

REPUBLIC OF KENYA

MINISTRY OF TRADE

**NATIONAL TRADE
POLICY**

EFFICIENT GLOBALLY
COMPETITIVE ECONOMY

APRIL 2009

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LIST OF ACRONYMS

ACP-EU	-	African, Caribbean, Pacific, and European Union
AEC	-	African Economic Commission
AEO	-	Authorized Economic Operators
AGOA	-	African Growth and Opportunity Act
ATIA	-	African Trade Insurance Agency
BOO	-	Built Operate and Own
BOT	-	Built Operate and Transfer
BPO	-	Business Process Outsourcing
CBIK	-	Centre for Business Information in Kenya
CCK	-	Communication Commission of Kenya
CET	-	Common External Tariff
CITES	-	Convention of International Trade in Endangered Species
COMESA	-	Common Market for Eastern and Southern Africa
COTU	-	Central Organization of Trade Unions
DDA	-	Doha Development Agenda
DFI	-	Development Finance Institutions
EAC	-	East African Community
EPC	-	Export Promotion Council
EPZ	-	Export Processing Zone
ERS	-	Economic Recovery Strategy for Wealth and Employment Creation
EU	-	European Union
FDI	-	Foreign Direct Investment
FKE	-	Federation of Kenya Employers
GATT	-	General Agreement on Tariffs and Trade
GDP	-	Gross Domestic Product
GJLOS	-	Governance Justice Law and Order Sector
ICSID	-	Center for Settlement of Investment Disputes
ICT	-	Information and Communication Technology
IGAD	-	Inter-Governmental Authority on Development
IOR-ARC	-	Indian Ocean Rim-Association for Regional Cooperation
IPR	-	Intellectual Property Right
ISI	-	Import Substitution Industrialization
IT	-	Information Technology
ITES	-	Information Technology Enabled Services
KAM	-	Kenya Association of Manufacturers
KEBS	-	Kenya Bureau of Standards
KEPSA	-	Kenya Private Sector Alliance
KNCC & I	-	Kenya National Chamber of Commerce and Industry
KNTC	-	Kenya National Trade Cooperation
KPA	-	Kenya Ports Authority
KRA	-	Kenya Revenue Authority
KUSCO	-	Kenya Union of Savings and Credit Organizations
MFN	-	Most favoured Nation
MDGs	-	Millennium Development Goals
MIGA	-	Multilateral Investment Guarantee Agency

MoA	-	Ministry of Agriculture
MoCMD	-	Ministry of Cooperative and Marketing Development
MoE	-	Ministry of Education
MoEAC	-	Ministry of East Africa Community
MoF	-	Ministry of Finance
MoFD	-	Ministry of Fisheries Development
MoH	-	Ministry of Health
MoIC	-	Ministry of Information and Communications
MoLFD	-	Ministry of Livestock
MoLG	-	Ministry of Local Government
MORPW	-	Ministry of Roads and Public Works
MoT	-	Ministry of Transport
MoTW	-	Ministry of Tourism and Wildlife
MoYA	-	Ministry of Youth Affairs and Gender
MPND	-	Ministry of Planning and National Development
MSEA-K	-	Micro, and Small Enterprise Association of Kenya
MSMEs	-	Micro, Small and Medium Enterprises
MUB	-	Manufacture under Bond
NAFTA	-	North Atlantic Free Trade Area
NCPB	-	National Cereals and Produce Board
NEMA	-	National Environmental Management Authority
NESC	-	National Economic and Social Council
NTB	-	Non-Tariff Barriers
ODPM & MoT	-	Office of the Deputy Prime Minister and Ministry of Trade
PBGs	-	Producer Business Groups
PPPs	-	Public Private Partnership
R&D	-	Research and Development
RECs	-	Regional Economic Corporations
RoO	-	Rules of Origin
RTA	-	Regional Trade Arrangements
SACCOs	-	Savings and Credit Cooperative Organizations
SADC	-	South African Development Community
SAPs	-	Structural Adjustment Programmes
SLO	-	State Law Office
SMEs	-	Small and Medium Enterprises
TREO	-	The Trade Remission Exports Office
UNCTAD	-	United Nations Conference on Trade and Development
USA	-	United States of America
VAT	-	Value Added Tax
WCO	-	World Customs Organization
WIPO	-	World Intellectual Property Organization
WTO	-	World Trade Organization

EXECUTIVE SUMMARY

Kenya's trade policy development has evolved through the following distinct policy orientations: import Substitution Policies (1960s -80s); Trade Liberalization through Structural Adjustment Policies (SAPs) (1980s); Export Oriented Policies 1990s.

Presently Kenya's Trade regime is guided by market-driven principles of liberalization under the World Trade Organization (WTO), which came into effect in 1995 and the increased efforts in the regional economic integration that has resulted in the establishment of the East African Community (EAC), Common Market for Eastern and Southern Africa COMESA) and the Inter-governmental Authority on Development (IGAD).

Progressive liberalization in Kenya has significantly reduced tariff levels, eliminated price controls and licensing requirements leading to modest growth in export markets. However, despite the open trade policy pursued, Kenya's trade structure, remains concentrated in primary products and traditional markets due to limited capacity for value addition in the manufacturing sector and the relatively underdeveloped intermediate and capital goods industries.

The deepening and expansion of regional integration and bilateral trade agreements have widened the scope of trade opportunities for the Kenyan businesses. Kenya therefore, has the potential to become a more competitive player in the region and global economy if factors affecting competitiveness are addressed.

The essence of the Trade policy on international trade, therefore, is to lay strategies to enhance export growth through value addition in export oriented manufactures and in the services sector as well as pursuing diversification to fully exploit the export opportunities in the emerging markets.

Trade plays a significant role in the country's growth and development through its linkages with all the sectors of the economy by creating markets through which goods and services get to the consumer. Trade also plays a critical role in poverty reduction through employment creation in informal, retail, and wholesale trade and provides MSMEs with opportunities of accessing more favorable prices in international markets thereby ensuring equitable income distribution.

The current Trade Policy instruments are contained in various policy documents and legislations and are administered by various institutions. In the process of implementation, these trade policy instruments have faced problems of effective coordination and harmonious decision-making leading to conflicting rules, regulations and practices affecting trade.

The National Trade Policy takes cognizance of the existing policies and the need to develop a coherent trade policy, with a view to creating a policy environment that facilitates the development of private sector. It highlights constraints and challenges in international and

domestic trade within the context of existing trade policies, identifies strategies and programmes to sustain the economy within the tenets of Vision 2030.

The **National Trade Policy Vision** is for “Kenya to become an efficient domestic market and export led globally competitive economy” while the **Mission** is “to facilitate Kenya’s transformation into a competitive export led economy, enhance regional integration and widen participation in both domestic and international trade’.

The Trade Policy mission will be achieved through the following broad objectives:

- (i) Promotion and expansion of Kenya’s exports of goods and services; and
- (ii) Development of an efficient and competitive domestic market.

The policy recognizes international trade as a strategic priority in realizing the objectives of raising business productivity; encouraging increased international trade and investment; stimulating and supporting MSMEs to participate more in international trade; enhancing the competitiveness in both the export and domestic markets; addressing market distortions; encouraging value additions and diversification; and improving market access. It has equally identified various programmes for implementation in order to address the constraints and challenges affecting the country’s development of international trade.

Some of the main constraints and challenges in international trade: include limited capacity for diversification and low value addition in production, increased use of non-tariff barriers in export markets; lack of competitiveness due to inefficient trade facilitation infrastructure, limited availability of affordable trade finance, limited negotiation capacity and uncoordinated negotiation process; preference erosion, among others.

The domestic trade policy aims at improving business environment and elaborates the government role and that of the private sector in trade and investment promotion. The policy further recognizes and encourages public-private partnership in implementing various programmes and activities. The distinct domestic trade elements covered in the policy include: Distribution and Wholesale Trade; Retail Trade and Informal Trade. Some of the key challenges include un-conducive licensing and regulatory framework; high transportation costs; inadequate logistics and ICT capacities and skills; access to affordable credit; inadequate business management skills; weak supply chains; and poorly serviced business premises, among others.

In addition to international and domestic trade policies there are a range of other trade-related policy issues that arise in the implementation of core programmes. These include consumer protection; competition; fair trade; investment issues; intellectual property rights; trade and environment; trade and gender; trade and labour standards; democratization and trade promotion; and dispute settlement mechanisms.

The policy covers e-commerce which is prioritized in the Kenya’s Vision 2030 which seeks to mainstream e-Trade within the overall economy. In order for this to be achieved, the government will focus on infrastructure development; market improvement; skills and technology upgrading; improved financial transactions; and improved Public Private Partnerships for the sub-sector.

In order to have a coherent and integrated national trade policy, the linkage and synergy of both domestic and international trade policy are important. In order to achieve its objectives the National Trade Policy prioritizes and sequences issues to be addressed as follows: policy and regulatory framework; infrastructure development; institutional strengthening; market development; and trade finance support.

The policy is presented in three sections comprising ten chapters. Section A gives background of the policy and comprises chapter one which gives the introduction. Section B on international trade comprises chapter two, three and four which highlight international trade policy regime, international trade strategies and objectives, international trade policy programmes, and complementary support policies and measures respectively. Section C on Domestic Trade policies comprises chapter five, six, seven, which focus on distribution and wholesale trade, retail trade, and informal trade respectively. Section C covers trade related issues, e-commerce and integration plans in chapters eight, nine and ten respectively.

SECTION A:
OVERVIEW

CHAPTER 1: BACKGROUND

1.1 Introduction

Kenya's trade policy development can be traced back to the Sessional Paper No. 10 of 1965 on African Socialism and its Application to Planning in Kenya. The Paper centred on ensuring rapid economic development and social progress for all Kenyan's. It placed emphasis on promotion and protection of the domestic industries. The policy was a key influence on the development of the country's trade regime over the first decade of independence.

The second major phase in the evolution of the trade policy in Kenya was through the Structural Adjustment Programmes (SAPs) introduced in the mid 1980's by Sessional Paper No.1 of 1986 on Economic Management for Renewed Growth. It emphasized a change from reliance on import substitution and protectionism towards a policy that led to industries being encouraged to manufacture for export with reform programmes aimed at improving efficiency, stimulating private investment and increasing the sector's foreign exchange earnings. It also meant economic liberalization bringing to an end the central role of the public sector institutions which had hitherto managed and coordinated trade distribution networks and related trade facilitation and promotion activities.

Presently Kenya's Trade regime is guided by market-driven principles of liberalization under the World Trade Organization (WTO), which came into effect in 1995. The liberalization phase has led to lowering of tariffs and reduction of non-tariff barriers in Kenya's export markets thereby improving market access to Kenya's products. The phase also coincided with increased efforts in the regional economic integration initiatives that resulted in the establishment of the East African Community (EAC), Common Market for Eastern and Southern Africa COMESA) and the Inter-governmental Authority on Development (IGAD).

In addition to the global and regional trade initiatives, the trade sector in Kenya is further influenced by commodity Acts and regulations contained in other various Acts under the administration of several ministries and public institutions.

This Trade Policy is also guided by international best practices of trade policy formulation and the dynamics in global business trends. The policy will seek to maximize on the emerging trends such as rise in south-south trade, global production networks, growing trade in services and wider use of e-commerce.

The policy further places emphasis on the need to enhance a conducive investment climate, mainstream Micro, Small and Medium Enterprises (MSMEs) in the global trade in view of their critical role in job creation, poverty reduction and furtherance of export diversification and economic development.

1.2 Role of Trade in the Economy

Trade plays a significant role in the country's growth and development through its linkages with all the sectors of the economy. Trade supports agriculture, manufacturing and service

industries by creating markets through which goods and services get to the consumer and therefore provides the channel through which effects of economic growth are transmitted to various players in the economy. For trade to be effective, therefore, it is imperative that the factors affecting the inter-relationship in the manufacturing, agriculture and service value chain are comprehensively addressed. Trade also plays a critical role in poverty reduction through employment creation in informal, retail, and wholesale trade. In addition, trade provides MSMEs with opportunities of accessing more favorable prices in international markets.

Progressive liberalization in Kenya has significantly reduced tariff levels, eliminated price controls and licensing requirements. As a result, imports grew from an average of 6.1% to 22.5% between the periods 1998-2002 and 2003-2007 respectively. Over the same periods exports grew from an average of 6.6% to 10%. The high growth in imports relative to exports resulted in the widening of overall trade imbalance from an average of Kshs.45 billion to Kshs.87 billion between the period 1998-2002 and 2003-2007 respectively.

Despite the open trade policy pursued, Kenya's trade structure, however, remains concentrated in primary products and traditional markets. For instance, exports are composed of a few primary commodities, which include tea, coffee, cut flowers, and vegetable products, accounting for over 50% of total exports. This has been due to limited capacity for value addition in the manufacturing sector and the relatively underdeveloped intermediate and capital goods industries. The trade direction is also limited to a few countries with COMESA and European Union accounting for over 60% of exports.

The deepening and expansion of regional integration and bilateral trade agreements have however widened the scope of trade opportunities for the Kenyan businesses. Due to these initiatives, there is an emerging trend towards exports of services, particularly professional services. Other non-traditional exports, which are driving the country's economic growth, include horticulture targeting the European Union Market. New market opportunities have emerged particularly the USA market that offers opportunities for exports of apparels and textiles under the AGOA initiative. The Middle East market has further opened opportunities for trade in livestock products while the "Asian Tigers" have provided opportunities for tourism.

Kenya has the potential to become a more competitive player in the region and global economy. However, the country's global competitiveness remains a major challenge due to low levels of productivity, un-conducive business regulatory environment and inadequate infrastructure development. Intervention measures need to be initiated and aim at further improving the business climate in terms of a conducive regulatory environment and greater access to finance and infrastructure development.

The essence of the Trade policy on international trade, therefore, is to lay strategies to enhance export growth through value addition in export oriented manufactures and in the services sector as well as pursuing diversification to fully exploit the export opportunities in the emerging markets.

On the domestic front, distribution and wholesale including retail sub-sector has played a major role in the Kenyan economy. The sub-sector currently accounts for 15.7% of GDP and 10% of formal employment. Indeed Vision 2030 has identified and earmarked wholesale and retail trade among other sectors for rapid growth and development. Overall, wholesale and retail trade including hotels and restaurants accounts for 58.7% of employment in the informal sector.

This informal sector commonly referred to as the “Jua kali” continues to play an important role in the labour market as it reduces the levels of unemployment by creating jobs for people in the labour force. In 2007, for instance, the sector provided employment to 7.5 million Kenyans and created 427,000 new jobs compared to 420,000 new jobs in 2006. This constituted 89.9 per cent of all the new jobs created outside small-scale agricultural sector and pastoralist activities.

There are however, emerging trends with associated challenges in the distribution, wholesaling and retailing activities. These include manufacturers distributing their own products; large scale importers retailing their merchandise and major supermarkets, shopping and exhibitions malls springing up to retail common user products in major urban centres.

The service sector which comprises tourism; transport and communications; trade and related services; and financial and business services, accounts for 60% of GDP. Within the service sector, there are emerging trends of growth in domestic trade brought about by the liberalization of the capital markets and the privatization program. This has enabled many more Kenyans to buy shares and trade through the Nairobi Stock Exchange. In addition, there are new developments of the domestic oriented Business Processing Outsourcing (BPO) and Information Technology Enabled Services (ITES) which has created trade opportunities for MSMEs to provide Business Development Services (BDS). The Trade Policy will therefore facilitate improvements in the enabling environment for increased trade in stock and shares and outsourced services.

1.3 Current Trade Policy Dispensation

The current Trade Policy instruments are contained in various policy documents and legislations; and are administered by various institutions. Some of the policy instruments include: import/export management, taxation, trade facilitation and promotion, licensing and registration, production and productivity, skills development and labour laws impacting on trade, investment and privatization incentives, Government procurement, intellectual property rights, competition and consumer protection, financial services, ICT, trade in services, governance (arbitration, bankruptcy etc.). The key Acts that operationalize these policy instruments include: Local Government Act/By-laws, Companies Act, Customs and Excise Act, EAC Customs Management Act, Weights and Measures Act, Trade Descriptions Act, Hotels and Restaurant Licensing Act, Investments Act, Standards Act, Environment Act, Industrial Property Act, Liquor Licensing Act and various consumer protection acts among others. (Refer to Annex 1)

In the process of implementation, these trade policy instruments have faced problems of effective coordination and harmonious decision-making leading to conflicting rules, regulations and practices affecting trade.

1.4 Need for a coherent Trade Policy

In view of the existing legal and regulatory framework with trade policies contained in various documents, legislations and institutions, the National Trade Policy seeks to consolidate existing policies and develop a coherent trade policy. It seeks to create the policy environment that is necessary for trade to flourish, drawing upon experiences in successful economies. It analyses trade constraints and challenges in international and domestic trade within the context of existing trade policies, prescribes strategies and programmes to sustain the economy within the tenets of Vision 2030. Further, the policy establishes the linkages between domestic trade and external trade policies and competitiveness of the economy.

The Policy takes cognisance of Kenya's commitments to the multilateral, regional and bilateral agreements. In particular, the EAC and COMESA regional integration agenda informs the formulation of this National Trade Policy. Further, the private sector and civil society concerns for the country to remain competitive and institutionalise accountability respectively also feed into this Trade Policy.

The formulation of this Trade Policy takes into account international best practices and also recognises the needs of micro, small and medium-sized enterprises (MSMEs), which have emerged within the global business environment. It also takes into account new developments and trends in international and domestic trade such as expansion of world merchandise trade, a surge in trade between economic blocs, rise in South-South trade, containerization, intra-firm trade, global production networks, growing trade in professional services, rapid advances in ICT and wider use of e-commerce.

1.5 Formulation of an Integrated Trade Policy

An integrated Trade Policy contains the elements of both international and domestic trade. It takes into account the need for effective coordination and shared importance of having institutions and infrastructure which support the development of trade. It also emphasises the need for effective participation of all stakeholders in particular the Members of Parliament through the relevant Parliamentary Committees; the private sector; the Civil Society. The integrated approach encourages information flows and builds confidence among stakeholders. The consultative process will ensure ownership of the National Trade Policy.

1.6 National Trade Policy Vision, Mission and Objectives

In view of the linkages between trade and economic growth, the Trade Policy aims at enhancing development by facilitating private sector led and globally competitive trade. In particular, trade will contribute towards national economic growth target of 10% by creating an enabling environment for diversification and expansion of exports and increased domestic trade. This is in line with the national economic growth target set under Kenya Vision 2030.

The National Trade Policy Vision is for “Kenya to become an efficient domestic market and export led globally competitive economy”. To achieve the aspiration of Vision 2030 the entire trade sub-sector is expected to play a critical role both in terms of vibrant domestic and international trade.

The National Trade Policy Mission is “to facilitate Kenya’s transformation into a competitive export led economy, enhance regional integration and widen participation in both domestic and international trade’.

The Trade Policy mission will be achieved through the following broad objectives:

- (i) Promotion and expansion of Kenya’s exports of goods and services; and
- (ii) Development of an efficient and competitive domestic market.

The National Trade Policy will use a comprehensive, coherent and integrated approach to achieve these objectives by:

- (i) Setting and re-defining Government Policy relating to International and Domestic trade;
- (ii) Designing appropriate complementary measures to improve the business regulatory and macro-economic environment;
- (iii) Increasing investment in infrastructure to support trade development;
- (iv) Improving co-ordination of institutions responsible for promoting and regulating trade; and
- (v) Ensuring effective participation of key stakeholders (Members of Parliament, Government Ministries, private sector, civil society, and development partners, among others).

SECTION B:
POLICY ON INTERNATIONAL TRADE

CHAPTER 2: POLICY ON INTERNATIONAL TRADE

2.1 Introduction

The policy on International Trade is anchored on liberalization and globalization and driven by competitiveness. Industrialization and rapid economic growth in developed and newly industrializing countries has been mainly attributed to international trade through export-led strategies. To exploit the existing and expanding opportunities in international trade arising from liberalization and globalization, countries have formed trade blocs in areas of common interest to enhance their competitive edge.

Kenya is an active member of World Trade Organization (WTO) where it has made commitments in both goods and services. It is also a member of COMESA Free Trade Area and EAC Custom Union. In addition, the country is also involved in bilateral trade arrangements with a number of countries. The commitments made under these trade arrangements and the national policy direction have formed the basis under which Kenya's international trade policy operates.

The international trade policy regime and institutional arrangements in Kenya include international trade agreements, the import policies and procedures, the export policies and procedures and other measures affecting production. The trade policy aims at transforming the country into a more open, competitive and export-led economy.

2.2 Current International Trade Policy Regime

Kenya's National Trade policy is anchored on the principles¹ and objectives of the WTO. The country is committed to gradual reduction of Tariff and Non-Tariff barriers and progressive liberalization of trade in services. The country is also a member of Regional Trade Economic blocs (COMESA and EAC, among others) and has also signed several bilateral and preferential trade agreements.

2.2.1 Regional Trade Agreements

Kenya is a member of the East African Community (EAC), Common Market for East and Southern Africa (COMESA), Intergovernmental Authority on Development (IGAD) and Indian Ocean Rim-Association of Regional Cooperation (IOR-ARC).

(a) East African Community (EAC)

Kenya, Tanzania, Uganda, Rwanda and Burundi form the East African Community. The EAC trading block brings the five countries together on issues of economic, social and political cooperation.

The EAC has created an expanded market for Kenyan goods and services with Uganda being the leading export market for Kenya and Tanzania and Rwanda also being major export destinations for Kenyan exports. The leading exports from Kenya to EAC countries include manufactured goods, fuel and lubricants and machinery and other equipments. The

¹ The WTO fundamental principles of the Most Favoured Nation (MFN) , National Treatment , Prohibition of Quantitative Restrictions (QRs) ,Tarriff Bindings/Commitments and Transparency

negotiations in the community are aimed at relaxation and harmonization on issues related to labour movement, work permits, education qualifications, standards, customs, rules of origin and common tariff nomenclature within the region.

