BRIEFING

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Kenya and its role in intra-Africa regional trade

The prospects of the EU-Kenya EPA

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BRIEFING

Kenya and its role in intra-Africa regional trade:

The prospects of the EU-Kenya EPA

ABSTRACT

This briefing provides an insight into the implications of the EU's Economic Partnership Agreement (EPA) with Kenya – with a particular focus on the extent to which it could affect regional trade in the East African Economic Community (EAC) and the African Free Trade Area (AfCFTA). It examines the new EPA and its implications in terms of its trade schemes as well as provisions in the area of sustainable development. It provides an overview of key factors that may affect regional and intra-African trade, such as AfCFTA, bilateral trade agreements with key trading partners such as China, the UK, and the US, and new initiatives such as EU-US cooperation on connectivity with Kenya. The briefing concludes with recommendations for Members of the European Parliament.

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1 Kenya, the EU and intra-African trade and investment

The Lomé IV Convention gave African, Caribbean and Pacific (ACP) members preferential tariffs for EU commerce. This breached the World Trade Organization's (WTO) "most favoured nation" (MFN) principle, which requires ACP partners to be treated equally with other developing nations. In 2000, a new clause allowed for alternative economic cooperation agreements to make the new ACP-EU Agreement ('Cotonou') WTO-compliant. The respective negotiations with the EAC concluded in October 2014.

The resulting EAC-EU EPA includes provisions on trade facilitation, customs, sanitary and phytosanitary measures, and the sustainable development of agriculture and fisheries. It provides for immediate duty-free, quota-free access to the EU market for all EAC exports, partial and gradual opening of the EAC market to EU imports, and safeguard provisions that allow each side to reintroduce duties if imports from the other side threaten to disrupt its economy. The EPA includes extensive rules on sustainable agriculture and food security, as well as on the sustainable use of fishery resources. It includes a dedicated chapter on economic and development cooperation. Moreover, the parties agreed to conclude deepening discussions on the environment and sustainable development, services, investment, and private sector development within five years of the agreement's entrance into effect. The EPA is governed by the institutional and procedural fabric of the Cotonou Agreement, and a violation of one of its 'essential elements' concerning human rights, democratic principles, and the rule of law may result in the suspension of the EPA trade preference for the partner in question.

According to a European Commission impact assessment, the deal will enhance EAC GDP on average by 0.3 % and slightly lower the poverty headcount in EAC countries. On average, the Commission expects that EAC exports to the rest of the world would rise by 1.1 %, while imports would rise by 0.9 % (the EU's proportion of total EAC imports would rise from 10.6 % to 12.6 %).

Following the Commission's proposal, the Council authorized the EU-EAC EPA's signing and provisional application (in terms of the EU's exclusive powers) in June 2016. Initially, the EAC planned to ratify as a group. However, only Kenya ratified the EPA, and Rwanda has signed it. The signature of the EPA has been delayed due to EAC talks. At their 21st regular summit in February 2021, EAC heads of state authorized "EAC states who wish to do so to commence engagements with the EU" without prior approval from all other EAC members (principle of variable geometry). In fact, this implies that Kenya, which indicated a desire to access the EPA on its own, will be free to proceed with implementation. The deferral of the ratification has minor ramifications for all EAC states but Kenya, as they are least developed countries (LDCs) and would continue to benefit from duty-free quota-free market access into the EU for "Everything but Arms" (EBA) regime.

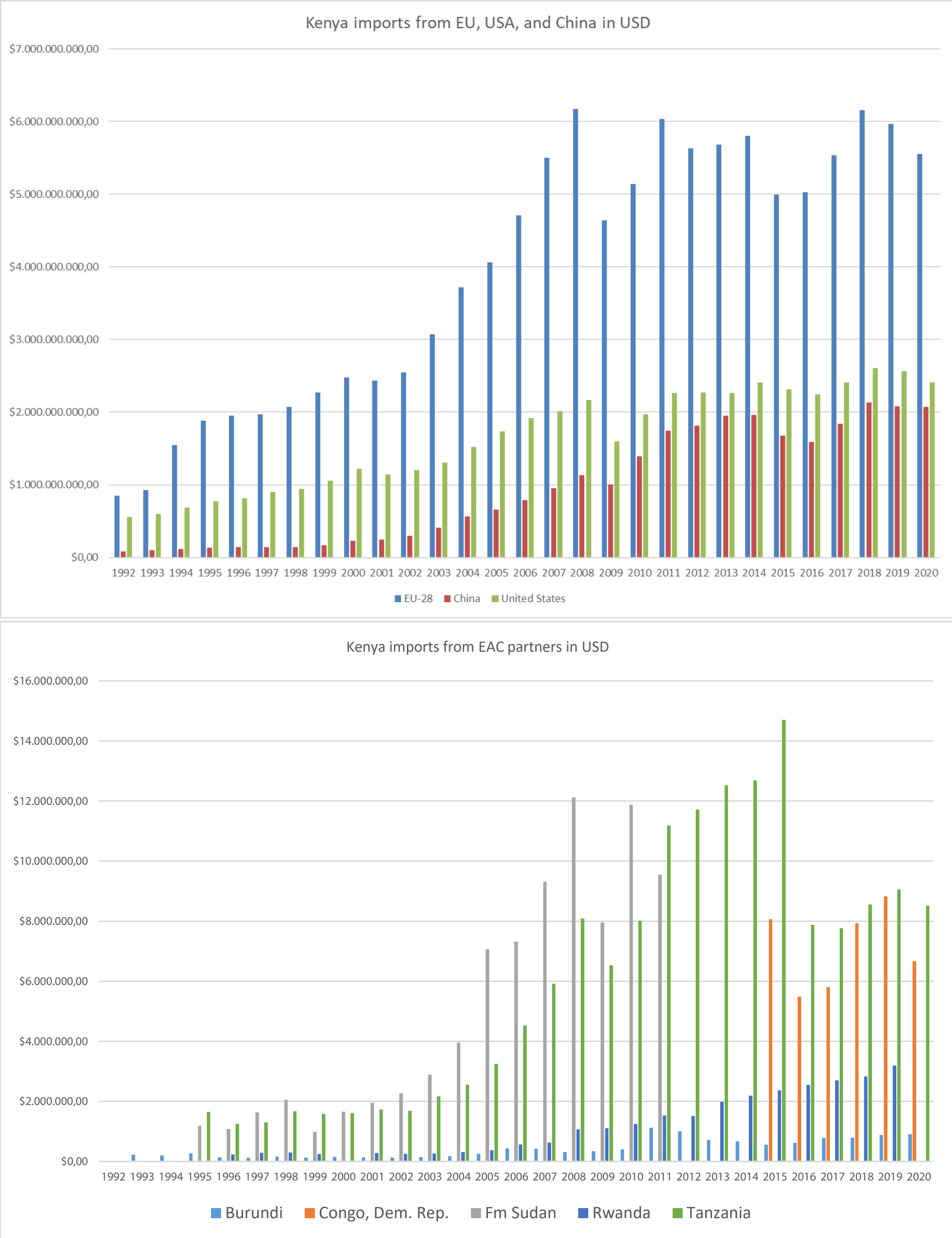
Kenya and the EU launched a joint taskforce on 22 June 2021 to develop a Kenya-EU EPA and agreed on 18 February 2022 to begin discussions on an interim EPA, which would be available to other EAC member states to join. Meanwhile, Kenya negotiated a bilateral post-Brexit trade agreement with the UK, replicating portions of the EAC-EU EPA and inviting other EAC member states to join. The interim Economic Partnership Agreement (EPA) was struck on 19 June 2023. With the EPA, the EU and Kenya agreed to eliminate tariffs on the majority of EU exports over 15 or 25 years. However, Kenya was able to incorporate special safeguards to protect its agriculture industry and nascent industries that Nairobi is eager to cultivate. The parties refrained from including services, stating that such provisions could be added when Kenya is prepared to assume such responsibilities. The agreement's TSD contains stringent provisions for environmental, climate, and biodiversity protection as well as a dedicated dispute settlement mechanism.

The aim of this paper is to provide insights on the implications of the EPA and how it would affect inter-regional trade (EAC region, Africa). It explores likely effects of the EPA against the status quo regarding Kenya and its economic integration within the EAC. The paper therefore intends to give an overview on the most important factors that may influence inter-regional and intra-African trade. By 2020, Kenya placed

103rd in terms of worldwide exports and 81st in terms of global imports in the same year (respectively 0.03 % of global exports and 0.09 % of global imports). Trade contributed for 15.6 % of Kenya's GDP of USD 99.29 billion in 2020, with total goods exports of USD 6.02 billion and total merchandise imports of USD 15.40 billion.

