

Report of the Proceedings of the AERC-KIPPRA World Trade Organization (WTO) Workshop, held on September 11-12, 2000 at the Safari Park Hotel, Tsavo Conference Room, Nairobi.

The Kenya Institute for Public Policy Research and Analysis (KIPPRA)

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Nairobi.**

By

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September, 2000.

***The inputs of Dr. Wilson Wasike and Mr. Eric Ronge, rapporteurs for two of the groups formed in the last session of the workshop, to section 6 of this report are appreciably acknowledged**

List of abbreviations

ACP	African, Caribbean and Pacific
AERC	African Economic Research Consortium
AGOA	African Growth & Opportunity Act
AOA	Agreement on Agriculture
APSEA	Association of Professional Societies in East Africa
CCK	Communication Commission of Kenya
COMESA	Common Market for East and Southern Africa
CRS	Computer Reservation System
EAC	East African Community
ECA	Economic Commission for Africa
EU	European Union
FDIs	Foreign Direct Inflows
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
GDS	Global Distribution System
IMF	International Monetary Fund
IPAR	Institute of Policy Analysis and Research
IP	Intellectual Property
JICCC	Joint Industrial and Commercial Consultative Committee
JITAP	Joint Integrated Technical Assistance Programme
KAM	Kenya Association of Manufacturers
KIPO	Kenya industrial Property Office
KIPPRA	Kenya Institute for Public Policy Research and Analysis
KIRDI	Kenya Industrial Research and Development Institute
MFN	Most Favoured Nation
MNCS	Multinational Companies
MTTI	Ministry of Tourism, Trade and Industry
NCWTO	National Committee on the World Trade Organization
NGOs	Non-Governmental Organizations
OECD	Organisation for Economic Cooperation and Development
QRS	Quantitative Restrictions
R & D	Research and Development
SADC	South African Development Cooperation
SAPs	Structural Adjustment Programmes
SPS	Sanitary and Phytosanitary
TBT	Technical Barriers to Trade
TRIPS	Trade Related Aspects on industrial Property Rights
TRIMS	Trade Related Investment Measures
UNCTAD	United Nations Centre for Trade and Development
WTO	World Trade Organization

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Executive summary

Introduction

The Uruguay Round of the multilateral trade negotiations led to the establishment of the World Trade Organization (WTO) in 1994, with the mandate of fostering progressive liberalization of world trade in goods and services. The WTO presents substantial opportunity for developing countries like Kenya to expand their exportation of goods and services. However, these opportunities have hardly been realized; in fact, it appears that developing countries have so far been adversely affected by the advent of the WTO. Questions now abound with respect to this outcome. Overall indications are that developing countries have performed poorly because of their relatively weak negotiation position as well as skills. For instance, it is widely known that the African voice has been rather silent during these negotiations.

As negotiations on Agriculture and Services are currently going on, there are frantic efforts to make the African voice more audible through capacity building, cooperation among similar-minded countries, and through other efforts. It was against this background that the AERC-KIPPRA workshop was organized with the objectives of:

- Creating awareness on the WTO issues among researchers and Government officials;
- Creating a network of researchers with interest and expertise on WTO issues to act as a pool to be frequently drawn upon to support the Kenyan negotiating team;
- Establishing a needs-based research agenda;
- Enhancing capacity building on multilateral trade negotiations in general;
- Generating informed consensus on the position Kenya should take with respect to the issues being negotiated currently; and
- Establishing a framework for future dissemination of information.

The workshop was funded by the African Economic Research Consortium (AERC) and organized by the Kenya Institute for Public Policy Research and Analysis (KIPPRA). The two-day workshop drew wide participation from Government ministries and departments, including as the Kenya Industrial Property Organization (KIPO); research institutions like AERC, KIPPRA, Institute for Policy Analysis and Research (IPAR), and the Kenya Industrial Research and Development Institute (KIRDI); and from universities, and the private sector. It was graced by the presence of the Permanent Secretary in the Ministry of Tourism, Trade and Industry (MTTI), Ms. Margaret Chemengich, who was the chief guest.

The workshop was organized into six sessions, as the programme in appendix II shows. The first session was devoted to welcoming and opening addresses. In session 2, WTO Agreements in general were reviewed and discussed, focusing primarily on the nature (features, deficiencies, and challenges) of the Agreements, progress of implementation generally as well as by Kenya, and impacts felt so far. Kenya's implementation of and experience (impacts) with WTO's Agreements on trade in goods and Agriculture were the subjects of discussions in session 3. In session 4, trade in services and WTO Agreements on services were discussed, with an emphasis on Kenya's service commitments and their impacts to date. One of the 13 Agreements of the Uruguay Round, the Trade Related Aspects on Intellectual Property Rights (TRIPS), and its implications to Kenya were the subjects of discussions in session 5. In the last session of the workshop, participants were requested to voluntarily join one of three groups for more detailed discussions and setting the way forward. The three groups formed were Trade in Goods and Agreements on Agriculture, TRIPS, and Trade in Services.

Summary of conclusions

The twoday workshop was characterized by intense discussions. Conclusions were reached on a wide range of issues, most important of which are:

- The WTO is, in general, poorly understood by business people, the Government, academics and researchers in the country. Thus, collaboration and linkage between researchers working on WTO issues and the country's negotiation teams does not exist. The Permanent Secretary challenged researchers to translate professorial papers into simple language understandable by industry.
- Public/private collaboration is still minimal in spite of the formation of such institutions as the NCWTO and the JICCC. The NCWTO lacks legal authority. The private sector, in particular, has not played any role largely because of wrong attitude to participation but also because of lack of capacity.
- The WTO and globalization, together with associated competition, are here to stay and the best thing for Kenya is to make her products competitive.
- Besides the WTO, Kenya has been poor in following Agreements (for example the Lomé European Union (EU) – African, Caribbean and Pacific (ACP) Agreement) and taking advantage of them. The country was adjudged as having a problem with implementation. So far, Kenya's implementation of the WTO has been poor but substantial liberalization has already been achieved unilaterally through the Structural Adjustment Programmes (SAPs).
- Developing countries, including Kenya, lack technical and financial capacity to make serious proposals at the WTO and other multilateral negotiation fora. JITAP and WTO Technical Assistance provisions have either not provided the required training or have not been exploited because of stringent conditions. Budgetary allocations to R&D in the country are, additionally, very small yet capacity building is key to effective participation in the WTO. The commitments and bindings the country has made so far have therefore not been informed by analytical research.
- There is need to develop analytical research competencies to strengthen the country's negotiation capacity. Such large capacity should be mainly directed at the relative comparative advantage analysis of sectors before commitments are made. Thus, even though the small group discussions came up with specific ideas on which sectors are best committed and which are best protected, it was decided that such agenda must be based on thorough and competent research.
- WTO Agreements have deficiencies and imbalances and are unfair to developing countries. Thus, products in which developing countries have comparative advantage are faced with high tariffs in developed country markets. Developing countries, like Kenya, must therefore seriously fight protectionism.
- It is very difficult to isolate the impact of the WTO on Kenya's trade performance because many changes took place at the same time that the WTO Agreements took effect. These include the ongoing liberalization under SAPs, weather changes, and political tensions. In addition, poor data availability hinders the use of methodology that can isolate these different influences. Nevertheless, the studies presented indicated some trends:
 - i. There are very small tariff and non-tariff barriers for manufactured products in the EU market, implying that Kenya is unable to export them there not because of high trade barriers but because of supply side constraints. These supply side constraints were found to be serious impediments in the country.

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- ii. For foods like fish and live animals, in which developing countries have comparative advantage, studies found high tariff and non-tariff barriers. Kenya, which is competitive in these products, could therefore benefit from the enforcement of WTO Agreements.
 - iii. There is not much change in the structure of Kenya's trade following her accession to the WTO, indicating perhaps that the country has not made deliberate attempts at understanding the WTO and taking advantage of it. Supply side constraints have limited the capacity of the country in taking advantage of the WTO Agreements.
 - iv. Sanitary and Phytosanitary (SPS) Agreements constitute unfair technical barriers to developing country trade. For example, the EU ban of fish exports from East Africa, under sanitary grounds, has robbed the region of enormous resources. There is risk of the region losing its lucrative horticultural product trade on similar grounds. Developing countries are demanding transparency on the implementation of this Agreement.

It was concluded that a sound methodological framework to facilitate the analysis of WTO impact on market access for Kenyan products should be developed.

- Kenya has drawn up the Industrial Property Bill 2000, as a step in the implementation of the TRIPS Agreement, contrary to the position taken by the African Group, which Kenya chaired at the Seattle Conference. The TRIPS Agreement has adverse consequences for farmers and consumers, curtails imitation and transfer of technology to developing countries, and does not recognize or protect indigenous traditional knowledge. It also raises deep ethical concerns and is inconsistent with African national legislations in which community ownership rights are recognized.
- Developed countries should be pushed to reduce export subsidies especially in Agriculture.
- The large number of agreements and regional groupings that Kenya is involved in is associated with conflicts, which need to be addressed. While a regional approach to the WTO issue was deemed cost-effective and given the conflicts inherent in multiple groupings, a pertinent question was posed: is it possible to use the WTO framework to attain the same goals pursued through regional integration?
- The discriminatory protocols of the WTO should be identified for negotiated removal or remedial action while, at the same time, the domestic supply conditions should be improved.

Immediate follow-up activities

The Workshop participants resolved that several activities should be implemented immediately as a follow-up to the workshop. First and foremost, the workshop proceedings' report should be circulated to all stakeholders and to the country's negotiation team. Secondly, a network of researchers and other resource persons on the WTO should be formed, with the participants of the workshop forming a nucleus. KIPPRA was requested to spearhead networking, capacity building of the negotiation teams, research on WTO impacts and on relative competitiveness of Kenya's goods and services, and to organize frequent discussions of WTO issues. In particular, the institute was requested to organize a workshop with more widespread stakeholder participation, particularly the private sector. KIPPRA's executive director informed the participants that the institute's primary mandate is capacity building in the area of public policy and it could therefore embark on capacity building of the negotiation experts immediately.

Proceedings of the AERC-KIPPRA World Trade Organization (WTO) Workshop: Full Report

Background

The Uruguay Round of the multilateral trade negotiations led to the establishment of the World Trade Organization (WTO) in 1994, with the mandate of fostering progressive liberalization of world trade in goods and services. The WTO presents substantial opportunity for developing countries like Kenya to expand their exports of goods and services. However, these opportunities have hardly been realized; in fact, it appears that developing countries have so far been adversely affected by the advent of the WTO. Questions now abound with respect to this outcome. Overall indications are that developing countries have performed poorly because of their relatively weak negotiation position as well as skills. For instance, it is widely known that the African voice has been rather silent during these negotiations.

As negotiations on Agriculture and Services are currently going on, there are frantic efforts at making the African voice more audible, through capacity building, cooperation among similar-minded countries, and through other efforts. It is within this background that the AERC-KIPPRA workshop was organized with the objectives of:

- Government officials;
- Creating a network of researchers with interest and expertise on WTO issues to act as a pool to be frequently drawn upon to support the Kenyan negotiating team;
- Establishing a needs-based research agenda;
- Enhancing capacity building on multilateral trade negotiations in general;
- Generating informed consensus on the position Kenya should take with respect to the issues being negotiated currently; and
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Introduction

The workshop was funded by the African Economic Research Consortium (AERC) and organized by the Kenya Institute for Public Policy Research and Analysis (KIPPRA). The two-day workshop drew wide participation from Government ministries and departments including the Kenya Industrial Property Organization (KIPO), research institutions like AERC, KIPPRA, Institute for Policy Analysis and Research (IPAR), and the Kenya Industrial Research and Development Institute (KIRDI), universities, and the private sector.¹ It was graced by the presence of the Permanent Secretary in the Ministry of Tourism, Trade and Industry (MTTI), Ms. Margaret Chemengich, who was the chief guest.