A three-band Common External Tariff (CET) on EAC imports originating in third countries was agreed upon in the context of the EAC Custom Union (CU) Protocol including the sensitive list comprising of goods that are charged tariffs higher than the maximum CET of 25%. The EAC customs protocol also provides for elimination of non-tariff barriers, provision covers on rules of origin, dumping, subsidies and countervailing duties, settlement of disputes, securities and other restrictive restrictions to trade, competition, duty draw backs and remission of taxes, customs co-operations re-exportation of goods and harmonization of trade documentation and procedures.

The adoption of the CET by the Partner States, ending the practice of Partner States charging different national tariffs and observing the provisions of EAC customs protocol are expected to contribute significantly towards enhanced simplicity, rationalization, and transparency of EAC Partner States' tariffs. These initiatives inform the direction of this trade policy.

(b) The Common Market for East and Southern Africa (COMESA)

Kenya is a member of COMESA that brings together 19 countries that form an economic bloc. Eleven of the COMESA Member States have joined the COMESA Free Trade Area (FTA) to which Kenya belongs. As such, it exchanges free-trade preferences with 10 COMESA FTA partner countries, as compared to tariff preferences exchanged with non-FTA COMESA members. COMESA intends to become a Customs Union by 2009 and become a full Economic Community by 2025

The COMESA countries have also adopted COMESA CET structure of a four-band category of raw materials at 0%, capital goods at 0%, and intermediate goods at 10% and final goods at 25%, with a provision for flexibility on policy space.

COMESA is currently the leading destination for Kenyan export products. The main exports to COMESA include manufactured goods, fuel and lubricants and machinery and other equipments. The expanded market has enabled Kenya to diversify exports particularly in the area of manufactured goods and trade in services. Kenya has become a leading financial and transport hub in the region. In addition, in the air transport sector, the national carrier has expanded its services to the region.

2.2.2 Preferential Trade Agreements

(a) African Growth and Opportunity Act (AGOA) (2000)

Kenya, along with other beneficiary Sub-Saharan African countries, has benefited from preferential trade arrangement provided by USA through the African Growth and Opportunity Act. The beneficiary countries have to meet eligibility criteria set out in the Act which includes establishment of a market based economy and issues of good governance. This trading arrangement was initially expected to expire in 2007 but has been extended to 2015. This scheme gives Kenya and other beneficiary Sub-Saharan African countries opportunities to export over 6000 product lines to the United States duty free and quota

free. However, Kenya has only been able to export a few products specifically textiles and handcraft due to demand side and supply side constraints. The policy has identified strategies to address these constraints.

(b) Economic Partnership Agreements (EPAs)

Kenya together with the other EAC Partner States is negotiating a new trading arrangement with the EU (EPA) as a successor to the Cotonou Partnership Agreement (successor to the Lome convention). The new trading arrangement will replace the non-reciprocal trade preferences arrangement offered to Kenya and other ACP countries under the Cotonou Partnership Agreement. At the expiry of this agreement in July 2009, this arrangement will be replaced by a WTO-compatible reciprocal Economic Partnership Agreement. The primary objectives of the EPAs are to foster sustainable development, integrate the ACP states into the world economy and fully comply with the prevailing WTO rules.

2.2.3 Bilateral Trade Agreements

Kenya has signed bilateral trade agreements with both developed and developing countries² that fulfil the following objectives:

- (i) Reciprocal participation in exhibitions and trade fairs as well as respective country week promotional events;
- (ii) Exchange of market intelligence, missions/surveys for market information;
- (iii) Encouragement of institutional cooperation such as the Standards Institutions; Chambers of Commerce and Industry, Customs Organizations, Research Institutions among others;
- (iv) Prompt and focused follow up of issues raised during bilateral meetings;
- (v) Exchange of general and product specific trade missions; and
- (vi) Promotion of Trade and Investment.

2.3 Import Policies, Procedures and Institutions

2.3.1 Goods Trade

a) Applied Tariff Structure

Since coming into force under the EAC Protocol establishing the EAC Custom Union on January 1, 2005, the EAC Common External Tariff (CET) has been Kenya's main instrument of import policy.

The EAC Custom Union Protocol establishes a three band common external tariff with 0% on raw material imports; 10% on intermediate goods imports and 25% on finished imports CIF in respect of all goods imported into the Community. Goods imported from EAC partners states are zero rated while some of Kenya's exports to Uganda and Tanzania are charged duties under a transitional arrangement ending in 2009. The Partner States also undertake to review the maximum rate of the Common External Tariff after a period of 5 years from the

² Bangladesh, Canada, China, Comoros, Congo, DRC, Djibouti, Egypt, Ethiopia, Hungary, India, Iran, Iraq, Lesotho, Liberia, Mauritius, Mozambique, Netherlands, Nigeria, Pakistan, Russia, Rwanda, Somali, South Africa, South Korea, Sudan, Swaziland, Tanzania, Thailand, Turkey, Ukraine, Zambia, Zimbabwe and Libya

coming into force of the Custom Union. EAC Partner States charge CET tariffs on sensitive products³ originating in third countries lower than WTO tariff bindings. Sensitive lists under COMESA and EPA are still under negotiation.

b) Tariff Bindings

Kenya's tariff bindings cover 14.9% of its total tariff lines. Tariffs are bound at a ceiling rate of 100% for all agricultural products. For non-agricultural products, Kenya has bound six tariff lines (at the HS four-digit level), equivalent to 1.6% of non-agricultural tariff lines; at 62% on fresh, chilled, or frozen fish (HS 03.02 and 03.03), excluding fish fillets and other minced fish meat; 35% on medicaments (HS 30.03); 18% on pharmaceutical goods (HS 30.06); 62% on mineral or chemical fertilizers (HS 31.05) containing two or three of the fertilizing elements, potassium, phosphorus, and nitrogen; and 31% on polymers of ethylene in primary form (HS 39.01). The tariff on "other tractors" (HS 87.01.90) is bound at 62%.

c) Duty Exemptions and Waivers

Kenya currently grants tariff exemptions on goods used by charitable bodies, churches, and approved educational institutions; the military and police; official aid-funded projects; in emergency situations; and by diplomatic and international organizations. In addition, samples and exhibits/displays for trade fairs may be imported into Kenya duty free. However, after use, the items should be re-exported or destroyed. In the event that relevant customs certification that the goods have been re-exported or destroyed is not produced, the relevant duties are imposed on the presumed value of the items. However, the introduction of the CET, with its increased share of zero tariffs, has made redundant a number of previous tariff concessions.

The Customs Union has also minimized discretionary powers of granting exemptions to custom duties earlier enjoyed by partner states, and which sometimes had created uneven playing ground for firms. The Partner States have undertaken harmonization of their exemption regimes, which shall be administered regionally.

d) Internal Duties

(i) Value Added Tax (VAT)

VAT is levied at a standard rate of 16% on the sale price of locally produced goods and services, or on the customs value (plus border charges) of imports. A reduced rate of 14% is applied on certain services, in particular hotels and restaurants. The government uses the VAT to support policy priorities, both to protect "strategic" sectors such as transportation and agriculture and to address short-term needs. The Customs and Excise Act also provides for zero-rated VAT on imports and purchases by designated persons or organizations.

³ Maize and maize products, dairy products, wheat + meslin flour, rice, sugar, cigars, cigarettes, cement, matches, batteries, khanga fabrics, bed linen, sacks, bags, used clothes, crown corks, jaggery.

(ii) Excise Taxes

Excise taxes apply to both imports and locally produced goods including alcoholic beverages, tobacco products, petroleum products, motor vehicles, carbonated drinks and mineral water, cosmetics, jewellery and cell phone airtime. These duties are charged on the ex-factory price of the domestic goods and the imports value (inclusive of custom duties) of the imported items. Excise duties on imports are collected at the time of imports along with import duties and VAT.

e) Quantitative Restrictions and Import Prohibition

The EAC Customs Management Act provides for quantitative restrictions and controls on some imports on grounds of security, health, morals and environment. These restrictions and controls are implemented through import quotas, licensing requirement and imposition of import ban. Import prohibition and licensing regime has goods categorized into three groups: prohibited goods, restricted goods and those that must meet technical, phytosanitary, health and environmental standards. Imports of animals and animal products are undertaken through permits issued by the Department of Veterinary Services.

f) Trade Remedies

Kenya's national legal basis for the imposition of anti-dumping and countervailing measures is in the Customs and Excise Act. A duty may be imposed on dumped⁴ or subsidized⁵ goods if their importation causes or threatens to cause material injury to an established industry or is such as to retard materially the establishment of an industry in Kenya.

g) Standards and Technical Regulations

Standards play an important role in ensuring the safety and quality of products in the market. Kenyan standards are formulated through consensus by the relevant stakeholders. The government has ensured that competent authorities are in place to undertake standardization, testing and certification. The Kenya Bureau of Standards (KEBS), Kenya Plant Health Inspectorate Services (KEPHIS), Weights and Measures Department are among the institutions that are responsible for developing and enforcing standards and technical regulations. Compulsory standards apply equally to both imports and locally produced goods.

⁴ Dumped goods as those with an export price lower than their fair market price in their country of origin or in the country from which they were exported to Kenya; or sold in Kenya at a price below the "cost of importing", i.e. the cost of the goods in the country from which they were exported inclusive of insurance, freight, duties, taxes and any other charges.

⁵ Subsidies are defined as any support (e.g. grant, loan, tax relief) given, directly or indirectly, on production or export.

h) Customs Valuation, Classification and Implementation Procedures

Kenya has notified its legislation on customs valuation to the WTO. Since January 2000, customs valuation in Kenya has been based on the Agreement on Implementation of Article VII of GATT 1994, which provides the rules for the customs value for the imported goods.

The Kenya Revenue Authority (KRA), Kenya Ports Authority (KPA), Kenya Airports Authority (KAA), KEBS, KEPHIS, Police and clearing and forwarding agents participate extensively in customs administration including charging fees for their services. A number of reforms have been undertaken to simplify customs administration which include automated online operations, harmonised EAC customs duties, reduction of road blocks, simplification and harmonisation of documentation between EAC and COMESA. Each member of the EAC Custom Union administers its own customs collection.

i) Rules of Origin (RoO) and Domestic Content Requirement

The Rules of Origin is one of the common trade policy instruments. The many trade agreements Kenya participates in call for different Rules of Origin and content requirements. The purpose of the EAC Rules of Origin which is similar to that of COMESA is to implement the provisions of Article 14 of the Protocol to ensure that there is uniformity among Partner States in the application of the Rules of Origin and that to the extent possible the process is transparent, accountable, fair, predictable and consistent with the provisions of the Protocol.

2.3.1 Trade in Services

Services constitute the most important sector of the Kenyan economy today, with its share of GDP and employment larger than the combined share of agriculture and industry. The services sector has been the most important sector in Kenya's economy in terms of employment creation, contribution to GDP and foreign earnings. The contribution of the services sector to real GDP was about 60% in 2007. The most important subsectors include tourism, transport and communication, financial services and business services. The services sector, including government services, absorbs about 68% of the labour force.

Kenya has made a number of commitments in its service sectors in WTO. Kenya's specific commitments under GATS cover the following areas: financial services (insurance and insurance related activities, re-insurance and retrocession, services auxiliary to insurance, banking and other financial services; Communication services; tourism and travel related services (hotel and restaurants, including catering, travel agencies and tour operators, and tourist guides); transport services; and other services (meteorological and data/information). The summary of Kenya's specific commitments in services is provided in annex 2.

The basic list of service sector considered for progressive liberalization includes business services, communication services, construction and engineering related services, distribution services, educational services, environmental services, financial services, health-related social services, recreational cultural and sporting services, transport services , tourism and travel and others

2.4 Export Policies and Measures Affecting Exports

2.4.1 Goods Trade

The trade policy instruments available for exports include: export taxes and charges, export prohibitions, restrictions, and licensing; export subsidies and incentives; export promotion and marketing assistance, and export finance, insurance, and guarantees.

a) Export Taxes and Charges

The registration formalities for imports of goods for commercial purposes under the Customs and Excise Act also apply to exports. Specifically, all exports must be carried out on the basis of a certificate.

The EAC Customs Management Act provides flexibility for member countries to impose export taxes and charges on a selected range of products for the development of sectors which are critical in addressing key national issues of industrial development, income inequalities and unemployment. Kenya maintains an export tax of 25%, on hides and skins and scrap metal to encourage local processing.

b) Export Prohibitions, Restrictions, and Licensing

Kenya prohibits the exportation of certain products such as the firearms and ammunition. A permit is required for exports of most agricultural products, food, minerals, and mineral products. Exports of certain agricultural and food products are subject to special licences to ensure that the country remains self-sufficient in these products.

Products considered as having aesthetic value or security importance to Kenya, and products covered by international conventions to which Kenya is a signatory e.g. Convention on International Trade on Endangered Species (CITES) require prior authorization by the Government before exportation.

Plant exports are subject to a phytosanitary certificate from Kenya Plant Health Inspectorate Service (KEPHIS), while export of animals and animal products require a health and sanitary certificate from the Department of Veterinary Services.

c) Export Subsidies and Incentives

Kenya does not grant any export subsidies, nonetheless, three incentives schemes are available to Kenyan companies to encourage export-oriented activities. These are the Export Processing Zones (EPZ) Scheme, the Manufacturing Under Bond Scheme (MUB), and the Duty Remission Scheme.

(i) Export Processing Zones Scheme

The Export Processing Zones Scheme, established in 1990, allows for duty and VAT exemption on imported machinery (except motor vehicles) and raw materials. Besides high-quality infrastructure, companies located in EPZs benefit from a ten-year corporate tax, income, and withholding tax holiday; exemption from stamp duties; and a 100% investment allowance (applicable over 20 years). The Export Processing Zones Authority (EPZA) acts as the primary licensing and regulatory

agency on behalf of the Government with the objective of rapid project approval and facilitating licensing.

(ii) Manufacturing under Bond (MUB)

The Manufacturing under Bond (MUB) Scheme was introduced in 1989. Under the scheme, firms exporting their total output are exempted from payment of import duties and VAT on inputs, including plant, equipment, and raw materials. The exemption is subject to the posting of a customs bond.

Eligible firms also enjoy an investment allowance of 100% on immovable fixed assets. To be eligible, investors must provide documentary evidence showing financial ability, technical know-how, and market availability as well as significant employment generation. MUB companies may sell their products on the domestic market, subject to the approval of the Commissioner of Customs and Excise, and upon payment of normal duties and taxes plus a 2.5% surcharge on the dutiable value.

(iii) Duty Remission Scheme

Duty Remission Scheme has been operational since 1990. Through the scheme the government grants remission of duties and VAT on goods imported for use in the production of manufactured goods for export or for the production of raw materials for use in manufactured products for export, or for the production of "duty-free items" for sale domestically. The Trade Remission Exports Office (TREO) administers the scheme. The remission is subject to the posting of a bond to cover the amount of unpaid duty. In order to recover the bond, exporters must demonstrate, within six months, which imports have been incorporated into the production of final goods that have been exported.

d) Export Finance, Insurance, and Guarantees

Kenya does not have any public export finance, insurance or guarantee schemes. However, African Trade Insurance Agency (ATIA) and the Multilateral Investment Guarantee Agency (MIGA) provide multilateral import and export credit and political risk insurance guarantee. Export finance and insurance must be taken with private companies whose prices are market-determined.

e) Export Promotion and Marketing Assistance

The Export Promotion Council (EPC) is mandated to promote and develop Kenya's export activities. The EPC's activities revolve around export market development, product development and adaptation, trade information and delivery services; trade policy facilitation and development of exporting skills. The EPC also maintains a Centre for Business Information in Kenya (CBIK), which provides business information and support services, and houses a WTO reference centre for the business community. In addition, the National Export Strategy (NES) currently under review has been Kenya's main policy paper on export promotion.

Other agencies involved in export promotion and marketing include the Export Processing Zones Authority (EPZA), the Kenya National Chamber of Commerce and Industry (KNCCI),

and sectoral producer and exporter associations such as the Kenya Association of Manufacturers (KAM) and the Fresh Produce Exporters Association of Kenya (FPEAK). Sectoral Parastatals such as the Horticultural Crops Development Authority are also involved in export promotion activities.

f) Research, Development and Extension Services

Kenya Agricultural Research Institutes (KARI), the Kenya Industrial Research and Development Institute (KIRDI) Kenya Institute of Public Policy and Research Analysis (KIPPRA), Institute of Policy Research Analysis (IPAR), Institute of Economic Affairs (IEA) and Tegemeo Institute of Egerton University, among others provide important research, development and extension services to the productive sectors and trade.

g) State Trading Enterprises (STEs)

Kenya maintains state trading enterprise as regulatory authorities to manage liberalised markets and correct market failures when need arises. Kenya's privatization efforts date back to 1992, when the Government launched the Public Enterprises Reform and Privatization (PERP) programme. Under the PERP, most of the commercially oriented enterprises were privatised except a few which were excluded from privatization due to their strategic importance such as National Cereals and Produce Board (NCPB), National Oil Corporation of Kenya (NCK) and Kenya National Trading Corporation (KNTC) among others. However, their role was drastically reduced as a result of liberalization and privatization.

2.4.2 Trade in Services

The general principles that apply to trade in goods of MFN, National Treatment and transparency also apply to trade in services. However unlike trade in goods, where the market access restriction is through tariffs, and market access restriction on trade in services is through regulations that include foreign equity restrictions, educational qualifications, economic needs tests and licensing among others.

The General agreement on trade in services however does not compel countries to open up their services sector. The agreement recognises the special needs of the developing and least developed countries to liberalise services according to their levels of development.

Kenya's export of trade in services is quite competitive in the African region but limited in the developed countries. The services sector in the developed countries is highly competitive and regulated making Kenya's potential to export difficult.

Limitations to export to developed countries particularly the EU include; economic needs test which has often been used as a market access barrier. Other market access barriers in the service sector include high financial requirements, recognition of educational qualifications and Visas and work permits.

The structure of Kenya's services export shows that cross-border trade, (mode 1) Consumption abroad (mode 2) are the most dominant modes of supply while the country's export of services of the other two modes, commercial presence (mode 3) and movement of natural persons (mode 4) though important for the developing and least developed countries are not yet fully exploited.

CHAPTER 3: STRATEGIES AND PROGRAMMES FOR PROMOTION OF INTERNATIONAL TRADE

3.1 Introduction

Globalisation and liberalization coupled with emerging trends in international trade offer opportunities for Kenyan exporters to penetrate into new markets. These changes however, have been accompanied by constraints and challenges to the businesses in coping with them.

Kenya's international trade strategies, therefore, aim at ensuring that Kenyan business enterprises especially the Micro, Small and Medium Enterprises (MSMEs) get the necessary support to be competitive and achieve their full potential. Greater emphasis is placed on export-driven growth in line with Vision 2030.

The policy recognises international trade as a strategic priority in realising some of the following main objectives: raising business productivity; encouraging increased international trade and investment; stimulating and supporting MSMEs to participate more in international trade; enhancing the competitiveness in both the export and domestic markets; addressing market distortions; encouraging value additions and diversification; and improving market access. The policy has identified various programmes for implementation in order to address the constraints and challenges affecting the development of international trade in the country.

The constraints and challenges as well as intervention measures on the promotion of international trade have been categorised into five (5) broad areas namely: market access, trade facilitation, institutional capacity and coordination mechanisms, supply capacity and information flow.

3.2 Market Access

The ability of Kenyan business enterprises to penetrate foreign markets has faced a number of constraints and challenges. The policy has identified strategies and programmes to address these constraints and challenges with a view to enhancing market access in foreign markets.

3.2.1 Constraints and Challenges

(a) The Increased Use of Non-Tariff Barriers (NTBs)

Tariffs have substantially come down as a result of multilateral trade agreements and the regional integration process to an extent that some countries have felt that their industries face stiff competition. In an effort to promote these industries, countries have turned to imposing non-tariff barriers, which have continued to increase over time.

The NTBs take the form of business registration and licensing procedures; customs documentation and administrative procedures; immigration procedures at the border crossing; cumbersome inspection requirements; road blocks, weighbridges, police checks and standards requirements; and transit procedures. Applications of NTBs restrict the flow

of goods and services among nations. The main challenge confronting the country is to ensure that negotiations at bilateral, regional and multilateral trading system lead to a reduction or elimination of all NTBs.

(b) Tariff Peaks and Escalations

While average customs duties have come down after successive rounds of negotiations, application of high tariffs and tariff escalations by developed countries for value added products originating from developing countries has continued to restrict exports of developing countries. In effect, this practice protects domestic industries of the importing country while discouraging value addition.

(c) Domestic Support and Trade Distorting Subsidies

Developed countries provide support to their producers, which make Kenyan products uncompetitive in both domestic and export markets. The trade distorting subsidies are provided in the sectors of strategic importance such as agriculture to the least developed and developing countries. The challenge therefore is for Kenya to develop effective negotiation mechanisms that will lead to substantial reduction and ultimate elimination of trade distorting subsidies.

(d) Treatment of Sensitive Products

The tariffs for the EAC sensitive products are lower than the WTO tariff bindings. Unlike the sensitive list being negotiated under the EPA with the EU, the EAC list is not comprehensive enough as it excludes some products, which require protection before exposing them to competition. The sensitive products are strategic for the purpose of safeguarding national interest such as employment, livelihoods, rural development revenue losses, and protection of some strategic industries.

The discrepancies cited above pose a great challenge to the government, thus calling for the need by the Partner States to harmonise the list of sensitive products and operating rules.

