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Effects of Sugar Protectionist Policies on Regional Inter-State relation: A Case Study of Kenya's
Sugar Policy in COMESA

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DECLARATION

I, Elizabeth Mwendu Musee hereby declare that this research project is my original work and has not been presented for a degree in any other University.

Signed..... Date.....

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This project has been submitted for examination with my approval as University Supervisor;

Signed..... Date.....

DR. ROSEMARY ANYONA

DEDICATION

This thesis is dedicated to my family for their continued encouragement and support. Much appreciation and gratitude to my loving parents: Pastor Josphart and Mrs. Christine Musee, who pushed me to pursue higher learning.

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Special thanks to God Almighty for granting me grace and strength throughout my study. I would like to also acknowledge my advisor Dr. Rosemary Anyona, for her in-depth guidance and assistance throughout the research project. I thank my parents, Pastor Josphart Musee and Mrs. Christine Musee for their financial and psychological support.

ABSTRACT

This study seeks to establish the effect of Kenya's sugar protectionist policy on industries, interstate relations and in effect regional integration. It will lay emphasis on sugar protectionist policies and specifically address Kenya's sugar protectionist policy and its effect on relations with other COMESA member states.

The overall objective of this study is to find out the Effects of Sugar Protectionist Policies on Regional Inter-State relation: A Case Study of Kenya's Sugar Policy in COMESA. For this objective to be achieved, the study will sought to address and evaluate the role of protectionist policies in the sugar industry, determine COMESA member states reaction to Kenya's sugar protectionist policy and to establish the effect of protectionism on the process of regional integration. This study will show that despite the Neoliberal assertion that calls for opening up of a state's borders to international trade and deregulation of markets by governments, protectionism in some industries is actually necessary and beneficial

The study is exploratory in nature using both qualitative and quantitative methods. Through interviews data was obtained from the Ministry of Foreign Affairs and International Trade, interviews with key informants involved in generating policy within regional bodies like COMESA, interviews from the Kenya Sugar Directorate and from academia.

The hypotheses in the study revealed that since Kenya took up the protectionism measures for its sugar industry, it has become an efficient sugar producer compared to how it before the safeguard. The study was also able to annul the view that Kenya's safeguard had no effects on its relations with COMESA member states. Even with support from the COMESA member states through the approval for the extension of Kenya's sugar safeguard, the safeguard drew various reactions from member states. The finding in the study was that states like Uganda and Southern Sudan found it to be interfering with their national interests, respectively. The study has also proven that the safeguard has not halted the regional integration process with no member state dismembering itself from the COMESA body.

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ABBREVIATIONS

SAPS	-	Structural adjustment programs
WB	-	World Bank
IMF	-	International Monetary Fund
GDP	-	Gross Domestic Product
COMESA	-	Common Market for Eastern and Southern Africa
SADC	-	South African Development Community
WTO	-	World Trade Organization
OECD	-	Organization for Economic Cooperation and Development
EAC	-	East African Community
ECOWAS	-	Economic Community of West African States
EU	-	European Union
FTA	-	Free Trade Areas
NAFTA	-	North American Free Trade Agreement
EPA	-	Economic Partnership Agreement
US	-	United States
ASEAN	-	Association of South East Asian Nations
EurAsEC	-	Eurasian Economic Community
ECA	-	Economic Commission for Africa
OAU	-	Organization of African Unity
PTA	-	Preferential Trade Area
RTA	-	Regional Trade Agreement
FTAA	-	Free Trade Area of the Americas
AfDB	-	African Development Bank

UNECA	-	United Nations Economic Commission for Africa
GATT	-	General Agreement on Tariffs and Trade
OPEC	-	Organization of the Petroleum Exporting Countries
VER	-	Voluntary export restrictions
OMA	-	Orderly market agreements
UK	-	United Kingdom
CET	-	Common External Tariff
STR	-	Simplified Trade Regime
ACP	-	African Caribbean and Pacific nations
EBA	-	Everything But Arms
FDI	-	Foreign Direct Investment
AFFA	-	Agriculture Food and Fisheries Authority
KSB	-	Kenya Sugar Board
ACP-EU	-	Agricultural and Rural Cooperation-European Union
UNCTAD	-	United Nations Conference on Trade And Development
SIIC	-	Sugar and Integrated Industries Company
DSC	-	Delta Sugar Company
USCE	-	United Sugar Company of Egypt
TRQ	-	Tariff-rate quotas
USDA	-	United States Department for Agriculture
FY	-	Fiscal Year

CCAA	-	Competitive Commercial Agriculture in Sub-Saharan Africa
IGAD	-	Inter-Governmental Authority on Development
DSM	-	Dispute Settlement Mechanism
DSU	-	Dispute Settlement Understanding
MT	-	Metric Tonnes

Chapter One

Introduction to the Study

1.0 Background

An assessment of protectionism within the context of Neo-liberalism levels as an outdated concept with little significance in the contemporary epoch. In its broadest sense, protectionism is defined as the deliberate action defined as deliberate action by a government to shield its national industries from external competition is widely loathed and discouraged. Protectionism is the economic policy of limiting trade between countries, it can be done through imposition of high tariffs on imports, imposition of restrictive quotas, anti-dumping laws and other government regulations aimed at discouraging imports.¹ Liberalization on the other hand involves unhindered trade of goods and services between or within countries, it is characterized by free trade. Free trade not only promotes economic development but also offers citizens of nations concerned more and better jobs. Hindrances to trade include government imposed constraints and interventions. The current economic state of affairs globally encourages the opening up of domestic markets and relinquishing of government control in the economy for the private sector. Most economists agree that free trade is beneficial for all in the long run.²

While this is so, the countries which champion free trade, especially the west have aspects of protectionism in their economies. It does seem peculiar that protectionism is still rife in these places bearing in mind the structural adjustment programs (SAPS) that were forced on developing countries since the early 1970s through to the 1990s. As a precondition to acquire aid from the west to stabilize their ailing economies, African countries were to institute World Bank (WB) and International Monetary Fund (IMF) backed policies, domestically.³ One key element of SAPS was the opening up of borders to allow free trade and government's withdrawal in the economy or decimation of parastatals. Needless to say, the policies have been cited as one of the reason African countries have had deteriorating standards of life.

¹ Fouda R. (2012), Protectionism and Free Trade: A Country's Glory or Doom?, International Journal of Trade, Economics and Finance, Vol. 3, No.5, p.

² Baumol, W. J. (1986). Productivity growth, convergence, and welfare: what the long-run data show. *The American Economic Review*, 1072-1085.

³ Tidjani, B. (1998). African unions under structural adjustment programs. *Relations industrielles/Industrial Relations*, 278-299.

Trade is an essential component of development; the two elements are inextricably linked as the fastest growing economies in the world have shown.⁴ International trade provides necessary stimulus for economic growth and development. Identifying factors that hinder trade is thus essential to achieve development more so in developing countries.⁵ In the last decade, trade involving developing countries has grown significantly contributing to economic growth and significant reduction of poverty. South-South trade has achieved considerable growth in the last decade and has risen from a fifth of global trade to one fourth.⁶ While most African countries can be classified as developing countries, their total share in international trade is a mere 2% while their contribution to the global Gross Domestic Product (GDP) is about 1%.⁷ This shows the significant gap to be bridged by these countries if they are to become significant players in the world economy. To participate fully in international trade, African countries must diversify their economies, stop relying on primary products as their key exports and accelerate region integration.

The developed world's role in international trade is most significant. The proportion of developed countries' exports in 1990 was approximately 68%.⁸ Despite being the most developed countries, industrialized nations still show protectionism. The sectors most affected by protectionism is agriculture and labor intensive manufacturing and services industries.⁹ African countries have found that to fully penetrate the global market, they need to start by increasing trade among themselves. The idea of regional integration has thus gained much praise since the 1960s though its crystallization in Africa is yet to be seen. Integration encourages countries in a specific region to remove trade barriers that limit trade be they imposed or natural through states' policies and infrastructure development. Of note in the African context is the Common Market for Eastern and Southern Africa (COMESA) which aims to make trade between its members freer by eliminating protectionist measures. Since the success of COMESA requires desertion of protectionist policies, it has come across strong opposition by weaker economies who fear

⁴ The Monterrey Consensus, (2008), "International Trade as an Engine for development". p. 1-3

⁵ Ng, F., & Yeats, A. J. (1999). *Good governance and trade policy: are they the keys to Africa's global integration and growth?* (Vol. 2038). World Bank Publications, p. 1-7

⁶ The United Nations, World Economic Situation and Prospects 2014

https://www.un.org/en/development/desa/policy/wesp/wesp_current/2014wesp_chap2.pdf. Accessed may 22, 2015

⁷ Gelb, A. H. (Ed.). (2000). *Can Africa claim the 21st century?*. World Bank Publications, p. 208

⁸ World Trade Organization, Trade and Development

https://www.wto.org/english/thewto_e/coher_e/mdg_e/development_e.htm accessed may 22, 2015

⁹ International Monetary Fund, Global trade Liberalization, <http://www.imf.org/external/np/exr/ib/2001/110801.htm> accessed May 22, 2015

industrial polarization.¹⁰ Kenya and Zimbabwe are seen by smaller economies as likely to dominate owing to their proportion of exports within COMESA. Ethiopia on the other hand has on several occasions come under criticism for its protectionist policy that limits the amount of imports it receives from COMESA member countries. Kenya, though a relatively large economy still has protectionist policies especially on its sugar industry which has infuriated other members.

This study will therefore seek to establish the effect of protectionism on industries, interstate relations and in effect regional integration. It will lay emphasis on sugar protectionist policies and specifically address Kenya's sugar protectionist policy and its effect on other COMESA member states relations. While regional integration postulates that integration enhances regional trade, economic development, stability, and security, opening up of borders to foreign goods by countries has been painstakingly slow in Africa and elsewhere. Notwithstanding the immense benefits of regional integration, virtually all states are reluctant to open up their markets in some industries.

1.1 Statement of the Research Problem

The global world of the 21st century has literally become borderless. People, goods and services traverse national borders like never before. Since the Soviet Union implosion symbolized by the fall of the Berlin wall, there has been only one dominant thought, Neo liberalism. Neo liberalism has come to shape the world in ways previously thought impossible. With exception of very few countries including North Korea, almost all countries in the world have opened up their markets to multiple foreign trade. Multilateral organizations like the World Trade Organization (WTO) have become avenues where states iron out their trade differences. WTO has been in the forefront to call for abolishment and reduction of tariff and non-tariff barriers that impede international trade. The process of regional integration is seen as the first step towards freer global trade as it involves harmonization of trade policies and tariffs as well as reduction in barriers to trade. While regional integration has reduced protectionism in general, there are some specific industries which exhibit widespread protectionism.

¹⁰ Meyn, M. (2005). *The Progress of Economic Regionalisation in Southern Africa—Challenges for SADC and COMESA*. Editors: Dirk Hansohm Willie Breytenbach Trudi Hartzenberg Colin McCarthy, 186, p. 210

The sugar industry is notoriously marked by protectionist policies even in the globalized world. From developed countries of Europe and North America to developing countries in Asia and Africa, sugar protectionist policies are rampant. It pits the efficient sugar producers against inefficient state backed producers who rely on government subsidies and high tariffs for their survival. Within the COMESA region, Kenya represents the non-efficient sugar producers while Mauritius is an efficient sugar producer. In North America US (United States), like Kenya, is an inefficient sugar producer though developed. Both Kenya and the US as examples have adopted protectionist policies to ensure survival of their sugar industry against cheaper sugar imports from other members of their regional blocks. Such countries have always argued that they need to protect their infant and struggling domestic sugar industries until such industries are able to compete more effectively internationally.

There arises a problem in that such countries being members of regional integration groups are expected to open up their borders to allow free movement of goods, otherwise their membership in the regional integration group defeats its purposes. The other member states who can produce sugar more efficiently may feel cheated in that, while they open up their borders to other products that countries with sugar protectionist policies can produce more efficiently, they are not allowed to export into these countries what they can produce efficiently (sugar). Regional integration aims at raising the economic levels of a region through increased GDP (Gross Domestic Product) levels which will bring about economic stability hence reduce poverty levels. Safeguard policies may work for developed countries but might stagnate a developing state's development level since protectionism closes a state's borders to trade; a source to economic growth and sufficiency.

1.2 Objectives of the Study

This study will seek to address the following objectives.

1. To evaluate the role of protectionist policies in the sugar industry.
2. To determine COMESA member states reaction to Kenya's sugar protectionist policy.
3. To establish the effect of protectionism on the process of regional integration.

1.3 Literature Review

Literature in this study will be divided into five sub-sections. Firstly, literature on Regional Integration and International Trade. Secondly, literature on Integration and protectionist policies. Thirdly, literature on case for protectionism. Fourthly, literature on

Common Markets for Eastern and Southern Africa and Protectionism, and lastly, it will focus on literature on primary goods protectionism.

1.3.1 Regional Integration and International Trade

To facilitate growth of trade, regional integration has for the longest time been championed by the international organization through multilateral bodies like the United Nations Conference on Trade and Development. Integration contributes to trade facilitation which has wide reaching implications. It is estimated that a 1% reduction in transaction costs would result in welfare gains of about US\$ 40 billion.¹¹ Although all countries would benefit, non-OECD (Organization for Economic Cooperation and Development) countries including African states would benefit the most.

Africa has made important steps towards regional integration as exemplified by the African Union and its regional blocks including The East African Community (EAC), Economic Community of West African States (ECOWAS) and Common Market for Eastern and Southern Africa (COMESA) which morphed from the Lagos and Abuja Treaties.¹² Despite these gains, the share of Intra-African trade is far lower than intraregional trade in other regions of the world.¹³ Integration as typified by the European Union (EU) entails the shedding of some degree of sovereignty to a supranational organization. Regional Integration is a process that involves two or more countries agreeing to work closely together to achieve stability, wealth and peace, specifically, economic integration entails the removal of trade barriers including tariffs, quotas and other border restrictions.¹⁴ Generally integration seeks to promote trade liberalization/free trade through stabilization and harmonization of tariffs, economic policies, fiscal and monetary policies. While many would agree that regional integration has positive effects, not all are so convinced. Free Trade Areas (FTAs) that mostly form basis of regional integration have not lived up to their promise. The North American Free Trade Agreement (NAFTA) which had at its

¹¹ United Nations, (2008) Unveiling Protectionism: Regional Responses to Remaining Barriers in the Textiles and Clothing Trade, p 322

¹² See Lagos & Abuja Treaties

¹³ African Development Bank, Regional Integration, Trade and Investment

<http://www.afdb.org/en/knowledge/publications/tracking-africa%E2%80%99s-progress-in-figures/regional-integration-trade-and-investment/> accessed May 21, 2015

¹⁴ Langhammer, R. J., & Hiemenz, U. (1990). *Regional integration among developing countries: Opportunities, obstacles and options*. Tübingen: Mohr, p.6-15

core freer trade is yet to live up to realize this goal.¹⁵ The Greek debt crises today does point to an inherent weakness in regional economic integration absent political integration.

The European Union has for decades been hailed as the best example of what regional integration can deliver. While the EU accounts for only 7% of global population, it is the world's largest economy, the biggest exporter & importer and a leading investor.¹⁶ Trade between the EU and the rest of the world doubled between 1999 to 2010, overall about ¾ of imports in to the union pay reduced or no duties and where duties are applicable accounted for just 2.2% and 2.6% for industrial goods and all goods overall.¹⁷ The above point to one important aspect of integration on international trade. Integration not only increases international trade but it also harmonizes duties across a region making international trade easier. Harmonization of duties within 28 member states of the union would practically be impossible to achieve without integration.

It is important however to note that the EU's friendly tariffs accrue from the fact that most of its imports are raw materials, components, and intermediary goods needed for its industries. Attaching high duties on these goods would be counterproductive reducing production and employment in the union. The European Union is however not without criticism for its trade policies. Its partnership with African countries known as Economic Partnership Agreement (EPA) which encourages African economies to open up their markets (up to 83% of their markets) to European imports has been deemed counterproductive by a leading German official. Noting the retrogressive tendencies of this arrangement, Gunter Nook states that these arrangements destroy what the EU has done in Africa through on the other side through development programs.¹⁸

Asia is more integrated to the rest of the world than it was four decades ago. The development of Asia's integration to the global economy has been fuelled by exports mostly to the US and the EU, while this is so, intra-regional integration in Asia is still low.¹⁹ Unlike

¹⁵ Coronado J.L and Robertson R. (1996) For Better or Worse: The Caribbean and NAFTA *Caribbean Studies* Vol. 29, No.1. p. 120-143

¹⁶ The European Union Explained, *europa.eu/pol/pdf/flipbook/en/trade_en.pdf* accessed May 22, 2015, p. 2

¹⁷ Ibid at 3

¹⁸ Gunter Nooks is German Chancellor Angela Merkel's Africa Commissioner, "EU-Africa Free Trade Agreements Destroys Development Policy" <http://www.euractiv.com/sections/development-policy/eu-africa-free-trade-agreement-destroys-development-policy-says-merkel> accessed May 29, 2015

¹⁹ Veronique Salze, Nina Merchant, Kathirine Loh and Sarah Alexander, (2013) Regional Integration: Asia's New Frontier

Europe which had relatively homogeneous economies in its nascent days of integration, Asia has diverse economies with different levels of development. Singapore for example is more developed than say Laos which might partly explain the low levels of regional integration. Integration in Asia has not reached the levels of the EU due to differences in Asian countries level of economic development and their hesitation to cede sovereignty to another entity due to their colonial history.²⁰

In South East Asia, regional integration has been occurred under the ambit of Association of South East Asian Nations (ASEAN). ASEAN aims to enhance economic, social and cultural development, promote regional peace and collaboration in agriculture, industry and expansion of trade.²¹ The rise of China has presented challenges and opportunities as pertains to Asian regional integration. The Hegemonic ambitions of China has led to tensions with its neighbors as exemplified by the South China Sea standoff between china and its neighbors including Vietnam. Some good has also come from it, in 2002 China and ASEAN signed the ASEAN-China Free Trade Area which took effect in 2010. The agreement greatly increases trade between China and ASEAN. In 2013 for instance, China-ASEAN trade accounted for 37% of ASEANS global trade, an 11% increase from year 2000, this came in the wake of the global financial crisis which made the EU and the US unfavorable trading partners due to the toll the financial crisis had on the west.²²

In Eastern Europe, the dissolution of the Soviet Union led to disintegration of the former Soviet Union. Russia being the dormant actor has however taken action to reintegrate some of the allies it lost after the Cold War. The Eurasian Economic Community (EurAsEC) was created by Russia, Belarus, Kyrgyzstan, Tajikistan and Kazakhstan in 2000 to reestablish economic and social and cultural ties between these countries.²³ EurAsEC aimed to create a common external custom, harmonize economic policy, tariffs and prices as a part of the common market.²⁴ It

²⁰ Nicolas, F. (2014). Regional Integration in East Asia: Theoretical and Historical Perspectives Edited by Satoshi Amako, Shunji Matsuoka, and Kenji Horiuchi

(Review). *Contemporary Southeast Asia: A Journal of International and Strategic Affairs*, 36(1), p 18

²¹ ASEAN Website, <http://www.asean.org/asean/about-asean/overview> Accessed June 27, 2015

²² See Supra note 19

²³ Delegation of the European Union to Russia, Regional Integration, Eurasian Economic Community http://eeas.europa.eu/delegations/russia/eu_russia/trade_relation/regional_integration/index_en.htm accessed June 27, 2015

²⁴ EURASIAN Economic Center, http://www.eurasian-ec.com/index.php?option=com_content&task=view&id=2&Itemid=7 Accessed June 27, 2015

remains to be seen how well integrated Eurasia will be due to the ongoing tensions in Crimea and Eastern Ukraine.

1.3.2 Integration and Protectionist Policies

Protectionism is seen as a major threat to the integration process. This view arises from the fact that integration seeks to end all forms of protectionism, by having cross-border trade relations with no barriers to trade, and as such the two cannot coexist with each other albeit at the regional level. This does not however mean that an integrated region does not shield its industries from competition from other regions. On the contrary, regional integration does discriminate against other countries who are not part of the regional block through higher tariffs and quotas. The agreed cooperation between states documented on paper only applies to the states that have signed the agreement and the gains are only applicable to the member states.²⁵

While efforts aimed at integrating Africa into one regional block have been widely embraced, success remains elusive. Since the 1960s, 1965 to be specific, when the United Nations Economic Commission for Africa (ECA) convoked a ministerial meeting in Lusaka Zambia, to promote regional integration,²⁶ not much has been achieved. ECA's focus is to advance economic cooperation and integration through preferment of policies and programs that promote this course.²⁷ The formation of Organization of Africa Unity (OAU) had some positive effects in that it provided the ambit under which African states could cooperate and ultimately resulted in the Lagos Plan of Action for the Economic Development of Africa (1980-2000) which created regional bodies to enhance integration. The Lagos Plan of Action²⁸ aimed to eliminate trade barriers to enhance trade between member states who were to initiate negotiations among themselves. It emphasized the creation of a Preferential Trade Area (PTA) in North Africa and sought to remove trade barriers by first eliminating inter-sub-regional barriers to trade.

America has come up with several proposal to push integration since the 1990s. However, these efforts have not been particularly successful more so between Latin America and

²⁵ Magnus B. & Ari K. (1997) Regional Integration and Foreign Direct Investment: *Working Paper Series in Economics and Finance* NO. 172 (Pg. 1-2)

²⁶ Ajomo, M. A. (1976). Regional Economic Organizations the African Experience. *International and Comparative Law Quarterly*, 25(01), 58-101.

²⁷ United Nations Economic Commission for Africa website, <http://www.uneca.org/our-work/regional-integration-and-trade/pages/about-regional-integration-and-trade> Accessed May 20, 2015

²⁸ See Lagos Plan of Action

Caribbean due to public backlash opposed to globalization.²⁹ Notwithstanding, the region has gone on to sign some important regional trade agreements (RTAs) including free trade agreements and customs unions. The ambitious Free Trade Area of the Americas (FTAA) though expected to bring immense benefits to the United States has stalled due to American detractors who fear that it will lead to loss of jobs in the US.³⁰ Talks to create the free trade area collapsed in 2005 due to US opposition. The argument has always been that such an agreement would either lead to American companies shifting their production to other American markets where labor is relatively cheaper or that American goods could face stiff competition from Latin America.

Preferential Trade Areas are normally the first step towards economic integration. PTAs are trade arrangements where a trading bloc allows products from participating countries preferential access to member's markets.³¹ Despite decades since the Lagos Plan of Action was launched, serious gaps facing African regional integration are obvious. The plan set out were too ambitious and African governments need to develop more realistic and pragmatic plans that the continent can reasonably attain.³² Inevitably, the slow rate of integration in Africa costs the continent numerous opportunities. Data from African Development Bank (AfDB) and United Nations Economic Commission for African (UNECA) shows that 1% trade integration in the continent would result into 2%-2.5% expansion in the Gross Domestic Product (GDP).³³

The WTO defines PTAs as unilateral trade predilections including preferential programs in which developed states give preferential tariffs to exports from developing countries.³⁴ PTAs do not necessarily have to be reciprocal. This is in stark contrast to Regional Trade Agreements (RTA) which are reciprocal trade agreements featuring two or more trade partners. RTAs have become especially common in the last two and a half decades, WTO/GATT had by April 7th

²⁹ Antoni Estevadeordal, Economic Integration in the Americas: An Unfinished Agenda, p 23

³⁰ Angeles Villarreal, The Integration in the Americas (2005) , p 3

³¹ Panagariya, Arvind. "Preferential trade liberalization: the traditional theory and new developments." Journal of Economic literature (2000): 287-331., 287-331.

