and regulations with the overall goal of preventing fraudulent practices, ensuring personal privacy and safety. The common elements among these three general exceptions were the Chapeau and the necessity test as well as the subject matter test. Other general exceptions include the need to ensure equitable and effective compliance with tax laws which only applies in relation to the National Treatment obligation as well as avoidance of double taxation which relates to the MFN obligation.

Other exceptions included the general exception which are particularly on the free movement of capital, the security exception which applies generally, the Restrictions and prohibitions as well as the safeguard measures. The research established that there is a significant difference between the general exceptions and all these exceptions as the general exceptions are applied as defences for violation while in other exceptions, they require a notification to the Council and secretary general. Conclusively, the EAC trade regime lays down a procedure through which these exceptions can be invoked, the standard and burden of proof which clearly demonstrate the efficacy of the exceptions.

CHAPTER FOUR

CASE STUDIES OF EAC TRADE DISPUTES AND THE EFFICACY OF THE EXCEPTIONS AND DEVIATIONS TO THE TRADE RULES

4.1 Introduction

This Chapter shall rely on EACJ decisions, reports, minutes of meetings, among others to examine particular case studies of trade disputes within the EAC. In so doing, this chapter shall demonstrate the factual background of each case study highlighting both the legal and non-legal factors leading to the trade dispute. Similarly, it shall lay bare the legality and the efficacy of the measure taken by the EAC partner state. Where a dispute arose as a result of the measure taken, this chapter shall further illustrate the dispute settlement mechanism pursued. This will include examining the pros, cons and gaps within that particular mechanism of dispute settlement. This chapter shall end with a conclusion and recommendations.

4.2. CASE STUDY 1: Kenya's Import Restrictions

1. Factual Background

Kenya is the most highly industrialised country and has the highest GPD within the EAC. Due to its protectionist agenda, it has imposed a number of temporary import restrictions with a primary object of protecting its domestic industries. Firstly, Kenya manipulates the legal standards to its advantage such as imposition of strict standards and measures to products to delay or even stop their importation in Kenya. The Kenya Bureau of Standards (KEBS) imposes extremely strict quality standards and pre-shipment inspection requirements which indirectly impacts on a common market. Secondly, Kenya imposes other measures which deviate from its trade obligations to restrict importation. These include the use of tariff barriers, additional import levies and the Local Content requirement as further discussed.

a. Use of the Common External Tariff

In 2022, the EAC partner states adopted a 4 band CET with a minimum rate of 0%, a middle rate of 10% and a maximum rate of 25% and 35%.[134] Consequently, Kenya applies a 0% tariff on raw materials so as to encourage and support domestic industries. Additionally, it imposes a tariff rate of 10% on intermediate goods, 25% on semi-processed goods and 35% on finished manufactured goods.[135] The Customs Union Protocol authorises Ministers to approve measures that may impose a higher tariff that the CET if such a measure will safeguard the interests of the community.[136] As such, in Jube 2024, Kenya invoked the same provision and applied to the Council of Ministers to expand the list of items not previously included in the CET 2022 Version.[137]

b. Use of Additional Import Levies

Kenya's additional levies on imports do not only discourage importation business but would also make the final consumers bear an excessive financial burden. Similarly, the CET which may vary from 0 to 35%, Kenya also imposes a value added tax of 16%. This is calculated on the basis of the Cost, Insurance and Freight (CIF) value, applicable costs and customs duty. Additionally, Kenya imposes an Import Declaration Fee of 3.5% and a Railway Development Levy of 2%.[138] Worse still, in 2023, there was a further additional cost burden dubbed, "Export and Investment Promotion Levy" on specified imported goods under the Finance Act of 2023. This measure further shifted the cost burden in favour of domestically manufactured goods.

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[134] EAC-Common External Tariff 2022 Version << https://eabc-online.com/download/eac-common-external-tariff-2022-version/ >> accessed on February 3, 2026

[135] International Trade Administration, "Kenya East African Community Introduces 4th Band to Common External Tariff", USA, 2026 << https://www.trade.gov/market-intelligence/kenya-east-african-community-introduces-4th-band-common-external-tariff >> accessed on February 3 2026

[136] Customs Union Protocol, Article 12(3)

[137] Gazette Notice of Kenya at 1-No.18 of 2024.; Also Otieno B, Kirii B, Oduor A, Mathini A, Kenya: Application of new Customs duty rates on certain products imported into the country, Bowmans, 2024 << https://bowmanslaw.com/wp-admin/admin-ajax.php?action=generate_acf_pdf_insight&post_id=67722&nonce=f6248c8623 >> accessed on February 2, 2026

[138] International Trade Administration, "Kenya East African Community Introduces 4th Band to Common External Tariff", USA, 2026 << https://www.trade.gov/market-intelligence/kenya-east-african-community-introduces-4th-band-common-external-tariff >> accessed on February 3 2026

c. Use of Local Content Requirement

Kenya has developed several local content requirements under the "Buy Kenya, Build Kenya" initiative. The 2020 Local content Policy imposes strict obligations in relation to government procurement where priority must be given to goods manufactured within Kenya.[139] The policy lists 330 goods which must be bought from the domestic market and this priority guarantees market for Kenyan based manufacturers.

Furthermore, in October 2025, the Kenyan National Assembly proposed the Local Content Bill 2025 which imposes a 60% local content requirement. This bill was already passed by the National legislative assembly and if it comes into force, it will impose a heavy local content requirement in form of local goods and services on all foreign companies operating in Kenya. Similarly, the bill requires foreign companies to ensure that 80% of their human resource are Kenyan nationals.[140] Worse still, failure to comply with the local content requirement attracts hefty and unbearable penalties such as a fine of 100 million Kenyan shillings and imprisonment of errant officials;[141] hence, if this bill is passed into law, it will create a competitive advantage for Kenyan goods, services and human resource compared to the foreign goods, services and human resource.

1. Legality of the Import Restrictions and possibility of a dispute

Regarding the above-mentioned import restrictions, the lacuna in the law has made it possible for Kenya to impose import restrictions without facing the possible legal consequences. Regarding the use of CET, EAC partner states find it nearly impossible sustain a legal action that seeks to challenge the measure. Kenya the existing law to

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[139] Republic of Kenya, Local Content Policy; Ministry of Industrialization, Trade and Enterprise Development, September 2020 << https://www.industrialization.go.ke/sites/default/files/2023-08/Kenya%20Final%20Local%20Content%20Policy%205%20tracked-%20Revised%2025%20-09-2020%20Final_0.pdf >> accessed on February 2, 2026

[140] Kenya Gazette Supplement No. 167 (National Assembly Bills No. 45) << https://www.parliament.go.ke/sites/default/files/2025-11/THE%20LOCAL%20CONTENT%20BILL%2C2025.pdf >> accessed on February 2, 2026.

