REPUBLIC OF KENYA

MINISTRY OF INDUSTRY, TRADE AND COOPERATIVES

STATE DEPARTMENT FOR TRADE

NATIONAL TRADE POLICY

"Transforming Kenya into a Competitive Export-Led and Efficient Domestic Economy"

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Export-Led and Efficient Domestic Economy"

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LIST OF ABBREVIATIONS AND ACRONYMS

ACA	- Anti-counterfeit Agency
ACP-EU	- African, Caribbean, Pacific, and European Union
AEC	- African Economic Commission
AEO	- Authorized Economic Operators
AGOA	- African Growth and Opportunity Act
ARIPO	- African Regional Intellectual Property Organization
ATIA	- African Trade Insurance Agency
B2B	- Business to Business
B2C	- Business to Consumer
BDS	- Business Development Services
BOO	- Built Operate and Own
BOT	- Built Operate and Transfer
BPO	- Business Process Outsourcing
BRRU	- Business Regulatory Reform Unit
C2B	- Consumer to Business
CBIK	- Centre for Business Information in Kenya
CBK	- Central Bank of Kenya
CBoK	- Coffee Board of Kenya
CAK	- Communications Authority of Kenya
CET	- Common External Tariff
CIN	- Consumer Information Network
CITES	- Convention of International Trade in Endangered Species
CNR	- Copyright and Neighbouring Rights
COMESA	- Common Market for Eastern and Southern Africa
COTU	- Central Organization of Trade Unions
DDA	- Doha Development Agenda
DFI	- Development Finance Institutions
EAC	- East African Community
EPAs	- Economic Partnership Agreements
EPC	- Export Promotion Council
EPZ	- Export Processing Zone
EPZA	- Export processing Zones Authority
ERS	- Economic Recovery Strategy for Wealth and Employment Creation

EU	-	European Union
FDI	-	Foreign Direct Investment
FKE	-	Federation of Kenya Employers
FPEAK	-	Fresh Produce Exporters Association of Kenya
FTA	-	Free Trade Area
GATT	-	General Agreement on Tariffs and Trade
GDP	-	Gross Domestic Product
GITS	-	Government Information Technology System
GJLOS	-	Governance Justice Law and Order Sector
GSP	-	Generalized System of Preference
ICSID	-	International Centre for Settlement of Investment Disputes
ICT	-	Information and Communication Technology
IEA	-	Institute of Economic affairs
IGAD	-	Inter-Governmental Authority on Development
ILO	-	International Labour Organisation
IOR-ARC	-	Indian Ocean Rim-Association for Regional Cooperation
IPAR	-	Institute of Policy Analysis Research
IPR	-	Intellectual Property Rights
IPT	-	Industrial Property Tribunal
ISI	-	Import Substitution Industrialization
IT	-	Information Technology
ITES	-	Information Technology Enabled Services
KAA	-	Kenya Airports Authority
KAM	-	Kenya Association of Manufacturers
KARI	-	Kenya Agricultural research Institute
KEBS	-	Kenya Bureau of Standards
KENFAP	-	Kenya National Federation of Agricultural Producers
KEPHIS	-	Kenya Plant Health Inspectorate Service
KEPSA	-	Kenya Private Sector Alliance
KFA	-	Kenya Farmers Association
KIE	-	Kenya Industrial Estate
KIFWA	-	Kenya Institute of Freight Workers Association
KIPI	-	Kenya Industrial Property Institute
KIPPRA	-	Kenya Institute of Public Policy Research Analysis
KIRDI	-	Kenya Industrial Research and Development Institute
KITP	-	Kenya Industrial Transformation Program
KMC	-	Kenya Meat Commission

KNCC&I	-	Kenya National Chamber of Commerce and Industry
KNTC	-	Kenya National Trading Cooperation
KPA	-	Kenya Ports Authority
KRA	-	Kenya Revenue Authority
KSC	-	Kenya Seed Company
KUSCO	-	Kenya Union of Savings and Credit Organizations
KWAL	-	Kenya Wine Agency Limited
LATF	-	Local Authority Transfer Fund
MDGs	-	Millennium Development Goals
MFIs	-	Micro Finance Institutions
MFN	-	Most Favoured Nation
MIGA	-	Multilateral Investment Guarantee Agency
MoALF	-	Ministry of Agriculture, Livestock and Fisheries
MoD	-	Ministry of Defence
MoDP	-	Ministry of Devolution and Planning
MoEACL&SP	-	Ministry of East African Community, Labour and Social Protection.
MoE	-	Ministry of Education
MoEP	-	Ministry of Energy and Petroleum
MoENR	-	Ministry of Environment and Natural Resources
MoFA	-	Ministry of Foreign Affairs
MoH	-	Ministry of Health
MoITC	-	Ministry of Industry, Trade and Cooperatives
MoICT	-	Ministry of Information, Communication and Technology
MoI&CNG	-	Ministry of Interior and Coordination of National Government
MoL&PP	-	Ministry of Land and Physical Planning
MoM	-	Ministry of Mining
MoPSY&GA	-	Ministry of Public Service. Youth and Gender Affairs
MoSCA	-	Ministry of Sports, Culture and The Arts
MoT	-	Ministry of Tourism
MoTIH&UD	-	Ministry of Transport, Infrastructure, Housing and Urban Development
MoW&I	-	Ministry of Water and Irrigation
MSEA-K	-	Micro, and Small Enterprise Association of Kenya
MSEs	-	Medium Small Enterprises
MSMEs	-	Micro, Small and Medium Enterprises
MUB	-	Manufacture under Bond
NAFTA	-	North America Free Trade Area
NAMA	-	Non-Agricultural Market Access

NCK	-	National oil Corporation of Kenya
NCPB	-	National Cereals and Produce Board
NCS	-	National Communication Secretariat
NEMA	-	National Environmental Management Authority
NES	-	National Export Strategy
NESC	-	National Economic and Social Council
NKCC	-	New Kenya Co-operative Creameries
NTB	-	Non-Tariff Barriers
NTP	-	National Trade Policy
PBGs	-	Producer Business Groups
PBR	-	Plant Breeders Rights
PPP	-	Public Private Partnership
R&D	-	Research and Development
RECs	-	Regional Economic Corporations
RoO	-	Rules of Origin
RTA	-	Regional Trade Arrangements
SACCOs	-	Savings and Credit Cooperatives
SADC	-	South African Development Corporation
SAPs	-	Structural Adjustment Programmes
SDT	-	State Department for Trade
SLO	-	State Law Office
UNCTAD	-	United Nations Conference on Trade and Development
USA	-	United States of America
VAT	-	Value Added Tax
WCO	-	World Customs Organization
WIPO	-	World Intellectual Property Organization
WTO	-	World Trade Organization
PCK	-	Postal Corporation of Kenya
SBP	-	Single Business Permit
SEZ	-	Special Economic Zones
SPS	-	Sanitary and Phytosanitary
STEs	-	State Trading Enterprises
TBT	-	Technical Barriers to Trade
TFTA	-	Tripartite Free Trade Area
TMEA	-	Trademark East Africa
TREO	-	Trade Remission Exports Office
W&M	-	Weights & Measures

FOREWORD
–by H.E the President of Kenya

Kenya is a trading nation: our goods and services find markets right across the region, and the world. We owe that success to the energy and innovation of ordinary Kenyans, and to the policies of past administrations, which built the skills and the relationships upon which our trade still depends.

But the policies of the past needed review. There have been substantial changes in governance since we ratified a new constitution, chief among them devolution. Some of our traditional export sectors have faltered in recent years; we need to see how best to support their recovery.

We also thought it was time to re-emphasise the role of trade in cutting poverty, and raising our people to prosperity. And we needed to rethink the co-ordination of our institutions, so that we were all pulling in the same direction, not working at cross-purposes. The National Trade Policy is the fruit of long and careful research, consultation, and deliberation; I believe it meets the pressing needs I have mentioned.

I am especially glad that the Policy was developed in consultation with the county governments, taking account of their submissions and the priorities they identified. One such priority was equity, so I am pleased to say that the policy offers opportunities for equitable sharing and contribution by county economies in national trade.

The policy provides a vital nexus for the country's efforts in investment promotion and trade development. We have new measures to promote exports to international markets, while extending national treatment to all imports.

Equally, it is clear that Kenya's trade today is more closely tied to regional and global trade agreements than it has ever been. We are allied with the WTO, with UNCTAD, with the EAC, with COMESA, with the Tri-Partite Free Trade Area; indeed, with a host of others. I am pleased that the National Trade Policy is anchored in our international agreements, and that it aligns us with our partners both in the region and further afield.

A similar alignment is called for internally: we can no longer allow disjointed action to delay our prosperity. We have designed a coordination and management structure for the National Trade Policy, to maximise cooperation and collaborative implementation by the various Ministries, Departments, Agencies and all others involved. Our institutional coordination of trade policy has historically been disorderly, but this Policy seeks to bring order and clarity.

The measures set out here promise to lift our nation to prosperity. But a policy remains a piece of paper until we start to work. So let me congratulate all those whose labours have brought us this document, and let's get to work. Let's turn the policy prescriptions here into prosperity for Kenyans.

H.E UHURU KENYATTA, CGH;
President of the Republic of Kenya

PREFACE
–by the Cabinet Secretary

The National Trade Policy is being launched at a time when the global trade landscape is facing emerging challenges. Over 70 percent of global trade is made up of manufactured goods. Intra-Africa trade averages about 12 percent whilst Kenya's share of both the global pie as well as in Africa has been facing serious bottlenecks leading to a huge balance of trade deficit with most of our trading partners.

The Trade Policy adds impetus to the robust trade policy reforms that the country has pursued under regional and multilateral trade arrangements. It translates to Kenya's commitments at regional and multilateral level to solidify policy measures and create opportunity for their domestication through the various instruments that are proposed. This will contribute to strengthening of regional integration and will in turn anchor our country as a dependable and predictable trading partner.

This Policy spells out complementarity with other sectors and provides a framework for these sectors to adopt policies that complement rather than compete with each other. This trade policy in particular introduces a trade agenda in several sectors such as agriculture, industry, infrastructure and ICT.

It creates opportunities for trade-led sector policy formulation to achieve sector specific trade targets. For instance, agricultural and industry policies must be geared towards responding to the national trade agenda of product and destination market diversification. Similarly, energy and infrastructure policies must contribute towards promoting competitiveness of Kenya's trade sector. ICT, on the other hand must drive trade, in keeping with the global experience, where e-commerce is overtaking traditional commerce because of the savings associated with low cost of trading under e-commerce.

Effective implementation of the National Trade Policy is expected to transform Kenya to a most competitive and prosperous trading nation. Prospects for this transformative impact lie in opportunities in the domestic market as well as in the regional and global markets, where Kenya has immense unexploited trade potential.

The structure and content of the policy portends itself to immediate implementation. I therefore call upon the full commitment and cooperation of all stakeholders to ensure successful implementation of this policy and thus enable it to contribute in a substantial way to Kenya's national development.

ADAN MOHAMED, EGH;
Cabinet Secretary, Ministry of Industry, Trade and Cooperatives

A PRELUDE
–by the Principal Secretary

The National Trade Policy is the product of many previous efforts over the years. The policy has been developed under the leadership of the State Department for Trade (SDT) with the support of Trademark East Africa (TMEA). The Council of Governors, through the Chief Executives of Trade, also played a pivotal role in the development of the policy. The subsequent Cabinet approval was a key milestone in the implementation of the country's *Kenya Vision 2030* policy blueprint which envisages trade as critical in driving the success of the vision in growing the economy and thus creating jobs for more Kenyans. The Policy provides a robust framework for steering the country's trade development under the devolved structure of Government in a much more synergetic manner.

The Trade Policy articulates provisions that are geared toward promoting efficiency in the growth of domestic trade through transformational measures that address the constraints impeding against the development of the wholesale, retail and informal sectors. Strengthening the current supply chain is therefore a priority in efforts towards sustainable development of these trade sectors. Towards this end, a National Commodities Exchange will be established.

The bedrock that the Trade Policy has provided for domestic trade development is the provision for legal and regulatory framework to govern the wholesale and retail sectors with specific focus on unfair trade practices such as late payments. Other foundational features of the domestic trade development include wholesale and retail sector market infrastructure development aimed at promoting market linkages and the visibility of Kenya's products in the domestic market.

The Trade Policy also seeks to create and defend open markets for Kenya's exports while also maintaining a level playing field for Kenyan farmers, manufacturers, service providers, creators, and innovators to compete. It also stands up for workers and businesses by challenging unfair trade practices and enforcing Kenya's trade rights under the trade agreements it has signed.

The approval of the National Trade Policy has triggered a process of trade-led development export strategy targeting sectors that have been identified as having trade potential in markets that Kenya has preferential market access arrangements. A national trade facilitation committee has already been formed to implement the trade facilitation measures specified in the trade policy and in line with WTO Trade Facilitation Agreement. Additionally, a trade remedies law will be enacted to support the application of safeguard, countervailing as well as antidumping measures in protection of Kenya's domestic trade from unfair global trade practices.

The pursuit of trade opportunities through the stimulation of investment and production in selected value chains are expected to pay off and thus, help to change the way Kenya does business. This is especially the case now that more than at any other time in its history, Kenyans are buying more foreign goods and services than they are selling Kenyan goods to the several consumers who live outside of its borders.

DR. CHRIS KIPTOO, CBS, Principal Secretary,
State Department for Trade

EXECUTIVE SUMMARY

Structure of the National Trade Policy

This new National Trade Policy is presented in four sections comprising ten chapters. Section A presents the background and context in which the policy has been developed. Section B focuses on Domestic Trade policies presented in three chapters, (two, three, and four) dealing specifically with distribution and wholesale trade; retail trade, as well as the Medium and Small Enterprises (SMEs). Section C pays attention to international trade and comprises chapter five which outlines specific international trade policy issues; the proposed objectives and the policy measures to be pursued. The Section D is on complementary policies and measures which comprises chapters that address E-Commerce; Trade facilitation measures; infrastructure needs and development; human capital development; trade finance; Intellectual Property Rights; Trade and Environment; Competition and telecommunication and web services; Gender and the youth in trade development as well as policies pertaining to Labour Relations.

