UNIVERSITY OF NAIROBI

Institute of Diplomacy and International Studies

\\ **Kenya's International Trade Policy Formulation and Negotiations** //

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Declaration

I, Sennane G. Riungu, hereby declare that this research project is my original work and has not been presented for a degree in any other university.

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Abstract

ternational trade policy consists of bilateral and multilateral arrangements between countries d dictates the terms of commerce between them. These trade policies and relations vary in ope and content but generally depend on the structure of the economy of a particular country. developing countries, trade policy-making is shaped by the interaction of international and mestic factors - economic and political. At the international level, the processes of obalization play a major role in influencing and shaping subsequent trade policies. At the mestic level, policy-making is intimately linked with the nature of the public-private lationship as well as the autonomy of state agencies and their institutional strength and pacity. Trade policies and their coherency clearly have a bearing on the overall trade strategy ırsued and consequently on the economic gains from trade.

Kenya's trade policy development has evolved through the following distinct policy ientations: import Substitution Policies (1960s -80s); Trade Liberalization through Structural djustment Policies (SAPs) (1980s) and Export Oriented Policies (1990s). Presently Kenya's rade regime is guided by market-driven principles of liberalization under the World Trade rganization (WTO) and the increased efforts in the regional economic integration that has sulted in the establishment of the East African Community (EAC), Common Market for astern and Southern Africa (COMESA.)

This study reflects on Kenya's international trade experiences and examines the stitutional arrangements and interaction of its actors in the trade policy formulation and egotiations processes. It also identifies and contributes to a better understanding of the factors at constrain effective formulation, negotiation, monitoring and evaluation of the country's ternational trade policy.

.bbreviations

CP-EU	-	African, Caribbean, Pacific, and European Union
ERC	-	African Economic Research Consortium
.GOA	-	African Growth and Opportunity Act
.U	-	African Union
:ET	-	Common External Tariff
.SEAN	-	Association of Southeast Asian Nations
OMESA	-	Common Market for Eastern and Southern Africa
SO	-	Civil Society Organization
:OTU	-	Central Organization of Trade Unions
:UTS	-	Consumer Unity and Trust Society
AC	-	East African Community
.ALA	-	East African Legislative Assembly
:PA	-	Economic Partnership Agreement
:PC	-	Export Promotion Council
:PZ	-	Export Processing Zone
:PZA	-	Export Processing Zones Authority
:RS	-	Economic Recovery Strategy for Wealth and Employment Creation
:U	-	European Union
'EATS	-	Fostering Equity and Accountability in The Trading System
'PEAK	-	Fresh Produce Exporters Association of Kenya
DRC	-	International Development Research Center
FI	-	International Financial Institution

IGAD	-	Inter-Governmental Authority on Development
IMF	-	International Monetary Fund
JICCC	-	Joint Industrial and Commercial Consultative Committee
JITAP	-	Joint Integrated Technical Assistance Program
KAM	-	Kenyan Association of Manufacturers
KEBS	-	Kenya Bureau of Standards
KCSA	-	Kenya Civil Society Alliance
KEPHIS	-	Kenya Plant Health Inspectorate Service
KEPSA	-	Kenya Private Sector Alliance
KEPLOTRADE		Kenya-European Union Post-Lome Trade Negotiations
KIRDI	-	Kenya Industrial Research and Development Institute
KIPI	-	Kenya Intellectual Property Institute
KIPPRA	-	Kenya Institute of Public Policy Research and Analysis
KFC	-	Kenya Flower Council
KNCCI	-	Kenyan National Chamber of Commerce and Industry
KRA	-	Kenya Revenue Authority
LIC	-	Less Industrialized Countries
MoT	-	Ministry of Trade
NAFTA	-	North Atlantic Free Trade Area
NCWTO	-	National Committee on the WTO
NDTPF	-	National Development and Trade Policy Forum
NEPAD	-	New Partnership for Africa's Development
NGO	-	Non Governmental Organization
ODI	-	Overseas Development Institute

OECD	-	Organization for Economic Cooperation and Development
PRSP	-	Poverty Reduction Strategy Paper
RODI	-	Resource Oriented Development Initiatives
SADC	-	Southern Africa Development Community
SAL	-	Structural Adjustment Loan
SAP	-	Structural Adjustment Program
SEATINI	-	Southern and Eastern African Trade Information and Negotiations Institute
UEPB	-	Ugandan Export Promotion Board
UNCTAD	-	United Nations Conference on Trade and Development
UNIDO	-	United Nations Industrial Development Organization
USA	-	United States of America
WB	-	World Bank
WIPO	-	World Intellectual Property Organization
WTO	-	World Trade Organization

"I dedicate this Research Project to my daughter, Danielle K. Mwenda."

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Chapter 1

Introduction to the Study

1.0 Introduction

The notion and practice of economic diplomacy has gained prominence over the past two decades and negotiations lie at the heart of this diplomacy. This is due to new and challenging economic issues, the global interdependence of states and the proliferation of regional trade initiatives, within and across continents. The establishment of the United Nations (UN) and the Bretton Woods institutions in the aftermath of the Second World War was a major landmark in the history of economic diplomacy[1] But the growing complexity of specialized economic issues and their increasing importance in a globalized world profoundly affect the way states and international organizations conduct their trade relations. In the face of changing world context, reforming some of these institutions has constantly come back to the table.[2] Kenya is generally active in this metamorphosing global economic arena and with it, its international trade policies.

Kenya's trade policy development can be traced back to the Sessional Paper No. 10 of 1965 on African Socialism and its Application to Planning in Kenya.[3] The Paper centered on ensuring rapid economic development and social progress for all Kenyans. The second major phase in the evolution of the trade policy in Kenya was through the Structural Adjustment Programmes (SAPs) introduced in the mid 1980s by Sessional Paper No.1 of 1986 on Economic Management for Renewed Growth.[4]

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[1] Soobramanien Teddy: "Economic diplomacy for Small and Low Income Countries" in Bayne Nicholas, Woolcock Stephen (eds.)*The New Economic Diplomacy: Decision-Making and Negotiation in International Economic Relations*' Ashgate Publishers. 2007 pp.187-204

[2] World Trade Organization *Press Release; PRESS/TPRB/124*; WTO Trade Policy Review:WTO, 19 January 2000

[3] Republic of Kenya, Sessional Paper No.10: Africa Socialism and Its Application to Planning in Kenya, Nrb; 1965

[4] Republic of Kenya. *Sessional Paper No.1 (1986) On Economic Management for Renewed Growth*. Nairobi; 1986

Immediately on attainment of independence, Kenya undertook diplomatic measures necessary for the implementation of its external economic policies. It established diplomatic relations with many countries in addition to fostering the already existing links with the United Kingdom. Relations were expanded with the USA, West Germany, Israel, India Japan as well as the then European Economic Community (now the European Union) among others. Similar steps were taken in Africa, especially Eastern Africa.[5] To intensify economic interactions in East Africa, Kenya supported the establishment of the East African Community in 1967 which crumbled in 1977 and has since been revived into the East African Community (EAC) Customs Union. Again in 1980, Kenya became one of the first signatories to the treaty establishing the Preferential Trade Area for Eastern and Southern Africa (PTA), whose aim was to promote increased interregional trade. The PTA was transformed into the Common Market for Eastern and Southern Africa (COMESA) in 1994. The COMESA Roadmap envisions progress through the stages of a Preferential Trade Area, Customs Union, Common Market – Free Movement of Persons, Monetary Union and eventually an Economic Community.[6]

Presently, Kenya's trade regime is guided by market-driven principles of liberalization under the World Trade Organization (WTO). Kenya signed the Marrakech Agreement on April 15, 1994 in Morocco and completed the notification process by December 31 1994, thus becoming a founder member of the WTO. In order to effectively implement Kenya's obligations under the WTO, a National Committee on WTO issues (NCWTO) was formed in 1995.[7]

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[5] Orwa, D.K: 'Independent Kenya's External Economic Relations,' in W.R. Ochieng' & R.M. Maxon, eds., *An Economic History of Kenya*; East African Educational Publishers Ltd; 1992 pp.389-400
[6] Official Ministry of Trade Website: http://www.trade.go.ke/index.php?option=com_content&task=view&id=107&Itemid=137
[7] Ddamilura, D. and Noor Abdi, H.: *Civil Society and the WTO: Participation in National Trade Policy Design in Uganda and Kenya*, report for CAFOD Trade Justice Campaign: 2003 p.65

This study will reflect on Kenya's international trade experience and examine the institutional arrangements and interaction of its actors in the trade policy formulation and negotiations processes. It will also seek to identify and contribute to a better understanding of the factors that constrain effective formulation, negotiation, implementation and the monitoring of the country's international trade policies.

1.1 Statement of the Research Problem

International trade policies and relations vary in scope and content but generally depend on the structure of the economy of a particular country. Kenya, like many other developing countries, is trying to diversify away from traditional exports; the foreign trade policies which it formulates and the negotiation processes in which it is involved with are therefore aimed at securing markets for new products, in addition to markets for the traditional exports. The basis for undertaking this study is to analyze the international trade policy formulation and trade negotiation processes in Kenya. This will be done by: assessing the institutional and organizational capacity to formulate, negotiate, and implement international trade policies; analyzing of the role of various institutions and stakeholders and identifying the factors that constrain effective formulation, negotiation, implementation and monitoring of international trade policies in Kenya.

1.2 Scope of the Study

This study will reflect on Kenya's international trade experience and it will examine the institutional arrangements and interaction of actors in international trade policy formulation and negotiation process in Kenya. It will also seek to identify the factors that constrain effective formulation, negotiation, implementation and the monitoring of international trade policies in Kenya since independence.

1.3 Objectives of the Study

This study seeks to:

i. Examine the institutional arrangements and interaction of actors in the international trade policy formulation process in Kenya.

ii. Examine the institutional arrangements and interaction of actors in the international trade negotiation process in Kenya

iii. Outline the factors (if any) that constrain effective formulation, negotiation, implementation and monitoring of the country's international trade policies

1.4 Literature Review

Bayne Nicholas and Stephen Woolcock[8] in their recent edition titled 'The New Economic Diplomacy: Decision-Making and Negotiation in International Economic Relations', correctly observe that some developing countries have mastered their interactions with the external world to the point where they actively pursue international economic opportunities be it in trade, investments, technology-driven business partnerships, tourism, off-shore banking and a whole range of services. They also note that at the other extreme are the developing states that either confront severe inadequacy of resources, or are torn by internal conflict and poor governance, leaving them woefully dependent on foreign aid. In essence, the globalization process does nothing for them. In between are located the majority of states, scrambling for the right mix of structure, policy and method, to take proactive advantage of the external environment.

This latter group is in pursuit of what is now being termed as 'Economic Diplomacy.' In his article, 'Economic Diplomacy: The Experience of Developing Countries', Kishan Rana[9]

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[8] Bayne Nicholas, Woolcock Stephen (eds): The New Economic Diplomacy: Decision-Making and Negotiation in International Economic Relations; Ashgate Publishing Ltd. 2007 p.8.

[9] Rana S. Kishan: "Economic Diplomacy: The Experience of Developing Countries" in Bayne Nicholas, Woolcock Stephen (eds): *The New Economic Diplomacy: Decision-Making and Negotiation in International Economic Relations;* Ashgate Publishing Ltd. 2007 pp. 93-112.

notes that this term has been used to refer to the process through which countries tackle the outside world, to maximize their national gain in all the fields of activity including trade, investment and other forms of economically beneficial exchanges where they enjoy comparative advantage. It has bilateral, regional and multilateral dimensions, each of which is important.

Trade policy is becoming an increasingly important policy area as developing countries seek to use it to foster economic growth and development. It is a policy area in which domestic and international factors interact intensely. Domestic producers and consumers can be important actors but, at the same time, increasingly complex international trade rules influence the trade policies which poor countries can adopt.[10]

Trade policy in most countries is developed through a complex process of decision-making involving various levels of government and institutions, companies and business associations, consumer organizations, trade unions and other members of civil society. No country has achieved substantial gains in trade without an effective trade policy framework[11] It is thus important for a country to have a trade policy framework that is guided by institutions which are effectively coordinated and which take into consideration the interests of several actors while at the same time remaining objective. In developing countries, trade policy-making is shaped by the interaction of international and domestic factors - economic and political.

At the international level, the processes of globalization play a major role in influencing and shaping subsequent trade policies. At the domestic level, policy-making is intimately linked with the nature of the public-private relationship as well as the autonomy of state agencies and their institutional strength and capacity. Trade policies and their coherency clearly have a bearing on the overall trade strategy pursued and consequently on the economic gains from trade while

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[10] Sally R: Trade Policy Making in Developing Countries and their Participation in the WTO: Differences and Divergence; 2005 p.7.
[11] OECD: *DAC Guidelines on Capacity Development for Trade in the New Global Context*; OECD, 2001 p.22.

the way in which trade policy is initiated, negotiated, and eventually implemented is predominantly a political process[12]

Evolution of Trade Policy Reforms

The boundaries of trade policy are not clearly defined as a result of increasing complexity and expansion of areas covered. This is primarily understood as the formulation of positions for bilateral, regional, and international trade negotiations and the setting of tariffs and other explicit import or export rules. In a broader sense, it also comprises the implementation of trade agreements, as well as any export promotion activities, ranging from government support to market intelligence and export credit schemes, to the creation of export processing zones, to subsidies for export-oriented industries.[13] In a wider sense, trade policy is also linked to questions of monetary policy, such as managing the risks of 'Dutch disease' associated with a temporary increase in export income from natural resources, but potentially also with large inflows of aid.[14] Trade policy is affected by the nature and complexity of governance and capacity problems prevalent in developing countries.[15]

Scarce financial and human resources limit what governments can achieve, but also inhibit constructive inputs from and coordination with the private sector.[16] Political economy interests within government may lead to substantial conflicts of interest around the formulation of trade policy. While trade liberalization has reduced the range of opportunities for rent-seeking

[12] KIPPRA & ODI: Trade Policy Making Process in Kenya: The institutional arrangements and interaction of Actors; June 2007 p.14.

[13] Soludo C. C. & Ogbu, O.: "The Politics of Trade Policy in Africa," in Soludo, C.C., Ogbu O. and Chang Ha-Joon (Eds.) *The Politics of Trade and Industrial Policy in Africa: Forced Consensus?* Trenton: IDRC and Africa World Press; 2004 pp. 43-61.

[14] Driscoll, R., Kizilbash Agha, Z., Cali, M. & Willem te Velde, D.: *Growth and Trade in Africa's Second Generation Poverty Reduction Strategies*. Working Paper, London: Overseas Development Institute; 2006 p. 33

[15] Grindle, M.: *Challenging the State*. Cambridge: Cambridge University Press; 1996 p.11.

[16] Van de Walle, N.: *African Economies and the Politics of Permanent Crisis, 1979-1999*, Cambridge: Cambridge University Press; 2001 pp. 26-39.

(e.g. around import licenses), some opportunities continue to exist and can be exploited for private gain where accountability is low.[17]

Effective Institutional Frameworks

The quality of the institutional framework for trade policy-making is crucial for several reasons. The institutional framework has a direct effect on policy coherence and an indirect effect on policy outcomes and ultimately has a bearing on the achievement of growth and poverty reduction (or lack thereof).[18]

A framework that is coherent and coordinated is likely to be more purposeful and authoritative and more widely accepted and supported by relevant actors. Such a framework is also likely to minimize policy conflicts and resource wastage through the duplication of efforts, as well as provide greater flexibility to pursue strategic trade initiatives through the enhanced participation of the private sector. Effective formulation and implementation of trade policy requires collaboration among the relevant government ministries and institutions and structured dialogue and consultation with major stakeholders.

The poor developmental record of most developing countries is partly thought to be linked to their defective institutional order. Related to this, although insufficiently appreciated, is their lack of administrative capacity and expertise to deliver and sustain sound, credible trade policies.[19] In the past, Kenya has experienced countless changes in its policy formulation process and strategic trade and industrial policies have been mainly influenced by the changing political set-up of the country.[20] In addition, multilateral and bilateral donor institutions have also played a

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[17] Zvekic, U. (2002), *Corruption and Anti-Corruption in Southern Africa.* Report for UNODC 2002 www.unodc.org/pdf/southafrica/southafrica_corruption.pdf.

[18] KIPPRA & ODI: Trade Policy Making Process in Kenya: The institutional arrangements and interaction of Actors; June 2007 p.16.

[19] ibid.

[20] Ikiara G. et al; "Formulation and Implementation of Strategic Industries in Kenya," in Soludo C., Osita, O. and Chang H-J, (2004), *The Politics of Trade and Industrial Policy in Africa: Forced Consensus*. IDRC. 2004 pp.75-98

key role in shaping trade policy formulation processes, especially in the 1980s and 1990s under the conditions of structural adjustment programs (SAPs). Soludo C. and Ogbu O., correctly note that the World Bank and the IMF managed to wield unprecedented control over economic policies and institutions in African countries since the 1980s.[21] Consequently, many African countries, including Kenya, have suffered from reduced policy autonomy.

The Trade Policy Cycle

According to the OECD, no two countries will adopt the same trade policy framework yet every country must master the same four-staged trade policy cycle of formulation, negotiation, implementation, monitoring and evaluation (M&E.)[22] The formulation of trade policy stage requires an inclusive approach and relies heavily on the assumption that the private sector and civil society have the requisite capabilities to contribute.

