Trade Policy-Making Process in Kenya:
The Institutional Arrangements and Interaction of Actors

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Authorship

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Abbreviations

ACEG	African Centre for Economic Growth
ACP	African Caribbean and Pacific
AERC	African Economic Research Consortium
AFIPEK	Association of Fish Producers and Exporters of Kenya
AGOA	African Growth Opportunity Act
APSEA	Association of Professional Societies in East Africa
COMESA	Common Market for Eastern and Southern Africa
CSO	Civil Society Organization
DET	Department of External Trade
DFID	Department for International Development
DoC	Drivers of Change
EAC	East African Community
ECOWAS	Economic Community for West African States
EPC	Export Promotion Council
EPS	Export Promotion Strategy
EPZ	Export Processing Zone
EPZA	Export Processing Zones Authority
FCC	Federal Communications Commission
FPEAK	Fresh Produce Exporters Association of Kenya
FKE	Federation of Kenya Employers
FOREX	Foreign Exchange
FTA	Free Trade Area
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GoK	Government of Kenya
HCDA	Horticultural Crops Development Authority
IDRC	International Development Research Centre
IDS	Institute of Development Studies
IEA	Institute of Economic Affairs
IFI	International Financial Institution
IGAD	Inter-Governmental Authority on Development
IMF	International Monetary Fund
ISO	International Standardization Organization
ITC	International Trade Center
JICCC	Joint Industrial and Commercial Consultative Committee
JITAP	Joint Integrated Technical Assistance Program
KAM	Kenyan Association of Manufacturers
KARI	Kenya Agricultural Research Institute
KEBS	Kenya Bureau of Standards
KEPHIS	Kenya Plant Health Inspectorate Service
KENFAP	Kenya National Federation of Agricultural Producers
KEPSA	Kenya Private Sector Alliance
KEPLOTRADE	Kenya-European Union Post-Lome Trade Negotiations
KNCCI	Kenyan National Chamber of Commerce and Industry
KFC	Kenyan Flower Council
KIBT	Kenya Institute of Business Training
KIFWA	Kenya International Freight and Warehousing Association
KIPI	Kenya Intellectual Property Institute
KIPPRA	Kenya Institute of Public Policy Research and Analysis

KIRDI	Kenya Industrial Research and Development Institute
KTDA	Kenya Tea Development Authority
KTB	Kenya Tourist Board
KTPP	Kenya Trade and Poverty Programme
KRA	Kenya Revenue Authority
KSB	Kenya Sugar Board
LICs	Low Income Countries
LDCs	Least Developed Countries
MoA	Ministry of Agriculture
MoF	Ministry of Finance
MoFA	Ministry of Foreign Affairs
MoH	Ministry of Health
MoTI	Ministry of Trade and Industry
NCWTO	National Committee on the WTO
NEPAD	New Partnership for Africa's Development
NGO	Non- Governmental Organization
ODI	Overseas Development Institute
OECD	Organization for Economic Cooperation and Development
OPS	Organized Private Sector
PRSP	Poverty Reduction Strategy Paper
RNF	Regional Negotiation Framework
SADC	Southern Africa Development Community
SAP	Structural Adjustment Program
TPSC	Trade Policy Staff Committee
TPRG	Trade Policy Review Group
UEPB	Uganda Export Promotion Board
UNCTAD	United Nations Conference on Trade and Development
USITC	United States International Trade Commission
USTR	United States Trade Representative
WTO	World Trade Organization
WIPO	World Intellectual Property Organization

EXECUTIVE SUMMARY

This study has been prepared for Ministry of Trade and Industry in the Government of Kenya, under the DFID-funded Africa Trade and Poverty Programme (ATPP). It adds to a series of papers examining this issue in Kenya, Malawi, Uganda and Tanzania, which were produced in 2003.

This paper aims to reflect on international experience and to examine the institutional arrangements and interaction of actors in trade policy-making processes in Kenya. The study sought to identify the factors that constrain effective formulation, implementation and the monitoring of trade policies and identify ways in which the process can be improved to become all-inclusive and in tandem with major development objectives.

The paper draws heavily on an earlier study on institutional review developed by consultants under the Ministry of Trade and Industry. The study has been updated by drawing on a range of primary and secondary sources, including Government of Kenya documents, the international literature and findings derived from key informant interviews. These interviews were conducted with 118 respondents in national and local government, the private sector, civil societies, research institutions and producer associations.

The study noted that trade policy processes in Kenya are shaped by the interaction between several international and domestic factors. The Ministry of Trade and Industry, while being the lead ministry in trade policy formulation and negotiations, is also charged with the responsibility of overseeing coordination and implementation issues across government. It was observed that considerable progress has been made in liberalizing the domestic economy and moving towards a more outward-oriented trade regime. Key to this has been significant reductions in both tariff and non-tariff barriers. Kenya is an active participant in the regional trading agreements of the East African Community (EAC) and the Common Market for Eastern and Southern Africa (COMESA) and is therefore well positioned to reap the benefits of the regional markets, which these two preferential trading areas offer.

Survey findings indicate that there is poor intra-government coordination between the lead Ministry (MoTI) and other Ministries and Parastatals. There is little evidence of attempts to mainstream trade policy into national development objectives. Each Ministry seems to be largely operating independently with limited consultation and prioritization of activities. Poor harmony and coordination within the Ministry of Trade and Industry, particularly between the Departments of External Trade and Internal Trade, was also observed.

Coordination between state and non-state actors in the trade policy process is also weak**.** There are no legal or formal frameworks for participation of research institutions, civil society, parliament, private sector and producer groups in the trade policy process. Even though there has been an improvement in the involvement of a wide variety of stakeholders in the trade policy formulation and negotiation processes, some groups such as micro-and small enterprises and most of the producer groups have no representation in the process. There are no frameworks provided for their participation and most of these groups still exert very weak influence in the process. This is also partly caused by their weak capacity in terms of human and financial resources.

Insufficient analytical capacity was cited as a major impediment to the trade policy formulation and negotiation processes in Kenya. It was observed that there is a general lack of analytical capacity within MoTI and poor linkages with research institutions to inform trade negotiations.

Capacity gaps have also been identified within civil society and private sector in terms of staff numbers, knowledge on trade issues and analytical skills. More serious is the capacity weakness of members of parliament on trade issues, which needs to be urgently addressed. The current trade related and capacity building support programs offered by various overseas development agencies are insufficient to address the existing institutional and knowledge capacity gaps within the various groups and there is a need for developing a comprehensive and sustainable trade-related capacity building program.

From the study, it emerges that Kenya needs to have an appropriate institutional framework with sufficient capacity in terms of skills and resources to make and effectively implement the right trade policy decisions. There is an urgent need to re-organize and restructure the Ministry of Trade and Industry towards this end. Stakeholder participation in trade policy processes should be enhanced through establishment of a Trade Support Network.