The Policy Framework

This *National Trade Policy* has been formulated within the framework of the national long term policy blueprint; the *Kenya Vision 2030* which is the basis of the country's entire policy formulation and implementation for all sectors in the country. The policy formulation has been further guided by the provisions of the Kenya Constitution (2010) which recognizes the concurrent jurisdiction of the national and county governments in relation to trade matters. The policy is also underpinned within the Constitution's provisions on the Bill of Rights, particularly the freedom of expression, freedom of the media, freedom of association, freedom of movement and residence, protection of right of property, labour relations as well as consumer rights and the Fourth Schedule. In addition, the critical International development aspirations and commitments such as the Sustainable Development Goals (SDGs) as well as regional and international trade agreements to which Kenya is a signatory have guided the formulation; notably: The World Trade Organization (WTO) agreements, the East African Community (EAC) and Common Market for Eastern and Southern Africa (COMESA) Treaties, EAC-EU Economic Partnership Agreement and the African Caribbean Pacific Cotonou Agreement.

The Focus on Trade Policy

The policy aspires to articulate the government's aspiration towards poverty eradication and sustainable economic development through providing opportunity for expanded markets, income generation and distribution, increased employment and competitiveness. The policy advances the course for poverty reduction by mainstreaming Micro, Small and Medium Enterprises (MSMEs) in the global trade, in view of their critical role in job creation, poverty reduction and the furtherance of export diversification and economic development. Moroever, the Policy builds on the momentum of trade policy reforms that have been ongoing since the mid-1980s, when the country shifted its trade policy from import substitution to export oriented policies. The key features of this reform include the significant reduction in tariff levels as well as the reduced licensing requirements and the elimination of price controls.

Balance of Trade Deficit

The Policy is cognizant of the prevailing situation in the trade sector, where overall trade performance, as measured by the Balance of Trade, has been poor and recording a deteriorating trend that is characterized by huge balance of trade deficits. In addition, the policy is developed in the context of the already documented fact about Kenya's share in the regional and global market, which remains low, with huge potential already having been identified in sectors that Kenya has both comparative and competitive advantage. The fundamentals behind this situation are traced to a narrow export base, which is characterized by the predominance of primary products and dependence on limited traditional destination markets. Limited value addition in the manufacturing sector and the relatively underdeveloped intermediate and capital goods industries also explain the dismal trade performance.

Trade in Services

The Policy recognizes the important role that trade in services is poised to play in overall development of the economy. The service sector which comprises tourism; transport and communications; trade and related services; and financial and business services, accounts for 60 percent of GDP. Within the service sector, there are emerging trends of growth in domestic trade brought about by the liberalization of the capital markets and the privatization program. In addition, there are new developments of the domestic oriented Business Processing Outsourcing (BPO) and Information Technology Enabled Services (ITES) which has created trade opportunities for MSMEs to provide Business Development Services (BDS). The Trade Policy will therefore facilitate improvements in the enabling of the environment for increased trade in stock and shares and outsourced services.

Unleashing Kenya's Potential in International Trade

The National Trade Policy seeks to unleash Kenya's potential targeting domestic, regional and global market. The multilateral, regional integration and bilateral trade arrangements that currently define the space that Kenya's international trade enjoys present an immense opportunity for pursuit of this policy objective. The task ahead is to address the main constraints and challenges to international trade, which include;

a) Limited capacity for diversification and low value addition in production;

b) Increased use of non-tariff barriers in export markets;

c) Lack of competitiveness due to inefficient trade facilitation infrastructure;

d) Lack of medium and long term finance for SMEs;

e) Limited availability of affordable trade finance;

f) Limited negotiation capacity and uncoordinated negotiation processes; and,

g) Preference erosion, among others.

Finding Sustainable Solutions

The drive in pursuit of solutions to these constraints and challenges is the central role that trade plays in the country's growth and development as well as poverty eradication. This is through its linkages with all the sectors of the economy where trade creates markets through which goods and services get to the consumers. Trade also plays a critical role in poverty reduction through employment creation in informal, retail, and wholesale trade and provides MSMEs with opportunities of accessing more favourable prices in regional as well as international markets thereby ensuring equitable income distribution.

Vision and Mission

The **Vision** of the National Trade Policy therefore is "to make Kenya an efficient domestic market and export led globally competitive economy". The policy's **Mission** is to facilitate Kenya's transformation into a competitive export led economy, enhance regional integration and widen participation in both domestic and international trade. The Trade Policy mission will be achieved through the following broad objectives:

a) The pursuit of a more open, competitive and export oriented policies that are compatible with the Country's National development objectives;

b) The creation of an enabling environment for trade and investment to thrive; and,

c) The promotion of Counties as centres of trade and investment.

The Principles

The policy is further premised on the following principles:

a) National and County Government joint efforts in the development of both domestic and international trade;

b) Creating opportunities for equal participation in trade through entrepreneurial development, giving priority to the socially and economically disadvantaged groups in society;

c) Provision of an enabling environment with a view to developing and nurturing a private sector that is capable of competing at global level;

d) Pursuit of bilateral, regional and multilateral trade initiatives;

e) Mitigating any adverse effects of practices by the country's trading partners by invoking and implementing trade defence measures and when appropriate, taking into account multilateral disciplines in the area;

f) Efficiency, and prudent resource mobilization and utilization;

g) A coordinated approach to formulation and implementation of trade policies; and,

h) Strengthen capacity to engage in, and advocate for Kenya's interests in, and during trade negotiations through improved organizational coordination and leadership, including at preparatory stage.

Complementarity

The National Trade Policy complements other existing sectoral policies and strategies that touch on trade issues including the agriculture and rural development policy, industrial policy, livestock policy, fisheries policy, among others. The National Trade Policy aims at providing a broad and overarching policy framework for other key policies, strategies and official documents affecting trade which include the following:

i) The Kenya Constitution (2010);

ii) Agricultural Sector Development Strategy;

iii) National Livestock Policies;

iv) National Industrial Policy;

v) Competition Policy;

vi) Investment Policy;

vii) Intellectual Property Policy and Strategy; and,

viii) Other Sectoral Policies and Strategies.

In sum, the National Trade Policy establishes coherence with all these other documents and where possible, the policy and its implementation plan incorporates elements of these other strategies, policies and plans in order to ensure as much coherence as possible. The trade policy also becomes a point of reference for sectoral policies and strategies that will be developed in the future, to ensure that such policies and strategies are in harmony with the overall trade policy.

SECTION A

THE BACKGROUND

CHAPTER 1

The Background and Context

1.1 Introduction

The *Kenya Vision 2030* is Kenya's long term policy blueprint which guides policy formulation and implementation for all sectors in the country. The Kenya National Trade Policy has been formulated within this framework while the findings and recommendations of the WTO Trade Policy Review (EAC/WTO TPR 2012) have also provided significant guidance to the formulation of this Policy. In addition, the universally adopted International development aspirations, disciplines and commitments especially the Sustainable Development Goals (SDGs) along with the regional and international trade agreements to which Kenya is a signatory have guided the formulation of the National Trade Policy. The agreements that have provided significant guidance thus include the World Trade Organization (WTO), the East African Community (EAC), the Common Market for Eastern and Southern Africa (COMESA), the African Caribbean Pacific Cotonou Agreement as well as the Inter-governmental Authority on Development (IGAD).

The National Trade Policy contributes towards the Government's ultimate goal of spurring the country's economic development and social transformation, to which trade is an important contributor. It explicitly addresses development aspects in a holistic manner; including sustainable development, by providing opportunities for creating wealth through income generation and distribution, increased employment, competitiveness and economic and social well-being.

The National Trade Policy formulation is further cognisant of Kenya's Constitution (2010) provisions in the Fourth Schedule (*Distribution of Functions between National Government and County Governments*). The policy therefore, is built upon the foreseen complementary roles of the National and County Governments in the creation of an enabling environment geared towards promoting competitiveness of Kenya's trade sector in the domestic and international markets.

The policy is also underpinned within the Constitution's provisions relating to the Bill of Rights, particularly, freedom of expression (Article 33), freedom of the media (Article 34), freedom of association (Article 36), freedom of movement and residence (Article 39), protection of right of property (Article 40), labour relations (Article 41) and consumer rights (Article 46).

The policy is geared towards stimulating income generation, distribution and poverty reduction throughout the country. This is premised on the reality that a vibrant trade sector impacts positively on the economy by placing and distributing incomes into all the production units in the country, thereby raising the purchasing power of the entire economy. Therefore, the policy allows people to exploit their productive potential and spurs economic growth, while curtailing arbitrary policy interventions. It also helps to optimally allocate resources as well as insulate the economy against shocks. The policy advances course for poverty reduction by placing emphasis on the need for enabling investment climate, mainstreaming Micro, Small and Medium Enterprises (MSMEs) in the global trade in view of their critical role in job creation, poverty reduction and furtherance of export diversification and economic development.

The policy has taken care of threats arising from trade policy reforms, especially economic losses associated with the reforms, through integration of a complementary policy component in the policy document. Complementary policies are those, which are useful to have in place or to implement simultaneously with trade policy reform. They are designed to ease adjustment strains, support the overall reform process, while ensuring that the reforms do not trigger poverty trends by giving households an equal opportunity in the trade sector space.

1.2 Situational Analysis

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

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

The liberalization phase has led to lowering of tariffs and reduction of non-tariff barriers in Kenya's export markets thereby improving market access to Kenya's products. Tariff liberalization has been driven by commitments under the EAC and COMESA, where tariff liberation has been one of the goals for regional integration towards the creation of the EAC Customs Union and COMESA Free Trade Area.

In spite of this impressive record of trade policy reforms, there still lacks a coherent framework for coordination of the formulation and implementation of trade policy. This omission has led to a situation where trade policies are scattered in diverse government documents and regulations with absolute lack of a harmonization and coordination mechanisms. The effect of this omission has been manifested in conflicting policies, weak policy implementation and inability of the policies to correct the deteriorating balance of trade and unexploited trade potential in the domestic economy, regional and global market.

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

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

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

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

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

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

The informal sector commonly referred to as the *"Jua kali"* sector continues to play an important role in the labour market as it reduces the levels of unemployment by creating jobs for people in the labour force. In 2014 for instance, the sector provided employment to 11.8 million Kenyans and created 693,000 new jobs compared to 622,000 new jobs in 2013.

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

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

1.3 Scope

This National Trade Policy covers both **domestic** and **international trade**. Whereas domestic trade encompasses wholesale trade, distribution, retail trade and informal trade while also entailing the sale and distribution of goods within and between the 47 counties in the country, International trade, on the other hand, covers Kenya's trade with the rest of the world. Kenya's competitiveness in the international market is highly dependent on the competitiveness of domestic trade. A highly taxed domestic trade undermines the competitiveness of Kenya's products in the international market. The need to ensure that Kenya's products remain competitive in the international market forms the nexus between domestic and international trade. A booming international trade promotes domestic trade, especially for firms that supply producers of goods for international market with raw material, packaging material and other services. This self-evident and symbiotic relationship between domestic and international trade has been taken into account in the formulation of the National Trade Policy.

1.4 The National Trade Policy Vision, Mission and Objectives

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

The National Trade Policy's Vision is to make Kenya an efficient domestic market and export- led globally competitive economy.

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

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

i) The pursuit of more open, competitive and export oriented policies that are compatible with the Country's National development objectives;

ii) The creation of an enabling environment for trade and investment to thrive; and,

iii) The promotion of Counties as centres of trade and investment.

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

i) Promoting domestic trade and investment;

ii) Setting and re-defining Government Policy relating to International and Domestic trade;

iii) Designing appropriate complementary measures to improve the business regulatory and macro-economic environment;

iv) Increasing investment in infrastructure to support trade development;

v) Improving trade policy implementation and trade facilitation in order to enhance efficiency and delivery of goods and services in both domestic and international market;

vi) Improving co-ordination of institutions responsible for promoting and regulating trade; and,

vii) Ensuring effective participation of key stakeholders (Members of Parliament, Government Ministries, private sector, civil society, and development partners, among others).

1.5 Guiding Principles

The National Trade Policy will be guided by the following principles:

a) The National and County Governments' symbiotic development of domestic and international trade, upholding National Treatment and competitiveness of Kenya's trade sector;

b) The pursuit of bilateral, regional and multilateral trade initiatives;

c) The creation of opportunities for equal participation in trade through entrepreneurial development thereby giving priority to the socially and economically disadvantaged groups in society;

d) The provision of an enabling environment with a view to developing and nurturing a private sector capable of competing at global level;

e) Mitigating any adverse effects of practices by the country's trading partners by invoking and implementing trade defence measures as and when appropriate, taking into account the multilateral disciplines in the area;

f) Placing greater emphasis on policy coherence, synergies and complementarities;

g) Nurturing and using a Public-Private Partnership approach in the formulation, implementation and monitoring of the National Trade Policy; and,

h) Focusing on the sustainable development of trade.

1.6 Linkages Between the Trade Policy and Other National Policies and Strategies

Whereas the National Trade Policy shall be the guiding policy framework for national trade development, it is complimented by other existing sectoral policies and strategies that touch on trade issues; including the agricultural policies; industrial; livestock and fisheries policies - among others. Moroever, the Trade policy aims to provide a broad and overarching policy instrument for other key policies, strategies and official documents that affect trade and which primarily are the following:

i) The Agricultural Sector Development Strategy;

ii) National Livestock Policies;

iii) National Industrial Policy;

iv) Competition Policy;

v) Investment Policy;

vi) National Intellectual Property Policy and Strategy; and,

vii) Other Sectoral Policies and Strategies.

Therefore, the National Trade Policy seeks to create the much-needed coherence with these other policy documents and where possible, its implementation plan incorporates elements of these other strategies, policies and plans in order to ensure as much coherence as possible. In addition, the trade policy becomes a point of reference for sectoral policies and strategies that will be developed in the future, to ensure that such policies and strategies are coherent with the trade policy.