(e) Expiry of Multi-Fibre Agreement and the US (AGOA) Market

The expiry of the Multi-Fibre Agreement in December 2005 exposed Kenya's exporters to stiff competition as major exporters of textiles from countries like China, India, and the Far East countries are now key players in the USA market.

The challenge is for the least and developing countries to negotiate for re-classification of the emerging economies such as China, India and Brazil.

(f) Narrow Baskets of Export

Kenya's export basket has remained relatively narrow comprising mainly of primary products such as tea, coffee, horticulture, fish and tourism. Primary products fetch low export earnings and are also vulnerable to price fluctuations in the world market.

The manufacturing sector is engaged in the production of low value-added and limited range of products due to limited use of modern cost-effective and efficient production technologies and limited information on international trade opportunities. This has contributed to limited scope for product diversification and expansion of export base.

The challenge to the government is to create an enabling environment for the manufacturing sector to undertake value addition of the primary production through agro-processing and other manufactured goods to generate greater access in international markets.

(g) Preference Erosion and Complexity of Rules of Origin

As a result of the erosion of preferences arising from the continued liberalization under WTO, the preferential market under AGOA and European Union (EU), Kenya faces the problem of declining exports caused by competition on the exports to these markets.

The EU insists on prohibitive Rules of Origin, which restrict entry of Kenyan exports to the EU market. In addition, with the current trend where production of industrial goods are manufactured and sourced from different countries Rules of Origin become difficult to apply.

The business community therefore will face even a bigger challenge in ensuring that they overcome the resultant competition once the new trading regime of EPAs comes into effect.

(h) High and Multiple Internal Duties and Taxes

A wide range of taxes, levies, cesses, and fees charged on production, inputs, and services, distort prices and make products/services uncompetitive in domestic and world markets. In addition, the multiple taxes are burdensome and cumbersome to the business community. The challenge for the Government is to review and rationalize all taxation laws and regulations to enhance competitiveness in production.

(i) Limited Trade in Services

Policies for trade in services are not well developed leading to lack of human resource development strategies and inadequate investment in infrastructure for transport and ICT services and promotion of trade in e-enabled services. The country also lacks effective domestic regulatory framework for many of the service sub-sectors. In particular, the absence of an enabling legislation for e-commerce and back office operations limits Kenya's potential to diversify into high value service sectors. The challenge is for the Government to develop a regulatory and institutional framework and improve data collection for trade in services.

3.2.2 Market Access Strategies and Programmes

The Policy has identified the following strategies to address the market access constraints:

(a) Enhancing Participation in International Trade Negotiations

The participation of the country in multilateral, regional and bilateral trading arrangements in the recent past has experienced a number of challenges that have constrained the business community to fully exploit the opportunities created by these trading arrangements. This calls for enhancement of participation in the Multilateral, Regional and Bilateral Trade Agreements

Programmes

- (i)* Develop mechanism to enhance Public-Private Sector Partnerships in trade related activities.

- (ii) Undertaking research and policy analysis to enhance negotiating and implementation capacities;
- (iii) Negotiating for elimination of non-tariff barriers in export markets ;
- (iv) Undertake research and analysis on restrictive import regimes based on NTBs;
- (v) Harmonize internationally benchmarked standards within the framework of regional and international agreements including establishing centres of excellence;
- (vi) Negotiate for double taxation agreements;
- (vii) Development of mechanism for handling unfair trade practices;
- (viii) Enforce conformity and compliance with standards and technical regulations; and
- (ix) Review the legal and regulatory framework to take on board commitments made in various trade agreements.

(b) Diversification of Export Base and Value-Addition

Kenya has not exploited the opportunities in the international market due to limited capacity to add value to existing products and diversify the export base. To exploit the existing potential in export markets there is need to identify and develop new export products and also increase value-added content. The government will facilitate diversification of export base and value-addition.

Programmes

- (i) Establish product development and adaptation centres to facilitate graduation to higher value-added activities;
- (ii) Undertake studies in order to prioritize on export activities and markets;
- (iii) Establish an Export Development Fund to promote export diversification and value addition; and
- (iv) Establishing centres of excellence on standards.

(c) Increasing Export Penetration in Priority Markets

Kenya's export market share has been declining over the years. In order to achieve desirable export targets envisaged in this National Trade Policy, there is need to explore new markets and sustain the current markets.

Programmes

- (i) Review and implement the National Export Strategy (NES);
- (ii) Establish a framework for service sector negotiations to remove market access and national treatment barriers;
- (iii) Improve the service enablers such as telecommunication, transport and financial services to enhance export opportunities;
- (iv) Establishment of free trade zones, tax incentives for trading activities and export performance awards;
- (v) Establish Commercial offices and commercial representation in the identified strategic markets;
- (vi) Establish exhibition centres and warehouses in priority markets such as COMESA and Asian Markets to increase visibility of Kenya's products;
- (vii) Undertake market intelligence, market surveys in the target markets and research to identify new products/services to trade in at regional and global level;

- (viii) Establish a network of Kenya's Diaspora to assist in marketing Kenya's products; and
- (ix) Review the role and operations of the State Trading Enterprises (STEs);
- (x) Establish incentive programmes such as export performance award to facilitate penetration into new markets;
- (xi) Establish a framework for provision and administration of export finance and guarantee schemes to cover risks faced by exporters;
- (xii) Establish an export development fund to promote export expansion, diversification and value addition;
- (xiii) Negotiate for the Provision of credit lines in respect of foreign purchases of domestic services;
- (xiv) Establish centres for product development and adaptation to facilitate graduation to higher value added activities through branding, adoption, packaging and new designs;
- (xv) Undertake Research and Development in trade, product design, marketing, distribution, and use of ICT and E-commerce;
- (xvi) Facilitate accreditation of standards certifying bodies to international bodies to address SPS/TBT issues;
- (xvii) Developing programmes geared towards inculcating an export culture among MSMEs; and
- (xviii) Establish direct flights to strategic markets.

(d) Safeguarding Sensitive Sectors and Industries

The sensitive products are strategic for the purpose of safeguarding national interest such as employment, livelihoods, rural development revenue losses, and protection of some strategic industries. This calls for the government to develop mechanisms for safeguarding sensitive sectors and industries against unfair competition.

Programmes

Develop mechanisms for safeguarding sensitive sectors and industries against unfair competition

3.3 Trade Facilitation

Trade facilitation encompasses issues of reducing the complexity and cost of the trade transactions process, streamlining trade procedures in order to reduce the risk and transaction cost and enhancing the efficiency, transparency and predictability of international trade as measured in time and money. The policy identifies strategies and programmes to address constraints and challenges associated with trade facilitation.

3.3.1 Constraints and Challenges

(a) Poor Infrastructure

The current state of the infrastructure in the country has led to an increase in the cost of doing business and failed to create and support an enabling business environment that will facilitate private sector investment in the key productive sectors.

The report on Kenya Investment Climate (2008) for example reports that power disruptions account for 7% loss of sales compared to less than 2% for China and South Africa. In addition, out of 150 countries Kenya is ranked 76 with regard to connectivity into the global supply chain, compared to China (30), India (39) and South Africa (30). In the end costly

stocks are held for longer periods compared to international best practices of minimum stocking. The inefficient transport systems account for losses of 2.6% of the sales values and the figure is higher when domestic transport logistics are taken into account.

The business community is therefore unable to take up opportunities created by globalization due to inefficient and unreliable infrastructure. In pursuit of efficient and reliable infrastructure, the challenge facing the government is to ensure adequate resources are available for infrastructure development.

(b) Cumbersome Customs Procedures and Documentation

Currently, customs procedures are cumbersome due to documentation requirements, customs processing delays and non-transparent importation rules, among others. The challenge facing the government is to reduce the cumbersome customs procedures and documentation and enhance cooperation among various government agencies to support efforts of the business community to effectively deal with increased trade flows.

(c) Inadequate Compliance with International Standards and Requirements

The domestic institutions charged with the responsibility of ensuring compliance with international standards requirements/recommendations lack adequate capacity. The challenge for the Government is to upgrade the capacities of these institutions and also to harmonize local standards with regional standards.

3.3.2 Strategies and Programmes

(a) Adoption of international best practices as the basis for import, export and transit procedures and administration.

In order for Kenya's exports to be competitive in potential markets there must be efficient customs procedures and documentation mechanisms.

This entails harmonizing and streamlining customs procedures by removing duplicative documentation requirements, customs processing delays, and any non-transparent importation rules and requirements, among others. It involves identifying and removing procedural barriers to trade and standardizing information requirements by simplifying procedures, encouraging use of best practices as well as applying relevant information technology.

Programmes

- (i) Establish a national enquiry point which is responsible for providing or facilitating access to trade-related information and documents to interested parties;
- (ii) Establish a single window/one-time submission system that allows traders to submit import, export and transit documentation and data (including electronic versions);
- (iii) Develop mechanisms to ensure that all authorities and agencies involved in border and other import and export control points cooperate and coordinate in order to facilitate trade;
- (iv) Undertake reforms for institutionalizing legally backed online customs administration, procedures and valuations; and
- (v) Develop mechanisms to make provision for the lodging and processing of clearance data and documentation prior to the arrival of the goods.

(b) Expansion of transport and communication infrastructure to facilitate regional and international interconnectivity.

Programmes

- (i)* Establish a regional infrastructure development fund in collaboration with other partner states;
- (ii)* Dredge Mombasa port to enable access to the larger post-Panamax vessels to allow for greater trade utilisation of the port; and
- (iii)* Expansion and Modernisation of all ports of entry and exit.

(c) Enhance compliance with international standards requirements

Programmes

- (i)* Develop institutional capacities to improve compliance with standards and Technical Regulations, customs administration;
- (ii)* Establish collaboration between standards bodies and institutions of higher learning;
- (iii)* Upgrade the capacities of institutions dealing with standards and also harmonize local standards with regional standards; and
- (iv)* Benchmark trade facilitation institutions and implement best practice programs.

(d) Undertaking reforms in institutions dealing with trade facilitation.

Programmes

- (i)* Establish mechanisms of publishing promptly all laws, regulations, judicial decisions and administrative rulings of general application relating to or affecting trade in goods as to enable governments and traders to become acquainted with them.
- (ii)* Enhance the capacity of regulatory authorities and eliminate conflict of interest by separating regulatory functions from service providers.
- (iii)* Develop an incentive package that is suited to the needs of service providers;

3.4 Institutional Capacity and Coordination Mechanisms

Provision of adequate human, financial and institutional capacity, as well as effective co-ordination between support institutions involved in trade negotiations and promotions are critical for businesses to exploit opportunities in the export markets. These have however, faced a number of constraints and challenges which are hereby addressed by strategies and programmes.

3.4.1 Constraints and Challenges

(a) Capacity to Negotiate

Multilateral trade negotiations involve complex and diverse trade issues, which require substantial resources, specialised knowledge and analytical skills. Currently there are inadequate financial resources available for negotiations, limited specialised knowledge and analytical skills for effective negotiations. The challenge for the government is to provide adequate resources for negotiations and skills upgrading.

(b) Uncoordinated Negotiating Process

The processes of multilateral, regional and bilateral trade negotiations have been undertaken by different groups. However there has been no mechanism to coordinate the negotiation process in the different trade arrangements which often leads to inconsistent commitments and obligations. This complicates the trading environment for the business community. The challenge is for the government to ensure that there is a well structured and coordinated negotiating process that will ensure that the country's interests are harmonized.

(c) Inadequate Capacity to Comply and Domestic International Obligations

Kenya is a signatory to various international trade agreements which she is expected to domesticate and implement. However, due to lack of human, financial and institutional capacities, the country has not domesticated or implemented some of these agreements for instance: the safeguard, subsidy and countervailing and anti-dumping agreements among others thus denying the business enterprises the benefits arising from these agreements. The challenge for the government is to provide adequate human, financial and institutional capacities to domesticate the agreements.

(d) Un-harmonized regional trade regimes

Kenya is a member of the EAC Custom Union, COMESA Free Trade Area, and IGAD among others. The CET, Rules of Origin (RoO) and border measures such as axle and transport insurance requirements in these blocks are not uniform. This poses a challenge to the business community in complying with different RoO and border measures. The other adverse effect of the multiple memberships to the business community is the unfair competition brought by trade deflation and diversion.

(e) Ineffective Coordination among Export Support Institutions

Greater co-ordination between export support organizations is critical for exporters to exploit opportunities in the export markets. The Trade support networks are characterized by scattered and uncoordinated trade related institutions thus making access to business information cumbersome. Inadequate funding for export support institutions has also contributed to the ineffective coordination

The challenge is for the government to develop effective coordination mechanisms of export support institutions to ensure smooth flow of business information and marketing. There shall also be need to provide adequate financial resources to the export support institutions to enhance their coordination mechanisms.

(f) Ineffective Administration of Duty Exemptions/Waivers and Multiple Internal Taxes

Goods currently granted tariff exemptions and waivers may find their way into the market and distort the domestic market. The domestic goods are subjected to unfair competition from goods receiving duty exemptions and waivers. The existence of numerous internal taxes reduces the competitiveness of the Kenya goods.

The challenge for the Government is to strengthen the monitoring mechanisms to ensure that goods under exemptions and waivers attract the relevant duties if traded in the domestic market. There is a need to undertake a review of internal tax structure to make more efficient and competitive.

3.4.2 Strategies and Programmes

(a) Enhance Capacity for negotiation

The Government in collaboration with key stakeholders will provide adequate resources for negotiations and skills upgrading,

Programmes

- (i)* Institutionalize stakeholder participation in the negotiations;
- (ii)* Build synergies from national capacities to strengthen and institutionalize regional negotiating capacities;
- (iii)* Develop mechanism to partner with regional research and capacity building institutions;
- (iv)* Strengthen capacity of the institutions involved in trade development and negotiations;
- (v)* Establish a Trade Policy Institute; and
- (vi)* Institutionalize research and training programmes within research and academic institutions.

(b) Coordinated Negotiation Process

To ensure that there is a well structured and coordinated negotiating process the policy identifies the following programmes.

Programmes

- (i)* Establishment of a negotiating framework with a legal mandate; (To harmonize commitments within the multiple memberships in the Regional Economic Co-operations and strengthen representation in capitals coordinating negotiations at the different levels(Lusaka, Brussels, Addis Ababa, Arusha, Geneva and Washington); and
- (ii)* Intensify and expand capacity for institutions involved in trade negotiations and facilitation.

(c) Strengthen Capacity to Comply and Domestic International Obligations

The Government in collaboration with key stakeholders will provide adequate human, financial and institutional capacities to domesticate the agreements.

Programmes

The Government in collaboration with key stakeholders will undertake measures to provide adequate human and financial resources.

(d) Harmonize Regional Trade Regimes

The Government will continue to participate in negotiations to harmonize the regional trade regimes to address the problems arising from multiple memberships.

Programmes

Provision of adequate human and financial resources to facilitate the negotiations for harmonization regional trade regimes

(e) Strengthen Coordination among Export Support Institutions

The Government in collaboration with key stakeholders will facilitate the development of effective coordination mechanisms of export support institutions to ensure smooth flow of business information and marketing.

Programmes

- (i)* Provide adequate financial resources to the export support institutions;
- (ii)* Strengthen export support organizations to enhance their efficiency and effectiveness in their coordination mechanisms; and
- (iii)* Establish a coordination mechanism for deepening the network of Kenya's Diaspora.

(f) Improve Administration of Duty Exemptions and Waivers

The Government will strengthen the monitoring mechanisms to ensure that goods under exemptions and waivers attract the relevant duties if traded in the domestic market.

Programmes

Review the administration and monitoring of duty exemptions and waivers provision

3.5 Supply Capacity

The multilateral trading system and the regional integration efforts have created opportunities for expansion of markets for Kenyan goods and services. However the opportunities have not been fully exploited due to inadequate supply capacities. The country's manufacturing and services sectors need to take advantage of these opportunities by raising the productive capacity and competitiveness.

3.5.1 Constraints and Challenges

The Government faces the challenge of addressing the high cost of labour, improving infrastructure, reducing the high cost of utilities and ensuring the availability of finance.

3.5.2 Strategies and Programmes

To address the constraints and challenges that affect the supply capacity the Policy identifies the following the following strategies and programmes:

Strategies

(a) Strengthening trade related research, development and extension services institutions

Programme

Increase resources on research and development.

(b) Deepen and broaden industrial linkages and enhance cluster-based development

Programme

- (i)* Establish industrial parks; and
- (ii)* Establish free ports.

(c) Rationalize incentive packages to take into account the domestic producers as well as exporters

Programme

- (i)* Establishing an export guarantee scheme; and
- (ii)* Establish an export development fund.

(d) Developing enterprise capability to take advantage of international opportunities

Programme

- (i)* Facilitating the improvement of packaging and development of brands;
- (ii)* Strengthening e-business capacity for enterprises; and
- (iii)* Establishing marketing and distribution channels in foreign markets.

(e) Enhance competitiveness and improve enterprise productivity through productivity centres

Programme

- (i)* Address supply side constraints; and
- (ii)* Ensure compliance with international standards and regulations.

3.6 Information Flow

Ease of access to up-to-date information by the business community is critical for enhanced trade expansion, market diversification and consolidation. However, various constraints and challenges with regard to information flow continue to face the business community which are hereby addressed by strategies and programmes.

3.6.1 Constraints and Challenges

(a) Inadequate Sensitization of the Business Community

The country has entered into commitments in the various trading arrangements that are meant to benefit the business community. However, the business community, civil society and the public sector are inadequately sensitized on these commitments. As a result, the business community is unable to exploit the arising trade opportunities.

The challenge is for the Government to ensure the availability of adequate resources for wide stakeholder sensitization.

(b) Inadequate Trade Statistics

Inadequate trade statistics makes it difficult for the business community to access relevant information necessary to make appropriate business decisions such as available business opportunities and markets. This is even more critical for statistics on trade in services. The statistics available at the Kenya National Bureau of Statistics are not sufficient in addressing the needs of the business community, negotiators and policy makers.

The challenge for the Government is to develop mechanisms for collection of trade data based on international standards to address the needs of all stakeholders in the trade sector.

3.6.2 Strategies and Programmes

Strategies

- (a) Enhance the capacity to undertake stakeholder information dissemination on trade matters.

Programme

Provide adequate financial and human resources for dissemination of trade information.

- (b) Strengthen trade data collection methods and management.

Programmes

- (i) Development of IT-facilitated information dissemination, human and institutional capacities development;
- (ii) Develop mechanisms for collection of trade data based on international standards; and
- (iii) Mainstream e-commerce in tertiary and learning institutions.

CHAPTER 4: COMPLEMENTARY SUPPORT POLICIES AND MEASURES

4.1 Introduction

Trade policy reforms play an important role in improving export performance in the face of constraints that have affected the development of export sector in the past.

To make export ventures more competitive and export activities more visible there's need for targeting specific aspects of the development process that are particularly trade enabling. In addition the trade policy will pursue the following complementary support policies and measures: trade facilitation; infrastructure needs and development; capacity building and human capital development; trade finance support measures; support to the competitiveness of business services; and telecommunications and web-access.

4.2 Trade Facilitation Measures

Trade facilitation involves measures aimed at easing, speeding and reducing the cost of movement of goods in the domestic market and across borders.

Kenya's trade competitiveness, based on export and import facilitation has been affected by number of export and import documents; time for processing export and import procedures; multiple approval requirements; and the cost of shipment of goods across borders. These numerous import and export procedures and high costs of cross border shipment of goods has placed Kenya's business community at a disadvantage relative to their competitors from other countries.

The Government has so far undertaken a number of trade facilitation measures. The Kenya Revenue Authority (KRA) has introduced Taxpayer Charter which stipulates the time and procedures for export documentations. Similarly Customs Services Department has introduced reforms and modernisation programmes including introduction of customs procedures based on risk analysis; introduced a Trade-X system; a community-based system for electronic exchange of information and documents among relevant authorities; an internet reference system for accessing statutory information and simulating transaction costs; and an electronic payment system.

4.3 Infrastructure Needs and Development

Adequate infrastructure including transportation, water, electric power, waste disposal, security and telephones as well as secure, affordable storage and warehousing facilities at ports enhance production of goods for exports. Inadequacies in infrastructure development increase the cost of production since most firms result to having their own back services to avoid interruptions in production.

The government has embarked on a number of infrastructural programmes including roads, energy, rail transport and Nairobi Metropolitan development programmes among others. In

order to meet the country's infrastructure needs the government will prioritise resource allocation towards infrastructure development.

In view of the foregoing, the following measures will be undertaken in infrastructure development to enhance the country's domestic and international competitiveness.

- (i) Provision of cost-effective world-class infrastructure facilities and services is a critical pre-requisite for Kenya's competitiveness in domestic and international trade;
- (ii) Considerable shift in the deployment of resources to acquire the necessary capacity and access infrastructure services (transport, telecommunications, energy, water, sewerage and sanitation and meteorological services) by firms and citizens in their wealth-creation efforts; and
- (iii) Enhance Public Private Partnership in infrastructure development through concessioning and operationalization of the infrastructure bonds.

4.4 Human Capital Development

Human capital development in the form of skill upgrading for production of exports and complementary support capacities elaborated hereunder are central to achieving the objectives of the National Trade Policy.

4.4.1 Skill Requirements for Export Production

Export oriented businesses face the challenge of getting workforce with relevant skills for export. The education system in Kenya should become more responsive to the skill needs of the economy. Some specific skills needed to support export oriented enterprises include: ICT, and international management training.

In designing and implementing an efficient and effective approach to the delivery of the new training needs of an export-oriented economy, the appropriate balance between individual, business and government intervention programmes will be maintained. Government will work in collaboration with the private sector in assessing capacity and training needs with a view of identifying training gaps for the export oriented enterprises.

