INTEGRATION, CROSS BORDER TRADE AND DISPUTE SETTLEMENT BETWEEN KENYA AND TANZANIA

BY

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DECLARATION

I hereby declare that this is my original work and has not been submitted to any other college, institution or university other than the United States International University Africa in Nairobi for academic credit. All materials herein from other sources are dully acknowledged.

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DEDICATION

I dedicate this research project to my amazing, loving and supportive family without whom this project would not have been possible. I also dedicate this research project to the Almighty God.
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LIST OF ABBREVIATIONS

UN- United Nations
EAC – East Africa Community
ADR – Alternative Dispute Resolution
WTO – World Trade Organization
SACU - Southern African Customs Union
GDP – Gross Domestic Product
EACCU – East Africa Community Customs Union
CBT – Cross Border Trade
ROW – Rest of the World
EABC – East African Business Council
FDI – Foreign Direct Investment
KNBS – Kenya National Bureau of Statistics
ICJ – International Court of Justice
OSBP – One Stop Border Post
KEPHIS – The Kenya Plant Health Inspectorate
KRA – Kenya Revenue Authority
KPA – Kenya Ports Authority
TRA – Tanzania Revenue Authority
KEBS – Kenya Bureau of Standards
TBS – Tanzania Bureau of Standards
SCT – Single Customs Territory System
ABSTRACT

The main objective of this study was to examine integration, cross border trade and dispute settlement between Kenya and Tanzania. It was guided by three specific objectives which include, to examine the nature of cross-border trade (CBT) and disputes between Kenya and Tanzania to investigate the mechanisms in place to resolve these disputes and to recommend other mechanisms that could be used to resolve the existing disputes. Decisively there is a significant trade between Kenyan and Tanzania with a lot of commodities being exchanged across the border. This trade involves product commodities as well as human capital. Kenya exports more than it imports from Tanzania with a significant margin of 34.21%. Trade between Kenya and Tanzania has been steadily decreasing at a rate of 7.66% for exports and 0.66% for imports. Trade disputes between Kenya and Tanzania range from, trade confrontation over the testing of commodities to job loss to foreigners as highlighted by the xenophobic remarks by one of the MPs in Kenya. Other disputes include a ban by Kenya on liquefied petroleum gas from Tanzania, which saw Tanzania retaliate by blocking Kenyan milk and its products, and cigarettes. There are also disputes experienced between pastoral communities of Tanzania and those from Kenya as well. Some of the diplomatic strategies that the Kenyan government and Tanzania have taken to address the cross border disputes include negotiation and delimitation and demarcation of border lines.
CHAPTER ONE

1.0 INTRODUCTION

This study is informed by the circumstance of Kenya/Tanzania relations that seem to deteriorate by each passing day. The two states have faced off in a number of issues on the matter of their integration into the East Africa Community. This has especially been manifested in trade dispute between the two states. Recently a Kenyan Member of the National Assembly was caught in public threatening Tanzanian traders in Kenya accusing them of stealing jobs and business from Kenya. The Tanzania government authorities on the other hand have more than once confiscated Kenyan products destined for the Tanzania market. The Tanzania authorities have even gone as far as destroying some of the products from Kenya.

Kenya and Tanzania continue to be in trade scuffles disregarding the benefits that their cooperation in the region could have on the two countries economy and development. For instance, Tanzania declined to cooperate with Rwanda and Kenya to jointly sign a trade pact with the European Union so as to gain access to the European Union market without having to pay duty fee. Tanzania and Kenya seem to fail to agree on some of the important trade agreements. Even in the EAC Tanzania seems to be reluctant to commit to the EAC with Kenya.

It is important that Kenya and Tanzania cooperate with each other since they share not only border lines but a lot of other things including natural resources. For example, Kenya and Tanzania share a National park, the Masaaï Mara/Serengeti National Park. The Masaaï have settled both in Kenya and Tanzania and despite there being a border between them they are the one community with the same culture and language Lake Victoria is also shared between Kenya, Tanzania and Uganda while the two countries still share the international
waters of the Indian Ocean. This study therefore examined how Kenya and Tanzania have integrated through trade and the disputes that have emanated from this relationship and what strategies have been used to solve the disputes. The study recommended possible strategies that can help these two states successfully end their disputes for their common good.

1.1 Background Information

Regional integration enables countries overcome divisions that hinder the movement of goods, services, capital, people and ideas across the states. Kenya and Tanzania are neighbouring countries in the East Africa region that have partnered in trade across their borders which has enjoyed some period of success as well some challenges that required intervention. Integration is a process that may lead to a condition in which a group of people has attained within a territory a sense of community and of institutions and practices strong to assure, for a long time, dependable expectations of peaceful change among its population (McIntyre, 2005).

According to Hass (1958) integration is a process whereby political actors in several distinct national settings are persuaded to shift their loyalties, expectations, and political activities towards a new centre, whose institutions demand jurisdiction over the pre-existing national states. This study is a subject of integration with respect to cross border trade, which refers to the the movement of goods and services through international land borders within a reach of distance legally defined (Gulte, Mohammed, Negash & Sisay, 2016).

Cross border trade is a significant economic activity, which contributes to the growth of various economies in the developing countries (Dhliwayo, 2017). Ama, Mangadi and Ama (2014) argued that even though cross border trade addresses issues significant to the
livelihood of people, its role to various economies seems to be ignored in mainstream trade policies and institutes, which has undermined its visibility and profitability. However, according to Chiwara and Ndiaye (2010) if cross border trade is developed it could empower business and enhance intra-regional trade in Africa and thus promote regional integration. These sentiments were shared by Soontiëns (2002) who observed that trade mainly between other members of SADC and South Africa, is a fundamental stage for social and economic growth and regional integration. Similarly, Dhliwayo, (2017) argues that cross border trade involved in physical movement of goods as well as individual traders enhances social and economic interaction.

East Africans continue to enjoy close ties with their respective East African neighbours, that is, Kenya, Tanzania, Uganda, Burundi and Rwanda. The formalization of this close ties through (eventual) political integration into a single federation is already underway through the East African Community (EAC, Treaty establishing the east african community, 1999). In this Community, Burundi, Kenya, Rwanda, Tanzania, and Uganda already have a unitary customs union, this means they are moving towards a single currency (the East African shilling) and eventually a single political state as per the East African Community report of 2014. The same report also notes that, this future Federation of East Africa or United States of East Africa, at 1.82 million square kilometres, will be the third largest African nation (and 17th largest in the world) by area with 135.4 million people, the second largest African population (and the 10th largest population in the world), after Nigeria and finally, at USD 85 billion, the 7th richest African economy, after Nigeria, South Africa and Egypt (EAC, 2014). Given that the mandate for integration of these EAC states rests on its citizens through a referendum, understanding East African citizens' perceptions toward East African integration is very important.
A glance through history, highlights that the people and countries of East Africa have traditionally been bound by commonalities, colonial heritage, cross-border affinities and common culture and language. Extensive migration and barter trade was a feature of economic and social life that predated colonization (Ogallo, 2010). A longstanding indigenous pattern of (informal) cross-border trade has continued to thrive in the borderlands of East African nation-states. Along with that, formal trade has been taking place between the two border countries. In today's East African Community (EAC), cross-border trade (formal or informal) is lauded for expanding economic opportunities that draw from regional advantages (Khadiagala, 2010).

Renewed interests in the East African regional integration arrangements have been heightened over the last decade in response to the global economic climate. The current EAC framework accentuates a move away from elite-driven development (a strategy of previous failed East African integration efforts) towards a process which is `people-centered' (EAC 1999). A referendum mechanism has been highlighted in this regard, to gain citizen consent of political federation, a public referendum in the three partner states would appear the most natural policy choice (Wako, 2004). While mobilization of a ballot vote is yet to occur, citizens are to be directly consulted to legitimize the EAC's future political agenda, underlining the importance of an investigation of citizen support.

While cross-border trade (CBT) continues to be lauded for its economic development between Kenya and Tanzania as well as in East Africa, border dispute has found its way in the trade. Players in the dispute involve the regimes of the countries and the people living at the border and therefore much of the effects of the dispute is experienced by the bordering communities who in one way or another would either be traders or livestock keepers.
Formal trade involves consultations and custom administration with representatives from local, national or regional trading as well as transport communities. Most of the disputes that arise from such trade are government related though the consequences of it are felt by the locals who produce the goods as well as the consumers of the products as the dispute limits the trade. On the other hand, informal cross border trade simply involves exchange of goods and services among the locals living in the border areas of Kenya and Tanzania. Border dispute in the informal trade has and continues to affect the people living at the border, who are either traders or consumers or both as well as cattle keepers whose work and livelihood involves moving around with cattle in search of green pastures (Business Daily 2018).

Even though debate over the EAC is paramount in partner states, literature on attitudes towards East African regional integration is extremely limited. It is commonplace to acknowledge the occurrence of East African migration, cross border trade and personal travel. Building on this observation, this research study has considered a borders perspective on understanding the integration of the East African region despite the challenge of cross border disputes. The research study narrows down to study the cross-border dispute between Kenya and Tanzania and how such dispute has affected the integration of the two states with the view of looking at the best method to addressing this pressing issue.

1.2 Statement of the Problem
There have been several instances of cross border dispute between Kenya and Tanzania ranging from Kenyan cattle being confiscated by Tanzanian authorities, increase in tariffs by the two states among others. According to (BusinessDaily , 2018), trade relations between Kenya and Tanzania were reduced due to both tariff and non-tariff barriers. The
increase in tariff barriers led to protests and blockade of goods by both sides at the Namanga border. This is despite the fact that both states are signatories of the EAC common market protocol that advocates for free movement of goods and services as well as capital and labor within the bloc. According to African research online (2017), a Tanzanian court auctioned cows belonging to Kenyan Maasai pastoralists, an action that caused tension between the two countries’ borders. Kenya also banned Tanzanian tour vans from accessing the Maasai Mara Game Reserve on the claims that the Tanzanians had restricted Kenyan operators from The Serengeti National Park.

It is further noted that Tanzania and Kenya compete for their neighbours’ imports and exports and for the East African safari and beach holiday markets (Cooksey, 2016). Cooksey (2016) argues that while ideological and economic differences could have led to the collapse of the initial EAC, Tanzanian fears of Kenyan economic dominance are the main cause of the slow pace of economic integration in the revived EAC. This study therefore examined the cross-border trade between Tanzania and Kenya and how the disputes arising have been settled and how this has affected integration between the two countries.

1.3 Research Objectives

The main objective of this study was to examine integration, cross border trade and dispute settlement between Kenya and Tanzania.

Specific objectives

1. To examine the nature of cross-border trade (CBT) and disputes between Kenya and Tanzania

2. To investigate the mechanisms in place to resolve these disputes.
3. To recommend other mechanisms that could be used to resolve the existing disputes.

**Research questions**

1. What is the nature and size of cross-border trade (CBT) between Kenya and Tanzania?
2. What are the mechanisms in place in resolving these disputes?
3. Are there other recommendations that can be applied in resolving these border disputes?