1.7 Coordination of Trade Policy Formulation and Implementation at National and County Government Levels

As a country, Kenya faces a daunting task of promoting domestic trade geared towards ensuring that domestic products remain competitive in the domestic market against imported products that are entering the country as a result of the open market trade policies that Kenya is committed to under the various regional and multilateral trade agreements. Kenya also faces a major challenge in addressing the deteriorating balance of trade while also exploiting the huge market potential in regional and global markets where the country has already sealed trade agreements. These challenges create an opportunity within which both the National and County Governments can rally the entire country behind a single agenda of promoting the competitiveness of domestic products in the domestic markets while also enhancing competitiveness of Kenya's products in the international markets through enabling domestic and international trade policies.

These challenges are to be addressed through a formidable coordination mechanism, within the framework of the Kenya's Constitution (2010) provisions in the Fourth Schedule (*Distribution of Functions between National Government and County Governments*) and Inter-governmental Relations Structures (*Intergovernmental Relations Act Cap 5G*). A consultative National and County Government institutional structure for trade policy formulation and implementation has therefore been proposed as a critical component of the National Trade Policy.

SECTION B

DOMESTIC TRADE POLICY

CHAPTER 2

Domestic Wholesale and Distribution Trade

2.1 Introduction

Wholesale trade, in this policy document is defined in accordance with the International Standard Commercial Identifier (ISCI); viz: the sale of goods or merchandise to retailers, industrial, commercial, institutional or other professional business users or to other wholesalers and related subordinate services. The yardstick to determine whether the sale is wholesale or not is the type of customers to whom the sale is made and not the size and volume of sales. Wholesale trading includes resale, processing and thereafter sale, bulk imports with ex-port/ex-bonded warehouse business sales and 'Business to Business' (B2B) e-Commerce.

On the other hand, distribution trade refers to the trade of goods and services that is undertaken by a company or an individual on behalf of company that produces the goods or services that are the subject of sale through a distributorship agreement. The Distributors and Wholesalers in the country can be broadly categorized as dealers in farm and agricultural produce; processed food, beverage and tobacco; personal and household goods; petroleum products; and motor vehicle, spare parts and accessories. Other categories of distributors and wholesalers include those dealing in building material and supplies; forest products; apparels; machinery and equipment.

Distribution trade services also comprise Commission agents' services and franchising services. Commission agents' services consist of sales on a fee or contract basis by an agent, broker or auctioneer or other wholesalers of goods/merchandise and related subordinated services. Product and trade name franchising involves the use of a trade name in exchange for fees or royalties and may include an obligation for exclusive sale of trade name products, business plan, and training materials and related subordinated services.

The distribution and wholesale including retail sub sector plays a major role in the economy of Kenya. The sub-sector currently accounts for 15.7 percent of GDP and 10 percent of formal employment. The distribution and wholesale trade particularly in agricultural produce has remained largely informal and characterized by inefficient and fragmented supply chain. The firms engaging in distribution and wholesale of agricultural produce also have weak business associations.

These establishments are largely small and medium sized and mainly located in the major urban centres thus making them not easily accessible to the rural based retailers. They act as middlemen between the producers/manufacturers and the retailers although in a few cases they supply merchandise direct to the final consumers.

Prospects for the subsector's development are secured through trade liberalization measures that have already been taken, as revealed in Kenya's commitments under the EAC and COMESA trade agreements as well as through commitments under the WTO. The subsector is fully liberalized and therefore open for both resident and non-resident to invest in.

2.2 Addressing Legal and Regulatory Challenges Affecting Wholesale Trade and Distribution

The lack of a clear legal and regulatory framework for the distribution and wholesale subsector has impeded its growth, especially because of the conflict arising due to lack of clear legal demarcation of wholesale and retail businesses. This has limited private sector response to opportunities for investment in the sector as well as business linkages between the suppliers and wholesalers. In addition, the subsector is regulated by several licensing agencies. These agencies require wholesalers to obtain annual licenses to authorise them to trade within their respective areas of jurisdiction. Apart from the high annual fees, **multiple charges by the two levels of government and regulatory agencies,** the procedure of acquiring these licences are also cumbersome thus increasing the cost of doing business.

Policy Objective

The government is committed to providing an enabling legal and regulatory environment to support the growth and development of the distribution and wholesale sub-sector as well as a strong backward and forward linkage between the subsector and productive sectors of the economy.

Policy Measures

In view of the foregoing constraints and challenges, the following policy measures shall be pursued:

a) The National and County Governments shall develop an enabling and business friendly national legal and regulatory framework for wholesale trade subsector;

b) Counties shall be supported in the implementation of the legal and regulatory framework for the wholesale trade subsector;

c) Competitive and fair trade practices shall be encouraged through specific provisions in the legal and regulatory framework for wholesale trade; and,

d) A one stop office for accessing all National and County Governments' business information and licenses for wholesale trade shall be established.

2.3 Developing Wholesale Market Premises and Infrastructure

The Agricultural wholesale markets are significant outlets of agricultural produce where both perishable and non-perishable goods are traded daily. They provide vital link between farmers, traders and ultimately consumers in commodity value chains. The wholesale markets are therefore meant to play a catalytic role in the promotion of a vibrant and reliable supply. There is presently, an acute shortage of agricultural wholesale markets with the few that are operational quite overstretched and having inadequate and in some cases, dilapidated infrastructure and facilities. The excessive demand for agricultural wholesale market premises is demonstrated by overcrowded spaces that compromise the very objective of these markets as outlets of farm produce. At the borders between Kenya and its neighbours, agricultural wholesale markets would offer perfect opportunity for integrating farming communities into the regional market through cross border trading. At the moment such markets are either non-existent or functioning without a regional integration agenda.

The provision and maintenance of adequate and efficient amenities in agricultural wholesale markets country-wide is a challenge that the National and County Governments in collaboration with private sector stakeholders will need to address.

Policy Objective

Given the foregoing scenario, the main policy objective here is to support the development of wholesale markets and supportive infrastructure for agricultural products in collaboration with county governments and the private sector.

Policy Measures

The County Governments in collaboration with National Government and the Private Sector will thus endeavour to:

a) Promote Public-Private Partnerships (PPPs) in the development and maintenance of wholesale hubs, markets and the general infrastructure;

b) Build new and rehabilitate the existing wholesale markets;

c) Promote, through collaborating with county governments, the development of cross border markets and support infrastructure; and,

d) Promote fair trade practise in the access of market infrastructure and business opportunity through private sector driven regulatory framework that ensures and guarantees inclusivity and fairness in access of established wholesale markets for business.

2.4 Enhancing Business Management Capacities

Technical skills are important competitive factors which enable an enterprise to sustain its market share both in the domestic and international market. They also determine the rate of technological progress at national level. The success of wholesale trade development is impeded by lack of adequate business management skills such as marketing, record keeping, costing and pricing. This is a need that requires immediate attention in order to stimulate the development of the subsector, especially expanding its reach beyond the current tendencies for urban concentration.

Policy Objective

The policy objective is thus to promote wholesale trade entrepreneurial training

Policy Measures

The National Government in collaboration with County Governments and private sector shall:

a) Facilitate the sector to design and institutionalize skills upgrading programs for owner managers and employees, with special focus on wholesale trading;

b) Encourage the business community to take advantage of the various training programmes available in the country;

c) Institutionalize entrepreneur training at all levels of education;

d) Strengthen and widen the mandate of government training institutions to develop the skills of entrepreneurs;

e) Leverage technologies for education and reform the curricular to emphasise current and future demands for skills; and,

f) Support school - to - market transition by creating linkages between training, university and the business sector.

2.5 Strengthening the Supply Chains

The wholesale trade of agricultural produce is characterised by weak supply chain, which is manifested in weak link between producers/farmers and the wholesalers. The tendency is for the wholesalers to rely on brokers for their supplies. This situation is exacerbated by lack of information on agricultural produce that is ready for the market. Lack of market information represents a significant impediment to market access especially for small holder producers and traders. This scenario substantially increases transaction costs and reduces market efficiency. A vibrant and reliable supply chain is the backbone of the wholesale subsector. Strengthening of the current supply chain is therefore a priority in efforts towards sustainable development of the subsector.

Policy Objective

To develop vibrant and reliable supply chains

Policy Measures

a) The National Government in collaboration with County Governments and the private sector will undertake the following:

   i) Facilitate establishment of a National Commodities Exchange for selected essential and commonly traded agricultural products;

ii) Promote competitiveness of supply chains through rationalization and harmonization of National and County Government business license fees and other charges; and,

iii) Establish National Food Balance Sheet to provide information on available and projected supply of agricultural produce as a tool for information on available food stock for food security purposes and trade.

b) The County Governments in collaboration with the private sector will:

i) Promote warehousing and fresh produce storage facilities through innovative ideas for agricultural produce in order to guarantee constant supply flows into the wholesale markets;

ii) Establish supply chains based on product categories and provide trade facilitation to enhance competitiveness. The wholesalers will be encouraged and facilitated to form strong linkages between themselves and the manufacturers;

iii) Promote regional clustering according to competitive and comparative advantage to enhance agricultural production and supply;

iv) Promote efficiency and competitiveness of the value chains by developing marketing systems that promote farmers and other producers direct access to the end markets of their produce for guaranteed high returns;

v) Promote collaboration of legal business associations within value chain in order to strengthen the value chain management; and,

vi) Facilitate the zoning of small and medium sized wholesalers in the major urban centres for easy access by the rural based retailers.

2.6 Strengthening Business Member Organisations

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

Policy Objective

The National and County Governments shall in collaboration with private sector promote business member organizations in wholesale and distribution.

Policy Measures

a) Support private sector initiatives towards strengthening/developing of an umbrella association for the wholesale trade subsector; and,

b) Promote effective representation of the wholesale subsector in the national policy making platforms on matters pertaining to wholesale trade.

CHAPTER 3

Revitalising Domestic Retail Trade

3.1 Introduction

The Retail trade, in this policy document is defined in accordance with the International Standard Commercial Identifier (ISCI); viz: the re-sale (sale without transformation) of new and used goods to the general public, for personal or household consumption or utilization.

Retail trade plays a significant role in the economy through the support it offers the entire trade sector by availing goods and services to the end users in volumes, quantities or packaging that the consumers prefer. Together with Wholesale trade, it accounts for about 8 percent of GDP. It offers opportunity for employment and income generation for the masses that are directly or indirectly employed in the subsector. It offers entrepreneurial opportunity for Micro, Small and Medium Enterprises (MSMEs) because of ease of entry.

The enterprises in this subsector comprise the bulk of the small and medium enterprises in Kenya. They are heavily concentrated in urban areas and form the main trading activities in the rural areas. Over the years, the numbers of enterprises in retail trade have shown a steady growth. There are emerging retailing trends where supermarkets, shopping and "exhibition" malls are springing up in major urban centres as a result of the vibrant retail trade business in the subsector that is being driven by increased consumer demand. This sub-sector, however, faces a number of constraints and challenges that require to be addressed as indicated in section 3.2 below.

3.2 Creating an Enabling Environment for Retail Trade

There are a number of specific challenges and constraints, including the legal and regulatory environment; business premises; the supply chain; capacity development issues as well as financing issues – among others, that constrain domestic retail trade. These are mentioned and examined further herebelow with the proposed policy objective and corresponding policy measures outlined for each specific factor.

3.2.1 Constraints and Challenges Affecting the Legal and Regulatory Environment of Retail Trade

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

Efforts have been made to streamline and improve the business regulatory environment by eliminating some licenses and simplifying procedures of acquiring retail business licenses. However, the reform of the County Governments' licensing system through the single business permit has not resulted in the expected reduction of the cost of doing business due to multiple charges by the two levels of government and regulatory agencies. It therefore continues to be a major constraint to the promotion and development of retail trade.

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

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

Retail trade is faced with constant threat of business losses due to handling or selling counterfeit products that can be confiscated any moment. This challenge is abated by weak national processes and procedures on standards that in some cases lag behind innovations and inventions leading to some products being released without mark of quality standards on retail market. This challenge can be addressed through a legal system that safeguards retail traders from such risks.

3.2.2 Policy Objective and Policy Measures to Remedy the Legal and Regulatory Framework of the Retail Sub-sector

The main policy objective is to provide a business enabling legal and regulatory framework for the retail sub-sector.

On the other hand, the national government in collaboration with County governments and the Private sector will pursue the following policy measures:

a) Develop an enabling and business friendly legal and regulatory framework for retail trade subsector;

b) Support in the implementation of the legal and regulatory framework for retail trade subsector;

c) Encourage competitive and fair trade practices through specific provisions in the legal and regulatory framework for retail trade;

d) Promote competitiveness of supply chains through rationalization and harmonization of National and County Government business license fees and other charges;

e) Establish a one stop office for accessing all National and County Governments' business information and licenses for wholesale trade; and,

f) Enhancing governance and compliance through coordinated communication and awareness creation.

3.2.3 Constraints and Challenges Affecting Retail Markets and Business Premises

There is an acute shortage of affordable retail markets and business premises, particularly in urban areas. The tendency is for the few premises that are available to attract high rental prices and goodwill for new entrants. The general environment under which some retail premises are located also lack proper waste management systems and are not conducive to the operation of retail businesses. The down side of this business premises constraint is the high cost of business operations which is passed on to consumers in high prices, high risk of investments, especially where traders resort to illegal business structures, and severe limitation of the exploitation of the retail trade potential. It also limits the extent to which retail traders can access cheap finance, where security associated with formal business premises is a key consideration.

3.2.4 Policy Objective and Policy Measures Targeting Retail Markets and Business Premises

The main policy objective will be to promote, through collaboration with County government, investments in retail markets and business premises.

In order to grow the retail markets and develop better business premises, the following policy measures will be pursued:

a) Promote proper county physical planning standards of retail business zones, backed by economic feasibility of businesses, in all neighbourhoods in urban centers and along transport corridors, complete with supportive infrastructure, services and amenities;

b) Promote investments in business parks;

c) Promote fair trade practises in the access of market infrastructure and business opportunity through private sector driven regulatory framework that ensures and guarantees inclusivity and fairness in access of established retail markets for business; and,

d) Support provision of business incubation infrastructure with time limits to the traders.