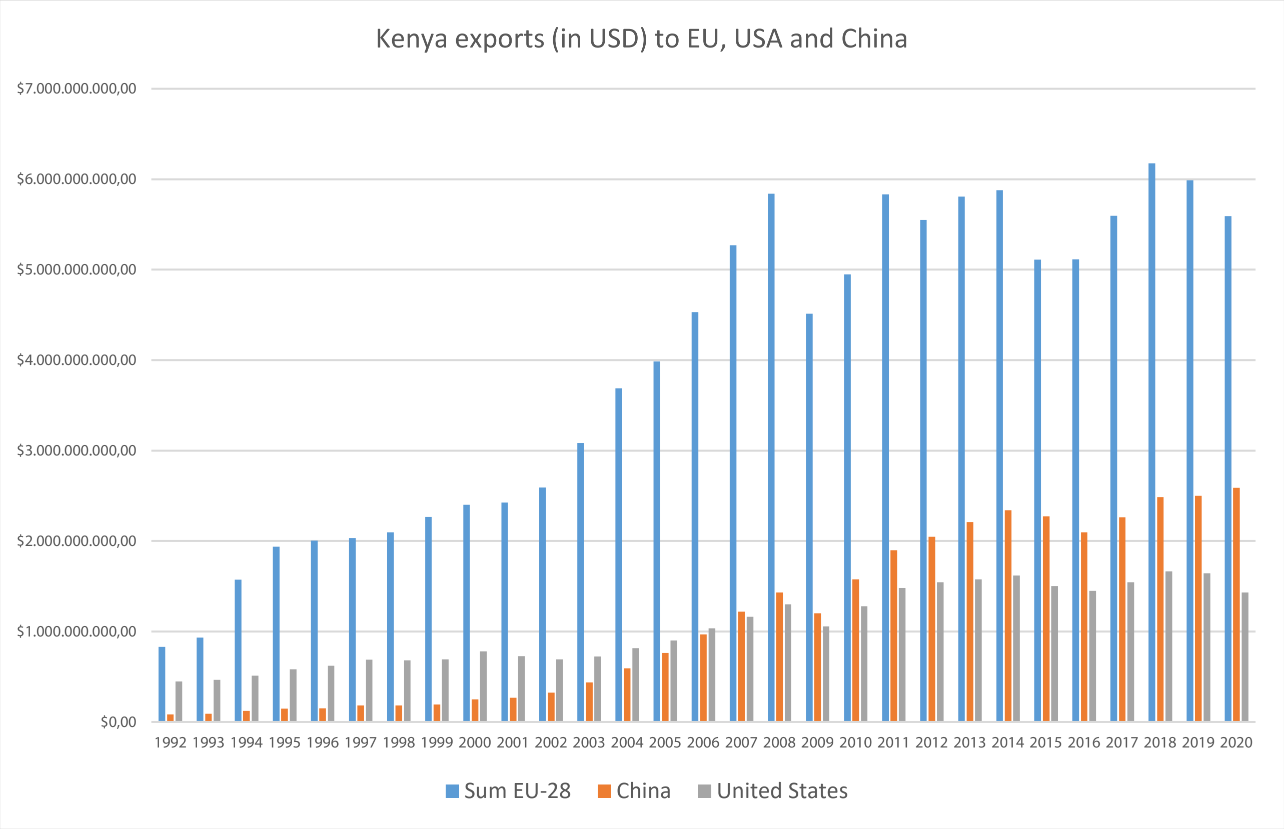
By way of introduction, we first shed light on Kenya's trade relations with the EU and within the framework of intra-African trade and investment. In recent years, Kenya has been a net importer of products from the 27 member states of the EU, with imports and exports totalling USD1.9 billion and USD916 million, respectively, as of 2019. Kenya's exports to the EU fell by 4.8 % (or USD167 million) in 2016, owing to a drop in shipments to important trade partners such as Spain, Italy, Finland, Poland, and Ireland. Weaker demand from EU partners persisted in 2017, with Kenya's exports to the Netherlands, the country's biggest European destination, falling by 6.8 %. This might be attributed to the severe reduction of two of Kenya's largest exports to the EU over the same time, particularly pineapples (ranked fourth, with 5.4 % of total exports to the EU) and non-crude petroleum oils (ranked seventh, with 4.6 % of total exports to the EU). Kenyan exports to the EU progressively rebounded, increasing by 10 % (to USD 882 million) in 2018 and 3.8 % (to USD 916 million) in 2019. Despite this, Kenya's percentage of total global imports into the EU has remained stable over the last years, fluctuating between 0.016 % and 0.019 %. Export growth rates varied between EU partners, ranging from 90 % contraction in Estonia and Slovakia to 10 % increase in the Netherlands, 200 % in Hungary, and up to 486 % in Luxembourg. Exports from Kenya get favourable treatment from the EU (primarily as a result of the EU-East African Community (EAC) Economic Partnership Agreement (EPA) and, to a lesser degree, as a result of the EU's Generalized Scheme of Preferences), which is beneficial for Kenya. However, Kenyan exporters who sell their goods in the EU encounter challenges when it comes to complying with EU labelling standards, rules of origin, and phytosanitary controls (Raga, Mendez-Parra, te Velde 2021).

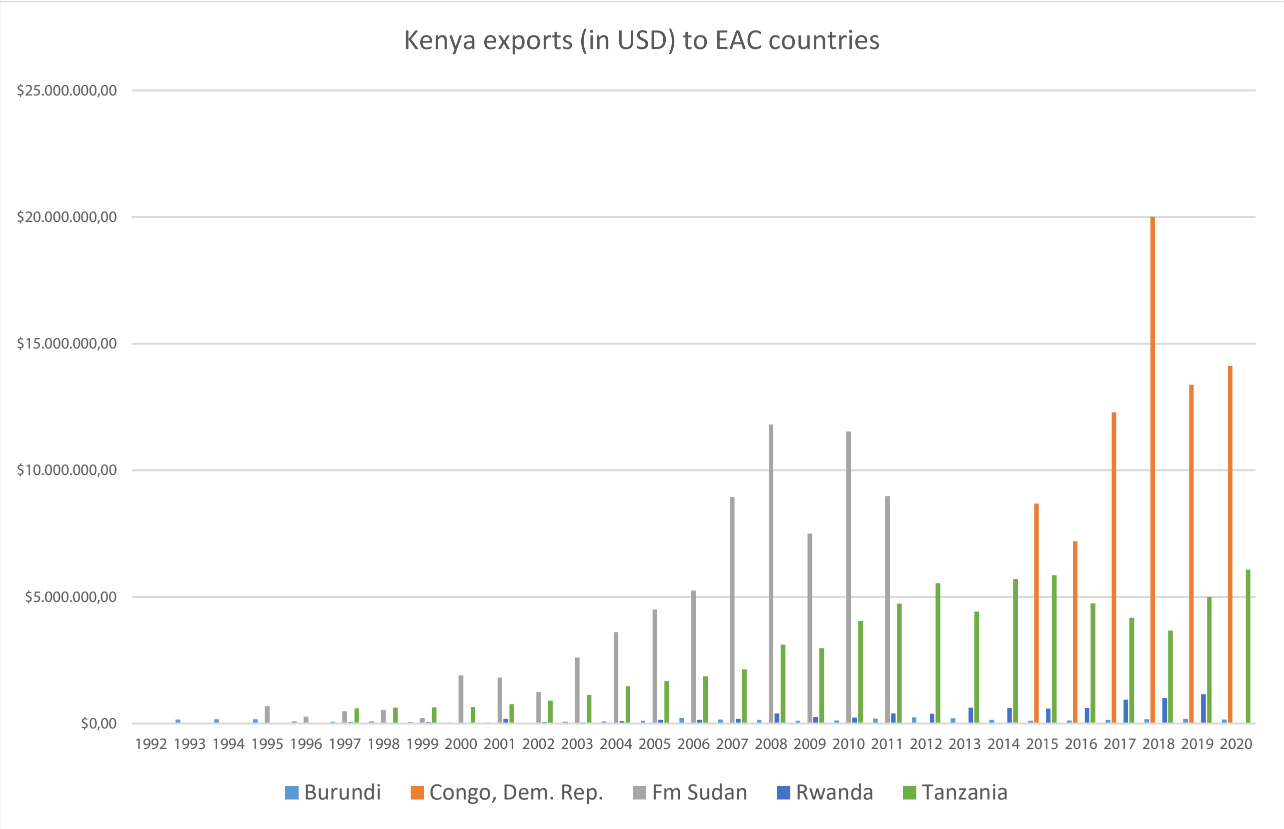
Figure 1: Kenya imports 1992-2020 (in USD)



Authors' own calculation and presentation on the basis of data provided by INTRACEN's Trade Map and the World Bank's WITS database (https://wits.worldbank.org/CountryProfile/en/KEN)

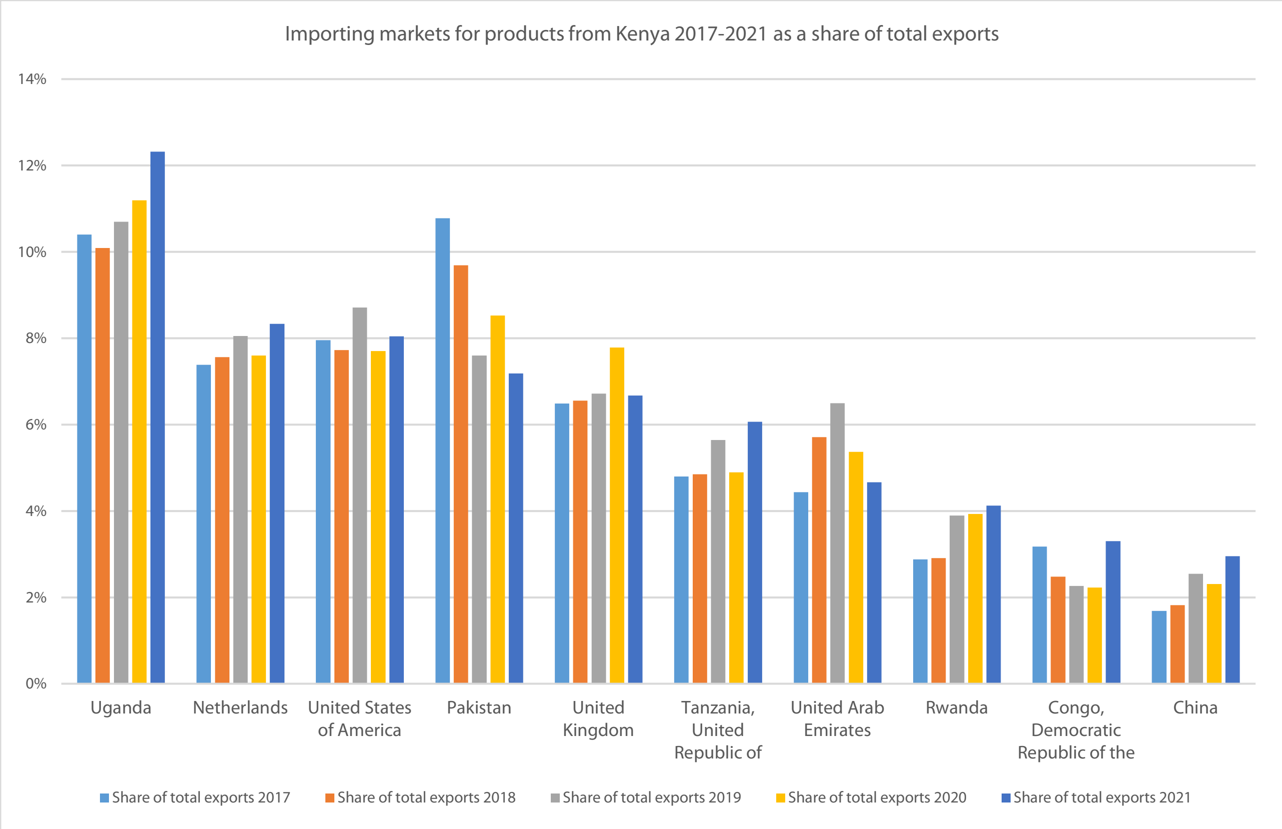
Figure 2: Kenya exports 1992-2020 (in USD)