[141] Sarinke N. D., "Keeping value in Kenya; The Promise & Challenge of the Local Content Bill 2025", Mckay Advocates, << https://www.mckayadvocates.com/post/keeping-value-in-kenya-the-promise-and-challenge-of-the-local-content-bill-2025 >> accessed on February 2, 2025

its advantage where it This makes the CET related measures look legal and in good faith. However; with the additional import levies, these are not justifiable and they are in breach of the CET and the CIT obligations under the Custom Union Protocol.

Similarly, it is my considered view that the local content requirements of 60% on services and goods and 80% of human resource are overly high and have gone unchecked by any EAC partner state. Both the additional import levies and the unreasonably high local content requirements do not only undermine the EAC treaty but also violate fundamental WTO legal regime.

There would be a possibility for a dispute, however there is no EAC partner state that has challenged Kenya's violation of its trade obligations. Given the basic legal principles relating to burden and standard of proof, and locus standi, other partner states would be barred from bringing an action against Kenya. Consequently, there has been no dispute and no dispute settlement mechanism tested in in this regard.

4.3. CASE STUDY 2: Kenya's ban on importation of Uganda's maize

1. Factual Background

Generally, developing countries are grappling with the challenge of food safety especially with post-harvest handling.[142] The Center for Diseases Control (CDC) notes that more than 4.5 billion people in developing countries are exposed to the risk of aflatoxins. [143] In 2004, Kenya experienced the most severe outbreak due to aflatoxins.[144] This resulted into 477 cases with a fatality rate of 40%.[145]

[142] Schmidt CW. Breaking the mold: new strategies for fighting aflatoxins. Environ Health Perspect. 2013 Sep;121(9): A270-5. doi: 10.1289/ehp.121-a270.
[143] Ibid
[144] EAC Aflatoxin Prevention and Control Strategy, Action Plan and result Framework (EAC/CM/36/Decision 18) 2018-2023
[145] Daniel J.H, Lewis L.W., Redwood Y.A., Kieszak S., Breiman R.F., Flanders D, Bell C., Mwihia J., Ogana G., Likimani S., Straetemans M., McGeehin M.A.," *Comprehensive Assessment of Maize Aflatoxin Levels in Eastern Kenya, 2005–2007*", Environmental Health Perspectives, Vo l u m e 119, Number 12, December 2011.

As such, the EAC developed a framework with a permissible level of 10 parts per billion (ppb) of aflatoxins.[146] However, on 5th March 2021, Kenya imposed strict import restrictions on maize from Uganda and Tanzania citing high levels of aflatoxins.[147] On May 11, 2021, the East African Community Focal Point reported that the Regional Monitoring Committee meeting was informed that Kenya's president had given two weeks since March 5th 2021 for the controversy to be solved; however, it took much longer.[148]

This decision stimulated a controversial debate as such import restrictions did not only affect trade but also food security across the region and overall regional integration.[149] Both farmers and business men incurred unbearable losses.[150] For example, more than 100 trucks of maize were stuck at the Busia boarder while the cost of a kilogram of maize rose to 80 Kenya shillings, approximately UGX 2,800 which lead to losses. Furthermore, even clearing agents lost jobs which affected their cost of living.[151] Aflatoxins cause a severe health risk of liver damage and death, liver cancer, immune suppression and a high risk of impairment in Children.[152]

2. Dispute and settlement Mechanism

The Republic of Tanzania filed a complaint No. NTB-001-013 challenging the decision of the Ministry of Agriculture, Livestock, Fisheries and Cooperatives (Agriculture and Food Authority).[153] Tanzania alleged that the Agriculture and Food Authority issued a letter to all Kenya customs officials without notification to the EAC Secretary General

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[146] Ibid
[147] Mubatsi A.H, "Kenya's maize ban", The Independent, March 15, 2021, << https://www.independent.co.ug/kenyas-maize-ban/ >> accessed on February 02, 2026
[148] Non-tariff Barriers, Reporting, Monitoring and Eliminating Mechanism, << https://www.tradebarriers.org/complaint/NTB-001-013 >> accessed on February 3, 2026
[149] Awori D, "Joy as ban on Uganda Maize is lifted", Daily Monitor, May 12, 2021, << https://www.monitor.co.ug/uganda/news/national/joy-as-ban-on-ugandan-maize-is-lifted-3397656 >> accessed on February 3, 2026
[150] Ibid
[151] Ibid
[152] Marechera, G. Estimation of the Potential Adoption of Aflasafe among Smallholder Maize Farmers in Lower Eastern Kenya. African Journal of Agriculture and Resource Economics, 10, 72-85., 2015
[153] Non-tariff Bariers, Reporting, Monitoring and Eliminating Mechanism, << https://www.tradebarriers.org/complaint/NTB-001-013 >> accessed on February 3, 2026

nor to concerned partner states as prescribed in the EAC notification procedure.[154] The breach of the procedure had disrupted trade and caused losses. The dispute was resolved on 20th May 2021 after diplomatic negotiations. Kenya lifted the ban and replaced it with strict quality and health standards.[155]

The General exceptions to the trade rules under article 21(1)b permits a deviation from the trade rules if the measure is necessary for the protection of plant, human and animal life or health.[156] A similar exception is contained in Article 22(1)d of the Custom Union Protocol.[157] Importantly though, the EAC legal standards impose a notification requirement to the EAC Secretary General before the imposition of the measure. Unfortunately, Kenya did not comply with the legal obligations and even when Tanzania brought the complaint, it did not follow the prescribed dispute settlement mechanism but it was settled by diplomatic negotiations. Such practice has largely frustrated the growth of the EAC jurisprudence on the general exceptions to trade and other related trade rules such as rules on market access, national treatment, MFN, Schedule of Specific Commitments, among others.

4.4. CASE STUDY 3: Kenya's ban on importation of Uganda's sugar

1. Factual Background

Uganda has the most developed sugar sector among the EAC partner states.[158] For about two decades now, Kenya has occasionally banned or restricted the importation of Ugandan sugar citing instances where sugar from third party states has been imported in Uganda and re-labeled as Ugandan sugar and exported to Kenya.[159] The controversial sugar debate started in 2011 when Kenya faced sugar shortage

[154] Ibid
[155] Ibid
[156] EAC Common Market Protocol
[157] EAC Customs Union Protocol.
[158] Nyamwange, M., Kiriti-Nganga, T., & Mbithi, M.L., "The impact of the EAST African Community (EAC) trade policies on the performance of the sugar industry in Kenya. Cogent Economics and Finance, 14(1). (2026), https://doi.org/10.1080/23322039.2026.2614454
[159] Mwesigwa A, "How Sugar soured trade ties between Uganda and Kenya" The Observer, 01 August 2014, << https://www.tralac.org/news/article/5972-how-sugar-soured-trade-ties-between-uganda-and-kenya.html >> accessed on February 01 2026

prompting it to allow Ugandan sugar without any taxes on it. However, about the end of 2012, there was a soaring relationship where Kenya imposed a ban on Ugandan sugar citing violation of the rules of origin.[160] Uganda was accused of importing sugar from third parties and exporting it to Kenya as though it was Ugandan made.[161]

In February 2013, Kenya intercepted over 220 tons of sugar from Uganda which dispute lasted until December 2014 when there were several diplomatic negotiations.[162] This resulted into strict verification and registration requirements for all sugar imports in Kenya. Nonetheless, Ugandan sugar manufacturers continuously complained of deliberate delays in granting of permits, unlawful rejection of granting permits contrary to the trade agreement and overall delays in cross boarder clearance.

