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Unmaking of a customs union: Regional (dis)integration in the East African Community

Jakob Rauschendorfer and Anna Twum ¹

Abstract: The Common External Tariff (CET) of the East African Community (EAC) customs union has long been considered the cornerstone of one of the more successful examples of regional integration in Sub-Saharan Africa. In this project, we assess the integrity of the CET using a novel dataset of country- and firm-level deviations from the common tariff regime created by digitizing information published in the gazettes of the EAC secretariat between 2009 and 2019. Using these data, we present five findings on the state of the EAC customs union and the tariff policy of its members: (i) Increased usage of country-level deviations from the common tariff schedule has rendered the Common External Tariff of the customs union less and less “common”; (ii) Kenya, Tanzania and Uganda predominantly use unilateral deviations to increase external protection while Rwanda makes use of the same mechanism mostly to decrease tariffs; (iii) Kenya, Tanzania and Uganda increase tariffs for the same broad classes of products, but target different industries; (iv) Unilateral tariff reductions at the country level are mostly used to facilitate access to inputs rather than to improve consumer welfare; (v) Data on firm-level exemptions through the EAC Duty Remission Scheme suggest that private sector development in the EAC would benefit from lower tariffs on intermediate inputs. Taken together, our findings emphasize the importance of a comprehensive review of the Common External Tariff and yield a number of relevant questions for further research on tariffs and exemptions schemes in the EAC.

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I. Introduction

Participation in international trade is essential for developing countries to achieve high rates of economic growth and reduce poverty. On the consumer side, trade and trade liberalization boost real incomes by lowering the cost of consumption and by providing access to a greater variety of goods. On the producer side, increased competition from abroad relocates factors of production to the most productive firms, while access to imported inputs and new export opportunities from reciprocal liberalization can enable firms to overcome limited domestic demand and boost firm productivity.²

Regional trade agreements can serve as a springboard to participation in global trade by boosting trade among countries at similar stages of development. For example, exporters are found to have higher chances of surviving global competition when they first export to regional markets (*cf.* Kamuganga 2012, Regolo 2017). Recognizing the potential for trade with each other, governments in Africa have launched a number of regional trade agreements over the last decades, with the most recent (and arguably most ambitious) example being the African Free Trade Area (AfCFTA).³

Two forms of regional trade agreements are free trade areas and customs unions. In a free trade area, members strive to liberalize trade with each other, but each country sets its own tariff schedule for imports originating from non-members. A customs union goes a step further: members negotiate and adopt a uniform tariff schedule called a Common External Tariff with each member applying the same tariff rates on imports originating from outside of the union. While this implies that members give up their autonomy to unilaterally set tariffs against non-members of the union (e.g., to increase external protection for strategic industries), implementing the same external tariff regime has distinct advantages.

In a customs union, the CET should theoretically eliminate the risk of price differentials that would make re-exportation of imported goods profitable and essentially render preferential Rules of Origin obsolete. However, in the absence of a uniform tariff schedule, as is the case in a free trade area, member states have to deal with issues of “trade deflection”, where a good is imported through the member country with the lowest tariff and is then re-exported to other members. To mitigate this risk, free trade areas have to implement costly monitoring systems and often unnecessarily strict Rules of Origin that end up impeding trade among member states. Additionally, establishing a customs union is normally a gateway for deeper forms of regional economic integration, such as a

² Irwin (2019) provides a review of the recent literature on the economic growth effects of widespread trade reform that took place in the developing world during the 1980s and early 1990s and concludes that trade reforms have a positive impact on growth, although with notable heterogeneity across countries. Fittingly, Pavcnik (2017) in her review of the literature on the impact of trade on inequality in developing countries concludes that “The answers to questions whether trade benefits the poor or increases inequality within a country are context specific” (Pavcnik 2017: 29), also highlighting the need for governments to eventually redistribute the gains from trade through interventions. Shu and Steinwender (2018) provide a survey of the empirical literature on the effect of trade liberalization on firm productivity and innovation.

³ Currently, there are eight regional economic communities in Africa that form the building blocks of the African Economic Community. These are: Arab Maghreb Union (AMU), the Community of Sahel-Saharan States (CENSAD), the Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC), the Economic Community of Central African States (ECCAS), the Economic Community of West African States (ECOWAS), the Southern African Development Community (SADC) and the Intergovernmental Authority on Development (IGAD). Often, individual countries are part of multiple blocs. For example, Uganda is a member of COMESA and the EAC.

common (single) market, which allows for the free movement of factors of production (cf. Krueger 1995: 5-12).

While the institution of a CET is the key feature that distinguishes a customs union from a free trade area, in practice most customs unions have rules in place that allow members to deviate from the common tariff regime for individual products.⁴ However, little is known about the prevalence of such deviations, even though they undermine a key principle of a customs union and in part constitute a reversal towards a free trade area.

To our knowledge, this paper is the first systematic analysis of such deviations. We present a new dataset on deviations from the Common External Tariff (CET) of the East African Community (EAC), a customs union consisting of Uganda, Tanzania, Kenya, Rwanda and Burundi.⁵ Specifically, we create a dataset of country and firm-level deviations from the EAC-CET by digitizing information published in the gazettes of the EAC secretariat covering fiscal years 2009/10 to 2019/2020.⁶ We combine these data on tariff deviations from the CET with data on tariffs from the official CET schedules, which provides us with a panel dataset of statutory tariff rates for all five EAC member states. The panel dataset is complete with country and firm-specific deviations from the CET. Using these data, we establish the following five findings on the state of the EAC customs union and tariff policy in the EAC:

- i) *Increased usage of country-level deviations has rendered the Common External Tariff of the EAC Customs Union less and less “common”;*
- ii) *Kenya, Tanzania and Uganda predominantly use country-level deviations to increase external protection while Rwanda makes use of the mechanism mostly to decrease tariffs;*
- iii) *Kenya, Tanzania and Uganda increase tariffs for the same broad classes of products, but target different industries;*
- iv) *Tariff reductions at the country-level are mostly used to facilitate access to inputs rather than to improve consumer welfare by decreasing tariffs on consumption goods;*
- v) *Data on firm-level exemptions through the EAC Duty Remission Scheme suggest that private sector development in the EAC would benefit from lower tariffs on intermediate inputs.*

The remainder of this paper is organized as follows. In section two, we present a novel dataset on deviations from the EAC Common External Tariff together with other data sources used in the analysis. In section three, we exploit these data and establish the five findings presented above. In section four, we explore the implementation of the EAC-CET in a case study using transaction-level customs data from Uganda. Section five concludes.

⁴ According to the *Dictionary of international Trade Law* (2015: 126-127), of all customs unions in the world only the European Union (EU) and the Southern African Customs Union (SACU) are “pure” in the sense that members have to strictly implement the CET of the agreement. Other customs unions allow members to deviate from the CET for a range of products. For example, under the rules of the *Economic Community of West African States* (ECOWAS) members are allowed to deviate from the CET for a maximum of three percent of all tariff lines by applying for a so-called Import Adjustment Tax (IAT) (cf. Laski, Mancellari and de Melo 2014).

⁵ Kenya, Tanzania and Uganda founded the union in 2005 and Rwanda and Burundi joined in 2007. All five members implement the CET. South Sudan joined the EAC in April 2016, but does not currently implement the CET.

⁶ The only other study exploring the topic of tariff exemptions in the EAC customs union is Bänder (2018), who explores the influence of interest groups on EAC members’ unilateral deviations from the EAC-CET building on stakeholder interviews.

II. Context and data

In this section, we describe the two main datasets employed in this paper and provide some background on the CET, a component of the *Protocol on the Establishment of the East African Customs Union* signed by five of the members of the EAC: Burundi, Kenya, Rwanda, Tanzania and Uganda. We then discuss the two major exemptions schemes that exist under the CET: the Stays of Application (SoAs) and the Duty Remission Scheme (DRS).

Under the CET, intra-EAC trade is tariff-free while product-specific tariff rates apply on the importation of around 5,600 classified goods originating from outside of the EAC customs union.⁷ The common tariff regime consists of a three-band system: 0 percent for raw materials/capital goods, 10 percent for intermediate inputs that have undergone some processing and 25 percent for final/consumption goods.⁸ Additionally, a small number of products are included in a *List of Sensitive Items*. The products included on this list are subject to tariff rates of 35 percent or higher (up to 100 percent). Table 1 shows the distribution of products per tariff band in line with the most recent version of the CET. While the number of individual products included in the *List of Sensitive Items* is small (last column), many of these products are traded in large volumes and matter substantially for the welfare of poor EAC citizens (e.g., sugar, rice, wheat, dairy, corn etc.).

Table 1: Number of products per tariff band under the EAC Common External Tariff.

	0 %	10 %	25 %	SI list	Total
# products	2,106	1,152	2,321	63	5,642
As % of products regulated by the CET	37.3	20.4	41.1	1.1	100

Notes: Illustration based on the 2017 version of the Common External Tariff, taking into account the 2017 update of the Harmonized Systems nomenclature. SI list = *List of Sensitive items* that assigns tariffs of 35% or higher on products.

The CET has two exemption schemes that enable countries as well as individual firms to deviate from the common tariff regime for individual products over a specified period.⁹ The first are country-wide deviations through the Stays of Application (SoA) mechanism, which EAC-members can use to unilaterally decrease or increase tariffs. The second are firm-level exemptions through the Duty Remission Scheme (DRS), which allow individual firms to import inputs at tariff rates lower than those set in the CET. Approvals under the DRS tend to be for a zero percent tariff.

To study the prevalence and importance of these deviations we employ two sources of data. The first is a new dataset of deviations from the CET, extracted from the EAC's Gazettes for the 2009/10 - 2019/20 fiscal years ("EAC gazettes" henceforth). The second is a dataset on quarterly import flows for all five EAC members obtained from the International Trade Centre's *TradeMap* database. We describe both datasets in more detail below.

⁷ Lower tariffs than those in the CET apply to imports that enter from a country that is a member of another free trade agreement that an EAC member is part of. As we show below in Table 2, the importance of these agreements is small.

⁸ At the time of writing EAC members had agreed on the introduction of a fourth band in the revised CET, but negotiations regarding which products would be included under that band were not concluded.

⁹ In this paper a "product" always refers to an 8-digit tariff line as regulated by the CET (e.g., 1905.3100: *Sweet biscuits*). A country or a firm "deviates" from the CET when it imports a product at a tariff rate different than the one in the CET. The HS 2017 version of the CET can be found at <https://www.eac.int/documents/category/eac-common-external-tariff>.

i. Digitized information on deviations from the CET: 2009/10 - 2019/20

Our first dataset, a new contribution to the body of research on EAC trade policy, is constructed by digitizing approved deviations from the CET published by the EAC secretariat through its gazettes. We digitize data on two main types of deviations, both of which are time-bound: country-specific deviations (i.e., Stays of Application) and firm-specific exemptions (i.e., exemptions under the Duty Remission Scheme).

The EAC gazettes are periodic publications used to publicly communicate legal decisions, directives and regulations agreed upon by the EAC Council of Ministers.¹⁰ These decisions include approvals for deviations from the CET under Stays of Application or the Duty Remission Scheme. Decisions published in the EAC gazette are legally binding to all member states (*cf.* East African Community 2020). We digitize details on announced approvals for Stays of Application and the Duty Remissions published in the EAC gazettes covering the fiscal years 2009/10 to 2019/20.¹¹

Country-specific deviations from the CET: Stays of Application. The first type of CET deviation we extract from the EAC gazettes are country-specific deviations from the common tariff regime at the product level, officially called Stays of Application. A Stay of Application applies to all importers (firms, organisations and individuals) in an approved country and changes a product-specific tariff rate to either a lower or a higher rate. The new rate is applicable to imports originating from any country outside of the EAC. Stays of Applications are approved by tariff and product line (8-digit product level of the *Harmonized System*) and are usually valid for the duration of one fiscal year.¹² They are negotiated by the *EAC Council of Ministers* on a case-by-case basis during their meetings and usually come into effect on the 1st of July (beginning of the EAC fiscal year).¹³

Example of a Stay of Application published in an EAC gazette: HS-Code 5608.11.00 (“Made up fishing nets”): Rwanda to stay application of the EAC CET and apply a duty rate of 10% instead of 25% for one year (cf. East African Community 2016: 3).

Firm-specific exemptions from the CET: The Duty Remission Scheme. The second type of deviation from the CET that we extract are firm-specific exemptions through the EAC’s Duty Remission Scheme. Similar to the Stays of Application, the EAC Council of Ministers approves Duty Remission Scheme exemptions normally for the duration of one fiscal year. Duty remissions differ from Stays of

¹⁰ The Council of Ministers is the EAC’s central decision-making and governing organ and consists of ministers (or cabinet secretaries) of EAC member states. It meets twice a year, with one meeting held immediately before the annual EAC summit during which the heads of government of the five member states provide political guidance on issues affecting the community.