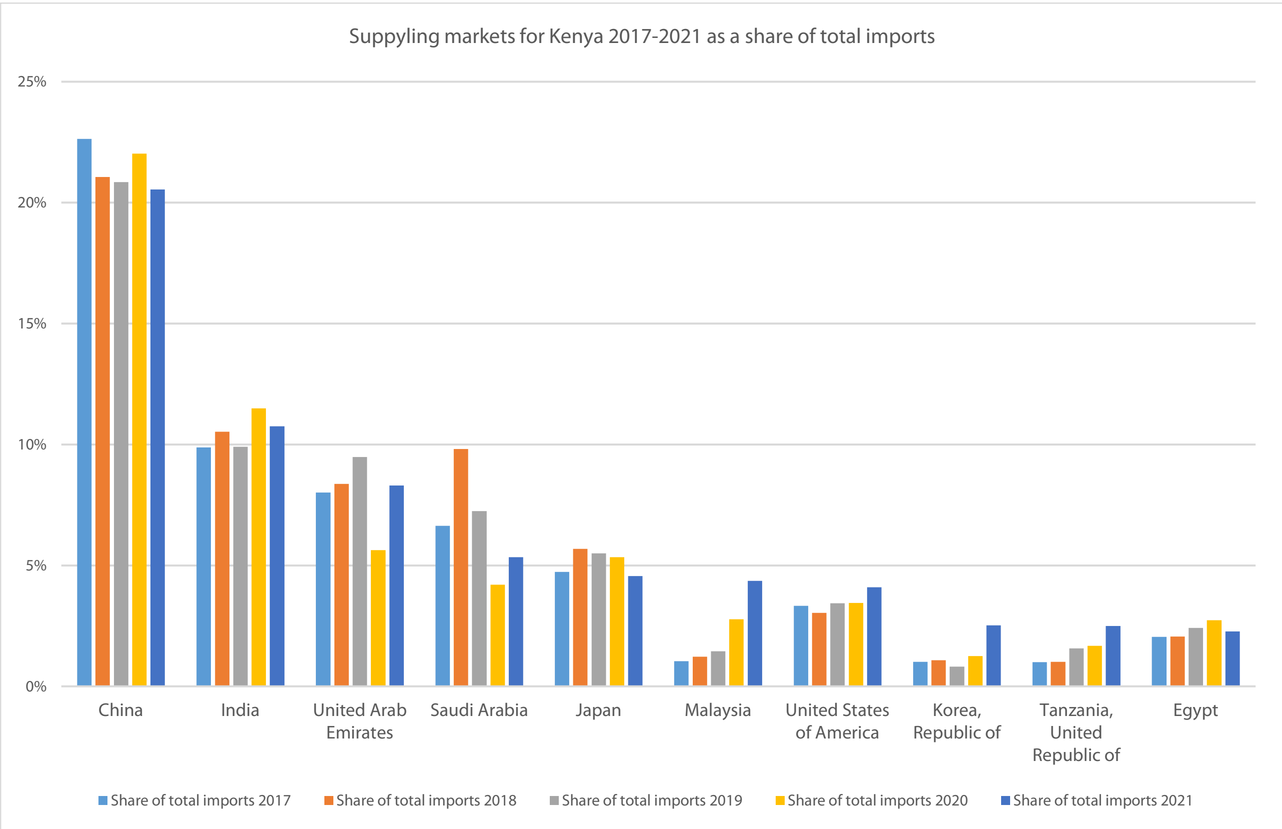




Authors' own calculation and presentation on the basis of data provided by INTRACEN's Trade Map and the World Bank's WITS database (https://wits.worldbank.org/CountryProfile/en/KEN)

Figure 3: Import and export markets for Kenya 2017-2021





Authors' own calculation and presentation based on data provided by INTRACEN's Trade Map and the World Bank's WITS database (https://wits.worldbank.org/CountryProfile/en/KEN)

Kenya has historically had significant trade relations with countries in the East African Community (EAC)[1]. The EAC is an intergovernmental organization composed of six member states, namely the three founding members Kenya, Tanzania, Uganda, as well as Rwanda, Burundi (accession in 2007), South Sudan (accession on 2016), and the Democratic Republic of the Congo (DRC; since March 2022).

Kenya's trade with EAC countries has been facilitated by various regional agreements, such as the East African Community Customs Union and the Common Market Protocol. These agreements aim to promote free trade and economic integration among member states. Consequently, Kenya has enjoyed certain benefits in terms of reduced trade barriers, harmonized customs procedures, and increased market access within the EAC region.

However, it is important to note that Kenya's trade relations are not limited to EAC countries alone. Kenya engages in trade with various other African countries and international partners as well.

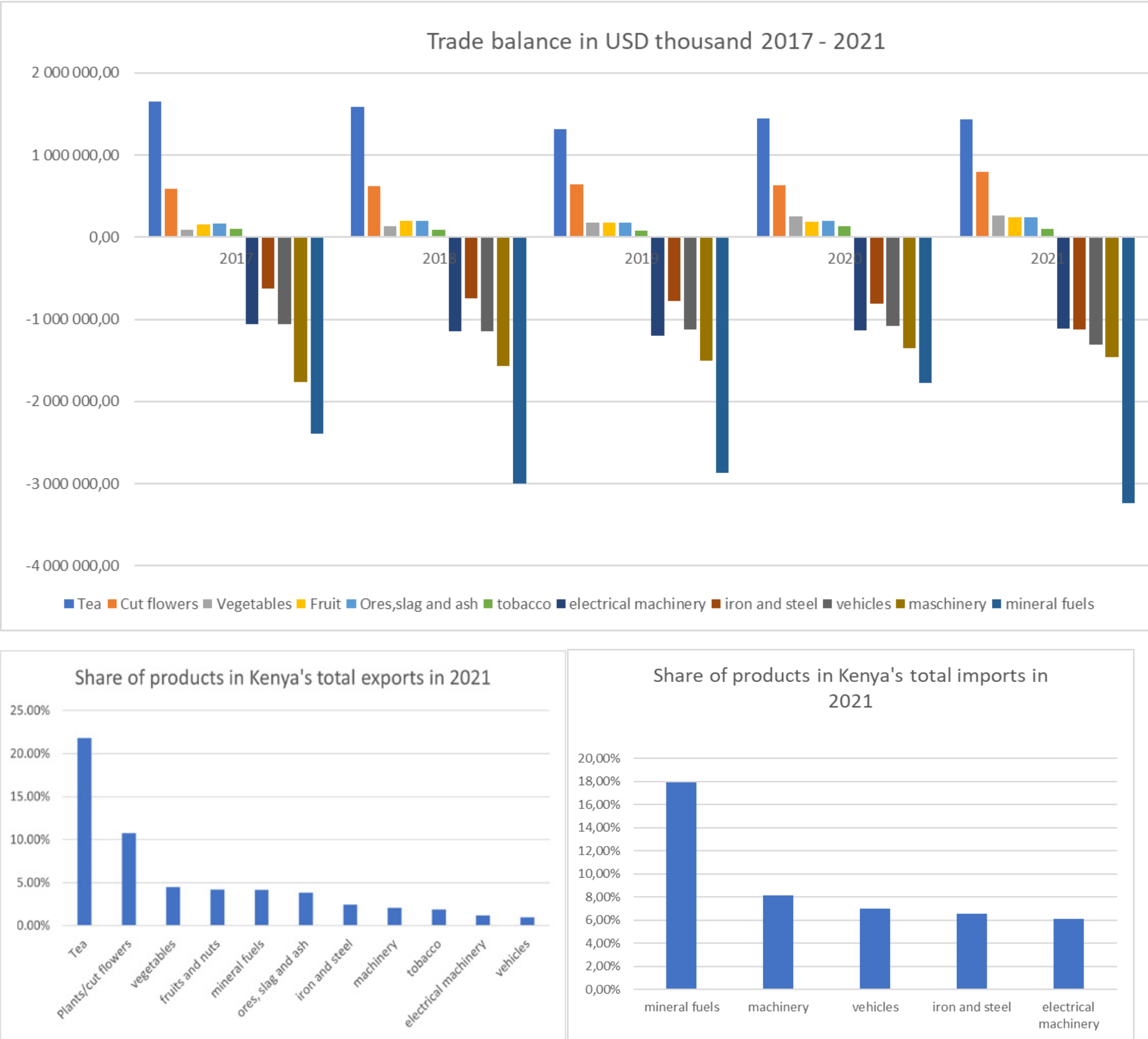
1.1 Kenya trade and investment relations

To date, Kenya remains a net importer with its trade balance being USD 12.84 billion as of 2021. Of the USD 19.59 billion worth of imports, roughly 18 % constitute mineral fuels. Followed by machinery (8.15 %), vehicles (7 %), iron and steel (6.56 %) and electrical machinery (6.09 %). Kenya is receiving around a fifth (21 %) of its imports from the People’s Republic of China. 11 % of imports come from India, 8 % from the United Arab Emirates and 5 % out of Saudi Arabia and Japan each.

Kenya is supplying goods worth USD 6.75 billion to other markets. Tea has by far the biggest share in Kenya’s exports (21.8 %) and is mainly exported to Pakistan (33 %), Egypt (12 %), the United Kingdom (9 %) and UAE (5 %). It is followed by plants/cut flowers (10.75 %), vegetables (4.48 %), fruits and nuts (4.18 %) and mineral fuels (4.16 %). Tobacco makes up only 1.86 % of exports. Importing markets for Kenya are mainly Uganda (12 %), the Netherlands (8 %), the United States (8 %), Pakistan (7 %) and the United Kingdom (7 %) as well as Tanzania (6 %).

[1] The EAC was established on November 30, 1999, with the signing of the Treaty for the Establishment of the East African Community. The member states of the EAC are Burundi, the DRC, Kenya, Rwanda, South Sudan, Tanzania, and Uganda. Its primary objective is to promote regional integration and cooperation among its member states. It has implemented a customs union, allowing for the free movement of goods within the region. Additionally, the EAC has taken steps toward the establishment of a common market, facilitating the free movement of labour, services, and capital among member states. The EAC has faced challenges in its integration efforts, including differences in economic development, political systems, and historical disputes among member states. However, the organization remains committed to achieving its goals and strengthening regional integration.

Figure 4: Kenya trade balance for selected products



Authors' own calculation and presentation on the basis of data provided by INTRACEN's Trade Map and the World Bank's WITS database (https://wits.worldbank.org/CountryProfile/en/KEN)

Kenya therefore mainly exports agricultural goods (58 %) and manufactured goods (32 %). Its imports are mainly manufactured goods (63 %) and almost equal shares of agricultural goods, fuels and mining products.

Kenya exports USD 4 628 billion worth of services, mainly "other commercial services" and transport services. Imported services (USD 4 008 billion) entail to almost equal shares "other commercial services", transport services and to a lesser extent travel services.

41 % (USD 2 786 billion) of Kenya's exports in 2021 were destined for other African countries. Of the intra-African exports 30 % flow to Uganda, 15 % to Tanzania, 10 % to Rwanda, 8 % to the DRC and 7 % to Egypt. Except for Egypt all these countries are located in proximity to Kenya and members of the EAC. The most important products exported are Tea, animal or vegetable oils, iron and steel and salt.