In order to improve coordination and harmonization of negotiation positions pursued under bilateral, regional and multilateral agreements, it is important that the various desks handling these issues be placed under one Ministry and department. It is proposed to establish a National Trade Advisory Council charged with the responsibility of ensuring proper coordination and linkages with various stakeholders, as well as harmonization of issues in various departments and divisions within the Ministry of Trade and Industry and across government. It is also proposed to establish a Trade Policy Center, within an existing research institution, charged with responsibility of providing technical and analytical support for improved trade policy formulation and implementation. It has also been recommended that trade consultative forums be established at the sectoral, national and Permanent Secretaries level.

1.0 INTRODUCTION

1.1 Trade Policy-making Process

Trade policy in most countries is developed through a complex process of decision-making involving various levels of government and institutions, companies and business associations, consumer organizations, trade unions and other members of civil society. No country has achieved substantial gains in trade without an effective trade policy framework (OECD, 2001). It is thus important for a country to have a trade policy framework that is guided by institutions which are effectively coordinated and which take into consideration the interests of several actors while at the same time remaining objective.

In developing countries, trade policy-making is shaped by the interaction of international and domestic factors - economic and political. At the international level, the processes of globalization play a major role in influencing and shaping subsequent trade policies. At the domestic level, policy-making is intimately linked with the nature of the public-private relationship as well as the autonomy of state agencies and their institutional strength and capacity. Trade policies and their coherency clearly have a bearing on the overall trade strategy pursued and consequently on the economic gains from trade while the way in which trade policy is initiated, negotiated, and eventually implemented is predominantly a political process.

1.1.1 Kenya's Trade Regime

Since independence in 1963, Kenya has gone through a series of trade policy episodes from inward-orientation to more liberal outward-orientated trade regimes in pursuit of sustainable economic growth and development. The trade policy reforms undertaken range from price-orientated measures (including tariffs, export taxes or subsidies, retention schemes, and duty exemptions) to quantity-based trade policy instruments (such as import quotas, import bans, import licensing and export quotas) or price measures related to export targets (Onjala, J., 2002). The shift from an import substitution strategy towards a more outward-oriented strategy began in the mid 1980s, with the removal of quantitative controls, expansion of export incentives and rationalization of import protection. In the early 1990s, the Government undertook major trade liberalization, including elimination of price and exchange rate restrictions, lowering of tariffs and scrapping of suspended duties (Republic of Kenya, 2004). Recently, the Government has embarked on a comprehensive reform of its trade system aimed at improving the environment for export-led growth within the frameworks of regional and multilateral trade arrangements.

1.1.2 Effective Institutional Frameworks

The quality of the institutional framework for trade policy-making is crucial for several reasons. The institutional framework has a direct effect on policy coherence and an indirect effect on policy outcomes and ultimately has a bearing on the achievement of growth and poverty reduction (or lack thereof). A framework that is coherent and coordinated is likely to be more purposeful and authoritative and more widely accepted and supported by relevant actors. Such a framework is also likely to minimize policy conflicts and resource wastage through the duplication of efforts, as well as provide greater flexibility to pursue strategic trade initiatives through the enhanced participation of the private sector. Effective formulation and implementation of trade policy requires collaboration among the relevant government ministries and institutions and structured dialogue and consultation with major stakeholders. These include not only the government but also the private sector, civil society organizations (CSOs) and political associations, as well as relevant international actors such as donors, regional and international trade bodies and advocacy organizations.

1.1.3 Kenya's Institutional Framework

The poor developmental record of most developing countries, including Kenya, is partly thought to be linked with their defective institutional order. Related to this, although insufficiently appreciated, is their lack of administrative capacity and expertise to deliver and sustain sound, credible trade policies (Soludo, C. and Ogbu, O. 2004). In the past, Kenya has experienced countless changes in its policy formulation process and strategic trade and industrial policies have been mainly influenced by the changing political set-up of the country (Ikiara, G. *et al,* 2004). In addition, multilateral and bilateral donor institutions have also played a key role in shaping trade policy formulation processes, especially in the 1980s and 1990s under the conditionalities of structural adjustment programs (SAPs). As noted by Soludo C. and Ogbu O., (2003), the World Bank and the IMF managed to wield unprecedented control over economic policies and institutions in African countries since the 1980s. Consequently, many African countries, including Kenya, have suffered from reduced policy autonomy.

a) Coordination

In Kenya, trade policy formulation and implementation involves a number of government ministries, departments and related institutions, creating a situation in which different bureaucracies within the government often compete or duplicate functions and where coordination is often poor. The Ministry of Trade and Industry (MoTI) is the principal government agency responsible for the overall trade policy formulation process, including bilateral and multilateral agreements and negotiations, and is responsible for overall coordination and implementation.

Coordination within the government is intended to be achieved through inter-ministerial meetings/committee coordinated by relevant ministries and agencies. The inter-ministerial meetings are usually held on a case-by-case basis. In trade negotiations there are various committees involved, such as the National Committee on WTO (NCWTO) and the Kenya-European Union Post-Lome Trade Negotiations (KEPLOTRADE) Committee which handles EU-ACP Economic Partnership Agreements (EPAs). These committees have different memberships and are often not well coordinated, reflecting the incoherency behind the trade policy decision-making process. In addition, most foreign missions are under-resourced and do not coordinate well with ministries back at home. As the expanding mandate of the WTO has drawn more institutions into the process of designing and implementing trade and trade-related investment policies, coordination within and among ministries and other stakeholders has become an even greater challenge in Kenya.

b) Consultation

The extent of consultation on trade policy-making is limited and weak. Lobbying and *ad hoc* interventions are the main means of influencing policy in Kenya. There is limited linkage - especially to trade policy research - and many actors (e.g. CSOs) are looked upon with suspicion by bureaucrats and therefore are not incorporated in the formal decision-making process. Apart from habitual rent-seeking, private sector and civil society inputs in the trade policy process are minimal if not hardly evident (Odhiambo, W. *et al,* 2004). Trade policy decision-making lacks transparency while independent and well-informed public discussion on crucial trade policy choices is conspicuous by its absence (Sally, R., 2005).

1.2 Objectives and Terms of References

This study was commissioned by MoTI through the Kenya Trade and Poverty Programme (KTPP). The basis for undertaking this study is to analyze the trade policy formulation process in Kenya, assessing the institutional and organizational capacity to formulate, negotiate, and implement pro-poor trade policy and analyzing the role of various institutions and stakeholders with a view to identifying the factors that constrain effective formulation, implementation and monitoring of trade policies and the impact on trade policy outcomes. The study seeks to identify ways in which the process can be improved to become all-inclusive and in tandem with major development objectives.