³² Qobo M. (2007) The Challenges of regional Integration in Africa: "*In the Context of Globalization and the Prospects for a United States of Africa*, p. 2-6

³³ Tralac, <http://www.tralac.org/news/article/5537-effective-regional-integration-demands-ending-protectionism.html> accessed May 21, 2015

³⁴ World Trade Organization Preferential Trade Areas https://www.wto.org/english/tratop_e/region_e/rta_pta_e.htm accessed May 20, 2015

2015 received 612 RTA notifications out of which 406 were already in force.³⁵ Generally, PTAs and RTAs are designed to reduce trade barriers, protectionism being a major one. They aim to open up borders to foreign goods for concerned countries by reducing tariff and other restrictive barriers. Research has shown that the size of economy and similarity of economic conditions is a critical factor in the formation and success of PTAs.³⁶

1.3.3 Case for Protectionism

While protectionism hinders trade between countries and therefore curtails development and inflow of Foreign Direct Investments, it can be used to deter protectionism. Protectionism can be used to advance opening up markets in foreign countries, the US can close its markets to any foreign country which does not open up its market to US products.³⁷ The US being an economic powerhouse can thus force smaller economies to adopt liberal policies towards American products. Needless to say, such pressure ultimately benefits the US more than the other country since the US exports a wide variety of manufactured goods, high tech machinery and capital equipment which are more expensive than say primary products that an African country may export to the US. The legal basis of closing up the US market draws from the 1988 Omnibus Trade and Competitive Act and is explicitly covered by sections 301-310.³⁸

Another reason for promoting protectionism has been that it improves a nation's well-being. This apparently applies to where a country has monopoly power over a particular product, the assertion is that such a country can use optimum tariff to benefit from its monopoly. As other economists have however argued, this is equivalent to monopolies raising their prices and reducing their output to maximize profits. This argument suffers from the fact that in the real world, no country holds such monopolistic power, even Organization of the Petroleum Exporting Countries (OPEC)³⁹ no longer holds such power presently as it does not act monolithically anymore. Moreover, market failures which occur when wages do not adjust quickly to fall in demand for an industry's product, like it was with US auto workers who lost to foreign

³⁵ World Trade Organization, Regional Trade Agreements, https://www.wto.org/english/tratop_e/region_e/region_e.htm accessed May 20, 2015

³⁶ Baier Scott and Jeffrey Bergstrand 2004. "On the Economic Determinants of Free Trade Agreements," Journal of International Economics 64(1):29-63

³⁷ Bhagwati J, Protectionism, Library of Economics and Liberty <http://www.econlib.org/library/Enc/Protectionism.html> accessed May 19, 2015

³⁸ See the 1988 Omnibus Trade and Competitiveness Act

³⁹ OPEC is permanent intergovernmental organization made up 12 oil exporting countries, it coordinates petroleum policies of its member states http://www.opec.org/opec_web/en/17.htm

competition, does not necessitate protectionism rather it requires remedial policies that address the problem. Dumping is a serious threat to national economies. Governments therefore elicit protectionist measures to prevent dumping of goods to domestic economies that could cripple local industries. This is because dumping connotes selling products below their cost price and is usually aimed at killing local industries so that foreign entities can then come and establish monopolistic tendencies in the domestic markets as there would be no domestic competitor. Other valid reasons advanced for protectionism policies include: to check import of harmful products, provide revenue for governments through tariffs, and attain self-sufficiency in sensitive sectors like agricultural food sector.⁴⁰

On the contrary, protectionism not only denies the domestic consumer cheaper foreign goods by limiting their entry but it is also a costly affair.⁴¹ Protectionism involves lobby groups who lobby for protectionists policies. In places like the US, these lobbies use significant amounts of money to run campaigns on mass media, resources that would be best used elsewhere to benefit the general society. Protectionism is ubiquitous and extremely hard to eradicate. Where governments do not employ quotas and tariff to limit foreign goods entry, voluntary export restrictions (VERs) come into play. The so called orderly market arrangements (OMAs) involve not quotas or tariff, but action by exporting country to limit its exports, the net effect is the same however. In VERs arrangements, the exporter limits exports and charges a higher price, Japanese auto industry best demonstrates this. VERs relating to Japanese auto imports are an ineffective and inefficient policy, in the UK for example, a tariff's welfare costs are way less than the cost of VER.⁴²

1.3.4 Common Market for Eastern and Southern Africa and Protectionism

COMESA traces its origins in the 1960s when African regional integration was first conceived, it culminated in the formation of Preferential Trade Area in 1981 which in 1994 transformed to COMESA.⁴³ COMESA comprises 19 member states from across Africa with a

⁴⁰ Brander, James, and Paul Krugman. "A 'reciprocal dumping' model of international trade." *Journal of international economics* 15.3 (1983): 313-321.

⁴¹ Baldwin, R., & Evenett, S. (2009). *The collapse of global trade, murky protectionism and the crisis: Recommendations for the G20*. CEPR, p. 13-18

⁴² Smith, A., & Venables, A. J. (1988). *Counting the cost of voluntary export restrictions in the European car market* (No. 249). CEPR Discussion Papers.

⁴³ COMESA website, About COMESA

http://about.comesa.int/index.php?option=com_content&view=article&id=95&Itemid=117 Accessed May 20, 2015

captive market of 389 million including: Burundi, Comoros, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia, and Zimbabwe. The body has a Free Trade Area among 11 state members which have eliminated tariffs on COMESA originating products. COMESA objectives include trade liberalization, easing administrative processes to allow freer movement of goods, promoting the private sector and harmonizing of economic and monetary policies.⁴⁴

Protectionism by COMESA members has been witnessed by member's repudiation to lower tariff bands number and adopt the maximum rate for tariffs.⁴⁵ The member countries have in the past differed over customs management and regional competition policy as well as the level of Common External Tariff (CET). There is also discord over the classification of goods into the four main categories, finished goods, raw materials, intermediates and capital goods.⁴⁶ While significant progress has been made in the reduction and elimination of tariff barriers, another form of protectionism has arisen. Non-tariff barriers within COMESA have been noted including roadblocks, import bans and prohibitive administration charges.⁴⁷ In this regard COMESA has formulated competition regulations that seek to ensure that competition is free and effective, it seeks to diminish anti-competitive practices and other systems of protectionism.⁴⁸

Kenya being a member of COMESA is expected to open up its borders to the inflow of foreign goods from the COMESA region. The country has however severally requested the COMESA Council of Ministers to extend its protectionist policy its sugar industry which it has pursued some time.⁴⁹ Ethiopia another member of COMESA is notorious for its protectionist policies and state interference in fixing prices. It has found itself on the defense over noncompliance to the COMESA Simplified Trade Regime (STR).⁵⁰ Zimbabwe is another protectionist nation owing to its long term inability to make its industries more efficient; many of

⁴⁴ *ibid*

⁴⁵ Khandelwal, P. (2004). *COMESA and SADC: Prospects and Challenges for Regional Trade Integration (EPub)* (No. 4-227). International Monetary Fund., p. 11

⁴⁶ *ibid*

⁴⁷ Yang, Y., & Gupta, M. S. (2005). *Regional Trade Arrangements in Africa: Past Performance and the Way Forward (EPub)* (No. 5-36). International Monetary Fund, p. 30-37

⁴⁸ Drexler, J. (Ed.). (2012). *Competition Policy and Regional Integration in Developing Countries*. Edward Elgar Publishing, p. 207

⁴⁹ Business Daily, Kenya <http://allafrica.com/stories/200711262038.html> Accessed June 27, 2015

⁵⁰ The Ethiopia Observatory <http://ethiopiaobservatory.com/2014/03/05/protectionist-ethiopia-to-join-comesa-free-trade-area-by-december/> Accessed June 27, 2015

its industries have had to fold due to cheaper goods from COMESA prompting the government to resort in protectionist measures.⁵¹ Zambia has shown inconsistencies in its protectionist policies as successive regimes have altered policies of previous governments. To be sure only a small proportion of COMESA members have zero rated tariffs on COMESA originating products indicating the rampant protectionist still being experienced.

1.3.5 Primary Goods Protectionism

Primary goods in international trade are generally foodstuffs and other materials which are in the form that they are initially exchanged in.⁵² Primary commodities form the bulk of developing countries exports mostly derived from agriculture and mining. There has been persistent calls for developing countries to diversify their economies to avoid over reliance on primary commodities so as to fully integrate these countries in the global economy. The general price trend of primary commodities has been one occasioned by falling prices and oversupply in the international market.⁵³ While the theory of specialization holds that countries should specialize in what they can efficiently produce, the developed world has in the past few decades started to produce primary commodities flooding the global commodity market. The European Union has come under criticism for its extreme safeguard policies in agricultural where a vast majority of developing countries have competitive advantage.⁵⁴

The EU has restricted its domestic markets to agricultural imports from developing countries by imposing quantitative restrictions to enable its inefficient domestic producers to access European markets. It also gives financial benefits to exporters through export subsidies to encourage exports as opposed to domestic consumptions. This has the unfortunate effect of charging domestic consumers more than foreign consumers for the same product. Another way the union protects its agricultural markets is through direct subsidies which are paid to farmers by governments leading to global overproduction and price volatility in commodity markets. The situation is no different in the US and other Organization for Economic Cooperation and Development (OECD) countries which make up developed nations of the world. In general the

⁵¹ The Source, Zim should abandon protectionism to compete regionally-Zeparu Report <http://source.co.zw/2014/12/zim-should-abandon-protectionism-to-compete-regionally-zeparu-report/> Accessed June 30, 2015

⁵² Rowe, J. W. F. (1965). Primary commodities in international trade. *Primary commodities in international trade*, p.1-4

⁵³ Ibid. at 78-83

⁵⁴ Trinity College Dublin, EU Agricultural Policy and World Poverty, <https://www.tcd.ie/iis/policycoherence/eu-agricultural-policy/protection-measures.php> accessed May 20, 2015

industrialized nations have high tariffs in agriculture like tariff peaks which are above 15%, tariff escalation which increase with level of processing and restrictive tariff quotas that limit the volume that can be exported into their markets at lower tariff rates.⁵⁵

1.3.6 Sugar Protectionism

The sugar industry remains one industry marred by serious protectionism. Sugar protectionism is rampant and extends from developed world to the developing world. The global sugar market is also a highly distorted commodity market.⁵⁶ The industry is characterized by conspicuous domestic support and biased trade policies including quotas, tariffs, state regulated prices, subsidies and guaranteed payments to producers. Sugar markets, both for refined and raw sugar are the most volatile due to the undue influence that does not allow free markets to operate fully.⁵⁷ Sugar plays an especially significant role in developing countries, in the period from 1960-1986, developing world produced approximately 75% of global sugar volume, and specifically 85% of cane sugar within this period came from developing world.⁵⁸ It therefore suffices to say that protectionist policies ultimately affects developing countries more disproportionately since it's such a significant product to their economies. Preferential agreements between the European Union (EU) and the US enable sugar producing countries to access EU and US domestic markets which exhibit higher sugar prices. Access to developed world market is vitally important for developing countries and is based on agreements. The sugar trade between the EU and African Caribbean and Pacific nations (ACP), for example, is governed by the EU/ACP sugar protocol.

Global sugar production comes from sugarcane or sugar beets. About 120 countries produce sugar using either. Globally, 120 countries produce sugar with a total output of 180tonnes per year.⁵⁹ Sugarcane which is normally grown in the tropics produces about 80% of this volume while sugar beets normally grown in temperate regions of northern hemisphere produces the rest 20%. Overall 70 countries produce sugar from sugarcane, 40 from sugar beets and 10 from both. Brazil is a major sugar producer and accounts for almost a quarter of all sugar

⁵⁵ See Supra note 7

⁵⁶ Nyberg J. Competitive Commercial Agriculture in Sub-Saharan Africa (CCAA) Study, p. 1-17

⁵⁷ Deaton, A., & Laroque, G. (1992). On the behavior of commodity prices. *The Review of Economic Studies*, 59(1), 1-23.

⁵⁸ Mulherin K.S, (1986) The Economic Importance of Sugar and Sugar Cane-Problems and Perspectives <http://www.fao.org/docrep/003/s8850e/s8850e02.htm> accessed May 20, 2015

⁵⁹ SUCDEN, Groupe Sucres Et Denrees <http://www.sucden.com/statistics> accessed May 20, 2015

produced globally. Last year, total global sugar trade was about 57 million tonnes of which 49 million tonnes was traded under the “free market” while 7.5 million tonnes was traded through preferential agreements including (ACP) and Everything But Arms countries (EBA) with the EU, Cuba-China Protocol and US and Mexico through North American Free Trade Agreement (NAFTA).⁶⁰

1.3.7 Sugar Protectionism in the United States (US)

The United States for example exhibits a high level protectionism and generous statutory subsidies to sugar makers.⁶¹ This is not an entirely new phenomena, the Sugar Act Amendments of 1965 were just a reflection of the sugar crisis facing America following its fall out with the Cuban government after the ascendancy of the communist regime under Fidel Castrol. The US sugar policy has been and is still legislatively intended to protect the wellbeing of both the domestic producers and consumers.⁶² The principle behind protectionism is to ensure American consumers have adequate sugar supply at relatively stable prices. Since 1934, the federal government has set domestic marketing quotas that limit sugar supplies available to domestic consumers. This applies to both the domestic and foreign supplier. The government has a payment program that pays domestic growers of sugar cane and sugar beets to keep them producing the raw materials for industries.

Domestically processed sugar in the US has an exercise tax while sugar importers incur a tariff on all sugar imports. The protectionism mechanism controls sugar supply based on estimates of US sugar consumption. While quotas do not determine annual aggregate supply, they do allocate consumption estimates. It is thus consumption estimates and not discrete sugar quotas that stabilizes prices and controls supply in the US. As it were, protectionism results from high production costs in domestic settings that necessitates deliberate action by governments to protect domestic producers who would otherwise go out of business. Cheaper sugar from foreign markets has the potential to dominate domestic markets killing domestic sugar industry and mammoth loss of jobs. Without protectionist policies, producers would continue producing sugar at high costs which in turn would be passed to the consumer affecting negatively consumer’s

⁶⁰ Ibid.

⁶¹ Horton D. (1970), Policy Directions for the united states sugar program, American Journal of Agricultural Economics Vol. 52, No. 2 p. 185-196

⁶² Polopolus L & Fuller V. Policies and Politics in Determining Sugar Quotas, The Southwestern Social Science Quarterly Vol. 43 (1963) p. 331-340

welfare. Though not encouraged in open economies, protectionism has its merits. It also has the effect of attracting foreign sugar producers into the domestic markets with high sugar prices which injects needed Foreign Direct Investment (FDI).⁶³

1.4 Justification

1.4.1 Academic Justification

Policies by governments ultimately determine how a nation is run. In the globalized world of the 21st century, countries have to be cognizant of the implications of their policy not only to the domestic environment but also to their international relations. The dominant Neoliberalism thought calls for opening up of a state's borders to international trade and deregulation of markets by governments. Protectionist policies though advantageous to the governments pursuing them are detrimental to other governments who can produce a good or service more efficiently. While protectionism is intended to improve welfare it may actually end up hurting consumer welfare by raising prices and increasing unnecessary government expenditure that could be best used elsewhere. This study will show that despite the Neoliberal assertion, protectionism in some industries is actually necessary and beneficial.

Though vast literature on protectionism and regional integration exists, studies on the effect sugar protectionist policies on the process of integration more so within COMESA are virtually nonexistent. This study will thus fill this academic gap. In so doing, the study will bring new insights into the whole debate of sugar protectionist policies and their significance or insignificance in the process of regional integration in Africa, specifically within COMESA. Consequently, the study will become an entry point for other researchers who might wish to study the topic further in the future. Ultimately, this study will argue existing literature.

1.4.2 Policy Justification

The study will become a guide for policy makers in governments and other intergovernmental organizations as they address protectionism in the sugar industry. It will also inform lobby groups who are active in championing protectionism.

1.5 Theoretical Framework

The study will employ Neoliberalism theory. Economic Neoliberalism is a theory that advances the idea that the state should have a minimal role to play in the economy. It is a belief that states should refrain from intervening in the economy and instead leave the economy to be

⁶³ Ibid. at 337

run by individuals who operate freely and as controlled by the market forces.⁶⁴ Its focus is on shifting the role of the public sector to the private sector in an economy. Neoliberalism is associated with the term 'small governments' which denotes the reduced role of government in the economy. The theory gained prominence from the mid-1970s as economic growth declined in America due to the oil crisis. Neoliberalism, though originally from Britain is widely associated with the Austrian School of Economics.⁶⁵

The neoliberalism theory has two angles to it, economic and international relations. International relations acknowledges the sovereignty of individual states, recognizing national border lines. The theory also recognizes that as separate entities, states should first be concerned with their absolute interests, for example power, before focusing on the relative goal. The main component in this theory in relation to international relations is how states, through cooperating can realize mutual gains. The second aspect, economic neoliberalism emphasizes on the alliances that will lead to economic gain doing away with public sectors and having private sectors instead; hence reducing government control.⁶⁶

The main proponents of Economic Neoliberalism include Ludwig von Mises, Friedrich von Hayek, and Joseph Schumpeter, other significant individuals include Milton Friedman, David Harvey and the Chicago School of Economists. It draws from the neo classical economics which among others advances reduction in deficit spending by governments opening up markets to trade through limitation of protectionism, role of private sector in the economy and deregulation. Neoliberalism has at its core the belief that every economic transaction is beneficial to all parties so long as it is mutually voluntary and deliberate⁶⁷ and therefore no need for excess regulation. Basically the theory champions freeing up of the economy by eliminating barriers and restrictions that limit trade by opening up of national borders.

Neoliberalism tenets include: Reduction in the role of government in regulating the economy. The theory argues that government's interference in the economy should be avoided to allow private individuals to be the main players in the economy. The role of the government in

⁶⁴ Thorsen, Dag Einar, and Amund Lie. "What is Neoliberalism?" *Oslo, University of Oslo, Department of Political Science, Manuscript* (2006): 1-21.

⁶⁵ Alexander Styhre, *European Financial Review-Neoliberalism, the Free Market and Decline of Managerial Capitalism* <http://www.europeanfinancialreview.com/?p=82>. Accessed June 29, 2015

⁶⁶ Powell, Robert. "Anarchy in international relations theory: the neorealist-neoliberal debate." *International Organization* 48.02 (1994): 313-344.

⁶⁷ Friedman, Milton. *Capitalism and freedom*. University of Chicago press, (1962), p20-27

the economy should be limited to allow the forces of demand and supply (market) run the economy. This is because the government due to its bureaucratic nature is an ineffective manager of the economy. Another principle within neoliberalism is the Rule of the market. The theory encourages free enterprise with no state bonds. Markets are self-regulating due to the forces of demand and supply and these provide the optimal price level and output for the economy.⁶⁸ Price controls are discouraged as they distort the demand-supply operations. It calls for greater international trade openness and investment as well as freedom of movement for goods and services across borders.

The theory also sees privatization of state owned enterprises as key to increase their efficiency and promote competition and consequently welfare. Due to the absence of the profit motive and more focus to public welfare, government owned enterprises are inefficient and because of their heavy subsidization and widespread monopoly, they end up providing poor goods and services. As a principle within neoliberalism, there is need for the deregulation of the economy since strict regulations of economies by states has the effect of reducing profits which discourages competition and effective working of the demand and supply forces. This ultimately results in lack of innovation and progress.

The theory will enhance the study because for integration to occur, government's role through protectionist policies must first diminish. The emphasis of the theory on markets forces means that international trade within an integrated region becomes a reality as forces of demand and supply, and not government policies, dictate the price and quantity of goods and services demanded by customers in domestic and foreign markets. The theory is thus apt as the study looks at what protectionisms does to state's relations. The study focus is on international trade which is best explained by neoliberalism theory.

1.6 Hypotheses

The following will constitute this study's hypotheses

1. Protectionism policies affect domestic sugar industries of states within COMESA positively

⁶⁸ Munck, Ronaldo (2005): "Neoliberalism and Politics, and the Politics of Neoliberalism"; pp. 60-69 in Alfredo Saad-Filho and Deborah Johnston: *Neoliberalism – A Critical Reader*. London: Pluto Press

2. Kenya's protectionist policy has not strained Kenya's relations with COMESA member states.
3. Protectionist policies have no effect on the process of regional integration

1.7 Methodology

The study is exploratory in nature. It will seek to explore the effects of sugar protectionist policies on that industry and interstate relations. Exploratory studies are normally carried out in new areas of research and aim to among others: scope out the enormity of a precise phenomenon or problem, generate preliminary ideas regarding a problem, and test the practicality of further inquiry into the study problem.⁶⁹ Exploratory studies seek to find out the “what” about a problem. The study will use both qualitative and quantitative methods. Quantitative data will come from the Ministry of Foreign Affairs and International Trade which will show the amount of sugar imports Kenya allows from COMESA region and the volume it exports. Qualitative data will come from interviews with key informants involved in generating policy within COMESA and from academia. Interview guides will be used to conduct interviews. Primary data will come from interviews while secondary data from government sources which will also be used to ascertain sugar import-export volumes within the region.

The population for the study will be drawn from the ministry of foreign affairs and international trade, Ministry of Agriculture, COMESA office and academic fraternity within Nairobi. Quota sampling will be taken to determine respondents. This sample method is mostly used where research seeks to interview more members of a particular group (policy makers and academia) than other groups (general public). The research design to be used is case study. Case study design studies contemporary phenomena and begs the question why and how.⁷⁰

1.7.1 Primary Source of Data

The source of primary data for the study will come from interviews conducted with key informants involved in policy. The key informants will be senior level executives drawn from the Kenya Sugar Directorate which is involved in making policies concerning Kenya's sugar sector, the Ministry of Foreign Affairs and International Trade which is involved in foreign policy and COMESA office in Nairobi which manages policy regarding integration. Key informants in the

⁶⁹ Bhattacharjee, A. (2012). *Social science research: principles, methods, and practices*, P. 6

⁷⁰ Yin, R. K. (2013). *Case study research: Design and methods*. Sage publications, p. 5

Government of Kenya ministries are the people who are best place to shed light on the topic owing to the fact that they are the policy makers. Informants from COMESA and Ministry of Foreign affairs and International Trade will provide details on any retaliatory measures adopted by other regional body due to Kenya's protectionist policy and any effect such has on the process of integration. The data obtained should give a clear picture and test the hypothesis.

1.7.2 Secondary Source of Data

Secondary data will be drawn from scholarly journals, books, articles, unpublished works and reports from the ministry of foreign affairs and international trade and COMESA.