3.2.5 Constraints and Challenges Affecting the Retail Sub-sector Supply Chain

The retail supply chain is fragmented and characterised by many small producers and retail traders with weak forward and backward linkages leading to inefficient supply chain. Retail traders continue to face stiff competition in matters of public procurement, which has remained a domain of large-scale traders. At the same time retail traders in the marginalised groups have not taken advantage of opportunities provided in the Procurement and Disposal Act due to their weak capacities. The challenge for the government is to streamline the fragmented supply chain system between producers and retailers.

3.2.6 Policy Objective and Policy Measures to Strengthen the Retail Sub-sector Supply Chain

The policy objective will be to strengthen the retail subsector linkage with the supply chains through Brand Kenya initiative.

The policy measures to be pursued will include the following:

a) Promote domestic trade development through establishment of Brand Kenya initiative product development incubators/centres targeting products with revealed domestic and international market potential;

b) Promote development of Brand Kenya retail outlets for enhancing domestic market access for Brand Kenya products initiatives;

c) Promote domestic market access of Brand Kenya initiative products through Government and Private Sector procurement programs;

d) Promote domestic producers direct linkage to domestic retail chains through Brand Kenya outlet initiatives and other retail networks;

e) The National and County Governments shall adopt policy measures to provide preferential treatment to MSEs in accessing government procurement at national and county level;

f) Enhance public private partnerships to deal with the fragmented supply chain;

g) Streamline the supply chain between retailers and suppliers to reduce wastage and losses;

h) Facilitate capacity of traders to cope with domestic market outlet demand; and,

i) Capacity build MSEs on Government procurement procedures.

3.2.7 Constraints and Challenges in Retail Business Management Capacities

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

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

3.2.8 Policy Objective and Policy Measures to Strengthen Retail Business Management

The policy objective shall be to promote business management and entrepreneurial skills training and development of ICT platforms for retail outlets.

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

a) Strengthening and redesigning the business management and entrepreneurship programs within technical institutes and universities;

b) Strengthening capacity building of the traders;

c) Enhancing the capacity of institutions charged with collection and dissemination of data and information;

d) Collation and dissemination of trade data and information; and,

e) Undertaking capacity building of institutions dealing with provision of Business Development Services (BDS).

3.2.9 Constraints and Challenges Relating to Business Financing

The growth and development of the retail sub-sector is constrained by lack of access to affordable business finance due to high interest rates, processing and administrative costs and lack of collateral. The situation is also compounded by lack of an effective credit system that allows retail businesses to procure goods on credit. The major challenge therefore lies in the mobilization of savings to facilitate the improvement of access to affordable credit to traders. The other challenge is for the government to influence the lowering of the prevailing high lending rates particularly in a liberalized monetary system.

3.2.10 Policy Objective and Policy Measure for Business Financing

The policy objective will be to promote access to finance for the retail trade sub-sector.

The following specific policy measures will be pursued and undertaken in order to improve access to trade finance by retailers:

a) Provide trade finance facility for provision of business loans to business start-up and traders;

b) Facilitate the establishment of effective traders' savings and credit cooperatives (SACCOs) and enhance the management of the existing ones; and,

c) Facilitate the establishment of more microfinance institutions and expansion of their outreach programmes.

CHAPTER 4

Micro and Small Enterprise Trade

4.1 Introduction

In the face of liberalisation and globalisation, informal trade remains the entry point for the majority of the business starters in the form of Micro and Small Enterprises (MSEs). These enterprises comprise small scale units providing production, distribution and retailing of goods and services.

The Medium and Small Enterprises sector is generally characterized by ease of entry; unsuitable work-sites; unregistered outfits; reliance on indigenous resources; family ownership; small-scale operations; intensive use of labour; extensive use of adaptive technology; and skills acquired outside the formal sector.

Being largely unregulated, most of the MSE sector operations have lead to some undesirable social and environmental impacts such as environmental degradation, non-observance of health standards and infringement of copyright laws whilst heavily relying on self-supporting and "informal" institutional arrangements.

The Micro and Small Enterprise Act No.55/2012 provides an opportunity to address the above challenges by facilitating recognition of MSEs for purposes of being facilitated through provisions of services and infrastructure that enable them to comply with public health and environmental standards, as well as business development outreach initiatives that are foreseen in the Act.

The MSE sector commonly referred to as the "*Jua kali*" sector in Kenya continues to play an important role in the labour market. It reduces the levels of unemployment by creating jobs for people in the labour force that cannot be absorbed in the modern sector.

The sector also plays a key role in cross border trade through activities of Informal Cross Border Traders. In recognition of the role that these traders play in cross border trade, especially in trade of food staff, the EAC and COMESA developed a Simplified Trade Regime geared towards enhancing cross border trade through simplified customs documents with requirements that are easy for informal cross border traders to meet.

4.2 Initiatives Undertaken to Promote the MSE Sector

One of the notable intervention measures that the Government put in place was the Sessional Paper No.2 of 1992 on *Small Enterprise and Jua Kali Development in Kenya.* The Paper emphasized the need to create an enabling environment through an appropriate legal and regulatory framework. It also highlighted a need to put in place support and facilitative measures to promote the growth of the sector. However, these measures did not yield the expected impact, largely due to their inappropriate design and weak implementation.

Another government intervention, which is currently being implemented, is Sessional Paper No.2 of *2005* on *the Development of Micro and Small Enterprises for Wealth and Employment Creation for Poverty Reduction.* Significant achievements arising from the implementation of this policy include among others reforms in the legal and regulatory framework. This effort has been geared towards addressing the cumbersome laws and regulations that are out of step with current realities and deemed hostile to the growth of MSE sector.

To enhance cross border trade facilitation among the MSEs, the government has facilitated the establishment of Cross Border Trade Committees with the aim of monitoring and reporting counterfeits, smuggled items and the emerging Non-Tariff Barriers (NTBs).

Under the EAC and COMESA programs, the government is facilitating the implementation of a Simplified Trade Regime (STR) to enhance facilitation of cross border trade among the MSEs. The STR entails use of a simplified customs document, simplified certificate of rules of origin on selected commonly traded items with a threshold value of up to US $2,000 under the EAC and COMESA STR.

4.3 Constraints and Challenges Facing the Small and Medium Enterprises Sector

Like other sectors of the economy, there are a number of constraints and challenges relating to the Small and Medium Enterprises (SMEs) sector; including those relating to the business premises; the legal and regulatory environment; market access; affordable credit - among others which are discussed briefly herebelow.

a) Inadequate Business Premises and Working Sites

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

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

b) Inadequate Regulatory Framework For SMEs

The SME sector has over the years has been constrained by an un-conducive regulatory framework. However, the by-laws previously applied by the former Local Authorities are no longer applicable and have been replaced by the Finance Act and other related legislations by the County Governments. The challenge is for the respective County Governments to continue to legislate laws that promote the growth and development of informal trade within a conducive regulatory and legal framework while at the same time safeguarding the environment, security and other social and economic activities.

c) Market Access Challenges and Low Quality Products

The growth and development of the SME sector depends on the existence of a vibrant market for the products and services that the sector produces. However, market access of products and services in this sector is constrained by inappropriate physical location as well as low quality and sub-standard goods. Due to use of low levels of technology and unskilled workforce most SMEs to operate at lower levels of productivity and are therefore unable to adequately serve demanding markets.

SMEs are yet to benefit from preferential treatment granted by the Public Procurement provisions due to its inconsistencies with other complementary laws and regulations. Moreover, linkages between the informal traders and the formal sector are either weak or non-existent.

The challenge for the County Governments is to identify and set aside appropriate market locations for informal traders; invest in technology improvement and create an effective marketing chain for the informal traders' goods and services and skills improvement. In addition the National Government should institute mechanisms for implementing the preferential treatment provided by the public procurement law with the particular aim of exposing SMEs to such opportunity.

d) The Challenge of Lack of Access to Affordable Credit

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

In order to assist the informal traders to access credit, the National and County governments' challenge will be twofold:

i) How to promote SMEs access to trade finance; and,

ii) How to facilitate the registration of SMEs for purposes of recognition and being profiled for accessing trade finance facilities.

e) Inadequate Business Skills

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

To address this challenge there is need to promote innovation, incubation and business camps to enhance business uptake among SMEs. Lessons from Kenya Industrial Estate (KIE) model need to be taken on board and replicated. Integration of training programmes into the country's education system and exposure of potential SME sector entrepreneurs to modern business management skills.

f) Informal and Cumbersome Trade Facilitation Procedures

Informality of most of the MSEs; cumbersome trade facilitation procedures or export and import logistics; poor work sites; lack of information or information asymmetry and limited value addition are some of the major constraints that have been identified as affecting the small scale cross border traders. The challenge is to integrate the informal cross border traders into the regional economic arena.

4.4 Policy Objectives and Implementation Measures for the SMEs Sector

In order to address the constraints and challenges that the SME sector faces, as already identified above, policy measures geared towards fostering the sector's development are proposed herebelow.

The overall policy objective for this sub-sector is to foster the development of the sector through business enabling legal and regulatory framework; provision of work place infrastructure and services as well as supportive business incubation centres.

The specific policy measures to be pursued for the SMEs sector are discussed herebelow:

a) The Legal and Regulatory Framework

i) The National Government shall, in collaboration with County Governments and the Private Sector, work to develop an enabling and business friendly legal and regulatory framework for SMEs which frameworks should be geared towards fostering their growth and development.

b) Market Development

The County Governments will:

i) Establish, through their physical planning function, fully serviced markets, work spaces and food outlets for SMEs in all the urban centres through public private partnership programmes to serve as business centres; and,

ii) Avail single permit business license to all SMEs operating in designated market places/work spaces and provide protection against harassment from any arm of the Government.

c) Business Skills Development

The National Government in collaboration with County Governments and the private sector will:

i) Redesign and institutionalize business skills development programmes within the institutes of technology and selected youth polytechnics for owner/managers and employees of the informal trade;

ii) Strengthen capacity of MSE trader associations.; and

iii) Undertake capacity building of institutions dealing with provision of Business Development Services (BDS).

d) Trade Finance

The National Government in collaboration with County Governments and the private sector will:

i) Establish Trade Finance Facility;

ii) Facilitate MSEs trader associations to form SACCOs for enhancing savings mobilization and establishing credit guarantee schemes from the mobilized savings by micro-finance institutions;

iii) Encourage use of credit guarantee system; and,

iv) Establish County Credit and Loans Schemes through appropriate legislations.

e) Simplified Trade Regime and Institutional Strengthening

The National Government in collaboration with County Governments and the private sector will:

i) Enhance the implementation of the simplified trade regime at the Kenya/Uganda, Kenya/South Sudan and Kenya/Tanzania borders;

ii) Strengthen the Cross Border Trade Committees;

iii) Facilitate the establishment of cross border trade associations (CBTAs) to provide an institutional framework for small-scale cross border traders to lobby the national and county governments and regional organizations on issues affecting cross border trade; and,

iv) Facilitate the establishment of Trade Information Desks (TIDs) on border points for access and sharing of trade information among the SMEs.

SECTION C

INTERNATIONAL TRADE POLICY

CHAPTER 5

International Trade

5.1 Introduction

International trade plays a key role in Kenya's economy as illustrated by the share of trade in goods in total GDP, which averages 43 percent. Trade in services increases the significance of international trade even further. This is evidenced by the role that trade in services plays in the global economy, which according to WTO (2010) accounts for two thirds of Global GDP or USD 49.5 trillion by 2015. Kenya is already reaping from this market through its diaspora community, which in 2015 remitted KES 145.4 billion[1] (or USD 1.43 billion).

The global market size, as outlined above is an indicator to the greater role that trade in services is likely to play in Kenya through increased exports of services to the global market place, given that the services leads other sectors in contribution to GDP, where it accounts for 60 percent.

Besides the macro level impact, international trade is playing a significant role in the realization of the country's productive sector goals of increased production to meet international demand for various products. This is evidenced in sectors, such as floriculture and horticulture, which have relied on international trade for sustained production.

International trade provides opportunity for agricultural and industrial development through export opportunities for agricultural produce and industrial products. It has, therefore contributed towards attainment of the Government's socio-economic goal of poverty reduction through enhancement of employment opportunities and income generation in the sectors that have been producing for the export market.

International trade has offered a platform for enhancing the country's competitiveness through opportunity for importation of raw material, intermediate products and capital goods that are much needed by the productive sectors but which are either in short supply or completely unavailable in the country.

Price stability and food security are other very critical areas of our economy that have been impacted upon by international trade. By affording Kenya an opportunity to import products that are in short supply, international trade has helped the country to realize two key objectives; stopping prices increases for products in short supply through meeting domestic shortfall and food security by availing opportunity for importation of such products. The opportunity for production for the global market, which is availed in the

1 *This is according to the Central Bank of Kenya, commercial banks and other authorized international remittances service providers in Kenya*

economy by international trade, remains the single most powerful incentive for increased investments - domestic or foreign direct investment.

Despite the prospects from international trade and contribution that this trade has made this far on Kenya's economy, its potential is far from being exploited. This is evidenced by the dismal share of Kenya's exports in total global trade which in 2013 stood at 0.03 percent. Kenya's imports have also been growing faster than exports, leading to huge balance of trade deficit that has put pressure on the Kenya shilling because of limited foreign exchange generation from export activities. The unemployment of highly educated youth is an indication of the unexploited potential in the global trade in services market, which requires urgent attention.

Kenya's international trade policy, therefore seeks to exploit the potential in both the trade in goods and trade in services through policy measures that contribute towards "transforming Kenya into a competitive export led economy and a thriving domestic market".

International trade policy is formulated within the framework of Multilateral, Regional and Preferential Tariff Arrangements (PTAs) that Kenya has entered into. These include the WTO, EAC, COMESA, Tripartite FTA (COMESA, EAC and SADC) AGOA and EAC – EU EPA. Trade regimes under these various arrangements are further detailed herebelow.