Kenya imports from African countries 11 % (USD 2 082 billion) of all imported goods, giving Kenya a trade surplus with African countries. The most important supplying markets are Tanzania (24 %), Egypt (21 %), South Africa (19 %) and Uganda (15 %). The most important products imported are cereals, sugars, wood, mineral fuels and paper.

FDI inflows to Kenya declined by over 68 % from 2017 to 2021 (37.5 % from 2020 to 2021)[2], while they increased in comparable East African countries such as Uganda over the same period and remained largely stable only in Tanzania. As of 2021, the EAC is the region with the lowest inflow of FDI. The FDI stock of Kenya accounts only for 9.5 % of its GDP whereas in its neighbouring countries Uganda (39 %) and Tanzania (24 %) the shares are significantly higher. This can be explained partly by Kenya's significantly bigger GDP. However, it can still be considered a low amount in relation to Kenya's economic development and the size of its economy. The 2020 National Bank of Kenya's latest Foreign Investment Survey reveals that the United Kingdom (13.5 %), Mauritius (11 %), the U.S. (10.3 %), South Africa (9.8 %), and France (5.2 %) are the primary investors in the country. The finance and insurance sector accounts for the largest portion of FDI stock, representing one-third of the total, followed by information and communication (16.1 %), wholesale and retail (15.4 %), and manufacturing activities (14.8 %).

Over the past few years, Kenya's ICT sector has been the recipient of the most FDI, largely due to the installation of fibre optics. Furthermore, Kenya is at the forefront of clean energy development in the region, with over 90 % of its on-grid electricity generated from renewable sources.

1.2 Kenya's particularities and barriers to exports and investments

Kenya has made significant strides in the service sector and is a source of innovative ideas adopted throughout Africa. The industry sector contributes only 17 % of the GDP and employs just 6 % of the workforce, while high-value minerals like titanium hold considerable potential. In contrast, the service sector accounts for 54.4 % of the GDP and employs 39 % of the workforce, making Kenya the commercial, economic, technological, and logistic hub of Eastern Africa. The country boasts a strong industrial base, advanced road infrastructure, and is a regional financial centre. Kenya's urban areas have a young, well-educated, and English-speaking population. The horticultural and tourism sectors are vibrant, but the latter is susceptible to volatility based on domestic political stability and regional security concerns. The regional energy sector also has immense potential, including offshore gas fields, with direct and indirect benefits.

Foreign investors benefit from the same treatment as national investors from administrative and judicial authorities, despite high levels of corruption, a slow judicial system, high unemployment, and poverty. Security issues related to terrorism and crime, inter-ethnic tensions, and the high cost of skilled labour, energy, and poor infrastructure pose challenges. Recent uncertainty about the capital constitution of foreign companies also present hurdles. Foreigners cannot own land in Kenya but can rent it for 99 years. Additionally, to benefit from certain government incentives, foreign investors must invest a minimum of USD 100.000. Kenya has established the One Stop Center through the Kenya Investment Authority to simplify administrative procedures for investors. However, compliance difficulties have arisen due to the duplication of regulatory agencies at the national and county level. Although most procedures have been digitized, transparency issues and the absence of a tracking system remain a concern.

Kenya has enacted modern competition and intellectual property protection laws, which include efficient trademark and patent registration processes. Its tax system is highly competitive in Sub-Saharan Africa, but stakeholders report uncertainty due to unpredictable decisions by Kenya Revenue Authority officials and unexpected changes to tax laws. While foreign workers can reside and work in Kenya indefinitely, the visa approval process can be slow. The import and export permit processes in Kenya are prolonged and require several documents, making it challenging for some stakeholders to justify importing goods. Contract

[2] Kenya's FDI landscape has been clouded by unfavourable investment conditions of the Covid-19 pandemic, political upheaval, uncompetitive returns, and relatively high levels of perceived public sector corruption. According to UNCTAD's Investment Report 2022, Kenya's inward FDI flow dropped year on year between 2019 and 2021, continuing a general trend of reduction since 2010. Over the same three-year period, the number of greenfield investments fell by approximately 60 %, from 95 in 2019 to 39 in 2021. This drop in FDI contrasts with a pattern found elsewhere in east Africa, where average FDI inflows climbed by 35 % between 2019 and 2021, totall0ing USD 8.2 billion.

enforcement through the Kenyan courts is comparatively speedy in the region, but the system remains cumbersome and lacks transparency.

Kenya has concluded 21 bilateral investment treaties (Table 1). In addition, Kenya is party to eight international treaties with investment provisions (TwIP). The Investment Promotion Act addresses investor-State dispute settlement, without prioritising a specific system (ICSID, UNICITRAL etc.).

Table 1: Bilateral Investment Treaties of Kenya

Short title	Type of agreement	Status
Kenya-Mauritius BIT (2019)	BIT	Signed
Kenya-Singapore BIT (2018)	BIT	Signed
Japan-Kenya BIT (2016)	BIT	In force
Kenya-United Arab Emirates BIT (2014)	BIT	In force
Kenya-Korea, Republic of BIT (2014)	BIT	In force
Kenya-Qatar BIT (2014)	BIT	Signed
Kenya-Turkey BIT (2014)	BIT	Signed
Kuwait-Kenya BIT (2013)	BIT	In force
Kenya-Mauritius BIT (2012)	BIT	Signed
Kenya-Slovakia BIT (2011)	BIT	Signed
Burundi-Kenya BIT (2009)	BIT	In force
Iran (Islamic Republic of)-Kenya BIT (2009)	BIT	Signed
Finland-Kenya BIT (2008)	BIT	In force
France-Kenya BIT (2007)	BIT	In force
Kenya-Libya BIT (2007)	BIT	Signed
Kenya-Switzerland BIT (2006)	BIT	In force
China-Kenya BIT (2001)	BIT	Signed
Kenya-United Kingdom BIT (1999)	BIT	In force
Italy-Kenya BIT (1996)	BIT	Terminated
Germany-Kenya BIT (1996)	BIT	In force
Kenya-Netherlands BIT (1970)	BIT	In force
Kenya-United Kingdom EPA (2020)	TwIP	In force
EAC-US TIFA (2008)	TwIP	In force
COMESA Investment Agreement (2007)	TwIP	Signed
COMESA-US TIFA (2001)	TwIP	In force
Cotonou Agreement (2000)	TwIP	In force
EAC Treaty (1999)	TwIP	In force
COMESA Treaty (1993)	TwIP	In force
AU Treaty (1991)	TwIP	In force

Authors' table, data based on UNCTAD International Investment Agreements Navigator (https://investmentpolicy.unctad.org/international-investment-agreements/countries/108/kenya).

2 The EU-Kenya Economic Partnership Agreement

2.1 Background

Economic Partnership Agreements (EPAs) are trade and economic cooperation agreements that create free trade areas between the European Union and the 79 African, Caribbean and Pacific States (ACP). The ongoing efforts to establish EPAs are rooted in the 2000 Cotonou Partnership Agreement (CPA), in which the EU and the ACP countries agree to take "all the necessary measures" to ensure the conclusion of new WTO-compatible, non-discriminatory EPAs. Previously, under the Yaoundé Agreement and the Lomé

Conventions, ACP states had enjoyed preferential tariffs for their trade with the EU. Yet this system of unilateral, non-reciprocal trade preferences drew increasing criticism from the international community as it violated the WTO's General Agreement on Tariffs and Trade's (GATT) Most Favoured Nation (MFN) clause prohibiting discrimination between trade partners. By instituting EPAs that explicitly pursue reciprocal trade liberalization, the Cotonou Agreement intended to solve the long-standing issue of preferential treatment.

Nonetheless, in line with the Special and Differential Treatment principle, EPAs usually maintain a degree of asymmetry to account for diverging levels of development between trading partners. According to the CPA, EPAs must consider the socioeconomic impact of trade measures on ACP countries, and their capacity to adapt and adjust their economies to the liberalization process. Thus, ACP countries may protect certain sensitive industries and take measures to protect food security, while the EU provides total duty-free and quota-free (DFQF) market access. African countries may even exclude up to 20 % of total trade from the liberalization process for selected products. ACP countries are further granted a liberalization period of 15 years or 25 years in exceptional cases, enabling them to open their markets in a gradual process (Bellora, Maurer, Mitaritonna, 2022).

Since EPAs are established under the Cotonou umbrella, they are envisioned to serve as instruments accelerating progress towards the wider CPA's goals. These include poverty eradication, sustainable development, and the smooth and gradual integration of ACP countries into the world economy (cf. Preamble). As a result, EPAs often include provisions beyond the mere liberalization of trade and the reduction of tariffs. The CPA puts particular emphasis on advancing regional economic integration and South-South interregional trade, which is why the EU encourages its ACP partners to enter the EPAs as regional groups. Further provisions on regional integration include a mandate that capacity building be provided to the public and private sectors of ACPs during EPA negotiations so that regional organizations and regional trade integration initiatives are strengthened. Further, special regional preference clauses in the EPAs themselves stipulate that countries in the same region must provide at least the same preferences to each other as they do to the EU.

EPAs aim to foster deeper EU-ACP integration. This includes reducing non-tariff barriers to trade (NTBs), such as technical, regulatory, or behind-the-border barriers. Thus, EPA provisions may address intellectual property, investment, competition, and public procurement. Other measures to deepen integration include development assistance, in particular aid for trade and technical assistance. Finally, EPAs may contain provisions on health and safety standards, sanitary and phytosanitary standards (SPS), rules of origin (RoO) and barriers affecting trade in services (Meyn, M. 2008; Milner, C., Morrissey, O., Zgovu, E. 2011).