4.4.2 Trade Policy and Support Capacity

Increased complexity of bilateral, regional and multilateral trade relations, calls for the Government to build and strengthen the public sector's capacity to negotiate and implement trade agreements; enhance capacity to implement trade remedy mechanisms, identify and analyse export market and needs; and effectively provide trade promotion programmes in the marketing of export products and foster international commercial relations. In this regard, the government will undertake in-post and in-house organization training, and enhance international trade-oriented education and training in secondary and tertiary sectors.

4.5 Trade Finance Support Measures

Access to affordable trade finance, is a major challenge to trade development. This situation is even more critical for MSMEs than large enterprises that have relatively adequate internal and external sources of financing. In spite of high liquidity in the financial sector, there are no innovative credit products to support economic growth, such as lending for long term investment and working capital. Where such lending exists, collateral requirements are

forbidding, interest rates and bank charges are high, and repayment terms are unfriendly. There are also concerns about availability of suitable financial products to cover risks associated with exchange rate fluctuations. The premium charged by commercial banks where such products exist is often prohibitive.

Export financing and credit schemes remains one of the problems experienced by the exporters. Banks do not provide back-to-back letters of credit while the knowledge available trade finance services are limited particularly among the MSMEs. The government through the National Export Strategy will formulate and implement export financing strategies that will ensure adequate and affordable access to export financing.

These measures will complement recently introduced financial reforms in the financial sector through the Micro-finance Act and Savings and Credit Cooperative Societies. The programmes will deepen and expand the reach of financial services to the MSMEs and improve performance and transparency in the cooperative sector.

4.6 Supporting the Competitiveness of Business Services

The National Trade Policy (NTP) is explicitly concerned with the development and competitiveness of all the trade and services sectors in Kenya, and the interactions and interdependence between domestic and international competitiveness central to NTP overall strategy and approach. In this connection, the efficiency of support business services in the areas of ICT, accountancy, audits, market intelligence and risk and credit management, among others, is critical to making both large and small firms competitive.

In addition, there are essential linkages between infrastructure and human capital development discussed above, and the issue of competitiveness of business services. In particular, infrastructure improvements, skills upgrading and human capital development as well as active pro-competition policies within a liberalised domestic market make business services more competitive in Kenya.

Business support services will also benefit from their competitiveness in that they will now be able to export their services to other countries particularly with regard to Business Process Outsourcing (BPO) espoused in Vision 2030.

4.7 Telecommunications and Web Access

Low cost telecommunications and Information Technology Enabled Services (ITES) are critical in supporting Kenya's enterprises to get integrated into the global value chain. For instance, the fragmentation of production globally has opened new opportunities for businesses to participate in the production chains located in different countries. However effective participation in this production chains requires rapid, and low cost access to information, reliable and low cost means of communicating globally. The government will undertake projects aimed at increasing broadband to reduce the cost of telecommunication services and installing undersea fibre optic system to enhance global connectivity.

Effective linkages between telecommunication and web access and information technology development are essential in the policy programmes for services export development as well as E-Commerce development which is a key feature of the domestic trade development

strategy offering, opportunities for export growth and diversification in both Kenya's goods and services.

SECTION C:

DISTRIBUTION AND WHOLESALE TRADE

DOMESTIC TRADE POLICY

Introduction

The domestic trade is substantially liberalized and the market forces continue largely to govern the sub-sector with the government only taking intervention measures when there are market imperfections that reduce or threaten consumer welfare or discourage competition. The role of Government in the domestic trade will continue to be mainly creation of an enabling environment for trade and investment to thrive. Domestic trade policies will be geared to integrating domestic trade with international trade given their interdependence.

The thrust therefore of the domestic trade policy will be to improve business environment and elaborate the government role and that of the private sector in trade and investment promotion. The policy recognizes and encourages public-private partnership in implementing various programmes and activities prescribed in the domestic policy. The distinct domestic trade elements covered in this section include: Distribution and Wholesale Trade; Retail Trade and Informal Trade.

CHAPTER 5: DISTRIBUTION AND WHOLESALE TRADE

5.1 Introduction

Formal Distributors and Wholesalers primarily engage in selling merchandise to retailers dealing in industrial, commercial and institutional goods, farm inputs, construction materials, or acting as agents or brokers in buying merchandise or selling merchandise to such firms. These establishments are largely small and medium size and mainly located in the major urban centres thus making them not easily accessible to the rural based retailers. They act as middlemen between the producers/manufacturers and the retailers although in a few cases they supply merchandise direct to the final consumers. There is usually no physical transformation of the merchandise by the Distributors and Wholesalers.

The Distributors and Wholesalers in the country can be broadly categorized as dealers in Farm and Agricultural Produce; Processed Food, Beverage and Tobacco; Personal and Household Goods; Petroleum Products; and Motor Vehicle, Spare Parts and accessories. Other categories of Distributors and Wholesalers include those dealing in Building Material and Supplies; Forest Products; Apparels; Machinery, Equipment and Supplies; ICT/Electronics; Wholesale Agents and Brokers and Miscellaneous Distributors/Wholesalers.

Prior to liberalization, the Government had a policy which provided guidance on how distribution of both locally manufactured and imported goods was to be undertaken. The policy prohibited manufacturers from engaging in distribution, wholesale or retail trade. Similarly, an importer of bulky common user goods could not be licensed to engage in retail trade. The Government had also established State Trading Enterprises (STEs) to deal with distribution of bulky commodities that were considered essential for the welfare of Kenyans.

Some of these State Trading Enterprises are the Kenya National Trading Cooperation (KNTC), the National Cereals and Produce Board (NCPB), Kenya Farmers Association (KFA), Kenya Meat Commission (KMC), Kenya Seed Company (KSC), New Kenya Co-operative Creameries (NKCC) among others. These enterprises were established to enhance the efficiency of the distributive trade. However due to poor management, these State Trading Enterprises became inefficient

With the liberalization of the economy, the role of these State Trading Enterprises has been minimized as the implementation of the policy was relaxed. This led to some manufacturers engaging in distribution of their own manufactured products as well as importers of bulky common user goods engaging in wholesale and retail trade thus being in direct competition with the retailers and wholesalers. Currently some of the business firms whose core business is basically retail (supermarkets) are also undertaking distribution and wholesale thus posing a big challenge to the small distributors and wholesalers.

The distribution and wholesale including retail sub sector plays a major role in the Kenyan economy. The sub-sector currently accounts for 15.7% of GDP and 10% of formal employment. The distribution and wholesale particularly in agricultural produce have remained largely informal and characterized by inefficient and fragmented supply chain. The

firms engaging in distribution and wholesale of agricultural produce also have weak business associations. Overall wholesale and retail trade including hotels and restaurants account for approximately 58.7% of employment in the informal sector.

5.2 Current policy regime

The current policy regime on distribution and wholesale sub-sector is aimed at improving the business environment by removing regulations that are not based on health, security and environment, and the Government desisting from taking intervention measures except when there are market imperfections in the sub-sector. The sub-sector is, however, still regulated through several legislations and licensing agencies though effort has been made to repeal and amend some of the legislations regulating the sub-sector.

The Local Authority licensing of this sub-sector is major impediment. Whereas efforts have been made to simplify the Local Authority licensing through the single business permit, this has not reduced the cost of doing business. The single business permit is still associated with the high fees and inappropriate implementation mechanisms.

In addition, traders in the country are subjected to multiple and cumbersome taxation. Whereas Kenya has reduced the corporate tax rate in recent years to be more comparable to its neighbours within East Africa, the financial burden of taxation is still considered to be a major constraint to the operations and growth of businesses including distribution and wholesale as profitability is reduced significantly. More specifically, the high tax burden is mainly due to the high profit tax rate of 32.5% which is the highest in East Africa. Furthermore, there is double taxation of profits which coupled with multiplicity of taxes such as Local government levies, Central government, user charges ; internal taxes such VAT and Excise tax all have a negative impact on business.

The challenge to government is to rationalize licensing regime and reduce the tax burden without compromising the provision of public amenities that are necessary for the growth and development of business enterprises in the country.

5.3 Constraints and Challenges

The distribution and wholesale sub-sector has great potential to benefit producers, manufacturers and consumers and to improve the distribution of the locally produced and imported goods. The sub-sector, however, faces various constraints which are a challenge to the Government to address. The main constraints and challenges are as follows:-

5.3.1 Un-Conducive Licensing and Regulatory Framework

The distribution and wholesale sub-sector is regulated by several licensing agencies. These agencies require distributors and wholesalers to obtain annual licenses to authorise them to trade within their respective areas of jurisdiction. Apart from the high annual fees, the procedure of acquiring these licences is also cumbersome thus increasing the cost of doing business. Whereas efforts have been made to simplify and reduce the number of licenses required as well as establishing a Business Regulatory and Reform Unit, the cost of doing business continues to be high.

The challenge to government is to improve the licensing and regulatory framework while guarding against leaving some of the agencies without legal instrument to address market imperfections or denying others their main source of revenue especially the local authorities.

5.3.2 High Transportation Costs

Most of the traded goods some of which are bulky are transported by road from the point of production or entry in case of imports to the distribution/wholesale points and then to the retailers. In several areas of the country and especially the rural areas the roads are dilapidated causing frequent breakdown of vehicles and hence high cost of maintenance.

During the rainy seasons some of the roads are impassable thus affecting trade, particularly in perishable goods. On the other hand, transportation by the railway is limited to areas with rail lines and rarely used due to its inefficiency. As a result, the cost of transportation to the distribution and wholesale trade is usually too high leading to inefficiency and uncompetitiveness in the subsector.

The challenge to government is to provide and maintain adequate and reliable road and efficient railway network throughout the country without exposing the business enterprises and her citizens to heavy taxation.

5.3.3 Inadequate Logistics and ICT Capacities and Skills

The slow development of the wholesale and distribution sub- sector in part has been the limited adoption of Information Communication and Technology (ICT).

The challenge therefore is for the Government to mainstream the adoption of ICT technologies in the wholesale and distribution sub sector.

5.3.4 Access to Affordable Credit

Easy access to affordable credit is a key factor for growth and development of wholesale and distribution. Many wholesalers and distributors, especially for start-ups are handicapped by lack of easy access to affordable credit.

The challenge to the Government is to come up with a conducive environment for financial institutions to provide easy access to affordable credit.

5.3.5 Inadequate Business Management Skills

Many distributors and wholesalers, especially the indigenous rural based, lack adequate business management skills such as marketing, record keeping, costing and pricing.

The challenge to the Government is how to mobilize adequate resources to provide business management skills to the business community country wide.

5.3.6 Weak Supply Chains

Distributors and wholesalers, especially those dealing with agricultural produce; have weak and fragmented supply chains from producers to distributors and consumer outlets. Lack of forward and backward linkages lead to wastage, particularly of agricultural perishable goods, between the farm gate and the consumer.

The challenge to the Government is how to facilitate and strengthen the required forward and backward linkages in order to improve the supply chain in the sub-sector.

5.3.7 Poorly Serviced Business Premises

Many wholesale markets for agricultural produce and other perishable products such as fish and chicken lack adequate amenities necessary for efficient business operations. As a result, the wholesalers are unable to sustain high standards of hygiene. The quality of the products is also affected by the inadequate amenities which often cause wastage leading to high operational costs.

Provision and maintenance of adequate and efficient amenities in wholesale markets country-wide is a challenge that the Government in collaboration with private sector stakeholders will address.

5.3.8 Weak Business Associations

The coordination of the sector is weak due to lack of strong umbrella associations to facilitate articulation and advocacy of business interest. The situation has been further compounded by proliferation of breakaway small associations due to leadership wrangles. The associations are also weakly funded due to narrow membership base a fact which has affected the management of the associations.

The challenge is for the businesses to form strong associations which can increase their bargaining power.

5.4 Sector Strategy and Goals

The overall goal in this sub sector is to enhance distribution and wholesale trade competitiveness through the following strategies:

5.4.1 Policy and Legislative Strategy

Under this strategy, the following policy measures will be undertaken:-

- (i) Strengthen the Business Reform Regulatory Unit to undertake simplification and rationalization of the number of distribution and wholesale related licences among others;
- (ii) The local authorities to explore other sources of revenue other than business licensing; and
- (iii) Reducing Tax burden.

The Government will continue to broaden the tax base by bringing on board other businesses and individuals not presently taxed as well as improve efficiency in tax collection. By doing so, the Government will be able to reduce the current high tax burden on business enterprises.

5.4.2 Institutional Strengthening Strategy

In order to enhance the performance of distributors and wholesalers the following policy measures will be undertaken:-

- (i) Strengthen business sector associations and their networks; and
- (ii) Capacity building to trade facilitators from the public sector for example Ministry of

Trade, Local Government, Agriculture, Cooperative Development, Health, environment and Industrialization, among others.

5.4.3 Information and Communication Technology Strategy

Use of Information Communication and Technology (ICT) by the distribution and wholesale sub sector has been limited and this has contributed to the low development of this sector. The adoption has been hindered by many factors, including high cost of ICT equipment, inadequate ICT skills and an under developed ICT infrastructure.

As a step towards achieving the overall goal for e-commerce in the wholesale and distribution sub sector, the Government, in collaboration with the private sector will undertake the following policy measures :-

- (i) Institutionalise ICT training and skills upgrading as part of on the job training programs;
- (ii) Create awareness for mainstreaming the adoption of ICT technologies in the wholesale and distribution sub- sector; and
- (iii) Developing a legal and regulatory framework for E-commerce.

5.4.4 Strengthening Supply Chain Strategy

In order to strengthen forward and backward linkages of distributors and wholesalers with the view to improving their capacities in the area of marketing the following policy measures will be undertaken:-

- (i) Establish supply chains based on product categories and provide trade facilitation to enhance competitiveness. The wholesalers and distributors will be encouraged and facilitated to form strong linkages between themselves and the manufacturers;
- (ii) Undertake a nationwide survey to determine the number of establishments in this sub sector according to the broad categorization to facilitate planning for promotion of the sub-sector; and
- (iii) Facilitate the zoning of small and medium sized distributors and wholesalers in the major urban centres for easy access by the rural based retailers. This will be achieved through provision of tax rebates on the basis of their distribution network, construction of wholesale and distribution hubs in the districts. The government will also set aside space to build critical infrastructure connecting Producer Business Groups (PBGs) to wholesale hubs and wholesale hubs to retail markets.

5.4.5 Capacity Building Strategy

Technical skills are important competitive factors which enable enterprise ability to sustain its market share both in the domestic and external markets. They also determine the rate of technological progress at national level. For this to be achieved, the following policy measures will be undertaken:-

- (i) The government will facilitate the sector to design and institutionalize skills upgrading programs for owner managers and employees;
- (ii) The government will encourage the business community to take advantage of the various training programmes available in the country; and
- (iii) Institutionalise entrepreneur training at all levels of education.

5.4.6 Trade Finance Strategy

Trade finance is imperative for growth and development of trade, including wholesale and distribution enterprises. There is therefore need to strengthen development finance institutions to become effective vehicles for provision of start-up capital, working capital and export finance to the wholesalers and distributors. Under this strategy, the following policy measure will be undertaken:-

- (i) The government will enhance and facilitate Development Finance institutions to provide affordable credit to distributors and wholesalers; and
- (ii) Create awareness on availability and affordability of credit from Development Finance Institutions.

5.5 Policy Programme and Projects

To execute the strategies for the distribution and wholesale sub sector, the government has identified the following flagship projects:-

- (i) Strengthen the Business Reform Regulatory Unit to rationalise the various legislations in the sub-sector;
- (ii) Link wholesalers and retailers to the digital villages once they are established;
- (iii) Promote programmes on franchising in wholesale business in rural areas;
- (iv) Develop skills upgrading programs in wholesaling and distribution;
- (v) Zoning for wholesalers and distributors;
- (vi) Developing free trade ports; and
- (vii) Develop a legal and regulatory framework for E-Commerce.

5.6 Overall Policy for the sub-sector

The Government will pay special attention to the development of more efficient wholesale and Distributive trade by:

- (i) Streamlining the supply chain and improving the quality of goods coming into the Kenyan market;
- (ii) Providing incentives for entrepreneurs to invest in storage facilities and processing, especially for perishable farm products, thereby eliminating price fluctuations resulting from surpluses or shortages of farm goods due to seasonal factors;
- (iii) Providing a solution to the problem facing many small-scale farmers, who take their goods to the market in periods of excess production but are unable to dispose of them, thereby incurring heavy losses; and
- (iv) Facilitate organised wholesale and distributive trade, to make it possible for producers in one locality to establish market linkages outside their local areas.

5.7 Implementation, Monitoring and Institutional Responsibilities

The Ministry of Trade will coordinate the proposed policy programme and projects for revitalising the distributive and whole sale trade. In particular, the Ministry of Finance will lead in the rationalisation of business logistics with regard to licensing and taxation while the Ministries handling infrastructure will provide leadership in infrastructure and transport logistics development.

The State Law Office will provide leadership on matters of legislation enactment in consultation with parent ministries and agencies. Some of the main collaborating ministries will include Finance, Industrialisation, Planning, Local Government, Youth Affairs,

Cooperatives, Communications, Agriculture, Energy and Environment. The public sector state agencies to participate in the revitalising of the distributive and wholesale sub-sectors include KEBS, KRA, CBK, NEMA, KPA, and CCK. The private sector associations which include: KAM, KEPSA, KNCCI, and any other relevant business associations will be involved in all stages.

CHAPTER 6: RETAIL TRADE

6.1 Introduction

The retail trade sub sector comprises of enterprises generally engaged in retailing goods and services without transforming the physical nature of the product except bulk breaking. These enterprises fall into various categories which include the general retail shop or specialized retailers such as food, beverages and tobacco; butcheries; Oil and Petrol/gas dealers; building materials, timber, and domestic hardware. Others deal in textiles, soft furnishings, clothing and shoes; photography; pharmaceutical goods; restaurants, cafes and other eating and drinking places; and lodging places.

These enterprises comprise the bulk of the small and medium enterprises in Kenya. Most of the enterprises firms comprise of small shops and stores. They are heavily concentrated in urban areas and form the main trading activities in the rural areas. Over the years, the numbers of enterprises in retail trade have shown a steady growth. There are emerging retailing trends where supermarkets, shopping and “exhibition” malls are springing up in major urban centres. This has led to the partitioning of premises into smaller cubicles where several small retailers sell assorted imported merchandise. Currently supermarkets control approximately 5% of the retail sub-sector business.

The retail trade sub-sector has great potential for employment creation due to its relative ease of entry. However, the sub-sector faces a number of constraints and challenges that require to be addressed for the sector to thrive.

6.2 Current Policy Regime

The retail sub-sector is currently regulated through registrations and several licensing agencies. The licensing of the retail outlets depends on the merchandise traded, which may require licenses on the grounds of health, security and environment considerations. In addition to the current Single Business Permit, all the local authorities under the Local Government Act Cap 265 impose additional licenses through their by-laws whose main objective is to generate revenue.

To streamline and improve the business regulatory environment a detailed review of 1,325 trade licences resulted in the rationalization of 694 licences, elimination of 424 licenses as well as simplification of another 607 licenses. The regulatory reform has led to the establishment of a Business Regulatory and Reform Unit (BRRU) in the Ministry of Finance. The Unit has the mandate to deepen business regulatory reforms in consultation with other stakeholders to reduce the cost of doing business in the country.

6.3 Constraints and Challenges

The following are the main constraints and challenges that affect the promotion and development of the retail trade sub-sector:

6.3.1 Inadequate and Poorly Serviced Business Premises

There is inadequate number of business premises particularly in urban areas which have partly restricted graduation of the informal retailers to the formal sub-sectors. In addition,

new entrants have to pay exorbitant rent including 'goodwill' for the few business premises that are available. The inadequacy of business premises is compounded by the fact that even where the Local Authorities have set aside plots for the construction of business premises, some of the plots have remained undeveloped for many years. Furthermore, most of the existing premises lack basic infrastructure such as electricity, sewerage, and water, which make operation of the business difficult.

The general environment under which some retail premises are located also lack proper refuse collection and waste management systems and not conducive to the operation of certain retail businesses. This is mainly attributed to laxity in enforcement of Local Authorities' by-laws.

The challenges that government must address is to facilitate the provision of adequate basic infrastructure for the business community through effective public private partnership arrangement. In addition, there is need for effective enforcement of local authorities' by-laws to stem the mushrooming of temporary business structures such as *kiosks* and ensure that retail business activities are conducted in a conducive environment.

6.3.2 Cumbersome Licensing and Regulatory Framework

The retail sub-sector is regulated through several registrations and licensing agencies that make the cost of doing business high. The licensing of the retail outlets is mainly used as tool of revenue generation, other than being based on best practices, such as health, security and environment considerations.

Efforts have been made to streamline and improve the business regulatory environment by eliminating some licenses and simplifying procedures of acquiring the current licenses required by retail businesses. However, the reform of the local authority licensing system through the single business permit has not resulted in the expected reduction of the cost of doing business as it is still associated with the high fees and inappropriate implementation mechanisms. It therefore continues to be a major constraint to the promotion and development of retail trade.

Registration of businesses (incorporation/business name) is still centralized in Nairobi. For the rural based retail outlets, registering a business is too costly.

The key challenges include balancing the use of business licensing as a tool for revenue collection and as a regulatory measure. The other key challenge is decentralization of business registration to the districts or adoption of online business registration.

6.3.3 Access to Affordable Business Finance

The growth and development of retail sub-sector is constrained by lack of access to affordable business finance due to high interest rates, processing and administrative costs and lack of collateral. The situation is also compounded by lack of an effective credit system that allows retail businesses to procure goods on credit.

The major challenge therefore lies in mobilizing of savings to facilitate the improvement of access to affordable credit to traders. The other major challenge is for the government to

influence the lowering of the prevailing high lending rates particularly in a liberalized monetary system.