The workshop was organized into six sessions, as the programme in appendix II shows. The first session was devoted to welcoming and opening addresses. In session 2, WTO Agreements in general were reviewed and discussed, focusing primarily on the nature (features, deficiencies, and challenges)

¹See Appendix I for the list of participants

of the Agreements, progress of implementation generally as well as by Kenya, and impacts felt so far. Kenya's implementation of and experience (impacts) with WTO's Agreements on trade in goods and Agriculture were the subjects of discussions in session 3. In session 4, trade in services and WTO Agreements on services were discussed, with an emphasis on Kenya's service commitments and their impacts to date. One of the 13 Agreements of the Uruguay Round, the Trade Related Aspects on Intellectual Property Rights (TRIPS), and its implications to Kenya were the subjects of discussions in session 5. In the last session of the workshop, participants were requested to voluntarily join one of three groups for more detailed discussions and setting the way forward. The three groups formed were Trade in Goods and Agreements on Agriculture, TRIPS, and Trade in Services.

1. *Session 1: Welcoming and opening remarks*

Participants were formally welcomed to the workshop by Dr. Hezron Nyangito of KIPPRA, who also provided a brief introduction to the workshop and highlighted its objectives. He then invited the AERC representative, Dr. Dominique Njinkeu, to make the first opening statement.

1. *Statement from AERC*

Dr. Njinkeu started by giving the apologies of AERC's executive director who could not attend the workshop due to prior commitments. The remarks dwelt on:

- AERC's mission of building capacity for policy analysis in Sub-Saharan Africa through support for post-graduate training in economics and thematic/collaborative research;
- AERC's project on "Africa and the World Trading System" intended to bring together African and non-African researchers and policy-makers with the goal of assessing the constraints and opportunities, for Africa, associated with coming into force of the WTO;
- AERC's assistance, together with the Organization of African Unity (OAU), Economic Commission for Africa (ECA), and the African Development Bank (ADB), in the preparation of the African position paper for the Seattle Ministerial Conference in 1999, an exercise that enabled AERC to appreciate better the multilateral trade problems facing African countries. These include insufficient knowledge of rules and procedures of the WTO, insufficient knowledge of constraints and opportunities, institutional flaws within WTO leading to lack of transparency and unequal rights of members, weak capacity of Africa to participate, comply and defend their rights, and critical supply constraints hindering the exploitation of opportunities presented by the WTO.
- The urgent measures African countries needed to put in place in order to be able to exploit the opportunities offered by the WTO. These are:
 - i. Mechanisms for adequate information and training of stakeholders on WTO issues;
 - ii. Identification and training of a core multidisciplinary group of scholars that is properly connected to policy makers;
 - iii. Adequate institutional setup locally and in Geneva, with proper association of the private sector and other stakeholders;
 - iv. Adequate participation;
 - v. Use of cost effective regional solutions; and
 - vi. Collaboration among African countries to effectively address the supply constraints facing the continent's entrepreneurs.

- Expectations from the workshop. These were:
 - i. Initiation of the process of frequent exchanges of knowledge through emergence of a group of researchers; and
 - ii Contribution to the position that Kenya will present at the WTO.
- AERC's commitment to continue assisting Kenya and other African countries in ensuring that they exploit all the opportunities in the WTO process.

2. *Statement from KIPPRA*

The Executive Director of KIPPRA, Prof. Mwangi Kimenyi, thanked all the participants for attending the workshop and the Government ministries for collaborating with KIPPRA on the task of organizing the workshop. He also thanked the staff of KIPPRA for working through the weekend to ensure that all the workshop materials were ready. The director described KIPPRA's mission as that of carrying out public policy analysis and capacity building, for instance through seminars like the one on the WTO. Expressing the pleasure of having the Permanent Secretary, MTTI, grace the workshop, the Director invited her to give the opening address.

3. *Opening speech from the PS, MTTI*

Ms. Margaret Chemengich, the PS (MTTI)², started by thanking all the participants and noting that the choice of programme was excellent as it included issues that are already on the WTO negotiation agenda: WTO Agreements, Agreement on Agriculture, General Agreements on Trade in Services (GATS), imbalances and deficiencies in the WTO Agreements, and TRIPS. She warned, however, that issues (not included in the programme) such as environment, competition policy, trade facilitation, Government procurement, and labour standards were likely to enter the WTO domain sooner than later. The speech noted that African countries had not been effective in the first and second Ministerial Conferences and that the post-Uruguay experience for African countries was characterized by imbalances tilted in favour of the obligations rather than benefits. The continent, however, had been more prepared for the Seattle Ministerial Conference, at which African countries were prepared to push for a "Development Round" that addressed poverty, implementation issues, greater market access to African exports, elimination of biases against developing countries inherent in the Uruguay Round Agreements, special and differential treatment of the least developed countries, and expansion of the WTO technical assistance and capacity building programmes.

The PS praised the position paper that the National Committee on the WTO (NCWTO) which was formed in 1995 had helped to prepare for Kenya, but challenged the committee to add value to the paper. Further, the PS challenged the workshop participants to enhance the capacity of the NCWTO to develop firm and concrete positions on the following WTO agenda (and other issues that may enter the agenda from time to time):

- Agriculture and services negotiations;
- The Agreement on Trade Related Intellectual Property Rights (TRIPS);
- Implementation issues and concerns including transition periods;

²See Appendix III for the full speech read by the PS.

- Transparency;
- Problems of Least Developed Countries;
- Capacity building through technical cooperation;
- Investment and competition policy;
- Agreement on Trade Related Investment Measures (TRIMS);
- Agreement on the application of Sanitary and Phytosanitary Measures;
- Government Procurement Agreement;
- Trade facilitation;
- Electronic commerce; and
- Dispute settlement.

The PS, in addition, noted the need for the country to pursue a proactive agenda in the current and forthcoming trade negotiations. She then thanked the AERC and KIPPRA and declared the workshop officially opened.

Questions and discussions

The following questions and/or comments, with respect to the opening statements, were raised:

- Since business people hardly understand WTO procedures and implications, what was the Government doing to ensure that this is improved and that the WTO is a practical tool for them?
- It was noted that the WTO was not merely academic as implied by a participant, as it had serious implications on the economy. The question, however, was why it had been so difficult for the country to take advantage of such practical agreements as the Lomé EU-ACP Agreement and whether there was any guarantee that the WTO Agreements would be implemented.
- Since 1994 when the WTO was established, how far had stakeholders collaborated with the Government?
- Where did competitiveness fall in the WTO?
- With the WTO, what did the South transfer to the North?

In response to these questions, the PS and the Executive Director of KIPPRA noted that competitiveness was the very essence of the WTO, and that developing countries should not expect any favours. Instead, they should strive towards price and quality competitiveness.

The PS asked the private sector to change the attitude of always expecting government support services and get into aggressive business tactics like the use of e-commerce. She admitted that the country has a problem with implementation. Nevertheless, with the definite targets and deadlines set in the Interim Poverty Reduction Strategy Paper, implementation is cautiously expected to improve. On the issue of stakeholder collaboration, the PS challenged researchers to translate professorial papers into simple business language. The Joint Industrial and Commercial Consultative Committee (JICCC) is currently in operation and was cited as an example of stakeholder collaboration, although there is no evidence of collaboration between researchers and WTO negotiators. The Executive Director of KIPPRA welcomed the idea of communicating research to industry as being a very relevant challenge.

2. Session 2: WTO Agreements and progress on implementation

The session was chaired by Mr. R.K. Wanjala of the Department of External Trade, Ministry of Tourism, Trade and Industry who started by lauding the timing of the workshop given the ongoing negotiations on services and agriculture. Two papers were presented during the session whose key highlights are reported below.

1. *World Trade Organization Agreements: features, deficiencies, challenges and implications, presented by Lawrence P.C.L. Makumba, Dept. of External Trade, MTTI*

Mr. Makumba, the head of the WTO division at the MTTI, gave the history of the GATT trade rounds since 1947, culminating in the signing of the Marrakesh Agreements in April 1994 which received tremendous celebration as the new trade order and which, represented by the WTO, was expected to usher in an era of substantial benefits for all countries. In spite of this pomp and celebration, however, the WTO Agreements are now known to have substantial deficiencies. The paper looks at various Agreements and discusses their deficiencies and inequities, some of which include:

- The focus is not on development, an aspect of particular interest to developing countries, but rather on expanding international trade by eliminating or lowering barriers to trade;
- Although the average level of tariffs in developed countries on industrial products is about 4%, those on products of particular export interest to the developing countries are significantly higher;
- The Agreements have an inherent bias against weak countries since the poorly developed countries cannot make effective use of the reciprocity instrument;
- Developing countries cannot make effective use of retaliation as the ultimate instrument for enforcement of rights and obligations, due to their relative political and economic weakness;
- Developing countries lack sufficient funds to maintain the numbers of skilled personnel required for effective participation in the process;
- The high costs of participation also impede collective action;
- Implementation of obligations and commitments is not easy for developing countries, as it is complex, requiring the drafting and enactment of the necessary legislation. Similarly, and technical requirements make it difficult for developing countries to monitor the progress made by developed countries;
- Developing countries are being confronted with new issues for negotiation even when the other issues on the table have not been decided upon; and
- Even understanding the text of the Agreements is a difficult exercise for developing countries.

The paper, in addition, provides some suggestions on the way forward. These include:

- All stakeholders need to work together in developing an agenda on trade related issues;
 - Stakeholders need to push for inclusion of development as an agenda of the WTO;
 - They need to push for improved implementation of WTO obligations and commitments;
 - They ought to mobilize to block any new forms of protectionism;
 - Mobilize resources;
 - Develop proactive rather than reactive agenda; and
 - Place substantial investment on human capacity (research, negotiating expertise, and legal expertise).
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2. Kenya's implementation of the WTO, presented by Elizabeth Kiio, Dept. of External Trade, MTTI.

The paper notes that Kenya, a member of GATT since 1964, acceded to the WTO in 1995. In the same year, and as a step towards implementation of the WTO Agreements, the National Committee on the WTO was formed to assist the Government understand the implications of the WTO and make full use of it. To date, the NCWTO has formed various sub-committees and established focal points to develop expertise and competence on WTO issues.

The paper discusses the Joint Integrated Technical Assistance Programme for Selected Least Developed and other African Countries (JITAP), started in Kenya in 1998, as another step towards implementation of the WTO Agreements. Aimed at capacity building, JITAP has trained 40 specialized trainers for Kenya. These are expected to mount awareness campaigns in the country on the Multilateral Trading System.

The country has also implemented:

- Notification requirements;
- Trade policy review (done in February 2000);
- Customs valuation legislation changes;
- TRIPS legislative changes;
- Trade-related legislative changes; and
- A schedule of commitments in goods and services.

In implementation, the country has faced the challenges of formulating and enacting laws and regulations as well as establishment of facilities, institutions, and enquiry points. Other problems faced include:

- Lack of technical expertise and institutional resources;
- Excessively short transition periods for incorporating WTO provisions into national legislation;
- Market access problems posed by tariff peaks and tariff escalations; and
- A generally disappointing trade performance for the country.