Additionally, when Ugandan farmers experienced low prices of sugarcane, they begun exporting the raw sugarcane to Kenya and in July 2020, 150 trucks carrying sugarcane were intercepted following an order by the Cabinet Secretary for Agriculture. He ordered an immediate ban on importation of brown sugar and sugar cane. The ban on brown sugar prompted Uganda to initiate a complaint against the measures imposed by Kenya.

Legality and Efficacy of the sugar import bans and restrictions

To ensure trade liberalisation, the EAC partner states undertook a commitment to respect the rules of origin.[163] For the goods to meet an exception under the rules of Origin, they must have been wholly produced within the partner state or they have been produced partially from materials obtained in a partner state.[164] Additionally, Kenya executed an agreement with Uganda in 2011 when Uganda was experiencing a sugar shortage. This agreement allowed Uganda to import duty free sugar to cover up

[160] Ibid
[161] Ibid
[162] Wachira Kang'aru & Wahome M, "How sugar barons arm-twisted state to accept imports", Daily Nation, << https://nation.africa/kenya/news/politics/how-sugar-barons-arm-twisted-state-to-accept-imports-1120222 >> accessed on February 3rd 2026
[163] Customs Union Protocol, Article 14
[164] EAC Customs Union (Rules of Origin), Rule 4

for the sugar scarcity in Uganda.[165] Following accusations of Uganda obtaining sugar from third party states and re-branding it as Ugandan sugar, Kenya sought a justification under Article 21(1)c(i)- which permits an exception to trade rules where the measure is to ensure prevention of deceptive and Fraudulent practices.[166]

Following the 2020 sugar importation restrictions and ban on brown sugar and sugarcane, Uganda filed a complaint No. NTB-000-975 on 10th August 2020 before the Regional Monitoring Committee. [167] This challenged Kenya's ban citing Kenya's protectionist agenda where it was protecting its domestic producers from competitive Ugandan sugar. Similarly, Uganda alleged that the cost of sugar production in Kenya doubles global standards of production costs and most of the Kenyan manufactures who are state owned use outdated technology which makes it sugar more costly and less competitive.[168]

Just like all other trade disputes, there was no formal dispute settlement mechanism as per the EAC trade rules but there were only diplomatic negotiations.[169] Prior to the resolution of the dispute, Kenya conducted several verification exercises on Uganda's sugar though permits were never issued for a long period. There were also bilateral meetings between trade ministers of Kenya and Uganda who agreed to resolve the

[165] Mwesigwa A, "How Sugar soured trade ties between Uganda and Kenya" The Observer, 01 August 2014, << https://www.tralac.org/news/article/5972-how-sugar-soured-trade-ties-between-uganda-and-kenya.html >> accessed on February 01 2026

[166] Common Market Protocol.

[167] Non-tariff Barriers, Reporting, Monitoring and Eliminating Mechanism, << https://www.tradebarriers.org/complaint/NTB-000-975 >> accessed on February 4th 2026

[168] Okadia F., "A minimum Guarantee Price for Sugar cane farmers", Institute of Economic Affairs, << https://ieakenya.or.ke/blog/a-minimum-guarantee-price-for-sugar-cane-farmers/#:~:text=All%20else%20equal%2C%20this%20also,at%20the%20ex%2Dfactory%20level.&text=Retailers%2C%20too%2C%20will%20likely%20gravitate,kg%20both%20in%20nominal%20terms. >> accessed on February 01st 2026

[169] Non-tariff Barriers, Reporting, Monitoring and Eliminating Mechanism, << https://www.tradebarriers.org/complaint/NTB-000-975 >> accessed on February 4th 2026

dispute.[170] This dispute was later resolved on 18th March 2021 after a series of diplomatic negotiations.[171]

4.5. CASE STUDY 4: The 2021 Kenyan ban on Uganda's Poultry Products

1. Factual Background

In 2017, Kenya and Rwanda imposed a ban on Ugandan Poultry and Poultry products due to an outbreak of avian influenza which would attack birds and people. This ban was justified under the general exceptions as the measure imposed sought to protect animal and plant life.[172] Ugandan authorities undertook strict measures to manage the outbreak but nonetheless, the ban was unduly prolonged for two years which exposed Kenya's protectionist agenda.[173]

However; Kenya's protectionist agenda was stripped naked during the 2021 Kenyan ban on Ugandan Poultry Products. Uganda has for long exported most of its poultry and poultry products to Kenya, Rwanda, South Sudan and Democratic Republic of Congo. As of 2021, Ugandan farmers were producing over 3 million eggs per day costing about 6 billion. However, about 70% of the eggs were being exported to Kenya, and 20% is consumed domestically and 10% would be exported to all the other countries. Kenya has a much more reliable market for poultry and poultry products. A case in a point, a 2021 report indicates that Kenya's per capita is 55-60 eggs per person annually unlike Uganda with 17 eggs per person per year.[174]

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[170] Independent Magazine, "Kenyan trade officials meet president Museveni over sugar exports", 14/April/2021 << https://www.independent.co.ug/kenyan-trade-officials-meet-president-museveni-over-sugar-exports/ >> accessed on February 3, 2026

[171] Non-tariff barriers, Reporting, Monitoring & Elimination Mechanism, << https://www.tradebarriers.org/resolved_complaints/page:17/sort:NtbType.name/direction:asc >> accessed on February 3rd 2026

[172] Common Market Protocol, Article 21

[173] Daily monitor, "Kenya lifts ban on Ugandan Poultry", Wednesday, June 05, 2019 — updated on January 02, 2021
<< https://www.monitor.co.ug/uganda/business/commodities/kenya-lifts-ban-on-uganda-s-poultry-products--1830392 >> accessed on February 3, 2026

[174] Ochola O.D., "Farmers petition EAC Ministry over Kenya's Ban on Ugandan Poultry Products", Uganda Radio Network, << https://ugandaradionetwork.net/story/farmers-petition-eac-ministry-over-kenyas-ban-on-ugandan-poultry-products >> accessed February 4th 2026

On January14 2021 during the COVID 19 pandemic, the Director of Veterinary Services of Kenya imposed a ban on Ugandan Poultry and Poultry products. His outright intention was to protect Kenyan poultry farmers noting that at the time, restaurants were not into active business due to the COVID 19 lockdown; hence, Uganda's poultry products were competing for market. He therefore sought to protect the Kenyan market.