**1.4 The significance of the Study**

The founding members of the EAC as well as the countries which joined later formed the EACC with the objective of improving the welfare of their people through increased intra-regional trade. The actual collapse of the old EAC was motivated by diverse levels of economic development, which destined Kenya taking a lion’s share of the EAC benefits, with the rest of the Partner States only importing from Kenya. This feeling of superiority made Kenyan officials question the significance of the East African Railways and Harbours being headquartered in Dar-Es-Salaam, while they had functional ministries in Kenya in charge of these sectors. After eleven years of integration and six years of implementing the EAC protocol, it is important to assess its impact on cross border trade. Cross-border trade (CBT) remains the dominant sector in the economies of Kenya and Tanzania in terms of its contribution to the GDP, employment, food security and poverty reduction.

This study focuses on cross border trade and dispute between Kenya and Tanzania and how such disputes have affected the economy of the two countries negatively by inhibiting smooth flow of trade. Insecurity due to dispute has resulted into a strained flow of goods and services between the Kenyan and Tanzanian borders hence to a greater extent killing the objectives of East African Community as a political and an economic bloc. Due to these
reasons, this research study indulged into details of the border dispute and how its strained movement and flow of goods and services has been a hindrance to the East African Community economic development of the region.

This research study provided information on the effects unstable borders have had on trade. The study also sought to provide a solution to the existing border problem to ensure that trade activities, facilitating the smooth flow of goods and services are realized within the Kenya and Tanzanian border.

1.5 Scope of Work
The research study investigates the cross-border trade (CBT) and dispute settlement between Kenya and Tanzania from 2010-2018. The choice of the year of study was influenced by the revival of the EAC in the year 2009 after it had collapsed in 1977, eleven years after it was formulated. Cross-border dispute affects cross border trade among the countries involved. Once trade is affected, then the political economy of the two regions also stands negatively influenced. The study therefore looks at the effects of cross border dispute on trade between the Kenyan and Tanzanian borders.

1.6 Limitations of the Study
The study faced several challenges. There was lack of information from most sources of secondary information such as articles, journals, books and magazines. The information obtained was mostly from newspapers and it was not sufficient.

The EAC office in Nairobi which was the recommended organization to get the information was reluctant to share any information they had. The officials who worked there seemed to not have an idea of the topic of study. I was finally advised to check the website of the Kenya National Bureau of Statistics (KNBS) which did not have the information the study required.
The governmental department involved in national and regional trade, the State department for Trade, said they did have the information and it usually takes a process to get the information.

Most of the institutions with the right information ended up delaying the information. I was forced to rely on the limited literature that was availed and the online content together with information contained in print material in the library.
CHAPTER TWO
LITERATURE REVIEW

2.1 Introduction
This chapter presents a review of literature on the subject of study. It also presents the theoretical review. The chapter presents literature on regional integration and cross border dispute. The study is guided by the regionalism theory.

2.2 Regional Integration
Regional integration is the process through which two or more countries agree to work closely together or cooperate to achieve wealth peace and stability (Carleton, 2019). The process of integration involves written agreements that describe the areas of cooperation in detail and the bodies involves in coordinating the whole process. Integration can either be economic integration whereby countries agree to improve cross-border trade by removing trade barriers such as tariffs, quotas and border restrictions between them (Gichangi, 2012). A good example is the north America free trade agreement that reduced trade barriers between Mexico, Canada and the United States (Carleton, 2019). Political integration is where the economies of the countries cooperating becomes integrated into a single market which leads to adoption of common policies in social policies and common political institutions (World bank, 2012). The cooperating nations may be so integrated to the point that they merge their armies and share the same foreign policies as in the case of united states of America.

The East African Community (EAC) is an economic regional cooperation that has been in existance since 1917 when the first custom union was formed between Kenya and Uganda and Tanganyika joined later (Munyao, 2013). The attempts were made to create the east African community but it was hindered by the failure of the three nations to agree on some
economic and political issues. According to Gichangi (2012) the signing of the treaty by Kenya, Uganda, Tanzania Rwanda and Burundi to re-establish the EAC in the year 1999 and the treaty came to force in the year 2000. According to the World Bank and IFC (2012) the EAC is a regional block that was formed with the aim of strengthening and improving cooperation between the states. Munyao (2013) observes that various steps taken to improve cooperation include improved communication and easing of travel restrictions, harmonization of tariffs and increased cooperation among security forces.

Gichangi (2012) asserts that the EAC has allowed the east African states to improve their interaction and trade between them and the integration seeks to achieve common market, monetary union and eventually become a political federation. Currently, the EAC has managed to effect common markets and custom unions with the establishment of the duty-free trade between partner states (Gichangi, 2012). The countries in the union enjoy common custom procedures and duty-free trade and common external tariff (World bank, 2012). The common market protocol established a single market between partner states allowing free movement of goods, labour and capital within the region (World Bank and IFC). Some of the requirements of the integration includes harmonization of domestic policies and regulation in the region to ensure they comply with the protocol. Restrictions have been removed on the free movement of factors of production (World bank, 2012). The adoption of the monetary union would help to bring a single currency in the region. A political federation would involve having a centralized parliament and president for the region.

Regional integration has been found to be effective in reducing inefficiencies while raising productivity among the partner states (Guo, 2011). However, some countries in such communities have resulted to unhealthy competition leading to distrust among the
countries. This phenomenon is more common in developing countries than it is in developed ones. Gichangi (2012) observes that regional integration in east Africa has experienced positive effects from the flow of trade between the member states leading to expansion of trade between these five economies. World Bank (2012) notes that concerns have been raised by Tanzania and Uganda that Kenya is likely to benefit more from preferential trade liberalization due to its high export share in the region.

EAC integration has recently been reborn and faces a lot of challenges due to disagreements between the member countries especially Tanzania and Kenya which have proven to be the leading economies in the region. The two seem to be challenging each other for the top position. According to Cooksey (2016) Kenya, Uganda and Rwanda are more devoted to fast-tracking integration in the region than Tanzania. Cooksey (2016) points out some instances where Tanzania has undermined the integration of the EAC, in one instance in 2011, Tanzania declined to sign an EAC Council of Ministers’ report on political integration unless the issue of land ownership was scraped off and clauses on military cooperation revised. More recent Ubwani (2014) observed that Tanzania declined to participate in the single tourist visa arrangement with Kenya, Uganda and Rwanda, alluding to security worries.

2.3 Economic Integration

Economic integration is a two-stage process that entails, one the removal or dilution of institutional barriers, hence developing incentives for more cross-border movement of goods, services, investments and factors of production. Second, it needs that actors exploit such opportunities to expand economic transactions (Prakash & Hart, 2000). Rugmun. Collinson and Hodgetts (2006) view economic integration as the establishment of transnational rules and regulations that enhance economic trade and cooperation among
countries. They observe that at one extreme, economic integration would result in one worldwide free trade market in which all nations had a common currency and could export anything they wanted to any nation. At the other extreme would be a total lack of economic integration, in which nations were self-sufficient and did not trade with anyone.

According to Salvatore (1987) economic integration refers to the commercial policy of discriminative reducing or eliminating of trade barriers among the member states, Salvatore points out that the degree of economic integration ranges from Preferential. Trade arrangements to Free Trade Areas, Customs Union, Common Market and Economic Union. McIntyre (2005) views integration as a process that may lead to a condition in which a group of nations within a territory has attained a sense of community, institutions and practices strong enough to assure, dependable expectations of peaceful change among its population. Hass (1958) writing on the unity in Europe, defined integration as a process whereby a political actor in several distinct national settings are persuaded to shift their loyalties, expectations, and political activities towards a new centre, whose institutions demand jurisdiction over the pre-existing national states.

The concept of economic integration is attractive but there are many implementation problems. It requires that the participants agree to surrender some of their national sovereignty such as the authority to set tariffs and quotas (Rugman, Collinson & Hodgets, 2006). Yehouc (2005) writing on the European Union identified stages that an integrative process may follow to reach the highest level of integration. The progressive removal and ultimate eradication of economic harrier, between states is often a lengthy and winding process, whose rhythm is determined by economic as well as political bargaining and compromise.
In Africa integration efforts have failed to bear satisfactory fruit, while other regions have fruitfully used their integration mechanisms to increase their economic welfare, Africa is left behind in respect to GDP growth, per capita income, capital inflows and the overall living standards. This is a challenge across most of the continent, despite the presence of a number of policy plans and striking visions such as the EAC (Qobo, 2007). One of the reason for the ailing integration among African countries is the approach taken in pursuing integration. It is observed that the experience of integration in Africa has little resemblance to the traditional concepts on regional integration, which is conceived as a sequence of establishing common markets and customs unions prior to proceeding to joint currency and complete integration of factor markets, ultimately resulting in a possible political union (World Bank, 2018).

### 2.4 Cross-Border Trade

Trade is the voluntary exchange of goods and services and a mechanism that allows trade is called a market. According to Samuelson, (2006) trade is a practice that is traced back to ancient times where people exchanged goods and services for other goods and services, referred to as barter trade. Presently, modern traders generally negotiate through a medium of exchange, mostly money. Trade is as old as mankind, although it has evolved over the years with civilization from the simple exchange of goods and services between families, communities and later countries on small scale (barter trade) to a complex and sophisticated modern day global trade among nations and regional trading blocs, governed under national, regional and international treaties. Trade plays an important role in global poverty reduction (Kathuria, 2018). Kathuria (2018) notes that some of the most successful countries have developed strong trade relationships with their neighbours so as to benefit from trade.
Cross border trade is the exchange of goods and services between states. It is a feature of international relations that focus on how states interact in the international arena (Kimunyi, 2014). According to Kimunyi (2014) no single state is self-sufficient and therefore each state has to interact with others in order to meet a need which could include access to a resource which only the other state has natural capacity or otherwise access to but has the potential to share with others at an agreeable rate or in return of that which the other party has reciprocal advantage. It is noted that in the course of the last two centuries trade has developed significantly and this has changed the entire global economy (Ortiz-Ospina, Beltekian & Max, 2018). According to Kimberly (2015) international trade contributes about 27% of the global economy.

Trade transactions include both goods, tangible products that are physically shipped and services, intangible commodities, such as tourism and financial services. The production chains for these goods and services are becoming increasingly complex and global (Ortiz-Ospina, Beltekian & Max, 2018). Ortiz-Ospina, Beltekian and Max (2018) note that recent estimates, shows that around 30% of the value of global exports comes from foreign inputs. They argued that most of the trade theories concentrate on sources of comparative advantage. The theories argue that all nations can gain from trade if each specializes in producing what they are relatively more efficient at producing, based on their strengths. The empirical evidence shows that comparative advantage is indeed relevant, but it is not the only force driving incentives to specialization and trade.

Cross border trade has also some informal trade and this is referred to as informal cross-border trade (ICBT). The informal cross-border trade involves legally produced goods and services that escape the state regulatory framework, thus avoiding certain tax and regulatory burdens, hence fully or partly evading payment of duties and charges. Such trade includes
those which pass through unofficial routes and avoid customs controls, as well as those that pass through official routes with border crossing points and customs offices yet involve illegal practices (Ama et al., 2013).