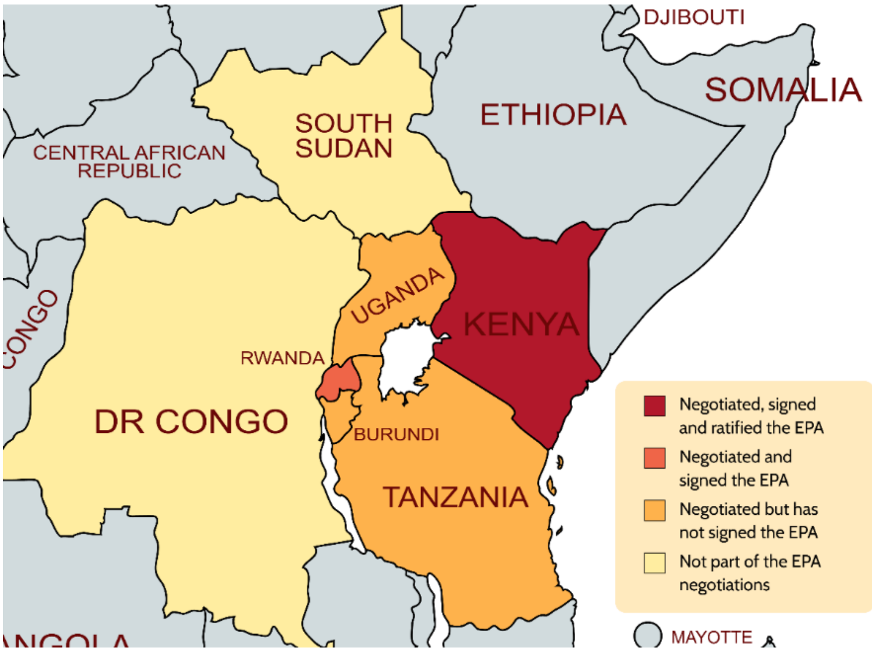
2.2 The EU-EAC EPA – a stalling process of signature and ratification

In October 2014, the EU concluded negotiations for an EPA with the East African Community (EAC). Founded in 1999, the EAC is one of the most integrated regional economic communities on the African continent. It has introduced a customs union and a common market and aims to form a monetary union by 2024. All EAC members at the time – Burundi, Kenya, Rwanda, Tanzania, and Uganda – were involved in the negotiation process[3]. The consolidated draft agreement was published in October 2015, opening the way for the signature and ratification process. In September 2016, the European Commission submitted a proposal for conclusion, signature and provisional application of the full EPA with the EAC. The Council of Ministers authorized the signature and provisional application of those provisions falling under the exclusive competence of the EU. However, to fully enter into force, the EPA must be ratified by each party – the EU, the EAC, and their respective member states according to their national ratification procedures.

[3] South Sudan and the Democratic Republic of the Congo, which joined the EAC in 2016 and 2022 respectively, did not take part in the negotiations. In line with Cotonou provisions, they will be able to join the EPA once it is ratified.

While all EU member states and the EU signed the EU-EAC EPA, only Kenya and Rwanda have done so on the EAC side. Moreover, Kenya is the only EAC state to have ratified the agreement. The agreement will be finalised once the European Parliament gives its consent to the agreement, after its official referral from the Council. In line with common practice, this final step will only occur once all EAC countries have signed the agreement. Yet, for different reasons, the remaining EAC states have been hesitant to move ahead with the signature of the agreement.

Map 1: East African Community member states. After Pichon (2018), updated version



Source: DG Trade, European Commission

Uganda has traditionally argued that signing the pact as individual countries would compromise the unity of the region, and allegedly waited for the bloc to take a common stance. Yet, in the wake of a recent push against LGBTQ rights under President Museva, Uganda's State Minister for Foreign Affairs revealed in April 2023 that Uganda had not signed the Post-Cotonou Partnership Agreement between the EU and the ACP states, which is due to replace the Cotonou Agreement expiring in June 2023. Citing the President's disagreement with the definition of human rights including sexual orientation and gender identity, he noted that the agreement had been initialled by the chief negotiators but not by any representative of the Government of Uganda. Since the EU-EAC EPA is negotiated under the Cotonou umbrella, it remains questionable whether Uganda's current government would consider signing it.

Burundi, which was sanctioned by the EU after political unrest when President Pierre Nkurunziza ran for a controversial third term in 2015, binds the signature of the EPA to the lifting of sanctions on behalf of the European Union. Article 136 of the EPA entails suspension of the EPA trade preference for a country sanctioned under the Cotonou provisions, for instance for a breach of human rights or the rule of law. Burundi thus has little incentive to sign an agreement that it is likely to be suspended from (Pichon, 2018). Yet, since relations between the EU and Burundi improved with the Council's decision to lift its sanctions in February 2022, Burundi is likely to sign the EAC-EPA to increase trade with the EU[4].

[4] Following the deterioration of the situation in Burundi in the run-up to the legislative and presidential elections in June and July 2015, the EU determined that the Republic of Burundi was not complying with the essential elements set out in Article 9 of the ACP-EU Partnership Agreement in terms of human rights, democracy, and the rule of law. As a result, on November 13, 2015, the Council launched the procedure that resulted in the adoption of Decision 2016/394 and relevant measures in 2016 under Article

Tanzania, in turn, has been cautious about signing the Agreement, citing fears that agricultural products like maize bran, cotton seed oil cake and shelled groundnuts would be at risk of being eliminated from the domestic market. Non-agriculture products like plastic articles for conveyance or packaging of goods, limestone and calcareous stone for lime or cement, rubberized textile knitted or crocheted fabrics, hot rolled steel and coils, iron bars and rods, casings, tubes and pipes were also expected to face strong competition from European imports. In addition, Tanzania would benefit from the failure of the EPA and Kenya falling back under the GSP. The Tanzanian and Kenyan economies compete for EU exports, as both mainly export cut flowers, tobacco, coffee and tea. Since Tanzania enjoys DFQF access to the EU under the EBA trade regime, it would gain a comparative advantage if Kenya were to face higher tariffs under the GSP (Krapohl and Van Huut, 2020). In 2017, Tanzania attempted to block members of the EAC from signing the agreement with the EU, an application that was rejected by the East African Court of Justice in 2017. It thus seemed like Tanzania mainly took part in the initial EPA negotiations for strategic reasons, to be able to block the Agreements' implementation later on. Yet, while Tanzania's late President John Magufuli was a vocal critic of the EPA, calling it a "form of colonialism," his successor President Samia Suluhu Hassan has shown a general openness towards signing.

Upon Kenya's request and given the stalemate in the signature and ratification process, EAC heads of states declared at their 21st ordinary summit in February 2021 that the EAC shall explore the use of *variable geometry* in the implementation of the EPA (Pichon, 2018). In a common political declaration of 17 February 2022, the EU and Kenya emphasized their close strategic partnership and vowed to advance the negotiations about a bilateral implementation of the EU-EAC EPA. This so-called interim Economic Partnership Agreement (EPA) would reflect the pending EPA, but be complemented by binding commitments on environmental protection, climate and labour right in the form of Trade and Sustainable Development provisions (TSD).

The EU-Kenya EPA negotiations were concluded on 19 June 2023.

Table 2: EAC real GDP at current prices (in million USD)

Indicator	Country	2015	2016	2017	2018
GDP at purchaser prices	**Burundi**	2 811	2 929	3 217	n.a.
	Kenya	63 470	69 189	78 758	87 904
	Rwanda	8 293	8 475	9 140	9 510
	South Sudan	2 202	2 729	2 560	4 665
	United Republic of Tanzania	47 379	49 774	53 275	57 347
	Uganda	29 772	30 623	31 695	33 565
GDP at basic prices	**Kenya**	57 780	63 209	72 214	80 298
	Rwanda	7 701	7 879	8 511	8 851
	United Republic of Tanzania	43 429	45 668	48 884	52 839
	Uganda	27 677	28 388	29 306	30 907

Data source: EAC data portal (https://eac.opendataforafrica.org/)

2.3 Current trade schemes

As can be seen from above, not all EAC member states have the same level of incentive to join the EU-EAC EPA. The European Union's fractured trade policy is the underlying reason. Under the Cotonou Agreement, least developed countries (LDCs) are granted DFQF access to the EU under the Everything but Arms (EBA)

96(2)(c) of the ACP-EU Partnership Agreement. In light of the peaceful political process that began with the general elections in May 2020 and has opened a new window of hope for the people of Burundi, the Council resolved to lift its sanctions in February 2022.

preference scheme. Middle-income countries, by contrast, fall under the less generous Generalised Scheme of Preferences (GSP) or GSP+ scheme. The GSP grants partial or full removal of custom duties on two-thirds of the tariff lines, meaning it is far less liberal than the EBA that grants full DFQF access for all products except for arms and ammunition, without any quantitative restrictions. Yet this fragmented trade policy framework leads to LDCs and middle-income countries having different incentives to join EPAs. While middle-income countries benefit from EPAs as a result of gaining full market access to the EU, this does not constitute a relative gain for LDCs compared to the preferences they enjoy under the EBA scheme. Instead, for LDCS EPAs represent an asymmetric market opening on their side, given that they already have full EU market access.

As a lower middle-income country, Kenya is the only country in the EAC that is not granted EBA trade preferences. Instead, the EU's trade relations with Kenya are governed by the GSP and the Market Access Regulation (MAR). The MAR was adopted unilaterally by the EU and provides DFQF access to the EU market for products originating in ACP states that do not benefit from the EBA scheme and are in the process of signing and ratifying an interim EPA. The MAR was applied to Kenya in November 2014, one month after the country concluded negotiations with the EU on the EPA. Compared to an EPA, the MAR provides less stability as the EU may withdraw the asymmetric preferences at any time. If the EPA was officially withdrawn, for instance, the MAR would no longer apply and Kenya would fall under the standard GSP. This would cost Kenya export duties of around USD 100 million a year (European Parliament, 2018). The MAR also does not foster deeper integration between regions, lacking special provisions on development assistance, human rights or regional integration support. Of all EAC member states, Kenya is thus the country set to benefit the most from signing an EPA with the EU.

Table 3: Overview EAC member states

Country	Status	Trade scheme	GDP per capita, adjusted by purchasing power parity (USD)	Population (million)	LDC graduation, thresholds reached*
Burundi	LDC	EBA	855.82	12.98	1/3
DRC	LDC	EBA	1 378.97	99.95	0/3
Kenya	LMIC	GSP, MAR	6 144.16	52.06	-
Rwanda	LDC	EBA	2 866.56	13.55	2/3
South Sudan	LDC	EBA	483.94	15.01	1/3
Tanzania	LDC	EBA	3 393.85	63.34	1/3
Uganda	LDC	EBA	3 026.50	45.05	0/3

*To graduate from the LDC status, a country must cross specified thresholds in the following three indexes: GNI per capita, Human Assets Index (HAI), Economic and Environmental Vulnerability Index (EVI). Source: UNDESA, IMF.

The EAC established a Customs Union in 2005, which removed all duties on intra-EAC Customs Union Protocol. If further ratified a more far-reaching common market protocol in 2010. Kenya thus trades freely with fellow EAC members as well as countries party to the Common Market for Eastern and Southern Africa (COMESA). Imports from other countries are subject to the EAC Common External Tariff (CET), which acts as Kenya's MFN tariff. The EAC CET is divided into three bands: 0 % tariff on imported inputs and raw materials, 10 % on intermediate goods and 25 % on finished products. However, certain products designated as 'sensitive items' are subject to higher tariffs. (Woolfrey and Bilal, 2017)

2.3.1 Contents of the EU-Kenya EPA

The EU-EAC EPA consolidated text comprises 147 articles which are complemented by roughly 500 pages of annexes. It comprises provisions on trade in goods (part 1), customs cooperation and simplified trade procedures (part 2), fisheries (part 3), agriculture (part 4) and economic and development cooperation (part 5). With these fields included, its scope extends beyond similar agreements, such as the EPA with the regional group of Eastern and Southern Africa (ESA). While the EU is set to liberalize 100 % of imports from the EAC, 64.4 % of imports of European goods into the EAC market are to be liberalized upon the implementation of the agreement, with another 15.3 % of imports to be liberalized within 15 years. A final 2.9 % is to be granted customs-free access to the EU market within 25 years. The total tariff lines are to be reduced from 5438 to a permanently excluded number of 1432. Goods excluded from liberalization include agricultural products, alcohol, chemical products, plastics, paper, textiles and clothes, shoes, ceramics, glassware and metalware, as well as motor vehicles, accounting for the remaining 17.4 % of European imports in the EAC.