As a way forward, the paper presents the proposals Kenya had prepared for presentation at the 3rd Ministerial Conference in Seattle, and concludes that the country intends to cooperate with other countries with similar interests in the pursuit of common objectives in the WTO.

Questions and discussions

The chairman, while inviting the discussants, underscored the fact that developing countries are seriously constrained by the WTO process. Thus, without changing domestic legislation to conform to the WTO protocols, a developing country cannot appeal to any WTO provisions such as the anti-dumping rules, yet legislative changes are costly, lengthy and difficult.

1. Dr. Dominique Njinkeu, discussant

Dr. Njinkeu raised the following questions and comments:

- i. Does the involvement of many ministries in the Kenyan case pose any institutional problems?
 - ii. Are the technical experts that Kenya has in Geneva adequate?
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- iii. How coherent are WTO, SAPs and other policies?
 - iv. How can African countries guarantee credit within the WTO framework for unilateral liberalization under the SAPs?
 - v. Since capacity building is at the centre of effective participation, African countries should make an explicit demand to WTO for comprehensive and effective capacity building programs;
 - vi. Kenya should insist that the legal framework of WTO allows countries like itself to form regional groupings they deem necessary for their development.
2. *Dr. Njuguna Ndung'u, discussant*
- i. What is needed is not so much understanding of what the WTO is but its implications on Kenya.
 - ii. Recommendation to fight protectionism is laudable (given that Europe does not seem ready to compete with the USA and other giants, preferring to compete with the developing countries) but development agenda should be national rather than an issue at the WTO.
3. *Questions from the floor*
- i. How well are the WTO systems understood by business people?
 - ii. Are the technical details of the WTO well understood by the NCWTO?
 - iii. What is the quality of the JITAP training and how meaningfully distributed are the 40 people trained so far in the economy?
 - iv. Does Kenya take joint positions with other countries, and should it form joint positions in any case?
4. *Responses and consensus*
- i. Kenya's negotiating capacity is weak, with her mission at Geneva having only two attaches and the Ambassador, and combining the WTO responsibilities with many other regional responsibilities. The MTTI would have liked to have at least 5 attaches if resources were available. Some countries have an ambassador solely for WTO issues and use consultants to aid their negotiation processes, while others send large delegations since a number of negotiations proceed simultaneously. The Kenyan team in Geneva lacks even support from Nairobi on the position to take on various issues. Additionally, even in the Trade Department of the MTTI, capacity is very low.
 - ii. Capacity building is a serious problem in developing countries, including Kenya, cannot become competitive without adequate provisions for research and development. The JITAP trainees are superficially trained, with focus mainly on the Agreements rather than on analytical aspects, and have other official tasks which hinder them from concentrating on WTO issues. There is, nevertheless, a provision within JITAP for the trained people to work with university professors to develop syllabuses on WTO courses.
 - iii. Even though membership of the NCWTO is open-ended and broadly inclusive, it is not working well, perhaps because of bureaucracy. Thus, neither its sub-committees nor the focal points are effective at the moment. Nevertheless, for the first time Kenya was able to submit its proposals, on behalf of the African Group, at the 3rd Ministerial Conference in Seattle, largely because of the input of the NCWTO. In addition, the sub-committee on TRIPS has produced a bill that is being debated in parliament. The main weakness with the NCWTO is
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that it does not have legal authority, having been administratively constituted. The private sector and some of NCWTO's other members, notably the Ministry of Finance, hardly attend the meetings. The role of the private sector was particularly noted as having been disappointing so far. The Kenya Association of Manufacturers (KAM) representative complained that the private sector does not receive formal invitation to the meetings.

- iv. On policy coherence, it was noted that trade is more or less peripheral in the IMF/World Bank discussions with Kenya.
- v. The need for African countries to form coalitions to facilitate adoption of joint positions on key and contentious issues was emphasized. In fact, Kenya already takes joint positions with other countries, as demonstrated by her chairing of the African Group in Seattle. COMESA, to which Kenya is a member, also prepared a paper for Seattle. The Economic Commission for Africa (ECA), too, prepared very useful briefs. Development of joint positions is, however, adversely affected by lack of coordination, unity and solidarity. The case of an African minister diluting the African Position Paper that Kenya had prepared by suggesting that the paper get noted and referred to after the Seattle Conference was cited as a case in point, showing this lack of solidarity and coordination.

3. Session 3: Kenya's trade in goods and WTO Agreements

This session was chaired by Mr. Nicholas Sabwa of the Ministry of Agriculture and Rural Development. Three papers were presented and intense discussions followed the presentations. The papers presented were:

1. *The GATT/WTO Agreements, domestic trade policies and external market access: The Kenyan case, presented by Prof. Francis M. Mwega, Economics Dept., Univ. of Nairobi.*

The paper starts by summarizing the objectives of the GATT/WTO Agreements as being the reduction of tariff and non-tariff barriers to trade through the tariffication of quantitative restrictions (QRs), binding of tariffs against further increases, reduction of the tariffs over time (developing countries, including Kenya, are required to reduce tariffs by 24% in a period of 10 years), and inclusion of all the duties and charges applying to a bound tariff in the schedule of commitments. Other implications of the Agreements include phasing out of export subsidies in 10 years and prohibition of export restrictions.

Kenya has implemented most of these tariff reductions under the Structural Adjustment Programmes (SAPs). Thus, QRs were abolished in 1994, Agricultural tariffs bound at 100%, and export subsidies abolished in 1993.

Prof. Mwega's paper analyzes the likely implications of the GATT/WTO Agreements for Kenya's domestic trade policies and investment. The paper notes that it is difficult to assess the impact of the trade policies implemented in the 1980s and 1990s but speculates that improved market access, from say WTO Agreements, may induce both local and foreign investment. In the country, however, data shows that investment rates and foreign direct inflows (FDI) as a percentage of GDP have both declined over the years. Since FDI to Africa is shown by literature to be slowed down by fear of

policy reversals, the paper further speculates that the WTO Agreements, by increasing credibility of domestic policies, are likely to improve investment.

On the impact of the Agreements on market access for Kenyan exports, the paper finds the tariff and non-tariff barriers facing the country's manufactured products in the European Union (EU) market to be very small, contrary to widespread thinking. The weak export performance of these products is therefore attributable to supply constraints rather than trade protectionism in the developed country markets. Among the country's non-traditional exports, which offer the greatest potential in export performance for the country, however, the incidence of tariff and non-tariff barriers is high for Food and Live Animals (SITC 0) and Alcoholic Beverages (SITC 112). The paper concludes, therefore, that the tariffication of non-tariff measures and the reduction of tariffs under the Uruguay Round is likely to benefit the country's Fish Industry (SITC 034) and Horticultural Products (SITC 034-062) compared to other exports. They are, however likely to be hurt by the erosion of the General System of Preferences (GSP) and the preferences provided for the Least Developed Countries (LDCs) within the WTO Agreements.

2. Kenya's trade flows of agricultural and manufactured commodities and impacts of WTO Agreements, presented by Eric. E. Ronge and Stephen N. Karingi, both of KIPPRA.

This paper uses Kenya's trade flows data, both aggregate and disaggregate, to analyze whether the WTO Agreements, in effect since 1995, have had any discernible impacts on the country's trade performance. It starts by demonstrating the openness of Kenya's economy, very high for a developing country. The country's openness index is slightly over 60% and has been consistently above 50%.

On the issue of impact, the paper finds no discernible change in the structure of trade and trade performance, on the basis of data available. Disaggregated data were available only from 1994, a period too short for conclusive analysis. The paper has highlighted the erosion of the country's COMESA (excluding EAC) export market. The erosion is likely to worsen if COMESA member countries continue to implement WTO Agreements unilaterally to the extent that trade with non-members becomes freer than trade with members. The paper indicates that there is potential loss of Kenya's share of the EU market due to the demise of Lomé EU-ACP Agreement and potential loss of the East African Community (EAC) market because of Tanzania's and Uganda's likelihood of joining the Southern African Development Co-operation (SADC).

The paper, in addition, suggests some possible strategies to enable the economy cope in the face of the forecast market share losses. The strategies include diversification of exports, improved competitiveness, diversification into non-traditional export markets such as South East Asia, formation of alternative trade arrangements with the EU, and increase in Kenya's trade with other COMESA member countries instead of concentrating on Uganda and Tanzania.

3. Implications of Agreement on Agriculture on agricultural development in Kenya, presented by Hezron O. Nyangito, KIPPRA.

The paper reviews the Agreement on Agriculture (AoA) and its implementation, and analyzes its implications for agricultural development policy in Kenya. It also discusses agriculture-related issues

set for negotiation in the next WTO round. The impacts of the Structural Adjustment Programmes (SAPs) on the country's agricultural sector are also addressed in the paper.

AoA has three main objectives, namely: improvement of market access, reduction of domestic support measures, and reduction of export subsidies. Market access rules in the Agreement include tariffication of non-tariff barriers, reduction of agricultural tariffs including those resulting from tariffication, minimum access commitment, and current access guarantee. Some non-tariff barriers were allowed particularly for developing countries, however, including anti-dumping, countervailing duties, emergency protection, balance-of-payments, special safeguards, infant industries, and general exceptions. The support measures that are exempt from reduction commitments are categorized into the green box, blue box and the *De minimis*. In the case of export subsidies, the practice is still allowed but constrained.

The paper discusses the experience with respect to the implementation of the AoA. Thus, as far as market access is concerned, the paper notes that bound tariffs remain high, tariff barriers have increased because of tariffication, tariff escalation for processed tropical products, tariff structure is complex for developing countries, safeguards are used less than expected by developing countries while OECD countries are using them to block developing country exports, and Sanitary and Phytosanitary measures (SPS) or technical barriers to trade (TBT) have nullified access to markets especially for developing countries. On the other hand, experience with the implementation of domestic support measures has shown that implementation is complicated by lack of adequate information on the support measures especially from developing countries, methodological problems in calculating the level of support and the Blue Box measures are relevant only to the developed countries. As far as the export subsidies are concerned, experience has shown that they are underutilized by developing countries.

In Africa, research has shown that the AoA has had the following adverse effects on agricultural development:

- Tariffication has extremely raised tariffs for major agricultural staple foods (maize, dairy products, meat and sugar), processed foods, cotton and tobacco;
- Tariff reduction formula adopted to satisfy AoA has led to increased tariff dispersion among agricultural products;
- Registered a marginal increase of the import bill for net-food-importing countries; and
- Resulted in displacement of African producers currently benefiting from such arrangements as the ACP-EU that must give way to AoA.

Kenya signed the AoA in 1995, by which time markets had been liberalized, agricultural subsidies eliminated, and support on agricultural spending reduced under the SAPs. This made it easy for the country to implement the AoA. So far, the country has bound agricultural tariffs at 100% and completely done away with the use of non-tariff barriers. The impact of this implementation on agricultural development in the country includes:

- Tariff rates bound do not offer adequate domestic market protection particularly for cereals and sugar;
- Reduction of agricultural subsidies and government support has had substantial effects on agricultural infrastructure and, therefore, growth;
- Decline in agricultural production, including food crops and export/industrial crops;

- Increased importation of foodstuffs, mainly maize, rice, wheat, sugar and dairy products, significantly reducing the market for domestically produced agricultural products. Liberalization and the ensuing cheap imports of textiles, second-hand clothes and footwear have, in particular, depressed the domestic production of textiles and footwear;
- The balance of trade between Kenya and the rest of the world has worsened; and
- Consumers have benefited from cheap availability of imported foodstuffs.