1.7.3 Data Analysis

Qualitative and quantitative data analysis will be used. Quantitative analysis of trade volumes and content analysis will be employed to better understand respondents.

1.8 Chapter Outline

Chapter one introduces the study and addresses the various concepts employed in the study. The chapter explores existing literature and points out the objectives of the study as well as the background. It also provides methodology and theoretical framework to be used in the study. The chapter deals with concepts of integration and protectionism in international trade and sugar industry. Chapter Two will be the overview of sugar protectionist policies. The chapter will deal with the first objective which is to examine the protectionist policy in the sugar industry. It will look at the effects of such policies and will draw from Africa and elsewhere in the globe.

Chapter three will seek to find out if Kenya's policies have attracted retaliatory measures or how COMESA member states have reacted to Kenya's sugar safeguard policies. It will examine measures taken up by other COMESA members have taken up as a response to Kenya's sugar protectionist policy. Chapter four will evaluate role of protectionism on regional integration process. The chapter will establish the negative effect of protectionist policies in the process of integration since integration is all about removing barriers to international trade in a region. Having protectionist policies in place is thus an obvious hindrance to the process. Chapter five will be the summary and recommendations, it will present the study's findings and provide recommendations.

Chapter Two

The Effect of Protectionist Policies in the Sugar Industry

2.0 Introduction

Sugar has nearly become a basic need in every household with the variety of uses for the product. It has become a very significant commodity that is produced and consumed all over the world. More than half of the sugar produced in the world is consumed in domestic market and the surplus traded in the global market.⁷¹ The sugar industry is a sector for employment and job creation right from the farming of the cane to the industries involved in the processing of sugar.

COMESA has a membership of 19 states out of which 11 have sugar as a major agricultural produce. Kenya, Madagascar, Zimbabwe, Zambia, Malawi, Ethiopia, Sudan, Egypt, Uganda, Swaziland and Mauritius are competitors in the production of the sugar. Not all are major producers of sugar, however Kenya is enlisted as among the countries that produce plenty of sugar. Kenya however is a rain fed cane producer while the rest of the major producers use irrigation for farming of the crop.⁷²

Protectionism versus free trade has been a global debate with each side having reasons for supporting one side and opposing the other. However, liberalization of trade is being embraced globally with the introduction of free trade areas (FTA) with safeguard policies being applied in sectors where governments feel the need for the protection. The COMESA FTA was introduced in the region where Kenya failed to be competitive enough against other sugar producing countries operating under the FTA. To protect its industry, the Kenyan government sought to safeguard its sugar sector through safeguard under Article 61 of the COMESA treaty. The safeguard was granted after consultations were done between the Kenyan government and the COMESA secretariat in 2002. Thereafter the policy has been renewed by the Council of Ministers severally.⁷³

2.1 Protectionism

Protectionism is the deliberate action by a government to shield its national industries from external competition. It is the economic policy of limiting trade between countries. It can be done through imposition of high tariffs on imports, imposition of restrictive quotas, anti-

⁷¹ AFFA. Comparative Assessment of the Competitiveness of Sugar Production in the COMESA Region. Report (2014)

⁷² (Ibid)

⁷³ (Ibid)

dumping laws and other government regulations aimed at discouraging imports.⁷⁴ Protectionism is contrary to free trade where traders practice liberalization in their trading activities with no or minimal government interference or barriers to trade. It is the act of controlling trade by a government through economic policies against international or foreign trade.⁷⁵

Protectionism policies restrain international trade to protect domestic industries against foreign competition brought about by international trade. A cheaper and a better commodity imported is a threat to a locally produced product which the domestic market may consider as of a lower quality and expensive, opting to buy the imported good. At the same time protectionism protects declining industries, also referred to as sunset industries. This is done so that the industries die slowly as opposed to abrupt closing down of such industries.⁷⁶ Industries that have been in operation for a long time, for instance, may need to be replaced with new ones that have better production capacities, for example, new age technology. The old industries still need to be in operation as the market is introduced to the new industries and with such international competition needs to be kept at bay to see these industries fade progressively and their replacements pick up.

Boundaries or some handicaps of different forms are placed on the imported products from foreign competitors to protect similar domestic products. The imported items are made “less attractive” to the domestic consumer through the different forms of protectionist measures. All these acts are meant to protect the emergent industries in developing nations. Most of the African Nations are termed as developing nations and majorly practice protectionism to protect their infant industries and to boost their economic performance.⁷⁷

Protectionism aims at fostering self-sufficiency. It limits trade between countries, for example controlling trade by imposing quotas as is the case with the Kenyan sugar safeguard. Countries that exceed the given quota levels are subjected to paying higher taxes. The sectors that are most affected by protectionism are agriculture and labor intensive manufacturing and services industries among others.⁷⁸

⁷⁴ Fouda R. (2012), Protectionism and Free Trade: A Country’s Glory or Doom?, International Journal of Trade, Economics and Finance, Vol. 3, No.5, p.

⁷⁵ Protectionism Definition, 2015, <http://www.investopedia.com/terms/p/protectionism.asp>

⁷⁶ Economies online, 2015 http://www.economicsonline.co.uk/Global_economics/Trade_protectionism.html

⁷⁷ Protectionism, <http://www.readyratios.com/reference/business/protectionism.html>

⁷⁸ International Monetary Fund, Global trade Liberalization, <http://www.imf.org/external/np/exr/ib/2001/110801.htm> accessed May 22, 2015

2.1.1 Forms of Protectionism

States take up safeguards that best suit their trading needs and the expected outcome. There are several reasons that lead up to a state's decision to take up safeguards, which include unfair trading grounds, policies and practices as well as to cushion her domestic businesses from international competition. A state will then use these as a basis to impose import controls.

Tariffs is one way of imposing safeguard measures and is basically tax paid on imports. Governments raise the taxes on imported products which in turn reduces the domestic demand of the commodity. Raised tax levels translates to higher prices on a commodity. A reduced demand on the imported commodity is an advantage to the local producer where demand for their domestic product has been created. Quotas as another safeguard measure is the physical limitation on the quantity of imported goods. Governments reduce the volume of imports allowed. It restricts the value of imports acceptable into a country in a given period of time. Quotas give the power of rationing the quantity of imports into a country.⁷⁹ It normally does not bring in any tax revenue for a government but they are more effective than tariffs as they bring about an absolute limit on the amount of commodity to be imported into a country.⁸⁰ As earlier mentioned and as will be discussed later on in this chapter, as is with Kenya's protectionism policy, a quota level was agreed on for the amount of sugar to be imported into the country from COMESA FTA region with a specific amount of tax to be paid by a state that exceeds the specified quota level. In this case, Kenya applied both quota and tariffs on its safeguard.

Voluntary Export Restraint (VER) is an agreement drawn between two countries to limit the quantity of their export to a particular state for an agreed period of time. For example, during the late 1980s the USA enforced VER on Japan.⁸¹ The VER arrangements provides for the exporter to limit exports and charge a higher price. Another safeguard option is the Intellectual property laws. These are laws that protect intangible assets, for example, patents or charters and copyright protection which protect inventions, designs, art works, music, literature among others.⁸²

⁷⁹ Sicular, Terry. "Plan and market in China's agricultural commerce." *The Journal of Political Economy* (1988): 283-307.

⁸⁰ Geoff Riley, Understanding Motivations of Protectionism, 2014
<http://beta.tutor2u.net/economics/reference/protectionism>

⁸¹ Berry, Steven, James Levinsohn, and Ariel Pakes. *Voluntary Export Restraints on Automobiles: Evaluating a Strategic Trade Policy*. No. w5235. National Bureau of Economic Research, 1995.

⁸² (Ibid)

Technical barriers to trade are nontariff barriers to trade. Some of the technical regulations under this form of safeguard are seen as unnecessary restriction.⁸³ They are protectionism measures that a state takes up to protect its consumers, regulate their market or even discriminate against particular imports to protect her domestic industries. These regulations may vary from one country to another.⁸⁴ Other than the immediate objective to the procurement process, a state may choose to promote other objectives associated with the primary objective through the preferential procurement policy.⁸⁵ Preferential state procurement policies as a safeguard measure is where a government clearly discriminates its domestic producers when finalizing contracts for state spending.⁸⁶ Preferential treatment is given to producers for trading opportunities prior to any foreign producer of the same commodity.

A government may choose to pay domestic producers to encourage domestic production by lowering their costs of production. For example, giving low cost loans or even having government-sponsored marketing in the global market; the cost of production is lowered for the producer; expense reduction. This is a trade policy and a safeguard measure for the domestic industries that need to be grown and made competitive in the international market. It is referred to as Export subsidies. Domestic subsidies as another form of trade policy is where a government gives financial support to producers for the production a product that is sold in domestically.⁸⁷

Different forms of licenses are granted for trade to take place between or among countries. The Import license is a permit given by a government to another to allow the importation of a particular commodity. This particular permit is aside that which is required for customs purposes.⁸⁸ Capital controls or exchange controls are restrictions put in place by a state. It is the constraining of the movement of currency between countries.⁸⁹ Such controls are by a

⁸³ Europe, Marilyn Swain. "Technical Barriers to Trade." (2010).

⁸⁴ Types of Protectionism, [http://www.economicshelp.org/blog/category/alevel/ Examples and Types of Protectionism Economics Help.html](http://www.economicshelp.org/blog/category/alevel/Examples%20and%20Types%20of%20Protectionism_Economics%20Help.html)

⁸⁵ Watermeyer, R. B. "Implementing preferential procurement policies in the public sector in South Africa: technical paper." *Journal of the South African Institution of Civil Engineering= Joernaal van die Suid-Afrikaanse Instituut van Siviele Ingenieurswese* 45.3 (2003): p-11.

⁸⁶ Rongjiu, Xue. "The Causes of Protectionism and How to Deal With It." *Guoji Maoyi Wenti* (3) (1987): 1-9.

⁸⁷ Krueger, Anne O., Maurice Schiff, and Alberto Valdés. "Agricultural incentives in developing countries: Measuring the effect of sectoral and economy wide policies." *The World Bank Economic Review* 2.3 (1988): 255-271.

⁸⁸ Meier, and Pilgrim. "Policy-induced constraints on small enterprise development in Asian developing countries." *Small Enterprise Development* 5.2 (1994): 32-38.

⁸⁹ Tamirisa, Natalia T. "Exchange and capital controls as barriers to trade." *IMF Staff Papers* (1999): 69-88

government on foreign exchange (buying or selling) of foreign currencies by residents or of domestic currency by foreigners.

Another form of protectionism is the financial protectionism. This is a policy that may apply when, for example, when a government instructs its banks to give priority to domestic industries when making credit; preferential treatment for financial support by financing bodies. In a state, there will be a variation in the way banks lend to foreigners where the interest rates may become higher to foreigners compare to the locals.⁹⁰ Murky or hidden protectionism is a form of safeguard policy that is vague and lacks clarity, for example, a government's oblique discrimination against alien employees, investors and traders.⁹¹ Government subsidies that is only applicable to products that are made locally. Embargoes are safeguard measure put in place that completely deters a consumer from accessing a particular commodity. It is the total ban on a commodity, probably for being harmful.⁹²

2.1.2 Causes of Protectionism

A country will take any necessary measures to protect its national interests. Reasons for protectionism vary from country to country and are dependent on the countries interests. Economic depression and recession of the economy are reasons enough to cause a country to result to protectionism. Depression is a period of time where the economy is on a decline with reduced levels of trade as well as the industrial activities go down and there us a fall in a country's gross domestic product (GDP); a slowdown in the trade and industry activity. Depression is an extended recession of two or more years.⁹³ As a result of the reduced industrial activities during this period of time, a country's defense for its industries will be determined by its protective measures. Protecting their industries from international trade and having minimal or even no competition from international trade, countries result to protectionism measures and policies.

Sunset industries are industries that have been in the market for a while and their time comes to an end. They are industries that have had their boom and peak days and they are now

⁹⁰ Rose, Andrew K., and Tomasz Wieladek. *Financial protectionism: the first tests*. No. w17073. National Bureau of Economic Research, 2011.

⁹¹ Aggarwal, Vinod K., and Simon J. Evenett. "A Fragmenting Global Economy: A Weakened WTO, Mega FTAs, and Murky Protectionism." *Swiss Political Science Review* 19.4 (2013): 550-557.

⁹² Types of Protectionism, <http://www.economicshelp.org/blog/category/alevel/ Examples and Types of Protectionism Economics Help.html>

⁹³ Rongjiu, Xue. "The Causes of Protectionism and How to Deal With It." *Guoji Maoyi Wenti* (3) (1987): 1-9.

on a decline. Such industries have been in operation and have seen their hay days. Their recovery or rebirth is not expected and may even be replaced. Governments hence put protective policies on such companies to ease and slow their decline with no or minimal competition from the international market.

Infant industries are mostly found in developing countries and their growth is vital to the economy of a state. Infant industries, also referred to as sunrise industries, may be protected and given room to grow through protectionism. Developing countries defend their upcoming industries which they term as potential industries with the hope of them getting into the international business. It is most likely that a newly established industry would not survive in an open trade system considering the competition that such an industry will encounter. Such an industry will be facing already established and experienced industries which bring about strong competition against it in the production of that particular commodity. Until the infant industry attains the technological capacity or even attain low production costs levels to make it competitive enough in the foreign market as its predecessor competitor industries, the existing companies have advantage over it. Protecting such an industry is then vital until it reaches competitive levels to avoid making losses or it being driven out of the market.⁹⁴ Hence therefore the need for these industries to be given time to study the market and attain the most cost-efficient levels for production of their commodities. They also need the time for them to develop or enlarge their market share and even train their labors. The time provided by protectionism measures enables them to gain a foothold in the market and become competitive enough. The protectionism measures also allow the domestic producers to attain some amount of profit by increasing the power in the international market grows.⁹⁵ It has however, proven hard to bring down protectionism measures in developing countries with infant industries with some people that have special interests requesting for extensions with convincing and justifiable reasons. For example, Kenya sought for an extension of its sugar protectionism measures yet again even after the country had exhausted its extension periods as stipulated within COMESA.

Specialization is an advantage to all as it brings about comparative advantage which is allowed in the world of business. Countries produce just enough. A country focuses its energy in

⁹⁴ Addressing the cause of protectionism, 2009, <http://www.lowyinterpreter.org/post/2009/02/13/Addressing-the-cause-of-protectionism.aspx>

⁹⁵ Hagen, Everett E. "An economic justification of protectionism." *The Quarterly Journal of Economics* (1958): 496-514.

the production of limited goods and choosing not to produce particular goods and opting to import them. Specialization allows for a country to produce the commodity which it is best at and the most cost effective in production and which will earn the country plenty of foreign exchange. Over-specialization, however, might arise as a result of taking the concept of comparative advantage to its extreme. It leads to the fragility of a state's economic base. Over-specialization leads to over-dependence on one specific product. If a developing country over depends in its production of a certain commodity, for example in agriculture, that will be adversely affected by change in weather patterns. To avoid over-specialization, a country then may result to protectionism.⁹⁶

In order to protect consumers from unsafe products, for example through embargoes, a state will put in place protectionism measures. Safeguard measures are placed to protect citizens of a state from products that their government considers not suitable for consumption. Substandard products are barred and the consumers are protected by government measures that ensure consumer product safety. For example, products that come into the country have to pass through the Kenya Bureau of Standards to assure its citizens of the safety in consuming a particular product. Such measures may attract retaliatory measure from the country whose products have been barred. The EU at one time barred beef and dairy products from the US and to justify its actions, the EU claimed that US have their cattle injected with hormones to increase their size and milk production.⁹⁷ The US tried to defend itself with no success and as retaliatory measure, it imposed sanctions against EU dairy products worth more than \$15 million.⁹⁸

Protectionism policies are taken up to protect strategic industries, for example, food, energy, and water industries. For example, EU's Common Agricultural Policy was placed to protect the agricultural sector and in turn create food security for Europe.⁹⁹ The need for protectionism also arises in order to protect the non-renewable resources. Some of the known non-renewable resources like oil are indeed considered special and resources that need to be protected. In such cases the regular rules of free trade are not considered so as to conserve the

⁹⁶ Cruz, Mario, et al. "The demographic dynamics of small island societies." *Ekistics; reviews on the problems and science of human settlements* 54.323-324 (1987): 110-115.

⁹⁷ Iowa Ag Review, Policy Reforms in World Markets: What would happen, 2004, http://www.card.iastate.edu/iowa_ag_review/spring_04/article2.aspx

⁹⁸ Elliott, Kimberly Ann, and Thomas O. Bayard. "Reciprocity and retaliation in US trade policy." *Peterson Institute Press: All Books* (1994).

⁹⁹ Impact of EU Sugar Trade on Developing EU Countries, Shaban R. Sserunkuma and Henry Richard Kimera <http://www.germanwatch.org/tw/zu-afr06.htm>

resource. A country may protect such a resource by limiting the output amount which in turn controls the quotas.¹⁰⁰

Unfair trade or competition puts industries at the risk of dying and in order to prevent such outcomes, safeguard policies are put in place. The erected barriers will bar acts like dumping from foreign countries. Societal settings and human rights of workers in developing countries are not the same. Some have unions and human rights defense groups while others may be lacking in the same. This in result may create an uneven playing field for all players. Hence through protectionism products that do not meet the minimal criteria of human rights and working conditions are not allowed into a market.

2.1.3 Advantages and Disadvantages of Protectionism

Unfair trade from foreign industries, among other reasons, is one reason common in a majority of the states that practice protectionism; hope for the betterment of domestic industries and growth of these industries is the motivating factor that encourages protectionism. It is an economic defense mechanism and in some cases is politically instigated. Protective measures however may at times work against an economy contrary to a state's expectations.

2.1.3.1 Advantages of protectionism

The growth of a new industries depends on how much it is shielded from external competition that can bring it down. This is one constant and an almost obvious reason for protectionism. Protectionism measures adopted in such a situation will protect the infant industries and their growth is guaranteed, it gives a chance to such industries to grow and develop enough muscle to survive and compete with international industries. The industries develop comparative advantage after learning from the pre-existing industries. The firms are able to function and develop at a decent rate with no much from the foreign and more experience companies. Protectionism keeps the domestic economy flowing with a reduction of imports. Domestic companies have less competition.¹⁰¹

The levels of unemployment in a country can be reduced through protectionism. This is because of the restrictions placed on industries in form of quotas (among others) will compel

¹⁰⁰ Sicular, Terry. "Plan and market in China's agricultural commerce." *The Journal of Political Economy* (1988): 283-307.

¹⁰¹ Impact of EU Sugar Trade on Developing EU Countries, Shaban R. Sserunkuma and Henry Richard Kimera <http://www.germanwatch.org/tw/zu-afr06.htm>

industries to hire local workers. In a case of a sunset industry, the workers are in danger of losing their jobs at the decline of such industries and so through protectionism, the jobs of these workers are protected, if only for a short while. On the same note, with minimized competition from outside, domestic businesses develop the capacity to produce and sell more goods easily there being no more incentives for firm to decrease their production cost through a decrease in the number of people a company employs hence allowing a flow of the economy with people having not lost their jobs.¹⁰²

When a country has a surplus of a particular commodity, it will result to selling that commodity in large amounts in another country (countries) at a lower cost by grand economies. Dumping hence is the selling a commodity in large quantities at a price that is lower than its production cost. The locally produced commodities will face major competition from similar commodities that have been dumped in the market. The consumers also in the victim country spend more than what the consumers overseas spend. So to protect the locally produce products from this unfair competition, protectionism is implemented against such products.¹⁰³

2.1.3.2 Disadvantages of Protectionism

States in support of complete trade liberalization have had their reasons not to support safeguard policies. Protectionism policies according to anti-protectionists affect the economy of a country which extends to the world economy. Safeguard policies tend to weaken the industry that's being protected in terms of innovation and improvement due to lack of exposure. Exposure and experience is the best teacher which the international arena provides. Protectionism however does not provide room for that. Sometimes competition is healthy as it strengthens and provides room for evaluation. Specializing is an advantage to a state's economy. However in protectionism, a country may over-specialize which in turn may translate to the loss of jobs and elevated levels of poverty. Closing of borders to international trade reduces the levels of economic growth where subsequently causes job loss.¹⁰⁴

Devoid of competition, industries lack fresh ideas to improve their products. In turn the consumers are dissatisfied and at the end of the day, the consumers pay more for poor quality

¹⁰² Pros and Cons of Protectionism, S12_EC122_International trade,
<https://sites.google.com/site/s12ec122internationaltrade/argument-for-free-trade>

¹⁰³ (Ibid)

¹⁰⁴ Cruz, Mario, et al. "The demographic dynamics of small island societies." *Ekistics; reviews on the problems and science of human settlements* 54.323-324 (1987): 110-115.

products whereas they can get fresh and better quality products from foreign competitors. To avoid this, liberal trade is advocated for through free trade agreements which work better for a country's economy extending to the world economy as well. Protectionism affects the price of imported goods due to an increase on the tariffs. Safeguard policies may also affect the quota levels which could be reduced or controlled unlike before. Less products are hence imported which results to the demand for domestic product increasing and in turn, there will be less or no incentive for exporting since the domestic consumer need have to be met first. Countries surplus produce that is not necessarily of acceptable quality may find its way into foreign states' markets. Dumping may be considered advantageous to some countries (especially in developing countries) where an imported product that is of a higher quality compared to a locally produced product is sold to the consumers at a lower price; cheaper than the locally made product. This will affect the economy of the domestic industry adversely. Safeguard policies come in handy to protect states from dumping activities.¹⁰⁵

Countries will create economic wars which are also referred to as Trade wars. Protectionism attracts retaliatory measures from other states whose products have been barred. Other countries may follow suit and retaliate in the same manner by having safeguard policies as well in response to the safeguard policies set against their products; for example, as a retaliation, it might become difficult and expensive for domestic industries to import new technologies which may be needed for the advancement of the industries whose products are safeguarded against international competition. A good example is the ongoing trade war between Japan and China or the US and China trade war where the US put constraints on tires gotten from China, and China evened the score by having barriers against U.S. goods, such as their chicken. This trade enmity reduces the specialization level of the two nations which in turn harms their economy which will stagnate or lead to a declining of the economy; declining economies translates to increase of poverty levels.¹⁰⁶

Once protectionism is instilled upon infant industries, it has proven difficult to remove the policies. There then develops the fear that the initially temporary protection may turn out to be permanent. Attempts to remove the protection measures tends to create unrest especially when

¹⁰⁵ The Advantages of Protectionism Economics Essay, 2003, <http://www.ukessays.com/essays/economics/the-advantages-of-protectionism-economics-essay.php>

¹⁰⁶ E-International Relations Publishing, Luca Ferrini, What are the Main Causes and Effects of Economic Protectionism, 2012 <http://www.e-ir.info/2012/08/28/the-causes-and-effects-of-economic-protectionism/>

there is political interests and influence. The infant industries may also lack incentives to become competent and even be established. There may also be corrupt dealings from the state representatives while meeting the requirements for protection. It is commonly said that protection bears forth monopoly. Monopoly is bound to arise in an economy that permanently has safeguards on its products. Protectionism bars foreign competition and with that, the possibility of these industries turning monopolistic is quite high. Monopolistic environments in turn exploit the consumer. These cartels are likely to take control of industries in developing countries considering the fact that developing countries have limited industries.¹⁰⁷ Sadly safeguard policies favor the rich in the society; the rich become richer as the poor become poorer. The rich gain greater control of the protected industries leaving the poor man at their mercy. Eventually a state will have an unequal distribution of the national income and the rich continue accumulating more wealth as the poor continue being poor.¹⁰⁸

2.2 Sugar Protectionist Policy beyond Africa

The protectionism policy is not a new concept. It is a practice that has been exhibited in the past with its replacement being liberalization of trade through regional integration and Free Trade Areas (FTA).¹⁰⁹ Globalization through regional integration to ensure growth of economies, international trade, removal of trade barriers and attaining a common market is the current proposed trade policy. The United States is a perfect example of one of the super economies globally. The US has exhibited a high level of protectionism and have had substantial legal subsidies to sugar makers.¹¹⁰ It is not an all new concept in the US as the Sugar Act Amendments of 1965 were a mirror image of the sugar crisis facing America following its fall out with the Cuban government after the power control by the communist regime under the leadership of Fidel Castrol. The US sugar policy has been and is still legislatively intended to protect the wellbeing of both the domestic producers and consumers.¹¹¹ The principle behind protectionism is to ensure American consumers have an ample supply of sugar at relatively stable prices. Since

¹⁰⁷ (Ibid)

¹⁰⁸ The Domino Effect of Sugar Protectionism, Michael Tennant, 2012 <http://fff.org/explore-freedom/article/the-domino-effect-of-sugar-protectionism/>

¹⁰⁹ University for Peace Africa Programme. Africa Peace and conflict Journal; Guidelines for contributors, (2014). Addis Ababa, Ethiopia.