Analytical capacity is particularly important at this stage as all parties must have a sufficient understanding of the underlying principles of trade issues, agreements and developments in the global trading system.[23]

The first stage is the preparation and execution of negotiating positions stage. It requires an inclusive approach and government negotiators must be aware of the interests, concerns and capabilities of domestic stakeholders. This allows the development of negotiating positions that prioritize interests and take into account stakeholders objectives, expectations and trade-offs they are prepared to accept. Consideration also needs to be taken of the capacity of governmental departments to successfully implement the various proposals being negotiated.[24] Responsibility for implementation is the third stage and in this case, a range of government departments will be

[21] Soludo,C and Ogbu, O. "The Politics of Trade Policy in Africa," in Soludo, C.C., Ogbu O. and Chang Ha-Joon (Eds.). *The Politics of Trade and Industrial Policy in Africa: Forced Consensus?* Trenton: IDRC and Africa World Press. 2004 p.43-61

[22] OECD. DAC Guidelines on Capacity Development for Trade in the New Global Context, OECD, 2001 p.45.

[23] KIPPRA & ODI: Trade Policy Making Process in Kenya: The institutional arrangements and interaction of Actors; June 2007 p.16.

[24] ibid.

involved in implementing trade agreements. Successful implementation will depend on the capacities and priorities of those departments.[25] The last stage in a trade policy cycle is monitoring and evaluation. This process should be on-going and requires inputs not only from the relevant government departments, but also from the private sector and civil society. This should also inform evolution of subsequent outcomes and or policies.[26]

The Institutional Framework for Trade Policy and its Political Economy

A general tenet of the "Logic of Collective Action" is that it is not interests per se which matter but the actual influence which individuals and groups with interests can bring to bear, that is, their organizational capacity and/or their direct and possibly hidden influence on policy makers.[27] Furthermore, small, well-organized groups such as manufacturers in a certain sector are argued to be generally more likely to have an impact on policies than large, dispersed groups (such as consumers), unless small groups can be formed that effectively represent the interests of such larger groups (such as special issue CSOs).

In practice, the ways in which individuals and groups influence policies is even more complex. For example, in the senior civil service there can be policy entrepreneurs or 'champions of change' who are able to pursue certain reforms against various sources of opposition[28] but policies can also 'get stuck' due to complex decision-making structures which create an excessive number of potential veto players and veto points.[29] Importantly, policies are also influenced by the external environment: by external leverage such as International Financial

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[25] ibid.
[26] ibid.
[27] ibid.
[28] Grindle, M., *Despite the Odds: The Contentious Politics of Education Reform*. Princeton: Princeton University Press, 2004 p.25.
[29] Tsebelis, G., *Veto Players: How Political Institutions Work*. Princeton: Princeton University Press, 2002 p.13

Institutions (IFI) conditionalities and also by external linkages and diffusion of policy ideas[30] The area of trade policy is noted to have particular characteristics: International factors -- agreements, international negotiations, pressures from IFIs -- play a particularly powerful role; it is highly technical; external' as well as 'domestic' factors potentially impact strongly on a country's citizens who may often be unaware of pending policy changes and their potential impact. A key dimension of the politics of trade policy is the institutional set-up and the actors and incentives this generates. A second important dimension shaping the set of domestic actors and interests is the ownership structure of the main exporting, importing, and import-competing industries. The key ministry responsible for trade negotiations is most commonly a ministry of foreign affairs or a ministry for industry and trade. In a number of countries, the presidential administration is involved in some way, either dealing with specific policy areas and initiatives and/or seeking to coordinate trade related activities of other ministries[31] Several other ministries and government agencies are typically involved in the implementation of trade agreements, especially bureaus of standards (dealing with technical issues such as ISO certification), and ministries of justice dealing with intellectual property rights and similar issues.[32]

Trade policy is a highly technical area and most parliaments in low income countries lack technical support staff – even for the most essential policy areas such as budgeting. This stands in contrast to trade policy making in many developed countries, where the legislative has -- and at times exercised -- substantial powers, especially in the US.[33] Beyond government, private sector associations can be important players. Often, these are sector specific associations. In

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[30] Levitsky, S. and Way, L., International Linkage and Democratization, 2005 p.62.

[31] For example, in Uganda the President's Office deals directly with the US-sponsored African Growth and Opportunity Act (AGOA).

[32] Rodrick D.: *Political Economy of Trade Policy in Grossman. G.* (ed.), Handbook of International Economics, Volume 3. Amsterdam: Elsevier; 1995 p.73.

[33] Bohara, A. and Gawande, K., "Interest and Ideology in the 1988 Omnibus Trade Act," in Mitra & Pnagariya, *The Political Economy of Trade, Aid and Foreign Investment Policies*. Amsterdam, Elsevier, 2004 pp.43-48

principle, private sector associations can provide important technical inputs for governments regarding the potential sectoral impact of policies which governments on their own would be unable to generate.[34]

Trade policy is traditionally a policy area where poor and disadvantaged groups offer little input, although these groups can be crucially affected by changes in trade policy (for example farmers, workers in import competing or export processing industries). In recent years, and in the context of a stronger emphasis on poverty reduction and participatory approaches,[35] there has been a greater emphasis on the poverty and distributional impacts of trade policy changes, particularly with a view to how they affect the vulnerability and risks for various groups of the poor. Two key 'assets' for shaping trade policy are "money and analytical knowledge."[36] In general, trade policy in developing countries, especially in the Less Industrialized Countries (LICs), suffers from scarcity of resources (finance, staff and specialized skills) which may be summarized as "capabilities" for trade policy. Scarcity also extends to the physical infrastructure and hence the domestic basis for trade - the weak integration of national markets reduces the possibilities to pursue opportunities which can result from trade liberalization.

Furthermore, it is important to take into account that trade policy is not an independent policy area, but is influenced by other policy areas especially foreign policy. As Draper argues, ministers responsible for foreign policy often have more political weight in cabinets than ministers of trade.[37]

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[34] Page, S., Developing Countries: Victims or Participants-Their Changing Role in International Negotiations, London, ODI, 2003 p.62.
[35] Newfarmer. R., *Trade, Doha and Development: A Window into the Issues*, Washington DC, World Bank, 2005 p.38.
[36] Ostry, S., The Trade Policy-Making Process: Level One of the Two Level Game: Country Studies in the Western Hemisphere, INTAL-ITD-STA Occasional Paper 13; 2002 p.27.
[37] Draper P. "Consultation Dilemmas: Transparency versus Effectiveness in South Africa's Trade Policy," in: Draper, P. (ed.), *Reconfiguring the Compass: South Africa's African Trade Diplomacy*. The South African Institute of International Affairs, Braamfontein, South Africa, 2005 pp.23-37

There is considerable difficulty in generating coherent and effective trade policy in many developing countries. Furthermore, weak capacity and coordination, poor formal institutions and a lack of public spiritedness at least in some policy measures combine to hold back the pursuit of more effective trade policies.

> "Most lead ministries on trade policy are not high up the pecking order within government and tend to be captured by politically well-connected protectionist forces. Inter-agency co-ordination is usually bad on traditional trade policy issues (tariffs and quotas on merchandise), and abysmal on newer issues like services, intellectual property, and environmental standards, which involve regulatory agencies across the range of government.[38]

Ikiara *et al* emphasize the dominance of the executive, and especially overly powerful presidents in economic policy making:

> "Reviews of economic policy-making in developing countries, and in Sub-Saharan Africa in particular, point to the dominance of the executive or the presidency in the policy formulation process. Consequently, effective participation of the other state institutions, mainly the legislature, judiciary and the political parties in the policy-making process is usually compromised. The contributions of research institutions, the private sector and the civil society are often either ignored or given inadequate attention and priority."[39]

Nonetheless, progress is possible in principle and in recent years governments have become more willing to engage in participation and coordination of policies. Still, in most developing countries, effective participation in policy-making by the private sector and civil society remains far from institutionalized, although important beginnings are being made and supported by donors in the context of the PRSPs.[40]

Greater participation has been advocated as a necessary ingredient of trade policy making out of an increasing recognition that changes in trade policy can have strong distributional effects

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[38] Sally, R., Trade Policy Making in Developing Countries and their Participation in the WTO: Differences and Divergence, 2005 p.41.

[39] Ikiara G. et al; "Formulation and Implementation of Strategic Industries in Kenya," in Soludo C., Osita, O. and Chang H-J, (2004), *The Politics of Trade and Industrial Policy in Africa: Forced Consensus?* IDRC. 2004 pp.75-98.

[40] Ddlamilura, D., and Abdi, H., Civil Society and the WTO: Participation in National Trade Policy Design in Uganda and Kenya, report for CAFOD Trade Justice Campaign, 2003 pp.75-98

(Lee, E. and Vivarelli, M., 2006;41 Stiglitz, J. and Charlton, A., 2006;42Soludo, C. and Ogbu, O., 2004).43 However, 'objective' interests of certain groups do not automatically translate into effective lobbying for or against particular trade policies while large and dispersed groups are particularly unlikely to realize their goals.44

1.5 Justification of the Study

Trade policy formulation process in Kenya, as in many developing countries, is shaped by the interaction between several international and domestic factors. The Ministry of Trade, while being the lead ministry in trade policy formulation and negotiations, is also charged with the responsibility of overseeing coordination and implementation of other trade related issues in the government. [45]

It has been observed that considerable progress has been made in liberalizing the domestic economy and moving towards a more outward-oriented trade regime. However, Poor harmony and coordination within the Ministry of Trade, particularly between the Departments of External Trade and Internal Trade, has also been observed and so as coordination between state and non-state actors in the trade policy process. Insufficient analytical capacity within the Ministry of Trade has also been cited by various scholars as a major impediment to the trade policy formulation and negotiation processes in Kenya. As such, it is evident that Kenya needs to have an appropriate institutional framework with sufficient capacity in terms of skills and resources to make and effectively implement the right trade policy decisions. This study

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[41] Lee, E. and Vivarelli, M., *The Social Impact of Globalization in the Developing Countries*. Institute for the Study of Labour Working Paper IZA DP no. 1925, 2006, p.112.

[42] Stiglitz, J., and Charlton, A., Aid for Trade. Report for the Commonwealth Secretariat, UNECA, 2006 p.94.

[43] Soludo, C., and Ogbu, O., "The Politics of Trade in Africa," in Soludo, C., Ogbu, O., and Chang Ha-Joon, in *The Politics of Trade and Industrial Policy in Africa: Forced Consensus?* Trenton: IDRC and Africa World Press, 2004 pp.43-61.

[44] Olson, M., *The Logic of Collective Action: Public Goods and the Theory of Groups*, Cambridge, Harvard University Press, 1965 p.49.

therefore seeks to reflect on international experience and to examine the institutional arrangements and interaction of actors in trade policy-making processes in Kenya.

1.6 Theoretical Framework

This section outlines one of the theories surrounding political economy and institutional issues shaping trade policy. The focus is essentially on how policy processes rather than policy content. It discusses the theoretical framework that will be used to understand why things have happened, rather than predict outcomes.

This framework will also serve as a point of reference for this particular study. Through empirical work on the study, it will then be possible to derive some hypothesis regarding the importance of the different factors in specific circumstances.

Neo-classical economic theory, which will be adapted for this study demonstrate that trade liberalization and specialization according to each country's comparative advantage benefits all countries. Trade enables the utilization of economies of scale, promotes increased competition and infuses new technology via foreign direct investment.[45] Although it is expected that free trade would lead to growth and development, many developing countries are yet to reap the predicted developmental benefits. This has led to the realization that trade liberalization and reform - though necessary - may not lead to improved trade performance unless complemented by other policy reforms (for example, macroeconomic, regulatory and structural)[46]

There are strong linkages between trade policy and other policies and therefore trade performance, growth and development. For instance, inappropriate fiscal, monetary and exchange rate polices will adversely impact on trade development. This calls for mainstreaming

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[45] Republic of Kenya, National Trade Policy: Efficient Globally, Competitive Economy, Government Printer, 2010 p. 4

[46] Dornbusch, R.; *The Limits of Trade Policy Reform in Developing Countries*, Journal of Economic Perspectives, vol 6. no. 1, pp 87-105.

trade policy into national development strategies in order to ensure that a package of reforms is formulated and implemented beyond just traditional trade issues. At the donor level, there is recognition that the trade agenda needs to be embedded in the overall development strategy and that the trade related capacity building should be coherent to the trade policy aims of the country.

The Neoclassical economic theory which is also associated with the neoliberal political policies is an approach developed in the late 19th century, partly based on books by William Stanely Jevons, Carl Menger and Leon Walras. It is grounded in the rejection of the Marxian notion of exploitation and the promotion of the idea that the distribution of social resources produced by market exchange is innately fair and just when it is allowed to work 'without friction.' This theory provides an analytical framework from which to argue in favour of the existing distribution of wealth. In this theory, those who become wealthy do so by hard work and frugality while those who become poor do so by profligacy and laziness. Nevertheless, the best of all possible worlds – Pareto Optimality – can only come about by unfetted market exchanges, allowing decision-making to occur without governmental interference which is the primary cause of the 'friction' that John Bates Clark warned about.[47] In many ways, neoclassical theory has become a tool for the dissemination of public policies and international agreements that reduce the role of government in shaping economic activities.[48]

1.7 Hypotheses of the study

The following hypothesis will be tested in this study:

i. Kenya has well developed institutional arrangements and interactions of actors in the international trade policy formulation process.

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[47] Arnsperger Christian and Yanis Varoufakis: what is Neoclassical Economics? The three axioms responsible for its theoretical oeuvre, practical irrelevance and, thus, discursive power; Oct. 2005 p.7

[48] World Trade Organization; Report on the "Seminar by the Integrated Framework Core Agencies:" The Policy Relevance *of Mainstreaming Trade into Country Development Strategies;* WTO; DC. 2005 p.115

ii. Kenya has well developed institutional arrangements and interactions of actors in the international trade policy negotiation and implementation process.

iii. There are factors that constrain effective formulation, negotiation, implementation and monitoring of the country's international trade policy.

1.8 Study Methodology

Research Design

After a careful consideration of various components such as the nature of the information needed, the data collection methods as well as the data analysis techniques required to complete this study, the researcher will adopt the exploratory framework of research design. This design has been selected for its flexibility as well as the fact that it can used as a building block for further research.

Data Sources

The study will be conducted by drawing on a range of primary and secondary sources, including Government of Kenya documents, official statistics, technical reports, scholarly journals, trade journals, review articles, reference books, library search engines, computerized databases and the internet and other relevant sources that will be deemed appropriate in providing suitable information as well as findings derived from key informant interviews. These interviews will be conducted with at least 20 respondents in national and local government, the private sector, civil societies, research institutions, producer associations exporting and importing firms, overseas development agencies, research institutions and parliament committees involved in trade issues. Purposive sampling will be used to select the specific institutions involved in trade policy formulation. One-on-one interviews will also be done specifically with the management of various institutions and Heads of Departments of the Ministry of Trade and other relevant government ministries and parastatals.

Data Review and Analysis

The data will subsequently be recorded and analyzed using appropriate mechanisms with an aim of detecting and explaining trends of international trade policies of Kenya since independence as well as Kenya's capabilities to prepare for, implement, evaluate and monitor trade policies and agreements as negotiated. Through reviewing, interpreting, and cross-analyzing both primary and secondary data, the information gathered will allow us to gain a better understanding of the situation in which Kenya finds itself on the international trading platform.

1.9 Chapter Outline

Chapter one will provide an introduction to the study.

Chapter two will give the background information into the evolution of international trade policy in Kenya and the key government actors and their roles in trade policy formulation.

Chapter three will look at the various processes and instruments involved in international trade policy formulation and the roles of various actors.

Chapter four will look at the various processes and instruments involved in international trade policy negotiations and the roles of various actors.

Chapter five will provide summary and conclusions to the study

Chapter 2

Development of Kenya's Trade Policy

2.0 Introduction

This chapter examines the background information on the evolution of trade policy in Kenya since independence. It also identifies the key state and non-state actors and the various roles that they undertake in the trade policy development process.

Kenya's trade policy development has evolved through the following distinct policy orientations: Import Substitution Policies (1960s -80s); Trade Liberalization through Structural Adjustment Policies (SAPs) (1980s) and Export Oriented Policies 1990s. Presently Kenya's Trade regime is guided by market-driven principles of liberalization under the WTO, which came into effect in 1995 and the increased efforts in the regional economic integration that has resulted in the establishment of the EAC, COMESA and the IGAD. In the 2000 decade, the policies have tended to be influenced and based on the governments definition of its policy priorities as spelt out in the two major policy documents of the time: the Economic Recovery Strategy (ERS) for Wealth and Employment Creation (2003-2007) and the Kenya Vision 2030 policy blueprint which is also the first major attempt by the Government of Kenya to define its long term policy. Kenya's policy on international trade is anchored on liberalization and globalization and driven by competitiveness[1]. Industrialization and rapid economic growth in developed and newly industrializing countries has been mainly attributed to international trade through export-led strategies.[2]

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[1] Republic of Kenya. *National Industrialization Policy Framework for Kenya; 2011-2015;* Ministry of Industrialization; Government Printer; 2011 p.14

[2] Republic of Kenya. *National Trade Policy: Efficient Globally, Competitive Economy*; Ministry of Trade; Government Printer; 2010 p.17

Kenya's overall policy on international trade is to pursue more open, competitive and export oriented policies that are compatible with multilateral, regional and bilateral trade commitments. The international trade policy regime and institutional arrangements in Kenya include international trade agreements, the import policies and procedures, the export policies and procedures and other measures affecting production. The trade policy aims at transforming the country into a more open, competitive and export-led economy.[3]

2.1 Evolution of Trade Policy in Kenya

2.1.1The Import Substitution Phase (1960s-80s)

At independence, the new government inherited an industrial policy which was based on import substitution. The Sessional Paper No. 10 of 1965 mainly centered on industrial development and pursued enhanced protection of the domestic market to help develop industries. The policy was a key influence on the development of the trade regime of Kenya over the first ten years from independence. Its objectives were to generate rapid growth of industry, ease balance of payments pressure and increase employment. There was a gradual but increasing resort to import licensing, which may have been a product of Kenya's membership of the East African Community (with Tanzania and Uganda) making use of tariffs difficult.[4] After the foreign exchange crisis in 1971, the government chose to introduce strict import controls rather than devalue. The policies contained in the Third Development Plan (1974-1978)[5] revolved around issues related to the empowering of citizens. To promote domestic trade, the government planned to continue disbursing loans to small traders through various programs and provide training programs for traders.