Much to the discomfort of the EAC countries, the agreement limits the imposition of new export taxes on raw materials and non-processed foods. Traditionally, EAC countries heavily rely on export taxes to curb the export of raw materials and import of processed goods, in order to foster the development of a domestic industry. To make up for losses of government revenue from the elimination or substantial reduction of tariffs, the EU agrees to transitionally provide financial resources to the Partner States. Yet, these payments are unlikely to cover the costs of the forgone industrialization incurred by exporting cheap raw materials rather than processing them within the region.

The annexes include information on the customs duties on products originating in the EAC Partner States and the EU, respectively, the number of tariff lines, the EPA development matrix listing details on various development projects, and development benchmarks, targets and indicators. Further, they comprise protocols on the concept of originating products, but also on territorial requirements and proof of origin, as well as arrangements for administrative cooperation.

The EU-Kenya EPA comprises 147 articles which are complemented by seven annexes (on Customs duties on products originating in the EAC Partner State(s), on Customs duties on products originating in the EU, on Trade and Sustainable Development, on the EAC EPA Development Matrix, on Development Benchmarks, Targets and Indicators, on a Joint Declaration regarding countries which have established a Customs Union with the EU, on a Joint Declaration of the Parties on the Economic and Development Cooperation in this Agreement), a specific Protocol on mutual administrative assistance in customs matters, and two Joint Statements on Rules of Origin and on Trade and Sustainable Development respectively.

The agreement comprises provisions on trade in goods (part 1), customs cooperation and simplified trade procedures (part 2), fisheries (part 3), agriculture (part 4) and economic and development cooperation (part 5). The EU-Kenya EPA liberalises 82.6 % by value of Kenya's EU imports. More than fifty percent of these imports are already duty-free. The majority of the remainder will be liberalised within 15 years of the agreement's enactment, while 2.9 % will be liberalised within 25 years. Various agricultural products, wines and spirits, chemicals, plastics, wood-based paper, textiles and apparel, footwear, ceramic products, glassware, articles of base metal, and vehicles were shielded from liberalisation by Kenya. Brussels and Nairobi refrained from including rules regulating services, competition policy, investment and private sector development, intellectual property rights, and public procurement transparency. Such rules are anticipated to be added within five years of the agreement's entry into force once Kenya is prepared to assume such obligations.

The EPA establishes an efficient mechanism for resolving disputes, which includes independent panellists, open hearings, the publication of decisions, and the opportunity for interested parties to submit written comments.

According to the European Commission, the EPA, is the "most ambitious EU trade deal with a developing country in terms of sustainability provisions such as climate and environmental protection and labour rights". In fact, the TSD chapter of the agreement contains obligatory provisions on labour standards, climate change, biodiversity, and gender equality. In addition, it prohibits parties from diminishing labour and environmental standards to attract trade or investment. Both parties concur to implement multilateral environmental agreements, such as the Paris climate change agreement. Additionally, the chapter includes obligations to combat illegal wildlife trade, illegal logging, and illegal, unreported, and unregulated fisheries. If either party breaches these obligations, the other party may initiate a specific dispute settlement mechanism that includes a tribunal investigation. The party in violation must inform the other party of its plan to implement the panel report within a specified time frame. This will be reviewed by an arbitration panel set up by the Special Committee on Trade and Sustainable Development (Article 18 of the agreement's Annex V).

Most provisions of the agreement's TSD chapter do not include the possibility of sanctions for a party that fails to comply with the panel report. Disputes with regard to the interpretation and implementation of the TSD chapters on Multilateral Labour Standards and Agreements (Article 3), Trade and Gender Equality (Article 4), Multilateral Environmental Governance and Agreements (Article 5), Trade and Biological Diversity (Article 7), Trade and Forests (Article 8), Trade and Sustainable Management of Marine Biological Resources and Aquaculture (Article 9), Trade and Investment Supporting Sustainable Development (Article 10), Trade and Responsible Business Conduct and Supply Chain Management (Article 11) will have to be resolved under the TSD's general dispute resolution procedures and do not provide for a specific sanctions regime in the event of deviant behaviour. On the other hand, the provisions of the TSD's chapter on Trade and Climate Change (Article 6) contain a procedure for sanctioning violations by a Party of its obligation to "effectively implement the Paris Agreement [..., and] to refrain from any act or omission that significantly impairs the object and purpose of the Paris Agreement" (Article 6.4). In such cases, a Party may take appropriate measures in accordance with the consultation and sanctions procedure set out in Article 96 of the Cotonou Agreement or the corresponding provisions (Article 101) of its successor, the Partnership Agreement between the EU and Members of the Organisation of African, Caribbean and Pacific States (OACPS). Article 96 of the Cotonou Agreement refers essentially to breaches in the areas of human rights, democratic principles, and the rule of law. The EU-Kenya EPA thus extends the substantive trigger conditions of Article 96 to the area of climate change mitigation and the commitments made in this context in the Paris Agreement.

The agreement's sustainable agriculture provisions of the agreement address food and nutrition security, rural development, including the sustainable use and management of natural resources, as well as income and job creation. It prohibits the EU from using export subsidies for agricultural products, even in emergency situations. According to the European Commission, the agricultural chapter commits the parties to a "deepened policy dialogue on agriculture and food security, including domestic policy transparency."

Interestingly, the EPA obliges the EU to provide Kenya with development aid. This assistance consists of trade capacity-building measures and assistance for Kenyan farmers to comply with EU sanitary and phytosanitary standards and other agricultural standards. According to the European Commission, "this alignment of standards makes it easier to comply with the requirements required to bring these products into the EU, thereby expanding agricultural trade opportunities."

As with other post-Lisbon EU trade agreements, the EU-Kenya EPA establishes a domestic advisory group of independent civil society representatives to advise both parties on the implementation of the agreement, as well as a consultative committee where civil society representatives from the EU and Kenya will meet regularly.

The TSD provisions specifically added to the EU-Kenya EPA recognize the interdependence between economic development, social development, and environmental protection. Accordingly, they specify how intensified trade and investment should contribute to overall sustainable development, addressing issues such as forests, marine biological resources and aquaculture, investment supporting sustainable development, business conduct and supply chain management, and scientific and technical information.

2.3.2 Expected impacts of implementing the EU-Kenya EPA

Predicting the precise economic, developmental and welfare impact of the EPA is a complex task (Stender, F., Berger, A., Brandi, C., Schwab, J. 2021; Muluvi A. M., Githuku S., Otieno M., Onyango C. H. 2015). In principle, the EPA could affect the Kenyan and EAC economy through three channels: direct impacts, indirect impacts, and economy-wide impacts. While direct impacts as a result of tariff reductions can be quantified, they do not provide the full picture. Indirect impacts however are hard to measure, given that they are contingent on numerous volatile variables. These include the capacity of economic actors to take advantage of opportunities created by the EPA, the capacity and political will of the government to implement necessary reforms to promote trade and investment, or the capacity of different value chains to cope with the challenges (e.g. increased competition from imports) that the agreement might entail (Woolfrey and Bilal, 2017). Accordingly, different studies on the impact of the EU-EAC EPA have yielded different results. Overall, the expected impacts for the EAC Partner States range from slightly negative to slightly positive.

Applying a dynamic general equilibrium model, a study by the European Commission found that implementing the original EU-EAC EPA would yield an overall positive impact for the original five member states. Tariff reduction alone would result in gains in real GDP ranging from 0.1 % (Rwanda) to 0.5 % (Kenya)[5]. Kenya and Tanzania are identified as the countries set to benefit the most. These gains would mostly result from cheaper imports boosting investments and consumption. The report also finds a moderate reduction in government revenues from excise taxes and duties for the five EAC member states. In Kenya, this revenue loss would be offset by increased income taxes resulting from GDP gains and an increased VAT from consumption. Tariff reduction is further expected to slightly reduce poverty (European Commission, DG Trade, 2017). By contrast, a more recent study employing a structuralist computable general equilibrium model finds that the EU-EAC EPA is likely to lead to negative macroeconomic and distributional effects, as the industrial and manufacturing sectors will face high adjustment costs associated with employment and public revenue losses (Tröster *et al.*, 2020).

Other studies rely on ex ante partial equilibrium analyses to determine the potential impact of the EPA on specific value chains in Kenya, such as the dairy industry or the horticulture sector (Africa Europe Faith and Justice Network, 2015; Woolfrey and Bilal, 2017). These studies show that the EAC EPA is unlikely to have large direct, tariff-related impacts on the respective sectors, both positive and negative. Indirect impacts however may be positive, if the EPA leads to the integration of local economic sectors into regional value chains. For instance, the EPA could facilitate development cooperation support for initiatives that build the capacity of these value chain actors and relevant institutions, and that improve the regulatory and business environment both in Kenya and in the EAC as a whole. In other words, the EPAs will not automatically boost development in the EAC, but it is up to the parties to the agreement to follow through with financial support.

A key question is whether the potential positive effects of the EPA would still manifest if the Agreement is implemented with Kenya as the only signatory on the EAC side. Article 2 of the EU-EAC EPA consolidated text lists as the second objective of the Agreement to "promote regional integration, economic cooperation and good governance in the EAC." Increasing regional trade is generally seen as one of the key enablers of accelerating the integration of the ACP markets into the international economy and global value chains, and EPAs are explicitly designed to support regional integration. The EAC as a supra-national

[5] Predicted values for 2042, in comparison to a baseline with no agreement.

organization has a pronounced interest in furthering regional integration, which would unlock untapped economic potential by increasing intra-regional trade. This would particularly benefit the EAC's smaller, landlocked countries like Rwanda or Burundi. The EAC Secretary General Hon. Peter Mathukii disclosed plans to double the share of intraregional trade to global trade in the EAC to "40 % over the next five years[6]. Measures will include the reduction of NTBs, but also reliance on the CET to promote local production, value addition and industrialization. In July 2022, the EAC imposed a 35 % tariff on locally available goods, such as meat, furniture and textiles". While the EAC's larger countries may not care as much about intra-regional trade, they still benefit from increased regional integration as it strengthens their international bargaining position and increases the region's attractiveness for investors (Fink and Rempe, 2017; Krapohl and Van Huut, 2020).