Specifically the Terms of Reference (ToR) were to:

1. Update the institutional/organizational review study carried out in 2003 by Institute of Development Studies (IDS) and Overseas Development Institute (ODI). This will involve analysis of institutions participating in the trade policy processes including the investment and industrial sectors.
2. Carry out a stakeholder analysis to identify and classify major stakeholders in terms of their importance to, and influence on, the trade policy decision-making process.
3. Review of the organization and structure within the lead ministry - Ministry of Trade and Industry - especially in the light of the structural reforms implemented since 2003.
4. Review existing interactions between the lead ministry and other relevant ministries/government institutions.
5. Review the role of private sector and civil society actors, as well as international actors, in terms of their capacity for trade policy and poverty analysis and their relationships with the lead institution.
6. Provide a comprehensive inventory/matrix of donor-funded trade related and investment support projects in MoTI, other related public sector institutions, the private sector, and civil society, as well as those being executed directly by donors.
7. Provide an assessment of institutional development needs in terms of capacity building and organization and proposals on how to strengthen the institutions involved in trade policy-making.
8. Review institutional frameworks for negotiation/participation in regional and international trade agreements and how they influence the trade policy frameworks.
9. Review existing frameworks for trade policy implementation and accountability and a proposal on strategies for monitoring and evaluation and impact assessment of policies.
10. Propose appropriate linkages and trade support networks at the national and international level in liaison with concerned institutions.
11. Propose to the Project Steering Committee on possible priority initiatives for this project.

1.3 Methodology/Approach

The study involves a review of both primary and secondary information. Secondary information is obtained exclusively from the initial 2003 study, relevant publications and information from the MoTI. A survey of 118 respondents was carried out covering various categories of government and parastatals institutions, private sector, CSOs, producer organizations, exporting and importing firms, overseas development agencies, research institutions, media and parliament committees involved in trade issues. Purposive sampling was used to select the specific institutions involved in trade policy formulation. One-on-one interviews were also done specifically with management of various institutions and Heads of Departments of the MoTI.

1.4 Organization of the Report

Chapter one provides an introduction and gives the specific terms of references, objectives and the methodology used in this study. Chapter two gives some theories and concepts into trade policy formulation and negotiations and highlights examples of best practice. Chapter three gives the background information into the evolution of trade policy in Kenya and how various institutions interacted and the general implications on policy. Chapter four looks at the various processes involved in trade policy formulation and negotiations and the roles of various actors while chapter five reviews capacity issues and makes suggestions for improvement. Lastly, chapter six concludes the study and gives the proposed recommendations for institutional reorganization and further prioritization of activities under KTPP.

2.0 LITERATURE REVIEW

2.1 Evolution of Trade Policy Reforms

Trade policy is becoming an increasingly important policy area as poor countries seek to use it to foster economic growth and development. It is a policy area in which domestic and international factors interact intensely. Domestic producers and consumers can be important actors but, at the same time, increasingly complex international trade rules influence the trade policies which poor countries can adopt (Sally, R., 2005).

The boundaries of trade policy are not clearly defined as a result of increasing complexity and expansion of areas covered. This is primarily understood as the formulation of positions for bilateral, regional, and international trade negotiations and the setting of tariffs and other explicit import or export rules. In a broader sense, it also comprises the implementation of trade agreements, as well as any export promotion activities, ranging from government support to market intelligence and export credit schemes, to the creation of export processing zones, to subsidies for export-oriented industries (Soludo, C. and Ogbu, O., 2004). In a wider sense, trade policy is also linked to questions of monetary policy, such as managing the risks of 'Dutch disease' associated with a temporary increase in export income from natural resources, but potentially also with large inflows of aid (Driscoll, R. *et al.* 2006, forthcoming).

Trade policy is affected by the nature and complexity of governance and capacity problems prevalent in poor countries (Grindle, M., 1996). Scarce financial and human resources limit what governments can achieve, but also inhibit constructive inputs from and coordination with the private sector. Clientelism and patterns of neo-patrimonial governance can add to the challenges of solving collective action problems in the public interest (Van de Walle, N., 2001). Trade policy in a narrow sense (e.g tariff rates) may be relatively less affected by neo-patrimonial governance, once the lowering of tariffs is in place and is bound by international agreements. Furthermore, even when tariffs are relatively low, smuggling and corruption of customs services is frequently still a major problem (Zvekic, U., 2002).

Political economy interests within government may lead to substantial conflicts of interest around the formulation of trade policy. While trade liberalization has reduced the range of opportunities for rent-seeking (e.g. around import licenses), some opportunities continue to exist and can be exploited for private gain where accountability is low. External pressures for trade liberalization -- motivated by economic analysis as well as concern about opportunities for rent-seeking -- may lead to overly sudden liberalization, particularly in countries with weak state capacity and when external leverage is high.

2.2 Theories and Concepts

This section outlines some of the concepts and theories surrounding political economy and institutional issues shaping trade policy. Some literature on trade policy formulation and negotiations in developing countries is also provided to draw out 'best practice'. The focus is essentially on how policy processes (i.e. how policies are shaped) rather than policy content.

2.2.1 The Trade Policy Cycle

According to the OECD, no two countries will adopt the same trade policy framework yet every country must master the same four-staged trade policy cycle of formulation, negotiation, implementation, monitoring and evaluation (M&E) (OECD, 2001):

- **Stage 1: The formulation of trade policy.** This stage requires an inclusive approach and relies heavily on the assumption that the private sector and civil society have the requisite capabilities to contribute. Analytical capacity is particularly important at this stage as all parties must have a sufficient understanding of the underlying principles of trade issues, agreements and developments in the global trading system. In particular:
    - Governments need to have the necessary data and analytical capabilities to explore and understand the implications of alternative trade policy measures for individual sectors and the economy as a whole.
    - The private sector needs to be able to evaluate the impacts of alternative trade policy measures in terms of their own competitiveness and potential opportunities in international markets.
    - Civil society needs to be able to monitor economic and social impacts of alternative trade policy measures on the livelihood groups for which they lobby.

- **Stage 2: The preparation and execution of negotiating positions.** This stage also requires an inclusive approach and government negotiators must be aware of the interests, concerns and capabilities of domestic stakeholders. This allows the development of negotiating positions that prioritize interests and take into account stakeholders objectives, expectations and trade-offs they are prepared to accept. Consideration also needs to be taken of the capacity of governmental departments to successfully implement the various proposals being negotiated.

- **Stage 3: Responsibility for implementation.** A range of government departments will be involved in implementing trade agreements. Successful implementation will depend on the capacities and priorities of those departments.

- **Stage 4: Monitoring and evaluation.** This process should be on-going and requires inputs not only from the relevant government departments, but also from the private sector and civil society. This should also inform evolution of subsequent outcomes/policies.