¹¹⁰ Horton D. (1970), Policy Directions for the united states sugar program, American Journal of Agricultural Economics Vol. 52, No. 2 p. 185-196

¹¹¹ Polopolus L & Fuller V. Policies and Politics in Determining Sugar Quotas, The Southwestern Social Science Quarterly Vol. 43 (1963) p. 331-340

1934, the federal government has set domestic marketing quotas that limit sugar supplies available to domestic consumers. This applies to both the domestic and foreign supplier. The government has a payment program that pays domestic growers of sugar cane and sugar beets to keep them producing the raw materials for industries.¹¹²

Domestically processed sugar in the US has an exercise tax while sugar importers incur a tariff on all sugar imports. The protectionism mechanism controls sugar supply based on estimates of US sugar consumption. While quotas do not determine annual aggregate supply, they do allocate consumption estimates. It is thus consumption estimates and not discrete sugar quotas that stabilizes prices and controls supply in the US. As it were, protectionism results from high production costs in domestic settings that necessitates deliberate action by governments to protect domestic producers who would otherwise go out of business.¹¹³ Cheaper sugar from foreign markets has the potential to dominate domestic markets killing domestic sugar industry and mammoth loss of jobs. Without protectionist policies, producers would continue producing sugar at high costs which in turn would be passed to the consumer affecting negatively consumer's welfare.¹¹⁴ Though not encouraged in open economies, protectionism, as seen earlier does have its merits. It also has the effect of attracting foreign sugar producers into the domestic markets with high sugar prices which injects needed Foreign Direct Investment (FDI).¹¹⁵

The US subsidized its sugar sector by imposing quotas on sugar imports. At the same time the US has been encouraging developing countries to cut back on their own subsidies. This move would be advantageous to the US as it's a protective measure on its private sugar producers from foreign competition. This then has led to unreasonably high prices in the US market on sugar. The US consumers at the end of the day have been the losers as a result of the policies.¹¹⁶ Import quotas have strictly limited the quantity of imported sugar to the US at the global value and at the same time protected domestic producers from more efficient foreign sugar growers who can produce cane sugar in Central America, Africa and the Caribbean at

¹¹² Ibid. at 337

¹¹³ Economics in Plain English for Students and Teachers in Economics, The Winners and Losers of Protectionism-the U.S. sugar industry <http://welkerswikinomics.com/blog/2013/04/30/the-winners-and-losers-of-protectionism-the-us-sugar-industry/>

¹¹⁴ The Editors of Encyclopaedia Britannica, Protectionism, 2014 <http://www.britannica.com/topic/protectionism>

¹¹⁵ (Ibid)

¹¹⁶ Bryan Riley, The Heritage Foundation, U.S. Trade Policy Gouges American Sugar Consumers, 2014 <http://www.heritage.org/research/reports/2014/06/us-trade-policy-gouges-american-sugar-consumers>

roughly half the cost of beet sugar produced in Minnesota and Michigan.¹¹⁷ This move has cost the American consumers and US sugar-using businesses as they have been forced to pay more compared to the world sugar price for a long; since 1982, consequently an increased sugar cost of billions of dollars.¹¹⁸

2.3 Sugar Protectionism in Kenya

Kenya has not always been a sugar producer. The crop was first introduced to Kenya over a century ago, in 1902. With the introduction of the crop, there needed industries within the country for sugar and other cane products to be produced hence in 1922 the first sugar cane factory was established in Miwani located near Kisumu. In 1927, another was set up at Ramisi in the coast province. Growth of sugar industries and sugar mills was a top agenda for the Kenyan Government. As evidence of its interest in the sector and its involvement, the government later established Muhoroni Sugar Factory in 1966 and soon after Chemelil Sugar Factory in 1968, Mumias in 1973, and Nzoia in 1978 and at Awendo, the Sony sugar company was established in 1979. Several other sugar mills have been set up since then.¹¹⁹

Sugar is considered to be not only a political but also a strategic commodity. The sugar industry been a continuous source of income to over a million people in Kenya. Through the industry, quite a number of Kenyan citizens have been able to secure employment. There has also been an advance in the rural infrastructural development. The commodity however has faced international competition from imported sugar under the COMESA protocol and also from other markets globally. The cost of sugar production in Kenya has been quite high as compared to other regional manufacturers and compared to the world market prices. The Kenyan sugar industries also are punctured with a heavy debt problem. Another struggle among others, has been the cane produced per hectare in Kenya not comparing well with that of other global trends.¹²⁰

Kenya largely consumes industrial sugar for example in making cakes, sweets and medicinal products which are in turn exported and sold within COMESA. In the list of

¹¹⁷ Council on Hemispheric Affairs, U.S. Sugar Subsidies and the Caribbean's Sugar Economies, 2013

<http://www.coha.org/u-s-sugar-subsidies-and-the-caribbeans-sugar-economies/>

¹¹⁸ Protectionist sugar policy costs Americans \$3 billion in 2012 <https://www.aei.org/publication/protectionist-sugar-policy-cost-americans-3-billion-in-2012/>

¹¹⁹ Wanyande, Peter. "Management Politics in Kenya's Sugar Industry: Towards an Effective Framework." African Journal of Political Science/Revue Africaine de Science Politique (2001): 123-140.

¹²⁰ AFFA. Comparative Assessment of the Competitiveness of Sugar Production in the COMESA Region. Report (2014)

challenges that Kenya faces with its sugar industries is the inefficient government owned industries. At the same time, there have been internal wars within the sector with too many mills fighting for the same cane without any regulation. Kenya being a member of the Common Market for Eastern and Southern Africa (COMESA) sought protection for its sugar. Kenya's safeguard has been renewed by the COMESA Council of Ministers on Kenya's request severally. The latest extension by the Council of Ministers was granted on 26 March 2015. In March 2004, Kenya was granted a four-year cover on its sugar which was granted by the council with conditions set for Kenya to meet.¹²¹ By the year 2007, at the end of the waiver granted by COMESA, Kenya had not yet achieved its goal and so it sought for an extension which would see the cover run to 2011. In December 2007, the council reviewed its protectionism treaty and the terms were adjusted to fit the World Trade Organization policy of ten years as the maximum time frame for safeguards for developing countries.¹²² In August 2011 Kenya then sought another extension of the safeguard which was to expire the next year in February. Now Kenya has a one year extension to institute the necessary changes that will place the sugar sector at a level where it can compete with other sugar producers among the COMESA members.

The safeguard is stipulated in Article 61 of the COMESA Treaty which provides for a safeguard clause which is meant to be administered by the Council Members of COMESA. The causal link, damage analysis, and examination process does not follow the WTO criteria, but is centered on a preliminary self-evaluation by the Member State desiring to take on the safeguard measure. This initial assessment is then certified by an analysis done by the COMESA Secretariat. This procedure was followed in the Kenyan sugar safeguard case. Kenya's safeguard was granted on conditions which Kenya is yet to fulfill. COMESA granted Kenya the safeguard on the basis that Kenya maintains the safety measures as a tariff rate quota with the quota aggregating while the above quota tariff decreases until it reaches and is maintained at 0%, privatizes the state-owned mills, provides infrastructure including roads and bridges in the sugar growing areas, pays farmers based on sucrose content instead of based on weight and does

¹²¹ Trade Mark East Africa, COMESA extends imports safeguards for Kenya, 2015, <https://www.trademarka.com/news/comesa-extends-imports-safeguards-for-kenya/new/get-involved/sign-e-news-tmea/>

¹²² Trade Mark East Africa, COMESA extends imports safeguards for Kenya, 2015, <https://www.trademarka.com/news/comesa-extends-imports-safeguards-for-kenya/new/get-involved/sign-e-news-tmea/>

research into fresh early maturing and high sucrose content sugar cane varieties and adopting them.¹²³

The COMESA committee, in its decision to extend Kenya's existing sugar safeguards agreed that the safeguards will be reviewed and renewed after a period of one year. The committee further agreed that there should be a system apportioning specific quotas to each COMESA Member State and that the apportioning should be put in place taking into consideration the agricultural calendar of the member states. It was also agreed that consultations should be done prior with the member states and be based on a formula to be agreed by the Council of Ministers. The COMESA Secretariat was to come up with the draft criteria for assigning the quotas. On March 26 and 27, 2015 in Addis Ababa Ethiopia during a two day sitting, in the COMESA Council of Ministers' meeting, the extra time approved for Kenya was to be ratified.¹²⁴

As the COMESA committee was approving an extension of the safeguards, based on the conditions initially set by COMESA for Kenya to accomplish to warrant their safeguard measures, they were keen to note that to some extent the directive on the safeguard had been realized and that the Kenyan government had approved privatization of the five state-owned sugar companies. Fifty one per cent of the companies was set to be sold to private shareholders, 30% to the farmers and 19% through initial public offer as soon as they become money-making as opposed to loss-making.¹²⁵

A study on the competitiveness of the Kenya Sugar Sector was done by the COMESA Secretariat prior the Council meeting which the Council used as a guide in making their decision. According to the study, the safeguard had allowed for new stakeholders to enter the Kenyan sugar sector. They also noted that it would have been hard or next to impossible for these investors to access a market that was flooded with cheap sugar imports without the protectionism measures. It was also noted that during the safeguard period, Kenya's sugar industry composition private sector holding had tremendously increased from an initial 33% in the year 2014 to a

¹²³ AFFA. Comparative Assessment of the Competitiveness of Sugar Production in the COMESA Region. Report (2014)

¹²⁴ COMESA Summit, 2015, Council Grants Kenya Sugar Safeguard, <http://www.comesa.int/summit2015/council-grants-kenya-sugar-safeguard/>

¹²⁵ Ochieng, Cosmas Milton Obote. "Development through positive deviance and its implications for economic policy making and public administration in Africa: The case of Kenyan agricultural development, 1930–2005." *World Development* 35.3 (2007): 454-479.

present 70%. The committee agreed that, in the Kenyan Sugar industry, new entrants, if given sufficient protection and a significant amount of time, would be able to stabilize and become competitive enough.¹²⁶

COMESA has also indicated that it is important to have a system that benefits all sugar exporting COMESA Member States in order to promote intra-COMESA trade. COMESA also supports the idea of letting COMESA Member States give support where they can to help meet the sugar deficit in Kenya through country-specific quotas through the formula was said to be developed depending on a country's agricultural calendar. A permit system that presently exists has been allowed to continue to apply till the formula is formulated.¹²⁷

The COMESA Trade and Customs Committee accepted Kenya's request for additional time of the safeguards that protect the local sugar industry from imports to develop and have its market open up fully to imports after failing to prepare the sector for international competition after more than a decade of being allowed to protect its sugar farmers with high tariffs. Kenya was given more time for it to develop and improve its infrastructure and carry out other restructurings. One of the main requirements which has been a hurdle is privatizing the state-owned sugar mills which include Nzoia, Chemelil, Sony, Miwani and Muhoroni Sugar companies. These sugar industries have been earmarked by the government of Kenya as those that will bring change in the sugar sector once the government succeeds in privatizing them. The privatization process however has been saddled by among other things, a debt of Ksh100 billion owed by the state owned industries. Kenya just began to operate under the devolved system of governorship, a system that Kenya is still trying to completely adopt and familiarize itself with. The new governing bodies found the safeguard policies already in place and became part of the sugar tussles. There have been wrangles over ownership of the industries with county governments demanding majority equity in the mills.¹²⁸

COMESA aims at making trade between its members freer by eliminating protectionist measures. Since the success of COMESA requires desertion of protectionist policies, it has come

¹²⁶ Word Press 4.1.5, Council grants Kenya safeguard, <http://www.comesa.int/summit2015/wp-content/uploads/2015/03/193B6507.jpeg>

¹²⁷ (Ibid)

¹²⁸ (Ibid)

across strong opposition by weaker economies that fear industrial polarization.¹²⁹ Even with safeguard policies there have been cases of sugar being smuggled into the country through smuggling networks from Somalia and the Middle East who deliver cheaper sugar that dodges 100% tax rates which is the tax rate that is applicable to imported from regions outside the COMESA FTA. Kenya and Zimbabwe are seen by smaller economies as likely to dominate owing to their proportion of exports within COMESA. Ethiopia on the other hand has on several occasions come under criticism for its protectionist policy that limits the amount of imports it gets from COMESA member countries. Kenya, though a relatively large economy still has protectionist policies especially on its sugar industry which has infuriated other members.¹³⁰

Since the safeguard was put in place, there have been quite a number of challenges with the sector. The Kenyan sugar sector has been marked with blame games and criticisms due to the problems experienced in the sugar sector with representatives of farmers and millers accusing the Kenya Sugar Board (KSB) of not doing its job. KSB has been accused of inadequately fulfilling its regulatory functions and will the licenses issued to new millers, there have been calls for the cancellation of such. Due to the smuggling of sugar to the country which has led to a piling of unsold sugar, there have been calls to for COMESA to suspend licenses of duty-free imports. Some of the industries that use imported sugar for their products, for instance, Coca Cola, have asked that there be a clear distinction between genuine importers and illicit importers and rogue re-packers of imported sugar so that their industries may not be affected during a crackdown of such.¹³¹ Another challenge that has been raised is on zoning of millers. Some of the millers have complained that some millers have violated the Sugar Act which requires that a new miller be at least 40 kilometers from an existing one. As a result of the quarrel, the Act has been repealed and thus has made the zoning issues null and void at the moment.¹³²

Kenya's production cost of sugar is quite high; almost double the average cost; compared to the cost of production in sugar producing countries like Malawi, Zimbabwe, Sudan and Swaziland. In the process of licensing of new millers, there have been an emergence of

¹²⁹ Meyn, M. (2005). The Progress of Economic Regionalisation in Southern Africa—Challenges for SADC and COMESA. *Editors: Dirk Hansohm Willie Breytenbach Trudi Hartzenberg Colin McCarthy*, 186, p. 210

¹³⁰ Word Press 4.1.5, About us, <http://www.comesa.int/summit2015/about-us/>

¹³¹ Kenya to seek further extension of COMESA sugar safeguards, 2014
<http://agritrade.cta.int/extension/agritrade/design/agritrade/images/agritrade.png>

¹³² Odek, Otieno, Peter Kegode, and Shem Ochola. "The Challenges and Way Forward for the Sugar Sub-sector in Kenya." *Published by Friedrich Ebert Stiftung (FES), PO Box 14932* (2003).

widespread levels of cane poaching. The high production cost is an indicator of the dominance and control of Kenya's smallholders whose deficiency of scale has led to low sucrose yields because of poor irrigation and use of inputs, increase in collection and transportation costs and the widespread cane-poaching, which has interrupted the operational capacity of the industry's mills. The utilization of mills' capacity has been seen to go down which has led to serious financial problems.¹³³

Kenya's decline in sugar production has been attributed to several factors including its agricultural practices and weather patterns. The different weather patterns compared to that of other regions, like Mauritius, has impeded efficiency in sugar production in the country. Most of the country's sugar is produced from western Kenya a region that is of high altitude and as a result sugarcane in the area takes 18 -20 months to mature. Sugar growing cycles can go up to 24 months. The farmers have been relying on rainfall for the crop and with global warming and change of weather patterns, the rains may fail and yield reduces. Other sugar producing states have embraced irrigation for the crop to increase yield as well as shorten the maturing time frame for the crop. As a way of revolutionizing the sector farmers have been introduced to faster maturing cane yet not all farmers have embraced this new type of cane but hope remains that they all do.¹³⁴

An input by strategic stakeholders has been seen as critical to turn around struggling state-owned millers. As part of the reorganization process the Kenyan government is aiming at making it compulsory for sugar millers to not only produce sugar but also to include in their production, ethanol and electricity, in order to increase the total financial performance of sugar companies.¹³⁵ Diversity in the industry is a sure way of increasing the returns and hence reduce the margin of debts and make profits instead.

Among the Kenyan sugar industries set for privatization, Mumias is evidence of the efforts put in place to see that, that is achieved. It is a semi-privatized company where the government's stake is only 20%. The industry has had controls of at least half the output. It was suggested that Mumias takes control over some government-owned mills to merge the sector and

¹³³ Obado, Okoth Z. *Competitive strategies employed by the sugar manufacturing firms in Kenya*. Diss. University of Nairobi, 2006.

¹³⁴ Wanyande, Peter. "Management Politics in Kenya's Sugar Industry: Towards an Effective Framework." *African Journal of Political Science/Revue Africaine de Science Politique* (2001): 123-140.

¹³⁵ (Ibid)

ease stress on sugar cane supply. However, this move would be made difficult with opposition from some farmer groups and county governments of a loan of Kshs500 million that was to be granted to the mill as a parliamentary inquiry continues into suspected illegal imports of sugar by the company. Owing to these debts owed by the Kenyan sugar mills, Parliament permitted a waiver of over Sh40 billion on the state-owned sugar firms owed to the Kenyan Government. This will however have to wait as the arrears will be canceled after the whole denationalization program is approved.¹³⁶ Through privatization of the mills, the debts may be cleared, even if not completely.

Generally sugar is a basic commodity that can be found in every household today. It is produced and used for different purposes. Sugar is sold in the domestic markets and for countries that have surplus, the commodity is sold in the international market. One hundred and twenty seven countries in the world produce sugar for both domestic consumption and for export. The amount of sugar traded globally rests at about 30%. The remaining 70% is traded under contract and in preferential trade areas and the price of the commodity in such regions making the world prices, which are meant to be fair and based on the 30% traded internationally, inapplicable. More than 50% of the sugar sold to the global community comes from Brazil, Australia, Cuba and Thailand with Russia being the greatest importer of the commodity. Kenya trading in and shipping out the commodity has been greatly affected by the different policies and rules of trade in the various trade regimes that exist in the world. Developments at the World Trade Organization has had an effect on the different trade regimes.¹³⁷

Kenya's call for protectionism was to protect its industries from international competition and at the same time protect the country from cheaper sugar from competitive sugar producing countries. Kenya's sugar sector has in the past been at the mercy of subsidized sugar from Europe and other efficient sugar producing giants.¹³⁸ Subsidized sugar from such countries has affected sugar producing industries in not just Kenya but the US as well leading to both countries taking up safeguard policies to protect their own sugar sectors with the hope of seeing the industries become globally competitive as well.

¹³⁶ Odek, Otieno, Peter Kegode, and Shem Ochola. "The Challenges and Way Forward for the Sugar Sub-sector in Kenya." Published by Friedrich Ebert Stiftung (FES), PO Box 14932 (2003).

¹³⁷ Kenya seeks longer COMESA sugar safeguards <http://www.capitalfm.co.ke/business/2011/08/kenya-seeks-longer-comesa-sugar-safeguards/>

¹³⁸ Kenya to seek further extension of COMESA sugar safeguards, 2014 <http://agritrade.cta.int/extension/agritrade/design/agritrade/images/agritrade.png>

Kenya's safeguard has been in place for over twelve years since 2002 to 2014. The safeguard was put in place to protect but not to restrict or impair trade within the COMESA FTA region. Members within the region with export interest to Kenya were guaranteed of continued business as long as they adhered to the new set trade regulations under the acquired safeguard. There has been a significant improvement as demonstrated by the farmers and millers. The characteristic within the sugar sector was delayed sugar harvesting and delayed payments for the cane delivered as situation that has been resolved by increasing the crushing capacity through the establishment of new mills. The new mills are privately owned mills. As is expected from the COMESA members, Kenya has exhibited improvement in the sugar sector with visible internal competitiveness among sugar millers. The safeguard allowed for the establishment of new millers into the sugar sector who found a ready market.¹³⁹

For Kenyan sugar industries to become efficient sugar producers and become effectively competitive in the global market, some form of trade barriers have been erected.¹⁴⁰ The main reason for the safeguard to buy some time for the concerned stakeholders, farmers and millers in partnership with the Kenyan government to deal with the limitations that have rendered the sector non-competitive. The sector has been non-performing with accumulation of debts by the sugar mills which they have not managed to pay. The barriers erected in the Kenyan market as anti-dumping legislation, high tariffs and quotas and countervailing duties as well as other safeguard measures have brought a sense of relief for the sub-sector and hopefully by the end of the safeguard period, the sugar industry will be stronger than ever and will have gained the muscle to be a player in the global field characterized by powerful and efficient sugar manufacturing industries.¹⁴¹

Among other problems, some of the challenges being faced in the Kenyan sugar sub-sector include, political interference in the giving of managerial posts of the milling firms leading to incompetent heads of firms not overlooking the lack of accountability in the management boards the high cost of production, poor or even the non-existent road networks and lack of transport, poor timing for harvest, and high debt burden on the part of the millers, over reliance on rain for the crop and low sucrose cane content as a result of poor seed variety (being

¹³⁹ AFFA. Comparative Assessment of the Competitiveness of Sugar Production in the COMESA Region. Report (2014)

¹⁴⁰ Gerald Andae, March 5, 2015. Kenya wins one-year extension to COMESA sugar import curbs. Business Daily

¹⁴¹ National Assembly Official Report, 13th June, 2013. (Pg. 1124-1125)

a problem on its own). With all these challenges, business experts and agriculturalists would excuse Kenya for the recurrent request for safeguards extension for its sugar.¹⁴² Amidst all the criticism and theories against policies about protectionism, it has been beneficial to the Kenyan sugar industry. Seeing, if nothing else, the sub-sector change ownership, even for one sugar industry, from government ownership to up to over 70% is an improvement all together. Privatization of sugar mills has been pushed for in the region with states' governments historically being major shareholders in the industries. Privatization of mills is seen as boost to the sector with privatized industries becoming more competitive. Being one of the conditions set by the COMESA committee, an increase in the composition of the private sector holding is promising for the sector.¹⁴³

The need for the protection of Kenya's sugar sector against international competition in anticipation of its maturity, raising competitive levels and attaining economic stability has led to the uptake of safeguard measures for the sector. In permitting Kenya's application for protective measures for its sugar, the COMESA Council did accentuate the need of having such a system to allow room for economic growth which in turn is a regional advantage as it in the end will contribute to the development and growth of the economic scale of not just the country but the regions that are in support.¹⁴⁴

A cooperation between the states and creating of Preferential Trade Areas (PTAs) will bring about faster economic growth within an area; it is the first step towards economic integration. These trade arrangements create trading blocs that allow products from the participating countries preferential access to member's markets.¹⁴⁵ There are gaps facing African regional integration but for these gaps to filled, the African governments will need to work together and give economic support to each other and in the end have more realistic and practical plans and goals that the continent can reasonably attain cooperatively as supported and

¹⁴² Ramírez Robles, Edna. "Training Module on Dispute Settlement Mechanisms for Trade Agreements." UNCTAD & TradeMark South Africa (2012).