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[3] ibid.

[4] World Bank. *Kenya-Industrial Sector Policies for Investment and Export Growth.* Washington D.C.: World Bank, 1987 p.44

[5] Republic of Kenya. *Third Development Plan 1974-1978*; Government Printer, Nairobi, 1974 pp 7-11

The government constructed industrial centers to promote the development of the manufacturing sector. In other sectors, such as agriculture, the overriding policy strategy was to build local capacity and increase output through education and training, research and extension services, provision of infrastructure (e.g. water) and extension of credit facilities.

As the import substitution regime progressed, a large bureaucracy developed supervising and implementing import bans and controls, allocating foreign exchange, issuing trade licenses, etc. By the end of the 1970s, the high costs of the import substitution strategy to Kenya's economy was already evident. The collapse of the regional markets meant that firms started operating at excess capacity and pressure increased on the Kenyan government to increase protection of local manufacturing.[6]

The Fourth Development Plan (1979-83) signaled a change in government policy towards a more open strategy. The plan acknowledged that "past industrial growth had been fostered by excessive protection, resulting in an industrial sector which was uncompetitive, overly capital intensive in relation to Kenya's factor endowments and a heavy net consumer of foreign exchange." The plan alluded to the use of tariffs as the principle form of protection for industries rather than quantitative restrictions. Furthermore, the tariffs were to be rationalized and reduced over time. Other recommended measures included a more liberal foreign exchange rate policy and the strengthening of export promotion schemes.[7] In this phase of Kenya's development, the policy making process was primarily dominated by the government. Trade policy processes and consultations were mainly the preserve of inter-ministerial deliberations. The Central Bank of

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[6] Ogonda R.T. "Kenya's Industrial Progress in the Post-Independence Era," in Ochieng W.R and Maxon R.M. *An Economic History of Kenya (Eds.)*, East African Publishers, Nairobi. 1992 pp. 207-.310

[7] Republic of Kenya. *Fourth Development Plan- 1979-1983,* op.cit

Kenya was responsible for issuing licenses for importation and marketing boards and cooperatives were regulatory institutions.

2.1.2 Trade Liberalization in the Era of SAPs (1980s)

In 1979, coffee prices fell whereas oil prices escalated, leading to serious balance of payment problems.8 Kenya was forced to seek financial aid from the World Bank and IMF and signed its first Structural Adjustment Loan (SAL) in 1980 which had conditions attached. The implementation of the SAPs involved, among others, promotion of nontraditional exports, liberalization of marketing systems and reform of international trade regulations. Trade liberalization under SAPS was characterized by the tariffication of quantitative barriers, subsequent reduction of tariffs and tariff dispersion.[8]

In the Fifth Development Plan (1984-88), there was an emphasis on the role of private enterprises in industrial development as well as promises to support export-oriented industries. A key policy was the promotion of non-traditional exports, while on the other hand, maintaining some of the apparatus of import substitution such as import licensing and government's direct involvement in production. Furthermore, the government stated its support for regional and international trade cooperation. Policies to promote domestic trade were largely similar to previous plan periods, revolving around services like training, credit and information transfer.

Inherent weaknesses in the economy due to the weak implementation of SAPs and other policies led to the Sessional Paper No. 1 of 1986.[9] The Sessional Paper emphasized a change from reliance on import substitution and protectionism towards a policy of exposing industry to

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[8] Ronge, E. and Nyangito, H. *A Review of Kenya's Industrialization Policy*. KIPPRA Discussion Paper no.2. 2000. P.25

[9] Republic of Kenya: *Sessional Paper No. of 1986 on Economic Management for Renewed Growth*. Government Printer, Nairobi, 1986. P. 16

international competition and encouraging non-traditional exports. The paper committed the government to moving away from restrictive import licensing, high tariffs and laid out a system of incentives designed to encourage exports.

The implementation of SAPs in Kenya took place at a time of limited democratic governance and was characterized by very limited consultation among stakeholders such as the private sector, civil society or the general populace. There was also much pressure and interference from donors. Furthermore, the government did not plan for the eventual likely effects of SAPs by establishing safety nets. This explains why there was resistance from trade unions and others, although this was suppressed by the autocratic regime.

In this era of SAPs, the institutional arrangement can be best understood in the context of the wider international scene. The government's influence in formulating most of the trade-related policies was greatly reduced. The multilateral donors and agencies such as the World Bank and IMF increasingly dominated. A number of policies adopted had been suggested or imposed by these multilateral bodies as part of the conditions attached to their financial assistance.[10]

2.1.3 Export Promotion Phase (1990s)

In 1988, the second push to liberalize the trade regime began and was more successful. The Sixth Development Plan (1989-93) elaborated on the export promotion strategy which centered on the creation of an enabling environment for export growth.[11] This would be achieved through institutional reform, reduction and restructuring of tariffs, abolition of export duties, introduction

[10] 10. Republic of Kenya. Sessional Paper No. of 1986 on Economic Management for Renewed Growth. Government Printer, Nairobi, 1986 p.22

[11] Maxon Robert and Ndege Peter. "The Economics of Structural Adjustment," in B.A. Ogot & W.R. Ochieng. *Decolonization and Independence in Kenya 1940-93 (Eds.)*, East African Educational Publishers, Nairobi; 1995 pp. 151-183

of export retention schemes, improvement of foreign exchange and insurance regulations and the establishment of the National Export Credit Guarantee Corporation. It is during this period that commercial attaches were stationed in major trading partner countries and trade missions were organized to emerging markets.[12]

The same plan acknowledged that some of the export incentives announced earlier were not yet operating as envisioned and therefore it recommitted the Government to their implementation. The Seventh Development Plan (1994-96) proposed regulatory changes designed to make investments in bonded factories and export processing zones more attractive. By the end of 1994, 40 enterprises were approved to operate in six gazetted Export Processing Zones (EPZs) and, by the end of 1995, imposition of countervailing duties was the only barrier to international trade remaining.[13]

Institutional arrangements for this period were still not well-defined and the government was the key player in policy formulation and negotiations. This period was also characterized by heavy influence from multilateral organizations and little influence from private sector investors.

2.1.4 Recent Developments in Trade Policy

From 2003, the era of economic recovery strategy, Kenya's trade policy framework has focused on trade promotion strategies, sector-specific strategies, commodity-specific strategies and regional and international trade regulations which all seek to ensure that maximum benefits from trade are secured. The current Trade Policy instruments are contained in various policy documents and legislations; and are administered by various institutions.[14] Some of the policy instruments include: import/export management, taxation, trade facilitation and promotion,

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12 Ng'eno N. et al. *Regional Integration Study of East Africa: The Case of Kenya*. KIPPRA Working Paper No. 9 2003 p32

13 Odhiambo-Mbai, C.: "The Nature of Public Policy Making in Kenya 1963-1996," in Njuguna, Ng'ethe and Wasuna (eds.), *Towards Indigenizing the Policy Debate*. Nairobi: IPAR, 1998 p.53

14 Republic of Kenya. *National Trade Policy: Efficient Globally, Competitive Economy*; op. cit. p.19

licensing and registration, production and productivity, skills development and promotion, licensing and labour laws impacting on trade, investment and privatization incentives, government procurement, intellectual property rights, competition and consumer protection, financial services, ICT, trade in services and governance

The key Acts that operationalize these policy instruments include: Local Government Acts and By-Laws, Companies Act, Customs and Excise Act, EAC Customs Management Act, Weights and Measures Act, Trade Descriptions Act, Hotels and Restaurant Licensing Act, Investments Act, Standards Act, Environment Act, Industrial Property Act, Liquor Licensing Act and various institutions and consumer protection acts among others.

In the process of implementation, these trade policy instruments have faced challenges of effective coordination and harmonious decision-making leading to conflicting rules, regulations and practices affecting trade. A number of other constraints further prevail, including poor governance, poor infrastructure, high business transaction costs, insecurity, unfair competition from cheap imports and difficulties in accessing external markets.[15]

According to the Economic Recovery Strategy for Wealth and Employment Creation (2003- 2007),[16] various measures have been put in place to address the above challenges: Incentive schemes for the manufacturing sector such as duty and VAT exemptions or remissions on imported inputs; establishment of the secretariat on counterfeit control and commercial courts; strengthening of surveillance on transit imports to avoid diversion; active participation in regional and international integration and cooperation schemes such as the EAC and COMESA; application of special safeguard measures under the COMESA agreement to protect

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[15] Republic of Kenya. *Poverty Reduction Strategy Paper for the Period 2001-2004.* Nairobi: Government Printer; 2001, P.57

[16] Republic of Kenya. *Economic Recovery Strategy for Wealth and Employment Creation 2003-2007*; Government Printer; 2003 p. 27

the sugar and wheat industries; improving market access abroad particularly in the EU and in Africa; expansion and strengthening of partnerships with the private sector especially in negotiating trade protocols; developing an export development strategy that considers all sectors of export potential, reviewing existing export development incentives and focusing on measures required to ensure diversification of export markets and therefore reduce vulnerability to unilateral decisions over trade and building capacity to monitor international trade malpractices in order to effectively apply anti-dumping and countervailing measures.

Trade policy today is also shaped by Kenya's membership in trade agreements. For instance, The COMESA countries have adopted COMESA CET structure of a three–band category of 0% on raw materials and capital goods, 10% for intermediate goods and 25% for finished goods, with a provision for flexibility on policy space. WTO agreements have also influenced the direction of trade policy, as well as the capacity to participate in trade negotiations. The nature of recent developments has conceived an intricate web of relationships that encompasses domestic actors, regional actors and international actors.17

Kenya, together with the other EAC Partner States is negotiating a new trading arrangement with the EU – Economic Partnership Agreement (EPA) as a successor to the Cotonou Partnership Agreement (successor to the Lome convention). In conformity with WTO provisions the new trading arrangement will replace the non-reciprocal trade preferences arrangement offered to Kenya and other ACP countries under the Cotonou Partnership Agreement. The primary objectives of the EPAs are to foster sustainable development, integrate the ACP states into the world economy and fully comply with the prevailing WTO rules.18

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17 Kenya Institute for Public Policy Research and Analysis (KIPPRA) and Overseas Development Institute (ODI). "*Trade Policy Making Process in Kenya: the Institutional Arrangements and Interactions of Actors.*" KIPPRA and ODI, June 2007. P.20

18 Republic of Kenya. *National Trade Policy -2010*, op.cit p.19

2.1.5 Vision 2030 and the National Trade Policy

The overarching framework to transform Kenya into a globally competitive and prosperous nation with high quality of life is provided in Vision 2030. Key objectives of this Vision include: maintaining sustained economic growth of 10 percent per annum over the next 25 years; having a just and cohesive society enjoying equitable social development in a clean and secure environment; and establishing an issue-based people-centered, result-oriented and accountable democratic political system.[19] Trade Policy is a key complement of the Vision and is intended "to transform the economy from a supply constrained outfit into one that is responsive to enhanced domestic integration and wider participation in the global economy for national and international trade expansion". Trade policy is intended to fast-track the realization of Vision 2030 objectives through: promotion of decent, protected and recognized informal trade; establishment of vibrant business supported by well established and functioning infrastructure and social amenities; expansion of Kenyan exports and generation of jobs and prosperity for the people of Kenya; transformation of Kenya into a regional service hub; and enhancement of opportunities and increasing the digital opportunity index from low access (0.17) to medium access (0.5). Another key objective of the Trade Policy is to consolidate all the trade policy-related instruments and measures into one comprehensive document. The National Trade Policy of 2010 took cognizance of the existing policies and the need to develop a coherent trade policy, with a view to creating a policy environment that facilitates the development of private sector. It thus highlights constraints and challenges in international and domestic trade within the context of existing trade policies, identifies strategies and programmes to sustain the economy within the tenets of Vision 2030.[19]

19. Republic of Kenya. "*First Medium Term Plan (2008-2012): Kenya Vision 2030, A Globally Competitive and Prosperous Kenya*". Nairobi: Office of the Prime Minister, Ministry of State Planning, National Development and Vision 2030. 2008 P.10

2.2 Key Institutions and Actors

2.2.1 Ministry of Trade

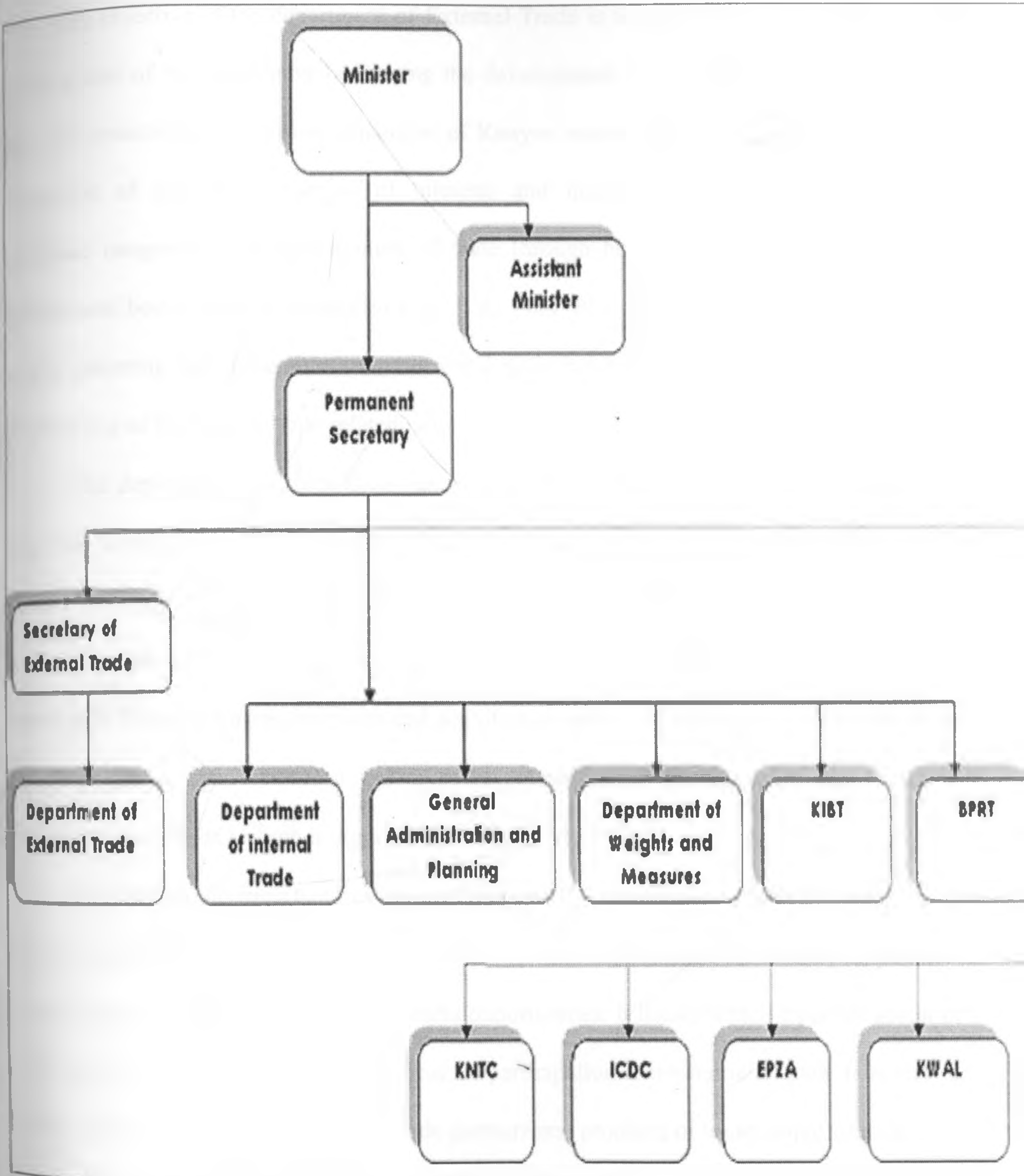
Ministry of Trade (MoT), headed by the Minister of Trade is at the centre of trade policy making. MoT holds the official mandate for trade policy issues although various elements of trade policy are undertaken by other Ministries. Nevertheless, MoT has the coordinating role for all trade matters. The Ministry's current institutional structure is the result of a number of changes that have occurred over the past decade which has resulted in various parts of the Ministries mandate being carried out by other sectors of the government. [20]

The MoT manages and implements trade policy with support from technical institutions. Its activities include trade development, research and analysis, policy making and implementation. It is also responsible for negotiations of multilateral, bilateral and regional trade agreements, although the matters related to the EAC are dealt with by another ministry specially created for this purpose. The MoT formulates trade policy taking into consideration the implementation of Vision 2030 and other national policies, and interests of the private sector and other stakeholders. Aligning policy with the regional and multilateral trading systems also drives trade policy formulation.[21]

At the operational level, the ministry is headed by the Permanent Secretary who has overall responsibility for the technical and administrative functioning of the Ministry. The Ministry then has several departments which are headed by Directors reporting directly to the Permanent Secretary.[22] The overall senior management structure of MoT is shown, to the extent relevant to the study, in figure 1 as a partial organogram.