2.2.2 The Institutional Framework for Trade Policy and its Political Economy

A range of literature addresses the question of how different actors influence policies (Grindle, M., 2004; Tsebelis, G., 2002; Van de Walle, N., 2001 and 2002; Hellmann, J., 1998; Haggard, S., and Kaufman, R., 1992; Hirschman, A., 1972; and, Olson, M., 1965). The bulk of the existing literature on the politics of policy formation is focused on developed industrial countries with well-institutionalised democratic systems. This is not likely to capture very well the situation of hybrid regimes and hybrid states predominant in most developing countries, where the extent of democratic accountability is more limited and where bureaucratic and neo-patrimonial elements co-exist in the organisation of the State (Clapham, C., 1982). Electoral mechanisms of accountability are often not fully effective in developing countries and/or are dominated by non-economic preferences (e.g. voting along ethnic lines).

A general tenet of the "Logic of Collective Action" is that it is not interests per se which matter but the actual influence which individuals and groups with interests can bring to bear – i.e. their organisational capacity and/or their direct and possibly hidden influence on policy makers. Furthermore, small, well-organised groups such as manufacturers in a certain sector are argued to be generally more likely to have an impact on policies than large, dispersed groups (such as consumers), unless small groups can be formed that effectively represent the interests of such larger groups (e.g. special issue CSOs). In practice, the ways in which individuals and groups influence policies is even more complex. For example, in the senior civil service there can be policy entrepreneurs or 'champions of change' who are able to pursue certain reforms against various sources of opposition (Grindle, M., 2004) but policies can also 'get stuck' due to complex decision-making structures which create an excessive number of potential veto players and veto points (Tsebelis, G., 2002).

Importantly, policies are also influenced by the external environment: by external *leverage* such as International Financial Institutions (IFI) conditionalities and also by external *linkages* and diffusion of policy ideas (Levitsky, S. and Way, L., 2005). Thus, certain policies may become more 'en vogue' due to evolving academic research and accumulating experience and the international copying of policies and practices (e.g. Keynesianism, monetarism or the spread of New Public Management methods in the 1990s).

The area of trade policy has particular characteristics:

- International factors -- agreements, international negotiations, pressures from IFIs -- play a particularly powerful role
- It is highly technical
- 'External' as well as 'domestic' factors potentially impact strongly on a country's citizens who may often be unaware of pending policy changes and their potential impact
- Domestic attention may greatly vary from complete neglect to some attention (e.g. latent protectionist messages) to considerable attention (e.g. anti-globalization protests (Rodrik, D., 1995))

A key dimension of the politics of trade policy is the institutional set-up and the actors and incentives this generates. A second important dimension shaping the set of domestic actors and interests is the ownership structure of the main exporting, importing, and import-competing industries. The key ministry responsible for trade negotiations is most commonly a ministry of foreign affairs or a ministry for industry and trade. Many countries have established export promotion agencies, frequently with a responsibility also for foreign direct investments.[1] Furthermore, a number of other ministries have some important responsibilities if a successful export promotion strategy is to be developed and implemented.[2] In a number of countries, the presidential administration is involved in some way, either dealing with specific policy areas and initiatives and/or seeking to coordinate trade related activities of other ministries.[3]

Several other ministries and government agencies are typically involved in the implementation of trade agreements, especially bureaus of standards (dealing with technical issues such as ISO certification), and ministries of justice dealing with intellectual property rights and similar issues. These institutions are more relevant as objects than as subjects of trade policies - i.e. an effective

[1] For example, the Ugandan Export Promotion Board (UEPB)
[2] Ministries of agriculture, health [sanitary, phyto-sanitary and food safety matters], labour, transport, etc.
[3] For example, in Uganda the President's Office deals directly with the US-sponsored African Growth and Opportunity Act (AGOA)

promotion of exports requires greater efforts with regard to meeting product standards. However, other ministries and overall government coordination can have important impacts especially on policies aimed at export promotion (e.g. ensuring that companies receive the support they require on technical standards; ensuring that transport facilities are built and maintained, and that procedures are not distorted by corruption or other forms of rent--seeking).

Regarding the policy process, the executive is likely to be particularly dominant relative to the legislative in shaping trade policy. In part, this is rooted in the overall context of executive dominance in most African countries, even where democratization has taken place in recent years (Rakner, L. *et al*, 2006). Furthermore, civil servants conduct international trade negotiations with a primary accountability to the executive. Trade policy is a highly technical area and most parliaments in low income countries lack technical support staff – even for the most essential policy areas such as budgeting. This stands in contrast to trade policy making in many developed countries, where the legislative has -- and at times exercised -- substantial powers, especially in the US (Bohara, A. and Gawande, K., 2004).[4]

Beyond government, private sector associations can be important players. Often, these are sector specific associations.[5] In principle, private sector associations can provide important technical inputs for governments regarding the potential sectoral impact of policies which governments on their own would be unable to generate. However, while industry/public sector lobby groups are very important in shaping trade policies in developed countries, they play a much smaller role in most developing countries (Page, S., 2003).

Important inputs into trade policy formulation can come from think tanks and research institutes (Sally, R., 2005) and from CSOs/specialized NGOs as well as trade unions. Draper P., (2005) studies the case of South Africa and cautions that where NGOs and trade unions are politically strong but not very knowledgeable about trade issues, they may lobby for an overly defensive/protectionist approach to international trade. Importantly, major international NGOs have become increasingly vocal around trade issues and often build coalitions with NGOs based in developing countries (e.g. Oxfam, Action Aid). This can raise issues of balance and legitimacy (Ostry, S., 2002).

Trade policy is traditionally a policy area where poor and disadvantaged groups offer little input, although these groups can be crucially affected by changes in trade policy (e.g. farmers, workers in import competing or export processing industries). In recent years, and in the context of a stronger emphasis on poverty reduction and participatory approaches, there has been a greater emphasis on the poverty and distributional impacts of trade policy changes, particularly with a view to how they affect the vulnerability and risks for various groups of the poor (Newfarmer, R., 2005; and, DFID, 2005). Some NGOs have sought to capture and publicize the 'voice of the poor' regarding trade policy and how they feel affected by them (Ddamilura, D. and Abdi, H., 2003).

Two key 'assets' for shaping trade policy are "money and analytical knowledge" (Ostry, S., 2002). In general, trade policy in developing countries, especially in the Less Industrialised Countries (LICs), suffers from scarcity of resources (finance, staff and specialised skills) which may be summarized as "capabilities" for trade policy.[6] Scarcity also extends to the physical

[4] In EU countries, the role of national parliaments in shaping trade policies is more limited, since trade policy is a policy area in which the European Commission enjoys wide competencies.
[5] For example, the Kenya Flower Council.
[6] Larger and middle income countries are relatively more likely to have a pool of specialists.

infrastructure and hence the domestic basis for trade - the weak integration of national markets reduces the possibilities to pursue opportunities which can result from trade liberalization. Moreover, scarcity of resources implies that there are relatively fewer institutions and funding streams to mitigate the risks and adverse effects on certain groups which can result from changes in trade policies.