In cross border trade, the national government has a responsibility to ensure that its citizens have access to values that are available in the international market and also protect local market infrastructure so that imports do not kill the local industry. This is especially true of the modern market economy which decentralizes power and thus requires less coercion of individuals than do other types of economy. Governments must coerce if markets are not allowed to allocate people to jobs and products to consumers (Kimunyi, 2014). Every nation therefore seeks to allow and facilitate access to goods and services which are not available locally for the good of the nation and this can only be only be realized through cross border trade. Cross border trade is essential to achieve the gains that international specialization makes possible. Trade allows each individual, region, or nation to concentrate on producing those goods and services that it produces relatively efficiently, while trading to obtain goods and services that it would produce less efficiently than others (Kimunyi, 2014).

Generally cross border trade between in East and most of Africa is conducted by small scale quasi-professional traders including women, who use various means to move small quantities of goods across national frontiers. Border areas are traditionally considered as disadvantaged and low opportunity regions. The geographical coordinates of such areas are expected to form a low competitiveness profile for one or more of the following reasons: a peripheral location and an isolated position with respect to the economic and political heartland of their country resulting in relatively high transportation costs; limitations to physical flows of commodities, truncated markets, and distorted trade relations; a relatively
poor infrastructure because of their geographical location on peripheral arteries of transport and communication networks; less developed social and business service provision and large differences in legal, administrative, and social welfare systems as well as in language and cultural traditions, which altogether hamper communication and cooperation with regions across the border.

Cross border trade activities, depending on the way they are conducted can be both beneficial and harmful to the economy. In many instances, they help to create employment (formal and informal) especially for the local population close to the border areas. The increased presence of traders and movement of people and goods across borders has certainly created more demand for goods and services and therefore employment for instance in hotels, lodges and restaurants, shops, money changing, etc. In a formal or law-abiding situation (where official procedures are followed by operators) the economy gains through lax revenue.

Where informal trade is conducted using illegal or illicit means, cross border trade can be detrimental to the economy. For instance, the trade can have a distorting effect on prices, with attendant consequences on competitiveness, employment and loss of revenues as goods are sold below normal market prices, thus a source of futile investment. In fact, this underground economies, if significant in magnitude, can make implementation of monetary and fiscal policies difficult. The informal cross border trade refers to the unregistered business activities undertaken across borders based mainly on popular economy. One of the main characteristics of this trade is that it is not mandatory to submit tax returns at the end of each financial year hence not entered in national accounts. It is observed that this form of trade has severe consequences for the country's social and economic development
as it robs the country of much needed revenue, and retards the growth of private sector and flow of investment through price distortion, among other effects.

2.5 Cross Border Disputes

According to Ikome (2012) the poor demarcation of boundaries between nations in Africa is identified as a potent source of political instability and conflict between nations in the region. At some point in time, considerations were made to revise the initial colonial borders but the policy makers refused to agree on the issue. A status quo was elected to avert the possibility of anarchy and chaos that would emerge from boundary contests (Ikome, 2012). However, border conflicts have continued to emerge in the continent in the last century due to the porous nature of borders and lack of proper delimitation and demarcation. According to De Melo and Tsikata (2015) the uneven distribution of resources is another factor that has led to cross border conflicts in Africa making it hard to achieve market integration. Governance related national conflicts have been experienced in horn of Africa, great lakes region and West Africa. According to Guo (2011) countries in Africa tend to neglect the border areas when providing infrastructure and core state services and this has been identified as the main contributing factor to the slow pace in terms of regional integration in Africa.

Oduntan (2015) asserts that tensions and border conflicts are likely to continue occurring in Africa due to a multitude of issues that trouble communities in the region. Some of these include terrorism, cattle rustling, ethnic violence secession movements among others. According to Oduntan (2015) border disputes have been experienced all over the world from the conflict between South Sudan and the Sudan to the conflict between Russia and Ukraine. In Africa cross border disputes have been experienced between morocco and Algeria due to each party accusing the other of harbouring militants and promoting arms
smuggling. Uganda and the republic of Congo has also experienced cross border dispute with regards to the Rukwanzi Island. Okumu (2010) observes that most of these disputes are attributed to inter-boundary resource disputes between the countries due to unmarked boundaries, poor governance and lack of border management.

In cases where countries engage in cooperation with each other, disputes are likely to occur with regards to the shared activities that they engage in (Guo, 2011). In EAC, regional feuds between states threaten to hinder the operations of the cooperation between states. In the recent years, Kenya has experienced various border disputes with other countries in the union such as closure of border which has hindered trade (Sunday, 2019). Cases of Kenyan trucks being held in Uganda for weeks is a good example of the deteriorating trade relations between member states. The main border crossing point between Rwanda and Uganda has also experienced closure as the two states accuse each other of interference in domestic issues. Sunday (2019) notes that the deportation of Rwandan and French top executives from MTN by Uganda on allegation of compromising state security is what prompted the closure of the border with Rwanda citing torture, arrest and disregard of foreign policy conventions by Uganda.

The Migingo Island dispute between Uganda and Kenya is another cross-border dispute between east African states that threaten the cooperation. The issue is about economic resources and sovereignty of the two states which emanates from the failure of the two states to address their border challenges. Wekesa (2010) opines that the EAC has a role of promoting peace and stability between its member states to ensure integration but also instituting mechanisms to address challenges that arise due to shared resources. De Melo and Tsikata (2015) identify that regional integration has been identified as the solution to the many governmental challenges that exist in the east African region. National
consolidation has been given higher priority and this is responsible for the various cross-border conflicts experienced in the region.

Borders have traditionally been understood as physical barriers, separating lines between territorial spaces. While this notion remains at the forefront for geographers, there has been a general trend towards understanding borders as a process, rather than borders as a physical and static construct per se (Newman, 2006). Territory and borders have their own internal political dynamics, creating social, economic and political change, as well as a physical outcome as a result of decision making. This allows for an analysis of an increasingly ‘borderless' world, where there has been a gradual fluidity and permeability in cross-border relations. The role of trans-boundary regions of the European Union and positive cross-border interactions has been a prominent topic in this regard (Kuhn, 2012).

The ‘borderless' world trajectory, however, is only one spatial interpretation upon which borders can be understood. The events of September 11th, 2001 in the United States of America, have brought a paradigm shift to the study of borders, attention has been relocated to the processes through which borders can be more rigidly controlled. To illustrate, the two borders of the United States (US), with Mexico and Canada, have been securitized, making it much more difficult to enter US territory (Gravelle, 2014). The construction of borders is also evident for means of security, for example, as with the case of the separation fence between Israel and Palestine (Newman, 2006).

Thus, borders can be understood as a process on two contrasting trajectories, in terms of invisibility, permeability and coexistence between respective groups, or in terms of a barrier of separation and security. But arguably underlying both borders processes is the reality that ‘borders reflect the nature of power relations and the ability of one group to
determine the lines of separation or to remove them, contingent on the political environment at any time' (Newman, 2006).

The influence of power relations on border processes is particularly prominent in Eastern Africa. Modern borders in Eastern Africa reflect intricate compromises by colonial and post-colonial leaders to moderate populations and achieve growth within specific boundaries. Yet, while post-colonial years saw a gradual acceptance of inherited boundaries as `barriers of security, East African regional organizations have increasingly been drawn upon to manage border problems and influence border permeability. In this sense, similar to `Western-centric' borders literature, there are two dominating spatial under-standings of borders in post-colonial Eastern Africa: borders of security and borders of prosperity (Khadiagala, 2010). Each were explored in turn to suggest implications for understanding attitudes to political federation in East Africa.

Khadiagala (2010) suggests that borders in Eastern Africa are perceived as a `frontier of insecurity' in regions inhabited by pastoralists and nomadic groups where state authorities have attempted to maintain law and order `on the cheap'. Following the creation of colonial boundaries, cartographers exerted considerable efforts to create cross-border economic programs of resource sharing, yet, borderland areas have been considerably marginalized during the post-colonial period. Borderland areas were linked to political and economic centers by military and security means, `to rein in the way-wardness of pastoral existence' (Khadiagala, 2010). Declining state authority in post-independence years, however, has paralleled increasing inter-ethnic disputes in periphery regions over particular resources, particularly land. In addition to the `new scramble' for natural resources, cattle rustling, drug trafficking, human trafficking, gun smuggling and auto theft all feature in the economy
of the borderlands (Okumu, 2010), underlining that border security has been a central factor of border relations over the years.

Declining state authority in Eastern Africa has also inherently brought regional organizations to the fore to improve regional stability and economic growth. Regional arrangements of governance have been perceived as an ‘automatic’ extension of Eastern Africa's shared history, geography and landscape. Ironically, among the reasons for a previous failed attempt towards an East African Community (1967-1977), concerns of sovereignty loss in the newly independent nation-states of East Africa were paramount (Mangachi, 2011). Nonetheless, the reformation of the East African Community in its present form promises borders that are less politically rigid and more permeable to trade and exchange. State authorities (Kenya, Tanzania, Uganda, Rwanda and Burundi) have recognized the economic potential underlying a regional approach, progressively committing to market-orientated economic policies (Kimbugwe, Perdikis, Yeung, & Kerer, 2012).

Khadiagala (2010) suggests that on the basis of regional integration efforts, ‘borderlands of prosperity are emerging in peripheral regions of intense economic and social interactions that build on cultural and geographic proximities’. It is apparent that progress of the East African Community has certainly been met by challenges. Internal political tension in Kenya has stalled economic progress, Tanzanian commitments to an open market are thwarted by lingering socialist ideologies, cross-border tensions in the Great Lakes have affected Uganda's original enthusiasm towards the EAC and further, the poor maintenance of infrastructure across the region has increased trans-action costs substantially. Nonetheless, optimism remains. The East African Business Council (EABC) has been established to promote cross-border trade and investment, the private sector has been
actively involved in the generation of regional policy and further, informal cross-border trade remains a major sector of the economy, contributing an important source of employment and income generation (Kimbugwe et al., 2012).

The East African interpretation of borders as a means of security or economic prosperity implicates two hypotheses concerning citizens' attitudes of further East African regional integration:

1. Citizens who think that the EAC will improve matters of cross-national dispute support the political federation of the EAC.

2. Citizens who think that the EAC will improve the availability of jobs, markets and trading opportunities support the political federation of the EAC.

2.6 Theoretical framework

2.6.1 Regionalization Theory

An understanding for the study of peace and security building by regional integration is drawn from the experience of Western Europe in the post-world War II and the European Union history. The relevance of regional integration to peace and security can be hard to look into because it is both an economical and geopolitical based process (Gravelle, 2014). The understanding of integration used as a means of dispute resolution is different from the classical model formerly employed by experts in the field. It portrays a coordinated effort of members within a particular region in the process of institutionalization of relations that is elite-led working out to preserve individual autonomy and representation (Henrikson, 2000).

The principles highlighted in the membership requirements, political allegiances and solidarity, interdependence, common territorial citizenship and subsidiary define integration. It has also shown significant peace-building effects. An example can be drawn
from the European Union which developed a network of institutions to manage regional interdependence which as a result ensured the irreversibility of post-World War II settlement in Europe. On the other hand, if the European experience is exemplary for integration’s systematic effects of the termination of dispute and a strategy for reconciliation, then the role of EAC must be perceived in a different analytical dimension as it works towards attaining tranquillity in the region (Ogallo, 2010).