¹¹ Historical gazettes were provided by the EAC Secretariat based in Arusha, Tanzania.

¹² The fiscal year is harmonized across the EAC and runs from the 1st of July to the 30th of June. The Harmonized System is an internationally used nomenclature, that provides a taxonomy of traded goods between countries and is used by almost every trading nation in the world.

¹³ It should be noted that the term Stays of Application, though formally used, is not a legal term. The *Council of Ministers* grants these exemptions based on the *Protocol on the Establishment of the East African Community Customs Union*, articles 12 (3) and 39 (c). Article 12 (3) allows the council to “(...) review the common external tariff structure and approve measures designed to remedy any adverse effects which any of the Partner States may experience by reason of the implementation of this part of the Protocol (...)”, while Article 39 (c) postulates that “[t]he customs law of the Community shall consist of: (c) regulations and directives made by the Council” (*cf.* East African Community 2004).

Application in three important ways. First, tariff deviations under the Duty Remission Scheme are granted to individual firms with the names of beneficiary firms published in the EAC gazettes. In contrast, Stays of Applications are granted at the country-level.¹⁴ Second, while Stays of Application allow a country to increase or decrease the tariff rate on a product for all importers (firms, institutions and individuals), exemptions under the Duty Remission Scheme always reduce the tariff rate for an individual firm and for a specific imported product (usually to zero, but sometimes to 10 percent). Third, exemptions from the CET granted under the Duty Remission Scheme are normally granted for a specified import volume while such stipulations do not usually exist for Stays of Applications.

The legal basis for the EAC's *Duty Remission Scheme* is the *East African Community Customs Management Act 2004*, Article 140, which states that “the Council may grant remission of duty on goods imported for the manufacture of goods in a Partner State” (East African Community 2009: 85). Additionally, the *East African Community Customs Management (Duty Remission) Regulations, 2008*, sets out a requirement for individual EAC members to form a *Duty Remission Scheme Committee* chaired by a representative of the Ministry of Finance that receives and processes firm applications for the EAC *Duty Remission Scheme*. Following assessment, the commissioner of the committee presents the EAC *Council of Ministers* with information on all applying firms along with information on the type of goods and quantities for which remission may be granted. The council subsequently approves or reject applications (East African Community 2008: 1-3).

Example of a Duty Remission published in an EAC gazette: HS-Code 1701.99.10 (“White Refined Sugar”): Approved Kenya manufacturers and quantities of sugar for industrial use to be imported at a duty rate of 10% under the duty remission scheme for twelve months. Company “ROK Industries Ltd” allocated 700 metric tonnes for the productions of assorted sweets.^{15/16}

By extracting these data on exemptions from the EAC gazettes, we create a dataset of deviations from the EAC-CET at the product, country, firm (in the case of the Duty Remission Scheme) and fiscal year level. In a final step, we combine data on these two types of exemptions with the CET schedules from 2007, 2012 and 2017, detailing product-specific statutory tariffs at the same level of detail as our exemptions data for all individual products the CET regulates (about 5,600).¹⁷ The result is a panel dataset of statutory tariff rates for the members of the EAC customs union from fiscal year 2009/2010 to 2019/20, appended with data on 2,580 country-level deviations from the CET through Stays of Application and 23,275 firm-level deviations through the Duty Remission Scheme.

¹⁴ Often, the structure of the gazettes is such that in one month a country (not a firm) is granted duty remission on a number of products with the condition of having to “submit vetted manufacturers and quantities of raw materials to be imported for publication in the gazettes in accordance with Section 140 of the EAC Customs Management Act, 2004”. The names of benefitting companies are then published in subsequent gazettes.

¹⁵ The usual CET tariff for sugar is 100 percent ad valorem.

¹⁶ Figures A1 and A2 in the Annex show extractions from the EAC gazettes showing published Stays of Applications and Duty Remission Scheme deviations.

¹⁷ The three different versions of the CET reflect updates in the *Harmonized System* nomenclature, which is periodically reviewed by the World Customs Organization to incorporate changes on products traded internationally (e.g., addition of new varieties). Beyond deviations from the CET, the EAC gazettes also contain data on permanent changes to the CET or the split of one product into two (e.g., “shirt” becomes “shirt for men” and “shirt for women”). We capture these additional data as well.

ii. Quarterly import data: 2010 - 2018

We obtain quarterly data on imports for all five EAC members from the *International Trade Centre's TradeMap* database.¹⁸ From these data, we construct a dataset of imports that are taxable under the EAC Common External Tariff regime: for each fiscal year, country and product combination, we calculate the import volume that originates from outside of the EAC, excluding imports from trading partners that share another preferential trade agreement with the EAC country under consideration.¹⁹ Our import data span the fiscal years 2010/11 to 2017/18 for all EAC countries except Rwanda, for which the database only contains data up to fiscal year 2013/14.²⁰

In Table 2, we employ import data for the 2017/18 fiscal year and show that majority of the entering EAC members are taxed at tariff rates under the CET. This makes the regime exceptionally important in determining the supply and price of imported products with consequences for economic growth, firm productivity and consumer welfare in the member states of the customs union.

First, in Column 1, we present for each EAC member state, the share of its total import volume that is subject to the CET. This portion of imports originates from both outside of the EAC as well as other regional trade blocs that the country is a part of. For example, for Uganda, we find that 90 percent of the country's imports originate from countries that are neither a part of the EAC or COMESA, Uganda's other regional trade agreement.

While already sizeable, these shares do not account for the fact that intra-EAC trade, which is included in these totals, is conducted tariff free under the customs union. Imports originating from members of other regional trade blocs may sometimes be subject to tariffs, depending on the product, and are usually lower than the CET rates from countries that do not enjoy any preferential treatment. To assess the importance of the CET based on the share of EAC members' imports subject to tariffs; we drop zero tariff intra-EAC trade from the calculations and present the share of a country's "taxable" import volume that is subject to the CET in Column 2. Once we cancel out tariff free intra-EAC trade, it becomes apparent that the CET regulates close to all EAC imports that are actually subject tariffs. To illustrate, for Rwanda, 96 percent of imports that enter the country from outside of the EAC originate from countries subject to tariff rates under the CET (e.g., India, China, the EU etc.) and only 4 percent originate from countries that share membership with Rwanda under the COMESA free trade area (e.g., Zambia or Mozambique).

¹⁸ *TradeMap* provides quarterly series of a country's trade collected from national statistical offices or regional organisations. We chose this source of trade data for two reasons. First, we need trade data that allow us to compute values for fiscal years as exemptions are normally granted on this basis (not calendar years). Second, unlike other sources, data from *Trademap* is available at the tariff line level (eight digits of the *Harmonized System*). This is crucial as it allows us to merge our tariff and exemptions data with import flows at the same level of product disaggregation.

¹⁹ We obtain total imports and subtract imports that either originate from within the EAC customs union (and are therefore imported tariff-free) or that originate from a trading partner that shares membership in another preferential trade agreement that the EAC member under consideration is part of. For example, Tanzania is also part of the SADC Free Trade Area. This means that goods imported from other SADC members (e.g., Zambia) attract tariffs that are lower than those specified in the CET but still greater than zero for a large variety of products.

²⁰ It is important to compute import flows for fiscal years since deviations from the CET (both Stays of Applications and Duty Remission Scheme) are normally granted on that basis.

Table 2: The CET is the primary tariff regime for all EAC members.

	Share of country's imports subject to the CET; tariff free intra-EAC trade included in total	Share of country's imports subject to the CET; tariff free intra-EAC trade excluded from total
Kenya	0.93	0.97
Tanzania	0.91	0.97
Uganda	0.90	0.99
Rwanda	0.72	0.96
Burundi	0.84	1.00

Notes: Data on imports for Burundi, Kenya, Tanzania and Uganda are for the fiscal year 2017/18 and taken from the ITC *TradeMap* database. Data for Rwanda are for 2016 and taken from UNComtrade (2020). Besides being a member of the EAC, Burundi, Kenya, Uganda and Rwanda are also members of *the* Common Market for Eastern and Southern Africa (COMESA) FTA. In addition to the EAC, Tanzania is part of the Southern African Development Community (SADC) Free Trade Area.

III. Five messages on tariff policy in the East African Community

In this section, we employ our constructed dataset on deviations from the Common External Tariff of the East African Community and present five findings on the state of the customs union and the tariff policy of its individual members.

One: *Increased usage of country-level deviations through the Stays of Applications render the Common External Tariff less and less “common”.*

As discussed in the introduction of this paper, a common external tariff is the defining feature of a customs union. By implementing the same tariffs on imported products regardless of which member of the union imports them, goods can circulate among members with little restrictions like cumbersome and trade restricting Rules of Origin.

Country-specific deviations from a common tariff regime have the potential to undermine this objective of a customs union. By implementing deviations from the CET, (i.e., implementing lower or higher rates than the communal tariff rates agreed on) countries introduce product-specific price differentials across the domestic markets of different members. These in turn might constitute an incentive for traders to take advantage of price differential and import and re-export goods that face a higher tariff when imported by another member of the union. It is therefore important to understand how “common” the Common External Tariff really is after taking into account country-specific deviations through the Stays of Application mechanism, which allows countries to implement tariff rates different from the CET.

To this end, Figure 1 first offers a simple count of granted Stays of Application per EAC member and fiscal year. As evident from this illustration, the number of approved Stays of Application has increased enormously over the course of the past decade, from below 100 in 2009/10 to more than 900 in 2019/20. Notably, some countries use the scheme more frequently than others do; Kenya, Tanzania and Uganda unilaterally deviate from the CET for many products, especially in more recent years.²¹ Rwanda is a notable user of Stays of Application as well but for fewer products. In contrast, Burundi has utilised Stays of Application from the CET only for a handful of products in any given year. Figures A3 and A4 in the Annex of this paper track the volume of imports imported under Stays of Application per each country (in total volumes as well as a share of a country’s total imports subject to the CET regime), showing that significant volumes of imports are affected.

²¹ The sizeable increase in Stays of Applications in 2018/19 and 2019/20 can in part be explained by countries increasingly being granted Stays of Applications on whole headings and even chapters of the CET, which each include many individual 8-digit products. For example, in fiscal year 2018/19, Uganda and Tanzania were granted Stays of Application from the CET for the heading 18.06 “Chocolates”, effectively resulting in a Stays of Application from the CET for five products each and offering protection for an industry rather than a product.

Figure 1: Unilateral deviations from the CET have increased substantially...