The paper identifies the following as emerging issues for negotiations:

- Improved market access;
- Reduction of export subsidies by developed countries;
- Improvement of the use of domestic support services by developing countries offering technical assistance;
- Prevention of the developed countries from using the multi-functionality of agriculture as an excuse for delaying the increase of market access for developing country products;
- Food security;
- Transparency with respect to SPS as they relate to agricultural products and technical barriers to trade; and
- Special and differential treatment for developing countries, including assistance to eliminate lingering supply constraints.

Questions and discussions

1. Prof. Peter K. Kimuyu, discussant

Prof. Kimuyu commended the presenters for the good papers they had prepared but noted that it is incorrect to attribute impacts to the WTO unless appropriate models are estimated, when SAPs and other things as well as policies also played a role simultaneously. He noted, furthermore, that even if the WTO protocols had been good, a poor political and policy environment could have nullified their effects.

It was noted by a participant that lack of deliberate attempts to take advantage of the WTO protocols rather than their appropriateness per se could be the explanation for the apparent lack of impact. Furthermore, the intense politicking that characterized the country during the period of WTO negotiations and after, moreover, must have reduced focus on these important issues.

Following further discussion from the floor, it was agreed that the papers should not attribute impacts to the WTO, be they positive or negative, without deeper analyses that effectively control for other influencing factors. Prof. Kimuyu, in addition, queried the quality of data used although the response from the author indicated these data were credible.

2. Prof. S.G. Mbogoh, discussant

Prof. Mbogoh also commended the authors of the papers presented in the session and agreed with Dr. Nyangito that the WTO has contributed to poor agricultural performance in the country. He gave the following comments:

- i. WTO could have improved market access for Kenya's products but this has been prevented by low domestic productivity. Indeed, it was discussed and agreed that the issue is not so

much whether market access has been improved but more so the status of domestic supply constraints, particularly the extremely high transactions costs. It was decided that the best way forward is to isolate the obviously discriminatory and bad clauses of the WTO Agreements for negotiation and, at the same time, improve the supply side conditions.

- ii. There is need to understand the WTO properly for effective negotiation of a favourable position with respect to the AoA in the future;
- iii. There is also need to find ways of increasing market access for processed agricultural products;
- iv. There is need to identify all the major roles for agriculture in the country to enable the country negotiate under the multi-functionality clause; and
- v. The issue of transparency in SPS is very important especially with respect to the use of pesticides.

3. *Questions and comments from the floor.*

- i. The question of whether it was only overheads and poor infrastructure that hindered Kenya's export of manufactured products to the EU when they were successfully exported to COMESA came up. The response indicated that it was largely geographical proximity that caused the difference in the two markets.
- ii. A question was asked about the position of human health in relation to the SPS, to which it was noted that all provisions in the SPS are actually related to human health. It was also noted that developed countries should not be entirely blamed on the issues of SPS, as they are necessary.
- iii. In response to a question on the relative role of good governance in the FDI equation, Prof. Mwega indicated that good governance plays a role but only to some extent. He gave the example of the leading African countries in terms of FDI as Nigeria and Algeria, countries known to have very poor governance.
- iv. The question of the implications of the multiplicity of the WTO Agreements arose. Discussion indicated that multiplicity has wrought some conflicts that need to be addressed.
- v. A number of participants felt that the authors of the papers needed to do a better job with regard to their recommendations on the way forward. In particular, it was felt that alternative ways of increasing market access for Kenya's products should have been explored in the papers, as should have been a focus on the message to give the country's negotiating team. Additionally, given the paucity of data and therefore the difficulty of carrying out watertight analyses of the impacts, the papers should have sought to identify issues under ongoing discussion and looking at the available Kenyan data to determine the appropriate position for the country.
- vi. On the issue of regional integration, discussion indicated that rather than worrying unduly about the possibility of Tanzania and Uganda joining SADC, the question should be whether the WTO framework could be used to attain the same goals sought from regional integration.
- vii. The issue of weak capacity building efforts and the futility of efforts aimed at pushing the WTO agenda forward without building capacity came up once again.

4. *Session 4: Trade in services and WTO Agreements*

The session was chaired by Mr. David Ochieng of the Ministry of Information, Transport and Communications. Two papers which looked at several services in Kenya were presented. These are summarized below.

1. *Principles of trade in services in light of WTO Agreements with special reference to tourism, air transport and financial services, presented by Gerrishon K. Ikiara, Univ. of Nairobi.*

The paper provides a global overview of trade in services, shows some features and principles of GATS, discusses the main objectives of GATS 2000, and presents an overview of Kenya's service sector and the country's commitments within the framework of GATS.

Introducing the presentation, the author noted that GATS is the first attempt to bring services into the multilateral trade framework. He also noted that trade in services negotiations have emerged as the most difficult of all negotiations due to diversity, newness, the complex regulatory framework of most countries' service sectors, and the fast-changing nature of modern service economies. The Uruguay Round was quite successful in setting the rules for services trade, but not so successful in increasing market access. The significance of services in the global economy was also demonstrated in the introductory remarks. Thus, services currently account for more than 70% of production and employment in developed country economies, and more than 50% in the economies of many developing countries. In addition, services trade account for about 7.6% of global GDP and one-third of global trade.

The paper provided as background material differs from the presentation made by the author in two major ways. First, the paper covers more service sectors than tourism, air transport and financial services. It also discusses all the service commitments that Kenya has made to date. The paper addresses the question of which sectors Kenya ought to commit and those in which it should seek greater market access, and gives the reasons why such choices should be made. It also generates information that is immediately useful to the negotiators. Secondly, the paper does not discuss the issues likely to be negotiated in the ongoing round, but the presentation does it for tourism, air transport and financial services.

On the GATS, the author notes that the spirit is that of progressive liberalization with reviews of the process after every five years. Kenya, therefore, is under no undue pressure to commit any services before carrying out exhaustive analysis. Even though actual commitment is voluntary, however, any country that becomes a WTO member is under moral pressure to commit some of the services. Once a sector is committed, the process of changing the commitments is very lengthy and difficult, a fact that underscores the importance of detailed analysis before commitment decisions are made.

Among the four modes of services supply or trade recognized under GATS, Mode 4 on Movement of Natural Persons is the most controversial because of the related immigration and other complications.

Services are important in the Kenyan economy, accounting (including government services) for close to 57% of the GDP and 61.5% of total wage employment. These shares are larger than Agriculture

and Industry combined. Services play a crucial role in the country's balance of payments, moreover, because they tend to have a net surplus in the current account.

So far, Kenya has made commitments in the following services:

- Banking and other financial services;
- Insurance services;
- Tourism and travel related services;
- Transport services;
- Communication services; and
- Other services.

The impressive growth and performance of services in the country over the last three decades took place in a largely competitive environment. Nevertheless, discussions with stakeholders show that there is considerable fear arising from uncertainty about the impact of immediate and full liberalization of trade in services.

According to the paper, Kenya's interests in the context of ongoing GATS negotiations lie in foreign travel (tourism), transport, insurance, professional services, communication services, and information technology. The paper recommends the following strategies for maximizing Kenya's interests in international trade in services:

- Binding those services that already enjoy little or no protection and pushing for reciprocal actions from other WTO members;
- Liberalizing and making commitments on those sectors where the country stands to benefit from transfer of technology for the benefit of consumers and producers, through lowering of the costs of supplying the services. A good example is the country's telecommunications and information sector where domestic competitiveness is currently weak. Opening up and making firm commitments through GATS framework would facilitate inflow of required foreign investments to allow these services to enjoy modern technology.
- Some restrictions on foreign suppliers and investors in the case of some services in order to allow domestic firms to restructure and prepare themselves to face global competition. This will be the case especially in those sectors where there is a considerable number of domestic firms already involved in the supply of certain services. Some of the sectors that are likely to benefit from such restricted access include financial, insurance, and transport services. Some of the conditions could be the cadres of the labor force that should be confined to nationals, proportional shares that can be held by foreign investors in joint ventures for a given period of time, and setting parts of the country for exclusive operation of local suppliers. A good example of the latter is restricting provincial and district air transport market to local firms, which is already being implemented in the country.

There are a number of areas in which Kenya could request more market access, both at the regional and international levels. These are:

- Increased mobility of professional, skilled, semi-skilled and unskilled labor force across national boundaries. The country could benefit much more given its large pool of well-trained manpower when compared to the economy's absorptive capacity after three decades of intensified investments in education and training, both at the national and individual levels; and

- Recognition of local qualifications in areas such as accounting, auditing, and other professional fields would allow the country to export some of the existing surplus of its well-trained labor force.

In order to have an impact on the GATS negotiations, there is need for a coordinated regional approach in the negotiations, especially in the case of services where there are broad common interests among the member states. Member states belonging to regional and sub-regional groups will need to consider granting preferential market access and national treatment in services to each other as a way of facilitating the development of national services production capacities. For the same purpose, member states should consider pooling resources for the joint provision of such services as shipping, air transport, tourism and other services where economies of scale could benefit these countries' economies.

During the presentation, Mr. Ikiara gave the following as the issues set for discussion in the ongoing negotiations and which, therefore, the policy makers and negotiators must be aware of:

- Definition issue. Kenyan negotiators should make a stand on definitions and scope, as the decisions taken will commit the country.
- Most favoured nation (MFN), that is, the non-discriminatory treatment of countries.
- Transparency.
- Tourism: definition, link with air transport, refining offers made, expansion of market access, competitive safeguards, access to information, fairness and justice in the use of Global Distribution System (GDS) and Computer Reservation System (CRS), discrimination in the issuance of visas, and removal of obstacles to development and promotion of regional tourism. For Kenya as a country, it may be necessary to ponder over the domination of the tourism industry by overseas tour operators. Is it ideal for the country or should foreign domination be controlled?
- Air transport services.
- Financial services.

2. Implications of WTO Agreements on trade of professional services, presented by Raphael Mwai.

Being the chairman of the Association of Professional Societies in East Africa (APSEA), Mr. Mwai stated that his paper was not academic but was instead based on practical experience. The paper starts with an introduction covering the objectives of GATS and its modes of trade or supply. This is followed with a discussion of trade in professional services (restricting the analysis to accountancy, legal and architectural services), including the size of the professional services market globally. Trade in professional services started in 1989 although it was not until 1995 that the working party on professional services was formed. The paper then discusses barriers to international trade in professional services which include:

- Nationality requirements, in which regulations favour national professionals relative to foreign professionals;
 - Residence/establishment requirements, regulations requiring professional service providers to be domiciled in the host country or establish commercial presence;
 - Professional certification in the host country;
 - Restriction on business structures or the form of incorporation; and
 - Other barriers such as local trade licensing requirements, discriminatory tax regime, visa requirements, and work permits.
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While Kenya does not restrict its professional services market in any significant way, Kenyan professionals seeking to export services face the restrictions above as well as other hindrances like visas, accreditation, nationality requirements and residency requirements. Kenya should pursue this issue during the negotiations.