Regarding domestic economic interests, it is essential to take into account that despite privatisations undertaken since the late 1980s, links between governments and enterprises in many developing countries are still close. Most developing countries do not have sound legislation on conflict of interests, or where such legislation exists (e.g. on asset declarations) it is rarely enforced. This raises the possibility that trade policies are influenced by particular interests, rather than by public policy concerns. This seems to be particularly the case around more informal restrictions on trade, such as corruption in customs, or the requirement to use certain firms to carry out inspections.

Drivers of Change (DoC) analysis trace such conflicts of interest and their impact on policy making at the national level but do not explore the political economy of trade policy in detail. For example, the DoC study on Malawi mentions the impact of economic interests of government officials on the communications policy of the country (Booth et al., 2006).

Furthermore, it is important to take into account that trade policy is not an independent policy area, but is influenced by other policy areas especially foreign policy. As Draper P., (2005) argues, ministers responsible for foreign policy often have more political weight in cabinets than ministers of trade. In principle, foreign policy and trade policy can go hand in hand, for example, in the case of European integration, which was a political goal that was pursued inter-alia through the creation of a Common Market. However, foreign and trade policies can also stand in contradiction.

There is considerable difficulty in generating coherent and effective trade policy in many developing countries. Sally R., (2005) paints a particularly stark picture:

> *"Most lead ministries on trade policy are not high up the pecking order within government and tend to be captured by politically well-connected protectionist forces. Inter-agency co-ordination is usually bad on traditional trade policy issues (tariffs and quotas on merchandise), and abysmal on newer issues like services, intellectual property, and environmental standards, which involve regulatory agencies across the range of government. […] Apart from habitual rent-seeking, business and other non-governmental input in trade policy is hardly evident. Finally, trade policy lacks transparency: almost everywhere it is dominated by well-organized "insiders" within government and outside it; intelligent public discussion on crucial trade policy choices, informed by independent, economically literate analysis, is conspicuous by its absence (although this is a developed country problem as well). No wonder, most developing countries are unable to formulate clear and precise national interests in trade policy, lack negotiating capacity in international forums, and fail to implement international agreements in a timely and effective fashion."*

There is relatively less scope for heavy rent-seeking around import regimes than there was before the structural adjustment period, as exchange rates have been unified, access to foreign currency has been liberalised and import licenses have been abolished. However, other avenues for rent-seeking around trade have been found (e.g. processing times for customs) and are being exploited. Furthermore, weak capacity and coordination, poor formal institutions and a lack of public spiritedness at least in some policy measures combine to hold back the pursuit of more effective trade policies.

Ikiara *et al* (2004) emphasise the dominance of the executive, and especially overly powerful presidents in economic policy making:

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

Nonetheless, progress is possible in principle (e.g. Ddamilura, D. and Abdi, H., 2003) and in recent years governments have become more willing to engage in participation and coordination of policies. Still, in most developing countries, effective participation in policy-making by the private sector and civil society remains far from institutionalised, although important beginnings are being made and supported by donors in the context of the PRSPs. Non-institutionalised participation by the private-sector often takes forms of *ad hoc* lobbying and is likely to provide more opportunities for rent-seeking than participation through public fora, although it is not automatic that rent-seeking would automatically disappear if consultation became more institutionalised. One of the challenges is that attempts at greater consultation and coordination are sometimes funded by donors but expire when these additional resources end.[7]

Greater participation has been advocated as a necessary ingredient of trade policy making out of an increasing recognition that changes in trade policy can have strong distributional effects (Lee, E. and Vivarelli, M., 2006; Stiglitz, J. and Charlton, A., 2006; Soludo, C. and Ogbu, O., 2004). For example, urban consumers may benefit from a liberalization of trade in agricultural goods, while farmers may lose (especially in an environment of agricultural subsidies elsewhere). However, 'objective' interests of certain groups do not automatically translate into effective lobbying for or against particular trade policies while large and dispersed groups are particularly unlikely to realise their goals (Olson, M., 1965). The degree to which groups are organised, for example, in farmers' unions, and the weight of their 'voice' in politics plays a crucial role in this regard.

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[7] For example, as happened with the Inter-Institutional Trade Committee (IITC) in Uganda which had been supported by the Joint Integrated Technical Assistance Program (JITAP).

2.3 Linking Trade Policy and National Development Strategy

This section focuses on how to integrate trade into national development plans and/or poverty reduction strategies. The discussion will highlight the importance of mainstreaming and the main approaches to mainstreaming trade policy, as well as consider best practices.

There is widespread consensus that trade and trade policy is good for growth and development. Neo-classical economic theories demonstrate that trade liberalization and specialization according to each country's comparative advantage benefits all countries. Trade enables the utilization of economies of scale, promotes increased competition and infuses new technology via foreign direct investment (Dornbusch, R., 1992). Although it is expected that free trade would lead to growth and development, many developing countries are yet to reap the predicted developmental benefits. This has led to the realization that trade liberalization and reform - though necessary - may not lead to improved trade performance unless complemented by other policy reforms (e.g. macroeconomic, regulatory and structural) (WTO, 2001).

There are strong linkages between trade policy and other policies and therefore trade performance, growth and development. For instance, inappropriate fiscal, monetary and exchange rate polices will adversely impact on trade development. This calls for mainstreaming trade policy into national development strategies in order to ensure that a package of reforms is formulated and implemented beyond just traditional trade issues. At the donor level, there is recognition that the trade agenda needs to be embedded in the overall development strategy and that the trade related capacity building should be coherent to the trade policy aims of the country.