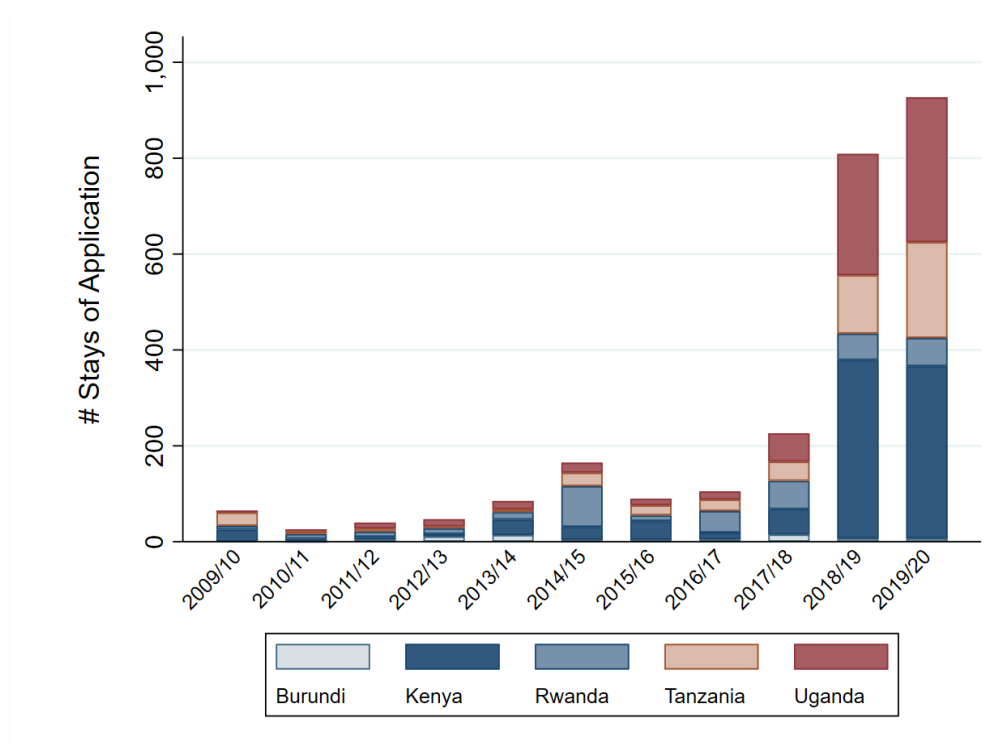
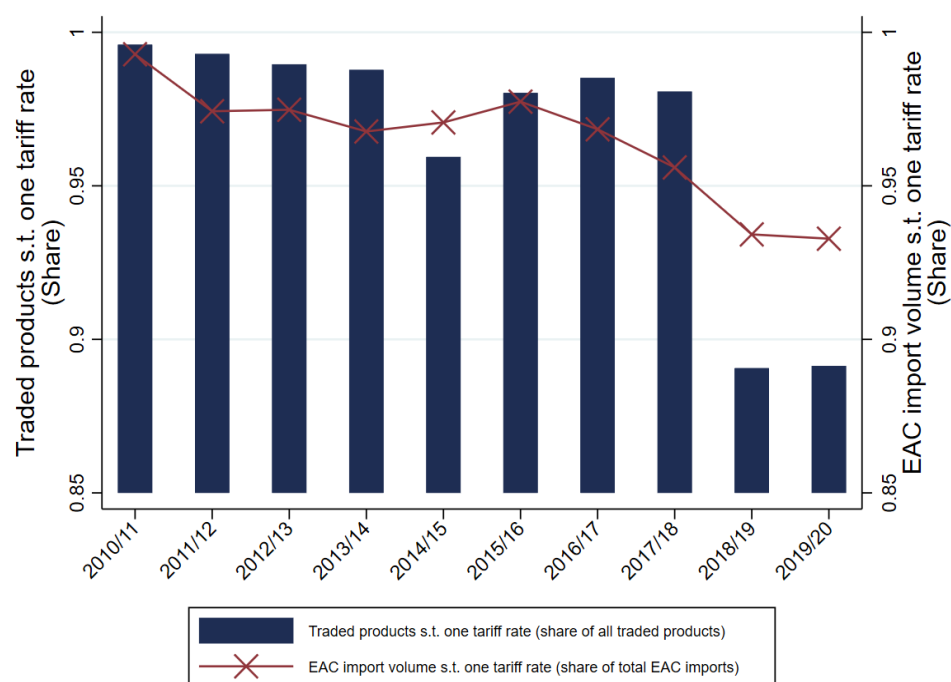


Figure 2: ... and render the Common External Tariff less “common”.



Notes: *Figure 1* - Stays of Application per country and fiscal year. A Stay of Application allows an EAC member to unilaterally deviate from the CET and implement a tariff (higher or lower) for the period of one fiscal year. *Figure 2* – The left Y-axis expresses the number of imported varieties that entered the EAC customs union under a communal tariff rate. The right Y-axis expresses the import volume that entered the EAC under a communal tariff rate as share of total EAC imports (i.e., it subtracts imports entering under SoAs). Import values for 2018/19 and 2019/20 are the ones from 2017/18, the latest year for which these data are available. For Rwanda, import data are only available up to 2013/14 and aggregate figures for later years are excluding Rwanda.

In Figure 2, we explore the impact of this sizeable number of country-specific deviations on the uniformity of the EAC's Common External Tariff. On the left y-axis of the figure, we show the number of products that entered the EAC customs union under one tariff rate, expressed as a share of all yearly imports from outside the EAC region. That is, we show what share of traded products actually have a common tariff rate in place once unilateral deviations accounted for. On the right y-axis, we express the EAC's import volume that enters the union under a single tariff rate as a share of total imports by EAC members from outside the region. For example, in 2012/13 we find that about 97 percent of all CET-taxable imports entered the union under uniform tariffs.

This illustration suggests an incipient but clear trend towards a less communal tariff regime. In 2017/18, the last fiscal year for which we have trade data for at least four EAC members, about 2 percent of all product lines imported by EAC members were not subject to the same tariff rate, resulting in about 4.4 percent of the EAC import volume from outside the region entering under at least two different rates. In terms of absolute numbers, in the same year USD 1.28 billion USD worth of imports entered the EAC under Stays of Application.

While we do not have import data for 2018/19 and 2019/20, we can extrapolate the share of affected import volumes by applying Stays of Applications implemented in those two years to the import volumes of EAC members in 2017/18. Following this procedure, Figure 2 suggests that about seven percent of all EAC imports entered the customs union under different rates in those fiscal years, assuming imports in 2017/18 are a suitable proxy for imports in 2018/19 and 2019/20. While this estimate relies on an extrapolation, when we employ Ugandan customs data for the 2018/19 fiscal year in our case study on CET implementation, we find that those products subject to a Stay of Application contributed about 8.1 percent to the country's import volume in that year, adding credibility to these estimates.²²

This graphical presentation establishes that the EAC's Common External Tariff is becoming less and less "common": countries increasingly implement tariffs different from those stipulated in the CET through the Stays of Application mechanism. Consequently, large volumes of imports enter the EAC under different tariff rates. This finding matters for how effectively the EAC customs union can leverage regional free trade to boost economic development.

For example, as members unilaterally implement tariffs different from the CET on more and more products, the incentive for traders to exploit resulting price differentials across different EAC markets increases. For example,, in fiscal years 2018/19 and 2019/20, Uganda implemented Stays of Application on *Ballpoint pens*, unilaterally increasing the tariff on this product to 60 percent, while the other four EAC members maintained the statutory 25 percent CET rate. The resulting higher price for imports of this product in Uganda could constitute an incentive for traders located in other EAC

²² It is also important to also highlight that at the time of writing, the EAC secretariat already published the 30th June gazette for 2020, communicating approved Stays of Application for the fiscal year 2020/21. The gazette showcases a further escalation of the usage of Stays of Application for the national interests of individual EAC members. For example, Uganda was granted approval to implement in excess of 800 Stays of Application in 2020/21, in comparison to a total of 302 in 2019/20.

members to import this product from source markets outside of the region and re-export it to Uganda. Arguably, to import at tariff free rates to the Ugandan market, traders in Kenya, Tanzania, Rwanda or Burundi might obtain certificates of origin through fraudulent practices like repackaging and/or by bribing customs officials.²³ Anecdotal evidence for such practices in the EAC are widespread. For example, in the case of Ugandan rice imports from Tanzania, Joughin (2019) reports that *“By 2014, the majority of rice coming into Uganda was sourced in Tanzania, some of it genuine Tanzanian product but some also having been imported into Zanzibar at the special rate and then repacked and brought “legally” into Uganda (...). In 2016, citing food shortage concerns, the Tanzania government applied for further exemptions to import rice from outside the EAC at a lower CET rate. Again, the exemption was abused with local Tanzanian rice being adulterated with repackaged and re-labelled rice from Pakistan”* (Joughin 2019: 6).

In the medium run, the introduction of a large number of often substantial price differentials across different EAC markets due to country-specific deviations from the CET is therefore likely to trigger measures targeted at preventing the practice of “trade deflection” that have the potential to reduce free intra-regional trade and undermine the very purpose of the customs union. Such trade harming policies could include temporary or permanent import bans, more restrictive Rules of Origin, additional and more burdensome checks and controls for intra-regional shipments, or, probably most concerning, the possibility of re-introducing intra-EAC tariffs.

A final comment concerns a threat to the unity of the Common External Tariff that is independent of member’s unilateral deviations through the Stays of Applications. At the time of writing, EAC members Kenya, Uganda and Burundi were all scheduled to bilaterally decrease tariffs with Djibouti and Ethiopia starting on January 1st 2021 as part of their commitments under the African Continental Free Trade Area (AfCFTA). Without other EAC members ratifying the agreement as well, these tariff reductions would undermine the integrity of the CET considerably (*cf.* Mold 2020). Additionally, Kenya is striving to conclude a bilateral Economic Partnership Agreement with the European Union to replace its duty free access under the *Everything But Arms* agreement in light of losing access to this preferential scheme after graduating from Least Developed Country status and is additionally pursuing a bilateral agreement with the United States. Moreover, if EAC members wish to achieve “deep” levels of integration in future trade arrangements with additional countries, unity on the CET and negotiating as a bloc would be most conducive to achieving this goal.

²³ EAC Rules of Origin distinguish between two classes of goods. Those that are wholly produced in a partner state and those that are *“Produced in the Partner State, but incorporate materials which have not been wholly produced there, provided that such materials have undergone sufficient working or processing in the Partner State”* (EAC 2015: 7). For the first class of goods (raw agriculture commodities, animals, minerals etc.), these products need to be wholly produced within an EAC member to be counted as originating from the EAC member, allowing for tax-free trading within the EAC. For the second class of goods, rules of origin are complex and often specific to individual chapters or products and may in some cases be difficult to verify by customs officials. To illustrate, for heading 70.13 (*Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes, other than that of heading 70.10 or 70.18*), the processing that has to be carried out on imported materials to confer originating status has to be one of the following: the product has to be manufactured from *“(…) materials of any heading, except that of the product”* or has to be produced by *“Cutting of glassware, provided the value of the uncut glassware does not exceed 60% of the ex-works price of the product”* or has to be the result of *“Hand-decoration (with the exception of silk-screen printing) of hand-blown glassware, provided the value of the hand-blown glassware does not exceed 70 % of the ex-works price of the product”* (EAC 2015: 56).

Two: Kenya, Tanzania and Uganda predominantly use Stays of Applications to increase external protection while Rwanda makes use of the mechanism mostly to decrease tariffs.

In Figure 3, we track the number of individual Stays of Application that increased tariffs (in red) and decreased tariffs (in blue) in comparison to the standard CET rates per fiscal year for Kenya, Tanzania, Uganda and Rwanda. We exclude Burundi from the illustration as the country only implemented 73 Stays of Applications over the entire study period.²⁴

We find that Uganda, Kenya and Tanzania have increasingly made use of the SoA mechanism to protect their domestic industries from international competition. These countries have also used Stays of Application to lower tariffs, but for a much smaller number of products.²⁵ Rwanda has done the exact opposite. Over the years, the country has continuously used Stays of Application to reduce tariffs on a sizeable number of products. A good example of Rwanda's divergent tariff policy is to consider the actions taken by the country in fiscal year 2016/17. In this year, all EAC members agreed to a number of permanent changes in the CET and increased tariffs on products including fishing nets, oil & petrol filters, smart cards, milk cans and a variety of steel products. In the very same year, Rwanda implemented Stays of Application for these products, thereby unilaterally reversing the tariff increases for imports into its own domestic market (*cf.* EAC 2016: 2-4). Not surprisingly, in the average statutory tariff rates of Rwanda tends to be lower than the rates implemented by other EAC members. In 2019/20 the latest year with available data, Rwanda's average CET tariff was 12.8 percent, while Uganda's average CET was 13.8 percent.²⁶

This finding that Tanzania, Kenya and Uganda strive towards higher protection for their domestic markets while Rwanda is taking a different approach and uses Stays of Applications predominantly to lower external protection bears interesting implications from the vantage point of efficiency and economic development. High tariffs impact consumers through higher prices of consumer goods (*cf.* Artuc et al 2020) and can affect the development of local industry through high prices for intermediate inputs, which in turn affects firm competitiveness in regional and global goods markets.²⁷