The bilateral implementation of the EU-Kenya EPA may give an impetus for further regional integration if it motivates the remaining EAC states to also sign and ratify the Agreement. In fact, the beneficial and bilaterally agreed asymmetrical market access to the EU and the focus on cooperation should be strong arguments. It is quite likely that one or more EAC countries will graduate from LDC status in the future and therefore lose duty-free quota-free access to the EU market under the EBA arrangement of the Generalised Scheme of Preferences, which will make the EPA even more attractive.

Under the EAC Common External Tariff (CET), 2519 goods of the Harmonized System (HS) carry a tariff of 20 % or higher. The EPA excludes the liberalization of 1206 of those goods, meaning that Kenya will continue to charge tariffs for 48 % of the goods carrying at least a moderate tariff in the rest of the EAC. For the remaining 52 % of these goods, however, the EPA foresees an immanent or gradual abolition of tariffs, generating different levels of liberalization within the EAC. This increases the incentive for smuggling highly competitive EU imports from Kenya to the rest of the EAC. Particularly Tanzania and Uganda, which share a land border with Kenya, may thus be forced to reinstitute rigorous border controls. This could eventually harm intra-regional trade. While the difference in tariffs for EU goods may be payable and would only apply to a limited number of goods, additional custom procedures create delay and opportunities for corruption (Stevens, 2006). The free circulation of goods between EAC member states may thus be threatened, and regional integration weakened, as it was agreed that the rules of origin of the Market Access Regulation will apply on a temporary basis to both parties' trade, while the original reciprocal rules of origin are being updated.

It is essentially for political reasons that there seems to be some unease in the EAC related to Kenya entering into bilateral trade agreements with third states. In 2022, two Kenyan Advocates of the High Court sued the Government of the Republic of Kenya for entering into talks with the United States over a bilateral Free Trade Agreement, arguing that it violated the EAC Treaty, the Customs Union Protocol and the Common Markets Protocol. In a landmark judgment, the East African Court of Justice (EACJ) ruled that Kenya had in fact violated its commitments to the community by failing to communicate the developments to the Partner States. The negotiations were thus declared legal, null and void[7]. While bilateral trade agreements are legal under certain provisions of the Customs Union Protocol[8] and the EAC has given its green light for Kenya to implement the EPA, this judgment shows that bilateral agreements continue to be a sensitive issue for the EAC.

While it would have been preferable to conclude an EPA with the entire EAC as opposed to Kenya alone, the current negotiated agreement does not undermine EAC regional integration. One can admit that

[6] For comparison, the EU's intraregional trade accounts for around 65 % of its global trade (2021).
[7] The judgment had little effect since negotiations had already come to a standstill after the change of administration in the US.
[8] Article 37 of the Common Union Protocol states that "A Partner State may separately conclude or amend a trade agreement with a foreign country provided that the terms of such an agreement or amendments are not in conflict with the provisions of this Protocol."

provisions on flexible rules of origin or development assistance[9] for the support of regulatory convergence and trade facilitation within the region, are more likely to be of use if the Agreement applies to the entire EAC. Further, a joint implementation would rule out potential unintended consequences that splinter the EAC, for instance, new intra-regional trade barriers. Nevertheless, it must be taken into account that as a non-LDC country, the looming penalty for not implementing the EPA is too high for Kenya to face. Implementing the EU-Kenya EPA may thus be a necessary next step. Yet, this requires the consent of all remaining EAC countries and clear provisions of how a disruption of the EAC can be nonetheless avoided.

3 Further factors impacting regional (EAC) and intra-African trade

Kenya is a key player in fostering several elements of regional integration within Africa. Note that it is the biggest economy in the EAC and a main driver of fast integration. As a result, it is not surprising that Kenya placed second in Africa for regional integration. The EAC scores first on the Africa Regional Integration Index, with free movement of people being its most strong characteristic. Kenya's considerable accomplishment in gaining regional and international trade agreements is establishing the country as a significant trading economy. Kenya will need to strike a balance between its overlapping and convoluted connections with the big powers, trading links with EAC neighbours, and interest in furthering the African Continental Free trading Area.

On 8 December 2020, the UK-Kenya EPA was signed. After the UK left the EU, the UK-Kenya EPA replicates the EAC-EU EPA with modest alterations to fit the new bilateral environment. Based on a Memorandum of Understanding, the Agreement was implemented on 1 January 2021 and came into effect on 22 March 2021 after domestic approval. The UK's interactions with third countries are heavily influenced by the EU-UK relationship after Brexit, which brought disruptions and uncertainty but also new possibilities for firms that can adapt. The UK traded under EU rules until 2020 while negotiating a new trade deal. The EU-UK Trade and Cooperation Agreement (TCA) allowed the UK to negotiate new trade arrangements with other countries. Since 31 December 2020, the UK no longer applies EU EPAs with regional ACP groups. The UK has tried to maintain its present arrangements after leaving the EU. It pledged to maintain trade with ACP countries in the 2018-2019 Trade Bill. Thus, it inked continuity agreements with ACP groups and countries such as ESA, CARIFORUM, SACUM, Cameroon, Côte d'Ivoire, and Kenya. Long-term UK-ACP discussions are anticipated, except from continuity agreements that broadly mimic EU-ACP EPAs. In terms of global trade involvement, the United Kingdom and Kenya vary significantly. In 2020, the United Kingdom was the world's 12th biggest exporter and 5th largest importer of products (2.30 % of global total exports and 3.56 % of global total imports, respectively). Its total goods exports were USD 403.9 billion, while total merchandise imports were USD 632.6 billion, and commerce accounted for 31.2 % of its GDP of USD 2.71 trillion. At the bilateral level, the UK was Kenya's 13th greatest source of imports (1.77 % of total imports) and 4th largest export destination (7.79 % of total exports) in 2020. Kenya, on the other hand, is a tiny supplier and consumer of commodities for the UK. It was the UK's 47th biggest importer and 50th largest export partner in 2020, accounting for 0.1 % of total imports and exports.

Regarding Kenya’s trade relations to the US (Omolo, M., Jairo, S., Wanja, R. 2016), Presidents Donald J. Trump and Uhuru Kenyatta established the U.S.-Kenya Trade and Investment Working Group in August 2018 to investigate ways to strengthen trade and investment ties between the two countries and set the foundation for a stronger future trade relationship. Under the Working Group, the US and Kenya agreed to

[9] On Economic and Development Cooperation, the original agreement with the EAC has been largely preserved, while some changes were needed to align the outdated text to the current EU development cooperation programming. An Annex, which is specific to Kenya and the EU, has been added to embody the changes to the regional agreement text. The Economic and Development Cooperations parts confirm the EU’s ambition to support Kenya in its implementation of the agreement as part of the overall EU-Kenya cooperation and within the framework of the current EU cooperation instruments.

cooperate in the following areas: exploratory talks on a future bilateral trade and investment framework; maximizing the remaining years of the African Growth and Opportunity Act (AGOA); strengthening commercial cooperation; and developing short-term solutions to reduce trade and investment barriers. The Trade and Investment Working Group convened its first meeting in April 2019 in Washington, and its second meeting in November 2019 in Nairobi. The US and Kenya began negotiations for a high-standard agreement to complement regional integration efforts within the EAC and AfCFTA in July of 2020. The governments then announced in July 2022 that they would begin negotiations for a "Strategic Trade and Investment Partnership (STIP)". Under STIP, the governments will pursue enhanced engagements to craft high-standard commitments in a broad range of areas in an effort to increase investment, promote sustainable and inclusive economic growth, benefit workers, consumers, and businesses (including micro, small, and medium-sized enterprises), and support African regional economic integration. In addition, the United States and Kenya reached an agreement on a Strategic Cooperation Framework to provide technical assistance and trade capacity building in Kenya with the goal of maximizing Kenya's utilization of the AGOA trade benefits for the remaining years of the preference programme, which is set to expire in 2025. Additionally, the Framework will support the growth and competitiveness of critical agricultural value chains in Kenya.

The US-Kenya STIP was established in the context of China's rapidly expanding trading engagement with Kenya. Kenyan imports from China have increased nearly thirty-fold since 2000, from USD 106 million in 2000 to USD 3.5 billion in 2020. Kenya's trade imbalance has expanded in tandem with these trade volumes. The country's overall trade deficit as of 2020 is estimated to be approximately USD 9.7 billion, with China accounting for almost one-third of this imbalance (USD 3.3 billion). Kenya's primary exports to China between 2015 and 2019, for example, were titanium and zirconium ores and concentrates (approximately 60 %), vegetable textile fibers (4.9 %), and petroleum oils (4.7 %). Its top imports include electrical machinery and equipment (19 %); nuclear reactors, boilers, machinery, and mechanical appliances and parts (18 %); iron and steel (7 %); and plastics (6 %). Closing the trade imbalance is a repeating issue subject that comes up often in the two countries' diplomatic interactions. It was one of the announcements made at the 2021 Forum on China-Africa Cooperation.

China and Kenya signed six bilateral trade agreements in January 2022, with the goal of reducing tariffs and other trade and nontrade obstacles. These agreements guaranteed Kenyan producers access to China's enormous market and established norms to enhance bilateral commerce, particularly avocado and fisheries product exports. The two countries agreed to collaborate on Information Communication and Technology (ICT) to boost digital economy in Kenya, continue in the development of regional transport for economic hub on Belt and Road Initiative (BRI) and creating market of Kenyan agricultural products.

Kenya has strong and expanding commercial links with other major countries in addition to the EU, the US and China. Kenya exports refined petroleum, tea, and meat to the UAE. The UAE and Kenya announced the kick-off of trade talks in July 2022 to launch a comprehensive economic cooperation agreement aimed at reducing trade obstacles between the two countries. The UAE intends to invest in Kenya's critical economic sectors, such as tourism and agriculture, and will increase non-oil trade and investment as a result of this deal.

The EU-US Trade and Technology Council (TTC) meeting of 5 December 2022 concluded that both parties will support secure and resilient digital connectivity as well as information and communication technology and services (ICTS) supply chains in third countries. It should be obvious that this initiative is not only a matter of transatlantic altruism, but also aims to prevent "untrusted" providers from controlling the infrastructure of countries of common strategic interest between the EU and the US. The TTC decided to focus first on Jamaica and Kenya. Regarding the latter, the joint transatlantic initiative seeks to support the implementation of Kenya's 2022-2032 National Digital Masterplan by expanding school connectivity in Kenya and bridging gaps in last-mile connectivity. First efforts should include a study on scalable solutions to expand school connectivity in Kenya, building fiber optic connections to schools in remote areas, a policy roadmap for affordable, secure, trustworthy, and meaningful connectivity, and training options to develop the next generation of digital professionals. In addition, the EU and the US announced to provide technical assistance to help Kenya update its Information and Communications Act and 5G Strategy in line with the principles set for high-quality global infrastructure projects at the TTC meeting in Paris-Saclay, France, on 16 May 2022.