¹⁴³ (Ibid)

¹⁴⁴ COMESA Council of Ministers meet in Addis Ababa., March 27, 2015. Summit Bulletin issue 4

¹⁴⁵ Panagariya, Arvind. "Preferential trade liberalization: the traditional theory and new developments." *Journal of Economic literature* (2000): 287-331.

pinpointed by the COMESA Council to allow Africa to take up more economic opportunities which she has lost in the past.¹⁴⁶

In summary, there are different forms of protectionism policies which include, but not limited to, quotas, VERs, additional licenses, murky protectionism, tariffs and technical barriers. Kenya sought for safeguard measures for its sugar companies under COMESA. Kenya has engaged quota and tariff safeguard policies which favor COMESA member states and limits sugar imports from non COMESA member states. One of the main reasons for Kenya's sugar safeguard was to protect her infant industries from international competition and to allow growth of the industry. The safeguard has among other things seen the privatization of a state-owned sugar mill as one of the COMESA requirements under the safeguard. Other mills are yet to be privatized but the process has begun.

¹⁴⁶ Qobo, Mzukisi. "The challenges of regional integration in Africa: in the context of globalisation and the prospects for a United States of Africa." Institute for Security Studies Papers 145 (2007): p. 2-6

Chapter Three

Reactions by COMESA Member States to Kenya's Protectionism Policy

3.0 Introduction

In international business, there is need for transparency and fair competition for all players. Regional bodies, for example, the COMESA FTA has formulated regional competition regulations to ensure that such an economic affairs environment is achieved. There are already set international principles of competition, for example the United Nations Set of Principles and Rules on Competition which were developed by the United Nations Conference on Trade and Development (UNCTAD) in 1980. The regional regulations are then set in line with such international codes of competition to avoid an overlapping and contradictions of such regulations. Globalization has made it possible and simple for states to share information and ideas hence states can keep up with global trends. Even with the regional rules and regulations, there still are laws of competition within a nation which are upgraded every now and then in line with global trends and at the same time to ensure their consistency with regional policies. The rules and regulations of competition provide room for a regionally predictable economic environment. They also provide room for economic competence, fairness among trade and industry operators and consumers and good corporate governance.¹⁴⁷

Regional trade agreements are all over the world through regional bodies like the Southern Africa Development Community (SADC) the Common Market for Eastern and Southern Africa (COMESA) or the European Union (EU). These regional bodies have the mandate to ensure that the sovereignty of states is upheld and at the same time safeguard the shared objectives and ambitions under the treaty. The challenge however remains where a state belongs to more than one regional body; for example, Kenya and Uganda, both being members of both COMESA and EAC. Over-lap of regional bodies is a possible over-lap of the trade regulations under the respective treaties.¹⁴⁸

In the setting up of regional trade agreements, the World Trade Organization (WTO) trade policies have been used as guidelines. WTO's policies and agreements are relevant and serve states that are members to the organization. Safeguard measures may be undertaken by a

¹⁴⁷ Lipimile K George, Elizabeth Gachuri. (2005). Trade and Competition issues: experiences at the regional level Competition Provisions in Regional Trade Agreements: How to Assure Development Gains. United Nations Conference on Trade and Development. New York and Geneva (Page 361-363)

¹⁴⁸ (Ibid)

member of WTO to restrict imports of a product temporarily as a way of protecting a specific domestic industry within the states from an increase in imports that are threatening to cause damage to the domestic industry. Prior to WTO, the General Agreement on Tariffs and Trade (GATT) was in operation. GATT had safeguard measures but countries rarely made use of the measure. There were however some aspects of the safeguard rules that were not clearly defined leaving some gray areas. This then was a loophole and some countries preferred protecting their industries through the grey areas where the measures allowed for Voluntary Export Restraint (VER) arrangements on some products, for example, cars, steel and semiconductors. The coming in of safeguards from WTO prohibited grey areas measure and even had time limits on all safeguard measures.¹⁴⁹

The Committee on Safeguards in WTO observes and reports on the overall execution of the agreement on an annual basis to the Goods Council. Any state that is affected by a safeguard measure undertaken by another state may request the committee on safeguards to make a ruling on whether the safeguard measures comply with the agreement's procedural requirements. Acting on the request, the committee may give a backing to the consultations, or they may consider reviewing applications for retaliatory action. With such a safeguard, it is considered that there are grey areas that need a review. The committee then is set to monitor and ensure that the grey area on which they have been notified of are done away with and also review all safeguard notifications.¹⁵⁰

Safeguards are meant to be temporal. Article XIX GATT and the Agreement on Safeguards indicates that WTO Members can take safeguard measures to safeguard their domestic industries from the rapid increase in imports of a particular product which may have unexpected effects on a WTO. It is a safety valve or a regulator where WTO Members can take action and raise tariffs and even introduce quantitative restrictions as a form of defense.¹⁵¹ Kenya used to acquire sugar from Egypt, Saudi Arabia, South Africa, Malawi and Madagascar. The success story in sugar production in Egypt is attributed to the different practices of production. Egypt produces sugar from cane and sugar beet under irrigation. Its sugar industry is fully diversified as it produces raw and refined sugar in addition to downstream products such as

¹⁴⁹ McGovern, Edmond. *International trade regulation*. Vol. 2. Globefield Press, 2015.

¹⁵⁰ (Ibid)

¹⁵¹ Lissel, Elenor. "Regional Safeguard Measures: An Incentive to sign Regional Trade Agreements without taking into consideration the special needs for Developing Countries." *European Trade Study Group 2011*. 2011.

syrops and other specialty sugar products. Egypt boasts of having several companies producing sugar, both from beet and cane, including the State-owned Sugar and Integrated Industries Company (SIIC), Delta Sugar Company (DSC) and United Sugar Company of Egypt (USCE). Its sugar production cost may not be as low but downstream activities, help reduce the cost of sugar production. Compared to Kenya's cane, in Egypt, sugar from beet is also low cost as the beet matures in less than 12 months, can thrive in relatively poor soils and can thrive even on less than optimal moisture.¹⁵²

Malawi is also enlisted as a major sugar producer just like Zambia and Sudan, and a net exporter to the region and the world. Malawi is capable of producing 300,000-tonnes of sugar. The country's cane yields per hectare are in excess of 100-tonnes with an average in recent years of 105-tonnes per hectare. The country too has varieties of cane which mature in 12-18 months with high sucrose content.¹⁵³ Swaziland is also rated as an exporter of sugar to the region and the world. The country's major factory can produce both raw and refined sugar. Its yield ranges from 95 – 105-tonnes per hectare. The sugar factory produces electricity for its own use and the surplus sold to the national grid. Other companies produce ethanol for export.¹⁵⁴ Sudan has also become a very efficient sugar producer in the region. It is a net exporter of sugar. Sudan irrigates its cane with supply from the Nile River. Their soil is rich alluvial. With such conditions the yield is estimated at 100-tonnes of cane per hectare. The country has cane varieties planted in the company estates which mature in 12-14 months and have a fairly high sucrose content. Ethanol production, at 65 million litres in a year with 90% of the Ethanol being exported.¹⁵⁵

Zambia has three sugar companies, all with nucleus estates and also getting sugar from out-growers. Among the three, two producers are very small contributing about 10% only. Even with one major company, Zambia is still competitive and produces over 450,000-tonnes of sugar. Average yields of cane per hectare are over 100-tonnes. The company has recorded a yield of 127-tonnes per hectare in the recent past. The country also has cane varieties which have early maturity of between 12-16 months with high sucrose content.¹⁵⁶

¹⁵² Hassan, Soltan Foly. "Development of sugar industry in Africa." *Sugar Tech* 10.3 (2008): 197-203.

¹⁵³ Thomas, Valerie, and Andrew Kwong. "Ethanol as a lead replacement: phasing out leaded gasoline in Africa." *Energy policy* 29.13 (2001): 1133-1143.

¹⁵⁴ AFFA. Comparative Assessment of the Competitiveness of Sugar Production in the COMESA Region. Report (2014)

¹⁵⁵ (Ibid)

¹⁵⁶ (Ibid)

3.1 Retaliatory Measures by Other States on US Sugar Protectionism Policy

Kenya and the US are economic giants in their own respective capacities and both states will go down history books as countries that took up protectionism policies to protect their sugar. The United States of America is termed as the world's leading consumer of sweeteners.¹⁵⁷ Being a large consumer of sugar, the US is at the same time ranking as one of the largest global producers of sugar. Among very few nations, the U.S. has a significant output of both sugarcane and sugar beets. The U.S. also imports sugar widely hence rated as one of the largest sugar importers. The U.S. sugar program uses price supports, domestic marketing allotments, and tariff-rate quotas to influence the amount of sugar available to the U.S. market.¹⁵⁸ It has managed to control and monitor the amount of sugar received and consumed in various ways. It uses tariff-rate quotas (TRQs), internal marketing allotments and price supports to control the quantity of sugar that will be available to the U.S. market. The program has been seen to support U.S. sugar prices which are even above comparable levels of sugar prices in the world market.¹⁵⁹

The United States also made it a little easier by providing loans for its sugar producers. In 2008 the U.S. Farm Act provided for United States Department for Agriculture (USDA) to give loans to sugar processors of U.S. grown sugarcane and to U.S. based processors of sugar beets at a set loan rate level for fiscal years (FY) 2009-13. Seeing that the producers were given funds for their effective sugar production, they in turn were required to settle the loans after a maximum term of 9 months as well as the interest charges. This was to be done by the end of the financial year in which the loan was given. In order for a produce to qualify for the loans being provided by USDA the processors had to agree to provide payments to producers that are relative to the value of the loan received by the processor for sugar beets and sugarcane delivered by producers.¹⁶⁰ The sugar produced is insurance for the loan provided by the USDA to the producers.

¹⁵⁷ Cohen, Rich. "Sugar love: a not so sweet story." *National Geographic* 224.2 (2013): 78-97.

¹⁵⁸ United States Department of Agriculture Economic Research Service, Sugar and sweeteners, June 04, 2015, <http://www.ers.usda.gov/topics/crops/sugar-sweeteners/.aspx>, Accessed July 22, 2015

¹⁵⁹ Klein-Marcuschamer, Daniel, et al. "The challenge of enzyme cost in the production of lignocellulosic biofuels." *Biotechnology and Bioengineering* 109.4 (2012): 1083-1087.

¹⁶⁰ United States Department of Agriculture Economic Research Service, Policy, Nov 04, 2014, <http://www.ers.usda.gov/topics/crops/sugar-sweeteners/policy.aspx> Accessed July 22, 2015

The US has exhibited a high level of protectionism and has had substantial legal subsidies to sugar makers.¹⁶¹ The US had a sugar crisis hence prompted the safeguard on their sugar through the Sugar Act Amendments of 1965. The US sugar policy has been and is still legislatively intended to protect the wellbeing of both the domestic producers and consumers.¹⁶² The principle behind America's protectionism is to ensure that the American consumer has an ample supply of sugar. The government has a payment program that pays domestic growers of sugar cane and sugar beets to keep them producing the raw materials for industries.¹⁶³ Sugar importers incur a tariff on all sugar imports. The US subsidized its sugar sector by imposing quotas on sugar imports. Kenya imposed quotas on all imports of sugar to protect the wellbeing of both the producer and consumer.

Being a politically powerful industry in the US, the industry has been at the center of sugar wars triggering sugar battles between the US and Mexico for over 20 years. The long-standing trade dispute on sugar and high fructose corn was resolved in 2006. The dispute came about after the US enforced harsher antidumping duties on sugar to ensure fair trade. Dumping came about Mexico having their sugar being sold at a lower cost compared to US-produced sugar. The dispute drew the attention of trade bodies like NAFTA and WTO.¹⁶⁴ Mexico's argument was that under NAFTA it was allowed to export net sugar surplus to the US duty-free. The US in turn argued that the agreement limited the amounts of sugar from Mexico. Tax wars then ensued with Mexico retaliating by imposing a 20% tax on soft drinks made with corn syrup sweeteners even with the US opposing Mexico's move.¹⁶⁵ With the involvement of NAFTA and WTO, the US and Mexico came into an agreement in August 2006 to eliminate the tax imposed. The relationship between the US and Mexico has since grown as both countries cooperate on areas of common ground.¹⁶⁶

¹⁶¹ Horton, Donald C. "Policy directions for the United States sugar program." *American Journal of Agricultural Economics* 52.2 (1970): 185-196. Vol. 52, No. 2 p. 185-196

¹⁶² Polopolus, Leo, and Varden Fuller. "Policies and Politics in Determining Sugar Quotas." *The Southwestern Social Science Quarterly* (1963): 331-340.p. 331-340

¹⁶³ Ibid. at 337

¹⁶⁴ Alice Vacek-Aranda, Sugar Wars: Dis-pute Settlement under NAFTA and the WTO as Seen through the Lens of the HFCS Case, and Its Effects on U.S.–Mexican Relations, 12 Tex. Hispanic J.L. & Policy 121, 127–128 (2006).

¹⁶⁵ Villarreal, M. Angeles. "US-Mexico Economic Relations: Trends, Issues, and Implications." LIBRARY OF CONGRESS WASHINGTON DC CONGRESSIONAL RESEARCH SERVICE, 2010.

¹⁶⁶ "Bush Administration Defends Sugar Deal to Congress," Inside U.S. Trade, November 3, 2006; "Grassley, U.S. Industry Welcome Agreement with Mexico on Sugar, HFCS," International Trade Reporter, August 3, 2006; and, "U.S., Mexico Reach Agreement on WTO Soft Drink Dispute Compliance Deadline," International Trade Reporter, July 13, 2006.

Kenya, like the US is a large consumer of the sweetener and has been rated as a large producer of the same. However the amount of sugar that Kenya produces is not enough to meet the demands by the consumers of the sweetener, hence its decision to allow Uganda to export sugar to Kenya under specific regulations. The sugar mills and industries were on a decline and hence the country acquired the safeguard policies in form of high tariffs and import quotas.¹⁶⁷ In comparison to the U.S, Kenya has managed to control and monitor the amount of imports through quotas. At the same time the market price for the locally produced sugar has been controlled owing to the cost of production of the commodity. A sugar directorate board has been set up to monitor and evaluate sugar production in Kenya, conducting studies and researches to improve the sector and fulfill the requirements that have been given under the COMESA safeguard. The US provide subsidies to the sugar producers as incentives to boost production. Kenya may not be able to give the sugar producers incentives but through funding researches and rehabilitating the sugar mills, the sector will reach international standards.

3.2 COMESA Member States' Reactions

Safeguard measures within COMESA region may not be imposed without the approval of COMESA member states. The members, after and evaluating the request of a member state to impose safeguard measures on a product, will either grant or reject the request. Kenya applied for the extension of the safeguard based on Article 61 of the COMESA Treaty which provides for safeguard measures for domestic industries that need safeguarding from international competition in anticipation of the maturity and stabilizing of the domestic industries. The safeguard clause, Article 61 of the COMESA treaty provides for an extension of a safeguard as a decision of the Council provided that the member state seeking extension has proof of improvement from the previous cover.¹⁶⁸ A state that already had the safeguard measure under the COMESA FTA umbrella that needed any special requests or exception is allowed to do so as long as the request is done to the COMESA Council of Ministers, as in the case of Kenya's extension of its protectionism policy on its sugar for the past 12 years. Kenya's safeguard would not have gone beyond the stipulated period (maximum of ten years) without having had the approval from COMESA Council as outlined in Article 61 of the treaty.¹⁶⁹

¹⁶⁷ Mitchell, Donald O. *Sugar policies: opportunity for change*. Vol. 3222. World Bank Publications, 2004.

¹⁶⁸ SAASA, OLIVER S. "The Case of COMESA under WTO Rules." *Legal Aspects of International Trade* (2001): 271.

¹⁶⁹ (Ibid)

Kenya sought for the extension of the safeguard to allow the development of its sugar industry which it was granted. The extension which was granted this year, 2015, will last till 2016. Kenya is yet to achieve its objectives in regard to improving its sugar industry and may seek to have another extension after the expiry of the present one which is subject to the approval of the COMESA member states, come 2016.¹⁷⁰ Amidst Kenya gaining protection for its sugar against giant sugar producers like Mauritius, Zambia and Southern Sudan, member states within COMESA, there have been no retaliatory measures taken up by the COMESA member states. The member states supported Kenya's move. Kenya's invocation of the Safeguard clause was found to be legitimate and as per the provisions of the COMESA Treaty in Article 61.¹⁷¹ As such, there were no retaliatory actions or trade-offs for the safeguarded sugar with other member states. Trade in all other commodities from Kenya and to Kenya has continued as usual on a duty free/quota free basis. COMESA member states were receptive of Kenya's decision to safeguard its sugar and this was evidenced by not only their approval to grant Kenya the safeguard policy but also allowing Kenya to have the policy extended several times. Kenya's safeguard was not meant to restrict regional trade or even impair trade. It was only meant to protect the sugar sector. On issuance of the safeguard, COMESA assured member states compensation to any state that felt that their interests were compromised by the safeguard. As a matter of concern the COMESA Policy Organs raised and discussed the matter and allowed affected states to claim their compensation and only Sudan came out to claim her stake. Kenya still maintains good trade relations within the region with the member states which is key for regional integration and for the growth and development of Africa as a whole.¹⁷²

The safeguard was put in place to protect the Kenyan sugar sector only. It was not to impair trade within the COMESA FTA. Countries with export interests in the Kenyan market needed an assurance with this matter that their interests will not be compromised and if so, their compensation. This matter has been raised severally in in COMESA policy organs and only Sudan came forward to claim her stake. With the implementation of the safeguard, there was multiplicity of systems at one time with frequent changes and random cancellation of issued

¹⁷⁰ AFFA. Comparative Assessment of the Competitiveness of Sugar Production in the COMESA Region. Report (2014)

¹⁷¹ Odek, Otieno, Peter Kegode, and Shem Ochola. "The Challenges and Way Forward for the Sugar Sub-sector in Kenya." *Published by Friedrich Ebert Stiftung (FES), PO Box 14932* (2003).

¹⁷² Patricia Njeru "Kenya's Sugar Industry Status & COMESA States Reaction to Kenya's Safeguard." Sugar Directorate, AFFA. Interview. 13 Oct. 2015.

import permits. These made the management of duty-free sugar imports cumbersome and erratic. Issuance of import permits was so haphazard and with such confusion in the licensing process, Kenya suffered shortage of sugar on the domestic market with importers issued with permits claiming that there was no surplus sugar in the COMESA region. Even with the claim, all COMESA net exporting states including Zambia, Malawi, Swaziland, Sudan and Mauritius had surplus sugar and continued to export to Europe and other parts of the Africa, including the COMESA region.¹⁷³

Running of the safeguard by the Kenyan government authorities has been the greatest defect of the safeguard. The government gazetted a COMESA Sugar Safeguard Committee to monitor imports of duty-free sugar from COMESA states and to be the link between shareholders in Kenya and the COMESA Policy Organs. However, many other agencies or departments have been involved in regulating and monitoring of imports. The clear effect of these administrative hitches has been that COMESA exporters of sugar have continued to avoid the Kenyan market to the extent that the quota is not fully utilised in spite of the demand on the local market. The licencing processes and rules, in all their aspects and modifications, have been the most detrimental measure in the application of the safeguard in Kenya and have become a great barrier to intra-COMESA trade in sugar.¹⁷⁴ The licensing processes and procedures have had defects as well and have negatively affected the management of the safeguard and have discouraged intra-regional trade in sugar. In order to have a duty free quota, this has to be resolved.

Kenya, being in the Eastern part of Africa is a member of the East African Community (EAC).¹⁷⁵ EAC is an establishment to promote, among other things, economic growth within the East African region. It is a regional Interstate body. The original founder members of the EAC were three members, namely, Kenya, Uganda and Tanzania. The present members include Kenya, Burundi, Tanzania, Rwanda, and Uganda. The headquarters are based in Arusha, Tanzania. The establishment treaty was signed on 30 November 1999 and put into force the next

¹⁷³ AFFA. Comparative Assessment of the Competitiveness of Sugar Production in the COMESA Region. Report (2014)

¹⁷⁴ (Ibid)

¹⁷⁵ Stahl, Heinz-Michael. *Tariff Liberalisation Impacts of the EAC Custom Union in Perspective*. Trade Law Centre for Southern Africa, 2005.

year, 7th July 2000 on ratification by the original 3 founder members.¹⁷⁶ Kenya is East Africa's largest economy. The EAC treaty, Article 82: Scope of Co-operation, stipulates that there should be no barriers and that the community should allow for the free movement of products within the region.¹⁷⁷ Uganda as a member of the EAC condemned and criticized Kenya's safeguard move where in 2012 Kenya blocked sugar imports from the neighboring countries. Initially, in August 2011, Kenya had allowed sugar imports to Uganda through the Mombasa port for six months only, ending in January 2012. However, after the six months, Kenyan authorities noted that the sugar imports from Uganda were increasingly steadily and accused Ugandan traders of exporting back the same sugar to Kenya. In October 2012 Kenya banned sugar from Uganda accusing Uganda of dumping duty free sugar in Kenya.¹⁷⁸ Uganda mentioned that the move (blocking sugar imports from neighboring countries) was in violation of the EAC common market protocol, which provides for free movement of goods without constraints as stipulated in Article 82 above.