Regionalization refers to that process whereby civil societies, governmental policies and the co-operate sector combine resources and share interests to an agreed end regionally unlike the national or global level. The difference in the co-operation is always significant but overlooked. A case in point is the rise of several sub-regional groupings in East Africa through coining of the words “regional” and “functionalism”-the EAC (6 members); the COMESA (20 members); the SADC (12 members); the PTA; the IGAD (6 members). Most of the blocs focus on economic trade except IGAD which works on reducing insecurity and political stability. In the same regard, this study looks into the impact of EAC on peace and security which most studies have ignored. The reestablishment of the EAC stimulated the growing need for peace and security through military collaboration to curb imminent threats among the Border States.

2.6.2 Functionalism Theory

Functionalism theory was advance by Spencer (1898). He argues that functionalism perceives society as a social system of parts that are interconnected just the same way the heart, lungs and the brain work in well-coordinated manner for the normal physiological functionality of the body. In place of the lungs and the heart, there are authorized and formal organizations in the society that must work together to bring about societal survival. A society functions efficiently if it shares common beliefs. These beliefs should be as a result
of the commitment of the members of the society to work towards adherence mutually shared consensus, otherwise termed as “collective conscience.” Attainment of the goals is also defined as the activities shared by all the members of the society through engaging individually formulated goals where society’s value consensus is reinforced. Making profits for the benefit of the whole community is a goal and therefore the need of political institutions aids in establishing these goals. If this has to be considered, the aim of integration becomes cohesion. Therefore, with cohesion in the society, peace and security is the final result as opposed to a deviant society (Block, 1980).

A functional working relationship in the EAC bloc determines how agreements are reached. Recognizing distinctive strengths and weaknesses bears mutual relations between states that eventually minimize disputes. Still, functionalism has to work on building reliable security institutions for resolving disputes in the East African Region as the dispute experienced in Kenya in 2007/2008 highlighted the stable importance states as the foundational proposition for regionalism for identity, prosperity, and security.

The Economic integration process has been taken as the solution for settlement of disputes. Incompatible interests, needs, and values cause dispute. The disputes can end through: withdrawal from contestation; free will agreement; conquest by one of the disputing parties; integration on equality basis or a deceptive agreement. The EAC also established a protocol to prevent disputes in the region.
CHAPTER THREE
RESEARCH METHODOLOGY

3.1 Introduction
The following chapter gives a brief description of the research methodology to be used in the final dissertation. In more details, the following chapter will discuss the research strategy, research method, methods of data collection, research approach, and type of data analysis, research process, ethical considerations and the limitation of the study.

3.2 Research design
My research for this case made use of a case study approach. Yin, (2003), states that one should make considerations of a case study design if the focus of his study is to answer the question how, if it features real-life behaviour that cannot be manipulated, when the contextual condition of the phenomenon study is relevant and that there is no clear line to be drawn between this phenomenon and the context. All these characteristics relate with my research since I am finding out how cross-border dispute between Kenya and Tanzania has been a threat to regional integration as well as a threat to political and economic development of East Africa Community. For my research, I employed a case study research whereby my case study was an analysis of the trade between Kenya and Tanzanian borders as well as the border disputes that acts as a threat to the trade itself and thus the economic development of the two states as well as an impediment to regional integration.

3.3 Data collection instruments
The main data sources used in the research was secondary data. Secondary data was collected in the form of extensively reviewing books, journals, newspapers, conference proceedings, Government and Non-governmental reports, scholarly works, articles, relevant websites and magazines to acquire secondary data used in the study. The study
also used a desktop research method which ensured up to date data is collected throughout the whole duration in which the study will being conducted. The researcher organized the data collected in a clear, logical and systematic manner so as to answer all the research questions of the study in a consistent and logical manner.

3.4 Techniques of Data Analysis

Data analysis begins with an investigation to learn what is already known and what remains to be learned about a topic through reviewing secondary sources and investigations others have previously conducted in the specified area of interest. However, in this research, the analysis will take one step further, including a review of previously collected data in the area of interest.

The data collected throughout the study was organized and analysed in logical manner. During this phase of the research the data collected was presented in chronological order such that the analysis and interpretation of the data is clear and concise. The researcher analysed data through content analysis for both qualitative and quantitative data. Content analysis is a form of analysis that consists of an examination of what can be counted in text of any form text, media or publication.

3.5 Ethical Considerations

This research was conducted in an ethical manner, respecting University policy, intellectual property rights and good intellectual practices.
CHAPTER FOUR
RESEARCH FINDINGS

4.1 Introduction
This study examined the integration between Kenya and Tanzania through cross border trade and how disputes emanating from cross border trade were settled between the two countries. Specifically the study considered the nature of cross-border trade and disputes between Kenya and Tanzania and the mechanisms in place to resolve these disputes. This study also offered some recommendations on mechanism that could be used to resolve the existing disputes.

4.2 Cross Border Trade between Kenya and Tanzania
Kenya and Tanzania are neighbouring countries in the East Africa region that have partnered in trade across their borders. As much as this trade has been successful in the most part, it has recently started experiencing some challenges that require intervention. The two countries trade relations are carried out under EAC framework and bilateral relations. Tanzania is Kenya’s second largest trading partner in the East Africa Community while Kenya is the largest trading partner for Tanzania (Diplomacy Bulletin, 2017).

In terms of investments, Kenya is the fourth largest source of Foreign Direct Investment (FDI) in Tanzania after the United Kingdom, China and India. Kenya’s overall investment portfolio is estimated at over US$ 1,425.56 million. There are roughly 430 Kenyan investments in Tanzania which created over 48,942 jobs in the country (Diplomacy Bulletin, 2017).

There are a lot of trade activities between the two countries, Kenyans especially have ventured a lot into Tanzania. It is argued that Kenyan firms are among the leading investors in Tanzania (Pearl, 2013). Booth et al., (2014) observed that in 2009 there were close to 50
Kenyan firms operating in Tanzania in different sectors such as production, banking, hospitality and natural resources industry. According to Temba (2019) in the year 2018 alone, 10 per cent of the more than two million tourists to Kenya were Tanzanian, amounting to 222,216 tourists, which was the second largest group after Americans. It is noted that the trade and tourism exchange between Tanzania and Kenya contributes immensely to the two countries’ economies.

When presenting the picture of the EAC to which Kenya and Tanzania are members, there is a positive image with a growth of 96% in trade between the members’ countries (Muluvi et al., 2012). This is despite the reluctant commitment of Tanzania which is observed to be frustrating the efforts of the EAC, as compared to Kenya and other allies that are much more committed to the EAC. It is noted that the trade between the 5 EAC member countries increased from $1.81 billion in 2004 to $3.54 billion by the close of the year 2009, a growth of 96 per cent (Muluvi et al., 2012). However, according to Cooksey (2016) there has been a decline in the Kenyan exports to Tanzania, for instance from 2008 – 2014, Kenyan manufactured exports to Tanzania reduced by 36 per cent.

According to Muluvi et al. (2012) Kenya’s exports to EAC member countries including Tanzania, are more diversified and include chemicals, fuels and lubricants, machinery and transportation equipment. This is unlike Tanzania and other member countries whose exports are dominated by agricultural produces and manufactured products, such as food, livestock, beverages, tobacco and inedible crude materials. Direct trade between Kenya and Tanzania compared to other countries, shows that Kenya exports to Tanzania are fourth to Uganda in the EAC. Tanzania took 8 per cent of Kenya export to EAC (Muluvi et al., 2012). In 2018, the Kenyan president, Uhuru Kenyatta extended an invitation to Tanzania to export to Kenya millions of bags of maize to the country directly (Temba, 2019).
4.2.1 Trade flows between Kenya and Tanzania

Although the EAC sub-region has witnessed a surge in trade flows among member states particularly after the establishment in 1st July 2010 of the common market. The EAC common market has provided for “four freedoms” namely; free movement of goods, labour, services and capital all of which are expected to boost trade and investment within the region.

Interest in analysing the trade flows between Tanzania and Kenya is based on economic as well as non-economic factors. The essence of focusing on trade flows between Tanzania and Kenya is that currently the two countries dominate the economy of the sub-region, in many aspects. Kenya and Tanzania are currently the “power houses” of the EAC economy. In 2010 for example, the combined GDP of the sub-region was US $ 79.3 billion. Kenya’s GDP during the same year was US $ 32.2 billion equivalent to 40.6%. Tanzania’s GDP was US $ 22.9 billion (equivalent 28.9%) during the same year. This implies that the combined GDP of Kenya and Tanzania was equivalent to 69.5% of the total EAC GDP.

The share of the other three countries (Uganda, Rwanda and Burundi) was 30.5%. According to data from the World Bank the two countries dominate the region where GDP per capita is concern. In 2010 Kenya had the highest GDP per capita (US $ 468.7) compared to Tanzania’s per capita GDP of US $ 458.4. The per capita GDP in the rest of EAC member states was lower than those for Kenya and Tanzania. Trade as a percentage of GDP was the highest in Kenya (65.4%) but was closely followed up by Tanzania whose ratio in the same year was 63.8%. Recent trade trends between Tanzania and Kenya suggest that apart from their relatively large GDPs, they still (Kenya and Tanzania) dominate the region’s trade.
In 2009 Tanzania’s exports to the rest of the World (ROW) was US $ 2,982,405 million compared to the country’s exports to Kenya which were valued at US $ 192,904 million (equivalent to 6.5%). This ratio increased to 8.0% in 2010 before levelling off to 4.7% in 2011. Tanzania’s exports to Kenya during the 2009 – 2011 period averaged US $ 246,368 million compared to the value of Tanzania’s exports to ROW which totalled US $ 3,922,637 million. Kenya is an important destination for Tanzania’s exports than all the other EAC countries combined.

4.2.2 Value of Trade between Kenya and Tanzania

According to the figures presented by the Kenya National Bureau of Statistics (KNBS) (2019) Kenya’s export to the EAC where Tanzania and Kenya are a Member reduced from KSh 131.6 billion in 2017 to KSh 129.0 billion in 2018. Figure 4.1 compares the import and export of Kenya and Tanzania from the period of 2014 to 2018.
According to the amounts shown, in 2014 Kenya export value to Tanzania was KES 42,724.90 Million as compared to an import value of KES 18,364.10 Million. In 2015 Kenya exported good worth KES 33,663.40 Million and imported good worth KES 16,906.20 Million. In 2016 Kenya exported commodities worth KES 34,796.60 Million as compared to an import of KES 12,806.10 Million. Again in 2017, Kenya exported commodities worth KES 28,521.10 Million and imported commodities worth KES 17,179.60 Million. Lastly, in 2018 Kenya exported commodities worth KES 29,753.50 Million and imported commodities worth KES 17,817.60 Million.

These values shows that Kenya exports more than it imports from Tanzania with a significant margin of 34.21% for the 5 year period from 2014 – 2018. It is also noted that trade between Kenya and Tanzania has been steadily decreasing at a rate of 7.66% for exports and 0.66% for imports.