20. Consumer Unity and Trust Society. *Towards More Inclusive Trade Policy Making: Process and Role of Stakeholders in Select African Countries*. CUTS International, Jaipur Printers P. Ltd. 2009 p.57
21. ibid.
22. KIPPRA & ODI; op.cit p.22

Figure 1: The Organizational Structure at the Ministry of Trade[23]



23. Official Ministry of Trade website – http://www.trade.go.ke/index.php?option=com_content&task=view&id=38&Itemid=59

2.2.2 Department of External Trade

The main objective of the department of External Trade is to contribute to the socio-economic development of the country by facilitating the development of favourable external trade policy that will consolidate and ensure expansion of Kenyan export market. Other objectives include: promotion of exports, promotion of bilateral and multilateral trade relations, promoting economic integration and development of trade through bilateral arrangements, regional and international bodies such as COMESA EAC, AU, ACP-EU, AGOA, WTO, ITC, UNCTAD and others, gathering and dissemination of external trade information to business community and coordinating of training on trade related issues.[24]

The department has three divisions, namely the WTO Division, Bilateral Division and Regional Division. The WTO Division handles all trade matters related to WTO, UNCTAD, UNDP, WB, IMF, UNIDO, WIPO, and FAO and participates in meetings of these organizations. It also coordinates Kenya position paper on all multilateral and international trade issues with regard to WTO, coordinates functions and activities of the NCWTO, analyzes WTO agreements impact on the Kenyan economy and gives recommendations on the same and liaises with government ministries and other organizations regarding WTO.[25]

The bilateral division handles bilateral trade policy formulation, monitoring and evaluation and bilateral trade development. It also advises the business community on policies for trade policies promotion and new business opportunities. It liaises with the private sector in handling bilateral trade matters and prepares for participation in international trade fairs and finally, it handles trade statistics, main trade partners and products of trade, opportunities for Investment and the national export strategy.[26]

24. Official Ministry of Trade website: http://www.trade.go.ke/index.php?option=com_content&task=view&id=22&Itemid=43
25. ibid
26. ibid

The Regional Division handles trade issues related to regional economic integration groups - COMESA, EAC, ACP-EU, COTONOU Agreement and Commonwealth Secretariat as well as trade policy formulation and preparation of economic briefs on these regions. It promotes new regional initiatives such as NEPAD under the AU and works to enhance co-operation with other regional bodies such as SACU, SADC, NAFTA, MERCUSOR and ASEAN and others.[27]

2.2.3 Other Relevant Ministries and Government Departments

A number of other government ministries and departments contribute to the trade policy making process. Key among these include: The Ministry of East African Community, which coordinates all activities related to East African Community. It coordinates monitors and evaluates the implementation of EAC policies, projects and programmes and liaises with the public and private sector stakeholders on EAC matters. The EAC Ministry also facilitates the review of Treaties, Protocols and Agreements under the EAC including those related to regional integration; The Ministry of Industrialization develops and implements the National Industrial Policy; The Ministry for Planning, National Development and Vision 2030 is responsible for national development planning; The Ministry of Finance sets and administers the national budge; Ministry of Foreign Affairs has the overall responsibility of dealing with international relations, Ministry of Agriculture formulates agricultural policies including plans to ensure sufficient domestic capacity to produce and supply the staple food commodities; and the Central Bank of Kenya sets the monetary and exchange rate policies as well as ensures macro-economic stability.[28]

27. The Official Ministry of Trade website. Op.cit
28. Consumer Unity and Trust Society. *Towards More Inclusive Trade Policy Making: Process and Role of Stakeholders in Select African Countries*. CUTS International, Jaipur Printers P. Ltd. 2009 p. 57-58

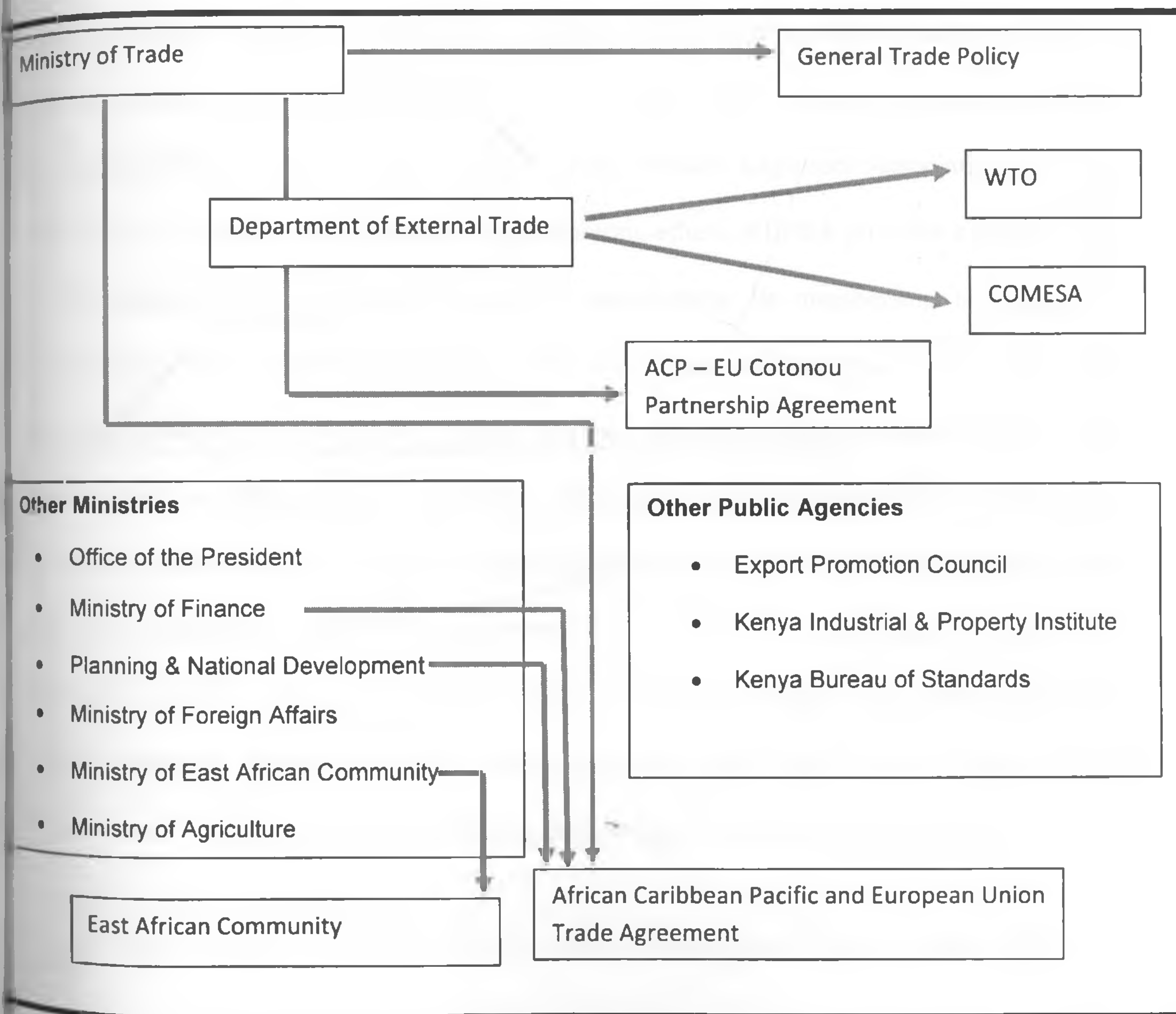
There are several other government agencies and parastatals that are responsible for dealing with matters that are related to selected trade policy measures and/or implementation of commitments under the multilateral and other trade agreements. These include: National Economic and Social Council that is entrusted with the responsibility of deliberating and advising on economic and social issues facing the country; Kenya Bureau of Standards that deals with the development and enforcement of domestic standards and acting as the focal point for issues related to international standard setting; Kenya Revenue Authority that collects governmental revenues including customs duties; and Kenya Industrial Property Office that administers laws related to intellectual property. Kenya Export Promotion Council and Kenya Exports Processing Zones Authority perform the main functions regarding export promotion whereas Horticultural Crops Development Authority is tasked with the development of horticultural sector which has emerged as the key export sector in recent years.

Kenya Investment Authority works to promote investment, Privatization Steering Committee deals with disinvestment of state enterprises and Development Bank of Kenya is mandated to provide development financing for projects. The Kenya Plant Health Inspectorate Service enforces plant protection standards and laws. Finally, KIPPRA provides the intellectual backstopping for various policies through its research and analysis activities.[29] These and other relevant government ministries and departments influence the trade policy making and implementation and interact with MoT in three ways. First, some of them that are tasked with the development of other key policies for example Vision 2030 set the parameters for trade policy. [30]

29. CUTS International. *Towards More Inclusive Trade Policy Making.* op.cit.
30. ibid.

Second, many of them implement various aspects of trade policy and/or its instruments for example, the Kenya Revenue Authority collects customs duties on imports, Industrial Property Office ensures the implementation of Kenyan commitments under the WTO Trade Related Aspects of Intellectual Property Rights (TRIPs) Agreement, etc.). Third, they provide inputs and comments on trade policy for example Ministry of Agriculture on issues related to trade in agricultural products.[31]

Figure 2: Key Government Ministries and Agencies Engaged in Trade PolicyFormulation[32]



31. ibid

32. Adapted from KIPPRA, Overseas Development Institute (ODI), and the Institute for Development Studies (IDS), University of Nairobi. "Trade Policy and Poverty Linkages in Kenya" Nairobi: KIPPRA, ODI and IDS, June 29, 2007 p. 43

2.2.4 Private Sector and Business Organizations

Kenya has a vibrant business sector engaged in all segments of economic activity. Its reach and sphere of activities has increased over the years due to privatization and deregulation policies pursued by the government and the deepening of regional integration.[33]

Businesses have organized themselves into a number of organizations. Three of these are broad-based umbrella organizations that strive to coordinate and represent the collective interests of the private sector and businesses. These are: KNCCI, KEPSA, and the FKE. KAM on the other hand brings together the enterprises engaged in manufacturing only. In addition, there are some sector-specific business associations also that represent the interests of a particular sector, for example, Kenya Flower Council (KFC), Fresh Produce Exporters Association of Kenya (FPEAK), and Computer Professionals' Union, among others. KEPSA provides a unified voice for the private sector in public-private sector partnerships. Its membership is diverse and representation on the governing council is inclusive. It provides opportunities for round table meetings, conferences, seminars and special discussion forums on topical issues like EPAs. The forums usually involve government ministries and agencies that deal with trade. Similarly KAM represents manufacturers as an umbrella organization and engages in influencing national trade policy via various sector-specific Negotiation Committees. It is also directly involved in consultative processes with various government ministries and departments. KFC and FPEAK actively participate in negotiations for market access in horticulture products exported from Kenya to the EU, assisting producers and exporters to meet standards and other requirements.[34]

33. Oyango, Christopher. *"Role and Influence of Main Interest Groups in the National Trade Policy Making Process"* Paper for CUTS Geneva Resource Centre FEATS National Inception Meeting in Nairobi, Kenya: October 14, 2008. P.34
34. ibid

2.2.5 Civil Society Organizations

The civil society scene in Kenya is rich with a number of civil society organizations. The CSOs include international NGOs like Oxfam and CUTS International, regional NGOs like Southern and Eastern African Trade Information and Negotiations Institute (SEATINI), and national NGOs like Centre for Development Concern.[35] They engage in lobby and advocacy as well as research, analysis and capacity building activities on a number of issues ranging from political to social to economic matters. The number and diversity of interests of CSOs in Kenya make important to have some mechanism for information and knowledge sharing and facilitating joint activities where needed. The Kenya Civil Society Alliance (KCSA) responds to this need. Many CSOs have interests in the area of trade policy. The main organizations dealing with trade issues include: ActionAid Kenya, Oxfam, EcoNews Africa, Consumer Information Network, CUTS, RODI, CDC, SEATINI, the Institute for Economic Affairs, and the Kenya Human Rights Commission.

Among the civil society are also included universities and research institutions that undertake research and analysis activities to inform trade policy making. Their research and analysis is used by both the government to set the policy measures as well as the NGOs to support their lobbying and advocacy activities. African Economic Research Consortium (AERC) and KIPPRA are two prime examples of such research institutions that have produced relevant research and analysis on trade issues. CSOs activities on trade policy issues started in late 1990s and initially focused on WTO issues. More recently their focus of attention has been the EPA negotiations with the EU and the regional integration arrangements particularly the EAC.

35. Oyango, Christopher. *"Role and Influence of Main Interest Groups in the National Trade Policy Making Process"* Paper for CUTS Geneva Resource Centre FEATS National Inception Meeting in Nairobi, Kenya: October 14, 2008. P.37

CSOs have tried to work with the government including through commissioning research. For example, research that informed national positions on the two immediate past WTO Ministerial Conferences were commissioned and undertaken by a consortium of CSOs: EcoNews Africa, Oxfam, Novib, Traidcraft, and Kenya Human Rights Commission. [36]

2.3 Key Consultative Mechanisms

Several consultative mechanisms have been established for consultations with various stakeholders on trade policy issues.

2.3.1 National Committee on the WTO (NCWTO)

The NCWTO is mandated to develop national positions on the WTO. This is the main consultative forum that brings together all stakeholders from the public sector, private sector, and the civil society to discuss trade policy issues related to the WTO. The NCWTO was established in pursuance of government reforms to involve all stakeholders into policy making processes: it was also a demand of the civil society. In the mid-1990s and after the WTO was established, with its far reaching agreements and commitments, NGOs felt that their concerns were not being taken into account by the government while determining its position on WTO issues.[37]Further discussion on NCWTO, its roles and challenges are discussed in chapter three.

2.3.2 Joint Industrial and Commercial Consultative Committee (JICCC)

Like the NCWTO, the MoT convenes and chairs the meetings of the JICCC also and provides the secretariat for its functioning. But unlike the NCWTO the JICCC consist mainly of the public and private sector representatives and meets when convened by the MoT to deliberate on specific issues related to industrial and commercial matters.

36. Onyango, Christopher, ibid p. 12
37. CUTS International. *Towards More Inclusive Trade Policy Making*; op.cit p.61

The JICCC functioning has not been very visible with little information available in the public domain on the periodicity, agenda and outcome of its meetings.[38]

2.3.3 KEPLOTRADE and National Development and Trade Policy Forum (NDTPF)

In Kenya, preparations for the EPA negotiations are being facilitated through the KEPLOTRADE Trade Negotiations Support Programme.[39] The civil society engagement in EPAs has been through a separate forum, the NDTPF.

The NDTPF is mandated to discuss and recommend the negotiating position for the country in EPA negotiations based on analytical studies and inputs and with a view to strengthening links between trade and development. These national negotiating positions are then taken by the national negotiators to the Regional Negotiating Forum where the regional negotiating position is formulated. The consultative framework for EPA is well defined and well funded (EU provided funding for this framework). The NDTPF allows for informed participation by all stakeholders whether from the government, the private sector, or the civil society including the research institutions. MoT coordinates the functioning of the NDTPF and acts as its secretariat.[40]

2.3.4 Cabinet's Sub-Committee on Trade/Inter-Ministerial Committees (IMCs)

Several mechanisms exist to consult relevant government ministries on trade policy issues and coordinate their functioning for proper implementation. At the highest level, Office of the President plays a crucial role in the formulation and implementation of trade policies in Kenya. Sectoral working groups of experts and the appointments of a Presidential Committee or Commission are common approaches to forming policy measures.[41]

38. Consumer Unity and Trust Society. *Towards More Inclusive Trade Policy Making: Process and Role of Stakeholders in Select African Countries*. CUTS International, Jaipur Printers P. Ltd. 2009 p.61
39. ibid
40. ibid
41. Official website of the Kenya Ministry of Trade. http://www.trade.go.ke/

The next level is the Cabinet sub-Committee on Trade where ministerial level consultations and coordination takes place on trade-related issues. This sub-Committee performs an important role in resolving issues among the ministries and ensuring a coherent and coordinated approach to trade policy.

Finally, coordination among various government ministries and agencies is also achieved through Inter-Ministerial Committees (IMCs). IMCs are initiated and coordinated by relevant ministries and are usually held on a case-by-case basis. [42] IMCs are an important mechanism for inter-ministerial consultations and bring together all governmental stakeholders. They allow for provision of technical inputs, substantive comments, and harmonization of various policies being pursued by different government ministries.

2.4 Conclusion

From this discussion, it is evident that since independence, Kenya has gone through a series of trade policy episodes from inward-orientation to more liberal outward-orientated trade regimes in pursuit of sustainable economic growth and development and that presently Kenya's trade regime is guided by market-driven principles of liberalization under the WTO. This phase also notably coincided with increased efforts in the regional economic integration initiatives that resulted in the establishment of the EAC and COMESA Customs Unions. In addition to the global and regional trade initiatives, the trade sector in Kenya is also influenced by commodity regulations contained in other various Acts under the administration of several ministries and public institutions and apart from the state actors, there are also key non-state actors that participate actively in the trade policy formulation process.