The ban happened when Uganda was under the COVID 19 lockdown which had compelled many people to resort to poultry keeping as an alternative source of livelihood leading to an overwhelming increase in poultry production. The ban which lasted for six months which greatly affected farmers to a tune of 120 billion Uganda shillings. Several farmers ran bankrupt and some lost assets due to failure to pay the bank loans acquired and invested in the poultry business.[175]

2. Legality and Efficacy of the Ban on Ugandan Poultry Products

The 2017 ban of poultry products by both Kenya and Rwanda fell within the ambit of the general exception to the trade rules under the Common Market Protocol and the Customs Union Protocol. This is because the 2017 ban resulted from Uganda authorities declaring the outbreak of avian influenza which risked both animal and human life and health which falls squarely within the exception. While as the ban lasted for a whole 8 months and even after Ugandan authorities approving the strict measures taken, Kenya still upheld the ban, it can still be justified.

However, the 2021 ban on Uganda poultry products just to protect the Kenyan market for Kenyan farmers was a brazen disregard of Kenya's trade obligations within the EAC Treaty and all other protocols. This was a total violation of the EAC trade rules which protect the free movement of goods and services among the EAC partner states.

[175] New Vision, "Poultry farmers count Shs.120b in losses following Kenya ban", 15, December 2021, << https://www.newvision.co.ug/category/business/poultry-farmers-count-sh120b-in-losses-follow-NV_122351 >> accessed on February 4th 2026

Dispute Settlement; The EACJ inordinate delay renders Mabirizi's case obsolete.

Due to the disastrous economic impact of the January 14th 2021 ban on Ugandan poultry, a Uganda famous lawyer Male H.K Mabirizi filed a reference to the EACJ on March 11th 2021. In reference No. 11 of 2021, the petitioner was a private individual who sued the Attorney General of Kenya.[176] The case contained two major issues, first the petitioner sought to challenge the January 14th 2021 ban on Ugandan Poultry products. Secondly, the applicant sought to challenge for the 5th March 2021 ban on the importation of maize from Uganda.

The government of Uganda did not express immediate concerns over the ban on the importation of Uganda poultry products. The Male Mabirizi case was to be a timely test for the EACJ jurisprudence but the structural bottlenecks of the court have made the case obsolete. Until today, there is no record that the Mabirizi case was heard and determined by the EACJ. The only available information indicates that the respondent filed his response after the 45 days limitation whether the petitioner filed application No. 6 of 2021 challenging the respondents reply as it did not meet the time limitation requirement. Worse still, application No. 6 of 2021 was heard after one year in June 2022, after the trade dispute had been settled by diplomatic negotiations.

The petitioner's application to reject the response by the respondent was quashed by court noting that rejecting the respondents reply would undermine the ends of justice. Both the Court and the respondent in the main suit and the application argued that the 45 days within which he had to serve the applicant had expired on 25th April 2021.

To the contrary, the applicant was served the reply on 3rd May 2021 which violated the time limit requirement. The respondent argued that he had filed the reply within the time required, though delayed to serve the petitioner due to COVID 19 restrictions. In the defence, the respondent had argued that the ban was to protect

[176] Male H Mabirizi v Attorney General of Kenya, Reference No. 11 of 2021.

Kenyan farmers and was also justified since Uganda had imposed excessive tariffs on Kenyan poultry products. The respondent argued that Uganda imposed VAT of 18%, withholding tax of 6%, infrastructure levy of 1% and an additional 6% of withholding tax on processed chicken mean and broilers day old chicks. There is however no record of hearing or disposing off the main petition.[177]

The inordinate delay to settle trade related disputes by the EACJ does not only limit the growth of the EAC jurisprudence on the trade rules and their exceptions but it ruins the partner states confidence in the court. Since March 2021, a petition that sought to challenge a violation of trade rules has never been heard. Such politically motivated delays and a lack of the political will to fully operationalise the EACJ makes the court look like a white elephant within the region. Whether the court is faced by structural bottlenecks or by political motives in its operations, it is largely a sham, incapable of rendering justice. The court's operations are thick in documentary and thin in reality. With all the trade disputes in context, the court and its jurisdiction exist as a formality yet it does not serve any practical value in settling trade disputes.

Uganda's alternative dispute settlement

After a long and loud outcry by Ugandan poultry farmers and traders through the Uganda Poultry Farmers Association.[178] Uganda took the usual root of diplomatic negotiations.[179] Unfortunately, Kenya kept the ban and all efforts from Uganda ministers did not yield any positive result. Having held a meeting with the Association of Poultry Farmers in Uganda on December 14th 2021, the Minister for EAC Affairs, Hon. Rebecca Kadaga revealed that the Ugandan cabinet had resolved to impose

[177] Observer, "E. African Court validates Keny
a's defence in Ugandan Poultry, Maize ban case", November 25, 2023 << https://observer.ug/news/east-african-court-validates-kenya-s-defense-in-ugandan-poultry-ban-case/ >> accessed on February 4, 2026
[178] The Independent, "Farmers petition EAC Ministry over Kenya's ban on Ugandan poultry", December 25, 2021, << https://www.independent.co.ug/farmers-petition-eac-ministry-over-kenyas-ban-on-ugandan-poultry-products/ >> accessed on February 02, 2026
[179] The Independent, "EABC Seeks dialogue to end Uganda-Kenya trade war", 16th December 2021, << https://www.independent.co.ug/eabc-seeks-dialogue-to-end-uganda-kenya-trade-war/ >> accessed on February 4, 2026

retaliatory measures on Kenyan imports into Uganda.[180] The government of Uganda took much more deliberate steps after nearly a year of a trade ban that affected farmers and traders.

Consequently, in December 2021, Ugandan cabinet decided to take retaliatory measures and asked the Minister of Trade to find such agricultural products from Kenya on which Uganda would impose a ban. This decision was however condemned by the EABC which called for peaceful settlement of disputes.[181]

As such, Uganda's Minister of Agriculture, Animal Industry and Fisheries Hon. Frank K. Tumwebaze led a delegation to Kenya to meet a Kenyan delegation that was led by Cabinet Secretary, Ministry of Agriculture, Livestock, Fisheries and Co- operatives Hon. Peter Munya, and accompanied by Ms. Betty Maina, Cabinet Secretary for the Ministry of Industrialisation, Trade and Enterprise Development. These had comprehensive negotiations aimed at restoring the trade relationships and put an end to the silent trade war between Uganda and Kenya.[182] Even besides such high level diplomatic negotiations, Kenya has since then imposed more trade restrictions to Ugandan goods.