5.2 Current International Trade Arrangements

There currently exists three types on international trade arrangements as summarized herebelow:

5.2.1 Multilateral Trade Arrangement

Kenya, through her commitment under the WTO has subscribed to the multilateral trade arrangements that are defined by various WTO Agreements. Specifically, the agreements which are alluded to in the Design of the National Trade Policy include the following: General Agreement on Trade and Tariffs (GATT), Sanitary and Phytosanitary (SPS) Agreement, Technical Barriers to Trade (TBT) Agreement, Anti-dumping Agreement, Subsidies and Countervailing Measures Agreement, Customs Valuation Agreement, Rules of Origin Agreement, Safeguards, Trade Related Intellectual Properties (TRIPs) Agreement, Trade in Services, among others.

To ensure consistency with these agreements, the policy is therefore aligned to the country's commitment at the WTO. This promotes integration of Kenya's economy into the global trade arena, especially among the WTO member countries.

5.2.2 Regional Trade Arrangements

Regional trade arrangements that shape Kenya's international trade policy include the East African Community (EAC); the Common Market for Eastern and Southern Africa (COMESA); the Intergovernmental Authority on Development (IGAD) and the Indian Ocean Rim-Association of Regional Cooperation (IOR-ARC). Each of these are briefly outlined herebelow.

a) The East African Community (EAC)

The EAC, whose membership comprises Kenya, Tanzania, Uganda, Rwanda and Burundi brings the five countries together on issues of economic, social and political cooperation. The EAC has created an expanded market for trade in goods and services, through the provisions of the EAC Customs Union Protocol and the Common Market Protocol as well as other regional integration instruments and sectoral strategies and policies. The EAC takes lead as the destination market for Kenya's exports, accounting for 25 percent in 2015. Opportunity for enhanced trade in services is abounding as is evidenced in EAC Partner States commitments under the Common Market Protocol.

Trade potential in EAC has been limited by factors that include measures that have tariff equivalent effects (such as non-recognition of the EAC Certificate of Origin) and a host of Non-Tariff Barriers (IFC - EAC Common Market Score card (2016). The slow pace in implementation of EAC policies also contributes to limitations faced in efforts towards enhancing expansion of exports.

Domestic laws that are not aligned to EAC Partner States commitments pose an immediate challenge that need to be overcome (IFC - EAC Common Market Score card (2016). Prospects for expanding trade in service in the EAC region lie in implementation of the commitments in the Common Market Protocol.

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

COMESA is a Regional Economic Community of 19 countries, which include Kenya. Through the Free Trade Area framework, COMESA affords Member States an opportunity for expanding their trade with the region as a destination for exports or a source for imports on duty free basis. In 2015, COMESA accounted for 16 percent of Kenya's total exports, whose trend over the period 2011 - 2015 is characterized by sluggish and near constant growth rate. Over the same period, COMESA recorded tremendous growth in imports, implying existence of trade potential that needs to be exploited in order to increase exports to this regional bloc.

COMESA regional integration also covers trade in service, a sector where Kenya is a key player in the REC. COMESA member states have undertaken measures to progressively liberalize trade in services in the region. Member states have identified four initial sectors to start liberalization. These sectors are tourism, communication, financial services and transport. Additional sectors will be identified to achieve higher levels of liberalization. The region therefore offers opportunities for strong growth in these sectors.

c) The Intergovernmental Authority on Development (IGAD)

IGAD comprises of the following countries in the horn of Africa - Djibouti, Somalia, Eritrea, Sudan, Ethiopia, Uganda and Kenya. IGAD has been transformed into a Regional Economic Community (REC) and its mandate expanded from drought and desertification to include an economic and trade agenda. It therefore provides a regional integration framework through which trade between the seven countries can be expanded using shared commitments in other RECs (such as COMESA) to deepen trade integration. There exists an opportunity to exploit the market potential in these countries through use of the IGAD framework.

d) EAC- COMESA/SADC Tripartite Free Trade Area (TFTA)

The EAC/COMESA/SADC Tripartite FTA, whose formation is based on the directive of the Heads of State Summit of 22nd October 2008, was eventually launched on 10th June 2015, covering the first phase of integration that includes trade in goods. Kenya stands to gain immensely from the expanded regional market of 26 countries, to be accessed under a Free Trade Area arrangement.

e) African Growth and Opportunity Act (AGOA) 2000

Kenya, along with other beneficiary Sub-Saharan African countries, has benefited from a preferential trade arrangement provided by the USA through the African Growth and Opportunity Act (AGOA). The beneficiary countries have to meet the eligibility criteria set out in the Act which includes establishment of a market based economy and issues of good governance. This trading program was initially expected to expire in 2015 was on 1st July 2015 extended by another 15 years. Kenya has benefited immensely from AGOA through duty free exports of various products to the US. These products are however dominated by apparel products. There exists opportunity to explore broadening of exports to cover other AGOA eligible products.

f) Economic Partnership Agreements (EPAs)

Kenya together with the other EAC Partner States concluded negotiations of the EPA in October 2014. Kenya and Rwanda signed the EPA on 31st August 2016. The rest of the EAC Partner States signing of the EPA will be guided by an ongoing Summit level process that aims at ensuring cohesion of the EAC while safeguarding EAC Partner States from any adverse effects that may arise from not signing or signing the EPA.

The EPA was ratified by Kenya Parliament on 20th September 2016 in order to comply with the EU Market Access Regulation 1528/2007 under which Kenya was required to sign and ratify the Agreement in order not to lose duty free market access which the country had been enjoying since 1975. Not signing and ratifying the EPA would have triggered the duty free market status in the EU with effect from 1st October 2016. This allowed Kenya to continue benefiting from the EU duty free market access pending the EAC Summit guidance on the signing and ratification of the EPA by rest of the EAC Partner State, in order to pave the way for the EPA to come into effect.

The EPA is the framework that guarantees sustainability of the over 30 years duty free market access trade regime that Kenya's exports have enjoyed in the EU, first under the four successive Lome Conventions, then under the Cotonou Agreement and lastly under the Framework for establishment of EPA (FEPA). The impact of this preferential trade regime has been to open up the EU market, which in 2014 accounted for 22 percent of Kenya's exports, taking a second position as a destination market for Kenya's exports after the EAC.

In the EU, five countries, out of the 28 EU member states accounted for 85 percent of total Kenya's exports into the EU. The export products were dominated by flowers, horticulture and traditional exports, coffee and tea. There exists opportunity for Kenya to exploit market potential in the 28 EU member States, beyond the traditional destination markets of Netherlands, Britain, Germany, Belgium and Italy. There is also opportunity to broaden the country's export base using the flexible rules of origin that were negotiated under the EPA.

Kenya, along with other EAC Partner States has committed to opening up the EAC market for EU products under the EPA framework. This covers all products that these countries have committed to liberalize with time. Sensitive sectors have been protected through the exclusion list. Liberalization of raw material and intermediate products from the EU will contribute towards competitiveness of the industries that will be importing these products for production of finished products. In that sense, the EPA contributes towards international trade policy for transformation of Kenya into a competitive export led economy. The EPA now guarantees Kenya's duty free quota free market access in the EU on contractual long term basis, which the country can now rely on in planning for investments targeting the EU as a destination market for her emerging industries.

5.2.3 Bilateral Trade Agreements

Kenya has signed various bilateral trade and investment agreements with both developed and developing countries[2] that fulfil the following objectives:

a) Reciprocal participation in exhibitions and trade fairs as well as respective country week promotional events;

b) Exchange of market intelligence, missions/surveys for market information;

c) Encouragement of institutional cooperation such as the Standards Institutions; Chambers of Commerce and Industry, Customs Organizations, Research Institutions among others;

d) Prompt and focused follow up of issues raised during bilateral meetings;

e) Exchange of general and product specific trade and investment missions; and,

f) Promotion of Trade and Investment.

5.3 International Trade Challenges and Policy Implementation Measures

The Government, through various commitments at the bilateral, regional and multilateral level has managed to obtain preferential market access for Kenyan goods in over 100 countries. Despite this tremendous performance in the international trade policy sphere, Kenya's international trade sector continues to face numerous constraints and challenges that have ended up limiting the country's full exploitation of the market opportunities in these countries. The constraints and the policy measures that are designed to address them are discussed in detail below.

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

5.3.1 Weak Institutional Capacity for Negotiations

Multilateral and regional integration processes that have evolved over the years through WTO framework and Regional Economic Communities have created opportunity for trade development. Kenya has taken advantage of these opportunities through participation in trade negotiations both at multilateral and level regional. The effective participation in trade negotiation however requires a robust negotiation mechanism in the form of an institutional structure and negotiating team with requisite skills. Presently, with exception of the National WTO Committee that is recognized as a permanent national structure for negotiation of the WTO issues, there lacks a Standing Committee to undertake trade negotiations covering regional and bilateral trade negotiations. There also lacks a mechanism of ensuring that experts from line ministries and private sector institutions who are seconded to undertake specific negotiations remain as standing committee members to ensure institutional memory, consistency and retention of capacity for trade negotiations in a core group/committee of negotiators.

The National Government will develop and strengthen institutional capacities for trade negotiations and promotion in compliance with international obligations. The National Government will develop a coordination mecahnism to streamline interventions in trade development.

The specific policy measures will be the following:

a) Establish a standing trade negotiation team with expertise on trade negotiation matters to be in charge of negotiation of all trade agreements;

b) Establish a stakeholder trade negotiation committee and enhance stakeholder participation in trade negotiations;

c) Strengthen human and institutional capacity for institutions involved in trade development and negotiations; and,

d) The National Government shall build the capacity of County Government on international trade policy so as to facilitate the County Governments promotion and facilitation of international trade development at County level.

5.3.2 Constraints and Challenges Affecting Market Access for Exports

Market access for Kenyan products in the regional and international markets has been limited by a host of constraints and challenges. This has led to Kenya's dismal share in global trade and in some cases experiencing decline, especially in the regional market, where some products have recorded substantial decline in exports. Among the most critical constraints are the ones discussed herebelow:

a) Prevalence of Non-Tariff Barriers (NTBs)

Intra-regional trade within EAC and COMESA has been greatly hampered by Non-Tariff Barriers taking the form of cumbersome and numerous customs documentation and administrative procedures; non-recognition of the certificates of origin; varying standards and stringent application of SPS requirements; delays at border crossing, road blocks, weighbridges, police checks and attendant costs; un-harmonized transit charges and procedures. Applications of NTBs restrict the flow of goods among nations. The main challenge confronting the country is to ensure that negotiations at bilateral, regional and multilateral trading system lead to a reduction or elimination of all NTBs.

Kenya exports also faces NTBs in international markets, associated mainly with SPS and Standards as well as season restriction of products through tariff quotas.

b) Ineffective Application of EAC Trade Promotion Schemes

Kenyan firms have faced challenges accessing the EAC market as a result of weaknesses in the implementation of the EAC Duty Exemption Scheme, which has been provided to promote competitiveness of industries through importation of raw material and intermediate goods on duty free basis. This scheme has potential of unlocking regional market potential for products that are currently being produced using imported raw material where duties are as high as 10 percent to 25 percent and VAT are loaded to the final cost of the product, thus contributing to uncompetitive production of the final product.

c) Charging of tariffs on some raw material, intermediate products and capital goods

Competitive export products require that the raw material and intermediate products that are used in the production of final products be subjected to no import duty. In the case of EAC CET, there are some sectors where this is not the case. The yard stick for determining whether raw material or intermediate product should attract duty is existence of regional capacity to supply the product to meet regional industrial demand for the same. This principle has so far not guided the EAC tariff architecture, as demonstrated by continued importation of such raw material and intermediate products from outside the EAC, with such imports being subjected to import duty.

The overall effect is that the final products are made uncompetitive in the regional as well as international market.

d) High and Multiple Internal Duties and Taxes

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

e) Challenges of Tariff Peaks and Escalations

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

f) Preference Erosion and loss of competitiveness

As a result of the erosion of preferences arising from the continued liberalization under WTO, Kenya faces the problem of declining exports in EU and US markets caused by stiff competition.

5.3.3 Policy Objective and Measures to Enhance Market Access for Exports

The government will pursue a trade competitive tariff structure, within the EAC policy framework, that is supportive of a competitive industrial sector and promote an NTB free regional and international market for Kenya's exports, using policy spaces availed by various trade agreements.

The specific policy measures to be pursued for enhancing market access for exports will be the following:

a) Elimination of NTBs

i) Strengthen National NTB Committee, building on the EAC NTB Act, through creation of trade issue based public/private sector platforms for development of research/private sector driven evidence on all NTBs that Kenyan products faces in the region and international markets;

ii) Support regional and bilateral NTB negotiations to fast track removal of NTBs against Kenya's exports;

iii) Strengthen mechanism for monitoring and reporting NTBs through strong public/private sector partnership and awareness program among traders; and,

iv) Remove all national NTBs to Kenya's exports and put in place mechanism of safeguarding emergence of national NTBs.

b) Trade Competitive Tariff Structure for Raw Material and Intermediate Products

i) Pursue Common External Tariff review within the EAC regional integration framework to ensure zero rating of tariff on raw material and intermediate products that the EAC industry determine as having inadequate or lack of regional supply to meet regional demand in terms of volume and quality;

ii) Support manufacturing industry application for duty remission scheme for raw material and intermediate products that experience regional season supply shortage;

iii) Strengthen administration mechanism for the duty remission and other EAC export promotion scheme, to ensure maximum use of these schemes by Kenyan industry, in support of competitive production for domestic and export market; and,

iv) Support strengthening of private sector capacity to apply and comply with the EAC duty remission and other export promotion schemes.

c) Trade supportive domestic tax structure

i) Eliminate domestic taxes and local authority/county taxes or cesses on all export products, with exception of those Gazetted for application of export taxes, pursuant to the provisions of trade remedies policy and relevant laws;

ii) Eliminate other charges having equivalent effect to tariff or local authority/county taxes or cess, with exception of charges for services provided in facilitation of the exports; and,

iii) Negotiate for harmonization of domestic taxes in EAC and other Regional Economic Communities that Kenya is party to, with an aim of promoting intra-regional trade.

d) Regional market access through supportive and flexible Rules of Origin

i) Advocate and negotiate for trade supportive Rules of Origin in EAC, COMESA and all other Regional Economic Communities that Kenya is party; and,

ii) Support awareness creation and capacity building among traders and manufacturers on applicable Rules of Origin in EAC, COMESA, EU, USA and other trade arrangements that Kenya is party to or is eligible.