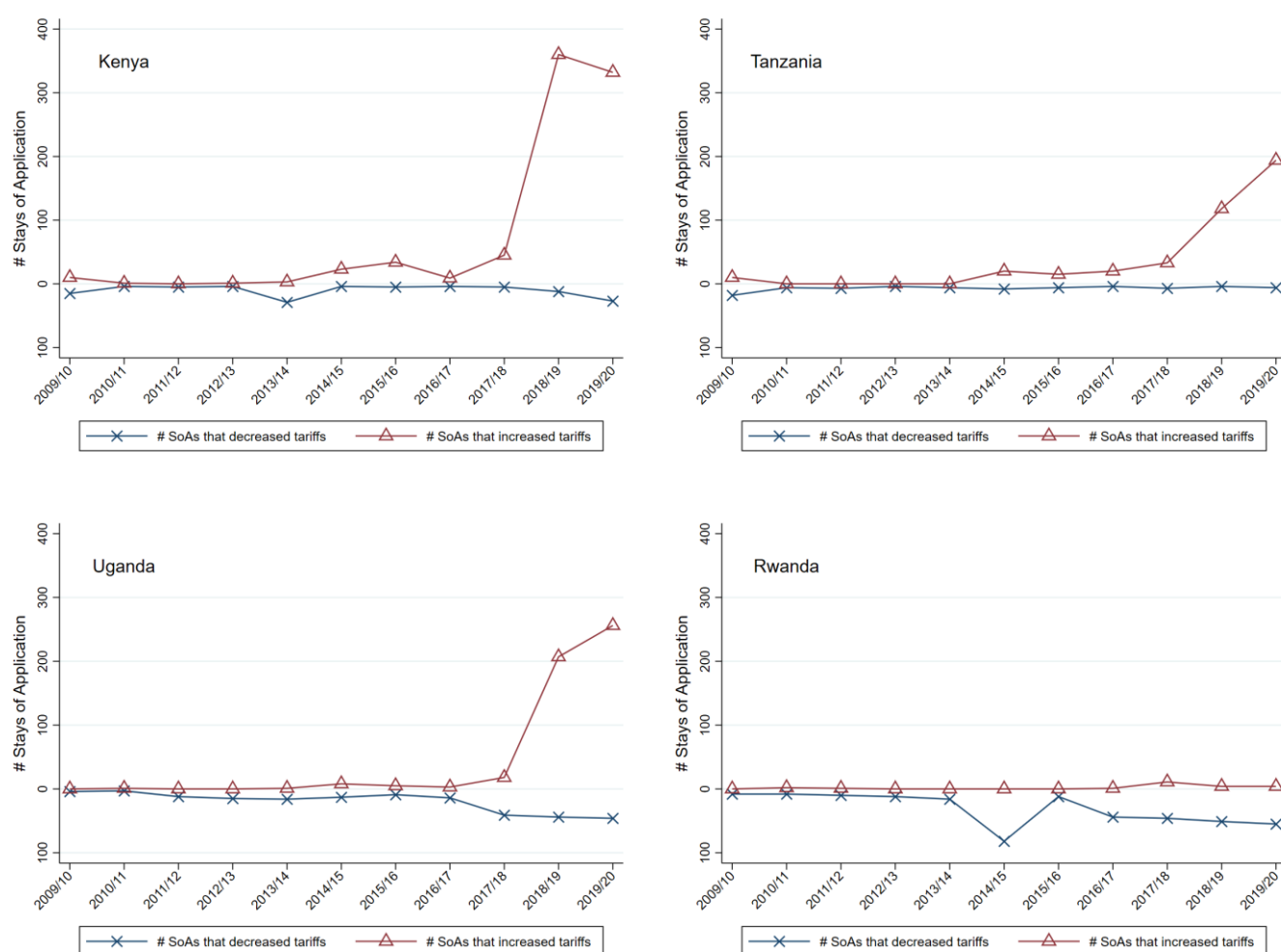
²⁴ For completeness, we provide the figure for Burundi in the Annex (Figure A5).

²⁵ Again, it is important to note that the extreme rise in later years can partially be explained by Kenya, Tanzania and Uganda being granted Stays of Applications from the CET for whole headings (HS 4-digits) or even chapters (HS 2-digits), offering protection not only for individual products, but entire industries.

²⁶ We provide a graph tracking average statutory tariff rates per each of the EAC members from fiscal year 2017/18 to 2019/20 in the Annex of this paper (Figure A6). It should be noted that these figures are simple averages that do not take into account that Stays of Application normally concern products that are traded in large volumes. For example, in the Uganda case study provided in section four of this paper, we show that those products on which the country implemented Stays of Applications in the 2018/19 fiscal year contributed 8.1 percent to the country's total import volume in the same year.

²⁷ For a review of the literature on the effects of trade liberalization on firm productivity through different channels see Shu and Steinwender (2018).

Figure 3: Countries deviate from the Common External Tariff into different directions.



Notes: SoA = Stays of Application. Omitted are those SoAs that do not unambiguously result in a higher or lower tariff rate on a product. For a small number of cases, the formulation of a SoA in the EAC gazettes is as follows: *Sunflower Oil - Kenya to stay application of EAC CET of 25% and apply a duty rate of 25% or USD 500/MT whichever is higher for one year*. These cases are counted as increases as the country moves from a fixed ad valorem tariff to a choice between the same ad valorem tariff and an amount that is higher.

An important question is whether these efforts to raise or decrease protection for specific products tend to be permanent or more sporadic, in which case effects may not be felt too strongly. Do countries repeatedly implement Stays of Applications on the same products?

Table 3 explores this question, building on data from the last three fiscal years during which we observe a sharp increase in the number of Stays of Applications across all EAC members. In the first column of Table 3, we present (for each country) the number and share of Stays of Applications implemented in 2018/19 that were also in place in the subsequent 2019/20 fiscal year. For example, we find that for Tanzania, around 94 percent of all Stays of Applications issued in 2018/19 were renewed in 2019/20 and that these countrywide deviations from the CET concerned 115 individual products. Taken together, around 89 percent of all Stays of Application granted by the EAC secretariat

in 2018/19 were still in place in 2019/20. Next, we take a two-year perspective and ask how many Stays of Application approved in 2017/18 were still in place in 2019/20. As shown in the second column of Table 3, this was the case for nearly 76 percent of all Stays of Applications across the EAC. In sum, this suggests that unilateral deviations from the CET through the Stays of Applications are “long-lasting”, with some differences existing across countries. For example, Tanzania reveals a much lower two-year survival rate for Stays of Applications than the other EAC members.

Table 3: Stays of Applications are typically renewed in subsequent years.

	(1)	(2)
	# SoAs granted in 2018/19 that were still in place in 2019/20	# SoAs granted in 2017/18 that were still in place in 2019/20
Kenya	323 86.8%	44 86.3%
Rwanda	51 92.7%	42 71.2%
Tanzania	115 94.3%	26 65.0%
Uganda	225 88.9%	54 91.5%
Burundi	7 100.0%	4 26.7%
Total	721 89.1%	170 75.9%

Notes: SoAs = Stays of Application.

Three: Kenya, Tanzania and Uganda increase tariffs for the same broad classes of products but target different industries.

For the three countries that predominantly use Stays of Applications to increase tariffs: what class of products and industries do they target? To answer this question, we first restrict our data to those Stays of Applications that led to tariff increases and merge the data with a taxonomy of goods that allows us to categorize traded products in line with their primary end use: capital goods, intermediate inputs and consumption goods.²⁸ We present the result for each EAC member in Table 4.

Table 4: Stays of Applications that increased tariffs, by end use of imported products.

	Capital goods (%)	Intermediate inputs (%)	Consumption goods (%)	Unclassified (%)	Total (#)
Kenya	2.0	40.1	57.7	0.2	818
Tanzania	0	52.9	46.8	0.2	410
Uganda	3.6	41.7	54.5	0.2	499
Rwanda	17.4	82.6	0	0	23
Burundi	0	100.0	0	0	12

Notes: The table shows per each country the percent of its total SoAs over the period 2009/10 – 2019/20 that increased tariffs on imports of capital goods, intermediate inputs and consumption goods. The total number of SoAs per country that led to tariff increases is 1,762. To classify goods into the three categories, we employ the *Broad Economic Categories* (BEC) taxonomy of goods. For a small number of cases the BEC assigns a good into more than one category (e.g., sugar is both an intermediate input as well as a consumption good). For these SoAs we assign the product to the first category.

Focusing on the countries that use Stays of Applications to increase tariffs, we find that Kenya, Tanzania and Uganda employ this mechanism almost exclusively to increase tariffs on intermediate inputs and consumption goods (in similar shares), mirroring a desire to protect their domestic industries from global competition. In this regard, it is important to note that increased protection on products labelled as “intermediate” fulfils the same function as tariffs on goods categorized as “final” in terms of protecting domestic producers. For example, in the 2018/19 fiscal year, Kenya increased tariffs on a large number of processed steel products (e.g., flat-rolled iron, iron bars and rods, nails etc.), which the country produces in sizeable volumes and exports to the region. In the BEC taxonomy, these products are labelled as “intermediate” goods also indicating that tariffs on these products hurt downstream industry (e.g., construction in the case of steel).

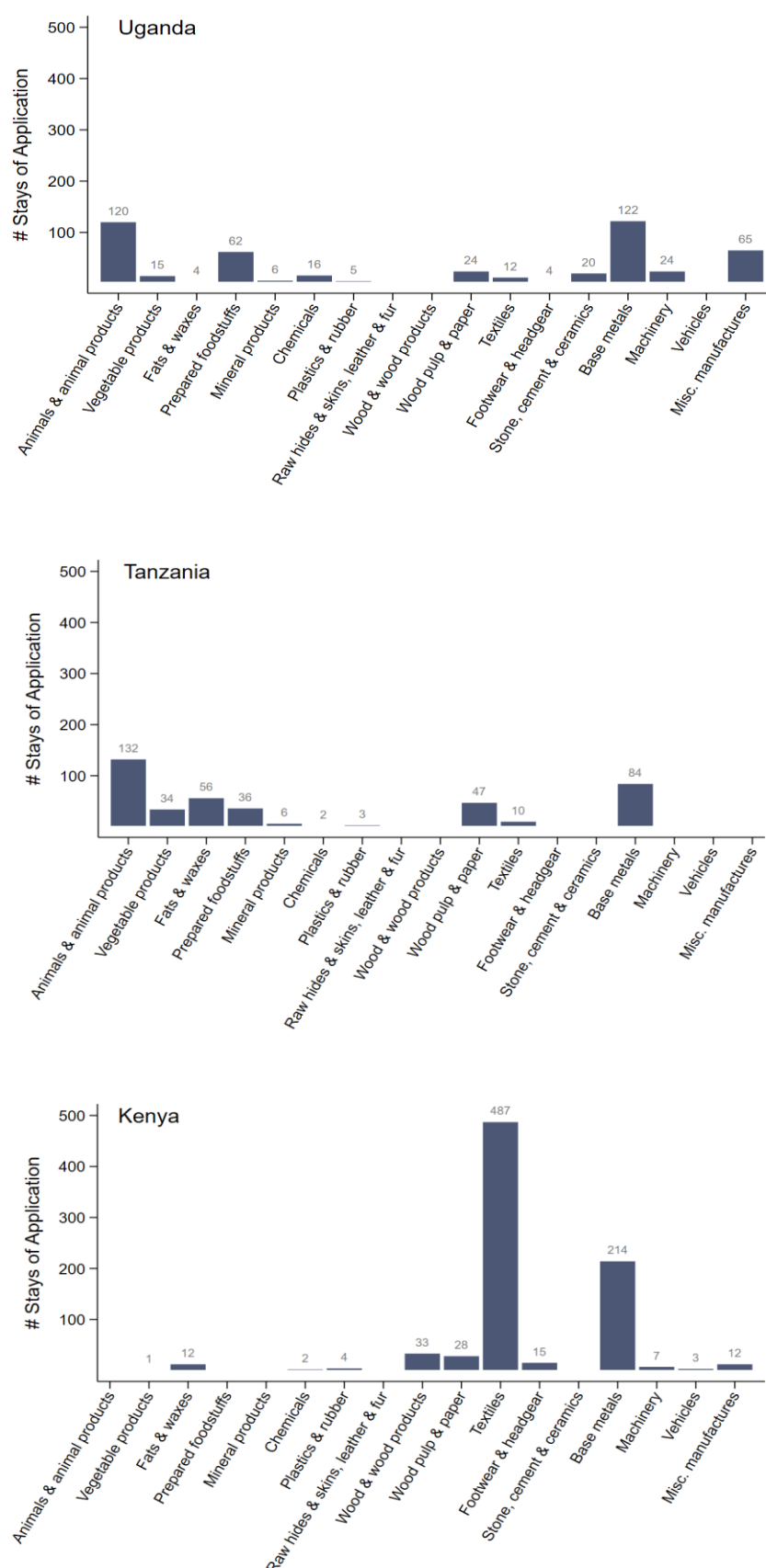
In Figure 4, we employ the same sub-set of the data as in Table 4 but highlight the specific industries (or product categories) that enjoy higher protection (higher than under the CET) in Kenya, Uganda and Tanzania due to the Stays of Applications these countries implement.²⁹ A few similarities, but also striking differences emerge from this comparison. First, for all three countries, base metals (mostly steel products at various stages of processing) are subject to tariffs higher than statutory CET rates of protection. Second, unlike Kenya, Tanzania and Uganda issue protection for the agricultural sector as well as for related industries (i.e., animal products, vegetable products, fats & waxes or prepared foodstuffs, beverages). Finally, all three countries offer above CET rates of protection for textiles, but Kenya does so more consistently and for a much larger number of individual products..³⁰

²⁸ We use the *Broad Economic Categories* (BEC), Version 5 categorization of goods developed by the *United Nations*. Rwanda and Burundi barely make use of the SoAs to increase tariffs so that we focus here on Tanzania, Kenya and Uganda.

²⁹ For completeness, we provide the same figures for Rwanda and Burundi in the Annex (Figures A7 and A8).

³⁰ Note that after our study period, in fiscal year 2020/21, Uganda increased tariffs on 341 textile products (*cf.* East African Community 2020).

Figure 4: Uganda, Tanzania and Kenya protect different industries.