According to a report by the WTO (2001), there are several critical issues to consider in mainstreaming trade policy into national development strategies:

- Sequencing of reforms and national policy trade-offs
- Determining priorities of complementary policies
- Promoting ownership and domestic coordination amongst key national economic ministries and donors
- Organizing financing of mainstreaming efforts

To strengthen the links between trade policy frameworks and other broad national developmental objectives, the OECD and others (e.g. Siphana, S., 2003) have developed key elements for effective trade policy frameworks. These include:

- A coherent trade strategy that is closely integrated with a country's overall development strategy
- Effective mechanisms for consultation among three key sets of stakeholders: government, the enterprise sector and civil society
- Effective mechanisms for intra-governmental policy coordination
- A strategy for the enhanced collection, dissemination and analysis of trade related information
- Trade policy networks, supported by indigenous research institutions
- Networks of trade support institutions
- A commitment by all key stakeholders to outward oriented policies
- A shift of emphasis to competitive advantage (micro and meso-environment issues) from 'comparative advantage' (macro-environment issues)

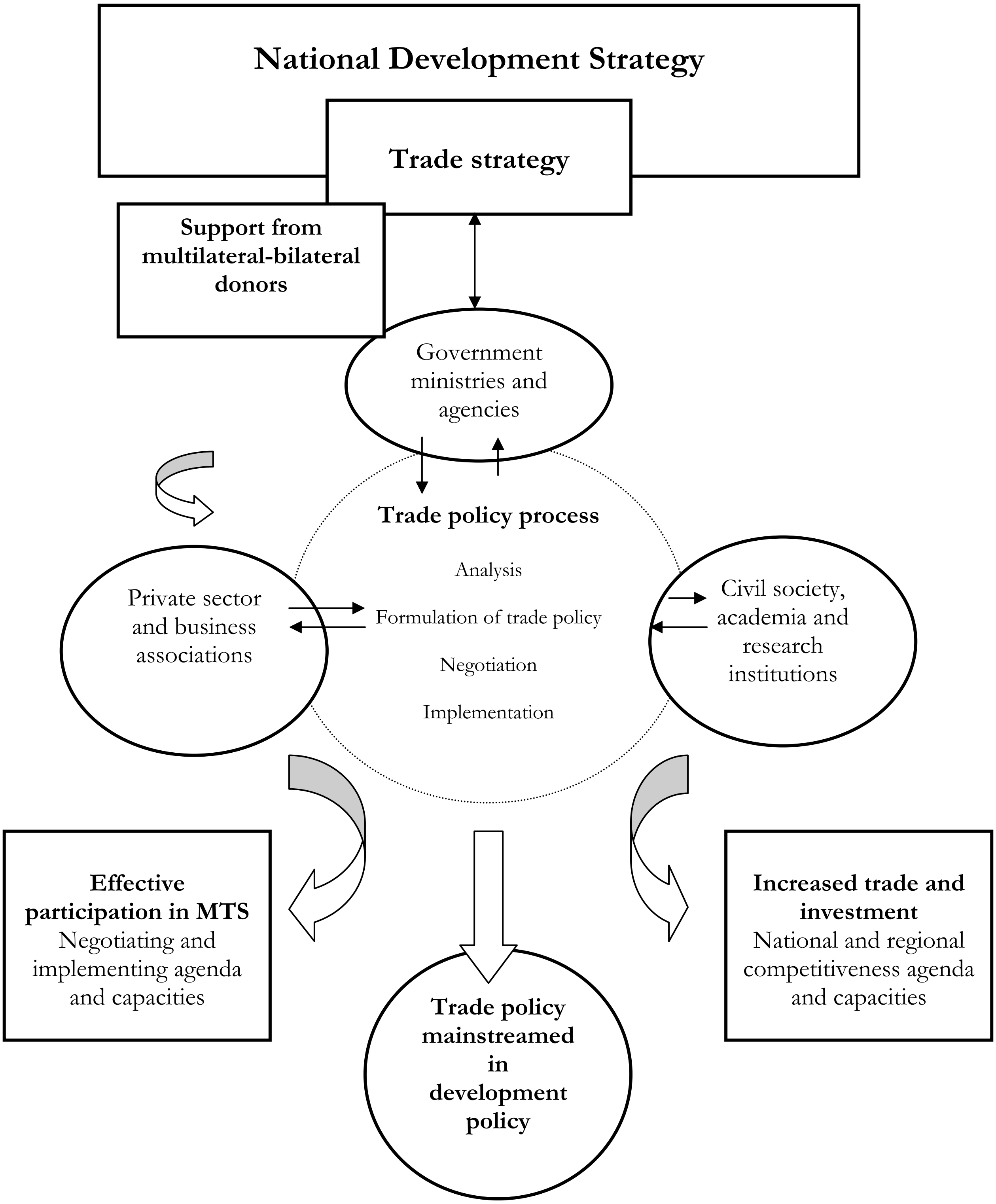
- Making competitiveness an enterprise, sectoral and economy-wide issue

Overall, an effective trade policy will identify a country's trade interests in line with its overall development strategy by involving a wide range of actors (figure 1). For this process to be effective, Solignac Lecomte, H. B. (2001) identified three key components of best practice:

- **Government leadership** plays a central role in driving the process forward (a lack of political interest or commitment will stall the process)
- **Development of appropriate institutional capacity**
- **Inclusion of all actors** in the process[8]

[8] Including the relevant ministries (not just those in charge of trade), private sector organizations, trade promotion and regulatory bodies, think tanks and other civil society organizations.

Figure 1: Elements of an Effective Trade Policy



Source: OECD (2001)

2.4 Cross Country Experiences in Trade Policy Making and Negotiations

2.4.1 Brazil

Trade policy-making in Brazil has evolved over the past two decades, related to an evolution of trade issues and of domestic political and economic changes.[9] During the 1970s, when the political regime was authoritarian, the field of trade policy was relatively narrow and the dominant economic policy paradigm was import substitution and the pursuit of industrial policies. Trade policy processes were institutionally concentrated and involved only a small set of stakeholders. The key institution at this time was the *Carteira de Comércio Exterior do Banco do Brasil* (CACEX) which had operational as well as regulatory functions and was involved in trade financing, subsidies, export promotion, and import 'control'. It interacted with the private sector on an informal basis, mainly along sectoral lines.

In the 1990s, a different modus operandi of trade policy-making developed in Brazil. Trade policy became considerably more complex as new sectors and themes were introduced (agriculture, services, investments, etc.). Political democratization had an important impact on demands for participation.

Trade agreement negotiations are led by the Ministry of External Affairs. The Ministry of Development, Industry and Foreign Trade plays a role mainly with regard to operations and related regulation. Due to the expansion of trade issues, a range of other ministries have become involved in various ways, increasing the need for inter-ministerial coordination. The Ministry of External Relations has created a set of networks for inter-ministerial coordination and for consultation with a wider range of stakeholders (e.g. private sector interests, civil society, organized labor, etc.). Each of these networks is dedicated to a specific set of trade negotiations (the *Secretaria Nacional da ALCA – SENALCA* is the National FTAA Secretariat for the FTAA negotiations; SENEUROPA for the Mercosur-European Union negotiations; and, *the Grupo Interministerial de Trabalho sobre Comércio Internacional de Mercadorias e Serviços* (GICI) for WTO-related matters).

In recent years, important changes have also taken place among the set of wider stakeholders. Civil society, trade unions and various economic interests have become more involved in trade policy matters and have sought to strengthen their capacity to formulate and launch policy proposals and to participate in trade policy formulation. A particularly important organization is the *Coalizão Empresarial Brasileira* (Brazilian Business Coalition, CEB) which, for the first time, brought together the agricultural, industrial and services sectors.[10] Non-governmental actors participate in trade policy formulation via the networks that have been created by the government. However, this participation is largely non-formalized and is often rather consultative in character. Nevertheless, in some negotiations, representatives from non-governmental organizations have been included in negotiating teams (e.g. CEB).