4.6. Case study 5: Tanzania's restrictions on Kenyan confectionary

Generally, Tanzania has not only been slow at implementing the Common Market Protocol but also imposes measures that derogate from the EAC trade rules. Tanzania's protectionist tendencies are seen often in the policies it imposes to restrict importation of various products from EAC partner states. Tanzania's protectionist tendencies have been so much evident for a long period of time. Worst of all, while as many partner states resort to bilateral diplomatic negotiations to solve

[180] Ibid
[181] The Independent, "EABC Seeks dialogue to end Uganda-Kenya trade war", 16th December 2021, << https://www.independent.co.ug/eabc-seeks-dialogue-to-end-uganda-kenya-trade-war/ >> accessed on February 4, 2026
[182] Joint Communique On Improving Bilateral Trade Republic Relations Between The Republic of Uganda and the Republic of Kenya, 21st December 2021 << https://www.agriculture.go.ug/wp-content/uploads/2021/12/Uganda-Kenya-Agricultural-Trade-Communique.pdf >> accessed on February 4th 2026

trade disputes, Tanzania has not accepted diplomatic negotiations for a long period which makes it have several non-tariff barriers which affects trade and the overall spirit of integration. Tanzania has imposed restriction on importation of agricultural produce, importation of Kenyan motorcycle spare parts, restrictions on Kenyan confectionary, and prohibited non-citizens from practicing 15 small businesses.

Factual Background

In 2018, Tanzania and Uganda imposed restrictions on Kenyan biscuits, ice cream and sweets. Uganda and Tanzania levied a 25% import duty on Kenyan confectionary on ground that the confectionary was being made from imported industrial sugar. Tanzania's argument was that industrial sugar was not made by any of the countries in the region which was imported under the remission scheme. Making biscuits, ice cream and sweets from imported sugar violated the rules of origin.[183]

The Kenya Revenue Authority submitted certificates of origin and these were disregarded by both Tanzania and Uganda. Tanzania claimed that the industrial sugar which was used to make the confectionary products was imported in Kenya under the 10% remission scheme. [184] This placed Kenyan manufacturers at an advantage compared to manufacturers in partner states.

The rules of origin under the EAC Customs Union Protocol guarantee free movement of products originating from within the partner states.[185] Furthermore, Annex III to the Customs Union Protocol gives effect to Article 14 and sets out in clear details about the rules of origin. Goods are said to meet the rules of origin where they have been produced wholly in a partner state or where they have been produced from materials imported from another state other than a partner state but where the production process was a substantial transformation of the materials.[186]

[183] Taylor M.E., "Another trade war in East Africa as Tanzania Uganda restrict Kenya's Ice cream, sweets", Face2Face Africa, April 24, 2018, << https://face2faceafrica.com/article/another-trade-war-in-east-africa-as-tanzania-uganda-restrict-kenyas-ice-cream-sweets >> accessed on February 12, 2026
[184] EAC Customs Management Act, 2004, revised in 2009, Section 14; East African Community Customs Management (Duty Remission) Regulations, 2008, Regulation 3.
[185] Customs Union Protocol, Article 14
[186] Annex III, Customs Union (Rules of Origin) Rules, Rule 4(1) a & b

From the foregoing, it is clear that the remission scheme is recognized under the EAC Customs Act and Regulations; hence, Kenya was justified in granting a 10% remission to importers of industrial sugar. Similarly, the rules of origin acknowledge that where a product is made from imported materials but it is made substantially from a partner state, then it meets the criteria under the rules of origin. Additionally, the Kenya Revenue Authority had issued a certificate of origin to the confectionary which was equally disregarded by Tanzania. It is upon the above premises that it is arguable that Tanzania has protectionist tendencies which violate EAC trade rules.

4.7. CASE STUDY 6: Tanzania's restriction on the importation of motorcycle spare parts manufactured in Kenya

Factual background

In 2023, the United Republic of Tanzania imposed restrictions on motorcycle spare parts from Kenya. These were being exported to Tanzania by Silverline Accessories Ltd based in Kenya. These restrictions denied motorcycle spare parts from Kenya a preferential treatment on the grounds that these did not meet the rules of origin under the EAC trade rules. The United Republic of Tanzania ignored the certificate of Origin from Kenya Revenue Authority and subjected the goods to a full CET. To the contrary, Kenya argued that the motorcycle spare parts were being manufactured from Kenya.

Dispute Settlement Mechanism

Consequently, when Tanzania disregarded the appeals from KRA and the EAC Secretariate, Kenya filed complaint No. NTB-001-124 to the Sectorial Committee on Trade. Kenya demanded that where URT is in doubt that the goods meet the rules of origin, it should follow the Rules of Origin and the procedures laid down in the Customs Management Act to verify the key concerns relating to the origin of the motorcycle spare parts.

During the 43rd SCTIFI, meeting of it was noted that Tanzania and Kenya had to undertake a joint verification process to confirm whether the goods in dispute fall within the prescribed rules of origin. These were to be conducted by ROO experts, National Monitoring Committees Coordinators. At the 44th SCTIFI meeting, it was observed that Tanzania had verified the headlamps, taillamps, indicators and these qualified for preferential treatment unlike the side mirrors. It was further ordered that further verification is carried out on the side mirrors and during the 45th SCTIFI meeting, it was reported that even side mirrors were verified and qualified for the preferential treatment. The dispute was resolved on November 23rd 2024.[187]

4.8. CASE STUDY 7: Tanzania's prohibition of non-citizens to engage in small businesses

The government of the Republic of Tanzania issued a Government Notice No. 487A of 2025 on 28th July 2025. This business licensing order prohibited non-citizens from engaging in 15 categories of small businesses and services. The prohibition restricted renewing of licenses or obtaining of new ones by non-citizens in activities such as tour guiding, operating beauty salons, operation of radio and television, mobile money, repair of phones and electronic devices, ownership and operation of gambling machines, among others.[188]

Additionally, the prohibition imposed hefty penalties which include a fine of not less than 10 million Tanzanian shillings, imprisonment not exceeding 6 months and revocation of visa. This order was vehemently castigated by various partner states and Kenya was particularly concerned about Tanzania's derogation of the EAC trade rules. This prompted Kenya's Minister for Trade to call on Tanzania to remove the ban. Similarly, Kenya's National Assembly Trade Committee Chairman Bernard Shinali

[187] Non-Tariff Barrier; Reporting, Monitoring & Eliminating Mechanism, << https://tradebarriers.org/complaint/NTB-001-124 >> accessed on February 12, 2026

[188] Strain M & Nazarali M, "Tanzania; Order prohibiting non-citizens from engaging in Certain business activities published", Bowman, 30th July 2025 << https://bowmanslaw.com/wp-admin/admin-ajax.php?action=generate_acf_pdf_insight&post_id=77192&nonce=de295ad5ad >> accessed on February 12, 2026

noted that failure to remove the ban would compel Kenya to impose retaliatory restrictions which would greatly affect Tanzania's trade.[189]

As of February 12th 2026, Tanzania has not removed the ban despite concerns by partner states about the economic and regional integration implications of the above prohibition. Similarly, the usual mechanism of dispute settlement which has been by way of bilateral diplomatic talks has not yielded any positive results.

4.9. CASE STUDY 8: Tanzania's restrictions on Labour Mobility

The EAC partner states have under the Common Market Protocol agreed to provide for free movement of goods, services and people. This also includes the free movement of labour.[190] The various facets of free movement of persons and labour include; - free movement of persons, standardization of identification system and travel documents, free movement of workers, mutual recognition of academic and professional qualifications and harmonization of labour policies, laws and programmes.