Notes: Cumulative number of Stays of Applications per product group. Categorization in line with the chapters of the Harmonized Systems nomenclature.

Four: *Tariff reductions at the country level through the Stays of Applications are mostly used to facilitate access to inputs rather than to improve consumer welfare by decreasing tariffs on consumption goods.*

Next, we restrict our data to those Stays of Applications used by EAC members to decrease tariffs on imported products. Table 5 again splits the data into the broad categories: capital goods, intermediate inputs and consumption goods. In terms of absolute numbers, it is noteworthy that Rwanda and Uganda have used Stays of Application to decrease tariffs on a sizeable number of products over the years, while other countries have done the opposite for the most part: over the study period, Kenya and Tanzania have decreased tariffs in only 114 and 76 instances through Stays of Applications, compared to 818 and 410 increases, respectively.

Table 5: Stays of Applications that decreased tariffs, by end use of imported products.

	Capital goods (%)	Intermediate inputs (%)	Consumption goods (%)	Unclassified (%)	Total (#)
Kenya	0	78.1	20.2	1.8	114
Tanzania	23.7	65.8	2.6	7.9	76
Uganda	18.4	70.0	6.5	5.1	217
Rwanda	17.2	69.8	10.2	2.9	344
Burundi	55.7	34.4	6.6	3.3	61

Notes: The table shows per each country the percent of its total SoAs over the period 2009/10 – 2019/20 that decreased tariffs on imports of capital goods, intermediate inputs and consumption goods. The total number of SoAs per country that led to tariff decreases is 812. To classify goods into the three categories, we employ the *Broad Economic Categories* (BEC) taxonomy of goods. For a small number of cases the BEC assigns a good into more than one category (e.g., sugar is both an intermediate input as well as a consumption good). For these SoAs we assign the product to the first category.

In terms of the broad classes of products targeted, the large shares of Stays of Applications that resulted in tariff decreases in the categories “capital goods” and “intermediate inputs” (almost 87 percent of all cases, *cf.* Table 5) suggest that EAC members use the mechanism to facilitate access to imported factors of production and not to improve consumer welfare by lowering prices for final/consumption goods.

Specifically, our data suggest that countries employ the Stays of Application mechanism to manually correct for “misclassifications” in the CET. To recap, the goal of the three band system of the CET (0 percent for raw material/capital goods, 10 percent for intermediate inputs and 25 percent for finished/consumption goods) is to make access to imported inputs affordable while at the same time offering substantive protection to local industries. The existing literature on the EAC-CET suggests that the regime suffers from issues of misclassification: many goods that should be subject to the 0 or 10 percent rate are misclassified as final/consumption goods and therefore subject to the 25 percent rate. Similarly, a small number of raw materials are subject to tariffs greater than zero (*cf.* Frazer 2017: 6). To assess the extent to which countries use unilateral tariff reductions to correct for these misclassifications, we compare the original CET rates for the products that are subject to tariff reductions through the Stays of Applications with the rates they should have according to the Broad Economic Categories (BEC) classification: 0 percent for raw/capital goods, 10 percent for intermediate inputs and 25 percent for final/consumption goods. We find that 619 out of 812

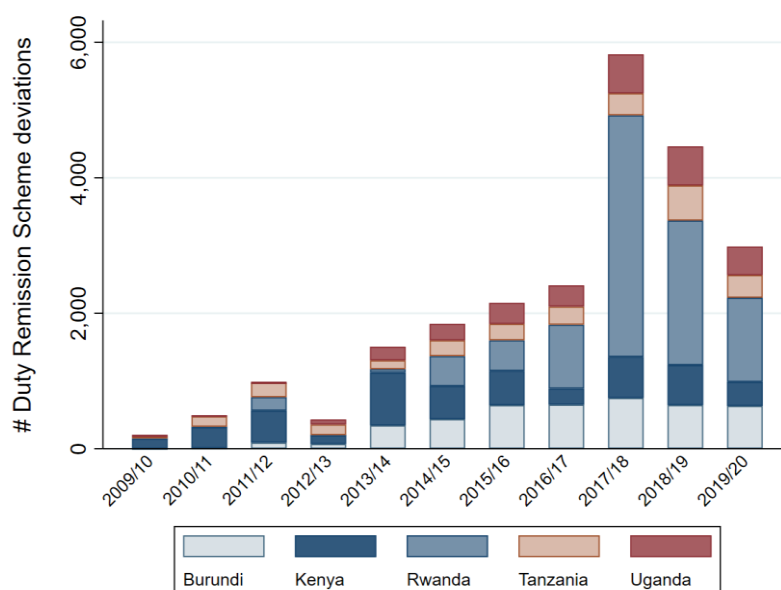
products (76 percent) that were subject to tariff decreases through the Stays of Application over the study period were misclassified in the CET according to the BEC.³¹

A final insight following from Table 5 is that usage of the Stays of Application by EAC members to improve consumer welfare (for example by reducing tariffs on food items) is limited and only concerns a very small number of individual products.³² Over the entire study period, only 78 Stays of Applications led to lower tariffs for consumption/final goods out of which 41 cases concerned the importation of rice, for which Rwanda, Kenya and Tanzania frequently implement rates lower than the 75 percent regulated by the CET.

Five: Data on firm-level exemptions through the Duty Remission Scheme suggest that private sector development in the EAC would benefit from lower tariffs on intermediate inputs.

In the final section, we employ data on firm-level exemptions from the Common External Tariff through the EAC’s Duty Remission Scheme. First, in Figure 4, we offer a count of the number of approved firm-level exemptions on individual products through the Duty Remission Scheme per EAC member and fiscal year.³³ Evidently, the number of deviations from the CET through the Duty Remission Scheme has increased substantially over the years.

Figure 4: DRS exemptions from the CET have increased substantially.



Notes: A Duty Remission Scheme deviation takes place when a firm is granted a tariff lower than in the CET on an imported product.

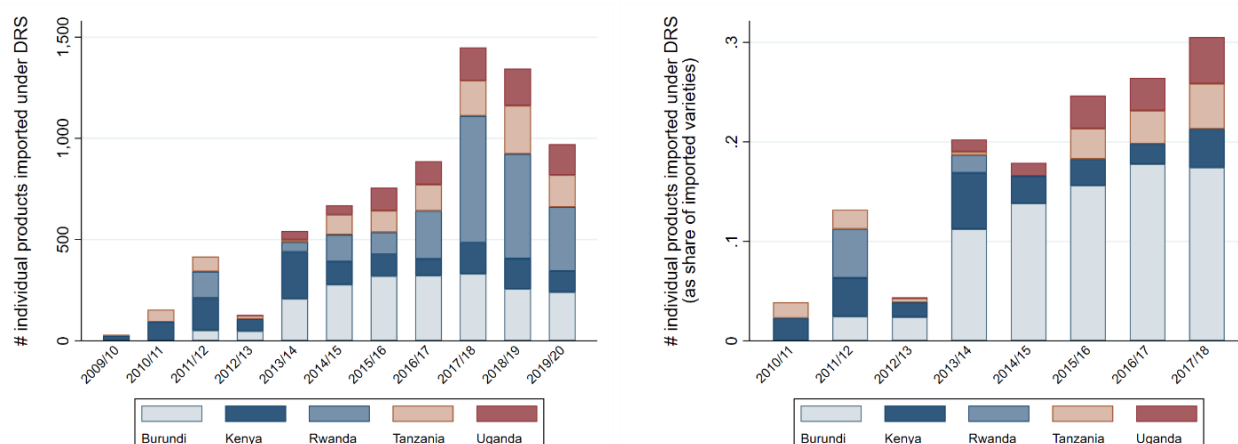
³¹ It should be noted that using an internationally standardized nomenclature like the BEC for this purpose has shortcomings. Some products may well be primarily a final consumption good in some countries, but predominantly an intermediate in others. For example, the BEC categorizes “husked (brown) rice” as an intermediate product according to end use, although in EAC countries the product is both milled and further processed as well as consumed directly.

³² A crucial feature of the CET is a list of *Sensitive Items* assigning excessive tariffs mostly to food items like rice (attracting 75 percent), maize (60 percent), dairy (60 percent) and other products consumed disproportionately by poor EAC citizens.

³³ To be explicit, each time a firm is granted to import a product at a tariff lower than the CET rate through the Duty Remission Scheme this is counted as a deviation. Tariff rates approved for the Duty Remission Scheme are usually zero but sometimes 10 percent.

Next, in Figure 5, we demonstrate that the number of individual products imported under the Duty Remission Scheme is sizeable and increasing. The left figure provides a count of the individual products imported under the Duty Remission Scheme. For example, in the 2017/18 fiscal year, Burundian companies were eligible to import 331 individual products duty free under the scheme. In the right figure, we express this number as share of all individual imported varieties. For example, Burundi's approved products under the Duty Remission Scheme (331 products) correspond to about 7 percent of all individual goods the country imported from outside of the EAC in the same fiscal year.

Figure 5: An increasing number of individual products are imported under the DRS.



Notes: The left graph shows the number of individual products approved for the Duty Remission Scheme. The right graph expresses these as share of all individual products actually imported by an EAC member. For Rwanda, data are only available up to 2013/14.

What types of products do firms import under the Duty Remission Scheme? Again, making use of the BEC classification of goods, Table 6 presents the share of approved Duty Remission Scheme exemptions for each of the three broad product categories: capital goods, intermediate goods and final/consumption goods. In line with the purpose of the Duty Remission Scheme to facilitate access to inputs for production, the vast majority of deviations are issued for imports of intermediate input goods. An outlier is Tanzania: only 65 percent of the country's Duty Remission Scheme deviations are for intermediate inputs with close to 29 percent approved for consumption goods.³⁴

Table 6: Deviations from the Duty Remission Scheme per broad product classes.

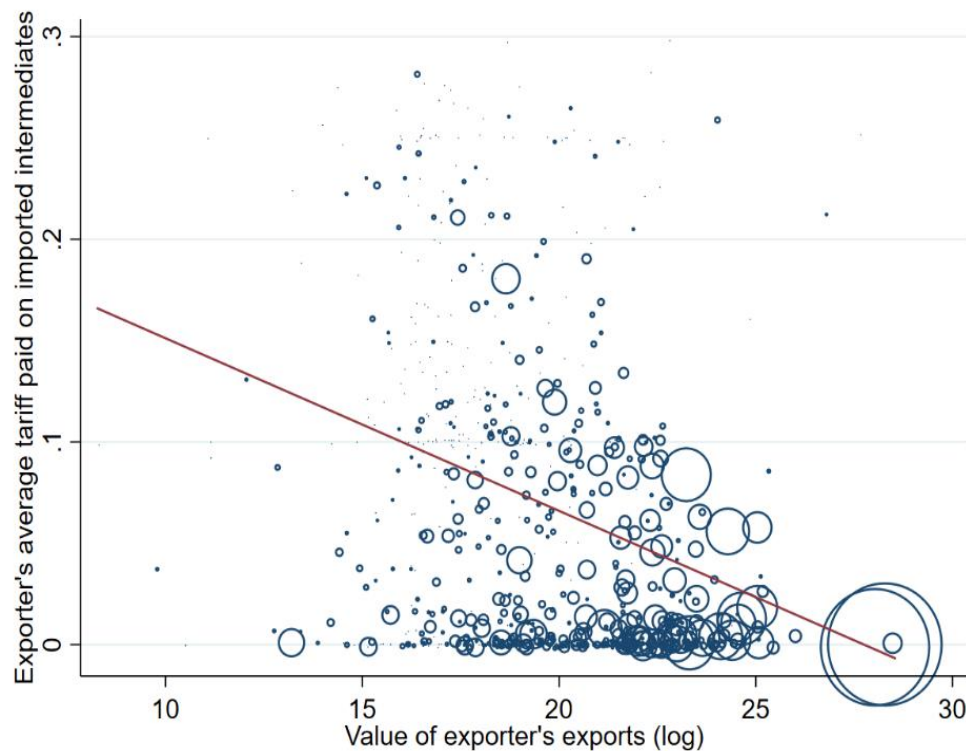
	Capital goods (%)	Intermediate inputs (%)	Consumption goods (%)	Unclassified (%)	Total (#)
Burundi	1.3	93.2	4.0	1.5	4,274
Kenya	0.8	85.0	12.6	1.6	4,613
Rwanda	1.0	91.8	6.9	0.1	9,046
Tanzania	6.4	64.7	28.9	0.0	2,614
Uganda	1.3	84.8	13.7	0.1	2,728

Notes: The table shows per each country the percent of its total Duty Remission Scheme deviations over the period 2009/10 - 2019/20 that led to lower tariffs on imports of capital goods, intermediate inputs and consumption goods. The total number of DRS exemptions across all EAC countries was 23,275. To classify goods into the three categories, we employ the *Broad Economic Categories* (BEC) taxonomy of goods. For a small number of cases the BEC assigns a good into more than one category (e.g., sugar is both an intermediate input as well as a consumption good). For these cases we assign the product to the first product category.