Finally, the paper analyzes the implications of trade in professional services for Kenya. Kenya is said to be a major exporter of professional services, but this is constrained by inadequate telecommunications infrastructure, lack of financial support, lack of public sector support, and lack of a positive image of Kenya's services abroad. Competitiveness of Kenyan professionals, according to APSEA, is constrained by low professional and technical skills, inadequate access to professional market information, weak work and business ethics, weak base in process and information technology, bias against local professionals within the public and private sectors, and lack of adequate awareness on the WTO implications.

The paper proposes the following strategies to enable Kenyan professionals benefit from GATS:

- Capacity building in professional services provision through negotiation under the WTO technical assistance programme;
- Lobbying for special and differential treatment;
- Negotiating removal of restrictions on schedules of commitments that work against Kenyans;
- Identifying areas of comparative advantage, especially cross border movement of natural persons, as well as negotiating favourable positions;
- Focusing on regional integration as a first step in capacity building for global competitiveness; and
- Lobbying with the Government for affirmative action, in favour of professionals, as part of the transitional arrangement of GATS.

Questions and discussions

1. Dr. Mbuyi Wagacha, discussant

The discussant made useful comments, starting with the observation that with or without the WTO, international trade and competition will continue and that negotiation is a power game, in which the relatively weak countries are disadvantaged. For this reason, there is need to develop analytical research competencies to strengthen the country's negotiation capacity. Negotiators need to know that unlike goods, services cannot be stored and therefore get wasted if they are not used. Since Kenya has already invested substantially in the services sector, the negotiators must know that these services must be used lest they get wasted.

Dr. Wagacha informed the audience that in general, the bindings and commitments made by Kenya have not been informed by analytical research. For every service sector, there is need to model (revealed comparative advantage, for example) the country's competitive position and to provide this information to the negotiators. This will indicate to planners the areas to allocate resources to and in which to request market access from WTO partners.

Dr. Wagacha gave an example of a good research document prepared by India, which shows that contrary to widespread belief, capital gains over labour when services are liberalized. The same

document indicates that FDI in services mostly employs nationals. These findings underscore the critical role of country-specific competent research and analysis to indicate the sectors that will gain and those that will lose from service liberalization.

Dr. Wagacha ended his comments by posing some questions with regard to the financial services sector: what are the implications of WTO on emerging and crucial micro-finance institutions? What are the implications on the Central Bank? What is the impact on the proportion of resources collected domestically and which are invested in the domestic economy?

2. *Prof. Patrick O. Alila, discussant*

Prof. Alila started his comments by thanking KIPPRA and the participants for the candid exchange of information even from the Government officials. He commended the service discussion for addressing such critical issues of development as infrastructure, technology, and human capital. The discussant opined that liberalization was necessary but some restrictions were also necessary. He also emphasized the need to have some data, from professional associations or from other sources, in the paper on professional services. As far as trade in professional services is concerned, the discussant noted that the following must be given due attention:

- i. African identity was paramount and foreign affiliation should not be viewed as the only credible affiliation;
- ii. International and even United Nations organizations in the country favour foreign consultants in remuneration and positions;
- iii. Loss of professionals by universities, which are the key training grounds for professionals in the country;
- iv. Tied aid which tended to impose undesirable conditions such as use of expatriates;
- v. NGOs that employ poorly baked professionals who team up with foreigners to produce poor quality service;
- vi. Government procurement of professional services is also not objective as it often favours foreigners;
- vii. The useful role that the private sector and professional association can and do play in promoting professional development; and
- viii. Need for evidence of reciprocity before the country enters into reciprocal arrangements.

3. *Questions and comments from participants*

- i. In response to a question on ethical issues related to trade in professional services, it was indicated that there are indeed ethical issues such as the allegation that professionals fan corruption, but that the issues are not very serious. Moreover, professional associations were reportedly working on strengthening ethics and service standards.
- ii. A participant noted that the private sector may not have the capacity to be the 'engine of growth' and that its capacity to finance itself, given heavy taxation, needs to be addressed. While this was found to have some merit, the private sector was requested to change its attitude towards participation.
- iii. A participant suggested that before capacity building was done, it was necessary to draw up directories of professionals and their professions as a way of identifying deficient areas. These could then be posted on the Internet.

Mr. Mwai informed the workshop that APSEA was involved in such a process. Another participant noted the need to develop an accepted database on services.

- iv. Data on the contribution of services to the Kenyan economy, contained in the paper by Ikiara et al., was exaggerated as it contained Government services. Ikiara accepted that Government services dominate but still maintained that the services sector (even net of Government services) is important and that Government services have important linkages with the private sector.
- v. There was a question on who the Kenyan negotiators are and if negotiation is not simply the work of the country's mission in Geneva. In response, it was noted that there was a support battalion from the country that usually travels to join the mission during negotiations. It is this support battalion that needs to be empowered with research support.
- vi. A suggestion was made that, due to the domination of services in the country by multinational corporations (MNCs), services discussions should be related to those of TRIMS in order to enable control of the MNCs. Mr. Ikiara responded that in most cases, the so-called MNCs, particularly in the accountancy profession, help develop the local professional industry and are actually largely controlled by the local professionals.
- vii. On the issue of data on professionals in Kenya, Mr. Mwai noted that there are some data from professional associations but these are inadequate. He indicated also that professional associations have been very active on WTO issues, for instance through setting up of enquiry points on professional services.

5. Session 5: Trade Related aspects on Intellectual Property Rights (TRIPS)

This session was chaired by Mr. Lucas Sese of the Kenya Industrial Property Office (KIPO). Only one paper was presented in this session.

1. *The TRIPS Agreement: Its nature and implications, presented by Dr. Otieno-Odek, Univ. of Nairobi.*

The paper starts by noting that TRIPS is one of the thirteen Agreements signed at the end of the Uruguay Round. The TRIPS Agreement is concerned with intellectual property, defined as creations or inventions of the human mind. The Agreement is aimed at giving property rights over intellectual property, effectively protecting the right to intellectual property, and providing for resolution of disputes at the international level with respect to such property. The paper discusses the subject matter of TRIPS or what the Agreement seeks to protect as patents, copyright and related rights, trade and service marks, industrial designs, geographical indicators, layout designs, protection of trade secrets, and anti-competitive practices. The Agreement defines the subject matter as well as the scope, and specifies the exclusive rights of the owner.

Kenya, being a signatory of TRIPS, is under the following minimum obligations:

- Adhering to and protecting minimum TRIPS standards of protection of intellectual property;
- Setting up of judicious and administrative procedures;
- Establishing comprehensive intellectual property right (IPR) systems covering patents, copyrights, trademarks, industrial designs and trade secrets;
- Protecting new plant varieties, a requirement that affects farmers' right to use saved seeds;

- Protecting of pharmaceuticals, requiring payment by pharmaceutical users of royalty to the owners of patents; and
- Exercising the right, after payment of adequate royalties and during national emergencies, to use inventions without the permission of the owner.

The paper then goes on to discuss some implications of TRIPS to Kenya, which include:

- Plant and variety protection affects farmers and consumers;
- Protection of animal and life forms has ethical implications, with religious groups accusing the Agreement of elevating man to the level of God;
- The Agreement reduces the public domain: that is, the room and scope for free copying and imitation. This affects immediate transfer of technology;
- The agreement does not protect traditional or indigenous knowledge;
- The agreement is not in conformity with the UN's Conventional Biological Diversity; and
- Rights of users and consumers are not provided for in the TRIPS Agreement.

Kenya's reaction to the TRIPS Agreement so far has been its membership to the TRIPS Council, which monitors the implementation of the Agreement and the drafting of the Industrial Property Bill 2000.

Questions and discussions

1. Gichinga Ndirangu, Action Aid, discussant

The discussant made the following comments:

- i. The complexity and ambiguity in the TRIPS has presented problems to many countries and hampered negotiations to the extent that, in the review due, many countries want to incorporate concerns with regard to domestic legislation. Developing countries do not have a watertight position on the TRIPS Agreement.
- ii. The Agreement prevents developing countries from copying and imitating technologies, yet this is credited with the emergence of the Asian Tigers.
- iii. Many drug manufacturers are misusing the Agreement by making cosmetic changes on their products, once the patent period has ended, and passing them as new inventions for further protection.
- iv. Lack of protection for indigenous knowledge has serious implications for developing countries and for Agriculture.
- v. Should the protection of indigenous knowledge be pursued within TRIPS or outside it?
- vi. The issue of public versus private sector research is also not properly addressed.
- vii. How can the cost of AIDS drugs be reduced with the TRIPS so restrictive?
- viii. The TRIPS Agreement is inconsistent with UN's Conventional Biological Diversity with respect to private versus public or communal ownership of rights.
- ix. How can the Agreement be consistent with African national legislation where community ownership rights are recognized?
- x. How can farmers' rights be protected?
- xi. Kenya's participation in the African Group is contradictory to its implementation of the TRIPS Agreement via the Industrial Property Bill 2000.

2. *Dr. Moses Makayoto, KIRDI, discussant*

The discussant started by asking whether ordinary farmers understand what 'intellectual property' means and noting that R&D and transfer of technology are crucial if countries like Kenya have to make a mark in inventions. He gave the example that Japan makes about 2000 patent applications annually while Kenya makes less than 20.

He also suggested that the definition of intellectual property must include, "it must have impact and safe environmental implications". Dr. Makayoto complained that some researchers are used by foreigners to throw away the country's inventions. He averred that transparency and accountability are very crucial in the TRIPS Agreement and suggested that the implementation of TRIPS must be changed to recognize Kenya's herbal medicine without requiring complex chemical composition analyses.

3. *Questions and comments from participants*

- i. Mr. Lucas Sese of KIPO informed the workshop that there are many forums for discussions and negotiations, such as the upcoming UNCTAD conference on traditional knowledge, but Kenya lacks the capacity to attend and participate effectively.
- ii. The Industrial Property Bill 2000 came under intense attack from the participants. Questions like the percentage of industry that is aware of KIPO, the changing versions of the Bill, the relevance of TRIPS in a country like Kenya that does not produce any indigenous inventions, benefits of TRIPS to Kenya, why Kenya is implementing TRIPS, and whether the country's position on TRIPS should lean more towards consumers or towards producers came up. Mr. Sese argued that the Bill has useful provisions like seeking to guide the private sector in contractual arrangements involving technology transfer. He, moreover, informed the workshop that TRIPS was being negotiated and there was adequate room for changing position, therefore.
- iii. It was agreed that Kenya's allocation for R&D was very small and needed to be increased. There was need, furthermore, to encourage local people to do research.

6. *Session 6: Group discussions on the Way Forward*

The last session of the workshop was devoted to group discussions. Three groups were formed and participants were allowed to freely choose the group they preferred. The participants in each group were mandated to choose a chairman and a rapporteur. The three groups, their chairmen and rapporteurs were:

- Group I: Trade in goods and Agreement on Agriculture.
Chairman: Dr. Dominique Njinkeu; *Rapporteur:* Eric Ronge, KIPPRA.
- Group II: TRIPS.
Chairman: Dr. Moses Makayoto, KIRDI; *Rapporteur:* Dr. Wilson Wasike of KIPPRA.
- Group III: Trade in Services.
Chairman: Mr. Raphael Mwai, APSEA; *Rapporteur:* Dr. Moses Ikiara, KIPPRA.

The groups were asked to discuss issues in detail and recommend the way forward, first, with respect to information or ideas that could be shared with the country's negotiation team and second, with respect to research ideas. In this section of the report, group findings as presented by the rapporteurs are introduced.

Group I: Trade in goods and Agreement on Agriculture.