Uganda also argued that Kenya was allowing imports from other states that are not members of the East African Community with ease. Kenya accused Uganda of wanting to export sugar to Kenya without permits. There was a near diplomatic stand-off between Kenyan traders with Kampala with the Ugandan traders being in pursuit of exporting its sugar to Kenya noting that Kenya was having an undersupply compared to its consumption needs¹⁷⁹. The Kenyan authorities were accusing the Ugandan traders of importing cheap sugar themselves and repackaging so as to sell the same product to well-paying markets like Kenya considering that Kenya is in need of more supply of the commodity. Uganda shielded itself from the accusations arguing that it had the capacity to produce sugar and have surplus for export to the COMESA region.¹⁸⁰

Ugandan officials have been pushing the Kenyan counterparts to open up their borders to allow for bilateral trade between the two states. The bilateral trade is set to be in favor of Kenya considering that last year (2014) Uganda bought goods worth KSh.60.7 billion compared to

¹⁷⁶ http://www.eac.int/index.php?option=com_content&view=article&id=1:welcome-to-eac&catid=34:body-text-area&Itemid=53 (Accessed 12/10/2015)

¹⁷⁷ http://www.eac.int/index.php?option=com_content&view=article&id=1:welcome-to-eac&catid=34:body-text-area&Itemid=53 (Accessed 12/10/2015)

¹⁷⁸ Dennis Odunga. "Uhuru Kenyatta Hits Back at Raila Odinga in Sugar Row." Editorial. *Daily Nation* [Nairobi] 12 Aug. 2015.

¹⁷⁹ Neville Otuki, August 11, 2015. Uhuru visit to Uganda unlocks trade in cheap sugar and meat. *Business Daily*

¹⁸⁰ (Ibid)

Uganda's exports to Kenya, worth, KSh.17.5 billion. Kenya and Uganda have now come into agreement. The two EAC and COMESA member states reached an agreement when the two heads of state met this year (2015). The two heads of state signed an agreement which would allow Kenya to export beef to Uganda and at the same time import sugar from Uganda which on an average is KSh.30 cheaper per kilogram.¹⁸¹

However, the sugar directorate office under the Agriculture Food & Fisheries Authority (AFFA) stated that Kenya has never closed its border either to COMESA or Uganda sugar. Sugar importation in Kenya is regulated and as such all importers, regardless of origin (EAC, COMESA or beyond the regional bodies) have to adhere to Kenya's licensing regime. Sugar imports from the COMESA FTA are under a sugar safeguard as provided for under the Article 61 of the COMESA Treaty. As such there is a quantitative cap for duty free imports currently at 350,000 MT. In other words, any sugar imported from the COMESA region beyond the quota of 350,000 MT will attract an above quota import duty of 5%.¹⁸²

The two heads of state in meeting highlighted the importance of bilateral trade with the role it plays in regional integration which is a feature within the EAC agreement. The bilateral trade would bring about economic benefits as well as infrastructure development.¹⁸³ The Kenyan Ministry of Trade officials have now started the process of issuance of import permits to the Ugandan sugar traders to support the undersupplied Kenyan market. Kenya trades with Uganda outside the COMESA TA regime, under the EAC Customs Union. The Kenya sugar directorate functions under the Agriculture Food & Fisheries Authority (AFFA). From their calculation, Kenya has had an undersupply of sugar with its production being at 650,000-tonnes against a demand of 860,000-tonnes hence a deficit of 210,000-tonnes of sugar. Uganda on the other hand has been having a surplus with a production of 465,000-tonnes against a consumption of 320,000-tonnes hence a surplus of 145,000-tonnes.¹⁸⁴

Kenya's sugar safeguard policy has been termed by COMESA member states as being a blanket safeguard that needed to be disintegrated and made simpler. The COMESA member states termed the safeguard as being too complicated for Kenya's Sugar protection terming the

¹⁸¹ Mwaniki Wahome. "Uganda Sugar Barons Finally Find Way to Export Sweetener to Kenya." Editorial. Business Daily 11 Dec. 2014

¹⁸² Patricia Njeru "Kenya's Sugar Industry Status & COMESA States Reaction to Kenya's Safeguard." Sugar Directorate, AFFA. Interview. 13 Oct. 2015.

¹⁸³ Neville Otuki. "Uhuru visit to Uganda unlocks trade in cheap sugar and meat". Business Daily August 11, 2015

¹⁸⁴ (Ibid)

safeguard as not only safeguarding its sugar but also shielding other aspects which should not be part of the safeguard. The members asked that the terms of the policy be reviewed and simplified.¹⁸⁵ However, Kenya's sugar directorate have termed the safeguard as one that covers sugar only with the rest of the trading business operating on a duty free/ quota free basis. Safeguards are sector specific and never on a blanket basis. So far Kenya is the single largest beneficiary of COMESA free trade hence with no need for having a blanket safeguard.¹⁸⁶

Kenya has the responsibility of fulfilling the requirements set under the safeguard for its own good. As Kenya aims at privatizing the sugar mills, corporate ownership of the mills has been raised with the contribution by private millers to the total amount of sugar made in the country rising to 70%. This is an indicator of the increase in business confidence in the sector. Diversification within the sugar millers to boost business and increase revenue has commenced with some companies being introduced to ethanol production and production of electricity as some of the ways that will increase returns within the sector. Research and development for the sugar sector is being conducted under Sugar Research Institute to attain new age knowledge for the betterment of the sector. The payment system within the sector was wanting but reforms have been made to see that the country attains a quality based payment system where payment is not based on cane weight but on sucrose content. The government of Kenya has given financial support to the betterment of the industry by, for example, funding the researches, improving the roads and infrastructure and through carrying out factory rehabilitations.¹⁸⁷

As expected of them in accordance to Article 61 of the COMESA treaty, Kenya reports annually to the COMESA Council of Ministers and heads of states of member states on the progress and what has been achieved with the safeguard in place. With the annual report, Kenya is kept in check and remains accountable to COMESA member states. The report is submitted orally and each member state present goes with a hard copy of the report which in turn is keeping a record of the happenings. On submission of the report to the COMESA members, they then

¹⁸⁵ Mary Kinuthia. "COMESA States Reaction to Kenya's Safeguard": EAC Secretary. Interview. 7 Oct. 2015.

¹⁸⁶ Patricia Njeru "Kenya's Sugar Industry Status & COMESA States Reaction to Kenya's Safeguard": Sugar Directorate, AFFA. Interview. 13 Oct. 2015.

¹⁸⁷ AFFA. Comparative Assessment of the Competitiveness of Sugar Production in the COMESA Region. Report (2014)

give recommendations. Some of the recommendations given were that Kenya improves on the cane species being used and choose a faster growing species.¹⁸⁸

3.3 Impact of the Safeguard Policy to Kenya

Kenya is a member of the EAC and COMESA and is a sugar producing state. The lake and coastal areas in the country have favorable weather conditions throughout the year that allow farming of cane. The farming practice of sugarcane was introduced to Kenya in the early 1900s. It was started in Miwani and Kibos areas of Kisumu district and in Shimoni and Kwale areas in the coastal areas of Kenya. The operations of these farms started before Kenya became independent hence they were initially under the control of the Asians. After independence, the Kenyan government took over and started large scale sugar projects in Nyanza and western provinces. The government started these two farms to meet a rise in demand of the commodity where shortage was met by import of sugar from Uganda.¹⁸⁹

Sugarcane farming in Kenya supports over 200,000 small scale farmers. Over 70% of the cane planted in Kenya is by these small-scale farmers which are also referred to as the out-grower schemes with the rest being under sugar factories also referred to as nucleus estates. Approximately, 6 million Kenyans earn their living directly or indirectly from sugar farming. Most of the farming is done in Western Kenya hence most of the industries are based in that region. Farming of the sweetener was initially done in the Coastal area of the country. Kenya's sugar farming saves Kenya approximately Ksh.45 billion in foreign exchange. An estimation by the Kenya Sugar Board (KSB) shows that the out-growers supply around 92% of the sugarcane processed by Kenyan sugar factories while the remainder is supplied by nucleus estates.¹⁹⁰

Six sugar companies are presently in operation in Kenya and only one has been privatized with the government holding 20% shares in the company. The process to see that more companies have been privatized is on going with the hope of stabilizing the sugar industry in Kenya to enable it become internationally competitive and efficient. On stabilizing the Kenyan sugar industry, the safeguard may be lifted; hopefully the industry's stability will be attained before the deadline of the current safeguard. So far the privatization program of the companies that are set to be privatized is on course with the Privatization Commission

¹⁸⁸ AFFA. Comparative Assessment of the Competitiveness of Sugar Production in the COMESA Region. Report (2014)

¹⁸⁹ (Ibid)

¹⁹⁰ (Ibid)

currently engaging different groups of stakeholders on sensitization on the divestiture methodology. M/S Ernst and Young are consultants involved in the privatization process. They have undertaken a re-evaluation of all the candidate mills for privatization and prepared information memorandums for eligible bidders. Once stakeholder consultations are complete, it is envisaged that the mills will be offered for sale in 2016.¹⁹¹

The safeguard is expected to be a turnaround point for Kenya's Sugar industry with the aim of raising the industry's production standards to international standards. However the industry has had shortcomings. Government subsidies, for example, free fertilizers, substituting rain with irrigation schemes, having well-paying buyers of cane from farmers, better and fast growing cane species and having advanced technology in terms of the machinery used for sugar production, right from the farm to the processing factory are Kenya's points of weakness within the Sugar industry against the African giants who are efficient producers of sugar. The difference between Kenya and these giants is mainly on the cost of production. Kenya lacks in these areas hence a declining, slow, stagnated or poor growth of its sugar industry. Apart from these shortcomings, corruption within the sector in the past has been the biggest challenge which led to huge debts within the sector. Poor management and political interests attributed to the high levels of corruption in the industry which in turn resulted to inefficiency within the industry.¹⁹²

Such shortfalls, in an industry expected to compete globally, need stringent measures, like protectionism policies, that will see them eradicated for the betterment of the industry. Safeguards create an atmosphere of monopoly and with such tendencies, it may attract investors who want a share in the control of the economy. These investors become a source of employment to the locals. Job creation is a boost to the country's economy. Safeguards stabilize a country's economy. At the same time, protectionism is a creating of non-tariff barriers. These barriers reduce the level of intra-trade.¹⁹³ However, even with the safeguard policies there have been cases of sugar being smuggled into the country through Somalia and the Middle East. Through these smuggling networks, cheaper sugar has found its way into the Kenyan market.

¹⁹¹ Patricia Njeru "Kenya's Sugar Industry Status & COMESA States Reaction to Kenya's Safeguard": Sugar Directorate, AFFA. Interview. 13 Oct. 2015.

¹⁹² Wanyande, Peter. "Management Politics in Kenya's Sugar Industry: Towards an Effective Framework." *African Journal of Political Science/Revue Africaine de Science Politique* (2001): 123-140.

¹⁹³ Mr. Kemboi "Kenya's Sugar Industry Status & COMESA States Reaction to Kenya's Safeguard": Sugar Directorate, AFFA. Interview. 13 Oct. 2015.

The importers of this sugar dodge 100% tax rates on the sugar, the tax rate applicable to imported sugar from regions outside the COMESA FTA.

Kenya's mandate as a condition to the protectionism policy was required to privatize some of the state-owned sugar companies. The companies that were selected for privatization include Nzoia Sugar Company, Sony Sugar Company, Muhoroni Sugar Company, Miwani Sugar Company and Mumias Sugar Company. The latter has already been privatized amidst challenges of mismanagement. The government of Kenya has retained a 20% share within Mumias. However, with the remaining five companies that have been set aside for privatization, the Privatization Commission appointed to initiate the process has had a hard time convincing some of the leaders of the benefits of process. Kenya was introduced to a devolved government system in the year 2013. The current government leaders and representatives in the devolved government system found the sugar protectionism policy in place. Early this year (2015), on Kenya being granted another extension by COMESA for the country to continue protecting its sugar, county government leaders from the western part of Kenya, where the sugar mills are, raised concerns on the privatization of the companies. The leaders to the regions where the five (to be privatized) companies are have insisted on a reverse gear so that they can be up to speed with what has been happening in regards to the policy. They asked for time for them to look into the matter insisting that the devolved government be involved in the decision making. Since the Kenya national government was running the companies but hasn't been successful, the leaders requested that the counties be given an opportunity to run the companies themselves considering that corruption in the national government is what drained the companies. The county leaders also noted that it is key that all stakeholders be involved in the process: farmers, citizens in the respective regions, county leaders among others.¹⁹⁴

The safeguard period has improved internal competitiveness among millers and enhanced sustainable livelihoods for cane growing households. There has been competition for raw materials as a result of new approaches by new millers. This has driven the public millers to strive for efficient service delivery in order to guarantee access to raw materials. New millers have been able to enter the Kenyan market thanks to the safeguard measure. They have been a source of ready market for the cane farmers. The safeguard has also enabled other millers to

¹⁹⁴ Mr. Kemboi "Kenya's Sugar Industry Status & COMESA States Reaction to Kenya's Safeguard": Sugar Directorate, AFFA. Interview. 13 Oct. 2015.

evolve, for example, Miwani Sugar Company which had stopped operation in 2001. Some of the sugar mills were in unjustifiable financial positions before the safeguard was put in place and still was the case even a few years into the implementation of the safeguard policy. The policy has however enabled such mills to improve their operations as well as their financial status.¹⁹⁵

The Kenyan government has shown support to the sector by providing low interest loans for cane development to enhance competitiveness of the farmers. The government also offered subsidies on farm inputs such as fertilizer and seed material as a process of implementing strategies for reduction of costs at farm level. The government also put in motion a draft of regulatory and legislative reforms to improve the business. This has seen the consolidation of all laws on regulation to promote agriculture and in turn the sugar sector. This will not only improve the business environment but will promote private investment in the sector. There has however been low representation of the farmers in development and execution of policy in the sugar sector thus affecting effectiveness of the farmers. The government embarked on a process of restructuring of the out-grower institutions to ensure effective petitioning and service delivery to farmers for heightened farmer competitiveness.¹⁹⁶

The safeguard has allowed Kenyan sugar stakeholders to look beyond their borders and be better integrated with the COMESA and other sugar players by bench-marking their operations against lower cost operators in all areas including cane varieties planted, factory efficiencies, downstream processing and other sugar by-products. The safeguard has been successful in ensuring Kenya sugar stakeholders focus more on the bigger, regional and international picture and less on internal limitations and constraints. The safeguard may fail to save every farmer or producer but the Kenyan sugar sector is expected to become competitive by the end of the safeguard period. This will be the result if, and not limited to, all stakeholders focusing on the areas of research and development, implementation and application of research results, advancements and re-investment in factory operations.¹⁹⁷

The safeguard gave Kenyan sugar producers, including farmers and millers, protection allowing them, in association with other concerned stakeholders and the Kenyan Government, time to deal with the limitations that have for long caused the sector to be non-competitive. From

¹⁹⁵ AFFA. Comparative Assessment of the Competitiveness of Sugar Production in the COMESA Region. Report (2014)

¹⁹⁶ (Ibid)

¹⁹⁷ Kenya Sugar Industry; Strategic Plan, 2010-2014, Enhancing Industry Competitiveness (Pg. 6)

the year 2002 to 2014, the fortune of sugar producers has improved significantly. Between 2002 and 2006 cane would be found having not been harvested for over 40 months for lack of crushing capacity among millers. New mill investments have led to an increase in crushing capacity hence dealt with the issue of delayed cane harvesting and payment for cane delivery.¹⁹⁸

The COMESA Council of Ministers agreed that Kenya's sugar safeguard should allow duty-free sugar imports to cover the deficit in the country's domestic production and consumption. The Kenyan sugar consumers, however, cannot identify themselves with COMESA FTA more specifically because of the licensing procedures and the apparent over-emphasis on protecting farmers and millers without much concern to the interests and wellbeing of consumers. Back in 2007 the Kenyan government reduced the rate of the Sugar Development Levy from 7% to 4%, which is mostly borne by consumers. The levy reduction, however, had no impact on the wholesale or retail prices of sugar on the domestic market so the consumer still paid the same amount for sugar or even higher. Benefits amassing from duty-free sugar imports benefited the traders only, sugar millers and brokers involved in sugar trade, forgetting the Kenyan consumer.

Sugar in Kenya is used for both domestic and commercial purposes. It is used as a sweetener in beverages and various foods within the Kenyan homes and in the production of commercial products. It is also used in making industrial alcohol with the molasses, which is a byproduct, being used in the chemical industries to produce fuel alcohol. Sugar is also used in making confectionaries, for example, bread, biscuits. The sugar cane left overs are used as fuel or as food for livestock and also as manure. In the spirit of preserving our environment sugarcane by products are used as raw material in the production of paper.

Sugar has over all been a political commodity with much policy distortions where countries even sell the product almost twice the market price which are dictated by production costs and government policies.¹⁹⁹ It is a commodity that has caused nations to be at logger-heads with each other. Historically, control of the trade of sugar has been important as it has been a source of personal wealth, taxation and political power. Sugar is relatively affordable hence the tag of war on who can have control of the commodity. In the 18th century, in the error of slave

¹⁹⁸ AFFA. Comparative Assessment of the Competitiveness of Sugar Production in the COMESA Region. Report (2014)

¹⁹⁹ Mitchell, Donald O. *Sugar policies: opportunity for change*. Vol. 3222. World Bank Publications, 2004.

trade, France had the option of ceding either Canada or Martinique to the British and chose to give up Canada as opposed to giving up Martinique, a sugar island. In the 20th century, after such incidences, the world sugar economy was dominated by regulations, protection and subsidies. GATT (General Agreement on Tariffs and Trade) and WTO (World Trade Organization) tried to cause reforms and liberalization in the already dominated sugar economy. The world sugar economy hence does not allow for free market forces to control it, rather is managed.²⁰⁰

Presently, apart from the sugar produced in Kenya, another 210,000-tonnes of sugar is required to meet the growing demand of the commodity. It requires this amount of sugar in order to meet the demands for the sweetener in Kenya. The Kenyan authorities have been controlling the amount of sugar that Kenya imports to protect its domestic industries. In the past couple of years Kenya has capped the sugar imports at 300,000-tonnes. This has been enough to cover the sugar deficit that the country has been facing.²⁰¹

Due to Kenya's administration of imports and the complexity of the regulatory framework within the country, it has become quite difficult, for sugar exporting nations in the region and from beyond the region, to access the Kenyan market. This has resulted in the continued rise of sugar prices within Kenya. Kenya's domestic demand for the product has been higher than what the country produces. According to Kenya's sugar directorate, the country's domestic production has left a net deficit to be filled by import. The big deficit has attracted a number of private sector players who have identified the sugar sector as a channel of obtaining a reasonable return. Some of the players that joined the market are Ramisi, presently referred to as Kwale International Sugar Company, Butali Sugar Company, Sukari, Kibos Sugar and Transmara. Kenya's biggest challenge with the sugar industry remains to be the high cost of sugar production, which is way above the world average production cost and the cost of production of other countries in COMESA.²⁰²

All countries of the world are eligible to export sugar to Kenya. EAC Exports all sugar duty free; COMESA FTA countries export all sugar duty free up to the safeguard cap of 350,000-Metric Tonnes; COMESA non-FTA States attract import duties to the extent of

²⁰⁰ Background paper for the Competitive Commercial Agriculture in Sub-Saharan Africa (CCAA) Study All-Africa Review of Experiences with Commercial Agriculture The African Sugar Industry – A frustrated Success Story
Geoff Tyler

²⁰¹ <http://softkenya.com/farming/sugarcane-farming/> (Accessed 13/10/2015)

²⁰² AFFA. Comparative Assessment of the Competitiveness of Sugar Production in the COMESA Region. Report (2014)

their derogation/accession to the Free Trade Area Protocol; Sugar from all other countries of the world attracts 100% import Duty, except for refined white sugar which is gazetted under the Duty Remission Scheme.

In summary, the industry has had challenges among which, privatization of the industries has not been so successful. The process has been slowed down due to some issues such as farmers not being able to raise enough capital to acquire the shareholding apportioned to them and government leaders' interference. In compliance with the Constitution of Kenya 2010 which incorporates the devolved county government system, agriculture is essentially entrusted to the county government. The rationale at the county level is that the privatized entities should be owned by the county. The Privatization Commission however, has pointed out that privatization does not include transferring assets from one Government (National) to another (County)²⁰³.

The safeguard has been in place for the past twelve years; since 2004. Kenya has had valid reasons to request for the extension of the safeguard under COMESA FTA which was granted. Countries have so far backed up Kenya's trade decisions without any form of resistance. They have supported the move thus far. However, having had the safeguard for that long, another extension on the safeguard may not be possible even with Kenya not having managed to fulfill the conditions placed for the safeguard. COMESA granted Kenya the safeguard on the basis that Kenya maintains the safety measures as a tariff rate quota with the quota aggregating while the above quota tariff decreases until it reaches and is maintained at 0%, privatizes the state-owned mills, provides infrastructure including roads and bridges in the sugar growing areas, pays farmers based on sucrose content instead of based on weight and does research into fresh early maturing and high sucrose content sugar cane varieties and adopting them.²⁰⁴

Price of sugar at the retail level is a reliant on the total production cost; the higher the production cost, the higher the retail price. Kenya's sugar production cost is quite high; almost double the average cost; compared to the cost of production in sugar producing countries like Malawi, Zimbabwe, Sudan and Swaziland. The high production cost is an indicator of the dominance and control of Kenya's smallholders whose deficiency of scale has led to low sucrose yields because of poor irrigation and use of inputs, increase in collection and transportation costs

²⁰³ AFFA. Comparative Assessment of the Competitiveness of Sugar Production in the COMESA Region. Report (2014)

²⁰⁴ (Ibid)

and the widespread cane-poaching, which has interrupted the operational capacity of the industry's mills. The utilization of mills' capacity has been seen to go down which has led to serious financial problems.²⁰⁵ The production costs in the end will determine if the Kenyan sugar industry can attain competency with duty free and quota free imports from the COMESA FTA. Compared to competitive sugar companies in the region, Kenya's sugar production costs are very high. Kenya through the regional integration bodies has the task of ensuring that its trade relations with the member states remains for the growth of her economy. Kenya's trade with the COMESA members might grow soar if the temporal safeguard develops the tendencies of being permanent. A too long safeguard may cause countries to feel their economic interests threatened and retaliate. Retaliation from COMESA member states to Kenya would see her economy deteriorate considering the trade arrangements under COMESA that have favored the Kenyan economy so far.

Kenya has managed so far to remain in good economic relations with other states within the region. COMESA Council of Ministers granted Kenya the safeguard on consultation and all member states supported the move. The safeguard even had a provision for the country that may feel its interests have been compromised, to be compensated with the matter having been brought to COMESA Council of Ministers' attention. Only Sudan claimed her stake. Uganda on the other hand sort for sugar trade based on the EAC treaty comprised of Kenya, Uganda and Tanzania. The move has drawn different reactions but Uganda has not crossed any trade lines since her move is not under COMESA treaty, rather under EAC which has its own trade policies.