While as other EAC partner states such as Uganda, Rwanda and Kenya have progressively harmonized their labour policies, academic and professional qualifications, Tanzania has been deliberately reluctant. The key restrictions in Tanzania include high work permit fees and administrative bureaucracies and strenuous processes.

Excessive work permit fees

EAC partner states have committed themselves under to ensuring that citizens from EAC partner states are not discriminated against while searching for employment. Partner states are therefore under an obligation to harmonize all their labour laws including social security, conducive work environment and nondiscrimination in the issuance of work permits. EAC partner states created the above obligations for

[189] Rukanga B., "Tanzania's ban in foreigners Operating small business sparks Kenyan backlash", BBC News, 30th July 2025, << https://www.bbc.com/news/articles/cdxyvzjpxe2o >> accessed on February 12, 2026

[190] Common Market Protocol, Part D, Article 7-12

themselves as a way of ensuring that there is free movement of labour across the region. To the contrary, Tanzania still charges work permit fees of USD 500 to nationals of EAC partner states.[191] The United Republic of Tanzania also charges USD 1,500 on mining related business.[192]

Arguably, Tanzania imposes less charges for work permits to EAC members compared to those imposed on nationals of other states. This however does not take away Tanzania's obligation under the EAC trade rules where there should be free movement of labour without discrimination. This financial barrier imposed on nationals of EAC partner states hinders the full actualization of the EAC Common Market Protocol because many low-income workers who are nationals of EAC partner states may not afford to pay for the permit. This adversely impacts on free movement of labour and leads to a violation of the Common Market Protocol.

Tanzania's Administrative Barriers

Besides the work permit fees, Tanzania imposes bureaucratic and administrative barriers which discriminate against nationals of other partner states; hence, limiting the free movement of labour. To obtain a Tanzanian work permit, a person is required to submit very many documents such as application letter, passport, a police letter, employment contract, academic documents, proof of qualification, and the employer should demonstrate in writing that they could not obtain a Tanzanian employee with the requisite set of skills and qualifications.[193]

The list of requirements for class A category which includes business people and large capital investors is overwhelmingly long.[194] Excessive administrative and bureaucratic procedures are not only costly in terms of money but equally require so much time obtaining them. Worst of all, requiring the employer to submit a justification letter

[191] Tanzania Immigration Department, "Residence Permit Class "A" Fees" << https://www.immigration.go.tz/index.php/102-fees/185-permit-fees >> accessed on February 12, 2026
[192] Ibid
[193] High Commission of the United Republic of Tanzania, Kampala-Uganda, "Residence & Work Permits Class A, B and C" << https://www.ug.tzembassy.go.tz/services/residence-and-work-permits-class-a-b-and-c >> accessed on February 12, 2026
[194] Ibid

why they are employing a non-Tanzanian national and why such an employee could not be obtained from among Tanzanian nationals is so discriminatory.

4.10. JUXTAPOSING THE CASE STUDIES WITH THE STUDY OBJECTIVES

Table 1: Summary of the Case Studies

	Measure	Year of the Measure	Exception to Trade	Dispute Statement Mechanism	Legality	Status of Dispute
1	**Case study 1**: Kenya's import restrictions					
	a. CET	June 2024	Article 12(1) Customs Union Protocol	No formal Complaint filed	(Not determined yet)	Ongoing
	b. Levies	2020	No exception is provided for Levies	No formal Complaint filed	Violates Article 6 of the Common Market Protocol	Ongoing
	c. Local Content Requirement	2020	(No Local Content exception)	No formal Complaint filed	Violates the Common Market Protocol	Ongoing
2	**Case study 2:** Kenya's ban on importation of	5/03/2021	-Article 21(b)- Common Market Protocol -Article 22(1)d	Complaint No. NTB-001-013 filed at SCITIF	Kenya did not notify the Secretary General	Resolved on 20th May 2021

	Ugandan maize					
3	**Case study 3:** Kenya's ban on importation of Ugandan sugar	-2011-2012 -2013 -2020	Article 21(1)c(i) of the Common Market Protocol Article 14 of the Customs Union Protocol Rule 4 of the Customs Union ROO	Complaint No. NTB-000-975	Kenya was found in violation of the Trade rules	Resolved by diplomatic negotiation
4	**Case study 4:** The 2021 Kenya's ban on Ugandan Poultry Products	-2017 -2021	2017 ban was justified under -Article 21(b)- Common Market Protocol -Article 22(1)d -The 2021 ban was a protectionist agenda and not justified	Male Mabirizi v AG of Kenya Reference No. 11 of 2021 Male Mabirizi v AG of Kenya Application No. 6 0f 2021	2017 ban was legal 2021 ban was illegal and a violation of EAC trade rules	Resolved by diplomatic negotiation on 21st December 2021
5	**Case study 5:** Tanzania's restrictions on Kenyan confectionary	2018	-Annex III of the Customs Union -Article 14 of the Customs Union Protocol - EAC Customs Management Act, 2004, revised in 2009, Section 14;	No formal complaint filed.	It was contrary to the EAC trade rules	Resolved

			-East African Community Customs Management (Duty Remission) Regulations, 2008, Regulation 3.			
6	**Case study 6:** Tanzania's restriction on the importation of motorcycle spare parts manufactured in Kenya	2023	Article 14 of the Customs Union Protocol Annex III, Customs Union (Rules of Origin) Rules, Rule 4(1) a & b	Filed formal Complaint No. NTB-001-124 to SCITIF	The restriction was illegal as Tanzania bore the burden to ascertain the origin of the goods.	Resolved on 23rd November 2024
7	**Case study 7:** Tanzania's prohibition of non-citizens to engage in small businesses	2025	In Violation of the Common Market Protocol	No Formal Complaint	It is illegal in contravention of the Common Market Protocol	Ongoing
8	**Case study 8:** Tanzania's restrictions on Labour Mobility	2010 to date	Violated Article 7-12 of the Common Market Protocol	No formal Complaint	It is illegal in contravention of the Common Market Protocol	Ongoing

Source: Developed by the Researcher from the Literature Reviewed (2026)

4.10.1. Objective 1: The Commonly implemented general exceptions and deviations to trade in the East African Community

In order to realize the primary object of this study, the first specific objective was to the commonly implemented general exceptions and deviations to trade. From the various case studies and the summary of the case studies, the commonly implemented exceptions and deviation to the trade rules include; -

General Exceptions

1. **To protect human, animal or plant life or health**

Most of the pertinent measures that stood out were those aimed at the protection of human and animal life and health. This general exception is enshrined under article 21(b)- Common Market Protocol with a similar provision under the Customs Union Protocol.[195]

This general exception was evidenced in the case study two which was on Kenya's ban on Ugandan maize due to aflatoxins. Similarly, in case study 4, in 2017 where Kenya banned Uganda's poultry and poultry products due to an outbreak of bird flue.