As the EPA is expected to reinforce Kenya's key and pioneering role within the EAC, the TTC initiative not only holds an opportunity for further "model development" of Kenya within the region. It is also possible that such a transatlantic-sponsored "boost" to its ICTS infrastructure could expose Kenya to accusations of further decoupling from its surrounding partners. To prevent such debates about envy and competition from arising in the first place, we believe it would be advisable to use EU-specific instruments such as the Global Gateway Initiative to promote connectivity in Kenya's neighbouring countries and thus – in analogy to the EU's TEN projects – to promote an EAC-specific ICTS structure.

4 Conclusions and recommendations

According to Article 36 of the Cotonou Agreement, the overall purpose of EPAs is to "promote the smooth and gradual integration of ACP countries into the world economy." Because EPAs are negotiated with regional blocs rather than individual countries, they are intended to promote regional integration, which is deemed essential for addressing development and modernisation issues more effectively. As the EAC is already the most integrated regional economic community in Africa, disagreements among EAC stakeholders regarding the EU-EAC EPA resulted in a standstill. The EU-Kenya EPA aims at implementing the provisions of the EU-East African Community (EAC) EPA that was concluded in 2014 and will be open for other EAC countries to join. Bilateral implementation is based on a decision of the East African Community from 2021 to let individual Members go ahead under the principle of "variable geometry". The EU invites – as agreed with Kenya – the other EAC Partner States to join the new agreement. In fact, the regional dimension with the EAC is highly valued by the EU. The bilateral implementation of the EPA does not introduce any changes into the intra-EAC trade relations, nor does it interfere with the regional integration process of the EAC. The EPA ensures that Kenya's exports have duty free and quota free access to the EU market, also benefitting from the asymmetric opening of markets under the EPA.

As EPAs are international trade agreements, the European Parliament's approval is necessary for the Council to adopt the EPA. The EU-EAC EPA dossier (2016/0038(NLE)) is the responsibility of the Committee on International Trade (INTA), and the Committee on Development (DEVE) must provide an opinion. DEVE has drafted an opinion urging INTA to recommend that Parliament endorse the conclusion of the EU-EAC EPA despite reservations "regarding Parliament's involvement in the monitoring process." INTA has not yet recommended a course of action. In its previous resolutions regarding EPAs, the Parliament has invariably insisted that their primary focus be on sustainable development, poverty reduction, and regional integration. Parliament also demanded the participation of ACP national parliaments in the drafting, monitoring and implementation of EPAs. It has urged the Commission to include development benchmarks and safeguard mechanisms to monitor and counterbalance the opening of ACP markets to EU products. In a resolution on the EU-ACP EPA adopted on 25 March 2009, the European Parliament stated that the EPA's liberalisation plans "need to be regularly assessed and revised if they prove too cumbersome for implementation" and that "trade commitments must be accompanied by an increase in support for trade-related assistance." Parliament also demanded greater ACP participation in the surveillance and administration of the EPA.

A recent EPRS briefing (EPRS 2022) summarised the perspectives of interested stakeholders on the EU-EAC EPA. Accordingly, EAC private-sector representatives support the EPA, albeit with sector-specific variances. Concerning agriculture, small-scale farmers are most concerned about EU competition: the EU has committed not to subsidise agricultural exports to the EAC, but this does not extend to the EU market, where subsidised EU products would compete with EAC imports. The EAC's private sector demanded a larger role in the negotiations. Due to the potential loss of “Duty-Free Quota-Free” market access in the EU, Kenyan private sector organisations, particularly the Kenya Flower Council, were reportedly the most apprehensive about the EU-EAC EPA. The International Trade Union Confederation (ITUC), ITUC-Africa, and the European Trade Union Confederation (ETUC) concluded in an October 2018 joint statement on EPAs with African regions that EPAs risk falling short on a number of anticipated commitments: They cautioned against the absence of references to labour rights and an evaluation of the effect of EPAs on women workers. In addition, they expressed concern that the rendezvous clause on investment and services could bring African states to privatise their public services. The EU's threat to revoke Kenya's preferential market access if it does not sign and ratify the EPA was also criticised by unions.

In light of the EPA's content, the unions' concerns appear to be largely unfounded. Our evaluation is predicated on the premise that the published EU proposal for the TSD chapter has been substantially realised[10]. On the other hand, considering the published agreement’s text, it remains unclear whether the concerns of trade unions regarding the privatisation of public sector services and services of general interest will be realised.

Regarding the impact of the EPA on Kenya's integration into the EAC and the African Free Trade Association (AfCFTA), there is little political evidence to suggest that the Kenyan government intends to withdraw from existing regional organisations. Kenya and Ghana were the first to ratify and deposit the AfCFTA's ratification instruments. When completely implemented, the AfCFTA will cover an estimated 1.3 billion people with a potential revenue of approximately USD 3.4 trillion across the African continent. Under the AfCFTA agreement, cross-border taxes on 90 % of goods are supposed to fall at the latest by 2030, although the tariffs on numerous products will be phased out even earlier. As of July 2022, 54 countries have signed the agreement and 43 have ratified it, allowing members to begin the implementation phase. Kenya was designated as one of seven countries (alongside Egypt, Ghana, Cameroon, Mauritius, Rwanda, and Tanzania) to pilot the AfCFTA's implementation in June 2022. Kenya released its AfCFTA implementation strategy (2022-2027) in August, with the objective of consolidating, diversifying, and expanding exports to African markets and ensuring that its manufacturing sector achieves annual real value-added growth of 5 %. Fish, medicine, fertiliser, paper, industrial chemicals, livestock, fruits, vegetables, spices, handicrafts, mining, and oil and gas are the export products targeted by the implementation programme. Priority service exports consist of professional services, tourism, education, healthcare, financial services, information, and communications technology (ICT), cultural and sporting services, and transport and logistics. Kenya began exporting under the programme as early as October 2022, sending Ghana its first shipments of locally produced car batteries and tea.

Tariffs are only one of the numerous obstacles to trade in Africa. Logistics is another significant obstacle. The first shipment of batteries under the AfCFTA regime took six weeks to travel from the port of Mombasa to Tema, near Accra, since the shipment passed through Singapore! To date, there is not enough commerce to justify the use of larger ships to transport products directly from one African port to the next. Currently, it is simpler for businesses to transport their products to a transshipment port in Asia or Europe, where they can obtain sufficient cargo bound for another African region. It is for these reasons that three-quarters of Africa's products continue to be transported on roads, which are frequently poorly constructed. This, according to the African Development Bank, increases the expense of logistics on the continent,

[10] This agreement with Kenya contains a robust and comprehensive chapter on trade and sustainable development reflecting a high level of ambition. It incorporates the vast majority of the outcome of the EU’s TSD review. The agreement includes for example strong and binding provisions on labour standards, climate change and biodiversity, gender equality. Furthermore, it prevents both parties from lowering labour and environmental standards to attract trade or investment. These commitments are binding and enforceable. Therefore, his agreement has a high transformative potential.

which can increase the price of African goods by up to 75 %. Should the EU wish to use the EPA to promote the economic and political integration of the EAC, the AU, and the AfCFTA, initiatives under the Global Gateway Program that modernize interregional and transcontinental infrastructures in a sustainable manner would be appropriate.

Despite Kenya's achievements in advancing its trade relations with the rest of the continent, the situation is not ideal. Kenya's export potential is diminished by nontariff barriers in the EAC and on the African continent, and Kenya's gains from the AfCFTA may be thwarted. In addition, a recent analysis of the nature of Kenya's imports revealed that the country continues to rely significantly on other regions of the globe for capital and intermediate goods (Ouma 2021). Due to the importance of capital and intermediate products to economic growth and industrialization, Kenya's imports will continue to be dominated by other regions. This external dependence threatens the AfCFTA's objectives of expanding intra-African trade and deepening integration. However, this should not be a reason for slowing down cooperation between the EU and the EAC. As countries like Kenya integrate into the global economy and are increasingly exposed to influences from systems competing with the EU (China, USA), it cannot be in the strategic interest of the EU to withdraw.

Finally, we would recommend the European Parliament to intensify the cooperation with the Kenyan Parliament as well as the parliaments of the EAC states within the framework of the ratification of the EPA. In any case, the EPA’s fabric of governance seems to assign a special role only to the consultative function of civil society organizations. As much as this upgrading of the civil society component in EU free trade agreements is to be welcomed, the rather deficient democratic control of the EPA by democratically elected, representative bodies is also to be condemned. In any case, in our view, there would be nothing to prevent the EPA parliaments from making more extensive use of their autonomous right of self-organization and creating an independent, inter-parliamentary consultation and control structure for themselves, independent of any assurances from the EPA's executive bodies.

List of acronyms

ACP	Africa, Caribbean and Pacific Group of States
AfCFTA	African Free Trade Association
AGOA	African Growth and Opportunity Act (US program)
AU	African Union
BIT	Bilateral Investment Treaty
CARIFORUM	Caribbean Forum
CET	Common External Tariff
COMESA	Common Market for Eastern and Southern Africa
CPA	Cotonou Partnership Agreement
DFQF	Duty-Free and Quota-Free (market access)
EAC	East African Community
EACJ	East African Court of Justice
EBA	Everything but Arms
EPA	Economic Partnership Agreement
ESA	Eastern and Southern Africa
ETUC	European Trade Union Confederation
FDI	Foreign Direct Investment
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GSP	Generalised System of Preferences
ICSID	International Centre for Settlement of Investment Disputes
ICTS	Information Communication Technology Services
ITUC	International Trade Union Confederation
LDC	Least Developed Countries
LGBTQ	Lesbian, Gay, Bisexual, Transgender and Queer
MAR	Market Access Regulation
MFN	Most Favoured Nation (clause)
NTB	Non-tariff barriers to trade
RoO	Rules of origin
SACUM	Southern African Customs Union
SPS	Sanitary and Phytosanitary Standards
STIP	Strategic Trade and Investment Partnership (US-Kenya)
TCA	EU-UK Trade and Cooperation Agreement
TEN	Trans-European Network
TSD	Trade and Sustainable Development
TTC	EU-US Trade and Technology Council
TwIP	Treaties with investment provisions
UNICITRAL	United Nations Commission on International Trade Law
VAT	Value Added Tax
WTO	World Trade Organization

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