5.3.4 Constraints and Challenges Affecting Export Promotion Through Market and Product Diversification

Kenya's regional and international market sphere has been expended tremendously over the years through regional integration, bilateral and multilateral trade agreements. Despite this commendable achievement in trade policy driven market expansion, the country's export destination market remains quite narrow, with over 70 percent of Kenya's total exports being destined to 12 countries[3] globally. The country's export products export base is also narrow, as evidenced by about 5 products/subsectors[4] accounting for 56 percent of total exports in 2014. This explains the dismal share of the country's total export in total global merchandise trade, which is estimated at 0.03 percent. This scenario demonstrates existence of huge export potential in the untapped regional and continental markets, the EU and Rest of the World. Potential for exports to the USA is also abundant, given the tendency for clothing and apparel to dominate Kenya's exports to the USA against over 6,000 AGOA eligible products.

5.3.5 Policy Objective and Measures to Support Product and Market Diversification

The Government will support diversification of Kenya's export market and products through export promotion and development of supply value chains that respond to regional and international market opportunities and end user requirements.

The following specific policy measures will be pursed to encourage product and market diversification:

3 EU (Netherlands, UK, Germany, Belgium and Italy), USA, EAC (Uganda, Tanzania and Rwanda) and COMESA (DRC, Egypt and South Sudan)
4 These products include: horticulture, tea, clothing and apparel, coffee (unroasted) and tobacco

a) Promotion of value chains to respond to regional and international market opportunities

i) Establish product development incubators/centres linked to export market potential to harness innovations and inventions geared towards production of value added products for the regional and international markets. Back these centres with dedicated standards and SPS support services to ensure timely certification of products for export markets;

ii) Promote development of bulking centres in support MSME exporters to master large international and international orders on a regular and sustainable basis;

iii) Establish Special and Free Economic zones and Industrial Parks to expand production for export market;

iv) Support trade outreach programs designed to sensitize and capacity build business community, especially MSMEs on regional and international trade opportunities; and,

v) The National Government shall collaborate with County Governments and build their capacity in promotion of value chains to respond to regional and international market opportunities.

b) Development of export financing institutions and instruments

i) Facilitate establishment of Export/Import Financing Bank.

ii) Establish an Export Endowment Fund (EEF) to promote export diversification and value addition.

c) Bilateral trade agreements/Memorandum of Understanding

i) Review existing bilateral trade agreements to ensure compliance with commitments in EAC trade regime and pursue, using the principle of subsidiarity opportunity for enhanced market access through enabling trade facilitation measures, information exchange, accreditation of standard bodies, mutual recognition of standards, among other measures.

ii) Conclude bilateral trade agreements with countries targeted for export expansion, ensuring that the agreements are compliant with Kenya's commitments in EAC and using the principle of subsidiarity, integrate opportunity for enhanced market access through enabling trade facilitation measures, information exchange, accreditation of standard bodies, mutual recognition of standards, among other measures.

5.3.6 Constraints and Challenges Affecting Trade Facilitation

Trade facilitation refers to the simplification and harmonisation of international trade procedures including import and export procedures. Procedures in this context largely refer to the activities (practices and formalities) involved in collecting, presenting, communicating and processing the data required for movement of goods in international trade.

The scope of Trade Facilitation is as articulated in the WTO Agreement on Trade Facilitation (TFA), EAC Customs Union Protocol, COMESA Protocol on FTA, the EPA and other trade arrangements that Kenya is party to.

The World Bank *Doing Business Index 2015*, ranks Kenya's *Trading Across Borders* as number 153, down from 152 in 2014. This is explained by the virtual lack of progress in this area of *Doing Business Index* in the last five years. As observed in the UNCTAD Trade Facilitation Agreement (TFA) Plan, the number of documents required for export has remained the same over this period (8 documents) as has been the days required to export (26). On the import side, the number of documents has also remained the same (9) but the days to import have increased by two (26 days in the last two years compared to 24 in the previous three).

The logistics side of trade facilitation, though having improved tremendously since 2007, is still not satisfactory as evidenced by the Logistics Index 2014, which ranked Kenya as 74, compared to the best performer countries such as South Africa, which was ranked number 34.

Areas of concern in trade facilitation are further amplified in the UNCTAD TFA (February 2015) assessment of the status of implementation of various aspects of Trade Facilitation as outlined in the agreement, where over 80 percent of these areas the status is 'Partial Implementation'. Other specific contributors to the poor state of Trade Facilitation in Kenya have been singled out to include those discussed further herebelow:

a) Inadequate Infrastructure

The current state of infrastructure in the country has led to an increase in the cost of doing business and failed to create and support an enabling business environment that will facilitate private sector investment in the key productive sectors. Inadequate road infrastructure has contributed to high transport costs as a result of unreliability and inefficiency of the road freight transport. Transport costs are estimated to constitute 30 percent of the cost of finished goods.

It is estimated that power disruptions account for 7 percent loss of sales compared to competitors like China and South Africa whose loses from power disruption account for less than 2 percent of loss of sale. In addition, Kenya is lowly ranked with regard to connectivity into the global supply chain.

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

b) Cumbersome Import and Export Procedures

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

c) Inadequate Compliance with International Standards and Requirements

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

5.3.7 Policy Objective and Measures for Trade Facilitation

The government in collaboration with private sector will ensure the improvement and development of infrastructure, improve customs procedures and documentation and enhance capacity for compliance with international standard and requirements.

The specific policy measures for trade facilitation are discussed further herebelow:

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

i) Establish a national enquiry point which is responsible for providing or facilitating access to trade-related information and documents to interested parties;

ii) Enhance the single window/one-time submission system to allow traders to submit import, export and transit documentation and data (including electronic versions);

iii) Develop mechanisms to ensure that all authorities and agencies involved in border and other import and export control points cooperate and coordinate in order to facilitate trade;

iv) Undertake reforms for institutionalizing legally backed online customs administration, procedures and valuations; and,

v) Develop mechanisms to make provision for the lodging and processing of clearance data and documentation prior to the arrival of the goods.

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

i) Establish a regional infrastructure development fund in collaboration with other partner states;

ii) Expansion and Modernisation of all ports of entry and exit; and,

iii) Expand and maintain roads and railway networks.

c) Enhance compliance with international standards requirements:

i) Enhance institutional capacities to improve compliance with standards and Technical Regulations;

ii) Enhance capacity for stakeholders;

iii) Establish collaboration between standards bodies and institutions of higher learning;

iv) Harmonise local standards with regional and international standards;

v) Benchmark trade facilitation institutions and implement best practice programs;

vi) Enforce conformity and compliance with standards and technical regulations; and,

vii) Harmonize internationally benchmarked standards within the framework of regional and international agreements including establishing centres of excellence.

d) Undertaking reforms in institutions dealing with trade facilitation:

i) Establish mechanisms of publishing promptly all procedures laws, regulations, judicial decisions and administrative rulings of general application relating to or affecting trade in goods as to enable stakeholders to become acquainted with them;

ii) Enhance the capacity of regulatory authorities and eliminate conflict of interest by separating regulatory functions from service providers;

iii) Develop an incentive package that is suited to the needs of service providers; and,

iv) National Government shall collaborate with County Governments in adoption and development of trade facilitation measures and programs which relate to County functions and shall build the capacity of County Governments to effectively participate in trade facilitation.

5.3.8 Constraints and Challenges Relating to Trade Remedies

Kenya, like all other WTO member countries is allowed policy space to discipline unfair trade practises pursuant to the provisions of GATT Article VI on anti-dumping, WTO Agreement on Safeguards and Agreement on Subsidies and Countervailing measures. This policy space is also echoed in the EAC Customs Union Protocol, COMESA Protocol on Free Trade Area, and the EPA. As a matter of principle and consistency with the WTO, the policy space is also to be reflected in future trade agreements that Kenya concludes with other partners.

The country, however, lacks a legal framework and institutional mechanism and capacity to undertake surveillance for cases of dumping, subsidies and other unfair competition that are disallowed under the above WTO agreements. This has exposed Kenyan producers to threats of dumping and sale of imported goods benefiting from subsidies. This has the effect of killing domestic industries and the country's effort of promoting production for domestic and export market. The provision of Trade Remedies in this National Trade Policy is designed to address this challenge.

5.3.9 Trade Remedies Policy Objective and Measures

The Government will protect domestic market and industries from unfair trade practices and threats arising from dumping and subsidies.

In turn, there will be two specific trade remedy policy measures to be pursued:

i) Develop a Trade Remedies Legislation; and,

ii) Develop human resource capacity to implement the provisions of the Trade Remedies legislation.

5.4 Trade in Services

5.4.1 Introduction

This policy document embraces the definition of international trade in services, pursuant to the provisions of the WTO General Agreement on Trade in Services, (GATS), where trade in services is defined in terms of the following modes of supply:

Mode 1, *cross-border supply*, only the service crosses the border. The delivery of the service can take place, for example, through telecommunications (telephone, fax, television, Internet, etc.), or the sending of documents, disks, tapes, etc.; Telemedicine has also emerged as a competitive mode of medical services.

Mode 2, *consumption abroad*, occurs when consumers consume services while outside their country. Visits to museums in a foreign country as well as medical treatment and language courses taken abroad are typical examples.

Mode 3, the service supplier establishes its *commercial presence* in another country through for example, branches or subsidiaries. Examples are medical services provided by a foreign-owned hospital, and banking services supplied by a subsidiary of a foreign bank.

Mode 4, *presence of natural persons*, occurs when an individual has moved temporarily into the territory of the consumer in the context of the service supply, whether self-employed or as an employee of a foreign supplier. For instance, architects moving abroad to supervise construction work are providing services under this mode of supply.

The scope of trade in services includes: business services, communication services, distribution services, education services, financial services, transport services and tourism and travel related services. The commitments made by Kenya under the WTO and the EAC Common Market Protocol have the effect of opening up the Kenyan market to regional and international investors. The commitments have necessitated reforms in the trade and services sector creating opportunities for exports of trade in services as well as improvement in competitiveness of merchandise. Similarly, the reforms have had the effect of attracting Foreign Direct Investments in sectors that have been liberalized.

5.4.2 Constraints and Challenges Affecting Trade in Services

One of the key impediments to exploitation of the potential in trade in services that has been identified in the IFC (2014) - *EAC Common Market Score Card*, is the existence of parallel domestic legislation that contradict regional commitments on liberalization of trade in services. This explains the challenges that Kenya's supply of services in the regional market has faced despite the EAC Common Market protocol having been concluded in

2010. The same can be said about other countries that have made commitments at the WTO but national laws limit the country's importation of services.

There also lacks a coherent framework for promotion of trade in services tying opportunities to education and training programs and budgeting. The country also lacks a system of collecting data on trade in services. This is a problem facing many WTO countries, which the WTO Secretariat, going by WTO (2010) - *Measuring Trade in Services Manual*, is trying to address.

5.4.3 Policy Objective and Implementation Measures for Strengthening Trade in Services

The Government is committed to writing a different edict in the trade in services sector through concerted efforts targeting the above-enumerated constraints. This zeal is propelled by the need to exploit the opportunities in trade in services that have been created through trade in services; commitments at the EAC and WTO level, as well as any future commitments under any regional or bilateral trade agreements. To realize this ambition, the policy measures that are discussed below will be pursued.

Policy Objective

The policy objective will be for the Government to promote expansion of trade in services targeting the regional and global market through measures that ensure Kenya remains competitive in the trade in services arena in the global market.

Policy Measures

In view of all the above issues, the following policy measures will be pursued:

i) Review and harmonize domestic legislation and regulations to Kenya's commitments in EAC and at the WTO, and any other trade arrangement that covers trade in services;

ii) Establish a Unit within the Ministry responsible for International Trade and other Government Agencies to ensure that Kenya exploits opportunities in trade in services in the regional and global market;

iii) Develop mechanism for data capture for trade in services;

iv) Encourage exports of services through a tax regime that enhances competitiveness of Kenya's suppliers of services in the regional and global market;

v) Promote development of supply chain for trade in services through linking Kenya's education and training sectors to the regional and international market supply requirements;

vi) Promote market access of trade in services through Bilateral Trade Agreements or Memorandum of Understanding that Kenya concludes with other countries; and,

vii) The National Government shall facilitate County Governments to develop the services sector in the functions assigned to County Governments such as tourism.

SECTION D

COMPLIMENTARY MEASURES

CHAPTER 6

Complementary Support Policies and Measures

6.1 Introduction

The impact of the National Trade Policy in stimulating the development of the trade sector is dependent on several sector- specific policies and strategies. The most significant of these sectors are identified in this policy with a view to stimulating alignment of the sector-specific policies to the National Trade Policy goals and objectives. Therefore, the various sector policies are seen in these document as complementary policy measures that are considered necessary catalysts in driving the development of the trade sector. They include: E-commerce, Physical Infrastructure, Industry and Agriculture; Investments, Human Capital Development, Trade Finance, Business Services, Intellectual Property Rights, Trade and the Environment; Gender and Youth as well as Labour Relations.

6.2 E-Commerce

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

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

In 2000, Kenya's internet usage penetration was 0.7 per cent of the population, which has increased to 19.5 per cent in 2010. The Government had projected to increase the ICT penetration and usage to 20 per cent by the year 2020. This target was premised on the basis of the World's internet penetration and usage of 17.6 percent and if achieved, would provide Kenya with an opportunity to compete favourably with other countries trading under E-commerce. This would in effect contribute to the e-commerce goal of enhancing the Digital opportunity Index from low access of (0.17) to medium access of (0.5).

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

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

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

The Government has recognized the potential of ICT in economic development and has therefore initiated major steps to promote its use. One of the major initiatives that the government is pursuing is to improve ICT infrastructure to bridge the digital divide and lower the cost of communications. The government is also leveling the ground through development and implementation of policy and regulations aimed at attracting investments in the sector. In light of the above, Vision 2030 has identified ICT as one of the sectors which will contribute significantly to the economic pillar where the target is to attain 10 percent GDP growth rate as envisioned in the Medium-Term Plan (2008-2012). Business Process Outsourcing (BPO), for instance, was identified as the flagship project for the sector.