Kenya is a sovereign state and has its own foreign policy that dictates its interaction with other states. Trade is a component that Kenya considers vital for the growth and development of the state through its connections with all aspects that make up an economy. Trade supports, among other aspects, the agriculture sector which is a major contributor to Kenya's economic growth. The Kenyan constitution (2010) encourages better coordination of foreign trade, foreign policy and international relations and to implement the constitution, Kenya has incorporated international trade in its foreign policy. Kenya, being a member of both the EAC and COMESA,

²⁰⁵ Agritrade, Informed analysis, Expert Opinion 2011, CTA. Technical Centre for Agricultural and Rural Cooperation (ACP-EU) <http://agritrade.cta.int/Agriculture/Commodities/Sugar/Kenya-to-see-further-extension-of-COMESA-sugar-safeguards>

its foreign trade policy has taken into consideration the regional agreements considering that Kenya seeks to remain competitive and efficient in the global market.²⁰⁶

International trade is one of Kenya's economic pillars and as indicated in its foreign policy, the country will take the necessary measures to see that its economy is upheld in respect to remaining internationally competitive. Economic diplomacy will see the attainment of a sustained economic transformation that will lead to Kenya becoming a middle income country by the year 2030 as guided by the Kenya Vision 2030. Kenya's move to safeguard the sugar industry is a move aimed at ensuring the state attains international competitiveness. States questioning Kenya's move would be questioning the country's foreign policy which has been put in place with the aim of attaining its national interest incorporated in its constitution.²⁰⁷

Generally, although member states within COMESA agreed to grant Kenya an extension to the safeguard, there have been some minor constraints in interstate trade relations which have been witnessed with some states, namely Uganda and Southern Sudan. There have been no retaliations or severe reactions from any other COMESA member states to Kenya's sugar safeguard. Southern Sudan, a sugar exporter in the region was compensated and Uganda was given an opportunity to export sugar to Kenya on acquiring all the licenses required.

²⁰⁶ Ministry of Foreign Affairs and International Trade. "Kenya Foreign Policy". (2014)

²⁰⁷ Ministry of Foreign Affairs and International Trade. "Kenya Foreign Policy". (2014)

Chapter Four

The Role of Protectionism on Regional Integration Process

4.0 Introduction

Lack of competitiveness in the Sub-Saharan countries in Africa has led to its deterioration in its standing in world trade. OECD (Organization for Economic Cooperation and Development) trade preferences gave Africa an advantage over mainly exporters. But Africa's own trade barriers are too high. Free and liberalized trade policies commonly have led to superior economic growth. This finding is important if Africa is to reverse its diminishing role in world trade.²⁰⁸

In the mid-1950s states in the sub-Saharan Africa accounted for 3.1 percent of global exports, yet by 1990 this stake had fallen to 1.2 percent. Blame has been placed on external protection in OECD markets as a contributing factor to this drastic decline. There being inappropriate domestic policies that reduced the region's ability to compete internationally also attributed to the situation that came to be associated with Africa's economy. In such a case then the probable solution to Africa's trade problems requires a liberalization of industrial countries' trade barriers.²⁰⁹

Safeguard policies especially on trade in agriculture are meant for good but they do have effects on the world economy. Protectionism gives rise to sizeable costs in the long run. This will occur as a result of a large variations of market alterations. Protectionism in trade affects consumers and taxpayers adversely because it raises the welfare costs considering that tariffs raise prices and with subsidies being associated with higher taxes. Protectionism has also led to a reduction in the level of competence in the use and allocation of resources within an economy. This can be the case where domestic producers concentrate on goods and services in which do not have comparative advantage. Protectionism can lead to financial and balance of payments difficulties in countries where governments fail to intervene.²¹⁰

4.1 A General Assessment of Kenya's Sugar Industry

²⁰⁸ Ng, Francis, and Alexander J. Yeats. "Open economies work better! Did Africa's protectionist policies cause its marginalization in world trade?" *Did Africa's Protectionist Policies Cause its Marginalization in World Trade* (1996).on August)

²⁰⁹ Amjadi, Azita, and Alexander J. Yeats. Have transport costs contributed to the relative decline of sub-Saharan African exports? Some preliminary empirical evidence. No. 1559. The World Bank, 1995.

²¹⁰ Bussière, Matthieu, et al. "Protectionist responses to the crisis: Global trends and implications." *The World Economy* 34.5 (2011): 826-852.

Sugarcane farming in Kenya is quite different from other countries in the region. For example, some of these countries farm on land that is owned by individuals as opposed to government owned. This is different in Kenya where, even with co-operatives and out-growers bodies, individual farmers grow cane on small land plots and supply 90% of the mill requirement.²¹¹ These diverse aspects of farming have denied Kenya comparative advantage in the international sugar market. Some African countries who have succeeded in becoming efficient and competitive sugar producers include, Egypt, Swaziland, Zambia, Mauritius, Malawi and Sudan among others. Egypt's sugar production is in different ways; incorporates variety. The state produces sugar from cane and sugar beet under irrigation. It has a sugar industry that's fully diversified that is not limited to producing only raw and refined sugar but also downstream products such as syrups and other specialty sugar products. The cost of producing sugar in Egypt may be a bit high, but not as high as it is in Kenya, but downstream activities, help reduce the cost of sugar production an aspect lacking in Kenya's sugar sector. Egypt's cane matures faster since the farming of the crop incorporates irrigation.

Malawi a major sugar producer just like Zambia and Sudan, and a net exporter to the region and the world. The country too has varieties of cane which mature in 12-18 months with high sucrose content. Its production capacity is higher than Kenya despite the country having only two factories. Kenya's neighboring state, Sudan, is a very efficient sugar producer in the region. The country is a net exporter of sugar. They too practice irrigation with water supply from the Nile River. Sudan has cane varieties.²¹² Another African country that has had success in the sugar production is Swaziland, an exporter of sugar to the region and the world. The state has a factory that can produce both raw and refined sugar and at the same time to pay for the expenses produces electricity for its own use and the surplus sold to the national grid. Zambia has one major company and remains competitive having cane varieties which have early maturity.²¹³

Kenya enforced safeguard policies on its sugar against its efficient counterparts, like Mauritius, Zambia and Southern Sudan, member states within COMESA, with none of these members retaliating to Kenya's move. The member states to COMESA showed support for

²¹¹ AFFA. Comparative Assessment of the Competitiveness of Sugar Production in the COMESA Region. Report (2014)

²¹² (Ibid)

²¹³ (Ibid)

Kenya's decision to safeguard its infant industries. Kenya's request of the Safeguard clause is valid and as per the provisions of the COMESA Treaty.²¹⁴ Kenya's trade decision to safeguard its industry had some requirements put in place by the COMESA Council of Ministers which include paying farmers on the basis of sucrose content instead of on weight, maintaining the safeguard as a tariff rate quota with the quota increasing while the above quota tariff falls until it reaches 0%, conducting research into new early maturing and high sucrose content sugar cane varieties (which is being done by the current Kenya sugar directorate) maintaining and adopting them, forgoing state ownership of sugar mills and privatising them, and providing infrastructure including roads and bridges in the sugar growing areas. Realizing the set requirements is ongoing with a report being submitted annually to the COMESA Council of Ministers. If Kenya had gone ahead and put trade barriers, through the safeguard, against imported sugar from any of the sugar producing member states, then the end result would have been retaliation from any of the COMESA members. Kenya's choice to cushion its decision under the provisions under Article 61 of the COMESA agreement saved the state any form of economic disagreement that would have resulted.

The COMESA requirement that has been much debated upon and has drawn debates from a number of the stakeholders is the privatization of state-owned mills. Kenya has privatized at least one sugar mill with the government holding only 20% shares in the company. There have been challenges with the privatization process. The Privatization Commission has nevertheless engaged different groups of stakeholders in sensitization of the divestiture and variations in the methodology engaged. Listing down some of the challenges faced including raising of capital by farmers to acquire the shareholding apportioned to them. As a sub-solution, the Government could hold the farmers' shares in trust but these would have to be paid for by the farmers. In compliance with the Constitution of Kenya 2010, with the devolved county government system, Agriculture is essentially devolved to the County government. The thinking at County level is that the privatized entities should be the property of the County. From the Privatization Commission however, privatization does not include transferring assets from one Government (National) to another (County). This is a bottleneck yet to be resolved.²¹⁵

²¹⁴ Patricia Njeru "Kenya's Sugar Industry Status & COMESA States Reaction to Kenya's Safeguard." Sugar Directorate, AFFA. Interview. 13 Oct. 2015.

²¹⁵ (Ibid)

4.2 Neoliberal Regional Integration and Trade

Neoliberalism supports economic liberalization policies which includes free trade policies. It is a belief that holds having an open, free and competitive market that is unrestrained and is freed from all forms of state interference. National and regional policymakers have seen the need of having a free market to increase economic productivity and raise living standards within states. Such a market setting requires reforming of the present states and social organizations and institution mechanisms to lessen their interference with the trade and industry life. Regional trade blocs have help attain this.²¹⁶ Neoliberalism encourages internationalization of states through regional integration blocs whereby states' national policies, rules and practices are adjusted and aligned with regional policies without undermining states' sovereignty. In Africa, regional blocs' trade policies are market driven aiming at removing obstacles to the free movement of commodities and investment within the region and beyond.²¹⁷

There are a number of Economic integration systems in Africa, among them, COMESA which contributes to attaining liberalization of trade, reduction of protectionism policies and cutting back of the role played by states in the economy, hence privatization.²¹⁸ Within COMESA, neoliberal regional integration has seen the establishment and attainment of favorable trading atmosphere. Kenya's uptake of the safeguard is not an anti-trade liberalization. It is a step towards efficiency in order to better attain economic stability in the sugar industry so as to create a better investment environment for the country and for the regional bloc. Competition with Kenya's incompetent and inefficient sugar industry against efficient and competitive states within the region will beat the purpose of neoliberal regional trading blocs which ought to protect and ensure economic growth of a state with the overall goal for the bloc being to become competitive enough to be integrated in the global market.

4.3 Regional Integration

The barriers of desperately small size and poor human and physical capital grants, heavy reliance on undiversified and weak structures of exports were the characteristics that made up a majority of the African states on acquiring freedom from colonial power. In order to attain

²¹⁶ Duina, Francesco. "The Social Construction of Free Trade: The European Union." *NAFTA and MERCOSUR*. Princeton University Press (2006).

²¹⁷ Söderbaum, Fredrik. "Modes of regional governance in Africa: neoliberalism, sovereignty boosting, and shadow networks." *Global Governance* 10.4 (2004): 419-436.

²¹⁸(Ibid)

economic growth and prosperity, the sub-Saharan states reached out to regional integration schemes. This was the states way out of colonial trade patterns which made their market vulnerable.²¹⁹ There has since been much backing from African governments for regional integration. Indeed they have widely embraced regional integration as an important aspect for their development strategies and resolved having several regional integration arrangements (RIAs).²²⁰

Regional integration, is a process in which States enter into an agreement that incorporates a specific region in order to promote regional cooperation. Through regional institutions and rules of engagement in the agreement, the initiatives and incentives are directed towards promotion of commercial interests as defined by the national governments participating in these agreements.²²¹ Regional integration is a give-and-take kind of relation. It is a mutual dependency between interdependent entities. It is a process that leads to interdependency among state actors both at national and international levels. Regional trade integration was originally seen as a process whose role was to drive to achieving the world trade liberalization.²²² This view has since changed and regional integration is seen as the new form of protectionism since regions close out regions. Regional integration affects the economic, political, legal and cultural aspects of the countries involved in the process. Political and economic factors explain the reasons to this notable spreading of regional integration globally.

Presently there is a global spread and escalation of regional integration in Africa, Asia, Latin America, the Caribbean and even the Pacific Islands, in different forms which include custom unions, Free Trade Agreement (FTA), and common markets, for example, COMESA. Taking into consideration the absolute advantage perspective or the comparative advantage producing inter-industry trade, or both, it is important to note that in either case integration produces winners and losers. Regional integration will lead to inter-industry specialization and trade. Despite the fact that consumers are happy to buy imported inexpensive foreign goods, incompetent domestic producers are substituted by more proficient foreign producers.²²³ This is

²¹⁹ Foroutan, Faezeh. *Regional Integration in Sub-Saharan Africa*. No. 992. World Bank Publications, 1992.

²²⁰ Hartzenberg, Trudi. "Regional integration in Africa." Available at SSRN 1941742 (2011).

²²¹ Trade Mark East Africa, Office of the Prime Minister. "National Regional Integration Strategy and Implementation Plan for Kenya." (2013)

²²² Štěrbová, Ludmila. "Regional integration: a New Trade Protectionism."

²²³ Rago C. "Regional Integration: the path towards liberalization or a step backward to protectionism?." *ASERI Focus International Trade*. (2008)

to imply that domestic producers of a traded in good or service face competition from the region and are hence damaged by integration.

Some states, to better deal with regional competition, a result of regional integration, have resulted to specialization which can only be effective economically if the product has a comparative advantage. Through specialization and an enriched division of labor. This has resulted in an increased openness to trade which can improve the level of consumption and returns in an economy. Greater openness to trade is, on average, linked to hastening growth and increasing productivity. Trade openness is a stimulant to both growth and the level of income. In order to achieve long run growth of an economy, emphasis needs to be put on the importance of technological spillovers as being a key source. Industries need exposure greater competition which can be achieved through trade openness. This will force firms to lower costs, facilitating improvements in productivity and competence. By empowering domestic industries to operate in more and larger markets, trade openness leads firms to realizing the benefits of economies of scale, easing further the process of cost reductions.²²⁴

Regional integration is an essential tool in Kenya's growth plan. Kenya has, over time, participated in regional integration matters through various regional trading arrangements including the Inter-Governmental Authority on Development (IGAD), the East African Community (EAC), and the Common Market for Eastern and Southern Africa (COMESA) Kenya's exports to the regional market make up over 50 per cent of the total export value (about US\$ 5.3 million as at 2011) with the EAC and COMESA markets combined which translates to 80 per cent of the total export share.²²⁵

Kenya, Uganda and Tanzania are the three members of the EAC which as a goal for the integration process aims to achieve a deeper regional incorporation among the three member states with the formation of a monetary union, a customs union, then a common market, and eventually a political alliance. The three states view regional integration as an essential component in encouraging better trade and investment and a crucial link for their development plan. Creation of an EAC customs union will help to facilitate higher trade and investment flows

²²⁴ Foroutan, Faezeh. Regional Integration in Sub-Saharan Africa. No. 992. World Bank Publications, 1992.

²²⁵ Trade Mark East Africa, Office of the Prime Minister. "National Regional Integration Strategy and Implementation Plan for Kenya." Republic of Kenya. (2013)

between member states. This will cause an increase in competition which will improve the competence of the exports sectors in the individual countries.²²⁶

4.4 Role of Protectionism on Regional Integration Process.

Globalization involves a number of processes with all aiming at increasing cross-border transactions of goods and services to boost country's economic growth and interdependence among other goals. Exchanges of world views, products and ideas happen at the global arena. The process of globalization has incorporated international trade in order to heighten global welfare. The current world system encourages globalization as much as possible. Regional bodies have been formed in the world with the aim of attaining global village, for example, the European Union (EU), Common Market for Eastern and Southern Africa (COMESA) and the East African Community (EAC). All these bodies are a way to open the world trading system. Globalization is a means to expose countries to international specialization as well as international competition. Globalization is an arena for competitive market forces and states that fail to compete for foreign investment end up as losers. Countries' infrastructure development has been boosted as a result of globalization. The world is slowly turning to be like a global village, with the increased and faster exchange of information and countries either learning or copying each other; countries see and are able to compare the capacities in other states.²²⁷

Globalization gives an opportunity for people within states, through different channels, for example through companies and governments, to interact through international trade and investments. This process is eased by the use of information technology. Globalization as mentioned earlier encourages opening up of international borders for cross-border trade to take place. It seeks to ensure all forms of barriers to trade are eradicated. COMESA aims at making trade between its members freer by eliminating protectionist measures. Regional integration refers to the building blocks that eventually culminate in a continent wide customs union, common market and political federation.²²⁸

Integration enhances regional trade, economic development, stability, security and opening up of borders to foreign goods by countries. The process of integration aims at lowering

²²⁶ Trade integration in the East African Community: an assessment for Kenya. Vol. 5. International Monetary Fund, 2005.

²²⁷ Helleiner, Gerald K. "Markets, politics and globalization: can the global economy be civilized?" *Journal of Human Development* 2.1 (2001): 27-46.

²²⁸ Patricia Njeru "Kenya's Sugar Industry Status & COMESA States Reaction to Kenya's Safeguard." Sugar Directorate, AFFA. Interview. 13 Oct. 2015.

policy obstructions to trade within a region and making it possible for more competent production. COMESA seeks to ensure that regional integration creates trade between or within countries. The process of regional integration is the first step towards freer global trade as it involves harmonization of trade policies and tariffs as well as reduction in barriers to trade.

Protectionism is the economic policy of limiting trade between countries. It can be done through imposition of high tariffs on imports, imposition of restrictive quotas, anti-dumping laws and other government regulations aimed at discouraging imports.²²⁹ Government-imposed constraints and interventions are also hindrances to trade. Liberalization comprises of unimpeded trade of goods and services between or within countries and is characterized by free trade. Free trade promotes economic development and is a crucial aspect of development with the fastest growing economies in the world ascribing the two elements to their immense growth.²³⁰ International trade offers necessary incentives for economic growth and development. Identifying factors that hinder trade is thus essential to achieve development more so in developing countries.²³¹ Protectionism hinders trade between countries and therefore curtails development and inflow of Foreign Direct Investments

Protectionism is seen as a major threat to the integration process. Integration seeks to end protectionism since the two cannot coexist with each other. This does not however mean that an integrated region does not shield its industries from competition from other regions. As a matter of fact, regional integration can discriminate against other countries who are not part of the regional block through higher tariffs and quotas. Regional integration in Africa has been embraced though it is yet to be attained. The success of integrating Africa into one regional block remains elusive since the process has been slow.

Preferential Trade Areas (PTAs) are normally the first step towards economic integration. PTAs are trade arrangements where a trading bloc allows products from participating countries preferential access to member's markets.²³² WTO defines PTAs as unilateral trade predilections including preferential programs in which developed states give preferential tariffs to exports

²²⁹ Fouda R. (2012), Protectionism and Free Trade: A Country's Glory or Doom?, International Journal of Trade, Economics and Finance, Vol. 3, No.5, p.

²³⁰ The Monterrey Consensus, (2008), "International Trade as an Engine for development". p. 1-3

²³¹ Ng, F., & Yeats, A. J. (1999). *Good governance and trade policy: are they the keys to Africa's global integration and growth?* (Vol. 2038). World Bank Publications, p. 1-7

²³² Panagariya, Arvind. "Preferential trade liberalization: the traditional theory and new developments." Journal of Economic literature (2000): 287-331., 287-331.

from developing countries.²³³ PTA agreements are beneficial with Zambia being an example of a country that has benefitted by being enabled to access regional and international sugar markets.

Regional trade, for example within COMESA, may result in competition within a country and in the region as organizations start trading in different geographic markets. For there to be regional trade there needs to be comparative advantage and the ability of domestic producers to power up their capabilities into producing goods for export at competitive terms of trade. Kenya is trying to achieve such an economic status where Kenya will have comparative advantage in sugar production posing great competition to other international sugar producers.

4.5 Effects of Protectionist Policies on Regional Integration

The trading of sugar in eastern and southern Africa regions is governed by national, regional and international trade regulations and agreements. The agreements include the Common Protocol for commodities in the EAC and the COMESA FTA. Kenya operates under the two agreements and under COMESA sought protection from import competition where restrictions were imposed on imports. Kenya imposed tariffs of 100 percent on imports brought in from outside the COMESA region with an additional 16 percent VAT. The policy safeguards Kenya's sugar against any duty-free imports from COMESA as well.²³⁴

Safeguard policies create non-tariff barriers which lead to reduced volume of interstate trade. International trade brings about trust between or among states and boosts interstate relations. This trust may be threatened by safeguard policies on products by states which in turn may interfere with a state's diplomatic relations with another, or others. Safeguard policies may also lead to retaliation which negates the spirit of integration.²³⁵

Regional integration is all about removing trade barriers. It is about common market policies where there is free movement of goods and services. The East African Community has been pushing for such an economic environment within East Africa. The EAC member states are also members of COMESA which also envisions having a common market with minimal or no form of protectionism. Such a market will boost states economies. Safeguard policies, amidst hindering trade, boost growth and stabilizes an individual state's economy. With a stabilized

²³³ World Trade Organization Preferential Trade Areas https://www.wto.org/english/tratop_e/region_e/rta_pta_e.htm (Accessed May 20, 2015)

²³⁴ AFFA. Comparative Assessment of the Competitiveness of Sugar Production in the COMESA Region. Report (2014)

²³⁵ Mr. Kemboi "Kenya's Sugar Industry Status & COMESA States Reaction to Kenya's Safeguard": Sugar Directorate, AFFA. Interview. 13 Oct. 2015.

economy, jobs are created and more people are promoted from the poverty bracket. A boost of the people's economic status is a boost on a state's economy.²³⁶

Safeguard policies within a state protect a product from competition. This results in high demands of the commodity which in turn leads to high prices on the commodity since there is no substitute for the product. Monopoly of the market is a result of safeguard policies where a single company or group of companies with a certain product have control, and maybe referred to as owning the market.²³⁷ Such market situations are characterized by a market having a single supplier for a particular product. The seller of this product faces no competition hence reign in the market arena in respect to a particular product.

Kenya applied for the extension of the safeguard based on Article 61 of the COMESA Treaty which provides for safeguard measures for domestic industries that need safeguarding from international competition with the hope that the industries will reach maturity and stabilize, becoming internationally competitive. Safeguard measures within COMESA region may not be imposed without the approval of COMESA member states. The members evaluate a member's request to impose safeguard measures on a product and either grant or reject the request.²³⁸

In the case of Kenya's sugar safeguard, the policy was invoked under the COMESA Treaty and secured based on justification, which the Council of Ministers agreed to. The COMESA member states supported Kenya's move and agreed to allow Kenya have the safeguard knowing what the policy entails. Under the circumstances, it is a COMESA specific affair and has had no impact on regional integration.²³⁹ The safeguard gave Kenya's sugar stakeholders a bigger and better perception of the sector. It gave them an opportunity to not just focus, limited by the national borders, but to look beyond the state's borders. This would help stakeholders on behalf of Kenya to be better integrated with other sugar players within COMESA and beyond to better their own industry. The stakeholders focus has shifted from domestic production rather internationally with less focus on the limitations and constraints that have been there in the past.

²³⁶ Mr. Kemboi "Kenya's Sugar Industry Status & COMESA States Reaction to Kenya's Safeguard": Sugar Directorate, AFFA. Interview. 13 Oct. 2015

²³⁷ (Ibid)

²³⁸ "Training Module on Safeguards: Excerpt from the COMESA treaty." Trademark Southern Africa. (Pg. 6)

²³⁹ Patricia Njeru "Kenya's Sugar Industry Status & COMESA States Reaction to Kenya's Safeguard." Sugar Directorate, AFFA. Interview. 13 Oct. 2015.