Brazil's structures and processes for formulating and pursuing trade policies appear far from 'perfect', but reflect the inevitable messiness of making policies which have a wide scope and involve many stakeholders. However, the structures and processes contribute a modicum of order as well as openness, allowing relatively effective and legitimate policies to emerge.

[9] This section draws on Marconini, M. (2005).
[10] However the interests of agriculture and industries on trade policies still diverge on a number of issues.

Furthermore, some of the outcomes in terms of trade policies have been inspired primarily by a political rather than an economic logic. For instance, concluding trade agreements with a range of developing and emerging market countries which are inspired by a desire to balance the large influence of developed countries at the international level but which are not necessarily 'pro-poor'. However, this has also been balanced by agreements that do have a more readily apparent economic rationale.

2.4.2 Mauritius

Mauritius provides a good example of successful investment and export-oriented industry promotion activities, albeit in a small island and hence relatively small-scale setting.[11] Trade and industrial policies have been led by the Ministry of Foreign Affairs and International Trade and the Ministry of Industry. On key matters, the economic committee of the Cabinet provides a platform for decision-making and inter-ministerial coordination. However, there are weaknesses in the inter-ministerial coordination, as is the case in many countries.

Mauritius' economy was traditionally based on sugar and sugar exports, with a highly concentrated ownership structure, and dependent on preferential trade agreements with the EU. An Export Procession Zone (EPZ) was set up in 1970 to develop an industrial sector (alongside diversification into [up-market] tourism, port services and financial services). The EPZ is led by an EPZ Development Authority. Other important institutional components are the Development Bank of Mauritius and the Investment and Export Promotion Authority (MEDIA).

Compared to Brazil, the emphasis in Mauritius has been more on attracting investment than on projecting a strong outward orientated trade policy. Mauritius has embraced a quasi-'corporatist' style of organization and collaboration among various interests and groups. Industry and labor have been well-organized in Mauritius. For instance, in the 1970s the private sector negotiated the sugar protocol on behalf of the government. The private sector has been represented by the Chambers of Commerce and Agriculture and later on in the Joint Economic Council which cooperates closely with government. Trade unions have been long established and have played an important role in the context of a largely democratic political regime.

2.4.3 Mexico[12]

Mexico presents a good example of a country which within 15 years has had a dramatic change in trade policy. For more than 40 years, Mexico followed a development model centered on import-substituting industrialization. In the 1980s, however, weakness in the oil market, scarcity of external financing and the debt crisis forced the Mexican government to change course and promote export-led growth (Carlos A. and Gustavo V., 2002). In less than 15 years, Mexico has become one of the main engines of economic growth. Export activity currently accounts for half of the growth in Mexico's GDP and almost one third of its overall GDP.

The dramatic shift in Mexico's trade policy may be explained by the recognition among government elites that if the new trade policy (export- led growth), and trade negotiations in particular, were to be successful, Mexico would require a system for soliciting and receiving advise during the policy-making process from certain segment of society – especially private sector groups.

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[11] This section draws on Bhowon, V., Boodhoo, N. and Chellapermal, P. (2004).

[12] This section is largely drawn from Carlos A. and Gustavo V. (2002)

The very elaborate Mexico trade policy consultation process can be traced back to the government's decision to seek a free trade agreement with the United States (NAFTA – Northern America Free Trade Agreement) and the realization of the historic significance of this decision. The government invited the private sector to participate in the negotiations 'with the aim of taking the necessary steps to achieve the best possible deal. In order to participate effectively, the private sector decided to strengthen and widen COECE[13] (Coordinating Body of Foreign Trade Business Associations) and used it as the main private sector coordinating body in the NAFTA negotiations. .After this restructuring, COECE became an organization comprising all business organizations involved in foreign trade and international matters.

The government later formed (through a recommendation of Mexican Senate) an Advisory Council on the Free Trade Agreement comprising of representatives of the government, the private sector, academia, labour and agricultural sector (Bustamante, J.,1991). The government had two representatives in this Council while the private sector had a majority representation. The Council included all the leaders of the main business organizations and Chief Executive Officers of some of the most important firms in several key sectors, industrial cities or regions and legal experts from well-known law firms. The academic sector was represented by the rectors or presidents of some of the most important public and private Mexican Universities while labour was represented by the leaders or representatives of the National Confederation of peasants, organizations of the Institutional Revolutionary Party (then governing party) and the labour congress, an umbrella organization of national labour organizations. The agricultural sector was represented by the leaders of the National Confederation of Small Landowners and the National Agricultural Council – representing most agricultural producers in Mexico. The Advisory Council serves as a forum in which the government discusses the broad outline and trends of trade policy and trade negotiations, inform strategic groups of the progress of the negotiations, and solicit their advise on these matters.

A striking characteristic of Mexican trade policy consultation process is that consultations take place prior to and during negotiations, prior to the final outcome of negotiations, for the review of the final outcome, and, in special cases like NAFTA, even during the process of ratification and implementation of trade agreements. The Mexican trade advisory mechanisms have been judged as been very effective in channeling advice from the private sector and some strategic social groups in Mexico to those within the Mexican government who formulate the country's specific negotiating objectives and policy approach towards its partners in trade negotiations (Carlos A. and Gustavo V., 2002). Through COECE, the Mexican private sector has become an active participant and advisor to the Mexican government in all of the important phases of trade negotiations, from the pre-negotiation stage to negotiations themselves.

2.4.4 South Africa[14]

In South Africa, trade policy is synonymous with trade negotiations. The Strategic choices concerning which partners to negotiate with and on what issues have been largely driven by foreign policy considerations (Draper, 2007). Trade negotiations are used principally for opening market access abroad for South African companies, whilst using reciprocity to discipline them in the domestic market.

[13] Coordinadora de Organismos Empresariales de Comercio Exterior – COECE. Before being strengthened, COECE's main function was to analyze the problems confronting a heterogeneous and complex private sector, and to establish a common private sector position on trade policy..

[14] This section draws from Draper, P., (2007).

In South Africa the Executive Branch is solely responsible for trade policy formulation and negotiating international trade agreements. Parliament also plays an important role in approving international trade agreements depending on the agreement's nature.

In the Executive, the Department of Trade and Industry (DTI) is the lead department in the formulation and implementation of trade policy. Within DTI, the key Divisions relevant to trade policy are: the International Trade and Economic Development Division (ITED), which handles negotiations; the newly established International Trade Administration Commission (ITAC - formerly the Board of Tariffs and Trade), which administers trade policy; and Trade and Investment South Africa, which promotes exports and investment. ITED plays a central role in trade policy formulation but Draper, P., (2007) observes that the Division has severe capacity constraints at two levels: insufficient staff numbers; and insufficient institutional experience of trade negotiations compared to most of its negotiating partners.