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

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

6.2.1 Constraints and Challenges Affecting E-Commerce

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

i) Low levels of Access as given by the Digital Access Index;

ii) Low levels of ICT usage as given by Digital Opportunity Index;

iii) Relatively high Internet access costs including connection service fees, communication fees, and hosting charges for websites with sufficient bandwidth;

iv) Limited availability of credit cards and a nationwide credit card system;

v) Lack of legal and regulatory framework for E-commerce;

vi) High dependence on off-shore hosted content;

vii) Network security problems and insufficient security safeguards discourage the use and growth of e-commerce; and,

viii) Inadequate skilled human resources and key technologies;

ix) Cross-border issues, such as the recognition of transactions under laws of other EAC / COMESA and other regional trading blocks member-countries, certification services, improvement of delivery methods and customs facilitation;

x) Lack of ICT Consumer Network to facilitate and stimulate demand for modern quality e-services; and,

xi) Insufficient telecommunication infrastructure and internet connectivity.

6.2.2 Policy Objective and Implementation Measures to Support E-commerce

The Government will promote e-commerce in trade in goods and services

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

a) E- Commerce Policy and Legal and Regulatory Framework

The Government will develop an E-Commerce policy to guide the development of E-Commerce bench marking such initiative to international best practise. A legal framework to facilitate implementation of the policy will also be developed.

b) E-Commerce Infrastructure Development

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

i) Finalize the installation of the fibre optic cable in all urban centres in Kenya to increase access and connectivity to the international telecommunication network;

ii) Liberalize network infrastructure, promotion of broadband competition and liberalization in network services and applications;

iii) Assemble computer hardware and software locally to ensure availability of quality computer goods and services;

iv) Integrate rollout of affordable quality broadband networks in the development of industrial clusters and special economic zones to promote B2B e-commerce; and,

v) Development of strategy for promotion of e-commerce.

c) E-Commerce Skills and Technology Upgrading

In skills and technology upgrading the following will be undertaken:

i) Establishing frameworks to learn new technology and encourage higher level e-business skill formation in conjunction with education institutions, businesses and individuals;

ii) Integrating e-commerce in all public and private sector institutions of higher learning and tertiary colleges;

iii) Capacity building for e-commerce; and,

iv) Promote business re-engineering.

d) Public Private Partnership Improvement Strategy for E-Commerce

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

6.3 Physical Infrastructure Development for a Competitive Trade Sector

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

The government has embarked on a number of infrastructural programmes including roads, energy, rail transport and Nairobi Metropolitan development programmes among others. In order to meet the country's infrastructure needs the government will prioritise resource allocation towards infrastructure development as stated below.

6.3.1 Policy Objective and Implementation Measures to Support Trade Infrastructure

The main policy objective shall be to pursue infrastructure development geared towards enhancing productivity, competitiveness and diversified sustainable productive capacities for domestic, regional and international trade.

The Government has a deliberate and biased policy to marshal all necessary policy tools to create a sustainable competitive production advantage for Kenya's trade development. The following policy measures will therefore be pursued:

a) Macroeconomic policies that allow allocation of at least 80 percent of capital expenditure to financing infrastructure and productive sector capital development, including maintenance;

b) Continue partnership with donors towards increasing ODA flows for building infrastructure and sustainable productive capacities for improvement of competitiveness of Kenya's products in the domestic, regional and international markets;

c) Mobilize resources from Aid for Trade facilities that are provided by the international community under the Multilateral Trade framework for building physical infrastructure and other trade capacity building needs for productive sectors;

d) Continue strengthening infrastructure for standards and certification and enhance efficiency of the Standards and SPS service providers focusing on laboratories for product certification, market compliance, conformity, safety mechanisms and enterprise quality management;

e) Enhance Public Private Partnership in infrastructure development through concession and operationalization of the infrastructure bonds;

f) Promote efficient and cost effective infrastructure service delivery through appropriate legal and regulatory framework that promotes competitiveness in the transport, energy and communication sectors; and,

g) Promote application of internationally accepted benchmarks in market driven price setting of key infrastructural services - energy, transport and telecommunication.

6.4 Industrial and Agricultural Sector Linkages to Trade Development

There is a close and complementary relationship between trade strategy and each of the other four strategies: the Industrial, Agricultural, Services and Development Strategies in propelling the economy to a 10 percent economic growth rate and making Kenya a globally competitive nation as projected in the Kenya Vision 2030 policy blueprint. These strategies are aligned to the country's export-led growth trade policy through private sector led initiatives under government facilitated enabling environment for trade, industrial, agricultural and services expansion and growth. Efforts will be made to strengthen the value chain processes to enable MSMEs to maximize the benefits arising from synergies in agriculture, industry and service sectors.

a) Industrial sector

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

Notwithstanding the past difficulties experienced by Kenya's manufacturing sector, it still will have to play a critical role in the diversification and value addition of trade products and thus propelling the country into a globally competitive nation. These linkages will be realized through:

i) Change over to the use of the state-of-the-art technology;

ii) Attracting foreign direct investment;

iii) Enhancing backward and forward linkages with the agricultural and services sectors;

iv) Production of agro-industrial exports with competitive advantage;

v) Significant investment in infrastructure;

vi) Development of a highly skilled workforce;

vii) Investment in large projects with large social economic returns; and,

viii) Taking advantage of the various government reform programmes.

The impetus towards the realization of the above goals is enshrined in the Kenya Industrial Transformation Program (KITP).

b) Agricultural Sector

Agriculture remains a key sector and the backbone of Kenya's economy as evidenced by its significant contribution in GDP, which in 2015 stood at 30 percent of Kenya's total GDP[5]. The significance of agriculture to the economy is further demonstrated by its share in total exports which in 2015 accounted for 58 percent of total exports. Out of the total agricultural product exports, 94 percent are primary, with value added products accounting for a mere 6 percent. The future of agricultural trade in Kenya lies in value addition, focusing on conversion of the primary product exports to value added products.

The challenge that the country now faces is how to exploit the export potential through sustained agricultural development, targeting moving agricultural products up the value chain through value addition. The Kenya Industrial Transformation Program as well as the proposed National Export Strategy has singled out the following agricultural products as holding promise for Kenya's quest for diversification of exports:

a) Livestock (Meat, Dairy, Poultry meat and eggs, leather, ornamental birds);

b) Agriculture (Horticulture, fruits, vegetables, nuts, floriculture, tea, coffee, pulses, honey, pyrethrum); and,

c) Fisheries (Inland, marine, aqua culture, aquarium fisheries).

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

The sector has been constrained by inappropriate legal and regulatory framework; inaccessibility of affordable credit; climate change leading to intermittent floods and droughts; and poor infrastructure, among others. These concerns were to be addressed through the Agricultural Sector Development Strategy (2009-2020), which replaced the

5 KNBS Economic Survey, 2016

Strategy for Revitalizing Agriculture (SRA) (2004-14). The focus of Agricultural Sector Development Strategy is improvement in value addition in dairy, coffee, tea, beef sub-sectors with subsequent diversification and increase in exports of these products. The ongoing reforms in the cotton and pyrethrum sub-sectors will lead to value addition and thus greater linkages between trade and agriculture.

New dynamic in agricultural sector, which has an impact on the sector's contribution to the development of trade sector, is the provisions of the Kenya Constitution 2010, which devolved the functions of agriculture as follows:

1) Functions and powers of National Government that touch on agriculture
    d) Agricultural policy; and,
    e) Veterinary policy.
2) Functions and powers of County Government that touch on agriculture
    a) Crop and animal husbandry;
    b) Livestock sale yards;
    c) County abattoirs;
    d) Plant and animal disease control; and,
    e) Fisheries.

In order for agriculture to play its pivotal role in trade development, coordination between National and County Government is envisaged. The role of the two levels of Government would have adverse effects on the goal of promoting agriculture and agro-processed products if uncoordinated.

The National Trade Policy, therefore envisions a situation where activities of the National and County Government are steered under a coherent framework of National Agricultural policy that reflects the new constitutional dispensation in order to avoid institutional related constraints in the process of promoting trade in agriculture and agro-processed products.

A National Agriculture policy has been developed as a first step towards addressing various sector concerns including the role of various agricultural parastatals and ensures harmony with the provisions of the constitution, especially in regard to the functions that the constitution has assigned to the two levels of government. However, there is need for transitional measures to ensure harmony in the implementation of various functions at both levels of government as a step towards coordinated approach to promotion of agricultural and agro-processed products' exports.

6.5 Investments for Exploiting Kenya's Regional and International Trade Potential

Regional integration as well as bilateral and multilateral trade agreements have opened the sphere of Kenya's market and created opportunity for production for these various markets. Kenya's current trade into these markets has however been low, with huge unexploited potential in several sectors that Kenya is not able to export, despite having a comparative and competitive advantage.

To unlock this potential, domestic and Foreign Direct Investment (FDI) is needed. Experience world over has demonstrated the role of FDI in promoting exports. While Kenya's performance in attracting FDI has been satisfactory, trade performance and the unexploited potential in several markets points out to opportunity for further promotion of FDI and domestic exports targeting trade sector as a prime mover of these investments.

6.5.1 Policy Objective and Measures for Exploiting Kenya's Regional and International Trade Potential

In order to fully exploit Kenya's regional and international Trade potential, the main policy objective shall be to promote investments geared towards exploitation of Kenya's trade potential in the domestic and international market.

The specific policy measures to be pursued shall be the following:

a) Profile all sectors and industries that Kenya has trade potential in in the domestic, regional and international markets as a result of regional integration, bilateral, international and multilateral trade agreements;

b) Provide targeted investment incentives to promote investments in these sectors; and,

c) Promote use of 'Competitiveness and productivity cluster approach' in opening up investments in the trade sector.

6.6 Human Capital for Trade Development

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

6.6.1 Skill Requirements for Export Production

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

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

6.6.2 Trade Policy and Support Capacity

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

6.7 Trade Finance Support Measures

Access to affordable trade finance is a major challenge to trade development. This situation is even more critical for MSEs than large enterprises that have relatively adequate internal and external sources of financing. In spite of high liquidity in the financial sector, there are inadequate innovative credit products to support economic growth. This is especially the case in regard to lending for long-term investment and working capital. Where such lending exists, collateral requirements are prohibitive while interest rates and bank charges are high[6], and repayment terms are unattractive. There are also concerns about availability of suitable financial products to cover risks associated with exchange rate fluctuations. The premium charged by commercial banks where such products exist is often prohibitive.

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

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

6.7.1 Access to Affordable Credit

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

a) The National Government will:

   i) Promote provision of affordable credit to traders and distributors by financial institutions;

   ii) Facilitate Small and Medium Enterprise traders access to affordable credit through trade sector targeted credit guarantee schemes;

   iii) Promote development of medium and long term financial products for Small and Medium Enterprises traders through the capital market; and,

6 *In a bid to tame high interest rates the Government has introduced an amendment to the Banking Act regulating the interest rates that banks should levy on loans, from 14th September 2016.*

iv) Promote awareness on availability and affordability of credit from Development Finance Institutions.

6.8 Supporting the Competitiveness of Business Services for Trade Development

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

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

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

6.9 Intellectual Property Rights for Trade Development

6.9.1 Introduction

Intellectual Property Rights (IPRs), which comprise of Plant Breeder Rights (PBRs), Copyright and Neighbouring Rights (CNRs), and Industrial Property Rights (IPRs), safeguards the commercial rights of owners of the IPRs through national legislation and international agreements. The objective of the IPRs system is to encourage the creator to disclose his creation to the public and thereby promote the progress of science and the useful arts.

The Government of Kenya recognizes the Intellectual Property (IP) system as an important tool for trade, incentive for investment and thus a catalyst for national growth in this world's liberalised economy. Consequently, as a commitment to regional/international co-operation, Kenya is actively involved in formulation and implementation of regional/international policy on IP system, and is party to the main regional/international treaties/agreements on IP including those of the World Trade Organisation (WTO). Nationally, Kenya has factored IP into its Constitution and other developmental frameworks under Vision 2030.

Thus, in order to facilitate the role of IPRs in its competiveness and realisation of its developmental objectives, the Government is devoting resources towards putting in place machinery for effective and efficient administration, management and utilisation of IP system within its territory, and all main aspects of IP are administered and managed in Kenya.

Administration of Industrial Property Rights is the mandate of the Kenya Industrial Property Institute (KIPI) under the Ministry of Industry, Trade and Cooperatives through the Industrial Property Act, 2001 and the Trade Marks Act. The Copyright and Related Rights that comprise literary works (prose fiction and poems); subject-specific books as well as artistic works (paintings and music) as well as cinematographic works, performers rights, broadcasting rights, rights of producers of phonograms-among others-are administered by the Kenya Copyright Board under the State Law Office through the Copyright Act, 2001. Plant Breeders Rights, which cover new plant, varieties are administered by the Kenya Plant Health Inspectorate Service (KEPHIS) under the Ministry of Agriculture through The Seeds and Plant Varieties Act, Cap 326 of the Laws of Kenya. Enforcement of IPRs is coordinated by the Anti-counterfeit Agency (ACA) under the Anti-counterfeit Act, 2008. The other institutions mandated by law to undertake, in the course of performance of their main statutory functions, IP enforcement and dispute resolution activities include the Industrial Property Tribunal (IPT), established by the Industrial Property Act, 2001; Kenya Bureau of Standards; Weights and Measures Department and the Kenya Revenue Authority (KRA).

6.9.2 Constraints and Challenges Affecting Intellectual Property Rights

The following are the main constraints and challenges affecting the protection of Intellectual Property Rights in Kenya:

i) Low level of awareness of intellectual property rights by public, judiciary, police and customs;

ii) Inadequate institutional framework for enforcement of intellectual property rights; and,

iii) Inadequate funding for innovative activities.

6.9.3 Policy Objective and Implementation Measures to Support Protection of Intellectual Property Rights

The Government is committed to strengthen the management and administration of its intellectual property system and to encourage innovation and creativity in Kenya.