6.3.4 Fragmented Supply Chain and Stiff Competition

The supply chain is fragmented with many small producers and retail traders with weak forward and backward linkages leading to inefficient supply chain. Retail traders continue to face stiff competition in matters of public procurement which has remained a domain of large-scale traders. At the same time retail traders have not taken advantage of opportunities provided in the Procurement and Disposal Act due to the weak mechanisms for implementing and enforcing the 30 per cent preferential access to public procurement.

With trade liberalization, several manufacturers and wholesalers have opened retail outlets which give price advantage over the general retailers dealing in the same products. In addition, the large supermarkets are setting up branches in small towns and as result of their bulk procurement they receive substantial trade discounts that enable them to offer lower prices leading to unfair competition to the small-scale retailers.

The challenge for the government is to streamline the fragmented supply chain system between producers and retailers. This will entail reducing the negative competition effects of large supermarkets on small-scale retailers, strengthening mechanisms for implementing and enforcing the 30 percent preferential access of public procurement by the small-scale traders and creating awareness of procurement procedures to retail traders.

6.3.5 Inadequate Business Management and Entrepreneurship Skills

The majority of the retailers lack business management and entrepreneurial skills. As a result majority of these retailers are unable to expand, do not maintain basic books of accounts, cannot sustain local and international business opportunities, business decisions made without adequate information, and have little understanding of legal requirements and procurement procedures leading to the collapse of a number of retail outlets.

The challenge is how to facilitate the provision of adequate and affordable business management trainings, access to business information and to inculcate entrepreneurship skills to retail traders.

6.4 Sector Strategy and Goals

The overall goal is to move toward a formal retail trade sector that is efficient, multi-tiered, diversified in product range and innovative. To achieve this goal emphasis will be placed on improving infrastructure development, regulatory framework, access to trade finance and credit, streamlining of the supply chain and business management training.

6.4.1 Infrastructure Development Strategy

The problem of inadequate and undeveloped infrastructure will be addressed through the following policy measures:-

- (i) Strengthening the Public Private Partnerships (PPPs) in the development and maintenance of infrastructure;
- (ii) Building new and rehabilitating the existing formal retail centres; and

- (iii) Enhancing the enforcement of local authorities' by-laws to stem the mushrooming of temporary and poorly constructed structures as business premises and ensuring that retail business activities are all conducted in a conducive environment.

6.4.2 Policy and Legislative Strategy

Conducive licensing and improved regulatory environment shall be achieved through the following policy measures:-

- (i) Establishing an effective one-stop shop for licensing, registration and taxation;
- (ii) Decentralizing business registration to the districts; and
- (iii) Exploring other sources of funding for local authorities as a balancing act between use of licensing as a tool for revenue generation and regulation purposes.

6.4.3 Business Finance Strategy

The following policy measures will be undertaken to improve access to trade finance by retailers:-

- (i) Facilitate the establishment of effective traders' savings and credit cooperatives (SACCOs) and enhance the management of the existing ones; and
- (ii) Facilitate the establishment of more microfinance institutions and expansion of their outreach programmes.

6.4.4 Strengthening Supply Chain Strategy

To improve market access, the following policy measures will be undertaken:-

- (i) Enhancing public private partnerships to deal with the fragmented supply chain;
- (ii) Streamlining the supply chain between retailers and suppliers to reduce wastage and losses;
- (iii) Facilitating the building of the capacity of traders associations;
- (iv) Training small scale retailers on Government procurement procedures; and
- (v) Exploring measures to address the negative impact of large super markets on the small-scale retailers.

6.4.5 Capacity Building Strategy

The policy measures to address the inadequacies of business management, market information and entrepreneurial skills in retail trade sector will include:-

- (i) Strengthening and redesigning the business management and entrepreneurship programmes within the technical institutes and universities;
- (ii) Improving capacity building of the traders associations;
- (iii) Enhancing the capacity of institutions charged with collection and dissemination of data and information;
- (iv) Collation and dissemination of trade data and information; and
- (v) Undertaking capacity building of institutions dealing with provision of Business Development Services (BDS.)

6.5 Policy Programmes and Projects

In implementing the strategies for the retail trade sub-sector, the following programmes and projects will be carried out:

- (i) Construction and maintenance of retail malls and rehabilitation of retail markets in the major urban areas through the Public-Private Partnerships;

- (ii) Simplification of business licensing (One Stop Shop for licensing, registration and taxation);
- (iii) Facilitate the establishment of retail traders SACCOs;
- (iv) Develop and mount training programmes on Government procurement procedures; and
- (v) Institutional development and strengthening of training institutions that provides business development services.

6.6 Overall Policy for the Sub sector

To facilitate the growth of a vibrant retail sub sector supported by well established and functioning infrastructure and social amenities, the Government will undertake the following policy measures:

- (i) Accelerate the ongoing efforts to remove barriers to retail trade;
- (ii) Accelerate the ongoing initiative to reduce multiple licences;
- (iii) Enhance measures to curb insecurity;
- (iv) Develop mechanisms to address entry barriers to retailing; and
- (v) Improve economic infrastructure.

With reliable and efficient infrastructure, it will be possible to attract domestic and foreign investments into these sectors.

6.7 Implementation Monitoring and Institutional Responsibilities

The Ministry of Trade will coordinate the proposed policy programme and projects for revitalising the retail trade. In particular, the Ministry of Local Government will lead in the Construction of new and rehabilitation of retail markets in the major urban centres while the Business Regulatory Reform Unit (BRRU) in the Ministry of Finance will be key in addressing unconducive licensing and regulatory framework and facilitating the establishment of more micro-finance institutions.

Training on business management and entrepreneurship skills and provision of market information will be undertaken by the Ministry of Trade. The State Law Office will provide leadership on matters of legislation enactment in consultation with parent ministries and agencies.

Some of the main collaborating ministries will include Industrialization, Youth Affairs, and Cooperative development, Communications, Agriculture, Energy and Environment. The public sector state agencies to participate in the promotion and development of the retail sub-sector include KNTC, KWAL, EPC, KEBS, KRA, NEMA, The private sector associations will be involved at all stages include KNCCI, KEPISA, KUSCO and any other relevant business associations.

CHAPTER 7: INFORMAL TRADE

7.1 Introduction

In the face of liberalisation and globalisation, informal trade remains the entry point for the majority of the business starters. The Informal trade comprises small scale units providing, distributing and retailing in goods and services. It is generally characterized by ease of entry; unsuitable work-sites; unregistered outfits; reliance on indigenous resources; family ownership; small-scale operations; intensive use of labour; extensive use of adaptive technology; and skills acquired outside the formal sector. Being largely unregulated, the informal sector operations lead to some undesirable social and environmental impacts such as environmental degradation, non observance of health standards and infringement of copyright laws, heavily relying on self-supporting and “informal” institutional arrangements.

The sector commonly referred to as the “Jua kali” in Kenya continues to play an important role in the labour market. It reduces the levels of unemployment by creating jobs for people in the labour force that cannot be absorbed in the modern sector. In 2007, the sector provided employment to 7.5 million Kenyans. The sector created 427 thousand new jobs in 2007 compared to 420 thousand new jobs in 2006. This constituted 89.9 per cent of all the new jobs created outside small-scale agriculture sector and pastoralist activities.

The informal trade workforce can be categorized into the owner-managers, wagedworkers, unpaid family workers, apprentices, contract labour, home workers and paid domestic workers. Of micro enterprises, some of whom are paid workers, paid dependent workers as well as unpaid workers.

7.2 Current Policy Regime

Despite the significant role played by the informal sector, it has continued to experience many constraints and challenges as already highlighted. The unfavourable policy, legal and regulatory environments have over the years constrained the development of this sector. One of the notable intervention measures that the Government put in place was the publication of Sessional Paper No.2 of 1992 on *Small Enterprise and Jua Kali Development in Kenya*. The Paper emphasized the need to create an enabling environment through an appropriate legal and regulatory framework; and put in place support and facilitative measures to promote the growth of the sector. However, these measures did not yield the expected impact, largely due to their inappropriate design and weak implementation.

Another government intervention, which is currently being implemented, is the publication of Sessional Paper No.2 of 2005 on *the Development of Micro and Small Enterprises for Wealth and Employment Creation for Poverty Reduction*. Significant achievements arising from the implementation of this policy include among others reforms in the legal and regulatory framework. This is especially so as a number of the existing laws and regulations remain cumbersome, are out of step with current realities and hostile to the growth of informal sector. For instance, the current Single Business Permit (SBP) applied by the Local

Authorities, remains prohibitive, is not standardized and appears, in most cases, punitive instead of facilitative.

The centralized registration of business names in Nairobi poses accessibility problem for informal traders located outside the capital city. The requirement for details of business physical and postal address also poses a major problem to business operators who may not have permanent physical locations.

7.3 Constraints and Challenges

The following are the constraints and challenges that hinder the informal trade sub-sector from growing and graduating to the formal trade status.

7.3.1 Inadequate and subserviced business premises and working sites

Majority of informal traders live and work in appalling, dangerous and unhealthy temporary premises and/or worksites, due to lack of basic facilities and amenities. Due to their fluid environment and operational nature, most of the informal trade activities such as hawking have not been amenable to mainstreaming in urban planning.

The key challenge is to mainstream informal trade in the urban planning without compromising their need for appropriate physical locations where they are easily accessed by their customers.

7.3.2 Unconducive Regulatory framework

The informal sector over the years has been constrained by an unconducive regulatory framework. The local authorities require them to obtain business permits although they are often harassed by the same local authorities despite their immense role in employment creation and distribution networks in goods and services. Notably, the by-laws applied by many Local Authorities are not standardized and do not appear, in most cases, to be facilitative. Quite often informal trade activities are constrained by frequent eviction and destruction of their trading makeshifts by local authorities on the grounds of operating without licences and unauthorised work sites. In addition, they are vulnerable to the ambivalent stance of the local authorities and the formal enterprises and by the dictate of unfavourable circumstances are compelled to operate outside the framework of the law with little or no legal protection. Even for their social security, they have to rely on family or group solidarity or unofficial organization.

The challenge is to promote the growth and development of informal trade within a conducive legal framework while at the same time safeguarding the environment, security and other social and economic activities

7.3.3 Inadequate Market Access and Low Quality Products

The growth and development of the informal trade depends on the existence of a vibrant market for their products and services. However, market access for their products and services is constrained by their inappropriate physical location, low quality and sub-standard goods. Use of low level of technology and skills in particular forces, most informal traders to operate at lower levels of productivity and are therefore unable to adequately serve demanding markets.

Informal traders are yet to benefit from the newly enacted Public procurement law in terms of the 30% preferential treatment due to its inconsistencies with other complementary laws and regulations. Moreover, linkages between the informal traders and the formal sector are either weak or non-existent.

The first challenge for which the government commits itself is to identify and set aside appropriate market locations for informal traders; invest in technology improvement; and create an effective marketing chain and demand for the informal traders' goods and services and skills improvement. The second challenge for the Government is to institute mechanisms for implementing and enforcing the 30 percent preferential access of public procurement by the informal traders.

7.3.4 Access to Affordable Credit

Majority of informal traders start their informal businesses with their own personal savings or with contributions from their family members. They also obtain credit from sources outside conventional financial institutions and often on much more unfavourable terms. Operations of most financial institutions are tailored to offer credit services to formally registered businesses which meet criteria such as proper maintenance of books of accounts, a viable asset base and availability of collateral. Informal traders cannot meet these criteria.

In order to assist the informal traders to access credit, the government's challenge will be on how to:

- (i) Facilitate financial intermediation between informal traders' associations and micro-finance institutions;
- (ii) Solicit sustainable and effective support and participation of key financial institutions in the provision of credit to the informal traders;
- (iii) Ameliorate the risk associated with financing informal traders;
- (iv) Facilitate registration of informal traders businesses; and
- (v) Facilitate programmes for business registration.

7.3.5 Inadequate Business Skills

Inadequate basic skills in business management and entrepreneurship are a major drawback in the growth and development of the informal trade. The traditional approach to vocational and technical training has not addressed their needs because there are no linkages between training and the related operation of the informal trade. Consequently, potential informal traders enter the sector ill prepared to effectively contribute to its success, while existing ones remain latent in their operations.

The key challenge is the integration of training programmes into the country's education system and exposure of potential informal entrepreneurs to modern business management skills.

7.4 Sub sector Strategy and Goals

In order to mainstream the informal trade within the overall economy, emphasis will be placed on infrastructure development, market improvement, business skills improvement and enhancement of trade finance through public private partnership. The overall goal

entails provision of land on which to construct markets for the promotion of decent, protected and recognized informal traders.

7.4.1 Infrastructure Development Strategy

The problem of infrastructure development will be overcome by:-

- (i) Establishing fully serviced markets in all the urban centres through public private partnership programmes; and
- (ii) Encouraging the private sector to build markets through the processes of Build Operate and Transfer (B.O.T) and Build Operate and Own (B.O.O) principles.

7.4.2 Market Development Strategy

The market development strategy will entail undertaking the following measures:-

- (i) Increasing markets for selected informal traders' products through enhanced, effective public and private sector procurement programmes within the formal sector in partnership with business associations such as KAM, KNCCI and KEPISA; and
- (ii) Training the informal traders association on procurement procedures will go a long way to enhance market access.

7.4.3 Business Skills Improvement Strategy

The inadequate business skills among the informal traders will be overcome through:-

- (i) Redesigning and institutionalizing business skills development programmes within the institutes of technology and selected youth polytechnics for owner/managers and employees of the informal trade;
- (ii) Improving capacity building of informal traders associations; and
- (iii) Undertaking Capacity building of institutions dealing with provision of business development services (BDS)

7.4.4 Trade Finance Strategy

The problem of inadequate trade credit to the informal sector shall be addressed through:-

- (i) Enhancing financial intermediation between informal traders associations and micro-finance institutions; and
- (ii) Facilitating informal traders associations to form SACCOs for enhancing savings mobilization and establishing credit guarantee schemes from the mobilized savings by micro-finance institutions.

7.5 Policy Programme and Projects

To achieve the overall goal for the promotion of decent, protected and recognized informal traders, the Government will facilitate the implementation of the following programmes and projects:

- (i) Development of physical markets for informal traders;
- (ii) Development of Business and market clusters;
- (iii) Mounting informal traders' procurement training programme;
- (iv) Development of business linkages and subcontracting programme
- (v) Setting up business skills upgrading programme;
- (vi) Establishment and management of SACCOs programme; and
- (vii) Capacity building for informal traders association programme.

7.6 Overall Policy for the Sub-sector

The overall policy for this sub sector is to focus on mainstreaming the informal trade into the overall economy by focussing on its growth and graduation into formal trade status through the provision of business development services.

7.7 Implementation Monitoring and Institutional Responsibilities

The Ministry of Trade will coordinate the proposed policy programme and projects for mainstreaming the informal trade within the overall economy. In particular, the Ministry of Local Government will lead in the provision of land for the construction of physical markets for informal traders countrywide. It will also be responsible for providing licensing and regulatory framework for informal traders. A collaborative approach will be adopted to address problems of market access with notable key players in the private sector such as KAM, KNCC&I, KEPSA among others taking the leading role.

Ministry of Finance will facilitate financial intermediation between informal traders associations and micro-finance institutions while the Ministry of Cooperative Development will play a leading role in facilitating informal traders associations to form SACCOS to enhance savings mobilization. Training on business management and entrepreneurship skills and provision of market information will be undertaken by the Ministry of Trade while Ministry of Labour will lead in the provision of technical training.

Some of the other collaborating ministries will include Industrialisation, Youth Affairs, Planning, Public Works, Agriculture, Energy, Science and Technology, and Environment. The public sector state agencies to participate in the promotion and development of the informal sub-sector include EPC, KEBS, KRA, NEMA, The private sector organisations that will be involved at all stages include Jua Kali Associations, KNCCI, FKE, MFIs, SACCOS, KEPSA, KUSCO, and any other relevant business associations.

SECTION D:

TRADE RELATED ISSUES, E-COMMERCE AND INTEGRATION PLANS

CHAPTER 8: TRADE RELATED ISSUES

8.1 Introduction

The previous chapters have concentrated on the core areas of international and domestic trade policy. There are, however, a range of other trade-related policy issues that arise in the implementation of the identified core programmes. This chapter addresses these other trade related issues such as consumer protection, competition and Fair Trade. Others include countervailing and anti-dumping duties to mitigate against trade subsidies and dumping respectively. Safeguards and remedies, investment related issues, intellectual property, environmental and biodiversity, gender and labour standards, and trade disputes settlement mechanisms have equally been covered.

8.2 Consumer Protection

A well functioning market should enhance and protect consumer welfare by effective consumer protection policies. Such policies are required to protect consumers irrespective of the level of competition in the market place. As liberalization of the domestic market deepens, consumer welfare continues to be threatened by the influx of substandard goods and counterfeits into the country. This calls for effective and well-coordinated intervention measures to protect consumers.

The institutions responsible for consumer protection in Kenya include; Weights and Measures Department (W&M), Kenya Bureau of Standards (KEBS), Kenya Industrial Property Institute (KIPI), Kenya Plant Health Inspectorate Service (KEPHIS) and Ministry of Public Health among others.

The Weights and Measures Department is mandated to ensure fair trade practices, use of accurate weighing and measuring equipment in trade and consumer protection under the Weights and Measures Act Cap 513 and the Trade Description Act Cap 505.

KEBS is mandated to promote trade through standardization in commerce and industry, provision of testing and calibration facilities, control of use of standardization marks and undertakes educational work in standardization under the Kenya Bureau Standards Act, CAP 496.

KIPI is responsible for administering industrial property rights, provide technological information to the public, promotes inventiveness and innovativeness and provides training on industrial property under the industrial property Act 2001.

KEPHIS is mandated to coordinate all matters relating to crop pests and disease control under various acts such as Pest Control Products Act 1985 and Plant Control Act Cap 324 among others.

In addition to the above Government agencies dealing in consumer welfare, there are also private sector agencies involved in consumer protection such as the Consumer Information Network of Kenya. These agencies are limited in outreach and also lack the necessary legal mandate to effectively enforce consumer welfare.

Constraints and Challenges

The key constraints facing consumer protection include:

- (i) Lack of effective and well-coordinated intervention measures to protect consumers;
- (ii) Inadequate legal institutional capacity for enforcement; and
- (iii) Inadequate consumer protection awareness.

The above constraints have exposed consumers to the effects of sub-standard goods.

The Government faces the challenge to develop effective and well coordinated consumer protection measures.

Strategy

The Government will strengthen institutional and legislative measures to ensure effective consumer protection.

Programmes

- (i) Amendment of the current legislation dealing with consumer protection;
- (ii) Enactment of a Consumer Protection Act;
- (iii) Creation of a national consumer protection body to undertake coordination of consumer protection activities;
- (iv) Ensuring effective consumer protection through consumer education and advocacy; and
- (v) Operationalization of the Anti Counterfeit legislation.

8.3 Competition

An effective competition policy encourages competition in an economy through preventing restrictive trade practices and restricting the concentration of economic power. The restrictive business practices and excessive market concentration tend to induce abnormally high prices and profits, and low quality and limitations of supply of goods and services.

The Monopolies and Prices Commission of Kenya, a Department in the Ministry of Finance is mandated to encourage competition in the economy by prohibiting restrictive trade practices, controlling monopolies, concentration of economic power and related activities in accordance to the current Restrictive Trade Practices, Monopolies and Price Control Act cap 504 (1990).

Constraints and challenges

The major constraints facing competition include:

- (i) The Act does not adequately provide control of restrictive trade practices, collusive tendering, monopolies and concentrations of economic powers and for control of mergers and takeovers; and
- (ii) Some economic activities are regulated by specific acts of parliament but are exempted from the provisions of the Restrictive Trade Practices, Monopolies and Price Control Act cap 504 (1990). There is therefore no coordination and control over regulators of these exempted economic activities by the Monopolies and Prices Commission of Kenya.

The challenge to the government will be to ensure a competitive business environment in Kenya.

Strategy

The government will encourage and ensure an effective, efficient and coordinated competition regime in the domestic economy.

Programmes

- (i) Review the current Restrictive Trade Practices, Monopolies and Price Control Act (1990); and
- (ii) Establish a strong autonomous competition authority in to effectively and efficiently administer the new competition law.

8.4 Fair Trade

Fair trade is based on dialogue, transparency, respect and seeks greater equity among trading partners. It contributes to sustainable development by offering better trading conditions. Trading in subsidized products and dumping on the domestic market are among the key practices that have been associated with unfair trade. Countervailing measures and anti-dumping duties are among the safeguard measures and remedies to address these unfair trade practices.

Kenya's Customs and Excise Act 2001 defines Dumping and Subsidy, provides for the constituting of an Advisory Committee on Anti-dumping and imposition of dumping and countervailing duties.

Constraints and challenges

The following are the constraints facing fair trade in the country:

- (i) Lack of necessary legislation to ensure compliance with the WTO provisions on safeguards, anti-dumping and countervailing and therefore can only apply the existing legislation on Dumping and Subsidy on limited basis;
- (ii) Lack of strict enforcement of the relevant laws thus leading to unfair trade practices such as display of merchandize by hawkers at the doorsteps of licensed permanent business premises thus blocking potential customers from accessing these premises.

The challenge for the government is to develop necessary legislation to deal with fair trade and the strengthening enforcement mechanisms.

Strategy

The Government will enhance fair trade practices by enhancing development of legislations on anti-dumping, safeguard, subsidy and countervailing measures.

Programmes

- (i) Establishment of framework for implementing trade remedy measures that is compatible with WTO provisions; and
- (ii) Develop effective enforcement mechanisms on fair trade practices legislations.

8.5 Investment Issues

The Kenya Investment Authority (KIA), is mandated to promote and facilitate private investment for both local and foreign investors. Established through the Investment Promotion Act 2004, the institutional and legislative framework governing investment in Kenya aims to promote and facilitate investment by providing assistance and incentives.