42. KIPPRA & ODI; *Trade Policy Making Process in Kenya: the Institutional Arrangements and Interactions of Actors*. Op.cit. p.12

Chapter 3

Kenya's International Trade Policy Formulation Process and Actors

3.0 Introduction

International trade policy consists of bilateral and multilateral arrangements between countries and dictates the terms of commerce between them. As Jeff Faux has said, "the precise content of a market's rules has major consequences for who gets to be rich and who gets to be poor." [1] As such, the development of an effective trade policy, whether national or international, requires coordinated efforts among all actors and stakeholders. This chapter seeks to elaborate how the process of international trade policy formulation is carried out in Kenya. In so doing, this chapter will focus on some of the international trade arrangements in which Kenya participates and the roles of some of the key stakeholders in the trade formulation process. The trade arrangements identified for this purpose are the WTO, COMESA and EAC.

3.1 Institutional Arrangements for Trade Policy Formulation

The official institutional framework for public policy making in Kenya comprises the executive, legislature, judiciary, local authorities and political parties. In an effective setup, it is expected that these bodies interact with one another and with various interest groups within civil society and private sector. It is through such interactions that well thought out and effective public policies are expected to materialize.[2]

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1. Faux Jeff: The Global Class War: How America's Bipartisan Elite Lost Our Future – and What It Will Take to Win It Back, John Wiley & Sons. NY,2006. P.3

2. Odhiambo-Mbai, C. "The Nature of Public Policy Making in Kenya: 1963-1996," in Njuguna, Ng'ethe and Wasuna (eds.), *Towards Indigenizing the Policy* Debate. Nairobi: IPAR. 1998 pp.21-37

The executive usually formulates two categories of policy: developmental and regulative. The two common approaches used in formulating development policies are the formation of sectoral working groups or experts and the appointments of a Presidential Committee or Commission. Within the Executive, the Ministry of Planning and National Development has the primary role of formulating development policies and coordinates their implementation nationally. The organizational structure extends further to the central and provincial organizational structures. At the central or national level, the organizational structure is made up of the Cabinet, the Ministry of State for Planning, National Development and Vision 2030, the Ministry of Trade and the Planning Units within the various ministries. It is worth noting that policies that have immediate financial implications require the input of the Ministry of Finance.[3]

Most of the policies initiated by the executive arm of government require approval of the legislature before implementation. The judiciary, on the other hand, acts as a moderator of the possible excesses of the two arms of government and ensures that their operations are within the constitutional order. Local authorities pass by-laws that regulate developmental activities in their areas of jurisdiction. These include issues on trade, particularly domestic trade. Competitive party politics usually provides an opportunity for a political party to convey its development policies and its subsequent election implies the approval, by the majority, of its public policies. This explains the similarity of development plans and party manifestoes.[4] The key contents of the manifestoes usually originate from the party supporters or the civil society. This implies that party politics is a key way through which the general public or civil society contributes in the public policy making process.

3. ibid.

4 Krueger, A. *Political Economy of Policy Reform in Developing Countries*. Boston: MIT Press; 1993 p.12

3.2 The Trade Policy Formulation Processes

As discussed in chapter two, trade policy formulation, implementation and coordination are the responsibility of several ministries with the Ministry of Trade spearheading the process.

Figure 3 below illustrates a representative process of trade policy making in Kenya. In practice, there are an infinite number of ways of formulating and implementing trade policy. The process depicted here should be viewed as the comprehensive - or ideal - trade policymaking process within Kenya's existing institutional framework(s). In the ideal set up, the process of making trade policy is made up of various stages from the time a policy need is identified up to the time when it is given presidential assent.

These stages are as follows:

Once a policy need [5] has been identified, the Permanent Secretary in the concerned ministry sets up a task force to collect views on the policy issue at hand and develop a Sessional Paper; then a stakeholder discussion of the views collected by the task force takes place. The JICCC and the Department of External Trade play a significant role in coordinating the discussions among the stakeholders; after these deliberations have taken place, the ministry draws up a cabinet memorandum seeking cabinet approval; once approved by Cabinet, the Ministry in consultation with various stakeholders draws-up a draft policy; the office of the Attorney General then prepares a draft bill for parliamentary debate; the Cabinet and the President respectively approve the Sessional paper to give it legitimacy; once it receives Presidential assent, it becomes an Act of Parliament, which can be enforced by law.[6]

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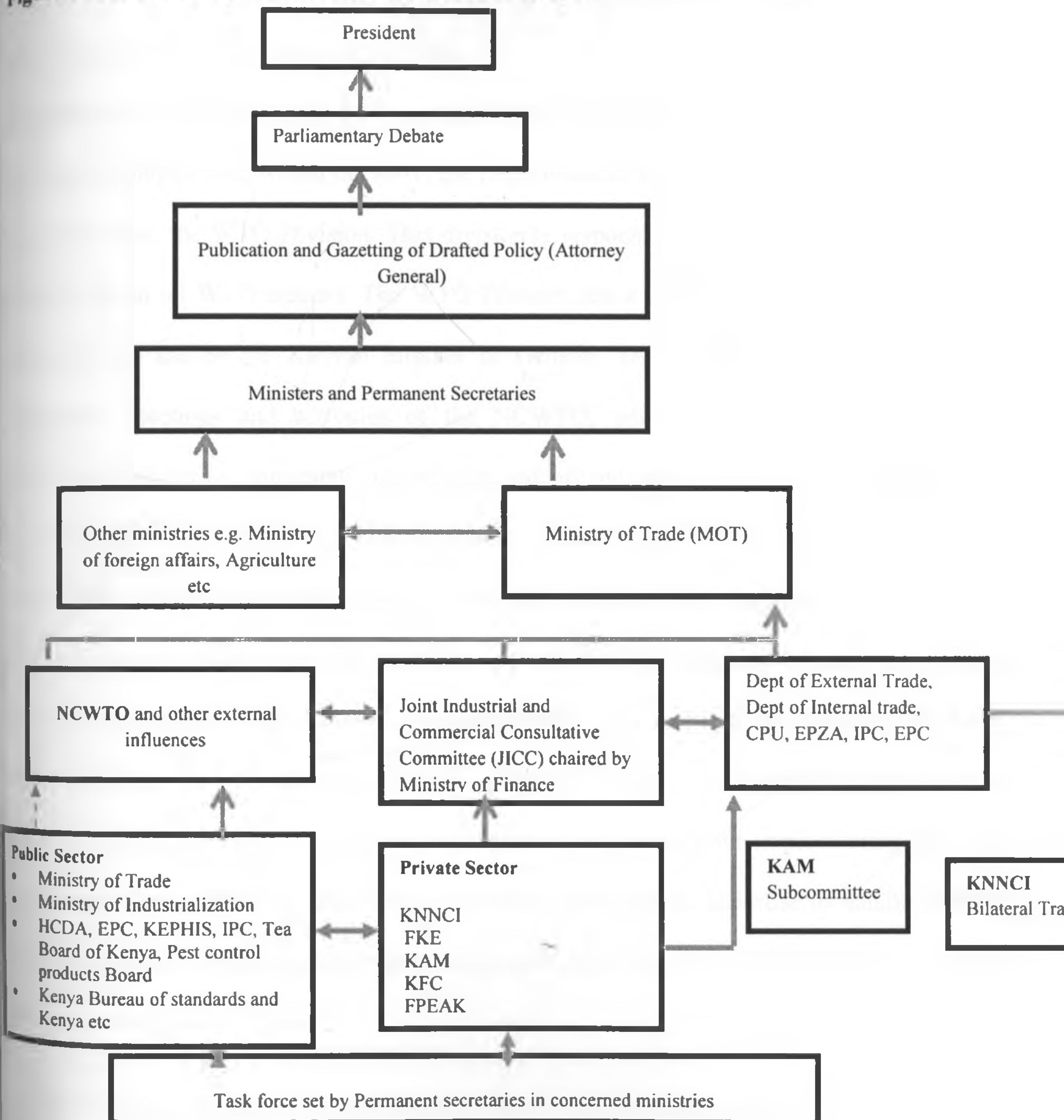
5 A policy need can be as a result of external influences, internal issues or through presidential decrees

6. Manyara, E. B. "Trade Policy Making Process in Kenya." Presentation for CUTS Geneva Resource Centre *FEATS National Inception Meeting in Nairobi*, Kenya: October 14, 2008. P.22

The implementation of the policy is carried out by the relevant bodies either private or public depending on the sections of the Act. It should be noted that many other policy decisions are made at the Ministry level often in consultation with stakeholders through gazette notices etc.

Figure 3: Trade Policy Formulation Process in Kenya [7]



[7] Adapted from KIPPRA & ODI; 2007 p.32

3.3 Multilateral Trade Policy Formulation Process

Kenya signed the Marakech Agreement on 15th April 1994 in Morocco and completed the notification process by December 31 1994, thus becoming a founder member of the WTO.[8] In order to effectively implement Kenya's obligations under the WTO, a National Committee on WTO issues, NCWTO, was formed in 1995.[8]

3.3.1 Structure, Organization and Functions of the NCWTO

As noted in chapter two, within the MoT, the Department of External Trade is found and within this department, the WTO Division. This division is responsible for coordinating action within government on all WTO matters. The WTO Division has a number of professional staff both within Kenya and at the Kenyan mission in Geneva. The Department of External Trade coordinates meetings and activities of the NCWTO, whose membership is drawn from government ministries, parastatals, universities and private sector organizations. The NCWTO has 45 members and is chaired by the Permanent Secretary in the Ministry of Trade. Currently, the NCWTO is an informal body which has no legal mandate.[9] The purpose of the NCWTO is to: develop modalities for the implementation of the WTO Agreements in order to maximize benefits to the country; to provide the government and the private sector with market information which will assist the identification of trading opportunities and to assist the Government in identifying areas that require legislative or administrative changes for implementing the WTO Agreements The NCWTO includes sub-committees with specific expertise to handle different issues including: Agriculture sub-committee (chaired by the Ministry of Agriculture); Services sub-committee (chaired by the

8. World Trade Organization Secretariat, Trade Policy Review Body. "*Trade Policy Review: Kenya,*" WTO, January 19, 2000 p.4

9. Consumer Unity and Trust Society. *Towards More Inclusive Trade Policy Making: Process and Role of Stakeholders in Select African Countries*. CUTS International, Jaipur Printers P. Ltd. 2009 p.60

Ministry of Transport and Communications); Market Access sub-committee (chaired by the Department of Industry) and the Trade and Environment sub-committee (chaired by the National Environmental Management Authority (NEMA); Trade Facilitation sub-committee (chaired by the Department of Internal Trade); Trade and Competition sub-committee (chaired by the Monopoly and Price Commission); Trade and Investment sub-committee (chaired jointly by the Investment Promotion Council (IPC) and the Ministry of Finance); Transparency and Government Procurement sub-committee (chaired by the Ministry of Finance); E-Commerce sub-committee (jointly chaired by the Ministry of Transport and Communication) and Trade-related Intellectual Property Rights sub-committee (chaired jointly by KIPI and the MoT) [10]

Each sub-committee has a Focal Point. These are organizations with expertise and competence in particular WTO issues and can be technical institutions, ministries, etc. These Focal Points provide technical inputs on specific issues. Similarly, there are National Enquiry Points (NEPs) established to help disseminate crucial information related to trade issues (for example KEBS and KEPHIS). There are also a number of Reference Points that store and disseminate WTO-related reference materials. They include the Department of External Trade within MoT, which is the reference point for the public sector and the Centre for Business Information in Kenya (CIBK) within the Export Promotion Council for the business community.[11]

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10. Consumer Unity and Trust Society. *Towards More Inclusive Trade Policy Making: Process and Role of Stakeholders in Select African Countries.* ibid.

11. ibid. p.61

3.3.2 Challenges facing the NCWTO

The NCWTO faces a number of challenges. The body has no legal mandate and this has led to two shortcomings. Firstly, treasury is not obliged to allocate it funds, and therefore it does not have its own budget from the government. Earlier sources of funds under the Joint Integrated Technical Assistance Program (JITAP) elapsed. Secondly, the government is not under any obligation to adopt its findings and recommendations, as such, its role is purely advisory and the Minister for Trade during any negotiations is not obliged to follow the position developed by the NCWTO.[12] Discussion with Ministry officials and stakeholders involved in the NCWTO highlighted several problems: irregular meetings, poor information flow and poor coordination among members. Lack of human resources makes NCWTO rely on members of staff from MoT who are also required to perform other ministerial duties. In practice, members often fail to attend meetings and therefore are not up-to-date, slowing down the entire process as clarifications are sought. It was observed that there is lack of consistency in individuals participating in the meetings, as 'new faces' keep turning up, reducing the productivity of the meetings. [13] A survey conducted by KIPPRA in 2007 indicates that only 32 percent of the state actors and 40 percent of the private sector group surveyed mentioned that they are represented in the NCWTO. Although 55 percent of the CSOs are represented, they only featured in two clusters (i.e. agriculture and services). Out of the 6 major research institutions, only KIPPRA is occasionally invited to the NCWTO. [14]

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12. Kenya Institute for Public Policy Research and Analysis and Overseas Development Institute. *"Trade Policy Making Process in Kenya: the Institutional Arrangements and Interactions of Actors."* KIPPRA and ODI, June 2007. P.44

13. Ddamilura, Davis and Halima Noor Abdi. *"Civil Society and the WTO Participation in National Trade Policy Design in Kenya and Uganda."* CAFOOD Trade Justice Campaign, August 2003. P.11

14. KIPPRA & ODI. ibid

3.4 Regional Trade Agreements

Kenya belongs to several regional trade agreements including the EAC, COMESA and the Cross Border Initiative (CBI). The EAC is composed of Kenya, Uganda, Tanzania, Rwanda and Burundi and is now a Customs Union. COMESA on the other hand is one of the largest trading blocs within Africa.[17] The Cross-Border Initiative (CBI) comprises a common policy framework developed by fourteen participating countries in Eastern and Southern Africa and the Indian Ocean, with the support of four co-sponsors; the International Monetary Fund, the World Bank, the European Union, and the African Development Bank. The policy framework aims to facilitate cross-border economic activity by eliminating barriers to the flow of goods, services, labor, and capital, and to help integrate markets by coordinating reform programs in several key structural areas, supported by appropriate macroeconomic policies.[18]

3.4.1 Trade Policy Formulation Process within COMESA

COMESA is currently a Customs Union that brings together 19 countries that form an economic bloc and intends to become a full Economic Community by 2025. The organizational structure of COMESA comprises of: The Authority; Council of Ministers; Court of Justice; Committee of Central Bank Governors; Inter-Governmental Committee; National Technical Committees; Secretariat and Consultative Committee of the Business Community and other Interest Groups.

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17. Ng'eno N. K., Nyangito H. O., Ikiara, M., Ronge, E. & Nyamunga J. (2003). Regional Integration Study of East Africa: The Case of Kenya. KIPPRA Working Paper No.9. 2003 p.11
18. Fajgenbaum Jose, et. al. *The Cross-Border Initiative in Eastern and Southern Africa.* IMF. 1999 p.3

In Kenya, the trade policy formulation process under COMESA is structured as follows: At the national level, an Inter-Ministerial/Inter-sectoral Committee comprising of public and private sector stakeholders spearheads the negotiations. [19] This is then followed by Technical Committees and the National Working Group under the Regional Integration Facilitation Forum (RIFF) that review, negotiate, and monitor implementation of specific sectoral programs and activities. The National Working Group also reviews proposals by COMESA Secretariat on the Common Tariff Nomenclature. After deliberations with the Technical Committees, the next step is for a technical proposal to be tabled at the COMESA Intergovernmental Committee, which consists of Permanent Secretaries from the member states responsible for the development and management of programs and action plans in all sectors of cooperation, with the exception of the finance and monetary sector. The action plans are then presented to the COMESA Council of Ministers which takes policy decisions on the programs and activities. The said policies are then passed over to the ultimate Authority, composed of Heads of State and Government and who are responsible for giving assent to the policies.[20]

3.4.2 The East African Community (EAC)

The EAC is a regional inter governmental organization established under Article 2 of the Treaty for the Establishment of the East African Community that entered into force in July 2000. The membership of the Community comprises the Republics of Burundi, Kenya, Rwanda, Uganda and the United Republic of Tanzania. [21]

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19. Kenya Institute for Public Policy Research and Analysis and Overseas Development Institute. *"Trade Policy Making Process in Kenya: the Institutional Arrangements and Interactions of Actors."* KIPPRA and ODI, June 2007 p.47
20. ibid
21. East African Community. *4th EAC Development Strategy (2011/12-2015/16) Deepening and Accelerating Integration.* EAC, 2011 p. 9

As stated under Article 5 (2) of the Treaty, "the Partner States undertake to establish among themselves and in accordance with the provisions of this Treaty, a Customs Union, a Common Market, subsequently a Monetary Union and ultimately a Political Federation in order to strengthen and regulate the industrial, commercial, infrastructural, cultural, social, political and other relations of the Partner States to the end that there shall be accelerated, harmonious and balanced development and sustained expansion of economic activities, the benefit of which shall be equitably shared."[22] The adoption of the CET by the Partner States, ending the practice of Partner States charging different national tariffs and observing the provisions of EAC customs protocol are expected to contribute significantly towards enhanced simplicity, rationalization, and transparency of EAC Partner States' tariffs. These initiatives inform the direction of the trade policy.[23]

3.4.3 Trade Policy Formulation Process within the new EAC

The Treaty for the establishment of the new EAC was signed by the leaders of the East African states at Arusha, in Tanzania, on November 1999. The Republic of Rwanda and the Republic of Burundi acceded to the EAC Treaty in June 2007 and in July, they became full EAC members. The trade policy formulation process in the new EAC is complex and involves many stages. For Kenya, it begins with the formation of a High-level Task Force which consists of experts from key ministries, private sector representatives and Kenya Revenue Authority officials. [24]

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22. ibid
23. Republic of Kenya. *Kenya National Trade Policy, Efficient Globally Competitive Economy.* Government Printer, 2009. P.17
24. Manyara, E.B. *"A Paper on Trade Policy Making Process in Kenya."* Paper for CUTS Geneva Resource Centre. FEATS National Inception Meeting in Nairobi, Kenya: October 14, 2008.