In order to encourage the recognition and and protection of Intellectual Property rights in Kenya the following policy measures shall be pursued:

a) Support promotion of creativity and innovation for the creation of intellectual capital for sustainable development;

b) Strengthen the legal frameworks for protection and enforcement of IPRs;

c) Strengthen institutional frameworks for administration and management of IPRs;

d) Promote and facilitate commercial exploitation of IPRs and technology transfer;

e) Develop adequate human resource capacity (technical and legal) for the administration, protection, commercialization and enforcement of IPRs;

f) Develop and promote IP Services industry;

g) Establish Innovation Fund;

h) Mainstream IPRs education and awareness into country's education system; and,

i) Promote research on IP related issues.

6.10 Trade and the Environment

6.10.1 Introduction

Kenya is signatory to a number of international and regional treaties and conventions[7] on environment, a number of which are trade related and covering environmental pollution and the depletion of natural resources through dumping of industrial and toxic wastes, biodiversity and migratory species of wild life, endangered wild fauna and flora, limitation of materials depleting the ozone layer and causing climatic change. In Kenya, the National Environmental Management Authority (NEMA), operating under the Environmental Management and Co-ordination Act, 1999, is mandated to exercise general supervision and co-ordination over all matters relating to the environment and is the principal instrument of Government in the implementation of all policies relating to the environment.

6.10.2 Constraints and Challenges Affecting Trade and the Environment

In spite of the above-mentioned steps, there are still, two main challenges and constrains touching on trade and its impact on the general environment:

i) Inadequate institutional and legal frameworks for compliance and enforcement with environmental requirements; and,

ii) Low appreciation of environmental issues related to trade by the stakeholders.

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

6.10.3 Policy Objective and Implementation Measure for Environment-Friendly Trade

In order to ensure more environment-friendly trade, the main policy objective and measure shall be to ensure the enforcement of more environment-friendly trade and investment activities.

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

6.11 Gender Equity and Youth Inclusive Approach to Trade Development

6.11.1 Introduction

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

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

6.11.2 Constraints and Challenges to Gender and Youth Inclusivity in Trade

Two main challenges appear to constrain the aspiration to a full gender inclusivity in trade development:

a) Inadequate legal framework to address discriminatory practices against women; and,

b) Inadequate access to capital by women owned enterprises due to lack of collateral since women rarely own property.

6.11.3 Policy Objective and Measures for Gender and Youth Inclusivity in Trade

The government will mainstream gender issues in trade development while also pursuing the following specific policy measures:

i) Promote gender equality in trade development;

ii) Develop laws, regulations and eliminate those that hinder women's access to financial assistance including credit;

iii) Capacity building on national and regional associations of women in business; and,

iv) Develop education programmes to eliminate prejudices against women and promote gender equality.

6.12 Labour Relations and Trade Development

Labour is a key resource to trade development. Economists recognize it among the three key factors of production, with the other three being capital, land and entrepreneurship. Without appropriate workers' rights and labour relations, labour can be a key impediment to the achievement of trade sector growth targets.

The National Trade Policy recognizes and upholds the labour rights as enshrined in the Kenya Constitution 2010. Specifically Article 41 on Labour Relations, which gives every person right to fair labour practices and to every worker right to fair remuneration, reasonable working conditions and the right to join and participate in activities and programmes of trade unions.

SECTION E

THE LEGAL AND INSTITUTIONAL FRAMEWORK

CHAPTER 7

The Legal and Institutional Framework

7.1 Introduction

The absence of a legal framework has posed a serious impediment to trade and business development in Kenya. This policy acknowledges that there is lack of coordination among institutions that are involved in trade development. The critical problems facing trade promotion and development as identified in the Policy includes scattered trade related policies in different ministries and government Agencies, conflicting policies, rules, regulations and practices that affect trade and ineffective coordination of various institutions and lack of a coordinated approach to trade policy formulation and implementation among all the relevant ministries and government Agencies.

It has also been pointed out that administrative procedures for business remain unnecessarily complex and time consuming, a scenario that is precipitated by lack of a coordinated approach to trade policy formulation and implementation. This has created legal, administrative and operational inefficiencies. Open trade and investment, underpinned by an effective framework of rules and regulations, as well as a coordinated and functioning institutional structure, delivers the best results for trade development. In view of the identified weaknesses, an effective legal and institutional framework is required to implement this policy.

The envisaged legal and institutional framework aims at:

a) Enhancing capacity to make and implement trade policy consistent with the country's international, regional and bilateral trade obligations;

b) Seeking more effective coordination among relevant government ministries, departments, agencies and other key stakeholders;

c) Building 'core capacity' to deal with trade issues within a lead institution;

d) Developing 'think tank' capacity at national level to undertake strategic analysis on trade issues;

e) Strengthening export supply capabilities through the strengthened policy environment, improved competitiveness of enterprise, increased investment in productive sectors, development of both hard and soft infrastructure, and the exploitation of new trading opportunities;

f) Strengthening of trade support services that ensure trade efficiency through trade facilitation, access to trade finance, access to business information, development of new products;

g) Advising on standards, packaging, quality control, marketing and distributional channels, commercial representation, functional trade promotion organizations, and promotion of trade in services;

h) Creating supportive trade-related regulatory and policy framework that will encourage trade and investment; and,

i) Enhance training and human resource development.

7.2 The Legal Framework for Trade Development

The National Government in consultation with the County Governments will develop a comprehensive trade development law that provides legal basis for the National Trade Policy. The law shall vest the mandate to provide overall trade policy leadership, initiation and co-ordination as well as the oversight of the synchronization of all activities and strategies of different institutions and agencies relating to trade development in the State Department responsible for trade.

The framework empowers the State Department responsible for trade with sufficient mandate to formulate policy, and give the Department an institutional/administrative structure able to drive trade policy reforms and discharge the functions assigned to the Department through an Act of Parliament.

The legal framework will provide for trade policy formulation and coordination mechanism between National and County Government in line with the provisions of the Kenya Constitution (2010) and in accordance with the provisions for the Intergovernmental Relations Act (Chapter 5G).

At the heart of any effective business policies is the justice system that protects all parties while transacting business. In recognition of this fundamental right, the legal framework will also factor access to justice and fair trial. The legal framework will provide for a comprehensive mechanism for resolving trade dispute between local businesses or between local and foreign businesses. This will include legal and arbitration means of dispute settlement.

The Constitution of Kenya 2010 provides for the right to free movement in Kenya. This right is crucial to Kenya's trade development, by guaranteeing any person to move freely in any part of the country and also leave the country in pursuit of trade businesses. To that extent, the National Trade policy legal framework will also factor this fundamental right.

Private sector is pivotal to the development of Kenya's trade. The sector plays this role through the enabling provision of the Kenya Constitution 2010 on freedom of association. This freedom needs to be recognized and upheld in the National Trade policy legal framework as a way of entrenching the private sector role in Kenya's trade policy development and implementation.

7.3 Institutional Framework for Trade Development

The implementation of the National Trade Policy will be pursued on a day to day basis through explicit functions on domestic and international trade that are tied to the specific provisions of the policy. Implementation will be the responsibility of the National and County Government through a coordination mechanism that is in accordance with the provisions of the Intergovernmental Relations Act (Cap 5G). The functions as further outlined herebelow are envisaged towards the implementation of the policy.

7.3.1 International Trade-Related Functions

The Department responsible for international trade shall be responsible on a day to day basis for implementation of the international trade policy component of the National Trade Policy by undertaking the following functions:

1) Coordination of regional trade matters under EAC, COMESA, EAC-EU, AGOA, ACP-EU, IOR-ARC and IGAD among others;
2) Co-ordination of matters concerning, WTO, UNCTAD, ITC and other ITOs, including negotiations and implementation of the relevant trade-related decisions emanating from ITOs;
3) Formulation of strategies and programs for implementation of bilateral, regional and multilateral trade arrangements;
4) Implementation, monitoring and reviewing of international trade policies;
5) Coordination of Kenya's engagement in bilateral, regional and multilateral trade negotiations;
6) Enhancement of the capacity for institutions involved in trade negotiations and facilitation;
7) Undertaking trade negotiations and ensuring broad-based stakeholder participation;
8) Establishing a framework for service sector negotiations and the development of programmes for promotion of export of services, including business process outsourcing;
9) Undertaking research and policy analysis to enhance negotiating and implementation capabilities;
10) Formulation and implementation of the Export Development Strategy;
11) Undertaking of policy analysis and research on international trade issues;
12) Ensuring transparency, compliance and enforcement of the trade laws, regulations and agreements;
13) Dissemination of relevant trade facilitation information to the business community through a one-stop national trade portal;

14) Ensuring consultation on the legal and regulatory framework for the establishment of Strategic Trade Controls (STC) of dual use goods in line with the UN Security Council Resolution 1540 (2004);

15) Protection of domestic producers/industry from unfair trade practices through application of appropriate trade defence instruments;

16) Promotion of Public-Private Sector and Civil Society Organizations'(CSOs) participation in international trade matters;

17) Coordination of Dispute Settlement matters arising from Multilateral, Regional and Bilateral trade

18) Commercial representation in Kenya Missions abroad;

19) Establishment of an Export Development Fund to promote export diversification and value addition;

20) Facilitation of access to financial resources for export promotion activities;

21) Establishment of a framework for provision and administration of export finance, export credit insurance and guarantee schemes, and;

22) Establishment of marketing and distribution channels in foreign markets and strengthening of e-business capacity for enterprises;

23) Protection of the domestic market from unfair trade practices through the establishment of an effective trade remedy regime;

24) Development of mechanisms for safeguarding sensitive sectors and negotiation of appropriate exemptions from tariff bindings and reduction commitments;

25) Establishment of a framework for the implementation of trade remedy measures that are compliant with the provisions of the World Trade Organisation (WTO);

26) Formulation of a program for capacity building of Counties on International Trade Policy issues and implementation;

27) Promotion of Counties as centres of production through visibility of County by Exportable products in the trade portal;

28) Development of mechanisms for collection of trade data, including an IT-facilitated information dissemination capability, and;

29) Encouragement of the establishment and strengthening of business sector associations.

7.3.2 Domestic Trade-Related Functions

The Directorate responsible for domestic trade shall be responsible on a day to day basis for the implementation of the domestic trade policy component of the national trade policy by undertaking the following functions;

a) Formulate domestic trade policies in collaboration with County Governments;

b) Formulate program for capacity building of Counties on Domestic Trade Policy implementation, and knowledge sharing;

c) Coordinate and harmonize all laws and regulations governing domestic trade;

d) Co-ordination of the activities of all national institutions and agencies responsible for facilitation of domestic trade to provide trade support services through trade facilitation, access to business information, advice on standards, packaging, quality control, marketing and distributional channels;

e) Develop models for wholesale hubs and tier 1 retail markets, in line with provisions of Vision 2030;

f) Collect and disseminate information on products available for domestic and export trade;

g) Coordinate a domestic trade program on commercial intelligence and market research and create a comprehensive database of information for the improvement and development of the trade;

h) Design a promotion and incentives package covering facilitation, production and competitiveness for MSE's that are engaged in domestic trade;

i) Initiate appropriate policies and strategies necessary to establish and enhance centres of innovation and creativity and facilitate the creation of an Innovation Fund to finance the development of intellectual property; and,

j) Undertake constant review of legislation, mainstreaming intellectual property rights, standards and SPS initiatives into the country's education system and business development outreach programs.

7.3.3 Institutional Structure for Implementation of the National Trade Policy

The institutional structure for the implementation of the National Trade Policy, which is referred to as '**Trade Sub-Technical Committee**' is in accordance with the Intergovernmental Relations Act (Chapter 5G). It is a trade sector committee that feeds into the Intergovernmental Relations Structure, specifically as a technical sub-committee on trade for the Intergovernmental Relations Committee.

The Trade Sub-Technical Committee shall comprise of representatives from the National and County Government under the names: National Trade Sub-Technical Committee and County Trade Sub-Technical Committee. The constitution and representation to each of these committees shall be as further elaborated herebelow:

1. National/County Trade Consultative Forum

The Policy recommends the establishment of the **National/County Trade Consultative Forum to steer implementation of the trade policy.** The forum shall comprise of members drawn from the National and County Governments Trade Technical Committees. The Forum shall be co-chaired by the CS responsible for trade matters and the Council of Governors' Chair responsible for trade.

2. National Trade Technical Committee

The Policy recommends the establishment of the **National Trade Technical Committee**, an advisory body whose function is to guide the overall trade policy formulation, provide an effective mechanism for intra-governmental policy coordination of cross cutting trade issues being undertaken by other departments of the National Government. In addition, the National Trade Technical committee shall also undertake national trade negotiation committee functions and the trade facilitation committee.

Membership shall be drawn from the national government ministries responsible for trade and trade related matters, county government, private sector and civil society. Technical working groups shall be formed to deal with specific issues. The convenor shall be the Principal Secretary responsible for trade.

3. County Trade Technical Committee

The Policy recommends the establishment of a **County Trade Sub-Technical Committee** in each county to create the necessary linkages between the National Government and the County Government on trade matters.

The County Trade Sub-Technical Committee is an advisory body whose function is to guide the overall trade policy formulation and implementation at County level as well as creation of linkages for an effective mechanism for intra-governmental policy coordination of cross cutting trade issues being undertaken by other departments of the County Government.

Membership shall be drawn from the county government responsible for trade and trade related matters, national government officers responsible for trade at the county, private sector and civil society. Technical working groups shall be formed to deal with specific issues. The convenor shall be the CEC responsible for trade.

7.3.4 Mainstreaming the National Trade Policy into the National Development Framework

The National Trade Policy will be implemented through a coordinated approach of the National and County Governments, with the aim of ensuring timely implementation of the policy measures that are foreseen. The instruments for implementation of the policy shall include:

a) An Implementation Strategy

This policy will be implemented through successive periodic implementation strategies or plans drawn by the National Government and the County Governments to implement specific policy measures that are in line with their roles and responsibilities in the trade policy.

b) Legal instruments

The Trade Development Act will be an overarching legal instrument for the implementation of the Trade Policy. Other legal instruments will include the pieces of legislation foreseen in the Trade Policy as well as any other that will be identified in the course of implementation of this Policy, especially with regard to legal based cross cutting issues, such as agriculture, investments, physical planning among others that affect trade affect trade.

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