Relatedly, even in the WTO jurisprudence, the protection of human, animal or plant life or health is by far the most alluded to and the only two instances where WTO panels have successfully accepted this justification. These were evident in the **U.S. – Shrimp** [196] and **U.S. – Tuna-Dolphin** [197] cases which came up under the general exceptions of the GATT (Article XX) and the General Agreement on Trade in Services (GATS Article XIV) out of 48 attempts to defend domestic policies challenged as illegal under WTO rules".[198]

[195] Common Market Protocol, Article 21(b) and Customs Union Protocol, Article 22(1)d.
[196] Appellate Body Report, *United States – Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS58/AB/R, 12 October 1998, at paras. 166-172.
[197] Appellate Body Report, *United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products*, WT/DS381/AB/R, 16 May 2012, at paras. 407-408.
[198] Rangel D., Supra *(*n 103*)*

2. **To secure compliance with laws or regulations which are not inconsistent with the EAC laws including those relating to prevention of deceptive and fraudulent practices**

The second commonly invoked exception is in order to secure compliance with the laws which are consistent with the whole body of trade rules within the EAC. Such a measure should be necessary to ensure compliance with the laws that help address fraudulent and deceptive practices. These are enshrined in the Common Market Protocol.[199] According to various case studies such as case study three where Kenya banned Uganda's sugar because it was said to be imported from third party states and Uganda would brand it as locally made sugar.

This practice was witnessed to in a Ugandan case of **Uganda v Hassan Basajjabalaba and Anor**[200] where they were accused of evading taxes by re-packaging sugar. Kenya has also been exercising vigilance leading to several instances of impounding Ugandan sugar that was fraudulently re-packaged as indicated in case study number three. A similar case scenario was under case study number six where Tanzania banned Kenya's motorcycle spare parts with the belief that they were not made from Kenya as illustrated in case study number six. Under the Customs Union Protocol, goods must comply with the rules of origin.[201]

Other deviations and waivers

3. **Rule of Origin**

Besides the above general exceptions, the EAC trade rules provide that for goods to be regarded as duty free, they must comply with the Rules of Origin.[202] Annex III of the Customs Union Protocol sets out the standard that goods must meet to qualify under the rules of origin. Consequently, where goods do not meet the rules of origin, they can be discriminated against as evidenced by several case studies above.

[199] Common Market Protocol, Article 21(1)c(i)
[200] High Court, Criminal Case No. 31 of 2013
[201] Customs Union Protocol, Article 14
[202] Ibid

Under case study number three, Uganda's sugar was denied access to the Kenyan market as it was said to be in breach of the rules of origin. Similarly, case study number five illustrates that Tanzania banned Kenya's confectionary because it was being made from industrial sugar which did not originate from any of the member states. However, it was later demonstrated that these met the requirements under Annex III of the Customs Union, the EAC Customs Management Act, 2004, revised in 2009, and the East African Community Customs Management (Duty Remission) Regulations, 2008, Regulation; hence, qualifying under the rules of origin.

Similarly, in case study number six, Tanzania banned Kenya's motorcycle spare parts; however, Kenya demonstrated with that these met the rules of origin as illustrated in case number six above. Consequently, the commonly cited exceptions for the deviation from the trade obligations are as illustrated above.

4.10.2. Objective 2: Partner states' compliance with treaty obligations and international principles in the imposition of the general exceptions and restrictions implemented in the East African Community.

Having identified the commonly alluded to exceptions for the violation of the EAC trade rules, the second specific objective was to demonstrate whether in imposing the exceptions, EAC partner states meet the various tests and obligations for their implementation. From the literature review under Chapter three of this study, I demonstrated the various tests which must be met for a given deviation. These tests largely relied on the WTO jurisprudence which has developed over the years. In demonstrating whether EAC partner states meet their obligations, I will use both the WTO interpretation and the wording of the EAC trade rules.

a. Protection of Human, animal and Plant life and health

There are three elements to be demonstrated and these include compliance with the Chapeau. This means that the measure must be implemented without discrimination or any ill will. Secondly, the measure must be necessary to protect human, animal and plant life and importantly, the measure should be to eliminate any life-

threatening circumstance. From the various case studies, it is inferable that Kenya imposed a ban on Ugandan maize under Case study two to protect human and animal life. It was necessary because it complied with the EAC aflatoxin Prevention and Control strategy.[203]

While as the above circumstances were met, the EAC trade rules impose a further obligation of notification to the Secretary General who in turn has to notify partner states. To the contrary, the states that have imposed restrictions in line with the above general exceptions have always failed to give an official notice to the secretary general.[204]

b. To secure Compliance with the laws that are necessary to control fraudulent practices

Just like the above general exception, this general exception also shares two common elements which are the necessity test and the compliance with the Chapeau. However, a unique element is that the measure must be aimed at ensuring compliance with the laws which are not inconsistent with the EAC laws.[205]

From the above case studies such as case study 3, 5 and 6, the EAC partner states have imposed restrictions aimed at ensuring compliance with the laws. Specifically, case study number three Kenya banned Uganda's sugar as to ensure compliance with the laws and to prevent fraudulent practices. Even under case study number five, Tanzania banned Kenya's confectionary to ensure compliance with the laws. From the case studies, it is inferable that some restrictions have been justified under this exception where they are to ensure compliance with the laws.

[203] EAC Aflatoxin Prevention and Control Strategy, Action Plan and Result Framework 2018 - 2023 2018 - 2023 | EAC/CM/36/Decision18

[204] Non-tariff Barriers, Reporting, Monitoring and Eliminating Mechanism, https://www.tradebarriers.org/complaint/NTB-001-013 accessed February 12, 2026

[205] Common Market Protocol, Article 21(1)c(i)

c. Compliance with the Rules of Origin

The last commonly implemented exception is where a state has to ensure the protection of the rules of origin.[206] Looking at case study number five, Tanzania banned Kenya's confectionary to ascertain if they complied with the rules of origin. Similarly, under case study number six, Tanzania restricted the importation of Kenya's motor spare parts until tests were carried out to ascertain they complied with the rules of origin. There has been compliance with the obligations under the EAC trade laws where the complaining partner state conducts several tests to ensure that the goods in contention comply with the rules of origin.[207]

4.10.3. Objective 3: The effects of non-compliance with treaty obligations and international principles in the imposition of the general exceptions and restrictions to trade on regional integration of the East African Community.

Some of the measures imposed by partner states have been premised on a protectionist agenda; hence, inconsistent with the EAC treaty and related trade rules. There have been different effects resulting from non-compliance with treaty obligations and international law principles. These effects include; -

Retaliatory restrictions

Where partner states have not complied with the treaty obligations and trade rules in implementing restrictive measures, affected stated have responded with retaliatory measures. This was evident in 2021 during the COVID 19 lockdown when Kenya imposed protectionist measures on Uganda's maize and poultry products. Uganda opted for diplomatic negotiations with Kenya and these did not yield immediate result; hence, Ugandan cabinet resolved to impose retaliatory measures on Kenyan imports into Uganda.[208] The Minister of Trade to find such agricultural products from

[206] Customs Union Protocol, Article 14, Annex III of the Customs Union, the EAC Customs Management Act, 2004, revised in 2009, and the East African Community Customs Management (Duty Remission) Regulations, 2008, Regulation
[207] Ibid
[208] Ibid

Kenya on which Uganda would impose a ban. This decision was however condemned by the EABC which called for peaceful settlement of disputes.[209]

Endless trade disputes

The EAC has had endless trade disputes arising from non-tariff barriers. The Regional Monitoring Mechanism has resolved 274 disputes arising from NTBs since 2007 to 2024.[210] These do not only affect trade but equally hamper the rate of integration of the East African Community.