The incentive packages covering facilitation, production and competitiveness presently target foreign investors and those producing for export. To mainstream SMEs and domestic producers into the supply chain will require that similar incentives are extended to this sector. The government has prioritized improvement of the business environment by accelerating institutional transformation, facilitating growth through greater trade expansion, improving productivity of enterprises, supporting entrepreneurship and MSE development.

Whereas Kenya has provided the above investment incentives there has not been remarked increase in investment. In the recent years investments have declined with some business enterprises relocating to other countries especially in the neighbouring countries.

Constraints and challenges

Inadequate incentives for local investors including SMEs. The incentive packages covering facilitation, production and competitiveness presently target foreign investors and those producing for export.

High cost of power, labour, infrastructural impediments and the cumbersome legal and Regulatory framework among other factors which need to be addressed to attract investment.

The challenge for the government is to ensure a conducive investment environment that will attract local and foreign investors.

Strategy

The government will promote and facilitate investment by providing an enabling investment environment for both local and international investors; providing modern infrastructure; establishing investment rules and laws; improving security.

Programme

Develop and improve incentives packages for local and foreign investors including development of infrastructure, simplifying licensing procedures, reduction of cost of utilities and provide tax incentives.

8.6 Intellectual Property Rights

Intellectual Property Right (IPR) safeguards the rights of an owner of the intellectual property through national legislation and international agreements especially concerning copyrights, patents and trademarks. The effectiveness of protection of intellectual property rights in a country has substantial effect on technology transfer and economic development. This therefore creates a need for effective legal and institutional framework to safeguard the intellectual property rights.

Kenya has a legal and institutional framework to ensure intellectual property rights protection, which includes the Industrial Property Act 2001, the Trade Marks Act, the Copyright Act 2001, the Seeds and Plant Varieties Act, and the Universal Copyright Convention. The Copyright Act protects literary, musical, artistic, audio-visual works, sound recordings and broadcasts, and computer programs. The Kenya Industrial Property Institute (KIPI) is responsible for patents, trademarks and trade secrets.

While Kenya is a signatory to several international and regional intellectual property conventions, including the World Intellectual Property Organization (WIPO) and African Regional Intellectual Property Organization (ARIPO), the intellectual property regime is a relatively recent development in the country. There is limited awareness on IPR systems among industries and SMEs, a situation which has contributed to Counterfeiting and piracy. This has negatively affected foreign direct investment and discouraged the growth of local entrepreneurs whose talents remains unexploited due to piracy.

Constraints and challenges

Inadequate enforcement of intellectual property legal and institutional framework

- (i) Lack adequate capacity to effectively deal with intellectual property rights protection; and
- (ii) The challenge is to develop adequate capacity, legal and institutional framework to deal with IPR issues.

Strategy

The government will mainstream intellectual property rights education and awareness into the country's education system and strengthen enforcement mechanisms.

Programmes

- (i) Strengthen the current legislation on IPR;
- (ii) Support IPR institutions through capacity building;
- (iii) Sensitize the business community on IPR system; and
- (iv) Strengthen and support protection of genetic resources, traditional knowledge.

8.7 Trade and Environment

Kenya is signatory to a number of international and regional treaties and conventions⁶ on environment, a number of which are trade related and covering environmental pollution and depletion of natural resources through dumping of industrial and toxic wastes, biodiversity and migratory species of wild life, endangered wild fauna and flora, limitation of materials depleting the ozone layer and causing climatic change. In Kenya, the National Environmental Management Authority (NEMA), operating under the Environmental

⁶ Convention on biological diversity; African convention on the conservation of nature and natural resources; Convention for the protecting, management and development of the marine and coastal environment of the Eastern African Region; Protocol concerning protected areas and wild fauna and flora in the Eastern African Region; Protocol concerning cooperation in combating marine polluting in cases of emergency in its Eastern Region; Vienna convention for the protecting the ozone layer; Ramsar convention on wetlands of international importance especially as water lower habitat; Convention of wild fauna and flora (CITES); Convention on the conservation of migratory species of wild animals; Convention on the prevention of marine pollution by dumping wastes and other matter; International convention for the prevention of pollution from ships; United Nations law of sea; Lusaka Agreement on cooperative enforcement operations directed at illegal trade in wild fauna and flora; United Nations convention to combat desertification in those countries experiencing serious drought and / or desertification particularly in Africa; Convention for the protection of world cultural and National Heritage; Convention for the establishment of Lake Victoria organization; United Nations Framework convention on climate change (UNFCCC)

Management and Co-ordination Act, 1999, is mandated to exercise general supervision and co-ordination over all matters relating to the environment and is the principal instrument of Government in the implementation of all policies relating to the environment.

Constraints and challenges

- (i) Inadequate institutional and legal frameworks for compliance with environmental requirements; and
- (ii) Low appreciation of environmental issues related to trade by the stakeholders.

The challenge for the government is to ensure compliance with domestic and international trade related environmental laws and regulations in addition to increasing stakeholder awareness.

Strategy

The Government shall facilitate the conservation and protection of the environment and promote domestic and international environmental friendly trade and investment activities.

Programmes

- (i) Strengthen institutional and legal frameworks;
- (ii) Strengthen capacity to implement, enforce environmental laws, regulations, standards and policies;
- (iii) Encourage the private sector to adopt eco-labelling, information exchange and networking on products and their requirements in terms of production process;
- (iv) Encourage private sector to produce environmental friendly products, adopt environmental friendly packaging materials and use environmental friendly transport systems; and
- (v) Encourage private sector to develop infrastructure facilities on waste management and disposal of industrial and toxic wastes.

8.8 Trade and Gender

The formal trade sector in Kenya does not offer equal opportunities to both men and women. Women are concentrated in the informal sector and account for 70 to 80 percent of persons engaged in petty and informal trading in Kenya. It is therefore impractical to implement effective trade and investment programmes for the economic and social development of the country without the full participation of women in the formal trade sector.

Constraints and Challenges

- (i) Inadequate legal framework to address discriminatory practices against women; and
- (ii) Inadequate access to capital by women owned enterprises due to lack of collateral since women rarely own property.

The challenge for the government is to remove obstacles that hinder full participation of women in the economy.

Strategy

The government will promote the empowerment and effective integration and mainstream the participation of women at all levels of trade and investment.

Programmes

- (i) Develop laws, regulations and eliminate those that hinder women's access to financial assistance including credit;
- (ii) Capacity building on national and regional associations of women in business; and
- (iii) Develop education programmes to eliminate prejudices against women and promote gender equality.

8.9 Trade and Labour Standards

Trade and investment activities in Kenya are carried out under the internationally prescribed labour standards as the country has ratified a number of the International Labour Organization (ILO) Conventions on labour standards.⁷

Kenya's labour laws provide safeguards for worker rights and mechanisms to address complaints of their violation. The labour laws of Kenya are embodied in its Employment Act (revised 1984) and the Regulation of Wages and Conditions of Employment Act (revised 1980). The Employment Act covers wages, leave, housing, health and welfare, local and foreign contracts of service, the employment of women and youth, and other administrative matters. The government through the Ministry of Labour, umbrella labour organization – the Central Organization of Trade Union (COTU) and the various employers' Associations, Federation of Kenya Employers (FKE) implement these laws.

Constraints and Challenges

The cost and productivity of labour in Kenya is considered uncompetitive compared to major competitor countries.

The challenge for the Government is to ensure harmonious labour relations and cost effective and a productive labour sector.

Strategy

The Government is committed to the internationally prescribed labour standards. It shall continually safeguard workers rights and provide mechanisms to address complaints.

Programme

Establish a private sector led capacity building programme to improve labour productivity and competitiveness of the Kenyan labour force to international standards.

⁷ ILO Convention 87 (Freedom of Association and Protection of the Right to Organise Convention, 1948) and Convention 98 (Right to Organise and Collective Bargaining Convention, 1949), ILO Convention 100 (the Equal Remuneration Convention, 1951) and Convention 111 (the Discrimination, Employment and Occupation Convention, 1958), Convention 138 (Minimum Age Convention, 1973) and Convention 182 (Worst Forms of Child Labour Convention, 1999), ILO Convention 29 (Forced Labour convention, 1930) and Convention 105 (Abolition of Forced Labour Convention, 1957).

8.10 Democratization and Trade Promotion

The key pillars of trade and investment promotion include continual progress toward the establishment of a market-based economy and the rule of law; the elimination of barriers to trade and investment; implementation of economic policies to reduce poverty; the protection of internationally recognized worker rights; and the establishment of a system to combat corruption among others. Kenya has a multi-party political system whose hallmark is parliamentary democracy. The political pluralism, rule of law and anti-corruption systems in place attests to commitment on democratization in the country.

Constraints and challenges

Inadequate and weak legal and institutional framework to enhance democratic participation to ensure a stable micro-economic environment

The Challenge is for the Government to ensure economic, social and political stability for business to thrive

Strategy

The Government will continue with a democratic system that is issue-based, people-centred, result oriented and accountable to the public in all trade related issues for the trade sector to play its crucial role towards attainment of the national development objectives including the Millennium Development Goals (MDGs) and Vision 2030.

Programmes

- (i) Enact and operationalize the legal and institutional framework to enhance democratic participation; and
- (ii) Develop formal and informal civic education programmes and promote open engagement between government and civil society, as well as the free flow of information.

8.11 Dispute Settlement Mechanisms

Effective trade dispute settlement mechanisms must not be cumbersome, should have legal backing and implemented transparently to ensure those involved have trust in the mechanisms. The main trade disputes settlement mechanisms include the Kenya judicial system where the Court of Appeal is at the apex, followed by high court and magistrates' and Kadhis' courts. Others are Commercial Courts which deal with commercial disputes and the Industrial Court which arbitrates disputes labour disputes.

The Public Procurement and Disposal Act provide an alternative mechanism through which trade disputes arising in the course of Government procurement and disposal will be arbitrated. The Act has created a Public Procurement Administrative Review Board whose mandate is to review and arbitrate on dispute that may be referred to it by the aggrieved parties in course of participating in public procurement and disposal.

The Landlord and Tenant (Shops, Hotels and Catering establishments) Act, Cap 301 controls the renting and leasing of business premises for a period not exceeding five years. The Business Premises Rent Tribunal created under the Act arbitrates disputes between the property owner and the tenant on matters affecting tenancy. At the regional level, EAC and

COMESA have trade dispute settlement mechanisms to deal with disputes that may arise among the Partner States. Under the EAC Custom Union, trade disputes among the Partner States are resolved under EAC Custom Union (Dispute Settlement Mechanism).

The EAC Competition Act provides a mechanism through which dispute on competition in the region is resolved. The Act establishes a Tribunal to resolve disputes dealing with competition.

Disputes in the COMESA are handled by the COMESA Court of Justice which has jurisdiction upon all matters referred to it pursuant to its Treaty.

On the other hand, trade disputes arising from breach of bilateral agreement are in built in the respective bilateral agreements and the signatory states have to follow the prescribed procedures.

Under the WTO, Dispute Settlement Mechanism (DSM) was designed, inter alia, to secure the 'rule of law' within international trade and provide all members with opportunities to exercise their rights under Multilateral Trade Agreements.

Constraints and Challenges

- (i) Outdated legal provisions and institutions dealing with dispute settlement i.e. Landlord and Tenant (Shops, Hotels and Catering establishments) Act; and
- (ii) Inadequate human and physical resources such as magistrates' offices and court clerks, inadequate trade lawyers and the existence of only one Commercial court in Kenya which leads to backlogs in hearing of disputes

The challenge is to review existing laws and institutions on dealing with dispute settlement as well as addressing the capacity constraints in the institutions.

Strategy

The government will create efficient dispute settlement mechanisms and improve the capacity to handle disputes.

Programmes

- (i) Review the relevant legislations; and
- (ii) Review and restructure institutions dealing with trade disputes.

CHAPTER 9: E-COMMERCE

9.1 Introduction

E-Commerce is the use of electronic communications and digital information processing technologies in business transactions. E-commerce involves the use of applications that run on the Internet and these applications influence the commercial relationships between firms and clients.

E-Commerce mainly occurs in three modes, namely: B2B (Business to Business), B2C (Business to Consumer) and C2B (Consumer to Business). B2B involve services such as call centres, back office operations, internet marketing, enterprise resource planning (ERP), information security service, internet advertisement and offshore development. B2C includes service for mobile phone and car-tracking service; send movie, music, game, e-mail, shopping mall and net banking. C2B ?

In 2000, Kenya's internet usage penetration was 0.7 per cent of the population, which has increased to 3.2 per cent in 2007. The Government projects to increase the ICT penetration and usage to 20 per cent by the year 2012. This target is premised on the basis of the World's internet penetration and usage of 17.6% and if achieved, would provide Kenya with an opportunity to compete favourably with other countries trading under E-commerce. This will in effect contribute to the e-commerce goal of enhancing the Digital opportunity Index from low access of (0.17) to medium access of (0.5).

9.2 Current Policy Regime

Currently, ICT issues are covered under various legislation including the *Science and Technology Act, Cap. 250 of 1977*, the *Kenya Broadcasting Corporation Act of 1988* and the *Kenya Communications Act of 1998*. The National Information & Communications Technology (ICT) Policy of Kenya which is a product of the Economic Recovery Strategy for Wealth and Employment Creation (2003-2007) was developed by the Ministry of Information & Communications in January 2006 to stimulate investment and innovation in ICT; achieve universal access as provided by the Digital Access Index; and Digital Opportunity Index among other goals.

The Economic Recovery Strategy (2003-2007) identified key ICT-related goals such as investing in adequate ICT education and training; and reviewing the legal framework to remove impediments that have discouraged the adoption and use of e-commerce. The ERS also identified the implementation of tax reductions and tax incentives on both computer software and hardware to make them affordable to micro-enterprises and low-income earners; establishing an inter-ministerial committee to incorporate ICT into government operations; and developing a master plan for e-government.

The Kenya Communications Act of 1998 repealed the Kenya Posts and Telecommunications Act and established: Communication Commission of Kenya (CCK) as the Telecommunications, Radio Communications and Postal Sector Regulator; National Communications Secretariat (NCS) to serve as a policy advisory body; Communications Appeals Tribunal; Telkom Kenya Limited; and Postal Corporation of Kenya.

The Government is committed with the ongoing liberalization of the various market segments of the telecommunications sector. Towards this end, the Government will inter alia, has put in place an appropriate regulatory framework and promote competition. Licenses in the ICT segment include those of Internet service providers; Internet gateway and backbone services; and Internet exchange point services.

There is however continued need for a comprehensive policy, legal and regulatory framework to support ICT development, investment and application; promote competition in the industry where appropriate; ensure affordability and access to ICT nationally; address issues of privacy, e-security, ICT legislation, cyber crimes, ethical and moral conduct, copyrights, intellectual property rights and piracy; and support research and development in ICT.

The telecommunications policy framework focuses on establishing a market structure that attracts investment in the sector and allows the creation of telecommunications infrastructure for leveraging national development. The market structure will be reviewed from time to time in line with changing market needs and technological trends.

9.3 Constraints and Challenges

The development of E-commerce in Kenya has been hampered by the following key constraints:

- (i) Low levels of Access as given by the Digital Access Index;
- (ii) Low levels of ICT usage as given by Digital Opportunity Index;
- (iii) Relatively high Internet access costs including connection service fees, communication fees, and hosting charges for websites with sufficient bandwidth;
- (iv) Limited availability of credit cards and a nationwide credit card system;
- (v) Lack of clear policies to support development of e-commerce;
- (vi) The underdeveloped ICT infrastructure affecting the efficient operations of E-commerce;
- (vii) Lack of legal and regulatory framework for E-commerce;
- (viii) High dependence on off-shore hosted content;
- (ix) Network security problems and insufficient security safeguards discourage the use and growth of e-commerce;
- (x) Inadequate skilled human resources and key technologies;
- (xi) Content restriction on national security and other public policy grounds greatly affects business in the field of information services, such as the media and entertainment sectors;
- (xii) Cross-border issues, such as the recognition of transactions under laws of other EAC / COMESA and other regional trading blocks member-countries, certification services, improvement of delivery methods and customs facilitation;
- (xiii) The relatively low cost of labour, which implies that a shift to a comparatively capital intensive solution (including investments on the improvement of the physical and network infrastructure) is not apparent;
- (xiv) Lack of ICT consumer Network to facilitate and stimulate demand for modern quality e-services;
- (xv) Insufficient telecommunication infrastructure and internet connectivity;
- (xvi) Absence of adequate legal and regulatory frameworks;

- (xvii) Limited availability of credit cards and a nationwide credit card system and
- (xviii) Lack of clear policies to support development of e-commerce.

Some of the main challenges in the development of E-commerce in the country are as follows:

- (i) The formulation and implementation of national ICT strategy given the complexity and cross cutting nature of ICT and the need for a holistic approach. It is difficult to create awareness at the political level or to adopt a state-of-the-art regulatory framework;
- (ii) Promotion of use of e-commerce by business community taking into consideration their low levels of awareness, low level of access and usage of ICT; and relatively high Internet access costs; and
- (iii) Promoting the use of credit cards considering the level of sophistication of the telecommunication system, security of card transaction and literacy of the population.

9.4 Sub-Sector Strategies and Goals

Kenya's 2030 vision for e-Trade is to "*Mainstream e-trade within the overall economy*". In order for this to be achieved, the government will focus on infrastructure development; market improvement; skills and technology upgrading; improved financial transactions; and improved Public Private Partnerships for the sub-sector.

9.4.1 Infrastructure Development Strategy

In order to promote infrastructure development the following measures will be undertaken:

- (i) Finalize the installation of the fibre optic cable in all urban centres in Kenya to increase access and connectivity to the international telecommunication network;
- (ii) Liberalize network infrastructure, promotion of broadband competition and liberalization in network services and applications.;
- (iii) Assemble computer hardware and software locally to ensure availability of quality computer goods and services.;
- (iv) Integrate rollout of affordable quality broadband networks in the development of industrial clusters and special economic zones to promote B2B e-commerce.

9.4.2 Market Improvement Strategy

The market improvement will be undertaken through the following measures:

- (i) Establishment of a legal and regulatory framework to support electronic transactions; and
- (ii) Development of an E-commerce policy.

9.4.3 Skills and Technology Upgrading Strategy

In skills and technology upgrading the following will be undertaken:

- (i) Establishing frameworks to learn new technology and encourage higher level e-business skill formation in conjunction with education institutions, businesses and individuals; and
- (ii) Integrating e-commerce in all public and private sector institutions of higher learning and tertiary colleges.

9.4.4 Public Private Partnership Improvement Strategy

As part of the Public Sector reforms and to improve the PPP strategy, the government shall commercialize non-core functions and develop Business Process Outsourcing mechanisms to provide benefits for use of professional human resource, cutting edge technology and cost savings.

9.5 Programmes

To achieve the overall goal for the execution of the strategies for e-commerce, the Government will facilitate the implementation of the following programmes:

- (i)* Integration of Programmes for promotion of E-Commerce;
- (ii)* Hardware and software development businesses;
- (iii)* E-Trade reform programme;
- (iv)* Digitization of product information;
- (v)* Standards and quality assurance to support e-trade;
- (vi)* Capacity Building for e-commerce;
- (vii)* Business Re-engineering Programme; and
- (viii)* B2B Programmes and Institutional linkages programme.

9.6 Overall Policy for the Sub-sector

Integrate e-commerce within the overall economy.

9.7 Implementation Monitoring and Institutional Responsibilities

The Ministry of Trade will coordinate the proposed policy programme and projects by mainstreaming e-commerce within the overall economy. In particular, the Ministry of Information and Communication will lead in facilitating the infrastructural development, Market improvement, Skills and technology upgrading, promoting and facilitating Public Private Partnership to enable innovations and competition to accelerate the growth of ICT industries.

Some of the other key players will include Ministry of Planning and National Development, Ministry of Finance (GITS), Ministry of Immigration & Registration of Persons, Ministry of Transport, Communication Commission of Kenya (CCK), Cabinet Office (Directorate of E-Government), Postal Corporation of Kenya (PCK), Telecom Kenya, Department of Remote Sensing and Remote Surveys and Private sector

CHAPTER 10: INTEGRATION PLANS

10.1 Integrating International and Domestic Trade Policies

For trade sector to play its important role in economic growth, industrialization and hence poverty reduction, several elements need to work together in synergy: better national development strategies that integrate trade as a key component; increased and effective national and international financial and technical assistance for developing production and trade capacities; and a more enabling national and international trade environment.

Improvements in the international and domestic trade will have an impact on economic growth and poverty reduction only if the government has sound integration plans for both the international and domestic trade policies. The previous chapters have discussed the ways in which the international trade policy and domestic trade policy could be supportive in the economic development. This chapter focuses on the other key elements of a National Trade policy: linkages between national and international trade policies; prioritisation and sequencing of issues; monitoring and evaluation; overall institutional structures and responsibilities and the review mechanisms.

10.2 Linkages between International and Domestic Trade Policies

As earlier noted (*Formulation of an integrated trade Policy*), trading across national boundaries involves issues that are both similar to and different from those involved when trading inside a country. There are however, linkages of common features of trading within and across national boundaries and the distinctive features and issues arising in international and domestic markets that need to work in synergy.

The International Trade Policy covered effective participation in trade negotiations, analysis and implementation of multilateral and regional/bilateral trade agreements, international trade policy mainstreaming or domestication and technical standards; trade facilitation, including tariff structures and customs regimes; support to regional trade agreements and human resource development in trade, all of which have a close bearing to the domestic trade activities. Concerted efforts to undertake research at the national level with the objective of ensuring that international trade policy decisions, including the WTO negotiation positions, regional and bilateral trade agreements, are based on sound analysis of the costs and benefits of different options for the domestic economy.