Issues raised

The resource persons within the group raised the following issues for discussion:

- What are the main barriers to Kenyan exports of manufactured products to the EU?
- Should Kenya use the WTO framework or some other means to respond to the threat posed by the entry of Uganda and Tanzania into SADC on her regional trade?
- What should Kenya do internally to take advantage of the WTO Agreement on Agriculture? In particular, which domestic support measures can enable the country to reap benefits from the Agreement?
- What methodological issues would be faced in research aimed at showing the impact on African agriculture, of the continued use of export subsidies in developed countries?
- What should Kenya's position be on the division of subsidies into actionable and non-actionable subsidies, and the new argument about the multi-functionality of agriculture that the developed countries are using to increase subsidies to the sector? Should Kenya respond by boosting subsidies to its own farmers, or by calling for a total abolition of export subsidies?
- How should Kenya respond to such new barriers as the lack of transparency in the implementation of the sanitary and phytosanitary measures?
- What form should the promised assistance to net food importers under the agreement on Agriculture take—fertilizer aid or food aid? Should such assistance take the form of financial support to strengthen local food production, or the form of a proper agreement on the administration of quotas?

Group discussions

Given the short time available for discussions as well as the unavailability of data, most of the above issues could not be addressed exhaustively. Indeed, many of these issues form agenda for comprehensive research. Nevertheless, discussions touched on both general and specific issues.

General discussions

- Before talking about barriers to the country's products in foreign countries, there is need to examine whether the country has the capacity to produce internationally competitive goods.
 - Dumping of goods into Kenya has been a serious constraint to the productive capacity and has affected the domestic market system.
 - The different types of goods that the country produces and exports do not face similar barriers in developed country markets, underscoring the need to distinguish the products that are affected.
 - To increase market access, Kenya should advocate greater use of the Internet.
 - The Government should address the problem of tariff escalation on agricultural and manufactured goods.
 - Before calling for the removal of domestic support measures for developed country agriculture, consideration should be given to the trade-off between increased affordability of imported agricultural products and the distortions that the support measures create.
 - Consideration should also be given to harmonization of trade policies with domestic policies in order to benefit from such trade protocols as the AGOA.
 - While negotiating agreement on food aid one needs to balance immediate food needs with the objective of long-term recovery of the agricultural sector.
-

Specific discussions

1. Food aid and genetically modified food

On this issue, discussions indicated that:

- Kenya should carefully consider how to take advantage of the higher prices offered for organically produced food as opposed to food produced through the use of inorganic fertilizers.
- There is need to consider the health risk inherent in the genetically modified foods offered as food aid, and the impact such foods are likely to have on the ecosystem. In this regard, the issue of broadening the definition of food security to include food safety as in the EU was considered. It was noted that such broadening could lead to the rejection of Kenya's primary good exports in such markets as the EU where food security requirements are already incorporated into the Sanitary and Phytosanitary (SPS) provisions.
- Kenya should push for inclusion into the AoA of safeguard provisions, and the requirement that the impact of genetically modified goods are made known to the all through increased transparency on the part of developers of such technology. Progress was noted in this area in the form of increased linkages between local research institutes and leading biotechnology firms.
- The government should ask for more time to study genetically modified foods and their impact on food safety, domestic food production, and on the ecosystem.

2. How to use WTO to make Kenyan agriculture more competitive

- The government should facilitate the development of local agricultural markets (such as futures markets) to give farmers incentives such as cash advances and information on pricing.
- Kenya should implement WTO Agreements in order to become competitive. However, the type and level of bindings should be determined by the objective of enhanced competitiveness. Technical assistance from the WTO would also make the country more competitive.
- Developed countries should be pushed to implement their bindings so as to reduce the level of protectionism which is still very high.
- Kenya should call for the removal of the distinction between actionable and non-actionable subsidies as the distinction provides room for unfair trade.
- The Kenya Bureau of Standards should be streamlined and strengthened to ensure that the quality of the country's products is high.

3. The best strategy for Kenya should Tanzania and Uganda move to SADC

- The speed of Kenya's integration into COMESA and the EAC should be determined by the commitments the country has made within the WTO.
- Kenya should consider whether to pursue its goals through the WTO or through regional trade agreements. This ought to be guided by careful analysis of the costs and benefits of alternative strategies.

Group II: TRIPS

Implementation problems, capacity building, research and outreach programmes on the TRIPS Agreement were the main issues that emerged from this group's discussions. Other matters related to protection of traditional knowledge and active private sector involvement.

1. Implementation problems

The TRIPS Agreement strives to ensure the adequate protection and effective enforcement of intellectual property (IP) rights, and the impartial resolution of disputes between WTO members about such matters to the mutual advantage of both producers and users of such property. To date, the most significant reaction by Kenya to the TRIPS provisions is the drafting of the Industrial Property Bill 2000 that is currently awaiting consideration by Parliament. However, it was observed that there were a number of teething problems (including inadequate professional capacity) which pose constraints to the implementation process.

2. Protection of traditional knowledge

Traditional knowledge is a fundamental area of concern in African innovations. Both traditional medicine (e.g., cures for certain ailments) and some merchandise in informal business sectors (e.g., the *kiondo*³) are potentially patentable subject matter. The concern is that these facets are not covered in the present TRIPS Agreement. Odek (2000: p. 8) rightly notes that the Agreement has a damaging effect on agricultural research. For instance, plant varieties that prior to the Agreement were in the sphere of national public domain now have the potential of being transformed into private property.

3. Business and Private Sector Involvement

Negotiation of the Agreement on TRIPS at the Uruguay Round gave rise to an acrimonious debate between industrial and developing countries. Business interests in the industrial world claimed large losses from the imitation and use of their innovations in developing countries. They also asserted that establishing strong intellectual property rights would benefit the developing countries by encouraging foreign investment, the transfer of technology, and greater domestic research and development. Developing country governments adamantly opposed this view, worrying about the higher prices that stronger IP rights would entail and about the harm that these rights might cause to infant, high-technology industries.

So the role of private sector participation in the promotion and protection of local innovation through R&D was one of the principal issues discussed. The Kenyan economy is dominated by large multinational companies (MNCs) that undertake R&D in their home countries with all the associated scale economies and simply transfer the final products to host nations. And it is highly unlikely that the status quo will be changed in the immediate or short run. Given its other significant macro- and micro- economic payoffs, it was agreed that the second best policy option for Kenya was to encourage the foreign private investment and then seek to protect Kenyans by franchising patents.

4. Capacity building on the TRIPS Agreement

The need for improved capacity in the understanding and drafting of actual legislation in harmony with the WTO/TRIPS Agreements was stressed. The complex nature and implications of the TRIPS text necessarily call for an interdisciplinary and multidisciplinary approach/team to decipher. Yet few lawyers and R&D policy experts in Kenya can comprehend the WTO legal provisions on trade in intellectual property rights.

5. Research and outreach programmes

The Kenya Industrial Property Office (KIPO) is a small government department with a staff compliment of 16 only. These officers cannot adequately and efficiently undertake quality research,

³ A *kiondo* is a traditional basket whose origin is associated with the ingenuity of the Kikuyu people of Kenya.

undertake outreach programmes, and examine countrywide applications for intellectual property rights. Similarly, the mandate and staffing of KIRDI are limited. KIRDI is a government parastatal established under the Science-Technology Act, Cap. 250 and is mandated to conduct research and development in all industrial and allied technologies including mechanical, civil, electrical and electronic, chemical engineering, energy, environment and commodity. Its mission is to develop a strong industrial technology base and to support industrial innovation as part of industrialization process for human development and poverty reduction.

The way forward

Issues of house (national) keeping and the impending Round of WTO negotiations were endorsed. On the former, it was agreed that a national taskforce on TRIPS – under the auspices of the Kenya National Committee of WTO – be formed to, inter alia, consider implementation problems as well as recommend strategies for building capacity for research, analysis and outreach in this field of international trade policy.

KIPPRA could source funding and identify qualified core personnel to decipher the TRIPS text and evaluate its trade implications on Kenya's agriculture, environment, health, investment and innovation; the initiative should involve a judicious mix of public and private participation. Empirical data, analysis and findings on TRIPS's implications are critical in informing Kenya's position in future WTO negotiations. Two research questions that immediately emerge are:

- Does stronger protection of IP rights have a positive impact on international trade flows for Kenya? Findings from elsewhere show that protection of IP rights increases bilateral trade flows of manufactured non-fuel imports, but no significant evidence is found for trade in high-technology goods.
- How will stronger patent protection in Kenya affect the behaviour of transnational pharmaceutical industries? In a similar study on India, Carsten Fink⁴ concludes that if future drug discoveries are mainly new varieties of already existing, therapeutic treatments, the effect of stronger patent protection is likely to be small. If newly discovered drugs are medicinal breakthroughs, however, prices may rise significantly above competitive levels and static welfare losses may be large.

Another national issue relating to outreach programmes is that the provisions of the Agreement ought to be simplified. In his paper, Odek states that: "Members are to ensure that enforcement procedures specified in the Agreement are available under their national laws to permit effective action against any infringement of intellectual property. The procedures are to be fair and equitable, not complicated and costly or entail unreasonable time limits or unwarranted delays. Provisions for review by way of judicial authority should be given".

The agenda for the forthcoming Round of negotiations were not entirely fleshed out. The matter of balance of protection of the producer vis-à-vis the consumer of intellectual property rights is not an issue because consumers are effectively covered under the TRIPS technovation clause. Nonetheless, traditional knowledge and ownership of rights to biotechnology are two areas where the discussion group felt should be included in future WTO provisions on TRIPS.

⁴Fink, C. (2000) "How stronger patent protection in India might affect the behaviour of Transnational Pharmaceutical Industries." Policy Research Working Paper No. 2352, World Bank: Washington DC.

Lastly, there is need to address and harmonize inconsistencies in Kenya's positions at the national and international levels *alà* biotechnology.

Group III: Trade in services

1. An overview

The Group had an intense and lively debate on various issues, and reaching consensus on any of them was not always easy, underscoring the importance of comprehensive research to inform the process of decision-making. The group sought first to understand the rationale behind the choice of services already committed by Kenya and the impacts of the commitments so far. The group was informed that the country chose to commit the service sectors that she had already autonomously liberalized through the Structural Adjustment Programme (SAP). The country had, therefore, somewhat benefited from autonomous liberalization since the WTO recognizes that Kenya has already made some commitments.

In the case of impacts, it was obvious that there is a dearth of information. Even Government officials in the Department of External Trade could not authoritatively talk about any impacts they were aware of. The only example mentioned as a case of adverse impact was that the industry had complained about the Computer Reservation System (CRS), following its commitment, forcing the country to apply for waiver of the commitment. A country that wants to reverse a commitment that turns out to be adverse can only apply for a waiver after 3 years and the process is lengthy and difficult.

2. The negotiating agenda.

Following intense debate, the group members arrived at the following as the agenda that should be communicated to the country's negotiating team:

- i. The country should push for provision of adequate credit to countries for autonomous liberalization.
- ii. The country should push for increased flexibility in reviewing commitments that turn out to have adverse consequences.
- iii. The capital market is a potential area for further liberalization or for opening up.
- iv. Commitment of investment in the financial services sector should be subject to more stakeholder consultation.
- v. Equity liberalization in insurance services should be undertaken to allow up to 49% foreign ownership.
- vi. Air transport services should be liberalized further as this has great potential to benefit tourism and horticulture export sectors.
- vii. Aviators to be allowed to choose insurers freely, including foreign ones, making reversal of the Civil Aviation Act Amendment of 1999).
- viii. Railway services, ports and shipping services being key infrastructural services in which Kenya lacks capacity should be committed.
- ix. Further liberalization of telecommunications, including the removal of the 5-year monopoly status given to Telkom Kenya and the monopoly accorded to the two mobile phone service providers should be undertaken.
- x. Transparent regulatory framework from the Communications Commission of Kenya (CCK) is required.
- xi. Liberalize investment in the telecommunications infrastructure such as the JamboNet.