4.11. CONCLUSION

The main aim of this study was to examine the efficacy of the exceptions and deviations to trade rules in the East African Community and their impact on regional integration. Specifically, this study established the commonly implemented general exceptions and deviations to trade in the East African Community. Secondly, it examined the compliance with treaty obligations and international principles in the imposition of the general exceptions and restrictions implemented in the East African Community. Lastly, this study assessed the effects of non-compliance with treaty obligations and international principles in the imposition of the general exceptions and restrictions to trade on regional integration of the East African Community.

This study established that there are common exceptions to trade such as the necessity to protect human, animal or plant life and health, the need to ensure compliance with the laws which are not inconsistent with the EAC trade rules and the protection of the Rules of Origin. However, this study also established that some of the restrictions are imposed with a protectionist agenda largely to protect domestic industries.

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[209] The Independent, "EABC Seeks dialogue to end Uganda-Kenya trade war", 16th December 2021, << https://www.independent.co.ug/eabc-seeks-dialogue-to-end-uganda-kenya-trade-war/ >> accessed on February 4, 2026

[210] East African Community,<< https://www.eac.int/press-releases/157-trade?start=27#:~:text=EAC%20Partner%20States%20resolve%2010%20Non%2DTariff%20Barriers%20as%20new%20ones%20emerge&text=East%20African%20Community%20Headquarters%2C%20Arusha%2C%20Tanzania%2C%206th%20June%2C,to%20resolve%20all%20outstanding%20NTBs. >> Accessed on February 12, 2026

Additionally, the commonly alluded to exceptions do not often follow the obligations that accrue from their imposition such as the notification to the secretary general. Other obligations such as conducting the relevant confirmatory tests in case of a disease outbreak or fault that would threaten human, animal, or plant life. EAC partner states do not exercise the obligation to conduct these confirmatory tests in case of suspicion of goods violating the rules of origin.

Consequently, failure to comply with treaty obligations and trade results into various conflicts such as retaliatory measures which lead to constant trade disputes. This affects business community across the region, impacts trade and the overall rate of regional integration.

While as a common market and a customs union were intended to be transitory stages towards a political federation, there has been low progress due to constant trade disputes.[211] This has not only affected trade but has also affected the independency of the EACJ as diplomatic negotiations often override the Court decisions. This leaves most of the trade disputes to be resolved by diplomatic negotiations as opposed to arbitration which is followed by necessary remedies to the aggrieved party.

4.12. RECOMMENDATION

i. Strike a balance between deterrence and restorative justice.

From the case studies above, trade disputes are settled by diplomatic negotiations often depending on the political will of the presidents of the Partner states. This is often premised on amicable settlement of disputes based on the legal notion of restorative justice. As such, the dispute settlement mechanism focuses more on restoration of trade relations as opposed to giving remedies to affected parties which would deter any further violations of the trade rules.

Besides the economic loss to affected states and business individuals, the states often imposing biased and repetitive trade restrictions with protectionist intent keep into the same habit. Consequently, this study identified gaps in the dispute settlement

[211] The Treaty for the Establishment of the East African Community, 1999, Article 5

mechanism. As such, this study highly recommends mainstreaming the dispute settlement mechanism to strike a balance between the need to ensure "amicable settlement of disputes" with the need to "remedy the aggrieved party(s)".

ii. Reduce the overlapping layers of Dispute Settlement Mechanisms

This study established that the EACJ is empowered under Article 27 of the Treaty Establishing the EAC to interpret the Treaty and the Article 54 of the Common Market Protocol gives reference to the EAC treaty. Similarly, Article 42 of the EAC Customs Union Protocol provides for dispute settlement and provides for details under annex IV to the Protocol and the EAC Customs Union dispute settlement mechanism further give reference to the EACJ, the mechanism is not well detailed to spell out the mandate of the EACJ.

On the other hand, other sectoral and specialised committees such as the Sectoral Council for Trade, Industry, Finance, and Investment, Committee on Trade and Remedies, Committee on Communication, the National Monitoring Committee not only receive reports but also settle disputes. This study recommends that the heads of states and the EALA develop a detailed dispute settlement mechanism spelling out the mandate and the power of the EACJ especially on awarding remedies and their enforceability as opposed to allowing every committee to settle disputes without a clear mechanism and award of remedies.

iii. Empowering the EACJ

Similarly, this study established that the EACJ is understaffed where the two divisions have a total of 11 judges with 6 in the first instance and 5 in the appellate division as of February 2026. Worse still, the EACJ does not hold Monthly sittings but holds quarterly sittings which make a total of 4 sittings per year. This implies that where a case is filed, it will be upon the complainant to file a certificate of urgency where the EACJ will hold an ad-hoc sitting.

As such, where a certificate of urgency is not honoured, then the complaint will take close to a year before it is heard and determined by the Court. This study therefore

recommends that the partner states increase their financial contribution to the EAC so that more judicial officers can be recruited to increase on the human resource at the EACJ for an expeditious disposal of cases.

iv. Empowerment of the Secretariate to fulfil its mandate

The EAC trade rules impose several obligations on states if they are to impose trade restrictions. These include notification to the Secretary General. To the contrary, this research established that partner states never comply with this primary obligation before imposition of the general exceptions or any limitations to trade.

This research recommends that presidents of EAC partner states and the EALA develop mechanisms that are will empower the secretariate to ensure that its mandate is fulfilled through the Secretary General by imposing such fines and penalties to states which disregard this particular obligation of giving due notice to the secretary general as well as other obligations that states must comply with before, during and after the imposition of any limitation or deviation from the trade rules.

v. Policy Makers to expand, and give effect to trade rules.

I acknowledge that the EAC has a plethora of policies relating to trade; however, the aspirations of the Common Market Protocol and the Customs Union Protocol are so many and so broad that they need other policies to further develop the trade rules. This research established that some trade rules are too broad without any policy giving them effect or their overall interpretation.

This research highly recommends the policy makers and the EALA to develop relevant policies which will not only detail some of the broad and ambiguous trade rules but also provide a mechanism for partner states' compliance.

vi. Researchers

Lastly, there is a paucity of literature regarding the EAC trade rule; hence, this research recommends that scholars, academicians and experts in international trade law and regional integration undertake further research. This will help develop the

EAC trade rules, the general exceptions to trade, dispute settlement mechanisms as well as the relevant remedies. This research will inform policy makers, heads of states and all the organs of the EAC.

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