The Domestic Trade Policy has mainly focused on business development and activities aimed at improving the entire business climate. Among the key constraints limiting export growth include lack of supply capacity, inadequate technology to meet standards and the generally high-cost business environment. Other issues covered include capacity with respect to business management skill; access to trade finance; and trade promotion in the productive Sub-sectprs, including at the institutional and enterprise levels. All of these are not only unique or limited to domestic trade but also equally important for international trade activities to thrive. In fact, the role of domestic institutions in the implementation of trade promotion and regulation measures is indeed crucial because international trade policy raises domestic issues and vice-versa.

There is a shared importance attached to having institutions and infrastructure, which supports the development of markets; encouraging information flows about market

opportunities, building confidence between buyers and sellers, and allowing speedy and low cost distribution of goods or provision of services. All these efforts on the development of the infrastructure are deemed to assist both international and domestic trading.

The integration, linkage and synergy of both domestic and international trade policy are important ingredients in achieving the overall aim of making Kenya a competitive and efficient market and export-oriented economy. Kenya's producers will be internationally competitive if they operate in competitive, efficient and well-organized domestic market conditions as the competitive challenge in the home market is a stimulus to preparation for exporting. The SMEs that account for the bulk of businesses in the country shall benefit from the certainties provided by the international trade rules provided that they are facilitated in terms of accessing information and capacity to take the export market opportunities arising from international trade agreements.

The policy programmes and their implementation take cognisance of supportive relationship between trade and other policies at both national and international levels with a view to achieving the economic growth objectives. There is therefore need for coherence at the national level, which calls for the adoption of sound complementary policies by government to manage for instance economic liberalization policy as well as ensuring that both international and domestic trade policy is informed by other national policies. The government, development partners through their development assistance and the private sector shall work towards building the institutional and trade capacity needs to benefit from increased trade and better market access.

10.3 Relationship to Industrial, Agricultural, Services and Development Strategies

There is a close complementary relationship between trade strategy and each of the other four strategies: the Industrial, Agricultural, Services and Development Strategies in propelling the economy to a 10 per cent growth rate and making Kenya a globally competitive nation as espoused in Vision 2030. Kenya's economic policy is to have an export-led growth through the private sector participation, while the government will play a facilitative role by creating enabling environment for trade, industrial, agricultural and services expansion and growth.

a) Industrial sector

The manufacturing sector is still largely inward-oriented, with part of the production exported to regional markets. Factors that have hampered the development of Kenya's manufacturing sector include the weakness of infrastructure (shortfalls in power and water supplies, telecommunication, roads and rail, and port facilities); high interest rates; the lack of industrial space; inadequate managerial, technical, and entrepreneurial skills; weak links between research institutions and manufacturers, i.e. between suppliers and users of research; relatively low value added; underdeveloped legal information culture and the continued existence of irrelevant, outmoded, and anti-market laws and regulations; and unpredictable and wide discretionary powers of administrators of laws and regulations.

Notwithstanding the past difficulties experienced by Kenya's manufacturing sector, it still will have to play a critical role in the diversification and value addition of trade products and

thus propelling the country into a globally competitive nation. These linkages will be realized through:

- (i) Change over to the use of the state-of-the-art technology;
- (ii) Attracting foreign direct investment;
- (iii) Enhancing backward and forward linkages with the agricultural and services sectors;
- (iv) Production of agro-industrial exports with competitive advantage;
- (v) Significant investment in infrastructure;
- (vi) Development of a highly skilled workforce;
- (vii) Investment in large projects with large social economic returns; and
- (viii) Taking advantage of the various government reform programmes.

b) Agricultural sector

Agriculture remains a key sector and the backbone of Kenya's economy despite the continuous reduction of its contribution to GDP over the last few years. . About 80% of the population lives in the rural areas and derives its livelihood largely from the sector. The sector has been constrained by inappropriate legal and regulatory framework; inaccessibility to affordable credit; intermittent floods and droughts; and poor infrastructure, among others.

The backward and forward linkages to agriculture lie in improvement of agricultural productivity spurred by the increased demand of the manufacturing sector as it transforms to the production of agro-industrial exports and hence create the desirable value addition, while relating to the improvements in access to global markets and expansion in export trade.

In 2004, Kenya unveiled its Strategy for Revitalizing Agriculture (SRA) 2004-14, with the objective of transforming agriculture into a profitable, commercially oriented, and internationally competitive activity, capable of attracting private investment, so as to reduce poverty, create high quality employment, increase value-added and provide food security.

Since the launch of the SRA, there have been remarkable improvements in value addition in dairy, coffee, tea, beef subsectors with subsequent diversification and increase in exports of these products. The ongoing reforms in the cotton and pyrethrum subsectors will lead to value addition and thus greater linkages between trade and agriculture.

c) Services sector

The Services Sector is increasingly becoming the most important sector of the economy contributing 60% of GDP and 68% of the total employment Kenya has a relatively liberalized services sector through the commitments made at WTO and through unilateral liberalization and privatization. The key service sectors include tourism, financial services, communication and transport on which Kenya has made specific commitments in WTO.

An emerging area of the services subsector is the Business Process Outsourcing/Offshoring (BPO) with great potential for growth to serve as an information hub for the manufacturing, agricultural, financial and trade development. For this to take place, the basic infrastructure of low cost and reliable telecommunications and energy will have to be in place on a stable basis; generation of a talent pool of young Kenyans through deliberate emphasis on university programmes in ICT, engineering and commerce as well as specific training at

other institutions; and initiatives to support BPO through marketing and promotion, and the design and incentive framework.

The financial services sector, though still significantly small in comparison with the global financial centres, plays a crucial role in the provision of financial services for investments in manufacturing, agriculture, trade as well the services sector investments. One of the critical issues in the financial services strategy is the need to enhance long-term finance, as evidence is available that the economy is in greater need of medium and long-term finance for its productive sectors.

c) Development Sector

The development sector embraces the social economic and political dimensions of the vision 2030. It cuts across the industrial, Agricultural and services sectors. New technologies products and markets will appear before 2030 that Kenya can ill afford to ignore. Besides our traditional markets, the trade policy must take stock of the unprecedented developments that we see in Asia. Kenyan economic sectors and our investors may strike out in directions we cannot fully predict today. Such is the essence of globally competitive markets. This calls for a pragmatic approach to development by Kenya, constant monitoring of both internal and external developments and a political will to make changes rapidly so that our economy does not lose any ground.

10.4 Prioritization and Sequencing of Issues

The following issues have been identified and sequenced as follows;

(a) Policy and legislative strategy to address:

- (i)* Un-conducive licensing and regulatory framework due to multiple and cumbersome licensing procedure;
- (ii)* Strengthening the Business Reform Regulatory Unit;
- (iii)* Review of outdated trade legislations that impact negatively on trade development; and
- (iv)* Unfair trade practices such as dumping, import surges and influx of counterfeit and sub standard goods.

(b) Infrastructure development strategy to address:

- (i)* Infrastructure needs and development;
- (ii)* Inadequate and poorly serviced business premises; and
- (iii)* High transportation costs, telecommunications and web access, electricity supply.

(c) Institutional Strengthening Strategy to address:

- (i)* Capacity Building Strategy for trade promotion experts/facilitators;
- (ii)* Human capital development;
- (iii)* Skill requirements for export production and marketing; and
- (iv)* Inadequate business management skills.

(d) Market Development Strategy to address

- (i)* Inadequate Supply capacity;
- (ii)* Strengthening supply chain Strategy;

- (iii) Access to Markets and Quality of Products;
- (iv) Conformity and compliance with technical requirement;
- (v) Kenya's penetration of priority country markets;
- (vi) Negotiating improved market access;
- (vii) Implementing trade agreements; and
- (viii) Improving export policies.

(e) Trade finance support measures to address:

Access to affordable credit by traders.

10.5 National Trade Policy Monitoring and Evaluation

To determine the relevance and fulfilment of objectives, development efficiency, effectiveness, impact and sustainability of the on-going or completed projects, programme or policy, design, implementation and the results of the National Trade Policy, the government shall undertake periodic monitoring and evaluation. Monitoring shall entail a systematic collection of information to assess progress towards the achievement of National Trade Policy objectives, outcomes and impacts.

Kenya's Vision 2030 provides the overall framework for developing the National Monitoring and Evaluation (M&E) system to provide feedback on the effectiveness of the implementation of the economic, social and political pillars. The Ministry of State for Planning and National Development (P&ND) has developed a National M & E system, which has been rollout to the line ministries including the Ministry of Trade

The National Trade Policy Monitoring and Evaluation (M&E) shall be used to signal potential weaknesses in programme design, allowing adjustments to be made and will be instrumental in checking any changes (positive or negative) to the target groups for instance the SMEs, informal traders, retailers, distributors and wholesalers that may be resulting from programme activities. The means of verification will include sectoral annual progress reports, statistical abstracts, economic surveys and other trade review papers. The overall monitoring and evaluation will remain a key responsibility of the Ministry of Trade as the coordination Ministry but on specific activities, monitoring and evaluation will be an internal management activity conducted by the implementing agencies.

The National Trade Policy M&E system shall as much as possible take participatory approach. This will allow the active engagement of stakeholders in order to ensure that all information collected and analyzed is used to improve the planning and implementation process of the Trade Policy. Furthermore, the implementation of the M&E system should render itself open for transparent scrutiny in many aspects including data collection, analysis, storage, presentation and utilization. It is important that the establishment of the National M&E system should take place parallel to the formulation of the Trade Policy Implementation Plan.

The Ministry of Trade in consultation with the key stakeholders will play a key role in providing output indicators to quantify the measures of progress towards the intended inputs, outputs, outcomes and impacts of the National Trade Policy programmes or strategies. The indicators, which should be independent of possible bias of the observer,

and fulfil the SMART criteria by being ‘Specific, Measurable, Achievable, Relevant and Time bound’, will be quite instrumental in assessing the quantitative and qualitative impact of National Trade Policy and its development efforts.

10.6 Overall Institutional Structures and Responsibilities

The success of trade policies in most countries, have largely been attributed to an effective, coordinated and functioning institutional structures characterized by a strong political will and commitment by the top policy making organs to take firm decisions on trade growth and development issues. This arises because trade activities are crosscutting in nature and therefore spread in different ministries and institutions, which have significant bearing on the trade promotion and development, that is, a number of factors and influencing measures are not directly within the purview of Ministry of Trade.

This section briefly highlights the inherent weaknesses of the current institutional structures and responsibilities that have impeded on the implementation of the past and current trade policies. It equally sets out an implementation framework of the National Trade Policy; comprising the institutional arrangements and the structures. The implementation framework has been designed to take into consideration the factors that have hindered the development of international and domestic trade in Kenya.

(i) Weaknesses of the Current Institutional Structures and Responsibilities

The current policies on trade in Kenya are scattered in various policy documents, legislations and institutions (Annex 1) hence, the need for a coherent national trade policy. The current Ministry institutional structure (Fig a) is inherently inadequate in both institutional capacity and legal backing which have significantly contributed to the poor co-ordination and implementation of the past and even the present trade policies.

The scenario has often led to conflicting pronouncements, rules, regulations and practices affecting trade, which has minimized the impact of trade policies and their contribution to economic growth and development. The ineffective coordination of various Ministries and institutions has resulted in duplications of promotional efforts and inefficiencies in resource utilization.

(ii) Proposed Institutional Structures and Responsibilities

To ensure a systematic and consistent approach to the implementation and the use of the National Trade Policy instruments and achieve the set broad objectives, it is imperative to create a vertical, apex institution that will provide leadership, allocate resources, set targets, oversee and synchronize the activities of all the different institutions that play a role in the trade promotion. Without such vertical co-ordination of stakeholder activities, it will be difficult to apportion failure or success to any particular institution and thus secure accountability.

The proposed framework is structured to provide three layers of responsibilities in the promotion of trade development. The apex body will be the top most organ providing leadership and vision. A technical team to

evaluate the technical viability of the policy innovations will back the structure. The decisions of the apex body will be implemented by relevant institutions with the Ministry of Trade and Industry carrying out the monitoring and coordination and reporting to the apex body.

The implementation structure provides a framework for both top-down and bottom-up approach to issues that would arise during the implementation of the policy. The implementation framework also provides for an all-inclusive participation by the public sector, private sector, universities and research institutions and the civil society. This will enable complete ownership and provide the various stakeholders an opportunity to have an impact on determining priorities for action.

The Implementation Matrix (Appendix...) will guide the implementation of the National Trade Policy. The implementation matrix has defined the actions to be undertaken and the respective agency to do it known as collaborators. In each case the agency or agencies with most immediate responsibility are specified and a timeframe for implementation given. Actions required are identified for relevant strategic issues and strategies in this policy.

10.7 Institutional Arrangements

10.7.1 The Role of the Government

The Government's role is to provide an enabling policy environment, namely, providing and maintaining essential infrastructure, dealing with insecurity perception, investing in human resource development and basic welfare, guarding against human exploitation and environmental degradation, diligent pursuit of Kenya's interests in International Agreements and Relationships, provision of information on resources, and technology and markets. The enabling policy environment will also facilitate the creation of a competitive industrial base that will spur industrialization, investment and trade expansion.

The government will also pursue the following policies to promote industrial development in the country and speed up the process of realization of the Vision 2030.

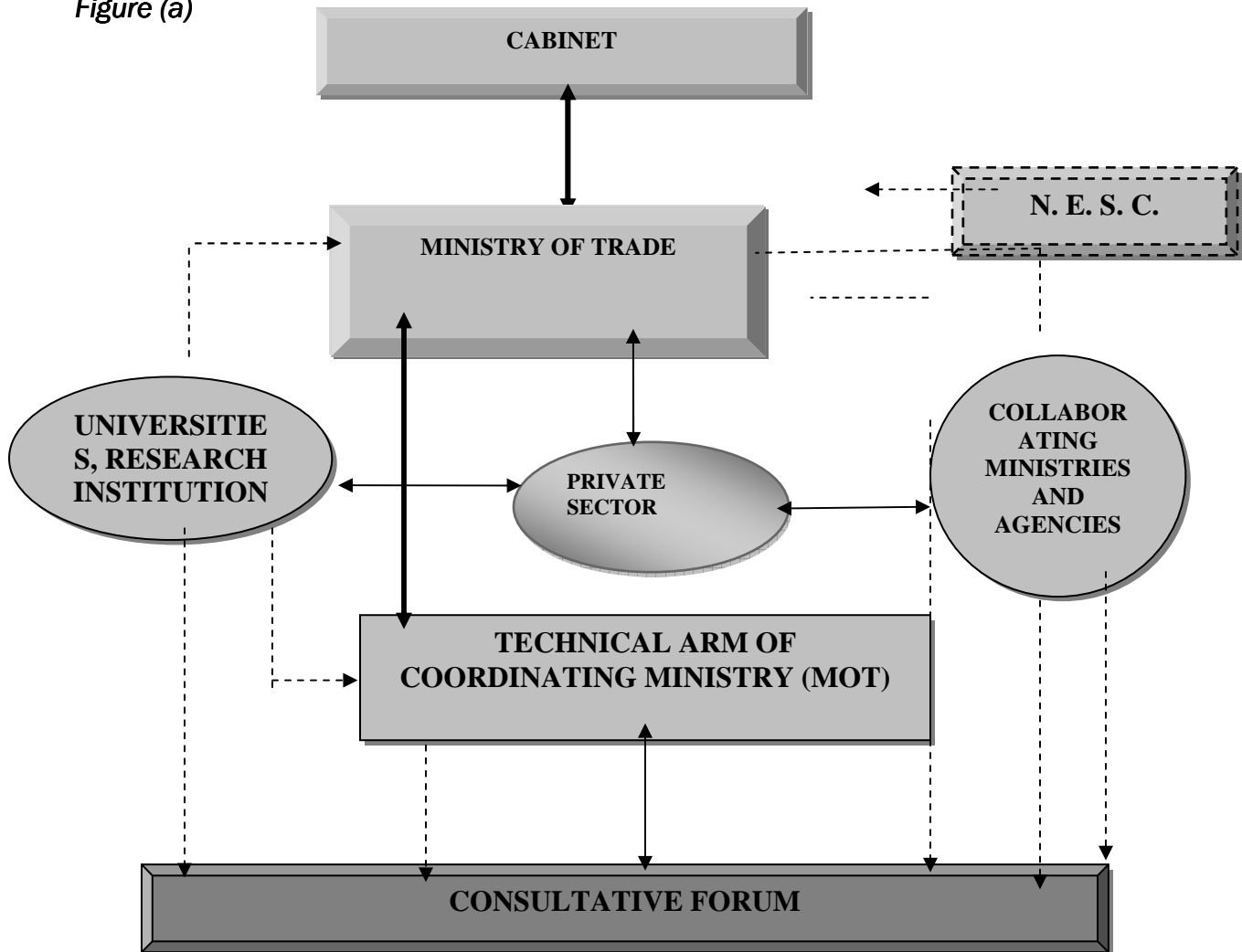
- (i) Maintain a stable political and economic climate that generates business confidence, protects property rights and upholds the rule of law and administration of justice;
- (ii) Provide institutional support in the development of competitive products;
- (iii) Provide administrative and social services, such as education and training, and health through partnership with the private sector. Where possible, beneficiaries of such social services will be called upon to contribute towards their provision;
- (iv) Provide and maintain the basic infrastructure at reasonable cost to consumers. Involvement of private sector operators in the provision and management of infrastructure will be encouraged;
- (v) Catalyze increased domestic investments through new industries and continuous flow of new foreign direct investments into the country. In pursuance of this, specific policy objectives, strategies and flagship projects have been designed to create inter-industry linkages, development of small scale industries through linkages, subcontracting, and entrepreneurship development among others;
- (vi) Enhance the participation of civil groups and private sector organizations in the decision making process by encouraging regular dialogue; and

(vii) Review Research and Development Institutions and their current mandates against the needs of the development of the nation.

In order to create the necessary conditions for the implementation of the policies articulated here, the current reforms of the civil service, to strengthen implementation capacities and induce efficiency, will be completed. There will be a continuous review of government structure and operational procedures with a view to improving service delivery. Clear responsibilities and lines of authority will be established in order to ensure speedy and efficient implementation of strategies articulated in this policy document as indicated in *figure 1* below.

The institutional arrangements will facilitate the various stakeholders to participate effectively through the following institutional structures:

Figure (a)



10.7.2 The Cabinet

The Cabinet provides the vision, political leadership and direction for National Trade Policy. It will approve and ratify decisions made at the Trade Commission. As the President chairs the cabinet, decisions that require to be taken by respective Ministries can then be instituted through directives from the cabinet.

10.7.3 The National Economic and Social Council (NES C)

The NES C Council is a standing committee comprising of eminent persons with diverse experience, knowledge, and skills that is chaired by the President or Hon. Minister for Finance in his absence. The committee, which was formed through the Kenya Gazette

Notice No. 7699 of September 24, 2004, provides expert advice on economic and social matters to the President and the Cabinet.

The NESC forum identifies and discusses policy issues on the basis of the prevailing and prospective economic circumstances and trends; monitors and assess whether current government programmes, activities, and policies are delivering targeted performance and results; and monitors and assess current policy issues where they are identified and discussed with a view to providing feasible recommendations. By virtue of its nature, the council will provide advice to the Trade Commission on economic matters related Trade and Industry growth and development.

10.7.4 Ministry of Trade

The ministry will perform the following functions:-

- (i) Coordinate trade development in all sectors in Kenya and negotiations bilaterally, regionally and in the Multilateral Trading Systems (World Trade Organization, WTO);
- (ii) Generate policy innovations that will accelerate trade development in the country;
- (iii) Advise the Government on the strategic trade development models to pursue in light of the dynamics in the international business arena;
- (iv) Through the relevant specialized agencies, direct research on thematic issues directly affecting trade development and propose mitigation or enhancement measures; and
- (v) Receive, synthesize and evaluate policy proposals from the Trade Consultative Forums and make appropriate recommendations to the Cabinet for approval.

10.7.5 Collaborating Ministries and Agencies

These include implementing Ministries, Agencies and Business Associations that are concerned with trade growth and development. The Ministry of Trade will continue to work closely with these Ministries, Agencies and Business Associations to ensure the implementation of strategies outlined in this policy remain focused to address the issues related to trade and industry sector. To further ensure participation of all stakeholders in formulation and implementation of strategies and policies that will ensure successful implementation of the policy, the Ministry will continue organizing consultative forums from time to time. This will help refocus implementation of strategies which may have not gone according to plan.

10.7.6 The role of the Private Sector

The private sector, through its umbrella associations, will be encouraged to sensitise its members on the importance of the policy towards trade development both locally and internationally. They will be encouraged to actively participate in the deliberations of the Sector Working Groups within the consultative forum. This will enable them to purposefully articulate their priorities for investing in domestic and international trade. They will also be engaged in policy implementation process under the Public-Private Partnerships as the policy recognises the private sector as the engine of economic growth. Some of the private sector organizations include; KEPSA, Kenya Association of Manufacturers (KAM); Kenya National Chamber of Commerce and Industry (KNCCI); Micro, and Small Enterprises Association of Kenya (MSEAK); Federation of Kenya Employers (FKE), Central Organization of Trade Unions (COTU) among others.

10.7.7 Universities, Research and Tertiary Institutions

The policy recognizes that the future of trade development will be highly dependent on innovation, technology transfer; and research and development activities both locally and internationally. This forum will comprise representatives from the public and private universities, research and tertiary institutions. The Kenya's trade development process in the area of negotiations will be informed by extensive research both locally and internationally. The forum will advise the Technical Arm.

10.7.8 The Technical Arm

The technical arm will comprise public and private sector experts in fields such as finance, broad infrastructure, research and technology, SME development, trade and economic integration initiatives and legal and business regulations. They will offer professional services in their respective fields to the Ministry, as and when required. The Ministry, through the technical committee will undertake research; provide technical inputs for submission to the Ministry for consideration. The Technical Arm will co-opt any member on a case by case basis to handle specific issues or requests requiring further expertise. They will also ensure that any technical work is handled before forwarding to the Ministry for necessary action.