The High Level Task Force is responsible for discussing issues pertaining to the Customs Union and Common External Tariff and compiles a position paper for Kenya with which negotiations can then be initiated and strategies can be formulated for the different Sectoral Committees. The High Level Task Force consists of several government Ministries and private sector representatives each with its own functions. These include: Ministry of East African Community which is responsible for coordinating the task force. It presents Kenya's Position papers after consultations; Ministry of Trade is in charge of issues pertaining to trade; Ministry of Finance handles the monetary and macroeconomic issues; Kenya Revenue Authority provides expertise on tax issues and Attorney General Chambers informs on legal issues. [25]

Sectoral Committees consist of experts from the five countries. They are responsible for tabling their various country position papers and discussing the various issues of concern within their various sectors. Their recommendations are then made to the Coordination Committee. Specifically the sectoral committees perform the following functions: Each committee is responsible for the preparation of a comprehensive implementation program and the setting out of priorities with respect to its sector; monitoring and keeping under constant review the implementation of the programs of the Community with respect to its sector and submit from time to time, reporting and making recommendations to the Co-ordination Committee either on its own initiative or upon the request of the Co-ordination Committee concerning the implementation of the provisions of the Treaty that affect its sector.[26]

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25. Lyakurwa, W., McKay, A., Ng'eno, N. & Kennes, W. "Regional Integration in sub-Saharan Africa: A review of Experiences and Issues," in Oyejide, T.A. et al.(eds.), *Regional Integration and Trade Liberalization in Sub-Saharan Africa.* Vol. Issue1: Framework, Issues and Methodological Perspectives. London: Macmillan. 1997 pp.12-31

26. ibid

Coordination Committee consists of the Permanent Secretaries responsible for the EAC in each partner state (and other Permanent Secretaries as each partner state may determine). Thus for the Kenyan side, the Permanent Secretaries for Trade, Finance and Planning are also in the committee. The functions of the Coordination Committee are to: Receive and consider reports from the Sectoral Committees; submit from time to time, reports and recommendations to the Council either on its own initiative or upon the request of the Council as well as to implement the decisions of the Council as the Council may direct. [27] The Council considers what is tabled from the Coordination Committee. The council may further hold discussions with the permanent tripartite commission, which consists of members from the five partner states, until a consensus is reached. The Council is thereafter responsible for tabling bills for discussion in the East African Legislative Assembly (EALA). [28]

The East African Legislative Assembly (Assembly) is an organ of the East African Community; established under Article 9 of the Treaty for the Establishment of the East African Community. Under the Treaty, the Assembly has a Membership comprising nine members elected by each Partner State; ex-officio members consisting of the Minister or Assistant Minister responsible for the East African Community Affairs from each Partner State; the Secretary General and the Counsel to the Community. Currently, the Assembly has 45 elected Members; and 7 ex-officio Members totaling to a Membership of 52. Twenty of whom are female.[29]The Assembly has a cardinal function in the furtherance of Community objectives; this function encompasses the legislative, representative and oversight mandate.

27. ibid.
28. ibid.
29. Official East African Community Website: http://www.eala.org/component/content/article/26-overview/13-welcome-to-the-east-african-legislative-assembly.html

Article 49 of the Treaty stipulates that the Assembly shall: be the legislative organ of the Community; liaise with the National Assemblies of the Partner States on matters relating to the Community; debate and approve the budget of the Community; consider annual reports on the activities of the Community, annual audit reports of the Audit Commission and any other reports referred to it by the Council; discuss all matters pertaining to the Community and make recommendations to the Council as it may deem necessary for the implementation of the Treaty; may for purposes of carrying out its functions, establish any committee or committees for such purposes as it deems necessary; recommend to the Council the appointment of the Clerk and other officers of the Assembly; and make its rules of procedure and those of its committees. The Assembly may also perform any other functions as are conferred on it by the Treaty.[30]

3.5 The Role of State and Non-State Actors in Trade Policy Formulation Process

The above institutional arrangements for trade policy formulation are clearly complex, especially given the various distinct yet overlapping levels of formulation and negotiation processes at the national, regional and multilateral levels. Furthermore, the issues of concern are diverse and technical and no single entity (for example, government) can effectively address all these varying demands without a strong partnership with the other stakeholders. These institutional arrangements require specialized levels of organization and coordination of activities between and among state and non-state actors, requiring immense human and financial resources. It is essential to have wide participation of all stakeholders to boost ownership and facilitate implementation and it is important for the stakeholders to have the requisite capacity for effective participation in this process.

30. ibid

Although MoT is more active in involving stakeholders, results of a survey conducted by KIPPRA indicates that there is a feeling among all actors that they are not sufficiently represented in trade policy formulation and negotiations. This was true for 70% of the state actors and 80% of the non-state actors. Inadequate human and financial resources tallied high as the main constraints inhibiting effective and sufficient participation and hence representation of actors in the various committees.[31]

There are many other factors that can affect participation of stakeholders. For instance, stakeholders may shy away if their contributions in the proceedings are not utilized to shape policy or if they perceive that there is lack of transparency in the process. The KIPPRA survey results indicate that the non-state actors largely perceive their influence as weak. Although the state actors perceive their influence as moderate, only 50% stated that they determined the negotiating agenda. Also, 80% of the producers and 30% of state actors declared that the process is not transparent. Another factor that may affect participation is poor coordination. Some respondents pointed out that scheduled meetings of the various processes tended to occur simultaneously and hence deterred effective participation of actors.[32] Further, the respondents (both state and non-state actors) consider that small and micro enterprises, consumer groups and producer organizations (including farmer associations) are largely excluded from the trade policy-making process. District Trade Officers, research institutions and professional bodies are also seen as largely excluded. [33]

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31. Oyango, Christopher. *"Role and Influence of Main Interest Groups in the National Trade Policy Making Process."* Paper for CUTS Geneva Resource Centre FEATS National Inception Meeting in Nairobi, Kenya: October 14, 2008.
32. Kenya Institute for Public Policy Research and Analysis and Overseas Development Institute. *"Trade Policy Making Process in Kenya: the Institutional Arrangements and Interactions of Actors."* KIPPRA and ODI, June 2007. P.36
33. ibid

3.6 Private Sector Organizations

The private sector actors usually interact in a formal manner with the government (and other actors) through private sector umbrella bodies like the Kenya National Chamber of Commerce and Industry (KNCCI) and the Kenya Private Sector Alliance (KEPSA). The effectiveness of the participation of the private sector is usually pegged on the strength of these umbrella bodies. Their role should be to represent the interest of their members especially when there are policy changes that affect them. Their effective participation in policy making is important to boost ownership and therefore the implementation of policies - which is still perceived to be poor. In the KIPPRA survey, individual private sector companies mentioned that they do not feel sufficiently represented by the KNCCI. They attribute this weak representation to ineffectual management of the KNCCI. KEPSA is relatively new, however its participation in the various negotiation processes seems to be strong. [34]

3.7 Civil Society Organizations

There are a large number of CSOs with varying levels of size, scope, geographical coverage and resource bases. This study only looks at a sample of CSOs whose mandates include trade issues and which have a national scope. It attempts to suggest an institutional framework, which would provide an effective platform for channeling the views of all CSO stakeholders on any pertinent trade policy issues.

The relationship between the government and CSOs has changed over the years. The relationship was originally one of mistrust and there was limited policy dialogue.[35]

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34. KIPPRA & ODI. "Trade Policy Making Process in Kenya: the Institutional Arrangements and Interactions of Actors. op.cit

35. Wanjau, Joe. "*Kenya's Experience in Creating an Umbrella (apex) Private Sector Body to Influence Pro-business Policies by Government.*" *2008* .p.12

However, over the last few years, relations have progressively improved and the government's appreciation of the civil society's contribution to development issues has broadened. The relationship reached an all-time high after the 2002 elections that ushered the NARC coalition (some of whose members had been working closely with CSOs) to power. Now, the critical issues are: Whether there are adequate institutional arrangements to facilitate the effective participation of CSOs in trade policy formulation and other related issues; whether the CSOs are clear on what issues clearly fall within their mandates and/or missions and whether the CSOs have the capacity (human, facilities and financial) to reasonably contribute to trade policy issues and, for the purpose of this study, pro-poor trade policy issues. The KIPPRA survey[36] results provide some useful insights on these issues. The findings indicate that the CSOs do not feel sufficiently represented in trade policy formulation and negotiations. Effective participation of CSOs is curtailed chiefly by human and financial resource constraints, but also by poor coordination between state and non-state actors and the poor organization of negotiations for instance, late communication about meetings.

It appears that the CSOs are guided by clear mandates (all could provide a mission statement). Most of the CSOs interviewed had one to four individuals engaged in trade-related work. A key observation is that their apex staff exhibited relatively good knowledge of the trade policy issues within their respective mandates and those that are affecting the country. Nearly all indicated that they had workforce shortages largely due to insufficient financial resources rather than unavailability of qualified personnel.

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36 The KIPPRA survey captured eighteen CSOs of which six were research institutions

Under these and other circumstances, CSOs sometimes miss multiple scheduled meetings for trade policy-making. The downside of this is that it may appear like the CSOs have less interest in the issues concerning their based on past attendance records. [37] Most of these CSOs perform general or analytical research on trade policy issues and boast of high capability to evaluate impacts of trade policy in terms of potential winners and losers, monitor these impacts and to lobby. Although most of these CSOs are involved in various trade capacity-building programs, mostly as trainers (78%), all but one admits that they have insufficient finances and lack relevant software programs for analysis. [38]

3.8 Research Institutions

Initially, the role of research institutions in trade policy-making was minimal. However, lately their participation has been increasing. Institutionally, some research institutions (specifically KIPPRA) occupy parastatal status and interact with the mainstream government on a daily basis. These interactions are normally in the form of policy advice provided to government through, for example, seminars, workshops and policy briefs. These usually touch on trade policy issues. The MoT also engages individual/private and corporate consultants including KIPPRA on research projects on various trade related issues. [39]

International organizations such as donors, research institutions and NGOs have a long tradition of engaging the services of the local research institutions on key trade policy works. These relationships are important but do raise a question on who shapes the direction of research. A casual observation indicates that most of the ongoing trade related projects are funded by foreign interests.

37. McGee, R., & Brock, K. *Mapping Trade Policy: Understanding the Challenges of Civil Society Participation*. Brighton: Institute of Development Studies. 2004. P.39

38. KIPPRA & ODI. "Trade Policy Making Process in Kenya: the Institutional Arrangements and Interactions of Actors.p48

39. Consumer Unity and Trust Society. *Towards More Inclusive Trade Policy Making: Process and Role of Stakeholders in Select African Countries*. CUTS International, Jaipur Printers P. Ltd. 2009 p.59

This may unintentionally promote interests that are not home grown or may compromise the relevance of these studies. Some arrangements however do promote home grown ideas. For instance, the AERC[40] funds collaborative research projects. These research teams are usually encouraged to include the local policy makers. The KIPPRA survey however revealed strengths and weaknesses of the research institutions. Their strengths are that they have, according to their self assessments, generally high capabilities to evaluate trade policies in terms of impacts. They can also effectively lobby and monitor trade policies. They have adequate internet connections and most believe they have sufficient software programs for analytical work. Their key weakness, according to the research institutions, was a lack of finances which may undermine their operations and role in trade policy-making in Kenya.[41]

3.9 Perceived Influence of State and Non-State Actors

Having looked at the roles of the various actors, it is important to look at the influence the various actors perceive others and themselves as having in the trade policy-making process. The non-state actors were quite diverse and their self-assessed levels of influence were roughly spread evenly from strong, moderate, and weak to very weak. According to the KIPPRA survey, the state and non-state actors were unanimous that multilateral organizations, government actors and overseas development agencies exert the strongest influences on trade policymaking process. About 70 percent of the government actors rated the influence of these groups as either strong or very strong. About 90 percent of the non-state actors classified the government's influence as either strong or very strong and about 60% thought the influence of multilateral organizations and overseas development agencies was strong or very strong.

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40 AERC is a public not for profit organization and not a research institution in the strictest meaning of the word

41. KIPPRA & ODI. "Trade Policy Making Process in Kenya: the Institutional Arrangements and Interactions of Actors. P.49

Non-state actors considered the influence of civil society, farmer associations and the media on the trade policy-making process as largely weak or only moderate. This is consistent with the earlier results about the exclusion of these groups from the trade policy making process.[42]

The perception that producer associations and CSOs have little influence implies that the poor have little say, since these organizations typically represent the interests of the poor. The stakeholders consider that the trade policy agenda is not necessarily conceived by government but largely influenced by the multilateral organizations. The perception of state actors is largely similar to this one also except that the multilateral organizations are seen to be the most influential group.[43]

3.10 Conclusion

This chapter reviewed the participation of various actors, both state and non-state, in international trade policy formulation processes. Kenya is an active participant in many international and regional trade agreements. Those reviewed in this chapter included the WTO, COMESA and the EAC. It has been noted that the implementation of commitments under these agreements as well as the requirements of on-going negotiations under several of these agreements often get factored into Kenyan trade policy formulation measures.

In a survey conducted by KIPPRA seeking to establish the levels of coordination between state and non-state actors in the process of trade policy formulation, it was found that Only 21% of government actors thought coordination between the state and non-state actors was good, while 44 percent thought it fair and 34% thought it poor.

42. KIPPRA and ODI. *"Trade Policy Making Process in Kenya: the Institutional Arrangements and Interactions of Actors.* P.51
43. ibid

Although the private sector group largely described intra-governmental coordination as fair, they were more skeptical about the co-ordination between state and non-state actors with 40 percent describing it as poor. 42 percent of the CSOs described coordination between state and non-state actors as poor. The main reasons cited for this poor coordination include: lack of a central coordinating body; lack of harmonized approach to trade policy formulation and inadequate funding among others.

Chapter 4

Kenya's International Trade Policy Negotiation Process and Actors

4.0 Introduction

Negotiations lie at the heart of international diplomacy. Parties such as governments, businesses, and non-governmental organizations employ the art and science of negotiation to protect and advance their organizational and constituent interests. The skillful use of negotiation can advance a party's interests and help to avoid a less attractive alternative.[1] An effective negotiation process can lead to positive outcomes that can result in the promotion of important international objectives including economic development, business interests, environmental protection, labor rights, and political stability, all of which can minimize the adverse impacts of poverty that can lead to violence and war. [2] This chapter reviews Kenya's trade policy negotiation process and the various actors involved as carried out under different international trade arrangements such as the WTO, COMESA and the EAC. It also examines the effectiveness of the Monitoring and Evaluation framework of such negotiated trade policies.

4.1 Multilateral Negotiation of Trade Policy

The rationale for multilateral trade rule is that every member will be better off if all other members adhere to an agreed rule and avoid beggar thy neighbour policies that might benefit an individual country in the short run, but would harm the country in the long run if other countries decide to pursue the same course. By its very nature, such a negotiation has to be approached as a win-win type of negotiation, because in most of such negotiations every country has to agree in order for the rule to be adopted.[3]

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1. Monning William W. & Feketekuty Geza. *International Trade Negotiations, a training manual*. ICDP, 2003 P.1
2. ibid
3. Hampson, F. Osler. *Multilateral Negotiations*, John Hopkins University Press, Baltimore& London, 1995. P.9

The various rounds of multilateral trade negotiations carried out under the auspices of the WTO are examples of such negotiations. Other examples are negotiations carried out by members of regional trade agreements such as COMESA, EAC and the European Union among many others. Multilateral negotiations of rules usually go through several phases.[4]

In the first phase, the issue identification stage, one country typically identifies an issue or problem, which it believes needs to be addressed through the formulation of a rule, or some other form of common action. In order to persuade other governments to embark on an analysis of the issue that could lead to the negotiation of a rule, proponents have to demonstrate that the identified problem or issue is more than a one time or rare event, that it is potentially a problem for every (or most) countries, that it is a more serious than a trivial problem for member countries, that the nature of the problem and the potential remedy is fairly consistent over time and across countries, and that the problem can be solved through a negotiated rule or agreement. If the problem is rare, member countries will be reluctant to spend the time to analyze and negotiate the issue and to restrict their future freedom of action. If it is only a problem for one or some countries, but not for a majority of countries, it will be difficult to get an agreement to study the issue, much less to negotiate binding commitments. If the nature of the problem and the appropriate remedy changes from event to event, opponents will argue that while there may be a problem, rule making is not the answer.[5]

4. ibid

5. Monning William W. and Feketekuty Geza. *International Trade Negotiations, a training manual*. ICDP, 2003 p 12

In the second phase, the analysis phase, the negotiators analyze the nature of the problem and the potential remedies. This phase of the negotiation is designed to create a clear understanding of the problem and how it may be addressed. In the WTO an issue at this stage of the process will be entrusted to a study group. Members will study historical occurrences of the problem, identify patterns, examine analogies to similar problems that have been addressed through negotiated agreements, and evaluate principles that could serve as the basis for rule making. If member countries are persuaded by this work that the problem is serious, that it is consistent over time, that it is widespread among member countries, that it can be remedied through some form of agreement, then discussions will move onward the search for a negotiating framework to address the issue.