Figure 4.2: Kenya Imports & Exports to Tanzania in Millions
In terms of trade, Kenya and Tanzania have not always had cordial relations, if anything, they have had an off and on relationship with a sense of animosity towards each other. Kenyan businesses have endured major sanctions from Tanzania that have limited the amount of goods and services traded in Tanzania. Kenya has in some instances reciprocated the harsh treatment and subjected Tanzanian imports to tight regulations.

4.3 Kenya and Tanzania Cross border Dispute

It is observed that boundary disputes in East Africa where Kenya and Tanzania belong, ordinarily pre-date the finding of mineral resources, these disputes have most recently been deepened by the burst of explorations (Okumu, 2010). The Kenya-Tanzania border is shared among communities from both sides and there has been cross-border business, agriculture and cattle grazing, especially by Maasai herders (Sayagie, 2018). According to Temba (2019) in spite of the mutual dependence, the relations between Kenya and Tanzania have not at all times been smooth, especially when it comes to trade. For example in July 2016, Tanzania declined to be involved in the Economic Partnership Agreement (EPA) with the European Union, abandoning Kenya and Rwanda to commit with the European Union independently rather than as a fortified trading bloc. More recently, protectionist policies have made it difficult for foreign traders to access Tanzanian markets. Despite membership of Kenya and Tanzania in the East African Community (EAC), traders from these countries crossing borders have been left frustrated by duties on some commodities, bans on certain imports and cargo hold-ups at border crossings (Temba, 2019).

Tanzania and Kenya have had their share of disputes in the EAC region, recently the two states were locked in a trade confrontation over the testing of commodities passing through their borders (Magubira, 2019). Magubira (2019) reported that in one instance Tanzania detained Kenyan commodities for more than a week to gather samples for testing and
Kenya had to file a complaint with the EAC Secretariat. The actions of Tanzania according to her Bureau of Standards institution was in response to Kenya subjecting Tanzanian commodities to quality verification before allowing them into Kenya. This according to the Tanzanian Bureau of Standards is against a common pact on the standards of goods traded within the East African Community (Magubira, 2019). According to Magubira (2019) Kenya and Tanzania have been in persistent trade disputes worsening their trade relations. Past disputes include a ban by Kenya on liquefied petroleum gas from Tanzania, which saw Tanzania retaliate by blocking Kenyan milk and its products, and cigarettes.

In another instance, Okumu (2010) noted that a current potential for dispute and a long history of contestation is the Kenya and Tanzania border because of its demarcation. The Kenya and Tanzania border was demarcated by two Anglo-German agreements as shown in Figure 4.1. The two agreements divided the Maasai community among the two states, each of which successively developed divergent domestic policies on pastoralist societies and natural conservation. True to these sentiments, there has been dispute emanating between Kenya and Tanzania. There has been tense diplomatic relations between the two states as a result of the confiscation and auction of 1,125 cows of Kenyan Maasai herders by Tanzanian government who as well sold another 2,400 cows after they crossed into Mt Kilimanjaro National Park in search of pasture (Sayagie, 2018).
Further, the cross-border dispute between Kenya and Tanzania escalated recently when, the Starehe Member of Parliament Charles Njagua directed some xenophobic remarks to Tanzanians working in Kenya while making a public address. His sentiments were widely cheered by Kenyan local Traders, however the government was quick to condemn these sentiments and the Member of Parliament was later arrested and arraigned in Court (Temba, 2019). The Starehe Member of Parliament was quoted as saying, “When you look at our market, Tanzanians and Ugandans have taken our business, enough is enough, if we will give them 24 hours and they will not leave, we will beat them and we are not scared of anyone.” This statement almost resulted in a political dispute between Kenya and Tanzania. The Tanzania government summoned the Kenyan ambassador to Tanzania to clarify if the declarations made by the MP represented the true position of the Kenyan government (Okoth, 2019).
Even though the Kenyan government distanced itself from Charles Njagua, similar sentiments from the leader of Majority in Parliament, Aden Duale seemed to back Mr Njagua sentiments to have foreign traders kicked out of city markets. The leader of Majority faulted Tanzania for preventing Kenyan professionals from assuming jobs in Tanzania and gave an example of Silvia Mulinge. Mr Duale is quoted saying,

“Vodafone’s Silvia Mulinge was refused license to work in Tanzania until she was recalled back by Safaricom Limited. Our business companies are subjected to stringent standards of Tanzania when Kenya is flooded with fruits and vegetables from Tanzania. Our chicken were burnt in Tanzania and our livestock auctioned. Today Brookside cannot sell milk and Farmers Choice cannot export sausages because of high tariffs set by Tanzania. We must protect Wanjiku in Gikomba and Halima in Eastleigh”.

The leader of majority Mr. Duale requested MPs to pass a law to protect local jobs and businesses, saying they were losing to foreigners from neighbouring countries (Mutai, 2019).

4.3.1 Pastoral Communities Disputes

According to the East African Legislative Assembly Report (2017), the cross-border disputes between Kenya and Tanzania brought about by trade started sometimes back in 2015 after President Pombe Magufuli of Tanzania was elected into office. The report highlighted the dispute experienced between pastoral communities of Tanzania and those from Kenya as well. The East African Assembly committee on Regional Affairs and Dispute Resolution (RACR) undertook from February 19th to 22nd, 2017 Public Hearings on the Pastoral Communities of Longido in Tanzania and Kajiado in Kenya in the context of the Common Market Protocol which was ratified by the Heads of the EAC Partner States.
in November 30, 2009 and entered into force in July 1, 2010. The assessment was a follow up of the fact-finding mission that had been conducted by the Committee on Pastoral Communities of Kapenguria and Kacheliba in Kenya and Nakapiripirit in North Eastern Uganda, in May 2012.

The main functions of the committee were to:

(i) Examine the free movement of persons in the pastoral communities;

(ii) To understand the level of Security among pastoral communities

(iii) Identify the challenges faced by pastoralists in the context of the Common Market Protocol;

(iv) To address the problems of pastoralists from a regional perspective.

According to the report, the committee in their investigations expected the following outputs:

(i) Extent of free movement of persons in pastoral communities assessed;

(ii) Pastoralism as viable livelihood understood and the EALA Members lobbied to appreciate pastoral issues with a view of enacting laws that are sensitive to pastoral needs;

(iii) Challenges facing pastoralists understood and mechanisms to address them sought;

and

(iv) Report produced and submitted to the House for consideration and approval.

After thorough study, the committee found out that both pastoral border communities expressed overwhelming support of the integration process but call for their concerns to be addressed. Also, the two cross border pastoral communities of Longido, Tanzania and
Kajiado, Kenya are interrelated by blood and inter-marriages between the Maasai communities of the two EAC Partner States. The report also showed that The Maasai speaking peoples that transcends the Tanzania and Kenya borders share a cosmology and history that predates colonial experience. One of the negative impacts of imperative of the Berlin Conference was to interfere and interrupt the family and cultural ties of the Maasai that occupy the Longido and Kajiado plains. This is the historical context under which the Committee on Regional Affairs and Dispute Resolution made an oversight visit to the Maasai communities living at both sides of the Namanga border between the United Republic of Tanzania and the Republic of Kenya;

Other findings that were discovered by the committee on dispute resolution are as follows:

i. Historical land claims arising from this history has continued to colour the relation of the communities on both side of the border with neighbouring communities as well as with governments’ and government agencies in both Tanzania and Kenya;

ii. It was apparent that most of the people didn’t have adequate knowledge on the operations of the EAC Common Market Protocol. Their main concern was the non-removal of barriers (tariff and non-tariff) at customs and along the borders;

iii. Majority of stakeholders’ discussions centered largely around challenges in cross border livestock marketing and trade, market information, disease control policies and strategies, marketing infrastructure, livestock movement and stock routes, and requirements for delivering slaughter stock to both Tanzania and Kenya Market Stakeholders identified key issues that constitute impediments to cross border livestock marketing. They include: a) Illegal cross border livestock movement, whether for trade, grazing or translocation b) Cumbersome and costly procedures for obtaining livestock import and movement permits c) Lack
of harmonization of export / import regulations and other protocols
d) inadequate linking of both Tanzania and Kenya Market Centers and other markets to producers and traders
e) insufficient policy and legislation support
f) poor enforcement of disease control regulations
g) inadequate and poor marketing infrastructure and limited market information access;

iv. Concerns were raised about differences in the land tenure systems between Tanzania and Kenya and loss of land due to free movement and right of establishment within the two countries. The fear of loss of land arises out of varied population densities between Tanzania and Kenya which continue to disadvantage some sections of the population. Similarly, the two Partner States have different land policies, laws and land management systems, modelled against the traditional and colonial systems at independence. The land tenure systems, range from customary law, statutory land law offering various forms of ownership such as communal, freehold and fixed term leasehold or right of occupancy.

v. Stakeholders from both pastoral border communities were concerned about the increased rate of school drop outs in Longido, Tanzanian side who are engaged in child labour activities in Kajiado, the Kenyan side at the expense of their education;

vi. The Committee noted that most of the challenges pastoral border communities raised are not anchored in the Partner States policies.

vii. The shared environment and ecosystem covering part of the Arusha Region and the Kajiado County which is home of the Community under review have various challenges including complications arising from environmental degradation, tensions arising from different policies on land, environment, tourism,
pastoralism, agriculture, different production systems including support systems such as extension services and so on;

viii. Given that this geographical region also covers several game parks and other wild animal sanctuaries concerns were raised on poaching, illegal trade in wild animals’ products as well as human and wildlife dispute.

The committee also did specific findings on each group at the border and on the part of Longido pastoral group of Tanzania, the following was discovered that:

a) Poor communication between Longido and the Ministry of Foreign Affairs and East African Community Cooperation in Dar-Es-Salaam was noted as Longido received a letter from the Ministry to notify them of the Committee Member’s visit on Monday morning February 20th, 2017.

b) Majority of stakeholders on the Tanzania side lacked sufficient knowledge on the operations of the EAC Common Market. Most of them thought of an existence of a big market under one roof where people meet for trading purposes.

c) Stakeholders at Longido in the Tanzanian side expressed concern about the issue of special passage fee charged per head of cattle transiting on private parcels of land and or boreholes while taking them to market at the Kaijado County on the Kenyan side.

d) Majority of the pastoral border community lacked sufficient knowledge on the laws and regulations guiding the EAC Common Market Protocol. They think it’s a free zone and their main concern is non-removal of barriers (tariff and non-tariff) at customs borders contrary to what they thought the Common Market sought to eliminate.
e) Many school going children drop out of school to go to the Kenyan side where there are more employment opportunities than the Tanzania side.

f) Stakeholders appreciated the Government of the United Republic of Tanzania for opening an Immigration Office at Longido for issuance of temporary travel documents hence making free movement at the border easier.