³⁴ As for deviations through the Stays of Applications, deviations through the Duty Remission Scheme are typically renewed at the firm/product level. See Table A9 this paper.

An important (though unsurprising) insight from our data on the usage of the EAC's Duty Remission Scheme is that firms seem to reveal a preference for lower tariffs on imported intermediates from outside of the region.³⁵ In Figure 6, we expand on this observation and explore whether lower tariffs on these inputs could possibly foster private sector development in the EAC. Here, we employ data on Ugandan exporters and correlate an indicator of firm performance (the annual value of an exporter's exports) with the applied tariff paid by the exporter on these imports. The size of a circle is proportional to the value of imported intermediate inputs by the firm. Exporters that import more intermediate inputs and pay lower duties on these goods export more. While we should not interpret this relationship as causal (e.g., it could well be that Ugandan authorities "pick winners" and provide already successful exporters with access to the Duty Remission Scheme), this illustration shows that Uganda's most important exporters (by volume) rely on imports of intermediate inputs that are likely not available locally, or at least not in sufficient quality or at competitive prices.³⁶

Figure 6: Ugandan exporters with better access to imported intermediates export more.



Notes: All indicators are calculated for the 2018/19 fiscal year. Sample restricted to Ugandan exporters (N=1,576) and categorization of intermediate inputs in line with the BEC. "Exporter's average tariff paid on imported intermediates" is calculated as the sum of duties paid for the importation of intermediate inputs divided by the value of imported intermediates. The size of the circle is proportional to the value of the firm's imported intermediates. For readability, we drop 22 exporters from our sample that pay in excess of 30 percent average duty on their imports of intermediate inputs. These firms imported less than 0.05 percent of Uganda's volume of intermediate inputs.

³⁵ Often the Duty Remission Scheme seems to be used by firms to avoid importing (at presumably unfavourable terms such as lower quality, higher prices or instability of supply) from another EAC member. For example, over the years, companies in Rwanda, Burundi and Tanzania were granted Duty Remission Scheme exemptions to import plastic products that Kenya exports in sizeable volumes to the region (lids, bottles, spools).

³⁶ It should also be noted that Ugandan exporters account for almost 70 percent of all intermediate imports in Uganda.

Against this background, a noteworthy insight from the data is that the number of firms with (gazetted) access to the Duty Remission Scheme is relatively small.³⁷ This implies that a limited number of companies have better and more affordable access to crucial inputs than their existing and potential domestic and regional competitors, thereby undermining market entry and competition.

Additional insights: *Inconsistencies between national SOAs and DRS policy has implications for competition and market efficiency*

Furthermore, we find evidence for inconsistencies of EAC members national trade policies that seem to suggest favouritism of individual firms. Specifically, we document cases where an EAC member increased tariffs country-wide through the Stays of Applications while at the same time granting one or more firms access to the very same product at a lower rate through the Duty Remission System. The individual cases per each year and country are documented in Table A11 in the Annex of this paper. While not numerous, these instances provide at least suggestive evidence that some firms are able to leverage their influence to obtain crucial factors of production at competitive prices while other importers suffer higher tariffs due to simultaneous tariff increases.

IV. How well is the Common External Tariff implemented?

An important observation about the tariff and exemption data presented in this study is that they are rates and regulations “on paper.” While decisions and directives published in the EAC gazettes are legally binding, breaches of elements of the Customs Union protocol have taken place before.³⁸ Additionally, implementation of any economic policy requires adequate capacity and coordination within and between responsible institutions. It is therefore important to assess the degree to which the official tariff regime of an EAC member (CET Schedule Plus countrywide deviations) is reflected in the rates actually charged on imports by the country. As suggested by Brenton et al (2009: 20) “[it] could be that some agreements actually facilitate trade whereas others merely exist on paper.” In this section, we explore this issue using Uganda as a case study.

We employ transaction-level customs data collected by the Uganda Revenue Authority (URA). The data show, for each of about 640,000 Uganda’s import shipments in the 2018/19 fiscal year, the product type, import value as well as the duty that was actually paid on a shipment. Since we are interested in the implementation of the CET, we limit the data to imports originating from countries to which this regime applies.³⁹ We then obtain the applied tariff rate on individual shipments by dividing the duties collected on the import by the value of the shipment. Next, we compute tariff rates at the product level for two classes of imports: (i) those that are labelled by the URA as being subject to taxation under the country’s legal tariff schedule; and (ii) all of Uganda’s roughly 640,000 import shipments in the 2018/19 fiscal year.⁴⁰ In what follows, we compare these two measures of

³⁷ Often between 100 to 300 firms per country and fiscal year. See Figure A9 in the Annex to this paper.

³⁸ For example, at the time of writing, Uganda was still implementing a unilateral 12 percent tax on imports of juices from Kenya, a violation of the Customs Union protocol (The East African 2020).

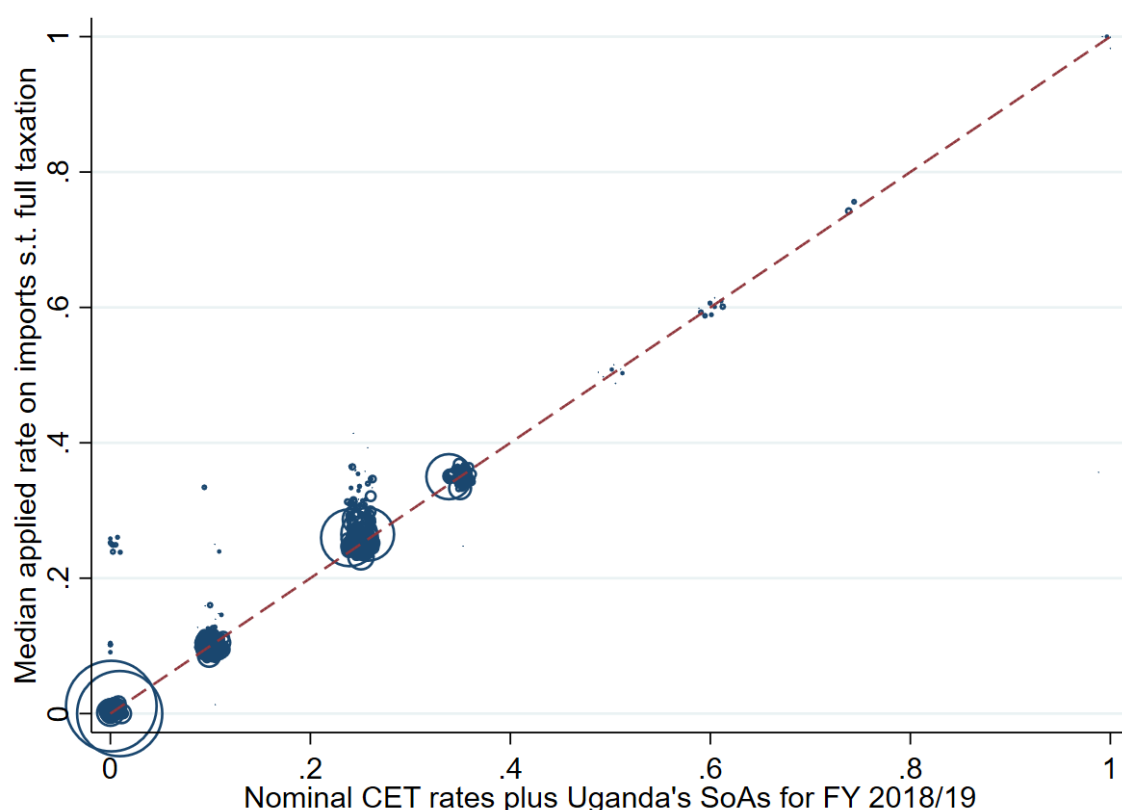
³⁹ That is, we drop other EAC members and members of COMESA from the pool of origin countries.

⁴⁰ The type of import duty regime that applies to a shipment (e.g., all taxes payable or reduced rates under the Duty Remission Scheme or other exemption schemes) is captured in the data through *Custom Procedure Codes*. Besides the EAC’s Duty Remission Scheme there are a host of other regimes that allow importers to import goods at preferential

“applied rates” at the product level with Uganda’s legally binding tariff rates: the CET schedule amended by Uganda’s Stays of Application for the 2018/19 fiscal year.

In Figure 7, we correlate Uganda’s legal CET tariff schedule with product-specific median applied rates levied on shipments that are labelled by the URA as subject to precisely those nominal tariff rates. That is, we explore whether Uganda implements its officially communicated CET tariff schedule.⁴¹ In the figure, each circle represents an individual product and the size of the circle is proportional to the import value of this product over the course of the fiscal year. Perfect implementation of Uganda’s legally communicated CET regime would place all circles on the 45-degree line. As evident from the figure, this is mostly the case with a small number of exceptions.⁴² Regarding Stays of Application, in fiscal year 2018/19 Uganda was granted to implement countrywide deviations from the CET for 247 products. 208 of these products were actually imported and together accounted for a sizeable 8.1 percent of Uganda’s imports entering from outside of the EAC as well as COMESA.⁴³

Figure 7: Uganda implements communicated CET rates.



Notes: Every circle represents an individual imported product. The size of a circle is proportional to the import volume of the product in the 2018/19 fiscal year. “Median applied rates” are computed as the median rate collected on import shipments of a product and only considering shipments that are labelled by the URA as subject to full taxation.

schemes (e.g., imports by the government or UN organizations, import duty remission for sugar for industrial use, importation of raw material by manufacturers of sanitary towels and others).

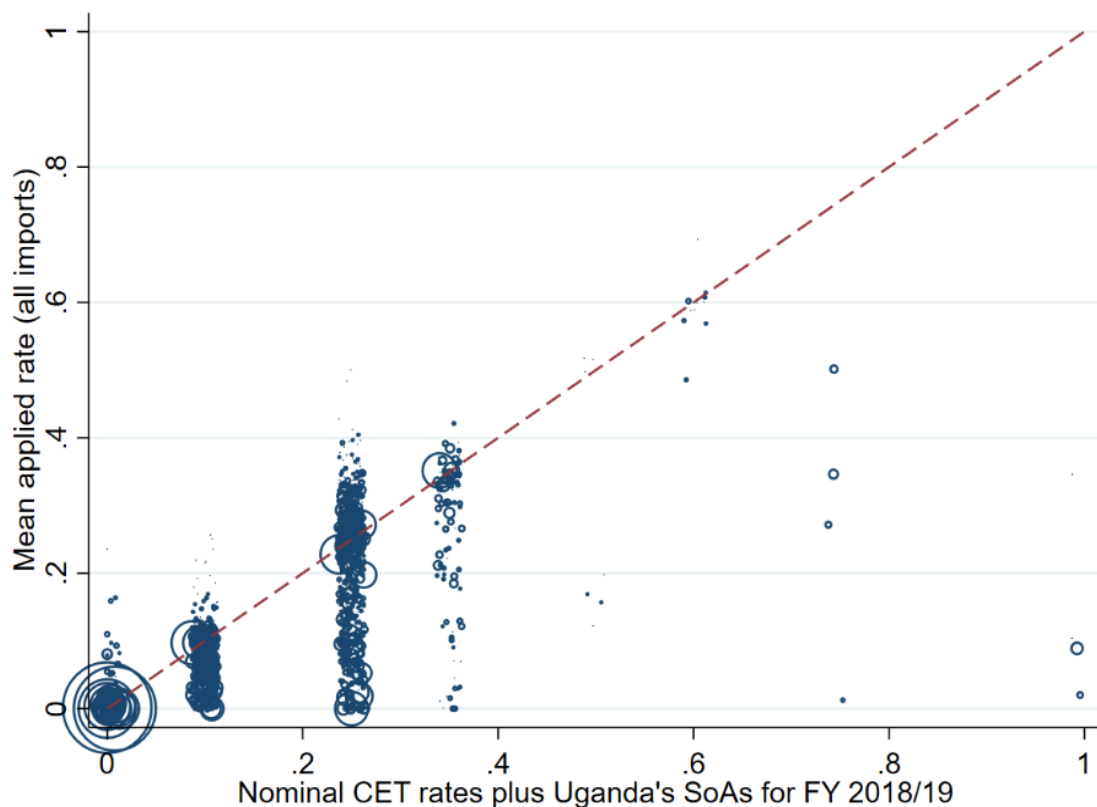
⁴¹ Using the median rather than the average allows us to report the value that is most representative of the rates applied on imports and reduces the influence of data entry errors prominent in these data.