In the third phase, the pre-negotiation phase, member countries hammer out the terms and mandate for the negotiations. In the WTO the issue at this stage is often entrusted to a working group or a committee that has a formal standing within the organization. The work of the group is to define the problem to be addressed, to identify the nature of the solution to be pursued through negotiations, the specific elements of the issue to be addressed, the components of a negotiated solution, and a timetable and venue for the negotiations.

In the fourth phase, the negotiating phase, member countries negotiate the actual provisions that will be added to the trade agreement. Such negotiations usually start with a consideration of negotiating proposals tabled by member countries. Where there are many such proposals, the Secretariat may be asked to compile the proposals into an integrated document, and to provide members with an analysis of the various proposals.[6]

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6. Monning William W. and Feketekuty Geza. *International Trade Negotiations, a training manual.* ICDP, 2003 p.12

A discussion of these proposals can lead to a second tier of proposals, which incorporate comments made by members during the review of the initial proposals, or which seek to bridge the gap between competing proposals. Success in multilateral rule making negotiations, like success in bilateral negotiations aimed at the mutual reduction of trade barriers, hinges on an in depth analysis of stakeholder interests and comprehensive consultations with stakeholders.[7]

4.2 Negotiation Structure and Framework for WTO Issues in Kenya

The NCWTO was noted in chapter three as the key division under the Ministry of Trade handling WTO related issues. Decision-making in the NCWTO is by consensus. However, when decisions cannot be reached by consensus, voting may be used. The membership of sub-committees is more open than with the NCWTO, as it depends on the subject being handled and the stakeholders' interests. The sub-committees meet more often than the NCWTO. At the sub-committee level, the decision-making process begins with the Focal Point which will make proposals on WTO issues coming from Geneva. However, before these proposals are presented to the sub-committee, either the Ministries or the organizations where the Focal Point is based must ratify them. When the sub-committee meeting is held, members consider the position taken by the Focal Point for further deliberations. The decision taken by the sub-committee is then forwarded to the MoT or the Geneva Mission (and very rarely the NCWTO since it has not been an effective body), where all members deliberate on the position and adopt or amend it. At this level, decisions are made by consensus.[8]

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7 Raiffa Howard. *The Art and Science of Negotiation*. Harvard University Press, Cambridge, MA 1996. P.5

8 Ddamilura, D. and Noor Abdi, H. *Civil Society and the WTO: Participation in National Trade Policy Design in Uganda and Kenya*, report for CAFOD Trade Justice Campaign. 2003. P. 4

The negotiating team in Geneva not only presents Kenya's positions on various issues but also monitors and relays information of the daily happenings in Geneva. These include notifications by other countries. Where situations arise and Kenya needs to respond, the Geneva team relays the information to MoT, which also acts as the Secretariat to the NCWTO. Once the information is received at the Ministry, the Ministry contacts the relevant sub-committee and working groups prepare reports which are passed on to MoT.[9]

Figure 4: Negotiating Structure for Kenya under the WTO

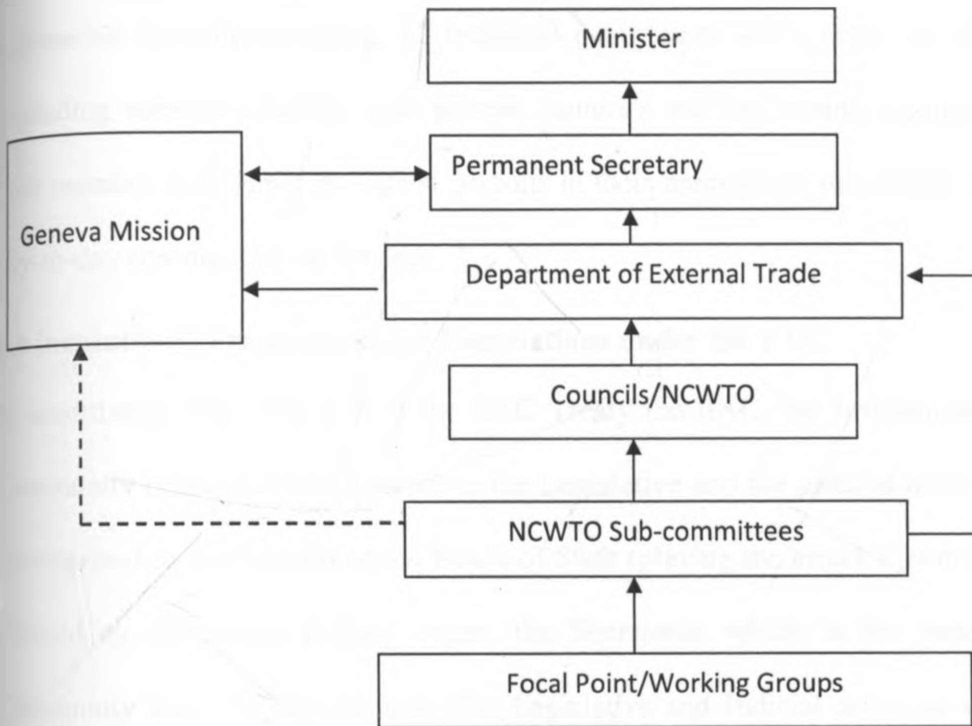

Figure 5 Adapted from: Kenya Institute for Public Policy Research and Analysis (KIPPRA) and Overseas Development Institute (ODI). *"Trade Policy Making Process in Kenya: the Institutional Arrangements and Interactions of Actors."* KIPPRA and ODI, June 2007. P.43

9. ibid

4.3 Institutional Framework for Negotiations under COMESA

COMESA launched its Customs Union (CU) on 7th June 2009 during the COMESA Summit of Heads of State and Governments of COMESA Member States held in Victoria Falls, Zimbabwe. COMESA has evolved a comprehensive decision making structure at the top of which is the Heads of State of the 20 member countries. There is then a Council of Ministers responsible for policy making, 12 technical committees and a series of other advisory bodies (including specific relations with partner countries and the business community). In addition, each member state appoints liaison persons in their appropriate ministries who form part of the day-to-day communication process. [10]

4.4 Institutional Frameworks for Negotiations under the EAC

In accordance with Article 9 of the EAC Treaty the EAC, the institutional framework of the Community consists of the Executive, the Legislative and the judicial arms. The Executive arm is composed of the Summit of the Heads of State (playing the broad Vision setting role), and the Council as the policy making organ, the Secretariat which is the executive organ of the Community and EAC Institutions. The Legislative and Judicial arms are made up of the East African Legislative Assembly and the East African Court of Justice respectively. The functions, mandates, and operational frameworks of these Organs and Institutions is set in line with the Treaty, Protocols, and Rules of Procedures.[11] In Kenya, the formal framework for participation in the EAC includes ministries, parastatals, private sector representatives and research institutions and appears inclusive.[12]

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10. COMESA official website http://about.comesa.int/index.php?option=com_content&view=article&id=75&Itemid=106

11. East African Community. *4th EAC Development Strategy (2011/12-2015/16) Deepening and Accelerating Integration*. EAC, 2011 p.12

12. KIPPRA & ODI. *"Trade Policy Making Process in Kenya: the Institutional Arrangements and Interactions of Actors.* op cit. p. 44

4.5 Role of Civil Society and the Private Sector in EAC Negotiations

It is recognized that one of the causes of the collapse of the EAC was the low level of involvement of civil society and private sector actors in the policy making process. The new approach to regional integration emphasizes the need for participation of the various public and private stakeholders and considers their participation essential for the effectiveness and sustainability of regional integration efforts. Under Article 127 of the EAC Treaty, it states that the Secretary General shall provide the forum for consultations between the private sector, CSOs, other interested groups and appropriate institutions of the EAC.[13]

However, this may not be the case in practice as divulged by the 2006 stakeholder survey results carried out by KIPPRA. The survey results indicate that government actors and the private sector have some representation in the EAC's High Level Task Force as noted in chapter 3. However, only 18 percent of those government actors surveyed indicated that they are represented in the EAC compared to 22 percent for private sector. It is important to note that the particular firms represented by the private sector umbrella bodies do not generally feel that their interests are sufficiently represented. The KIPPRA survey included all the mainstream CSOs and research institutions. Although the civil society[14] is encouraged to participate effectively in all organs of the EAC, none of the groups interviewed in the 2006 stakeholder survey indicated that it was represented in the EAC negotiation process. These findings suggest that the participation and influence of these groups on the negotiation process may be minimal, if at all it exists.[15]

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13. ibid. p.46

14. Including research institutions. There may be individuals from the research entities who participate in the EAC. However, such individuals do not usually represent the views or positions of their affiliate institutions.

15. KIPPRA & ODI. *"Trade Policy Making Process in Kenya: the Institutional Arrangements and Interactions of Actors.* Op cit. p. 47

4.6 Negotiating Framework under the Economic Partnership Agreements (EPAs)

At the end of 2007 the Eastern African Community (Burundi, Kenya, Rwanda, Tanzania, and Uganda) agreed a region-to-region interim or "framework" EPA with the EU.[16] The EAC is embarking on an ambitious and successful regional integration process. In parallel, the EAC has been determined to conclude a full EPA. However, they and the EU remained mindful that the pace of the negotiations is dependent on the on-going EAC integration process which determines the commitments the EAC are ready to take in the EPA process. Discussion with MoT officials indicate that prior to the Cotonou Agreement there was no negotiating framework for the Lome Conventions.

Negotiations were purely a government affair comprising of MoT officials and there was no consultation with the private sector or civil society. This changed when the new negotiations on Economic Partnership Agreements (EPAs) began in September 2002. Since the launch of the EPA negotiations, Kenya along with other three EAC countries (Burundi, Rwanda and Uganda) were negotiating EPAs under the ESA configuration, whose membership of 16 countries whereas Tanzania, a member of the EAC Customs Union was on the other hand pursuing EPA under SADC configuration. The countries had been expected to prepare their individual positions and feed into a unified stand under the regional groupings.[17]

The EAC countries' negotiations of EPAs under different configurations posed a challenge to these countries, because by virtue of their being members of the EAC Customs Union, they were bound by the EAC Customs Union Protocol and the EAC Customs Union management Act to sign EPAs as one customs territory.

16. Njehu Fredrick. Report for the workshop on: *EAC/EC-Economic Partnership Agreements (EPAs): Kenya's perspectives* held on 3rd June 2011, Nairobi, Kenya. CUTS International. P.5
17. KIPPRA & ODI. *"Trade Policy Making Process in Kenya"* op cit p.38-39

On October 13th 2007, the EAC Ministers of Trade directed the EAC partner States to harmonize their EPA position and submit a harmonized market access offer to the EC. A strong collaboration between EAC and ESA was also recommended in order to ensure that positions being pursued at EAC were in tandem with COMESA and SADC regional integration processes. In view of these developments, Kenya is therefore negotiating EPAs under EAC arrangement, as it maintains close collaboration with ESA in view of the need to advance the course for harmonized positions between EAC and COMESA.[18]

The EAC negotiating structure comprises of the EAC Ministers of Trade, EAC senior officials who include Permanent Secretaries in Trade Ministries and the EAC-EPA Technical Experts. The EAC EPA Experts are drawn from multi-sectoral background (agriculture, trade, investment, services, etc) and they comprise of representative of the public and private sector organizations and Civil Society organizations in the trade and development sectors. Their function is to prepare negotiating positions on all aspects of EPA negotiations at national level. The national positions are then used by the representatives of each country in the EAC EPA Experts regional EPA meetings in preparation of the EAC position for negotiation with the EC. The Negotiations with the EU are taking place at two levels – Ministerial and Senior Officials levels. EAC Negotiations with the EU are led by Lead Minister at Ministerial level (the country providing the current Chair of the EAC provides the Lead Minister) and Lead Senior Official (the country providing current chair of the EAC provides lead Senior Official – Permanent Secretary). On the EU side negotiations are being led by Lead spokesperson (Commissioner – DG Trade) at Ministerial level and Senior Official (DG Trade) Senior Officials level.[19]

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18. Njehu Fredrick. Report for the workshop on: *EAC/EC-Economic Partnership Agreements (EPAs): Kenya's Perspectives* held on 3rd June 2011, Nairobi, Kenya. CUTS International p.7-8
19. ibid

Each country has established a National Development and Trade Policy Forum (NDTPF) which is both multi-sectoral (agriculture, trade, investment, services, etc) and representative of the public and private sectors and non-state actors involved in trade and development work. The function of the NDTPF is to determine what the optimal development and trade negotiating position for the country would be and to prepare briefs outlining these positions which are then used by the representatives of the country in the Regional Negotiating Forum in preparation of the ESA position for the negotiations with the EU. [20]

Each NDTPF is supposed to send three representatives to the RNF, which should meet at least once every two months (more frequently if necessary) during the EPA negotiating period. Each NDTPF will nominate a Team Leader and an alternate to the Team Leader. To ensure coherence, continuity and consistency, the Team Leader or/his alternate will be present at all RNF meetings. The member or members of the rest of the team from each NDTPF will be experts in the various sectors to be negotiated under the EPA and so will vary according to the agenda of the RNF. Depending on the issues to be negotiated, an ESA member may co-opt experts with relevant expertise to act as advisors. The composition of the RNF includes representatives from the capitals of each country participating in the ESA negotiations (includes public and private sectors and other non-state actors); ambassadorial lead spokespersons from Brussels; representatives from one or more regional NGO involved in trade and development issues; and, representatives of the regional organizations involved in the negotiations. The negotiations for Kenya are done through stakeholders' consultations to guard against any major negative effect on the processes such as the EAC regional integration.[21]

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20. Oyango, Christopher. *"Role and Influence of Main Interest Groups in the National Trade Policy Making Process"* Paper for CUTS Geneva Resource Centre FEATS National Inception Meeting in Nairobi, Kenya: October 14, 2008. P.61
21. ibid

stakeholders such as KAM have been engaged in the EPA process by preparing a sensitive list of products to identify the products that Kenya has interest in exporting to the EU market. These products show that Kenya has comparative industrial development targeting the EU market that is relying on third country imports by the day. Such a position has been driven by empirical research on export trends and industrial development. [22]

4.7 The Organization of the EPA Negotiation Process in Kenya

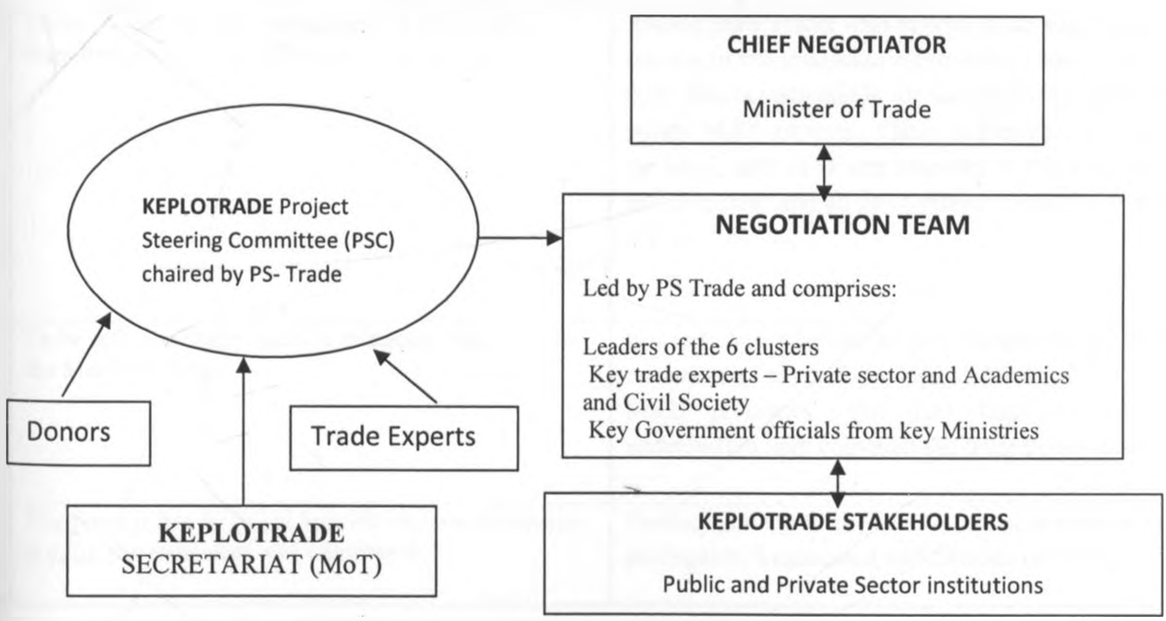
In Kenya, preparations for the EPA negotiations are being facilitated through the KEPLOTRADE Trade Negotiations Support Programme. The national negotiation structure comprises an institutional framework comprising of six clusters (i.e. market access, development, agriculture, fisheries, services and trade). The Minister for Trade leads the negotiations as the Chief Negotiator. The Chief Negotiator receives the country position from the negotiating team, which synthesizes reports from various clusters. The Clusters are in charge of carrying out analytical studies on the broad sectoral categories after which they form positions through the consultative process.[23] This is represented in figure 6 below.