- xii. Push for bringing broadcasting into the GATS framework.
- xiii. Push for market access from regional (Uganda and Tanzania) and international markets, especially through Mode 4 of service supply.
- xiv. There is also need to push for greater technical assistance.

3. The research agenda.

In view of uncertainty regarding the likely impacts of WTO commitments on the service sector, the group felt that in-depth research was urgently needed on:

- The impacts of commitments already made by Kenya; and
- The feasibility of allowing foreign insurance without commercial presence.

Comments from participants.

- i. WTO is a good thing and Kenya should find ways of making use of it. Nevertheless, Kenya should ensure that liberalization does not lead to exploitation of child labour like it has done in Asia. Kenya's effectiveness at the WTO negotiations is expected to improve given that this workshop was the first forum in which researchers and academics seriously addressed the global trade issue. Regional approach to the WTO was deemed to be more cost-effective.
- ii. Report of the workshop proceedings should be distributed to the participants, circulated to various industries and economic sectors, and tabled at the negotiations in Geneva. The report should educate different sectors on issues relevant to them, highlighting which of them may be on the negotiating table, and suggesting broad policy changes for Government action.
- iii. KIPPRA, in association with other agencies like IPAR and AERC, should develop a network of resource persons on the WTO and call a brainstorming session to discuss the results of the workshop. Dr. Nyangito of KIPPRA informed the participants, in his closing remarks, that all the participants of the workshop will constitute the nucleus of the network discussed and that they would be approached as need arose and for frequent discussions. KIPPRA would also organize another workshop in which all stakeholders would participate.
- iv. Research is needed to examine sectoral comparative advantages for Kenya in order to determine the country's key sectors as far as trade is concerned. In the closing remarks, Dr. Nyangito of KIPPRA promised that KIPPRA, in collaboration with AERC and the Government ministries would strive to make this and other proposed research realizable.

Closing remarks, by Executive Director, KIPPRA

The executive director of KIPPRA, Prof. Mwangi Kimenyi, thanked all the participants for finding time to attend and participate in the workshop, the AERC and other organizations for collaborating, and the KIPPRA staff for a splendid effort. He singled out the collaboration KIPPRA has had with the Government, particularly the Ministry of Tourism, Trade and Industry and promised that the close cooperation would continue. He hoped that, in future, there would be better participation from the private sector and stated that KIPPRA was open to and ready to work with the private sector.

On the way forward, the director promised to adopt the suggestions made by the participants, including the circulation of the proceedings report. Stating that KIPPRA has the primary duty of building capacity in the area of public policy, the director indicated that the institute could start capacity building of the country's negotiating experts immediately.

Summary of conclusions

The two-day workshop was characterized by intense discussions. Conclusions were reached on a wide range of issues, most important of which are:

- The WTO is, in general, poorly understood by business people, the Government, academics and researchers in the country. Thus, collaboration and linkage between researchers working on WTO issues and the country's negotiation teams is missing. The Permanent Secretary challenged researchers to translate professorial papers into simple language understandable by industry.
- Public/private sector collaboration is still insignificant in spite of the formation of such institutions as the NCWTO and the JICCC. The NCWTO lacks legal authority. The private sector, in particular, has not played any role largely because of having the wrong attitude to participation, and also because of lack of capacity.
- The WTO and globalization, together with associated competition, are here to stay and the best thing for Kenya is to build competitiveness of her products.
- Besides the WTO, Kenya has been poor in following Agreements (for example the Lomé European Union (EU) – African, Caribbean and Pacific (ACP) Agreement) and taking advantage of them. The country was judged as having a problem with implementation. So far, Kenya's implementation of the WTO has been poor but substantial liberalization has already been achieved unilaterally through the Structural Adjustment Programs (SAPs).
- Developing countries, including Kenya, lack technical and financial capacity to make serious proposals at the WTO and other multilateral negotiation fora. JITAP and WTO Technical Assistance provisions have either not provided the required training or have not been exploited because of stringent conditions. Budgetary allocations to R&D in the country are, additionally, very small yet capacity building is key to effective participation in the WTO. The commitments and bindings the country has made so far have therefore not been informed by analytical research.
- There is need to develop analytical research competencies to strengthen the country's negotiation capacity. Such large capacity should be mainly directed at the relative comparative advantage analysis of sectors before commitments are made. Thus, even though the small group discussions came up with specific ideas on which sectors are best committed and which are best protected, it was decided that such agenda must be based on thorough and competent research.
- WTO Agreements have deficiencies and imbalances and are unfair to developing countries. Thus, products in which developing countries have comparative advantage are faced with high tariffs in developed country markets. Developing countries, like Kenya, must therefore seriously fight protectionism.
- It is very difficult to isolate the impact of the WTO on Kenya's trade performance because many changes took place at the same time that the WTO Agreements took effect. These include the ongoing liberalization under SAPs, weather changes, and political tensions. In addition, poor data hinders the use of methodology that can isolate these different influences. Nevertheless, the studies presented indicated the following trends:
 - a) There are very small tariff and non-tariff barriers for manufactured products in the EU market, implying that Kenya is unable to export them there not because of high trade barriers

but because of supply side constraints. These supply side constraints were found to be serious impediments in the country.

- b) For foods like fish and live animals, in which developing countries have comparative advantage, studies found high tariff and non-tariff barriers. Kenya, which is competitive in these products, could therefore benefit from the enforcement of WTO Agreements.
- c) There is not much change in the structure of Kenya's trade following her accession to the WTO, indicating perhaps that the country has not made deliberate attempts at understanding the WTO and taking advantage of it. Supply side constraints have limited the capacity of the country to take advantage of the WTO Agreements.
- d) Sanitary and Phytosanitary (SPS) Agreements constitute unfair technical barriers to developing country trade. For example, the EU ban of fish exports from East Africa, under sanitary grounds, has robbed the region of enormous resources. There is risk of the region losing its lucrative horticultural product trade on similar grounds. Developing countries are demanding transparency on the implementation of this Agreement.

It was concluded that a sound methodological framework to facilitate the analysis of WTO impact on market access for Kenyan products should be developed.

- Kenya has drawn up the Industrial Property Bill 2000, as a step in the implementation of the TRIPS Agreement, contrary to the position taken by the African Group, which Kenya chaired at the Seattle Conference. The TRIPS Agreement has adverse consequences for farmers and consumers, curtails imitation and transfer of technology to developing countries, and does not recognize or protect indigenous traditional knowledge. It also raises deep ethical concerns and is inconsistent with African national legislations in which community ownership rights are recognized.
- Developed countries should be pushed to reduce export subsidies, especially in Agriculture.
- The large number of agreements and regional groupings that Kenya is involved in is associated with conflicts, which need to be addressed. While a regional approach to the WTO issue was deemed cost-effective and given the conflicts inherent in multiple groupings, a pertinent question was posed: Is it possible to use the WTO framework to attain the same goals pursued through regional integration?
- The discriminatory protocols of the WTO should be identified for negotiated removal or remedial action while, at the same time, the domestic supply conditions should be improved.

Immediate follow-up activities

The participants resolved that several activities should be implemented immediately as a follow-up to the Workshop. First and foremost, the Workshop proceedings' report should be circulated to all stakeholders and to the country's negotiation team. Secondly, a network of researchers and other resource persons on the WTO should be formed, with the participants of the Workshop forming a nucleus. KIPPRA was requested to spearhead networking, capacity building of the negotiation teams, research on WTO impacts and on relative competitiveness of Kenya's goods and services, and to organize frequent discussions of WTO issues. In particular, the institute was requested to organize a workshop with more widespread stakeholder participation, particularly that of the private sector. KIPPRA's executive director informed the participants that the institute's primary mandate is capacity building in the area of public policy and could therefore embark on capacity building of the negotiation experts immediately.

Appendix I: List of WTO Workshop participants

<u>Name of Participant</u>	<u>Position</u>	<u>Inst/Org</u>	<u>Tel. No</u>
1. Prof. Peter Kimuyu	Executive Director	IPAR	251179
2. Dr. Mbui Wagacha			"
3. Dr. Dominique Njikeu			"
4. Mr. Gerishon Ikiara	Senior Lecturer	IDS, UoN	334244
5. Dr. Otieno Odek	Senior Lecturer	Faculty of Law, UoN	"
6. Ms. M. Chemengich	P.S.	MTT & I	252950
7. Mr. R.K. Wanjala		DET, MTT & I	
8. Mr. Lawrence P.C.L. Makumba		DET, MTT & I	313594
9. Mr. M.M. Otieno		DET, MTT & I	"
10. Mr. Duncan Mwangi		DET, MTT & I	"
11. Mr. M.M. Kimani	Dept. of Industries	MTT & I	215815
12. Mr. Davis Barasa	Dept of Tourism	MTT & I	217604
13. Mr. Lukas Sese	Deputy Director		
14. Mr. Kefa L. Muga	Principal Economist	M.O. F & P	338111
15. Mr. B.R. Ndegwa	Principal Economist	M.O.F. & P	
16. Ms. Shobhna Shah	Snr. Economist	M.O.F. & P	
17. Mr. P.O. Bw'Ombuna	Dep. Chief Economist, Ag. H/o Planning	Min. of Agriculture	716665
18. Mr. Nicholas Sabwa	Snr. Economist	Min. of Agriculture	
19. Ms. Grace J. Chirchir		KEPHIS	
20. Ms. Elizabeth M. Kiio		DET, MTT & I	
21. Mr. Peter Ochieng Ligulu			
22. Miss Alice Wachi	Insurance Officer	Comm. Of Insurance	
23. Mr. Urbanus W. Mutisya & Admin.	Public Relations Wanawake	Maendeleo Ya	
24. Mr. Abel N. Nandwa		COTU	
25. Mr. Gichinga Ndirangu		ACTIONAID	440440/442200
26. Mr. Patrick Nzusi & Trade Div. Coop	Economist Economic Affairs & Int.	Min. of Foreign	334433
27. Mr. Moses Ogolla		Relief & Rehabilitation Office of the President	
28. Mr. David Ochieng		Attorney General's Off	
29. Mr. Walter Kamau			
30. Mr. Peter Kegode			
31. Mr. Kairo Thuo		Delloite & Touche	
32. Dr. Moses Makayoto	Director	KEMRI	
33. Prof. Patrick O. Alila	Director	IDS, UoN	
34. Prof. S.G. Mbogoh	Dept. of Agriculture	UoN	
35. Betty Maina	Chief Executive Affairs Chairman	Inst.of Economic	
36. Mr. Raphael Mwai		APSEA	
37. Ms. Rosely Amadi		AG's Office	
38. Beldine A. Omolo		UoN	
39. Njambi Mwangi		UoN	
40. Mary Ndunge Nguli		UoN	
41. Awoke Tilanum		AERC/JFE	
42. K. Storey		AERC	
43. Mr. John M. Matheka		KNCC & I	
44. Mr. N.M. Haji		AG's	
45. Ms. Jane Kabubo ALL KIPRA STAFF		UoN	

Appendix II: WTO Workshop programme

Day 1

Registration 8:30 – 9:00 a.m.