⁴² For example, “*pocket size radio cassette players*” were imported at a median rate of 35 percent despite the legally communicated CET rate being set at 25 percent.

⁴³ “Non-traded” Stays of Application products come from the fact that in the 2018/19 fiscal year Uganda was granted Stays of Application from the CET for whole headings and a whole chapter (“*Meat and edible meat oval*”). Not all individual products under these headings and chapters were imported.

Last, in Figure 8, we correlate Uganda's CET regime (EAC-CET plus the country's Stays of Application, on the X-axis), with average applied rates per product across all shipments, regardless of whether they entered under a preferential scheme or not. This allows us to compare the tariff that importers in Uganda pay on average on an imported product with the country's statutory rates. To explain, a product may be subject to a 25 percent statutory rate in Uganda's CET, but the average applied rate actually paid may be lower due to a significant share of imports of that product entering Uganda under preferential exemption schemes like the Duty Remission Scheme, tax free imports by organisations like the United Nations or diplomats, NGOs or government institutions. For example, the product *"Other electric conductors, for a voltage not exceeding 80 Volt"* is subject to a statutory tariff rate in the CET of 25 percent but in the data we find that the mean applied rate actually paid for this product by Ugandan importers is about 20 percent due to a sizeable number of imports coming in under preferential exemption schemes. Regarding donor financed imports specifically, we find in the data that almost 21 percent of Uganda's entire import volume in the 2018/19 fiscal year entered the country duty and VAT free under a Customs Procedure Code labelled *"Imports for UN agencies and NGOs in support of a project in Uganda"*.

Figure 8: Uganda's applied CET tariffs differ substantially from nominal ones.



Notes: Every circle represents an individual imported product. The size of a circle is proportional to the import volume of the product over the 2018/19 fiscal year. "Mean applied rates" for products are computed as the sum of duties paid for a product divided by the import volume of the product. Products that were imported less than ten times per year are dropped from the illustration.

As evident from the figure, for many imported products, the mean applied rate is considerably below Uganda's nominal tariff rate.⁴⁴ Notably, the Duty Remission Scheme seems to be used as a mechanism to manually correct for misclassifications in the CET: many of the products which are subject to a nominal 25 percent rate (X-axis) should be subject to 0 or 10 percent in line with the rationale of the CET's three band system to tax capital goods at 0 percent, intermediate inputs at 10 percent and final products at 25 percent. As evident from the figure, average applied rates for those products subject to a 25 percent tariff or higher are often considerably lower. At the extreme, we find that virtually none of the three individual tariff lines under the product heading "sugar" (the only good attracting a tariff of 100 percent ad valorem in the CET), attracts a mean applied rate even close to the nominal one (right lower corner in Figure 8).

Sugar in particular, a crucial input for higher-value products like processed food or beverages, is a case worth briefly considering in more detail. Examining individual import shipment shows that the tariff line making up the vast majority of Uganda's sugar imports is "sugar for industrial use" and imported under the EAC's Duty Remission Scheme at a rate of 10 percent ad valorem. Only very few individual sugar import shipments are subject to then normal CET rate. This suggests that effectively the 100 percent rate functions as an import ban by rendering the product prohibitively expensive for Ugandan consumers and firms that do not have access to a preferential access scheme.⁴⁵

Overall, our exercise seems to suggest that the EAC's Common External Tariff is implemented relatively well in Uganda. First, countrywide deviations from the regime through the Stays of Applications as well as the product-specific rates of the CET itself are implemented almost perfectly. A first message from this exercise is that while country-specific deviations from the CET undermine the goal of the EAC customs union, this shows that tariffs are an effective tool of industrial policy in Uganda: Unlike multi-institution efforts (e.g., addressing supply-side constraints like access to fertilizers or high-quality seeds to improve agricultural productivity), tariff rates can be adjusted quickly and at zero implementation cost. Second, the EAC- Duty Remission Scheme seems to play an important role in making important inputs accessible to domestic manufacturers. However, use of such a discreet, company-specific system is a second-best solution: Ideally, all manufacturers and interested investors should have access to crucial inputs at competitive prices through adequate classification of goods in the CET.

⁴⁴ As evident from 8, for some products we find a mean applied rate above the statutory tariff rate. It is unclear why this is the case, but possible explanations include delayed implementation of lower tariff rates from one fiscal year to the next, ad-hoc changes by the revenue authority as well as data entry error where paid trade taxes other than duties are entered into the field for tariff payments.

⁴⁵ The number of individual sugar importers in 2018/19 was 90 with the five largest firms accounting for about 65 percent of Uganda's total sugar imports in that year.

V. Concluding remarks, policy and further research

In this paper, we explore tariff policy in the EAC customs union by exploiting a new dataset on country and firm-level deviations from the Common External Tariff of the East African Community. The key policy implication coming out of our analysis is that a comprehensive review of the CET is overdue. Especially in recent years, countries have increasingly used the Stays of Application to implement tariff schedules that differ significantly from the communal tariff regime, with the total number of approved country-level deviations from the CET reaching more than 900 in the 2019/20 fiscal year. In some sense, this implies that the EAC is gradually moving away from a customs union towards less regional integration akin to a free trade area. While there also is a worrying momentum towards higher external protection in three of the EAC members (Kenya, Uganda, Tanzania), the fact that the Common External Tariff is becoming increasingly “uncommon” is likely to pose a threat to the customs union’s potential to promote regional trade. Additionally, this trend could impede future efforts to deepen regional integration in the EAC by establishing a common market or when members try to maintain the deep levels of regional integration in future agreements encompassing additional countries (e.g., the AfCFTA).

While we hope that these data will be of immediate use for policy makers in the EAC (for example to track the performance of firms with access to the Duty Remission Scheme or to inform countries’ negotiation positions for the ongoing CET review), the dataset presented in this paper also provides a number of opportunities for additional applied research with rich policy implications. We conclude with five examples of research questions that could be explored with the data.

- i.)* Does the increased usage of Stays of Applications and deviations under the Duty Remission Scheme undermine the goal of higher intra-regional trade because countries import more from countries outside of the EAC?
- ii.)* How effective is national and regional tariff policy in the EAC at fostering the development of productive firms? For example, what is the effect of higher external protection on firm (and sectoral) productivity, exports and employment?
- iii.)* Do national Stays of Application trigger trade-deflection (smuggling) due to creating price differentials across different EAC markets? ⁴⁶
- iv.)* What is the role of access to intermediate inputs for firm performance and does (possibly discriminatory) access to the Duty Remission Scheme undermine competition and entry of new firms?
- v.)* What economic and political forces drive the observed patterns of protection in different EAC members?

⁴⁶ It could well be that transport costs between different import and selling points within the EAC “eat up” potential gains from re-exporting. Recent work by Felbermayer et al 2018) indicates that for the majority of global trade, trade deflection is not profitable due to external tariffs that are similar and non-negligible transport costs. This in turn bears important implications for the need for strict Rules of Origin, which are often assumed to hamper trade.

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A1: Extract of a Stay of Application announcement.

30th June, 2019

EAST AFRICAN COMMUNITY GAZETTE

3

Legal Notice No. EAC/76/2019

EAST AFRICAN COMMUNITY GAZETTE

THE PROTOCOL ON THE ESTABLISHMENT OF THE
EAST AFRICAN COMMUNITY CUSTOMS UNION

LEGAL NOTICE

In EXERCISE of the powers conferred upon the Council of Ministers by Articles 12 (3) and 39(c) of the Protocol on the Establishment of the East African Community Customs Union, the Council of Ministers has approved the following measures on customs duty rates on the items provided under The Harmonized Community Description and Coding System in Annex 1 to the Protocol:

S/N	HS code	DESCRIPTION	DECISION
1.	1006.10.00	Rice in the husk	Kenya to stay application of EAC CET rate of 75% or USD 345/MT whichever is higher and apply a duty rate of 35% or USD 200/MT whichever is higher for one year.
	1006.20.00	Husked (Brown) rice	
	1006.30.00	Semi milled or wholly milled rice	
	1006.40.00	Broken rice.	
2.	1006.30.00	Semi milled or wholly milled rice	Rwanda to stay application of EAC CET rate and apply a duty rate of 45% or USD 345/MT whichever is higher for one year.
3.	1001.99.10	Wheat Grain	(a) Uganda to stay application of EAC CET on HS Code 1001.99.10 and 1001.99.90 and apply a duty rate of 10% instead of 35% for one year; and
	1001.99.90		(b) Rwanda to stay application of EAC CET on HS Code 1001.99.10 and 1001.99.90 and apply duty rate of 0% instead of 35% for one year.

A2: Extract of Duty Remission Scheme announcements.

4

EAST AFRICAN COMMUNITY GAZETTE

1st April, 2019

Legal Notice No. EAC/41/2019.

THE EAST AFRICAN COMMUNITY CUSTOMS
MANAGEMENT ACT 2004

LEGAL NOTICE

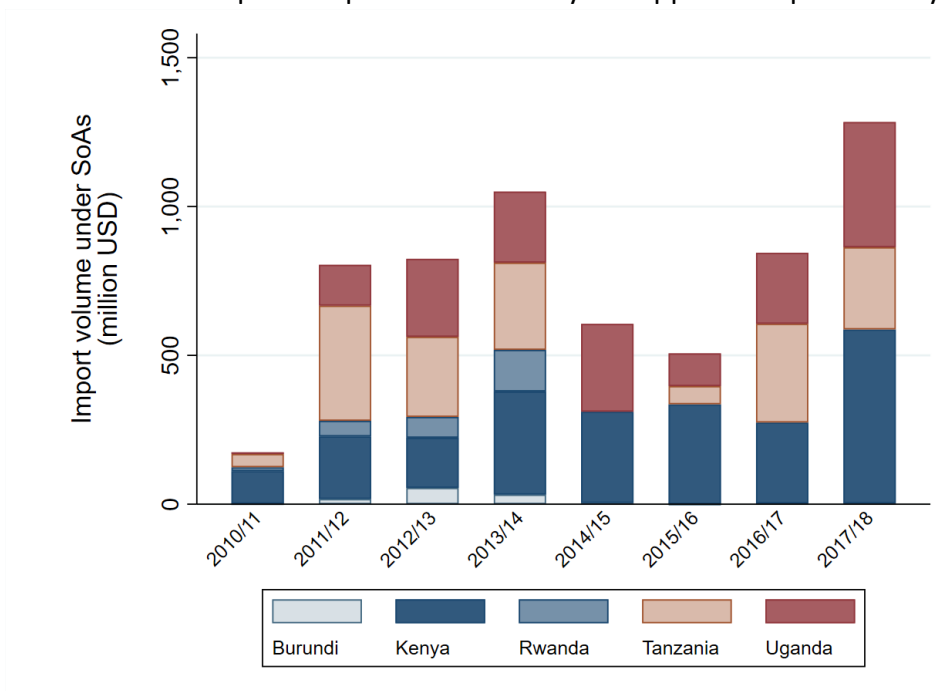
IN EXERCISE of the powers conferred upon the Council of Ministers by section 140 of the East African Community Customs Management Act 2004, the Council of Ministers has approved the following manufacturers to import the specified quantities of sugar for industrial use under the Duty Remission Scheme.

APPROVED KENYA MANUFACTURERS AND QUANTITIES OF SUGAR FOR INDUSTRIAL USE TO BE
IMPORTED AT A DUTY RATE OF 10% UNDER THE DUTY REMISSION SCHEME FOR TWELVE MONTHS

S/N	Company Name	Tariff No	Description	Quantity Allocated in Metric Tons (MT)	Finished Product
1.	Equatorial Nut Processors Ltd	1701.99.10	White Refined Sugar	400	Processed nuts
2.	ROK industries Ltd	1701.99.10	White Refined Sugar	700	Assorted Sweets
3.	Almasi Bottlers Limited	1701.99.10	White Refined Sugar	17,000	Carbonated Soda

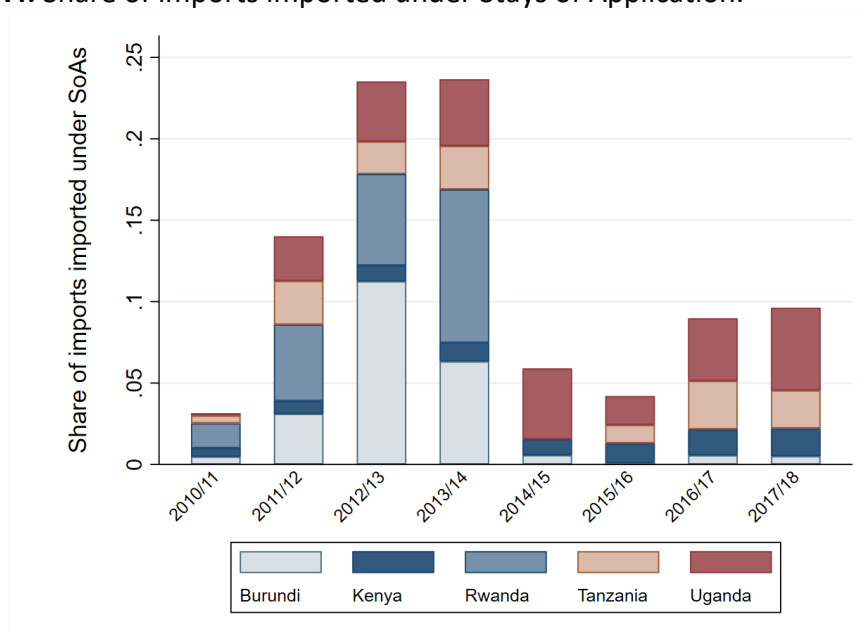
AMB. DR. RICHARD SEZIBERA,
Chairperson Council of Ministers.