Some of the strategies being applied by the KEPLOTRADE Trade Negotiations Support Program include: Analytical studies in support for the development of negotiations; capacity building and training on Cotonou, EPAs and WTO issues; stakeholder (public and private sector and civil society) consultations as the vehicle through which all negotiation positions are identified and developed and information dissemination on EPA negotiations. [24]

22. CUTS Geneva Resource Center. *Towards More Inclusive Trade Policy Making: Process and Role of Stakeholders in Select African Countries.* CUTS International; Geneva Switzerland; 2009 p.61-62
23. ibid.
24. ibid.

The negotiating framework for EPA is clearly well structured. The structure not only permits wide participation but also allows for specialized participation of the various actors in their respective relevant clusters. As an advantage over other structures, the KEPLOTRADE arrangement can potentially accommodate the strong presence or influence of CSOs and research institutions in the negotiating team.[25] From the KIPPRA survey findings, there appears to be relatively good representation of the various actors surveyed in most of the KEPLOTRADE clusters. However, there are weaknesses. One of these is the weak participation in the trade-related issues cluster such as trade and environment, technical barriers to trade (TBT), trade-related intellectual property rights (TRIPs), and e-commerce among others. Although these issues are important for the country's overall development, only one parastatal indicated that it is represented in this group. Furthermore, the fact that none of the respondents indicated participating in the fisheries group may imply that these two clusters may need to be revamped.[26]

Figure 5: Negotiating Framework of EPAs in Kenya



Adapted from KIPPRA & ODI. *"Trade Policy Making Process in Kenya"* Op cit p.40

[25] KIPPRA & ODI. *"Trade Policy Making Process in Kenya."* P.47

4.8 Monitoring and Evaluation of Trade Policy Implementation

Monitoring and evaluation (M&E) is a process that determines the relevance, effectiveness, efficiency and impact of strategies vis-a-vis the initial objectives. It is usually done to assess the degree of performance with respect to established yardsticks. Although one of the key features of an M&E framework is that it is decision-oriented and hence should be formulated consultatively, the survey results indicate that nearly half of the government actors are not aware if there is any M&E framework for trade policy.[27] Table 1 summarizes key attributes of a good M&E framework vis-à-vis the identified weaknesses in Kenya as presented in the KIPPRA survey.

Table 1: Weaknesses in M&E for Trade Policy in Kenya

	Key attributes of a good M&E process or framework	*Identified weaknesses of current M&E framework (from KIPPRA survey results)*
1	It is decision-oriented hence should be formulated consultatively.	Nearly half of the government actors do not know of the existence of an M&E framework for trade policy in Kenya. 25 percent said there is no such framework.
2	There should be clear assignment of roles and responsibilities for an effective M&E process.	Among state actors who believe in its existence (only a 25 percent of the total state respondents) there is no unanimity as to who is responsible for the implementation of the trade policy M&E process. These implementers were given as the MoT, both MoT and Ministry of Planning and National Development and all government ministries with a ratio of 4:3:2.
3	To be effective there must be adequate resources for the M&E process.	It is not clear whether the government has invested enough resources (financial, human and others) for the various M&E processes. The fact that the ministries are understaffed may constrain the trade policy M&E process.
4	The process has large yet specific data requirements (i.e. for the indicators and outcomes).	Seventy percent of the state actors said trade-related data is inadequate, fragmented and difficult to access.

27. Kenya Institute for Public Policy Research and Analysis (KIPPRA) and Overseas Development Institute (ODI). *"Trade Policy Making Process in Kenya: the Institutional Arrangements and Interactions of Actors."* KIPPRA and ODI, June 2007. P.53

The KIPPRA survey results indicated that when asked about the capacity to monitor socio economic impacts of alternative trade policies, about 40% of the state actors thought there was either low capability (31%) or no capability (8%). 25% were positive that there was high or very high capability. The rest (nearly 40%) described their capability as moderate. 14% of non-state actors thought they had low or no capability to monitor impacts of trade policies. Over 60% rated their capabilities as high (50%) or very high (14.3%).[28]

4.9 Coordination of Trade Policy-making Process

Many contributors to the trade policy-making process in Kenya suggest that the inter-ministerial coordination of trade policy making is poor.[29] This is supported by the KIPPRA survey results which indicated that 66% of government actors view the inter-ministerial coordination as poor and that inclusion and consultation of the relevant ministries is moderate or weak. 75% of actors from the private sector consider that inter-ministerial coordination is fair while 59% of CSO actors surveyed consider its coordination to be fair or good/very good. The surveyed institutions and organizations are also noted to have described the trade policy formulation process in Kenya with respect to coordination between state and non-state actors. Only 21% of government actors thought coordination between the state and non-state actors was good, while 44 % thought it fair and 34% thought it poor. Although the private sector group largely described intra-governmental coordination as fair, they were more skeptical about the co-ordination between state and non-state actors with 40% describing it as poor. 42% of the CSOs described coordination between state and non-state actors as poor.[30]

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28. ibid
29. Odhiambo W. et al Managing the Challenges of WTO Participation. Kenya's Participation in the WTO: Lessons Learned. Case Study 20 (accessed from: http://www.wto.org/english/res_e/booksp_e/casestudies_e/case20_e.htm. 2004
30. KIPPRA & ODI. *"Trade Policy Making Process in Kenya:* ibid.

Other related findings reveal that at least 80 percent of the non-state actors and 75% of government actors thought that the work of trade regulatory agencies is not well coordinated. The state and non-state actors largely attributed the poor coordination on the presence of conflicting roles of these agencies or simply a lack of harmony. State actors stated that one of the causes of the poor coordination was the unstable Ministries (i.e. some Ministries keep on being merged and split). The new Ministries would then take up a subset of the roles of earlier ministries creating some disorder, at least in the short run.

The main reasons for the poor coordination were explained in a telephone interview by an economist and a policy analyst (Fred A. Miencha).[31] These came as a confirmation of the findings by the 2006 KIPPRA survey and they included among others:

Lack of a central coordinating body. It was noted that at the moment, the Ministry of Trade lacks sufficient mandate to coordinate other ministries and government departments and agencies on trade policy issues and negotiations. Currently, trade matters are handled within the cabinet committee on Finance, Planning and Trade. Within this arrangement and given the dominant role that finance and planning play in the Kenyan economy, there is every likelihood that trade issues would be subjugated to the periphery hence resultant coordination problems; lack of harmonized approach to trade policy making and negotiations. As discussed elsewhere in this study, Kenya currently lacks a harmonized approach to trade policy making. This was also confirmed during the telephone interview with the economist. It was said that although most trade negotiations and issues are handled under the Ministry of Trade, there are some issues which are handled by different other ministries.

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31. Telephone interview with (Fred Atika Miencha); Economist and Trade Policy Analyst, October 23rd 2012

A case in point is negotiations for East African Community which are currently dealt with under the Ministry of East African Community while the Ministry of Planning and National Development is responsible for ACP/EU Cotonou negotiations; the negotiation frameworks are also very informal. It was noted that most of the institutions currently established for supporting government in trade negotiations are informal e.g NCWTO and the clusters established for the purpose of negotiating EPAs. It is thus difficult to have effective coordination within such informal arrangements; lack of adequate funding was also cited as another reason for poor coordination of trade policy formulation process. Money is one of the most important assets for shaping trade policy (the other one being analytical knowledge). However, the current level of funding to the MoT is not sufficient to enable it carry out its functions and coordinate effectively.[32]

4.10 Kenya's Trade Policy Negotiation Shortcomings

Similar reasons that led to poor coordination were also cited as those that led to major shortcomings in the trade negotiation process.[32] Poor intra-government coordination between the lead Ministry, (MoT), other Ministries and parastatals was noted as a key shortcoming in the trade policy negotiation process. Each Ministry largely operates independently and there is very limited consultation and prioritization of activities. For example, this is more conspicuous in the case of EAC negotiations, which are carried out within the Ministry of East African Community, and with minimal consultations with MoT and other relevant bodies. Other reasons cited by the policy analyst included: lack of coordination and harmony within the Ministry of Trade itself.

32. Kenya Institute for Public Policy Research and Analysis (KIPPRA) and Overseas Development Institute (ODI). *"Trade Policy Making Process in Kenya: the Institutional Arrangements and Interactions of Actors."* KIPPRA and ODI, June 2007. P.54
33. Telephone interview with (Fred Atika Miencha); Economist and Trade Policy Analyst, October 23rd 2012

While there are various departments (and in some cases different ministries) dealing with bilateral, regional or multilateral trade arrangements, there currently lacks a formal framework for harmonizing positions taken in these different trade arrangements. There are also poor linkages between the Department of External Trade and the Department of Internal Trade. Further, it was noted that coordination between state and non-state actors in the trade policy process is weak. There are no legal or formal frameworks for participation of research institutions, civil society, parliament, private sector and producer groups in the trade policy process. There is no clear mechanism for involving non-state actors in trade policy process.

Information asymmetry between those involved in negotiations and other stakeholders. Often, trade-related policy decisions are made at a higher level without ensuring that information reaches the concerned and affected groups such as producers and the private sector. Asserting the findings of KIPPRA further, Fred noted that some stakeholders in trade policy process were completely left out. He noted that even though there has been an improvement in the involvement of a wide variety of stakeholders in the trade policy formulation and negotiation process, some groups such as micro-and small enterprises and most of the producer groups have no representation in the process; that there are no frameworks provided for their participation and that most of these groups still exert very weak influence in the process. This, he explained is also partly caused by their weak capacity in terms of human and financial resources. Capacity gaps which has been cited by the KIPPRA as a major impediment to the trade policy formulation and negotiation processes in Kenya was also discussed as a major impediment to the trade policy negotiation process. [34]

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34. Extended telephone interview with Fred Atika.

It was stated that there is a general lack of analytical capacity within MoT and there are poor linkages with research institutions to inform trade negotiations. Capacity gaps were also identified within the civil society and private sector in terms of staff numbers, knowledge on trade issues and analytical skills. On the same note, it was observed that there are insufficient capacity building programs and the trade related and capacity building support programs offered by various overseas development agencies are not sufficient to address the existing institutional and knowledge capacity gaps within the various groups and hence there is a need to design a comprehensive trade-related capacity building program which is institutionalized and fully sustainable to ensure continuity of such programs. Another shortfall cited was the inadequate Monitoring and Evaluation framework. From the discussion, it was noted that the existing M&E framework of trade policy is quite weak and not well coordinated. This is in part due to the lack of clear guidelines for M&E as well as no existing logical framework to monitor indicators. It was noted that there is no specific body responsible for overseeing the M&E process and ensuring accountability.

Due to these shortcomings, it can be stated that a large majority of stakeholders do not play an effective role in the trade policy processes. Although stakeholders were not explicitly asked about the effectiveness of actual trade policy formulation and implementation, the majority were of the opinion that their views were not represented in the trade policy making processes and that they exerted very little influence over the process. Most stakeholders are not aware of any trade policy formulations going on. [35]

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35. Telephone interview with (Fred Atika Miencha); Economist and Trade Policy Analyst, October 23rd 2012.

A quick check with some research institutions and civil society organizations indicated that these organizations were also not effectively utilized in evaluating gains and losses of any potential trade arrangements the country may opt for.[36]

4.11 Conclusion

This chapter sought to review the international trade policy negotiations process as carried out by Kenya under the various trade arrangements that include WTO, COMESA, EAC and even the EPAs. A closer review of the multilateral trade policy negotiations process reveals that generally trade negotiations are complex as they involve a number of actors who play different but vital roles in the negotiations process. In its negotiations at the WTO, it was noted that Kenya has formed a key division under the Ministry of Trade, the NCWTO, which is mandated with the responsibility of handling WTO trade related issues. This committee however has several shortfalls with the major one being that it has no legal mandate and this seriously undermines its effectiveness.

Kenya is a key player in the COMESA Customs Union. This chapter notes that in order to be more effective in its policy formulation process for the region, COMESA has evolved a comprehensive decision making structure at the top of which is the Heads of State of the 20 member countries. There is then a Council of Ministers responsible for policy making, 12 technical committees and a series of other advisory bodies.

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36. Research Institutions and Civil Society Organizations reached on telephone on October 23rd 2012 included: Consumer Unity & Trust Society, Consumer Information Network, Kenya Institute of Public Policy Research and Analysis and the University of Nairobi

In this chapter it was observed that the institutional framework of the East African Community trade policy negotiations consists of the executive, the legislative and the judicial arms and in Kenya, the formal framework for participation in the EAC includes ministries, parastatals, private sector representatives and research institutions and it appears inclusive. Another important observation made from telephone interviews was that the monitoring and evaluation process of the implementation of trade policies in Kenya bore various weaknesses that included but not limited to lack of a monitoring and evaluation framework and major capacity gaps.

Chapter 5

Conclusions

5.0 Introduction

This chapter provides the summary and conclusion to this study. The study sought to provide an analysis of the international trade policy formulation and negotiations process in Kenya, including the key players and stakeholders and their roles in the process. It also outlined the various challenges and shortfalls experienced in this process.

5.1 Summary

Trade has been recognized as a key engine for growth and development. Developing countries such as Kenya in particular are encouraged and strive to increase their participation in trade. The aim of such countries is to use trade as a tool to increase production, productivity and competitiveness and thereby generate resources, employment and opportunities to climb the development ladder. Trade policy serves as a means to achieve these objectives and hence has assumed a key position in the development strategies of such countries as Kenya.

This study has noted that Kenya's trade policy development has evolved through various distinct policy orientations which include the Import Substitution Policies (1960s -80s), the Trade Liberalization through Structural Adjustment Policies (SAPs) (1980s) the Export Oriented Policies 1990s and presently, its trade regime is guided by market-driven principles of liberalization under the World Trade Organization (WTO) and the increased efforts in the regional economic integration that has resulted in the establishment of the East African Community (EAC), Common Market for Eastern and Southern Africa COMESA) and the Economic Partnership Agreements (EPAs) among other trade initiatives.

Kenya's commitments under the EAC, COMESA and WTO influence Kenya's trade policies. They create a strong push to increase openness and reduce tariffs – although both the EAC and COMESA encourage the construction of an external tariff wall to encourage within-group trade. Both the EAC and COMESA provide Kenya with trading opportunities and for the growth of semi-protected 'infant industries'. This illustrates how important it is that the Kenyan government 'picks winners' rather than simply protecting producers and manufacturers at the expense of consumers.

The study further noted that there are various actors and stakeholders involved in the process of international trade policy formulation and negotiations. These have been identified to be mainly the state actors that include government ministries and parastatals and the non-state actors such as civil society organizations, private sector associations and business organizations, each with a distinct role to play in the process.

The Kenyan government's role through its various organs such as the Ministry of Trade, other collaborating ministries, government associations and parastatals has been identified as one of providing an enabling policy formulation and negotiation environment, namely, providing and maintaining essential infrastructure, dealing with insecurity perception, investing in human resource development and basic welfare, guarding against human exploitation and environmental degradation, diligent pursuit of Kenya's interests in International Agreements and Relationships and the provision of information on resources, technology and markets. Whereas the Ministry of Trade was noted to be the key ministry mandated with the responsibility related to trade policy issues, it was also found out that some of the key bodies such as the National Committee on the World Trade Organization legal mandate and thus is unable to function optimally.

On the other hand, the private sector, through its umbrella associations, has been encouraged to sensitize its members on the importance of the policy towards trade development both locally and internationally. These associations have also been encouraged to actively participate in the deliberations of the Sector Working Groups within the consultative forum. This will enable them to purposefully articulate their priorities for investing in local, regional and international trade.

They will also be engaged in policy implementation process under the Public-Private Partnerships as the national trade policy recognizes the private sector as the engine of economic growth. Some of the private sector organizations identified include; KEPSA, KENFAP, Kenya Association of Manufacturers (KAM); Kenya National Chamber of Commerce and Industry (KNCCI); Micro, and Small Enterprises Association of Kenya (MSEAK); Federation of Kenya Employers (FKE), Central Organization of Trade Unions (COTU) among others.

5.2 Conclusion

Kenya has been liberalizing its trade policy since the era of import substitution and is now considered fairly fully open. The trade policy formulation and negotiation process has evolved from an era when the process was a government affair and there was no space for civil society or private sector participation to one where these groups are increasingly involved. Kenya participates in several trade pacts which have shaped the trade policy process. Also, significant progress has been made in an attempt to introduce formal frameworks for trade policy negotiations and generally to improve trade policy processes.

Despite this progress however, this study brings out various critical shortcomings in the Kenyan trade policy process as noted in the study hypothesis which include: poor intra-government coordination between the lead Ministry and other Ministries and parastatals; lack of coordination and harmony within MoT; poor coordination between state and non-state actors; information asymmetry between those involved in trade negotiations and other stakeholders; non-involvement of some stakeholders in trade policy processes; insufficient capacity building programs; and an inadequate Monitoring and Evaluation Framework. Owing to these shortcomings, the majority of the stakeholders were of the opinion that their views were not represented in the trade policy-making processes and that they exert very little influence over the process. It also emerged that research institutions and civil societies are not being effectively utilized in providing technical and analytical support to trade policy negotiators and implementers.

As a result of the shortfalls identified above in the trade policy formulation and negotiation process, the study found out that there was a need to improve coordination between the MoT, other ministries and relevant stakeholders; that it is necessary to enhance stakeholder participation in the entire process of policy formulation and negotiation and also that there is need for the creation of a formal framework for participation of all relevant stakeholders with clear guidelines as to what their mandate is and what is expected of them.

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