COMESA envisions attaining a fully integrated internally competitive regional economic community. Such a community would have capital, labor, good and services move freely across international borders. COMESA's expectations are that Kenya's safeguard on its sugar would address and advance this vision. The safeguard in line with the expectations of COMESA, aims at ensuring that the Kenyan sugar being a sub-set of both the Kenyan and COMESA economy enables the Kenyan citizens enjoy high standards of living and contributes to COMESA competitiveness.²⁴⁰ COMESA's ambitions will be attained with an increase of the levels of production with high qualities of the products. This requires a restructuring and diversification of the production base. This can be made possible if states can have access to technology and other resources and at the same time have the technological know-how. Greater regional co-operation and networking between domestic, regional and international players will enhance productivity and competitiveness in the global market place for COMESA.²⁴¹

4.6 Kenya's Foreign Policy in Relation to Regional Integration and the Sugar Safeguard

Prior to considering a regional body which is made up of states, states are separate sovereign entities with their own individual visions which they can fight for and if threatened will seek ways of shielding themselves from such threats. States have national interests which they seek to protect and every move is calculated with these interests in mind. In this regard states have policies that govern their relations with other states to ensure veneration of national interests in the respective areas that make up a state, for example trade foreign policies. Right from independence, Kenya's foreign policy has been based on, among other principles, ensuring that the state does not interfere with other states' international affairs or national interests, maintains a peaceful co-existence with other states and promotes regional integration. Kenya's overall goal, which is its driving force and target, is the realization of the components in the Kenya Vision 2030 which seeks to provide high quality life for its citizens through industrialization, foreign trade and international relations.²⁴² The country's trade policy has developed through successions of policy orientations with the current trade rules being guided through regional trading blocs like COMESA.

²⁴⁰ AFFA. Comparative Assessment of the Competitiveness of Sugar Production in the COMESA Region. Report (2014)

²⁴¹ History of COMESA - Key Challenges in the Global Economy
http://about.comesa.int/index.php?option=com_content&view=article&id=95&Itemid=117&limitstart=1
(Accessed July 23, 2015)

²⁴² Ministry of Foreign Affairs and International Trade. "Kenya Foreign Policy". (2014)

Through regional integration, FTAs have been created which has widened the scope of international trade for Kenyan goods. Kenya's membership to COMESA, a regional body where the country targets its goods operating under the body's trade agreements, is a way of promoting international trade in line with the country's foreign policy. Kenya's import policy stipulates that the country's key tool in its trade with the international community is COMESA Common External Tariff.²⁴³ The policy aims at promoting fair trade and the attainment of equitable bilateral, regional and multilateral trade agreements which has been accomplished by the country's membership to regional integration blocs. The emergence of COMESA created a vibrant regional economic bloc which threatened the Kenyan sugar industry causing the industry not to have comparative advantage. The regional economic zone exposed Kenya's sugar industries to a high degree of competitiveness from the COMESA member states hence Kenya's uptake of sugar safeguard policies as provided for in the COMESA trade policy. Kenya's national trade policy is to be internationally competitive and increase capital flows to Kenya through international trade. Kenya's safeguard then aims at revolutionizing the industry to become internationally competitive and in the end be a source of the inflow of capital for the country.²⁴⁴

COMESA trade policy aims at economic partnerships through regional integration for the development of their natural human resource.²⁴⁵ This policy matches with the Kenyan policy that seeks to raise the economic standards of its citizens in line with Vision 2030. Kenya's foreign policy also indicates the need for liberalization of trade with limited trade barriers. However, liberalization of trade through regional blocs led to importation of cheap sugar, from efficient sugar producing countries, to the Kenyan market which led to a deterioration of the industry. Kenya's safeguard counters the idea of liberalization of trade by limiting trade through quotas and taxes which is only favorable to the COMESA FTA member states. However the industry needed the safeguard to revive the dying sugar industry, to correct the trade imbalances and raise

²⁴³ Godfrey, Ungaya Cotty, Edmond Were, and John Byaruhanga. "How Inadequate Structural and Trade Policy Reforms in the Kenya Sugar Industry Have Threatened Its Survival in the Common Market of East and Southern African Region (Comesa)." *International Journal of Innovative Research and Development* 4.4 (2015).

²⁴⁴ Ministry of Foreign Affairs and International Trade. "Kenya Foreign Policy". (2014)

²⁴⁵ Oduor, Maurice. "Resolving Trade Disputes in Africa: Choosing Between Multilateralism and Regionalism: The Case of COMESA and the WTO." *Tul. J. Int'l & Comp. L.* 13 (2005): 177.

the economic standards of Kenyans which will come about with a revived sugar industry; all in line with the COMESA policy and its trade policy.²⁴⁶

4.7 Test of Hypothesis

This study has tested three hypotheses:

1. That Protectionist policies affect domestic sugar industries of states within COMESA positively. This was verified as true in this study. Kenya, being the only state that has taken up protectionism has benefited from being safeguarded from international competition within COMESA regional bloc which constitutes of efficient sugar producer. New private-owned sugar mills have been established with further progress being made to see the industry is developed further.
2. Kenya's protectionist policy has not strained Kenya's relations with COMESA member states. This supposition was negated in this study. Kenya's safeguard has strained trade relations with some members of the COMESA bloc, namely, Southern Sudan and Uganda. Despite the continued support from the COMESA member states through the approval for the extension of Kenya's sugar safeguard, the safeguard drew various reactions from member states. Uganda and Southern Sudan stated their concerns in relation to the safeguard and were both responded to, respectively.
3. Protectionist policies have no effect on the process of regional integration. This hypothesis as confirmed to be true in this study. Regional integration bodies have been set up to help states achieve their national interests in various fields, for example, economic growth all aiming at attaining the regional objective. COMESA granted Kenya its safeguard on sugar so that Kenya may stabilize its industry. This has not caused a rift or interfered with the regional integration process whatsoever. The regional bloc still exists with all its members actively participating as before.

Generally, Kenya's protectionist policy has had no effect on regional integration within COMESA. COMESA member states formulated policies that would help states achieve their national interests and at the same time improve and enforce states relations with each other. Regional integration seeks to empower states in recognition of their sovereignty and national interests hence states supported Kenya's pursuit of attaining efficiency in its sugar industry.

²⁴⁶ Odek, Otieno, Peter Kegode, and Shem Ochola. "The Challenges and Way Forward for the Sugar Sub-sector in Kenya." *Published by Friedrich Ebert Stiftung (FES), PO Box 14932 (2003).*

Kenya's sugar safeguard is in the aim of achieving its economic national interest of continuing to be an economic power block in East Africa and beyond.

Chapter Five

Conclusion and Recommendations

5.0 Introduction

Protectionism which can generally be defined as deliberate action by a government to shield its national industries from external competition is widely loathed and discouraged. Protectionism is the economic policy of limiting trade between countries, it can be done through imposition of high tariffs on imports, imposition of restrictive quotas, anti-dumping laws and other government regulations aimed at discouraging imports. Liberalization on the other hand involves unhindered trade of goods and services between or within countries, it is characterized by free trade. Free trade not only promotes economic development but also offers citizens of nations concerned more and better jobs. Hindrances to trade include government imposed constraints and interventions.

Sugar has nearly become a basic need in every household with the variety of uses for the product. It has become a very significant commodity that is produced and consumed all over the world. More than half of the sugar produced in the world is consumed in domestic market and the surplus traded in the global market. The sugar industry is a sector for employment and job creation right from the farming of the cane to the industries involved in the processing of sugar. The sugar industry been a continuous source of income to over a million people in Kenya. Through the industry, quite a number of Kenyan citizens have been able to secure employment. There has also been an advance in the rural infrastructural development. The commodity however has faced international competition from imported sugar under the COMESA protocol and also from other markets globally. The cost of sugar production in Kenya has been quite high as compared to other regional manufacturers and compared to the world market prices. The Kenyan sugar industries also are punctured with a heavy debt problem. Another struggle among others, has been the cane produced per hectare in Kenya not comparing well with that of other global trends. Kenya being a member of the Common Market for Eastern and Southern Africa (COMESA) sought protection for its sugar. Kenya's safeguard has been renewed by the COMESA Council of Ministers on Kenya's request severally. The safeguard is stipulated in Article 61 of the COMESA Treaty which provides for a safeguard clause which is meant to be administered by the Council Members of COMESA.

5.1 Summary

The current economic state of affairs globally encourages the opening up of domestic markets and relinquishing of government control in the economy for the private sector. Most economists agree that free trade is beneficial for all in the long run. Trade is an essential component of development; the two elements are inextricably linked as the fastest growing economies in the world have shown. International trade provides necessary stimulus for economic growth and development. Identifying factors that hinder trade is thus essential to achieve development more so in developing countries.

To facilitate economic growth through trade, regional integration has for the longest time been championed by the international organization through multilateral bodies like the United Nations Conference on Trade and Development. Integration contributes to trade facilitation. Protectionism is seen as a major threat to the integration process. This view arises from the fact that integration seeks to end protectionism. Regional integration does discriminate against other countries who are not part of the regional block through higher tariffs and quotas; hence protectionism.

Sugar has over all been a political commodity with much policy distortions where countries even sell the product almost twice the market price which are dictated by production costs and government policies. For the Kenyan sugar industries to become efficient sugar producers and be effectively competitive in the regional market, some form of trade barriers have been erected; quotas. COMESA council of Ministers granted Kenya the safeguard on consultation and all member states supported the move. The safeguard is expected to be a turnaround point for Kenya's Sugar industry with the aim of raising the industry's production standards to international standards. The safeguard period has improved internal competitiveness among millers and enhanced sustainable livelihoods for cane growing households. The Kenyan government has shown support to the sector by providing low interest loans for cane development to enhance competitiveness of the farmers. The government also offered subsidies on farm inputs. Member states within COMESA agreed to grant Kenya an extension to the safeguard. There have been some constraints in interstate trade relations which have been witnessed with some states namely Uganda and Southern Sudan with both states attended respectively.

5.2 Conclusion

States are sovereign entities with national border lines, with national interests and with foreign policies that govern their international relations. These border lines are internationally recognized and respected. A country will do what it takes if its sovereignty is undermined and border lines interfered with. Regional bodies recognize these invisible territorial lines and also appreciate states' national interests. The regional blocs are made of sovereign states which are not coerced to join or dismember themselves from the unit unless other states feel their sovereignty is undermined or threatened by the membership of a state which may then demand for a dismemberment of the state. Kenya as a sovereign state has its trade policies which are in line with COMESA trade policies. Kenya's foreign policy is to see the advancement of its industries and have capital in-flow from through international trade. This being the case, Kenya needed to see that its sugar industry attains the capacity to compete internationally and in turn become regionally and globally competitive. The attainment of this will boost the country's economy as well as advance the region's position in the global market as the region aims at being globally competitive like the EU among others.

The concept of globalization and economic neoliberalism has been incorporated in the COMESA treaty whereby there is increment in cross-border transactions of goods and services to boost countries economic growth and interdependence. It has exposed states to international specialization as well as international competition. Regional integration is an aspect that interlinks with globalization in the sense that it enhances regional trade, economic development, stability, security and opening up of national borders to trade. This aspect has been seen within COMESA through the many trade agreements; bilateral and multilateral trade unions. Trade liberalization within regional trading blocs has seen the establishment of unrestricted transaction of goods and services between and among countries. Regional integration has for the longest time been championed by the international organization through multilateral bodies like the United Nations Conference on Trade and Development to facilitate growth of trade. Integration contributes to trade facilitation which has wide reaching effects. Protectionism policies and the Neoliberalism school of thought interlink in the sense that they both aim at seeing growth in an economy which can only be achieved with the minimal interference of governments. Neoliberals support an open and free market with less barriers to trade and restrictions that limit trade; freeing up of the economy by opening up of national borders.

The neoliberalism school of thought indicates that governments should have a minimal role to play in the economy of a state and the economy should be run by market forces and individuals who are allowed to operate freely. It supports privatization within an economy. The theory emphasizes that market forces of demand and supply in international trade, within an integrated region, should be allowed to dictate the price and quantity of goods and services demanded by customers in domestic and foreign markets.

Trade is an essential component of development with the two elements being linked to some of the fastest growing economies in the world. Intra-state and inter-regional trade provide necessary stimulus for economic growth and development creating the need to identify factors that hinder trade to achieve development more so in developing countries. Trade involving developing countries has grown significantly contributing to the global economic growth and significant reduction of poverty levels. Regional trading blocs that are a product of regional integration provide FTA to eliminate and reduce barriers to trade and boost economic growth and economic efficiency. Regional blocs are grounds for training and preparation of markets for international competition.

Africa has made important steps towards regional integration as exemplified by the African Union and its regional blocks including, The East African Community (EAC), Economic Community of West African States (ECOWAS) and the Common Market for Eastern and Southern Africa (COMESA). Africa is made up of developing countries; it is a developing continent. It is made up of small economies and small domestic markets with regional bodies like COMESA that seek to see economic growth and attain regional and eventually economic competitiveness. Such economies are branded as having small infrastructure, production bases that are not diversified, and poor skilled human capital. Economies and markets with these characteristics have little or no chance of competing within a regional market base. Through such regional bodies, inefficient, uncompetitive, infant and newly established industries can flourish.

Governments may choose to take different forms of protective measures to protect their infant domestic industries from international competition. Some of these protective measures include; Tariffs, Quotas and Voluntary Export Restraint (VER), among others. As is the case with Kenya, quotas were put in place as a form of protectionist policy to see the safeguarding of its sugar industry till it attains efficiency and international competitiveness. Kenya is a sugar producer and is largely consumes industrial sugar for example in making cakes, sweets and

medicinal products which are in turn exported and sold within COMESA. Kenya has sought for safeguards on its sugar sector severally with the requests being granted. However, the sugar industry has coped with various challenges such as cane poaching, capacity underutilization, high cost of production, free cheap sugar imports and outdated technology. The COMESA Council of Ministers granted Kenya a one year extension on its safeguard measures for its sugar. Kenya applied for the extension of the safeguard in March 2015 based on Article 61 of the COMESA Treaty. Safeguard measures within COMESA region may not be imposed without the approval of COMESA member states. The member states ascended to Kenya's proposal to extend the safeguard an indicator that they saw the need for the extension. Only Uganda and Sudan have reacted to the safeguard though still maintain good relations with Kenya as they still trade amongst themselves. The safeguard has seen sugar importation into the country regulated on the basis of quotas with a quantitative cap for duty free imports. The cap provides for a certain amount of sugar to be imported into Kenya with any other extra amount being subject to import duty. Countries beyond the COMESA FTA and EAC zones attract 100% import duty. Kenya's sugar safeguard is an opportunity for the stakeholder to have a bigger point of view of the sector and defocus on self-interests which have in the past led to the decline of the industry. Some requirements were put in place by the COMESA Council of Ministers which include privatisation of state-owned mills and providing infrastructure including roads and bridges in the sugar growing areas among others.

5.3 Recommendations

Establishing neoliberal reforms in developing countries involves moving from a safeguard-based domestic form of economic design to a more market-based system and reducing the safeguards or if possible removing the domestic protections already in place. This allows for free movement of products across borders which at the same time internationalizes industries and in in turn industries are able to evaluate their capacity to operate in the international scenery. Industries can only be safeguarded for so long and unless the government lets an industry makes its own mistakes, growth and efficiency cannot be attained. Indeed the government can show support to the sector and correct the mistakes that it has done when the sugar industries were under its control. If Kenya is to thrive in the sugar cane industry, it should learn from countries with successful sugar stories within the regional block and globally.

Through the concept of globalization of sharing of economic, technological and agricultural ideas the country can thrive in sugar production as it so desires. Intra-competitiveness is a wrong trade practice especially in an area where industries expect to grow. Sugar mills from the past and those that are emerging ought not to compete against each other but rather support each other to see that the sector satisfies its domestic demands for the commodity and becomes globally competitive. This is the challenge that the Kenyan sugar sector must address: competitiveness regionally and eventually internationally, and not competitiveness among Kenya sugar producers themselves. Regional standards and operational parameters and efficiencies attained by other regional producers ought to be Kenya's points of reference in measuring its own success. The sugar sector stakeholders ought to shift focus and stop using its national territory for quantity achievement or development. The scale of measurement to be used should be beyond Kenya. A majority of the sugar success stories in the world have one thing in common; the practice of irrigation and having a variety of the cane for early maturity. This will reduce the cost of production a great deal. The government, as a stakeholder in the sector should provide irrigation infrastructure to assist the cane farmers. As a request from the potential COMESA and EAC sugar exporters, the licensing procedures ought to be simplified with corruption dealings eradicated to give a fair chance to all potential exporters and to save the Kenyan producer.

To meet the COMESA expectations the government ought to speed up the process of privatizing the mills still under their control. Kenya has managed to achieve much, however, there is a possibility for Kenya to seek another extension in order to completely stabilize, considering that there are new entrants in the industry, and for the sector and to fully comply and meet the requirements set by COMESA. Even if Kenya does not manage to get another extension, the time period under which the safeguard has been in operation is enough for Kenya to thrive in the market. Having multiple businesses within the industry, for example produce ethanol, generating electricity and other cane by products to bring in the extra capital.

Kenya is in danger of developing cartels within the industry who may in the end drain the pockets of the domestic consumer. A monopolistic market in a state usually are a result of safeguard policies. The safeguard policy should protect both the consumer and the producer and if put in place for too long, the consumer will be at a disadvantage. If the state protects both parties to ensure that the consumer is not paying a too high price for the product and at the same

time the producer does not end up making losses, then the safeguard is for the good of the nation as a whole. The welfare of the citizens of a state that has safeguard policies put in place has to consider shielding both parties from any form of exploitation. To avoid a situation where the producer of the commodity indeed has control of the price of the commodity but hikes it to the point that it becomes too high, inconsiderate of the low income earner, who also has other basic needs that need to be paid for, then the Kenyan government has to have rules to the price control, but not run the industries.

Kenya's devolved government system was set to ensure that there is equal distribution of development opportunities across the counties; it was to ease the national government's workload and see that there is an equal chance for development for all counties. The leaders to the counties in which the sugar industries scheduled for privatization are, have asked they be involved in the process of privatization of the companies in their counties. Their argument is reasonable though has led to the slowing down of the privatization process. The sugar industries will be beneficial to not just the county citizens but to the economy of the entire state. To quicken the process then, meet COMESA's expectations and beat deadline, the national government should indeed incorporate the county governments who in turn should keep up with the happenings that have taken place within the sugar industry instead of stalling or dragging back the process.

At the end of the day, it is important to note that protectionism acts in favor of the rich in the society. They have the greater control on the protected industries. This results in an unequal distribution of the national income. The rich continue accumulating more wealth as the poor continue being poor. In the case of Kenya, bidding will be done by the Kenyan government for the state-owned sugar mills where the low income earners may not so much be able to buy from the government with many aspects being considered, for example, they have to ensure there is food on their table for them and their families, the share might be too expensive for them, high bidders might end up buying all or most of the shares leaving limited or no shares for the low income earner among many other reasons. The Kenyan government and the sugar directorate should consider selling the in small units which a low income earner can afford giving an equal chance to all. These small units are also a way of raising more capital from the sale of the shares.

Kenya sugar farmers and sugar processing farms have the choice of substituting sugarcane for another profit making cash crop which will lessen Kenya's chances of ever

becoming a satisfactory producer and manufacturer of sugar for its domestic use or for exportation. The Kenyan government should allow private industries to be the main players of the economy. There have been industries that have been established since the uptake of the safeguard which should be left under private control and management. The government due to its bureaucratic nature is an ineffective manager. The rule of the market is a principle pointed out in the neoliberalism theory of the economy that encourages free enterprise with no state connections. A market is self-regulating due to the forces of demand and supply. These market forces provide the best price levels and output for an economy. Self-regulation can only be achieved in a free market with the availability of variety of a product. Owing to the rise in demand of sugar in Kenya, the government should let market be self-regulating with little or even no interference from their end. the government's role should be mainly ensuring that aspects like dumping and having low quality products in the market does not happen with proper regulations and eradication of corruption within the system.

Generally the Kenyan sugar industry has suffered from poor management in the sector with major issues of corruption in past managements which led to major debts in the sector. Poor management was accompanied by political influence; government ownership and control of the industry. Due to corruption, politically powerful people with protection from the government drained the industry by using it as a source of wealth. Learning from this past poor history, the Kenyan government should make the effort to see that there is complete change in the management of the sector and have clear policies to guide the stakeholders within the industry

As mentioned in previous chapters, Kenya through the regional integration bodies has a duty to herself and her citizens, of seeing that her trade relations with members in the regional bodies is retained for the growth of her economy as well as that of the region. Economic empowerment of a state, raises its status in a region and in the world. Small economies or growing economies may feel the need to maintain a safeguard if they feel they have not attained enough economic empowerment as desired in order to make them competitive enough. The result of such is having a permanent safeguard which in turn may lead to retaliations that will harm a country's economy even further. In this case, Kenya's trade with the COMESA members might grow soar if the temporal safeguard currently in place is extended over and over and eventually develops to being a permanent safeguard. A too long safeguard may cause countries to feel their economic interests threatened even further which may lead to, among other things,

trade wars. Retaliation from COMESA member states to Kenya would see her economy deteriorate considering the trade arrangements under COMESA that have favored the Kenyan economy so far has given it economic supremacy in the region at being the top 10 economies in Africa. Therefore, the recurrent extensions on Kenya's safeguard under COMESA FTA ought to cease and better solutions for the industry sought after. At the same time, the Kenyan government ought to sort out any differences among the stakeholders, put political ambitions and self-interests on the side and put the country's economy in relation to the sugar sector specifically in mind by ensuring that it fulfills the conditions set for it under the safeguard within the limited time remaining. The least person within the sugar sector cycle, the farmer and probably workers in the mills will have a higher price to pay if the sector does not gain international competitiveness. Globalization has made it easier for countries to share ideas and learn from each other, hence Kenya can simply move from being a developing state to a developed state.

5.4 Areas for Further Research

Following this study, further research should be done on the following areas: how the protectionist policy the Kenyan cane farmers and a comparative study on USA protectionist policy and Kenya's protectionist policy in the sugar industry.

Annexation

Interview Guide

My name is Elizabeth Mwendu a student at the University of Nairobi taking a Masters in International Studies. I am currently doing my school project titled "Effects of Sugar Protectionist Policies on Regional Interstate Relations: Case Study Kenya's Sugar Policy in COMESA". Kindly allow me to ask you a few questions about my research topic.

Name: _____

Occupation: _____

1. Has Kenya's safeguard policy affected regional integration in any way (negatively or positively)? _____
2. What reactions has Kenya's safeguard elicited from COMESA member states following the country's uptake of sugar safeguard policy? _____
3. COMESA member states said that Kenya's safeguard was a blanket safeguard that didn't safeguard just sugar, but more which was a concern and they asked for the safeguard to be simplified. Which other areas does (did) the safeguard cover and was it simplified?

4. What are some of the benefits that have been brought about by Kenya's safeguard?

5. What is the current sugar status in Kenya (Demand vis a vis Supply amount prior importing; countries allowed to export sugar to Kenya; progress with privatization of the once government run sugar companies)? _____
6. What are some of the challenges experienced with privatization of the sugar companies in Kenya? _____
7. What advice would you give to curb the situation and for the betterment of the sugar industry in the future? _____
8. What requirements were put in place by COMESA for Kenya under the safeguard policy? _____
9. What recommendations would you make for regional integration? _____
10. What recommendations would you make for Kenya to attain its goal of stabilizing and making the sugar industry competitive in the international market? _____
11. What recommendations would you make for Kenya to improve its trade relations with COMESA member states? _____

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