A3: Volume of imports imported under Stays of Application per country.



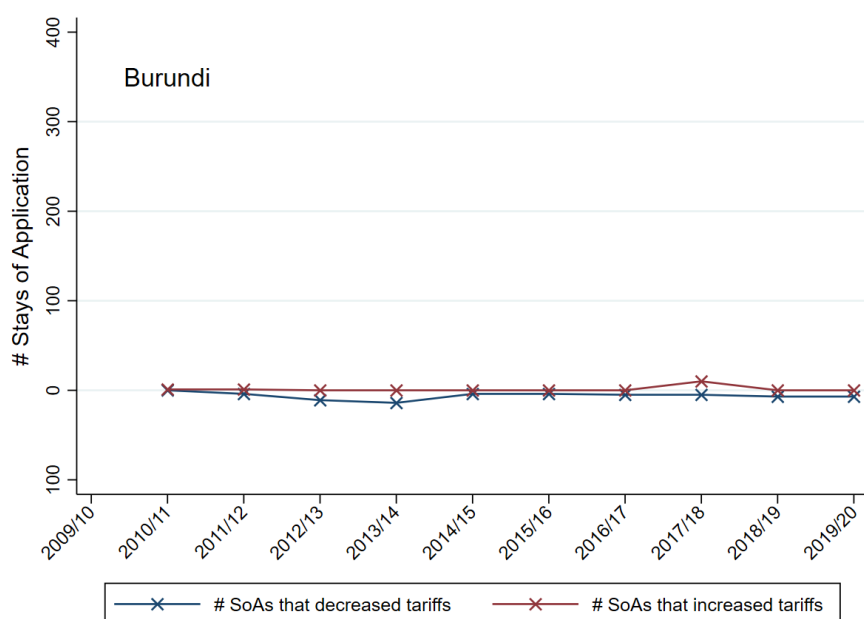
Notes: Values are in '000 000 USD. Data are taken from the TradeMap database by the International Trade Centre (2020). Data for Rwanda are only available for up to 2013/14.

A4: Share of imports imported under Stays of Application.



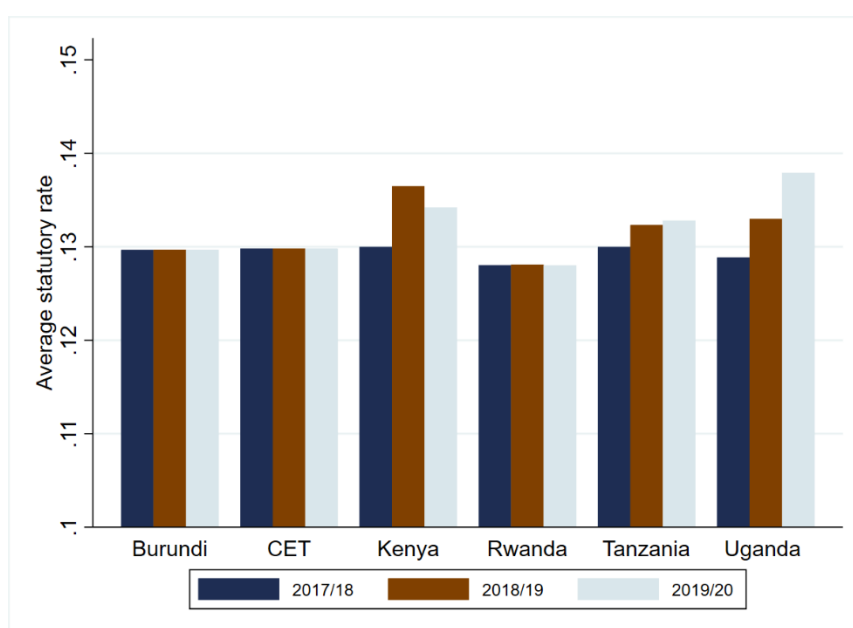
Notes: Share of imports imported under SoAs is the share of imports subject to CET rates. Data are taken from the TradeMap database by the International Trade Centre (2020). Data for Rwanda is only available for up to 2013/14.

A5: Usage of Stays of Application by Burundi, increases (red) and decreases (blue).



Notes: SoAs = Stays of Application. Omitted are those SoAs that do not unambiguously result in a higher or lower tariff rate on a product. For a small number of cases, the formulation of a SoA in the EAC gazettes is as follows: *Sunflower Oil - Kenya to stay application of EAC CET of 25% and apply a duty rate of 25% or USD 500/MT whichever is higher for one year*. These cases are counted as increases as the country moves from a fixed ad valorem tariff to a choice between the same ad valorem tariff or an amount that is higher.

A6: Average statutory tariff rates per individual EAC member (2017/18 – 2019/20).



Notes: Each bar graph is the simple average of the CET the country implements after taking into account country-specific deviations from the common regime through country wide Stays of Applications.

Figure A7: Industries subject to tariff increases through the Stays of Applications – Rwanda.

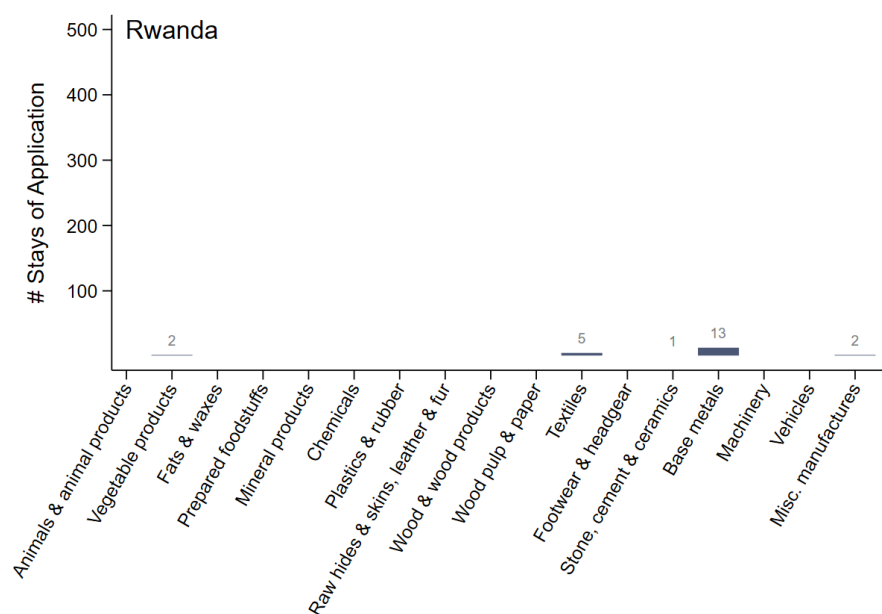
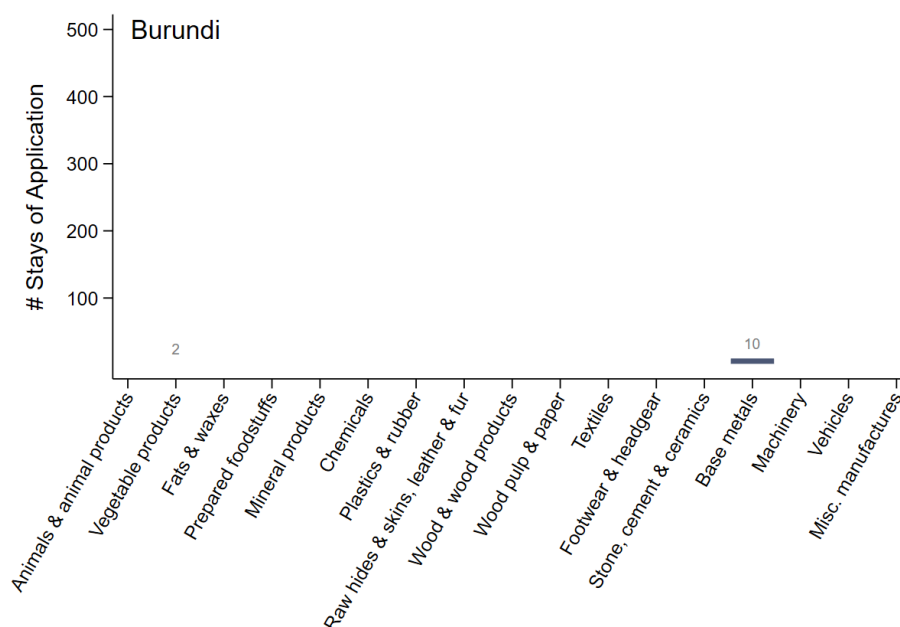


Figure A8: Industries subject to tariff increases through the Stays of Applications – Burundi.

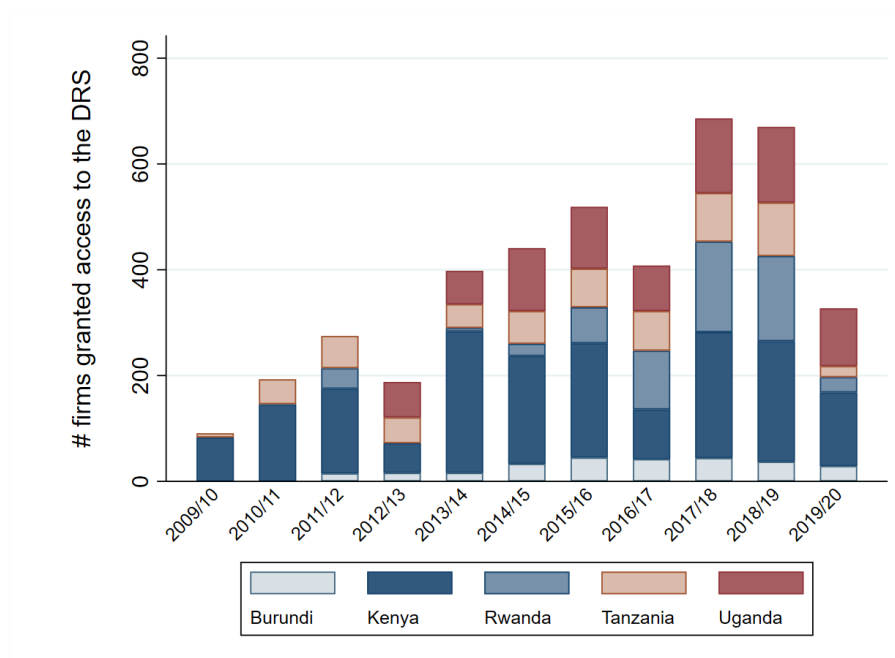


A10: Deviations through the Duty Remission Scheme are typically renewed in subsequent years.

Country	DRS from 2018/19 that are in place in 2019/20	DRS from 2017/18 that are in place in 2019/20
Kenya	82 55 %	83 53.9 %
Rwanda	504 82.4 %	524 77.3 %
Tanzania	233 73.5 %	116 66.3 %
Uganda	195 71.7 %	197 73.8 %
Burundi	230 89.8 %	227 68.4 %
Total	1,244 77.5 %	1,147 71.4 %

Notes: DRS = Duty Remission Scheme. Renewals are counted at the product/firm-level.

A9: Number of individual firms with access to DRS per fiscal year and country.



Notes: Number of firms with access to the Duty Remission Scheme.

A 11: Trade policy inconsistency in EAC members.

	Burundi	Kenya	Rwanda	Tanzania	Uganda
2011/2012			1		
2013/2014		1			
2014/2015				2	
2015/2016		3		4	
2016/2017		2		7	
2017/2018	7	6	5	2	1
2018/2019		24		1	4
2019/2020		8		4	5

Notes: Number of instances at the product level where a member state implements a tariff increase on a product through a Stay of Application, while at the same time offering a firm access to the same product at a lower rate through the Duty Remission Scheme. For example, in 2017/18 there were five cases where Rwanda increased tariffs nationwide through Stays of Application on products while at the same time making the same product(s) available at lower rates to individual firms.

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