On the Kenyan side as well, there were specific challenges that the Maasai people of Namanga border would face, something that would trigger the border dispute and therefore, needed to be addressed. These specific challenges included the following:

a) That Stakeholders expressed with increased concern cases of donkey theft since the introduction of two slaughterhouses in the Rift Valley last year. Stakeholders are thinking of closing the private abattoirs, saying their continued existence will wipe out donkeys. In Kajiado County alone, hundreds of donkeys have been stolen in the past year, leaving owners to wallow in poverty as they rely on their animals for a living. What shocks stakeholders most is that the thieves are not interested with the meat, they are after the skin, liver and genitalia of the animal only.

b) That Stakeholders on the Kenyan side expressed concern about the issue of fees and levies charged by allegedly the local authorities for pasture and water on the Tanzania side.

c) That Stakeholders and pastoral communities on the Kenyan side lamented about the challenges encountered, including high population growth rates, encroachment of crop farming on grazing lands, restricted mobility due to decentralization of settlements, privatization of rangelands and resultant land grabbing, insecure land tenure, and environmental degradation. Other
challenges include disputes (violent/arms), climate change and variability, unsound development and trade policies biased in favour of crops, and cheap cows and or beef from Tanzania leading to distortion of prices, ineffectiveness of pastoral traditional risk management strategies, increased food insecurity and poverty levels among pastoralists;

d) That Stakeholders on the Kenyan side expressed concern about the barriers they encounter when transiting their livestock and goods to Tanzania including being subjected to unofficial multiple fees and levies.

According to Tralac organization on the 17th of July 2017, the Kenya trade war with Tanzania resumed after the two countries had signed a four-day peace pact kicking out restrictions that had cost the border traders billions and billions of shillings. According to the Kenya Association of Manufacturers, Tanzania maintained many restrictions that had existed before the signing of the truce making it difficult for Kenyan goods to enter the Tanzanian market.

During that time, the Kenyan affairs cabinet secretary by then, Amina Mohammed together with the Tanzanian counterpart Augustine Mahiga made an announcement that the import restrictions had been done away with. Kenya had already lifted the ban on wheat flour and liquified petroleum products from Tanzania while Tanzania removed its blockage of Kenyan milk and milk products as well as cigarettes.

The citizen newspaper of July 6, 2018 noted that Kenya and Tanzania had agreed to end the dispute and that the states were free to trade with each other. However, the paper also noted that those trading in edible oil, textile products, confectionery and cement were to wait longer as Tanzanian government requested to complete a verification exercise which would determine the rule of origin of the products. The dispute resolution was conducted
in a diplomatic manner when both Kenyan and Tanzanian permanent secretaries for trade and industrialization namely Dr. Chris Kiptoo and Prof. Elisante Ole Gabriel respectively met together with the private sector then deliberated on ways to end the dispute. The same information was also quoted by All Africa newspaper of 6th July 2018, on which the paper noted that Kenya and Tanzania had chosen to end trade wars and therefore the two countries were to import freely.

4.4 Strategies Applied in Solving the Kenya-Tanzania Border Dispute

It is observed that boundary disputes in East Africa where Kenya and Tanzania belong, ordinarily pre-date the finding of mineral resources, these disputes have most recently been deepened by the burst of explorations (Okumu, 2010). According to Gordon (1987) the cross border relations of Kenya and Tanzania changed radically in the late 1970s and early 1980s as both nations reacted to a fast changing regional context, the intensified importance of Africa in the global geo-strategic considerations of the world's superpowers, and the onset of severe domestic economic difficulties.

The Kenya-Tanzania border is shared among communities from both sides and there has been cross-border business, agriculture and cattle grazing, especially by Maasai herders (Sayagie, 2018). According to Temba (2019) in spite of the mutual dependence, the relations between Kenya and Tanzania have not at all times been smooth, especially when it comes to trade. According to Gordon (1987) the relations between Kenya and Tanzania weakened sharply in the latter 1970s, but then again, since 1983, they entered a new period of cooperation. Since then Kenya and Tanzania have not had any critical dispute, they have however had small dispute that have been due to trade wars, which have not warrant any serious intervention from the two national governments. This study here highlights the
dispute that have been witnessed between these two countries and how they have been handled for solutions.

a) Tanzanian government distrust Kenya arguing that interterritorial arrangements did not equally distribute the benefits of cooperation

**Dispute:** Tanzania disputed the arrangement of the East Africa states accusing Kenya to be benefiting from this arrangement. It called for a new arrangement to be made that could better serve the interests of all the East African state. Kenya gave little care to the specifics of regional cooperation.

**Solution 1:** The solution for this dispute was obtained through negotiation which were referred to as *‘The Kampala Agreement’*. The agreement sought to limit trade imbalances and to reallocate investment in order to improve industrialization prospects for Tanzania and Uganda. This was never a success, as the arrangements were not implemented effectively because the changes needed were more challenging than had been foreseen.

**Solution 2:** Due to the failure of the *‘The Kampala Agreement’* in bringing regional balance that was the cause of dispute between Tanzania and Kenya, another solution was sought through the establishment of the EAC. The EAC was set up to reinforce and control industrial, commercial and other relations of the member states so to have an accelerated and sustained development of economic activities with the region and the benefits to be equally shared (United Nations, 1972). The EAC set up four independent institutions to control a number of infrastructure including, railways, harbours, airways, ports together with telecommunications, with their headquarters spread across the three states. The earlier years following the establishment of the EAC, there were positive relations however, Kenya continued to dominate the cross border trade and this led to Tanzania and also Uganda to take measure to protect their interests.
**Recommendation:** The recommendation is for renegotiation to be done that will also consider other EAC players who have an interest in EAC bloc. These negotiation should be objective and geared towards a win-win position for each party.

b) Dispute over EAC infrastructure

**Dispute:** After the demise of the EAC, Kenya used equipment from East African Airways to make to establish its own national Airways Company. Tanzania was angered by this move and accused Kenya of lack of good will and it retaliated by shutting its border with Kenya to cut off Kenyan exports to Tanzania. Both Kenya and Tanzania suffered as cross border trade between these two countries was halted. Kenya was hurt more sine its exports to Tanzania dried out. On the other hand Tanzanian tourism sector was hurt and her consumers also lost access to several supplies that had no consistent alternatives.

**Solution:** Negotiations were initiate to stabilise relations between the two states. However, for a long time in the negotiation the two states remained in stalemates as each of them upheld preconditions for negotiations that the other country found unacceptable. Year later the two states reached a consensus through their negotiations. However it was only until the change of political office and demise of key individuals in the government, that the Kenya and Tanzania relations took a more positive turn with the border opened. The U.N. Economic Commission for Africa also played a key art in softening the stance of the two states in their dispute.

**Recommendations:** Despite the negotiation and re-opening of the Kenya-Tanzania border the move seems to be for convenience and there is no unconditional cooperation. Any slight provocation from any of the two states will collapse the cooperation. I recommend here that these two states need to create a special convoy that would iron out the difference that seem to be deeply rooted on the economic control of the region in East Africa.
c) Tanzania auction off cattle of Kenyan Headers and burnt alive chicks from Kenya Trader.

**Dispute:** Tanzania seized and auctioned off 1,300 cows that had strolled across from Kenya to Tanzania to graze. They also seized and burnt alive 6,500 chicks, which had been taken into Tanzania by a trader.

**Solution:** Kenyan representative at the East African Community bloc sent a “note of protest” to Tanzania. The Kenyan government had to compensate the affected herders as the Tanzania government remained unapologetically and blamed the Kenyan government saying it failed to warn its citizens.

**Recommendation:** The Kenyan government did well to compensate the Kenyan headers of their loss. They need to caution their citizen in any development that affects their movement to Tanzania so as to avoid such dispute in future.

d) Kenyan MP threatens Tanzanian other foreign traders in Nairobi

**Dispute:** Charles Njagua, Starehe Member of Parliament, which is part of the Nairobi Central Business District, when addressing the public directed some xenophobic remarks to Tanzanians working in Kenya. His sentiments was widely cheered by Kenyan local Traders. The Tanzania government summoned the Kenyan ambassador to Tanzania to clarify if the declarations made by the MP represented the true position of the Kenyan government.

**Solution:** The Kenyan government condemn the MP sentiments and the Member of Parliament was later arrested and arraigned in Court. The government wrote a letter to Tanzania clarifying apologizing to the Tanzanian government over the utterances made by the MP.
**Recommendation:** Kenya and Tanzania need to negotiate the movement of human capital across their borders. Tanzania seems to have strict laws protecting her people while Kenyan laws are open to foreigners. If this is to work Tanzania also need to relax its laws to Kenyan entering to work and do business there.

**4.4.1 Non-Tariff Barriers Disputes**

This study reviewed some of the non-tariff barrier dispute that have been witnessed between Kenya and Tanzania and how they were solved through bilateral meetings between representatives of the two countries. These disputes are presented below with a review of their solutions.

a) Kenya held a Tanzanian mineral consignment without any reasons

**Dispute:** A Tanzanian trader (02 Export Gem Company limited of Arusha, Tanzania) had exported a consignment of minerals to Kenya but failure to seal the business deal caused the consignment to be directed to the country of origin (Tanzania). Despite all documentations regarding the return of the consignment being processed and concluded between TRA and KRA, KRA did not release the consignment to the trader. Efforts were made through phone, physically and in writing but KRA continued holding the consignment since November 2018 to date. The affected company has continued to incur losses which include hotel bills, escort fees, storage fees, transfer car fees and document processing fees.

**Solution:** Kenya was urged by Tanzania to give reasons for holding the consignment for nine months but no explanation was provided. Instead, Kenya acknowledged it had taken note of the issue and was following the due process of EAC laws and regulations to resolve the issue. Tanzania, urged Kenya to ensure the minerals are released without demurrage or
storage costs and with immediate effect. The solution was successful as it led to the release of the consignment and the demurrage and storage charges were waived.

**Recommendation:** the matter was resolved after Tanzania asked for the immediate release of the consignment with no extra charges. Kenya on its part committed to releasing the minerals to the Tanzanian trader on 27\(^{th}\) April 2019 at the Taveta border. The issue indicates that there is no unconditional cooperation between the two states in terms of trade. The two countries seem to be in constant disputes even for issues that can be resolved amicably. There is need to send iron out the issues between the two countries to eliminate the differences that threaten to disrupt the cooperation between them.

b) Kenya holding fifty containers of cement gypsum board and gypsum powder worth USD$102,255

**Dispute:** KPA/KRA held Tanzanian’s fifty containers of cement, gypsum board and gypsum powder and this due to ban that has stripped transhipment if containers from Mombasa to Pemba. The ban on stripping had made it difficult for the importer to clear the 50 containers making the accumulated demurrage charges and storage costs to be higher than the value of the consignment value. Charges include shipping line for MSC Euro 26,000, shipping line for CMA on 40 containers $ 240,000, Wharf age US$39,000, KRA warehouse rent US$39,000.

**Solution:** Tanzania submitted all the necessary evidence that was required and Kenya promised to take note of the issue and report back. The position of Tanzania was that the consignment should be released and all the demurrage and storage costs waived. Kenya was to study the evidence during the meeting and revert back during the course of the meeting. Kenya agreed to study the evidence provided to revert back within a month. The
solution has not been achieved, but it is expected that it will offer a long-lasting solution to the issue of concern.