Session 1: 9.00- 10.00 a.m. - Opening Remarks

- Welcoming** - KIPPRA and AERC Coordinators
- Opening Remarks** - KIPPRA Executive Director
- AERC Executive Director
- Chief Guest** - Ms. Margaret Chemengich – Permanent Secretary
Ministry of Trade, Tourism and Industry)

Tea Break – 10.00 to 1.0.30 a.m.

Session 2: 10.30 a.m. – 1.00 p.m.

Overview of World Trade Agreements and Progress on Implementation

- Chair :** (Ministry of Tourism, Trade and Industry)
- 10.30- 11.15 a.m. **World Trade Organization Agreements:
Features, Deficiencies, Challenges and Implications**
(Mr. L. Makumba)
- 11.15 - 12.00 p.m. **Kenya's Implementation of WTO Agreements**
(Prof. J. Okello)

12.00 – 1.00 p.m. **Discussions**

- Discussants:**
1. Prof. T. C. I. Ryan-WTO Features, Deficiencies, Challenges and Implications
 2. Dr. Andrew Mullei -Kenya's Implementation of WTO Agreements

Lunch 1.00 p.m. – 2.00 PM

Session 3. 2.00 p.m. - 4.30Pm

Kenya's Trade in Goods and WTO Agreements

Chair (Ministry of Agriculture and Rural Development)

- 2.00 - 2.30 p.m. **The GATT/WTO Agreements, Domestic Trade Policies and External Market Access:
The Kenya Case** (Prof. F. Mwega)
- 2.30 - 3.00 p.m. **Kenya's Trade flows of Agricultural and Manufactured Goods and Impacts of WTO Agreements.** (Mr. E. Ronge and Dr. S. Karingi)
- 3.00 - 3.30 p.m. **Impacts of Agreements of Agriculture on Kenya's Agricultural Development**
(Dr. H.O. Nyangito)
- 3.30 p.m -4.30 p.m. **Discussions**
Prof. P. Kimuyu – GATT/WTO Agreements, Trade Policies, External Market Access and Trade Flows
Prof. S.G. Mbogoh –Agreement on Agriculture and Agricultural Development in Kenya

Tea Break and Departure

Day 2**Session 4: 8.30 a.m. – 10.30 a.m.****Trade in Services and WTO Agreements**

Chair : (Ministry Transport, Communications and Broadcasting)

8.30 - 9.00 a.m. **Principles of Trade in Services in Light of WTO Agreements with special Reference to Tourism, Air Transport and Financial Services.**
(Mr. G.K. Ikiara)

9.00 - 9.20 a.m. **WTO Agreements on Telecommunication Services and Implications**
(Mr. C. Njoroge/Mr. M. Muriithi)

9.20 - 9.40 a.m. **Implications of WTO Agreements on Trade of Professional Services.**
(Mr. R. Mwai)

9.40 - 10.30 a.m. **Discussions**
Discussants: 1. Dr. M. W. Wagacha—Tourism, Air Transport and Financial Services
2. Prof. Alila – Telecommunications and Trade in Professional Services

10.30 - 11.00 a.m. **Tea Break**

Session 5: 11.00 a.m.- 1.00 p.m.**Trade Related Aspects on Intellectual Property Rights (TRIPS)**

Chair: Kenya Industrial Property Organization
11.00 - 11.45 a.m. **TRIPS Agreements and its Implications.**
(Dr. Otieno Odek)

11.45 - 1.00. p.m. **Discussions:**
Discussants: Mr. G. Ndirangu: Action AID
Director: KARI
Director: KEMRI
Director : KIRDI

1.00 – 2.00 p.m. **Lunch**

Session 6 : 2.00 to 4.30 p.m.**Group Discussion and Way Forward (Breakout Sessions)**

Group 1- WTO Agreements and Negotiations

Group 2. Trade in Goods

Group 3. Agreements on Agriculture

Group 4. TRIPS

Discussants to Chair Groups

Group Rappoteurs to be appointed by groups

Conference Rappoteurs: Dr. M. M. Ikiara; Dr. Kulundu Manda

Appendix III.

Statement by Ms Margaret K. Chemengich, EBS, Permanent Secretary, Ministry of Tourism, Trade and Industry at the AERC-KIPPRA WTO Workshop at Safari Park Hotel, Nairobi 11th September, 2000

Mr. Chairman, resource persons, organizers of this workshop, distinguished participants, ladies and gentlemen:

It is indeed a great honour and privilege for me to have this opportunity of addressing this important workshop on World Trade Organisation Agreements.

The workshop is taking place at a time when there are so many activities going on around us and globally. This is a reflection of the fact that globalization is proceeding at a fantastically fast speed. We cannot afford to dilly-dally or practice the policy of "wait and see" lest we be left fallen by the wayside.

The choice of the topics/subjects for this workshop's discussion is an excellent one. The organizers could not have formulated a better programme than what is currently on the agenda of the multilateral trading system of which we are part.

There is no doubt that the Uruguay round of negotiations which gave birth to the current World Trade Organization (WTO) was the most comprehensive and complex of the post-war negotiating rounds of the general agreement on tariffs and trade. Until 1994 when the Uruguay round was signed in Marrakech, Morocco, traditional trade negotiations were mostly about tariffs on manufactured goods. But in order to address the broad range of what was seen as shortcomings in the multilateral trading system in the context of globalization and liberalization, the Uruguay round covered Non-Tariff Barriers (NTBS), agriculture, export subsidies, trade in some services, investment, intellectual property rights, and standards for food safety.

As history tells us at the finalization of UR, GATT member countries reached new agreements in each of these new areas. The results were a new GATT- 1994, which reduced industrial countries' tariffs by about 40 per cent on average, and three pioneering arrangements, the General Agreement on Trade in Services (GATS), the Trade-Related Aspects of Intellectual Property Rights (TRIPS), the Trade-Related Investment Measures (TRIMS), and the creation of World Trade Organization (WTO) as an apex institution to administer these and other UR agreements. I am pleased to note that these agreements, together with the crucially important subject of agreement on agriculture, are key topics for discussion at this workshop.

I must, however, take this early opportunity to warn that the WTO's domain may soon extend to environmental issues, competition policy, trade facilitation, government procurement and labour standards, among others, as evidenced by the proposals put forward at previous negotiating fora, including the 3rd WTO Ministerial Conference in Seattle, USA.

Mr. Chairman, we have to be cognizant of the fact that although the Seattle ministerial conference failed to agree on a common declaration and on a new round of negotiations, there are moves currently for reviewing the situation with a view to launching a new round of multilateral trade negotiations. This will mark a critical juncture for many African countries, including Kenya. The proposals are being advanced at a time when a number of fundamental changes have taken place, including a shift towards democratic forms of government in many countries and adoption of liberal, market-oriented economic and financial policies and structures. Things are happening at a time when there seems to be an emerging consensus among African governments and their development partners, that the overarching objective of development in Africa has to be the reduction of poverty in the short-to-medium term and its eradication in the long run.

It is also important to recall that following the Marrakech Agreement, African countries have sought to be effectively integrated in the global trading system and to improve their participation in the multilateral trade negotiations under the WTO. Participation in the First and Second Ministerial Conferences in 1996 in Singapore and in 1998 in Geneva, respectively may have been less effective. But the preparation for participation in the Third Ministerial Conference, which was held in Seattle, USA, was more effective, thanks to a better preparedness by developing countries.

African countries arrived in Seattle for the third WTO Ministerial Conference with both aspirations and hope that the conference would mark a new beginning in multilateral trade negotiations within the framework of the World Trade Organization (WTO). They were pressing for a "development round" that would address deepening poverty in their countries and modalities for their effective integration in the global trading system. They were armed with a set of proposals to make the concerns of the world's poorest people central to the rapidly expanding global trading system. In Seattle, they also wanted to argue that industrialized countries should open their markets to African exports, eliminate the biases against developing countries inherent in the Uruguay round agreements, and adopt a package of special and differential treatment in favour of the least developed countries.

It may be pointed out that by focusing on "implementation issues," African countries hoped to pry open developed countries' markets, obtain agreement for developed countries to eliminate tariffs on exports from the least developed countries, expand the WTO technical assistance and capacity-building programmes. They also hoped to obtain agreement on extending and enforcing the "special and preferential" treatment provisions of the Uruguay round agreements, which are intended to assist the integration of developing countries in the global trading system. I am pleased to say that Kenya's paper which was prepared for the conference was a model for Africa.

I wish to urge the participants to improve upon it, particularly in view of the on-going negotiations on agriculture and services. I also wish to bring to the attention of the participants the fact that it is not only agriculture and services negotiations which are currently being addressed. The other areas being addressed include:

- The agreement on Trade-Related Intellectual Property Rights (TRIPS);
- Implementation issues and concerns, including transition periods;
- Transparency;
- Problems of least developed countries;
- Capacity-building through technical cooperation;

- Investment, competition policy, and government procurement;
- Agreement on Trade-Related Investment Measures (TRIMS);
- Agreement on the application of sanitary and phytosanitary measures;
- Government procurement agreement;
- Trade facilitation;
- Electronic commerce; and
- Dispute settlement, among others.

Dear participants, I am informed that some of you are members of the National Committee on World Trade Organization (NCWTO) which was established in 1995 and changed with the following main objectives;

- To study and analyze in-depth the provisions of the WTO Agreements and their likely effects on the country's economy.
- To monitor on a continuous basis the implementation of the agreements by the WTO and its member countries and recommend appropriate action by Kenya.
- To provide modalities for implementation of the agreements by Kenya such as would ensure maximum gains to the country.
- To provide Government and the private sector with the necessary analysis on new market access conditions to enable identification of immediate and potential trading opportunities created by the Uruguay round both in traditional and non-traditional markets.

While I commend the national committee for the good document you produced last year for the Seattle Ministerial Conference, I challenge you to aim at producing a new paper with some value added not only on the issues addressed in that document but all the other relevant issues that are on the agenda of the WTO, or those which are being proposed. This means more work and some sacrifice from you for the good of this country. My hope is that this workshop will enhance your capacity to deal with these issues.

In this regard, it may be recalled that the completion of the Uruguay round negotiations and the subsequent establishment of the WTO were hailed by many as heralding a new dawn in international economic relations. Many studies conducted at the time postulated that gains would accrue to developing member countries as a result of the new market access opportunities and the certainty and predictability created by the new rules-based trade regime. This, regrettably, has not been the case as far as African countries are concerned. Indeed, the post-Uruguay round experience of African countries highlights an imbalance tilted in favour of the obligations rather than the benefits that were expected from the multilateral trading system. We must work tirelessly to reduce the imbalances and deficiencies in these WTO Agreements. I am pleased to note that this is one of the subjects you will be discussing during the workshop. In order to survive, we must devise strategies aimed at maximizing the benefits from the international trading system by pursuing a proactive agenda in the current and forthcoming trade negotiations.

In conclusion, I wish to reiterate my request to you that you add value to what has already been done, and you also aim to seriously address and develop firm and concrete positions on any new issues that may be introduced.

I take this opportunity to sincerely thank AERC and KIPPRA for organizing this important workshop at such a timely hour, and also for inviting me.

With these remarks, it is now my privilege to declare the AERC-KIPPRA WTO Workshop fully open.

I wish you success in all your deliberations.

Thank you.