10.7.9 Consultative Forum

This is a forum where the public and private sectors make deliberate effort to share the concerns and give suggestions on how they can be solved. This will include issues in the policy, emerging trade and industry issues and act as a focal point for Technical Arm to collect and synthesize views. The Consultative forum will be designed, where necessary, to address sector specific issues, or focused group discussions. The Consultative forums would comprise members from Public Sector, Private Sector, Civil Society and the Development Partners.

10.7.10 Review Mechanisms

The National Trade Policy will be reviewed at least after every five years or as need arises through a consultative process.

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Annex 1: Institutions Coordinating Trade and Main trade-related laws

Area	Ministries/Organisations in Public Sector	Law	Core Activity	Organisations in private sector and civil society and International Organisations
Customs	Min. of Finance KRA,	EAC Protocol, 2005 EAC Customs Management Act, 2004 Customs and Excise Act (Cap. 472), revised edition 2000 Finance Act, 1999	Customs administration	KIFWA
Import/Export control	KRA, Min of Trade, Min of Finance	Import, Exports and Essential Supplies Act (Cap. 502)	Trade administration	KAM, KEPISA, WCO, KEBS, EPC, EPZA,
	AG	Trade Disputes Act (Cap. 234), 1991	Arbitration	
	MOA/KEPHIS	Plant Protection Act (Cap 324),	Research/standards	
	MOA/KEPHIS	Agricultural Produce (Export) Act (Cap 319)	Research/standards	
Licensing of businesses	Min of Local Government	Local Government Act Cap 265	Licensing	
	Min of Immigration	Aliens Restriction Act, 1985	Work Permits	
	AG	Companies Act (Cap. 486), 1978	Registration	
	Min of Labour	Factories Act (Cap. 514), No. 38 of 1950	Safety	
	AG	Bankruptcy Act (Cap. 53), 1930		
	Min of Local Government	Physical Planning Act (1996)	Business citing and building codes	
	Min of Lands	Government Land act (cap280)	Coordinates the development of land policies	
Taxation	Min of Finance	Income Tax Act (Cap. 470), 1989	Revenue collection	
	Min of Finance	Value Added Tax Act (Cap. 476), 1989	Revenue collection	
	Min of Lands	Stamp Duty Act, 1982	Revenue collection	
Exchange Rate	Min of Finance/CBK	Exchange Control Act, 1994	Regulation	
Sanitary and phytosanitary measures	MOA/PCPB,	Pest Control Products Act, 1985	Disease control	
	DVS	Meat Control Act, 1977	Public health inspection services to meat exporters	
	DVS	Dairy Industry Act Cap 336,	Quality control	
	DVS	Fertilizers and Animal Foodstuffs Act (Cap 345), 1977	Quality control	
	DVS,	Animal Disease Act (Cap 364), 1972; revised, 1989	Disease control	
	KWS	Kenya Wildlife Act	Conservation	
	Kenya Vaccine Production Institute (KEVEVAPI)	Animal Disease Act (Cap 364), 1972; revised, 1989	Research	
	Min of Environment/LVEMP	Environmental Management and Coordination Act (EMCA)	Sanitary standards	
	Min. of	Animal Disease Act (Cap	Research	

Area	Ministries/Organisations in Public Sector	Law	Core Activity	Organisations in private sector and civil society and International Organisations
	Livestock/International Centre for Insect Physiology and Ecology (ICIPE)	364), 1972; revised, 1989		
	KEPHIS, HCDA	Plant Protection Act (Cap 324), 1937; revised, 1979	standards	KFC
	MOA	Seeds and Plant Varieties Act (Cap326),	Quality control	
	MOH	Public Health Act (Cap. 242)	Health safety	
	Fisheries department.	Food, Drugs, and Chemical Substances Act (Cap. 254)	Food safety	
	KARI		Research	
	KEBS	Fish Quality Assurance Regulations (2000)	Standards	SGS, BIVAC,
Standards	Min of Trade/KEBS, National Standards Council (NSC), Kenya National Accreditation Service (KENAS)	Standards Act (Cap. 363), 1981	Standards	SGS Kenya Limited, Veritas Quality International Kenya (BVQ) Limited, and CVA International Fresh Producers Exporters Association of Kenya (FPEAK)
	NEMA	Environmental Management and Coordination Act (EMCA)	Environmental impact assessment	
	Min of Agriculture(MOA)	Suppression of Noxious Weeds Act (Cap 325), The Agriculture Act , Cap 318	Agricultural Policy and Services National Food Policy Crop Production and Marketing Pests and Diseases Control Agricultural Extension Services	Kenya Agricultural Research Institute (KARI)*. Kenya Plant Health Inspectorate Service (KEPHIS). Agricultural Development Corporation. Agricultural Finance Corporation. Nyayo Tea Zones Development Corporation. Tea Research Foundation. Coffee Research Foundation. Kenya Sugar Board. Coffee Board of Kenya. National Cereals and Produce Board (NCPB). Kenya Seed Company. Horticultural Crops Development Authority (HCDA). Pyrethrum Board of Kenya. Kenya Sugar Research Foundation (KESREEF). Tea Board of Kenya
	Ministry of Labour and Min of Environment	Ecolabeling/Labour standards/ environmental standards	Standards	

Area	Ministries/Organisations in Public Sector	Law	Core Activity	Organisations in private sector and civil society and International Organisations
	Government Chemist		Testing	Private laboratories
	KDB Milk Processors/Marketers	Dairy Industry Act, Cap. 336	Processing, Marketing	Private processors
Labour	Min of labour	Wages and Conditions of Employment Act (1951, with subsequent amendments) Employment Act Labour Relations Act Labour Institutions Act	Promotion of self employment in micro and small enterprises	COTU FKE Labour organisations National Social Security Fund (NSSF)
	Min of Immigration	Immigration Act	Work Permits	
Foreign investment	Min of Finance	Constitution of Kenya (Section 75), 1963		
	Min of Finance	Investment Promotion Act, 2004	Investment promotion	
	Min of Housing	Housing Act, 1990	Settlement	
	Min of Lands	Land Acquisition Act, 1983		
	AG	Companies Ordinance Act (Cap. 486), 1959		LSK
	AG	Investment Disputes Convention, 1967		LSK
	AG	Partnership Act (Cap. 20 and 30)	Registration	LSK
	AG	Arbitration Act, No. 4 of 1995		LSK
Privatization	Min of Finance	Privatization Act, 2005	Divestiture	
Export processing zones	Min of Industrialisation	Export Processing Zone's Act (Cap. 517), 1991	Production and marketing	Private investors
Government procurement	Min of Local Government	Local Government Act, 1998	Procurement	
	Min of Finance	Sale of Goods Act, 1981		
	Min of Finance	Government Contracts Act, 1979		
	Min of Public Works	Architects and Quantity Surveyors Act, 1978		
	Min of Finance	Public Procurement and Disposal of Public Assets Bill, 2005	Procurement	
Intellectual property rights	Min of Industrialisation/KIPI	Industrial Property Act, 2001	Patents	
	MOA	Seeds and Plant Varieties Act (Cap. 326), 1991	Patents	
	AG	Trade Marks Act, 2002	Trade marks	
	AG	Statute Law (Repeal and Miscellaneous Amendment Act), 1980		
	Min of Higher Education, Science & Technology	Science and Technology Act (Cap. 250), 1977		
	Min of Industrialisation/KIPI	Patents and Designs (Convention Countries) Order, 1971	Patents	
	Min of Industrialisation/KIPI	Copyright Act, 2001	Patents	

Area	Ministries/Organisations in Public Sector	Law	Core Activity	Organisations in private sector and civil society and International Organisations
Competition	Min of Finance	Restrictive Trade Practices, Monopolies and Price Control Act (Cap. 504), 1990	Competition	
	AG	Arbitration Act, 1985	Dispute settlement	
Agriculture and related activities	Tea Board of Kenya (TBK)	Tea Act (Cap. 343), 1950	Marketing - Representing large and medium sized farms	Kenya Tea Growers Association (KTGA).
	National Tea Development Corporation (NTDC)		Representing Nyayo Tea Zones	
	Kenya Tea Development Agency (KTDA Ltd)		Marketing on behalf of smallholder tea farmers	Kenya Small Tea Growers Association (KSTGA) Kenya Union of Small Scale Tea Owners (KUSSTO),
	East African Tea Trade Association (EATTA).	Societies Act 1957	Representing tea traders	Tea Packers East African Tea Trade Association (EATTA)
	MOA/	Sugar Act, 2001		
	Kenya Sugar Research Foundation (KESREF)		Research	Kenya Sugar Millers Association (KESMA)
	MOA	HCDA Act		Processors, Producers, Marketers International NGO's
	Min of Cooperative Development Coffee Board of Kenya (CBK)	Coffee Act, 2001	production, processing, marketing and regulation	
	Kenya Coffee Development Authority (KCDA)			
	Nairobi Coffee Exchange (NCE)			Kenya Coffee Producers and Trade Association (KCPTA)
	Kenya Coffee Research Foundation		Research in prevention of mould formation	
Coffee Research Foundation (CRF)		Research		
	Forests Act, 1992			
Agriculture Finance Corporation (AFC)		Finance		
Fisheries	Department of Fisheries	Fisheries Act, 1972	enforces legislation, facilitates investments, collects revenue	AFIPEK (Kenya Fish processors and Exports Association) SGS Community Groups
	Min of Fisheries	Exclusive Economic Zone (foreign fishing craft) regulations 1990		
	Min of Fisheries	Marine Zones Act cap 371(1991).		
	Kenya Marine and	Science and Technology Act	Research	

Area	Ministries/Organisations in Public Sector	Law	Core Activity	Organisations in private sector and civil society and International Organisations
	Fisheries Research Institute (KMFRI)			
	Kenya Wildlife Services (KWS)	KWS Act	Fish protection	
	Moi University and several polytechnics		Training	
Livestock	Min of Livestock/Kenya Agricultural Research Institute (KARI)		Research	Kenya Livestock Marketing Council
	KETRI,		Disease control	
	KWS	Wildlife Conservation and Management Act (Cap. 389).	Conservation	Private companies under CSR
	Kenya Society for the Prevention of Cruelty to Animals (KSPCA)			
Financial services	Min of Finance/CBK	Banking Act (Cap. 488), 2002		
	Min of Finance	Finance Act, 1999		
	Min of Finance	Insurance Act, 1984		
	Min of Finance/CBK	Central Bank of Kenya Act (Cap 491), 1966		
	Min of Finance	Unit Trust Act (Cap 521)		
	Min of Finance	Retirement and Benefit Authority Act, No. 3 of 1997	Social security	
	African Trade Insurance Agency (ATI)		Export Credit guarantees	COMESA Insurance companies
Min of Cooperatives/SACCOS				
Energy	Kenya Petroleum Refineries Limited (KPRL)	Petroleum Act, Cap 116	Petroleum supply	Private importers
	Kenya Pipeline Company (KPC)		Petroleum distribution	
	National Oil Corporation (NOCK),		Petroleum retailing	Private retailers
	Min of Local Government	Local government Act, Cap 265.	Licensing	
Electricity	Kenya Power and Lighting Company Limited (KPLC),	Electric Power Act, 1997	Distribution	
	Kenya Electricity Generating Company (KenGen)	The Arbitration Act	Generation	
	Electricity Regulatory Board (ERB)		regulation	
Water	Min of Water	Water Act, 2002	Provision of water services	
Transport	Min of Transport	Merchant Shipping Act (Cap. 389), 1989	Enhances the operations and efficiency of transport services	
	Min of Roads	Kenya Roads Board Act, 2000	Development, Standardization and Maintenance of Roads	
	Kenya Airport Authority	Kenya Airport Authority Act		

Area	Ministries/Organisations in Public Sector	Law	Core Activity	Organisations in private sector and civil society and International Organisations
		(Cap 395), 1992		
	Kenya Civil Aviation Authority,	Civil Aviation (Amendment) Act, 2002		
	Min of Transport/KPA	Kenya Ports Authority Act (Cap 391)		
Telecommunications and postal services	Min of Communication and Information	Kenya Communications Act, 1998		
Tourism	Min of Tourism	Hotels and Restaurant Act, 1986		KATO and KATA
		Tourist Industry Licensing Act, 1990		
		Wildlife Conservation and Management Act, 1989	National Parks and Wild Game	
	Catering Levy and Development Trustee		Develop local tourism operators	
	Kenya Utalii College		Training	
	Kenya Tourist Board,		Promotion	
	Kenya Tourist Development Corporation		Financing	
Trade Facilitation, Promotion	Public Sector Infrastructure development and Parastatal utility providers County Council	Transport Licensing Act	Transport Logistics Utilities Improving competitiveness and productivity	Forwarding and Clearing Agents Internal Container Terminals KIFWA
	KRC	KRC Act,		
	Kenya Wildlife Services (KWS)	Kenya Wildlife Act	Maintain roads in game reserves and national parks	
	Kenya Roads Board (KRB)	Kenya Road Board Act 1999	Maintain national road network Manage Fuel Levy Fund Oversee District Roads Boards	
	Ministry of Environment and Natural Resources/NEMA		Safeguards and enhances the quality of the environment through coordination, research, facilitation and enforcement, while encouraging responsible individual, corporate and collective participation towards sustainable	

Area	Ministries/Organisations in Public Sector	Law	Core Activity	Organisations in private sector and civil society and International Organisations
			development.	
	Transport Licensing Board			
	Kenya Port Authority		Own and operate port facilities Oversee shipping	
	Kenya Airports Authority		Management of airports, including safety and security	
	Civil Aviation Authority		Regulating aviation activities	
	Motor Vehicle Inspection Unit		Determine roadworthiness of public service vehicles	
	Transport Licensing Board		License public service vehicles and assign them routes	
	Kenya Pipeline		Transportation	
Negotiations	Min of Trade/Min of EAC/Min of Environment/Min of Foreign Affairs			Regional blocs
Production/Marketing	Kenya Meat Commission (KMC).	Kenya Meat Commission Act, Cap 363		Kenya National Chamber of Commerce and Industry
	MOA	Stock and Produce Theft Act, Cap 355		
	MOA	Cattle Cleansing Act, Cap 358		
	MOA	Hide, Skin and Leather Trade Act, Cap 359		
	Min of Livestock	Rabies Act, Cap 365		
	Min of Livestock	Veterinary Surgeons Act, Cap 366 (as amended in 1993)		
Consumer Protection	Min of Trade	Trade Description Act (Cap. 505), 1962		Consumer Information Network, Kenya
	Min of Trade/Weights and Measures Department	Weights and Measures Act Cap513		Consumer Information Network, Kenya
	Min of Industrialization/ Kenya Bureau of Standards	Kenya Bureau of Standards Act Cap 496		Consumer Information Network, Kenya
	Min of Industrialization/ Kenya Industrial Property Institute (KIPI)			
	Min of Agriculture/KEPHIS			
	Min of Agriculture	Pest Control Products Act 1995		
	Min of Agriculture	Plant Control Act Cap 324		
Capacity building Institutions				
	Horticulture		Training farmer	

Area	Ministries/Organisations in Public Sector	Law	Core Activity	Organisations in private sector and civil society and International Organisations
	Development Centre (HDC)		associations on standards	
	Min of Agriculture/Farmers Training Centres		Farmer training	
	Min of Cooperatives			Cooperative societies
		Education Act (Cap 211),	Training	
		Industrial Training Act (Cap 237 1960, revised in 1983)	Training	
	Technical and Vocational Education Training (TVET) institutions			
	Productivity Centre of Kenya (PCK)			
	Min of Labour/Directorate of Industrial Training (DIT)			
Trade Information Dissemination				
Governance Institutions	Kenya Anti-Corruption Commission.			
		Bankruptcy Act,	Insolvency Regime	
		Deeds of Arrangement Act, ,	Contract Enforcement	
Legal Frameworks	AG	Chapter 2, section 26 of the Constitution of Kenya	Advises the Government on all legal matters for purposes of facilitating and monitoring the rule of law, protection of freedoms, democracy and efficient delivery of legal services	
	Parliament		<ul style="list-style-type: none"> Examining and challenging the work of the government (scrutiny) Debating and passing all laws (legislation) Enabling the government to raise taxes. 	
	Kenya Law Reform Commission (KLRC)	Reforming laws		

Annex 2: Summary of Kenya's specific commitments in services

Sector or subsector	Mode of supply			
	Cross-border supply	Consumption abroad	Commercial presence	Presence of natural persons
Market access/National treatment				
2. COMMUNICATION SERVICES				
C. Telecommunication services				
For public use				
(a) Voice telephone service	NLex/NL	NLex/NL	R/N	Uex/Uex
(b) Telex services				
(c) Telegraph services				
(d) Facsimile services				
(e) Private leased circuit services				
For public use				
(b) Packet-switched data transmission services	NL/NL	NL/NL	R/NL	Uex/Uex
(c) Circuit-switched data transmission services				
For non-public use				
Services supplied to closed users group	NLex/NL	NLex/NL	NLex/NL	Uex/Uex
(a) Voice telephone services				
(b) Packet-switched data transmission services				
(c) Circuit-switched data transmission services				
(d) Telex services				
(e) Telegraph services				
(f) Facsimile services				
Value added services				
(h) Electronic mail	NL/NL	NL/NL	NLex/NL	Uex/Uex
(i) Voice mail				
(j) On-line information and database retrieval				
(k) Electronic data interchange				
(l) Enhanced/value-added facsimile services, including store and forward, store and retrieve				
(m) Code and protocol conversion				
(n) On-line information and /or data processing (including transaction processing)				
Other				
Internet and internet access services	NL/NL	NL/NL	NLex/NL	Uex/Uex
Satellite based	NLex/NL	NLex/NL	NLex/NL	Uex/Uex
Mobile services				
Cellular/mobile telephone				
Mobile data services				
Personal communications services				
Paging				
Terrestrial based				
Mobile services				
Cellular/mobile telephone				
Mobile data services				
Personal communications services				
Paging				
Fixed satellite services (for public use)	OP/NL	OP/NL	NLex/NL	Uex/Uex
D. Audiovisual services				
(a) Motion picture and video tape production services (excluding distribution services)	NL/NL	NL/NL	U/U	Uex/U
(b) Motion picture projection services	Utf/Utf	NL/NL	NL/NL	Uex/U
7. FINANCIAL SERVICES				
A. Insurance and insurance related services				
(a) Life insurance	U/U	U/U	OP/NL	Uex/Uex
(b) Non-life	UexSP/U	U/NL	OP/U	Uex/Uex
(c) Broking	U/U	OP/N	OP/NL	Uex/Uex
(d) Agency services	UexSP/NL	U/U	R/U	Uex/Uex
(e) Auxiliary services, assessors, intermediaries and loss adjustors	NL/NL	NL/NL	NL/NL	Uex/Uex
(f) Reinsurance and retrocession (all classes)	R/NL	R/NL	R/NL	Uex/ Uex
B. Banking and other financial services				
(a) Acceptance of deposits and other repayable funds from the public	NL/U	NL/NL	OP/U	Uex/Uex
(b) Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transactions	NL/NL	NL/NL	NL/U	Uex/Uex

Sector or subsector	Mode of supply			
	Cross-border supply	Consumption abroad	Commercial presence	Presence of natural persons
	Market access/National treatment			
(c) All payments and money transmission	NL/NL	NL/NL	NL/U	Uex/Uex
(d) Guarantees and commitments	NL/U	NL/NL	NL/U	Uex/Uex
(e) Participation in issues of all kinds of securities and provision of services related to such issues except underwriting	R/U	NL/NL	R/U	Uex/Uex
(f) Asset management except pension fund management	NL/U	NL/NL	R/U	Uex/Uex
(g) Advisory and other auxiliary financial services	NL/NL	NL/NL	NL/U	Uex/Uex
9. TOURISM AND TRAVEL RELATED SERVICES				
A. Hotels and restaurants (including catering)	Utf/Utf	NL/NL	NL/NL	Uex/OP
B. Travel agencies and tour operators services	NL/NL	NL/NL	NL/NL	Uex/OP
C. Tourist guides services	NL/NL	NL/NL	NL/NL	Uex/OP
1.1. TRANSPORT SERVICES				
C. Air transport services				
(a) Aircraft repair and maintenance services	Utf/Utf	NL/NL	NL/NL	Uex/U
(b) Selling and marketing of air transport services	NL/NL	NL/NL	OP/OP	Uex/U
(c) Computer reservation systems (CRS) services	NL/NL	NL/NL	U/U	Uex/U
F. Road transport services				
(a) Passenger transportation	NL/NL	U/NL	U/U	Uex/OP
(b) Freight transportation	NL/NL	NL/NL	U/U	Uex/U
(c) Rental of commercial vehicles with operator	NL/NL	NL/NL	U/U	Uex/U
(d) Maintenance and repair of road transport equipment	Utf/Utf	NL/NL	U/U	Uex/U
(e) Supporting services for road transport services	NL/NL	NL/NL	U/U	Uex/U
12. OTHER SERVICES NOT INCLUDED ELSEWHERE				
Meteorological data information	NL/NL	NL/NL	U/U	Uex/OP

NL: No limitations, i.e. Kenya agreed to place no constraints on the item in question.

NLex: No limitations with exceptions.

U: Unbound, i.e. Kenya made no engagements with respect to the item in question.

Uex: Unbound, except as provided by Kenya's horizontal commitments.

UexSP: Unbound, except as provided by Kenya's horizontal commitments, and/or special provisions apply.

Utf: Unbound due to lack of technical feasibility.

R: Restriction

OP: Other provisions apply.

Source: WTO documents GATS/SC/47, 15 April 1994; /Suppl.1, 26 February 1998; and /Suppl.2, 18 November 1999.