**Recommendations**: The issues between Kenya and Tanzania keep on recurring with regards to trade between the two countries. To ends the stalemate between them, it is necessary to engage the EAC secretariat to provide guidance on these two partner states on the issue of ban of stripping within a month. This will help to eliminate future disputes in this area and ensure compliance with set regulations.

c) Increased inspection fee for all trucks from Tanzania

**Dispute**: The Kenya Plant Health Inspectorate (KEPHIS) increased its inspection fee for all trucks from Tanzania from Ksh. 1600 to Ksh. 8100 per truck. Tanzania argued that Kenya needs to revise the fee down from Ksh. 8100 to Ksh. 1600 given that the decision was only distorting trade among the partner states in EAC and not promoting it. KEPHIS is still charging KSH. 8100.

**Solution**: Kenya agreed to continue charging the inspectorate fees as follows for 0 to 20,000kgs -50 cents minimum to Ksh. 2,000. 20,001 to 400,000kgs would be charged 25 cents, while 400, 001 to 1,000,000 kgs would be charged 15 cents. And those above 1,000,000 would be charged 5 cents. An agreement was reached that each agency should continue charging its own charges until harmonization takes place. Tanzania agreed to recognize the certificate of analysis issued by KEBS and urged Kenya not to charge TBS certified wheat already packed in 25 kgs, 10 kgs, 5kgs and 2kgs. The issue is yet to be resolved but the harmonization of the charges is expected to eliminate the stalemate that exist between the two countries.
**Recommendation:** It is recommended that each of the agencies should continue charging their own rates until the harmonization is competed in June 2019. The dispute emerges from the contest between the two countries as they try to emerge as the economic power in the region. It is important to have an envoy involving members from the two states to sit down and talk about the differences that are rooted in economic control of EAC. This will help to eliminate further dispute from occurring with regards to trade between the two countries.

d) Kenya is not implementing SCT for goods originating from United republic of Tanzania making it hard for Tanzania business community to enjoy the benefits of SCT.

**Dispute:** Kenya was still partially implementing the SCT for products whose destination was Tanzania and not for goods from Tanzania to Kenya. The bilateral meeting held between the two countries concluded that the issue would be finalized by having TRA and KRA finalize their issues and upload Tanzania products in their system by July 2018. Kenya was also required to deploy staff to Dar es Salaam, Tanzania by October, 2018 as part of implementing SCT. Kenya did not provide a clear answer as to when it will start using SCT when clearing goods from Tanzania. Kenya agreed to deploy its Customs Officers in Tanzania for implementing SCT.

**Solution:** To resolve the issue Kenya agreed to deploy its staff to Dar es Salaam in Tanzania by the end of October by 2018 by implementing SCT. The deployment of the staff would make it easier to implement the SCT for goods originating from Tanzania. It would promote full implementation of SCT in both countries helping to end the dispute filed by the United Republic of Tanzania.
**Recommendation:** Kenya did well to commit itself to implement SCT by September 2019 as a way of improving trade between the two countries. This would ensure full implementation of SCT for goods destined for Tanzania and those originating from Tanzania thereby eliminating future disputes with regards to implementation of SCT.

e) Double inspection by the Kenya Bureau of Standards (KEBS)

**Dispute:** It came to the attention of the URT that certified products originating from Tanzania were being retained at the Namanga border post for 14-30 days pending KEBS conformity assessment which is contrary to the EAC agreement on recognition of notified quality marks. Partner states in the region had agreed to mutually recognize the quality marks and standard regulatory authority from EAC ensuring smooth movement of tradable goods in the region. Once a product has been approved by a competent authority in the member states there is no need of rechecking the same by counterpart Authority in another partner states. Kenya Bureau of Standards (KEBS) had continued to conduct double checks for quality of products already checked and approved by Tanzania Bureau of Standards (TBS) causing goods to be held for up to 21 days. Such actions to detain trucks carrying certified goods from Tanzania goes against the SQMT Act 2016 which provides power to standard national bodies to conduct conformity assessment on EAC certified goods. Kenya continue to contravene these agreements by inspecting products from Tanzania despite the products having TBS marks of quality.

**Solution:** The EAC surveillance inspection procedures do not provide for the holding of consignments at the border but they should be released on condition that they are not sold until the reports are out and the certification is done. The exporting partner state needs to be notified of their non-conforming products to follow up on the corrective action to be taken. Issuing general suspension on imports is not procedural for such products. KEBS
confirmed that it was following the standard procedures and it submits to the EAC SQMT Act that allows for products that are not conforming to be recalled and TBS confirmed this corrective action which allowed exportation of tiles to continue from Tanzania.

**Recommendations**: In resolving the issue both Kenya and Tanzania have agreed that the issues relating to suspension have been dealt with. The parties agreed to follow the proper procedures as stipulated in the EAC SQMT Act 2016 to ensure that such disputes do not arise in the future. This will help to reduce accusations that one partner state is engaging in non-procedural practices when dealing with imported goods from member states.

f) Discriminative Excise Duty that hinder TBL beer export to Kenya

**Dispute**: The Government of Kenya through KRA imposed discriminative excise duty on beer products produced outside Kenya. Tanzania raised the issue given that beer produced by TBL would not fetch optimal export markets in Kenya. This goes against the prior agreement by both nations to harmonize domestic taxes during a bilateral meeting held on 3rd-5th July 2018 in Dar es Salaam. Tanzania argues that, the discrimination is in violation of article 15 of the customs Union Protocol that prohibits imposing direct internal taxation on goods from other partner states in excess of that imposed on similar domestic goods. However, Kenya still applied discriminative excise duty on beer citing that the duty applies to beer produced from agricultural products other than barley.

**Solution**: in resolving the issue, Tanzania urged Kenya to eliminate discrimination between beer produced from other EAC partner states exported to Kenya and locally produced beer. Kenya agreed that the issue was a domestic tax matter and would be discussed in its own forum which is under domestic tax harmonization. The matter was resolved by harmonizing domestic taxes in the two states.
**Recommendation:** It is recommended that the partner states work together in identifying the areas that might raise disputes in terms of trade. This will make it easier to ensure that no domestic tax issues hinder trade between the two partner states. Possible steps to undertake include harmonizing of all domestic taxes that touch on imports and exports to EAC member states.

g) Delay practices when conducting physical inspection

**Dispute:** Tanzania complained that Kenya was intentionally and unnecessarily holding up goods when inspecting them at the border. KRA takes up to 7 days to carry out physical inspection and approvals for goods entering for Tanzania Breweries Limited (TBL) consignment at the border which is too much time for such an exercise. The delays were affecting the efforts of enhancing regional trade in EAC. Tanzania argues that Kenya should stop the delaying tactics when clearing products from Tanzania and clearance needs to be undertaken at the respective borders according to the agreement and within the prescribed time.

**Solution:** In resolving the issue, Kenya agreed that the Trade Facilitation Mechanism will be used to clear goods to ensure that the time taken to carry out the process is reduced. Tanzania on its part ensures that Kenyan goods are cleared within a day by using SCT Systems. Tanzania proposed that Kenya should use Single Customs Territory System when clearing goods destined for Kenya.

Recommendation: The issue of trade disputes can hinder cooperation between member states due to unfavourable terms of trade. Kenya has assured its commitment to the use of Trade Facilitation Mechanism to fast-track the clearance of goods originating from EAC partner states.
h) Kenyan printed labels are denied access to Tanzania markets

**Dispute:** Kenya argue that its printed labels were not allowed access to Tanzania market. Despite the process of manufacturing labels being same in Tanzania and Kenya, labels from Tanzania were accorded preferential EAC treatment. On its side, Tanzania argued that labels made in Kenya do not qualify for Certificate of Origin due to non-value addition by at least 30 percent of ex-factory costs of goods based on EAC Rules of Origin. Tanzania argued that label manufacturers are non-manufacturers and converters thereby making them unqualified for preferential tariff treatment. Kenya noted that it accorded printed labels from Tanzania preferential treatment despite the fact that they were not raw materials for purposes of label in the EAC region.

**Solution:** The dispute was resolved through an agreement between both parties, Kenya and Tanzania to adopt similar treatment of printed labels. Tanzania was requested by Kenya to accord preferential treatment to its printed labels. During the SCTIFI meeting of November 2018, Tanzania affirmed its commitment towards according preferential treatment to printed labels originating from Kenya. Tanzania submitted and confirmed to the meeting that from 2018 it was according Kenyan labels preferential treatment since 2018 but its printed labels were not accorded preferential tariff treatment when transferred to Kenya.

**Recommendations:** The first step towards eliminating the dispute between the two nations with regards to the printed labels being accorded preferential treatment is the commitment of Kenya and Tanzania to accord preferential treatment to labels. However, it is necessary to ensure that both countries appoint an envoy to discuss and iron out issues affecting trade between these two partner states. This will help to eliminate mistrust and disputes allowing enhanced cooperation and improved trade between the countries.

i) Lack of preferential treatment of vehicles from Kenya-Scania East Africa
**Dispute:** The trade agreement among EAC member states allows goods manufactured in one state and exported to another partner state to be accorded preferential treatment. However, the United Republic of Tanzania was enforcing full CET on motor vehicles transferred to Tanzania from Scania East Africa citing that such vehicles do not qualify for the origin criterion as specified in RoO2015. The basis of according preferential treatment to Tanzania market by Scania Motor Vehicles occur on irregular basis. Kenya noted that this was affecting trade making it hard to thrive due to the unpredictable environment. The concern raised by Kenya was the on-off accordance of preferential treatment since 2016 which had severe implications to businesses and affected people in Kenya and Tanzania.

**Solution:** Tanzania received a communication from the EAC Secretariat citing that Scania vehicles meet the required rule of origin. The vehicles qualify for preferential treatment as they are assembled from CKD in Kenya. Kenya requested Tanzania to assure that it will accord preferential treatment to Scania products from Kenya to which Tanzania responded that vehicles which fall under the rule of origin are not subjected to duty when verification exercise is undertaken. This would help to eliminate the inconsistencies in preferential treatment of Scania products from Kenya.

**Recommendation:** Given that the matter has been resolved Tanzania gives assurance that Scania products originating from Kenya will be accorded preferential treatment as per the EAC laws and rules. Notably, this is a good step towards streamlining trade between these two partner states leading to improved cooperation.

j) Lack of preferential treatment to Kenyan products especially cement and tobacco.

**Dispute:** According to the EAC Rule of Origin, cement companies producing cement with locally produced clinker should be accorded preferential treatment. Those using both locally produced and imported clinker should wait for Rule 11 of Rule of Origin to be
implemented. Kenya protested that Tanzania was not following the Rule of Origin procedures and it failed to accord Kenyan cement companies’ preferential treatment. Tanzania affirmed and argued that it was according companies used locally produced clinker preferential treatment. It was therefore implementing the report on verification mission on cement to its fullest. Kenya disputed these assertions made by Tanzania and reiterating that Kenyan cement companies including those sampled during the verification exercise were still denied access to Tanzania’s market. Tanzania confirmed receipt of the evidence and confirmed it was working on it.

**Solution:** For companies producing cement using locally produced and imported clinker, they would have to wait for the Rule 11 of Rules of Origin to be implemented. It was agreed that companies producing cement using locally produced clinker would be accorded preferential treatment under the EAC Rules of Origin. The TRA asserted that it gives feedback on the issue of implementing rule 11 in one week.

**Recommendation:** The two countries have made a crucial step towards dealing with the dispute by admitting that discrepancies exist in according preferential treatment to Kenyan cement companies. It is recommended that the EAC secretariat should constitute a team of experts to establish how Rule 11 of the Rules of Origin will be implemented during the next SCTIFI. This will ensure that the issue is dealt with conclusively.

k) Introduction of printed codes/tax stamps

**Dispute:** Kenya introduced tax stamp or printed codes on KEG and beer imported or manufactured in Kenya with effect from 1st February, 2016 at a cost of Ksh. 150 raising the cost to US$5/HL. Kenya has continued to charge the stamp and printed codes. Tanzania requested the lowering of these charges and fees and to implement electronic issuance to reduce costs.
Solution: In response Kenya reported that the issue of stamps is a domestic function issue that falls under domestic Tax harmonization. It was agreed that the issue would be handled under the domestic tax harmonization to eliminate the dispute. Both countries agreed to wait for the process to be completed to guide on how charges could be imposed on exported beer and KEG.

Recommendation: It was recommended that Tanzania should wait for the completion of the domestic tax harmonization as this would provide a lasting solution to the issue. The process would help to eliminate any confusion in terms of the fees charged on beer and KEG exported from Tanzania.

4.5 Mechanisms that could be used to resolve the Existing Disputes.
Countries have a number of alternatives available to them in trying to realize a peaceful resolution of their cross-border disputes with their neighbours. Some of the common dispute resolution that may be applied in the case of Kenya and Tanzania dispute include:

Bilateral Negotiations: - Through bilateral negotiations mechanism, Kenya and Tanzania can settle their cross-border disputes without involving any other party so as to keep the conditions as they were and stabilize the bone of contention. In bilateral negotiations Kenya and Tanzania will have to be ready to soften their stance, if they aim to resolve their disputes without intervention from outside. With bilateral negations the two states will be able to fully control their dispute settlements. Bilateral negotiations have the benefit of offering a common agreement and also promote good long-term cooperation between the two countries if there are some mutual benefits.

Third Party Mediation: - This mechanism is taken in the event that bilateral negotiations have failed. It entails a neutral party engaging the two disputing parties in finding solutions to their differences. The neutral party who is referred to as a mediator communicates to the
disputing parties the stance of each other and help them focus on important issues in the
dispute and in the process, help them achieve a consensus. Kenya and Tanzania could go
this way in the event that they reach a deadlock in their bilateral negotiations. They could
reach out to their neighbouring countries such as Uganda or Rwanda to help them attain
sustainable solutions to their dispute. This mechanism is advantageous since the neutral
party looks at issues rationally and does not favour one party.

**Arbitration and Jurisdiction:** - This mechanism is a legal way of resolving disputes. The
arbitration acts as a judicial mechanism of resolving dispute. Some of the courts of law that
Kenya and Tanzania can take their cases include, International Court of Justice (ICJ) and
the International Tribunal for the Law of the Sea.

**Cross-border Cooperation:** - Cross-border cooperation is a mechanism whereby peace
agreement are made between the disputing states. Kenya and Tanzania can enter into peace
agreements by creating conditions and practices that ease collaboration over borders, this
could also involves supporting the social and economic well-being of local communities
living in the border regions. In cross-border cooperation Kenya and Tanzania may also
work across the border to eliminate physical and psychological obstacles to trade and
communication. This will enhance economic, social, and territorial cohesion between the
two states.

**Cross-border Economic Cooperation Economic:** - This mechanism deals with
cooperation initiatives for economic benefits between the neighbouring countries. This
mechanism tend to bring the management of transnational resource jointly as commonality
even between warring states. Kenya and Tanzania can forge Cross-border Economic
Cooperation Economic and share the benefits of the common natural resources such as the
Masaai Mara and Serengeti National Park and Lake Victoria.
Multilateral System (WTO): - The World Trade Organization has established a system, the Multilateral System for its members to use if they are faced with a dispute. The Multilateral System sets out the procedures and the timetable for resolving disputes between two states. If Tanzania or Kenya feels aggrieved by their counterpart, they can take their case to the Multilateral System. In this system, settling disputes is the responsibility of the Dispute Settlement Body, which consists of all WTO members. The Dispute Settlement Body has the sole authority to establish “panels” of experts to consider the case, and to accept or reject the panels’ findings or the results of an appeal.

Inquiry or Fact-Finding: - This entails the two disputing parties establishing a body of inquiry or fact-finding to find out the basics of the issue so as to establish if the said violation was committed, to determine what obligation or treaties could have been dishonoured and give a suggestion of remedies or actions to be taken by the parties. The findings and recommendation of the inquiry are not binding. The nature of Kenya and Tanzania dispute need this type of mechanism so as to establish the cause of their dispute. They can then combine it with negotiation to create a mutual permanent solution.
CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

This study examined the integration between Kenya and Tanzania through cross border trade, the disputes emanating from the trade and how they are solved. The findings have presented in chapter four. In this chapter the study presents the conclusion drawn from the study and presents the recommendation for mechanism to address the cross-border disputes between Kenya and Tanzania

5.2 Conclusion

5.2.1 Cross Border Trade between Kenya and Tanzania

Decisively there is a significant trade between Kenyan and Tanzania with a lot of commodities being exchanged across the border. This trade involves product commodities as well as human capital. According to statistics Kenyan firms are among the leading investors in Kenya. Records shows that there are 504 Kenyan-owned firms in Tanzania, valued at KES 170 billion compared to 24 Tanzanian firms operating in Kenya with a values of KES 19 billion. Tourism has also been at the center of trade between Kenya and Tanzania, with the latter tourists contributing significantly to the number of tourist in Kenya. For instance in 2018, Tanzanian tourist accounted for 10 per cent of the more than two million tourists to Kenya, amounting to 222,216 tourists, which was the second largest group after Americans.

Kenya’s exports to EAC member countries including Tanzania, are more diversified and include chemicals, fuels and lubricants, machinery and transportation equipment. This is unlike Tanzania and other member countries whose exports are dominated by agricultural produces and manufactured products, such as food, livestock, beverages, tobacco and
inedible crude materials. Direct trade between Kenya and Tanzania compared to other countries, shows that Kenya exports to Tanzania are fourth to Uganda in the EAC. Kenya exports more than it imports from Tanzania with a significant margin of 34.21%. Again trade between Kenya and Tanzania has been steadily decreasing at a rate of 7.66% for exports and 0.66% for imports.

5.2.2 Kenya and Tanzania Cross border Dispute

Kenya and Tanzania have had a good share of dispute in their relations, this is despite the membership of these two countries in the East African Community that seeks to create a harmonious relations in East Africa. The relations between Kenya and Tanzania weakened sharply in the latter 1970s, but then again, since 1983, they entered a new period of cooperation. Since then Kenya and Tanzania have not had any critical dispute, they have however had small dispute that have been due to trade wars, which have not warrant any serious intervention from the two national governments except for bilateral meeting that have been used to negotiate their disputes.

Traders from these countries crossing borders have been left frustrated by duties on some commodities, bans on certain imports and cargo hold-ups at border crossings. There is high chance for cross border disputes in countries in Eastern Africa due to discoveries or more exploitation of trans-boundary resources. Trade disputes between Kenya and Tanzania have range from, trade confrontation over the testing of commodities to job loss to foreigners as highlighted by the xenophobic remarks by one of the MPs in Kenya.

Other disputes include a ban by Kenya on liquefied petroleum gas from Tanzania, which saw Tanzania retaliate by blocking Kenyan milk and its products, and cigarettes. The leader of majority in the Kenyan National assembly was even in record requested MPs to to pass a law to protect local jobs and businesses, from foreigners from neighbouring countries.
There are also disputes experienced between pastoral communities of Tanzania and those from Kenya as well.

5.2.3 Strategies Applied in Solving the Kenya-Tanzania Border Dispute

Some of the strategies that the Kenyan government and Tanzania have taken to address the cross border dispute include, negotiation and delimitation and demarcation of border line. There has also been some instance of blockades and strikes whereby it has been reported by newspapers and also in the electronic media that after truce agreements from the government failed, border communities in the two countries resumed strikes and road blockades. Again, there has been evidence of confiscation of commodities for instance Kenyan cattle have been confiscated by Tanzanian authorities.

5.3 Recommendation

This study draws a number of recommendations as informed from the findings. It recommends that:

There is need to conduct as many joint meetings among pastoral border communities as possible to sensitize and enhance their understanding about the EAC integration; There is need for EAC to work closely with cross border pastoral communities to ensure proactive measures are employed in responding to dispute such as providing rapid response, investigation and dispute resolution at community level

Effective operationalization of One Stop Border Post (OSBP) will ease trade in both Namanga in Longido, Tanzania and Kajiado, Kenya borders. The Namanga OSBP did not make provisions for livestock trade and still restricts trade in livestock. Also, there is an urgent need for EAC Partner States to balance security of tenure on one hand and land as an asset/resource for economic development of the cross-border
pastoral communities. There is need to rationalize/decentralize issuance of import/export permits so that they can be obtained locally in the district, region or County where the animals are originating from. There is also need for creation of common border livestock markets and inspection points.

There should be a call for empowerment of market players through capacity building, better market information access, formation of advocacy groups/associations and linking them to markets as well as more education and awareness creation on the importance of observing disease control regulations on both sides of the pastoral border communities. The improvement of marketing infrastructure such as stock routes, holding grounds, roads and communication as well as improved dialogue with policy makers and other relevant stakeholders should be pursued with a view to enhancing legal and policy support for cross border regional livestock marketing and trade.

There is a need for pastoral border communities to become more involved at the level of local governments and provide them with information and training about pastoralist livelihood systems for local government institutions to understand and value what pastoralists are doing. This includes documenting how the pastoral management system and practices, which have traditionally been able to cope with and adapt to changing climatic conditions are now threatened by the fragmentation of rangelands, which has reduced the mobility of pastoralists and their access to natural resources.

Rights of children particularly relating to education and child-labour will have to be addressed on both sides of the border. Child departments or agencies in both Tanzania and Kenya may need to develop harmonized and coordinated approaches
to safeguard the rights of children and ensure children amongst pastoralist communities at this border and neighbouring regions attend school and their rights are respected. Special attention needs to be directed to addressing the problem of children crossing the border as “hired herders”. The Committee received concerns on both sides of the border that children from Tanzania are especially vulnerable to this illegal and exploitative phenomenal.

The East African Committee on Regional Affairs and dispute resolution need not only come up with recommendations to end the dispute but also to plan on how to implement the recommendations and polices. The EAC has signed a free preferential trade area among its members. we continue to witness tariffs in the borders yet members of the EAC are supposed to trade freely. Implementation of these protocols need to be revisited and right measures taken against countries that breach the agreements.

The Kenyan and Tanzania governments should come up with a permanent solution on this issue. The sitting heads of state should be able to solve this problem before it escalates into a bigger issue. Negotiation and mediation should be applied by the qualified people to come up with a solution to this matter without necessarily having to wait for the EAC community to provide a solution.

Lastly, as the two countries purpose to grow their economies, they should learn that if negotiation fails, then it shall result in to real war and now this will kill the development agenda of the two states and the EAC agenda as well. It is therefore advised that lasting solution is necessary to keep in motion the EAC dream.
REFERENCES