One of the important actors in trade policy formulation is the Department of Agriculture. The Department plays a critical role particularly in the regional context, where agriculture is a central concern to most Southern African Development Community (SADC) states. It is considered to be well organized with a well-established consultative mechanism in the form of the Agricultural Trade Forum, which brings department officials and industry players together on a regular basis to discuss trade negotiations. The forum plays a critical role in formulating positions on agricultural trade – the bedrock of any trade agreement. The Department also has long-established linkages with university-based research organizations.

Historically the Department of Foreign Affairs (DFA) has played a marginal role in trade policy formulation owing to lack of capacity. The formal role of the DFA has been restricted to advising DTI negotiators on the content of specific negotiations, particularly from the foreign policy perspective; and reviewing agreements for their consistency with South Africa's international obligations. The Justice Department reviews trade agreements for their consistency with the constitution.

3.0 TRADE POLICY MAKING FRAMEWORK

3.1 Evolution of Trade Policy in Kenya

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

At independence, the new government inherited an industrial policy which was based on import substitution. The Sessional Paper No. 10 of 1965 mainly centered on industrial development and pursued enhanced protection of the domestic market to help develop industries. The policy was a key influence on the development of the trade regime of Kenya over the first ten years from independence. Its objectives were to generate rapid growth of industry, ease balance of payments pressure and increase employment. There was a gradual but increasing resort to import licensing, which may have been a product of Kenya's membership of the East African Community (with Tanzania and Uganda) making use of tariffs difficult (World Bank, 1987). After the foreign exchange crisis in 1971, the government chose to introduce strict import controls rather than devalue.

The policies contained in the Third Development Plan (1974-1978) revolved around issues related to the empowering of citizens. To promote domestic trade, the government planned to continue disbursing loans to small traders through various programs and provide training programs for traders. The government constructed industrial centers to promote the development of the manufacturing sector. In other sectors, such as agriculture, the overriding policy strategy was to build local capacity and increase output through education and training, research and extension services, provision of infrastructure (e.g. water) and extension of credit facilities.

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

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

In this phase of Kenya's development, the policy making process was primarily dominated by the government. Trade policy processes and consultations were mainly the preserve of inter-ministerial deliberations. The Central Bank of Kenya was responsible for issuing licenses for importation and marketing boards and cooperatives were key regulatory institutions. The era was marked by the minimal participation of the private sector, civil society and donors.

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

In 1979, coffee prices fell whereas oil prices escalated, leading to serious balance of payment problems (Ronge, E. and Nyangito, H. 2000). Kenya was forced to seek financial aid from the World Bank and IMF and signed its first Structural Adjustment Loan (SAL) in 1980 which had conditions attached. The implementation of the SAPs involved, among others, promotion of nontraditional exports, liberalization of marketing systems and reform of international trade regulations. Trade liberalization under SAPS was characterized by the tariffication of quantitative barriers, subsequent reduction of tariffs and tariff dispersion.

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

Inherent weaknesses in the economy due to the weak implementation of SAPs and other policies led to the Sessional Paper No. 1 of 1986 ("Economic Management for Renewed Growth"). The Sessional Paper emphasized a change from reliance on import substitution and protectionism towards a policy of exposing industry to international competition and encouraging non-traditional exports. The paper committed the government to moving away from restrictive import licensing, high tariffs and laid out a system of incentives designed to encourage exports such as the export promotion strategy.

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

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

3.1.3 Export Promotion Phase (1990s)

In 1988, the second push to liberalize the trade regime began and was more successful. The Sixth Development Plan (1989-93) elaborated on the export promotion strategy which centered on the creation of an enabling environment for export growth. This would be achieved through institutional reform, reduction and restructuring of tariffs, abolition of export duties, introduction of export retention schemes, improvement of foreign exchange and insurance regulations and the establishment of the National Export Credit Guarantee Corporation. It is during this period that commercial attaches were stationed in major trading partner countries and trade missions were organized to emerging markets (Ng'eno, N. et al, 2003). The same plan acknowledged that some of the export incentives announced earlier were not yet operating as envisioned and therefore it recommitted the Government to their implementation.

The Seventh Development Plan (1994-96) proposed regulatory changes designed to make investments in bonded factories and export processing zones more attractive. By the end of 1994, 40 enterprises were approved to operate in six gazetted Export Processing Zones (EPZs) and, by the end of 1995, imposition of countervailing duties was the only barrier to international trade remaining (IPAR, 1995).

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

3.1.4 Recent Developments in Trade Policy

From 2003, the era of economic recovery strategy, Kenya's trade policy framework has focused on trade promotion strategies, sector-specific strategies, commodity-specific strategies and regional and international trade regulations which all seek to ensure that maximum benefits from trade are secured. However, a number of constraints prevail, including poor governance, poor infrastructure, high business transaction costs, insecurity, unfair competition from cheap imports and difficulties in accessing external markets (Republic of Kenya, 2003).

According to the Economic Recovery Strategy for Wealth and Employment Creation (2003-2007), various measures have been put in place to address the above challenges:

- Incentive schemes for the manufacturing sector (e.g. duty and VAT exemptions or remissions on imported inputs)
- Establishment of the secretariat on counterfeit control and commercial courts
- Strengthening of surveillance on transit imports to avoid diversion
- Active participation in regional and international integration and cooperation schemes (e.g. EAC, COMESA, etc.)
- The application of special safeguard measures under the COMESA agreement to protect the sugar and wheat industries
- Improving market access abroad particularly in the EU and in Africa
- Expansion and strengthening of partnerships with the private sector especially in negotiating trade protocols
- Developing an export development strategy that considers all sectors of export potential, reviews existing export development incentives and focuses on measures required to ensure diversification of export markets and therefore reduce vulnerability to unilateral decisions over trade
- Build capacity to monitor international trade malpractices in order to effectively apply anti-dumping and countervailing measures.

Trade policy today is shaped by Kenya's membership in trade agreements. For instance, with the establishment of the EAC, the tariff structure is now tailored to the Common External Tariff (CET) and may change subject to COMESAs CET once it is established. WTO agreements have also influenced the direction of trade policy, as well as the capacity to participate in trade negotiations. The nature of recent developments has conceived an intricate web of relationships that encompasses domestic actors, regional actors and international actors.

A more detailed discussion of the above institutional arrangements for trade policy will be discussed in the subsequent chapters.

3.2 Key Government Actors and their Roles

3.2.1 Ministry of Trade and Industry: Organization and Mandate

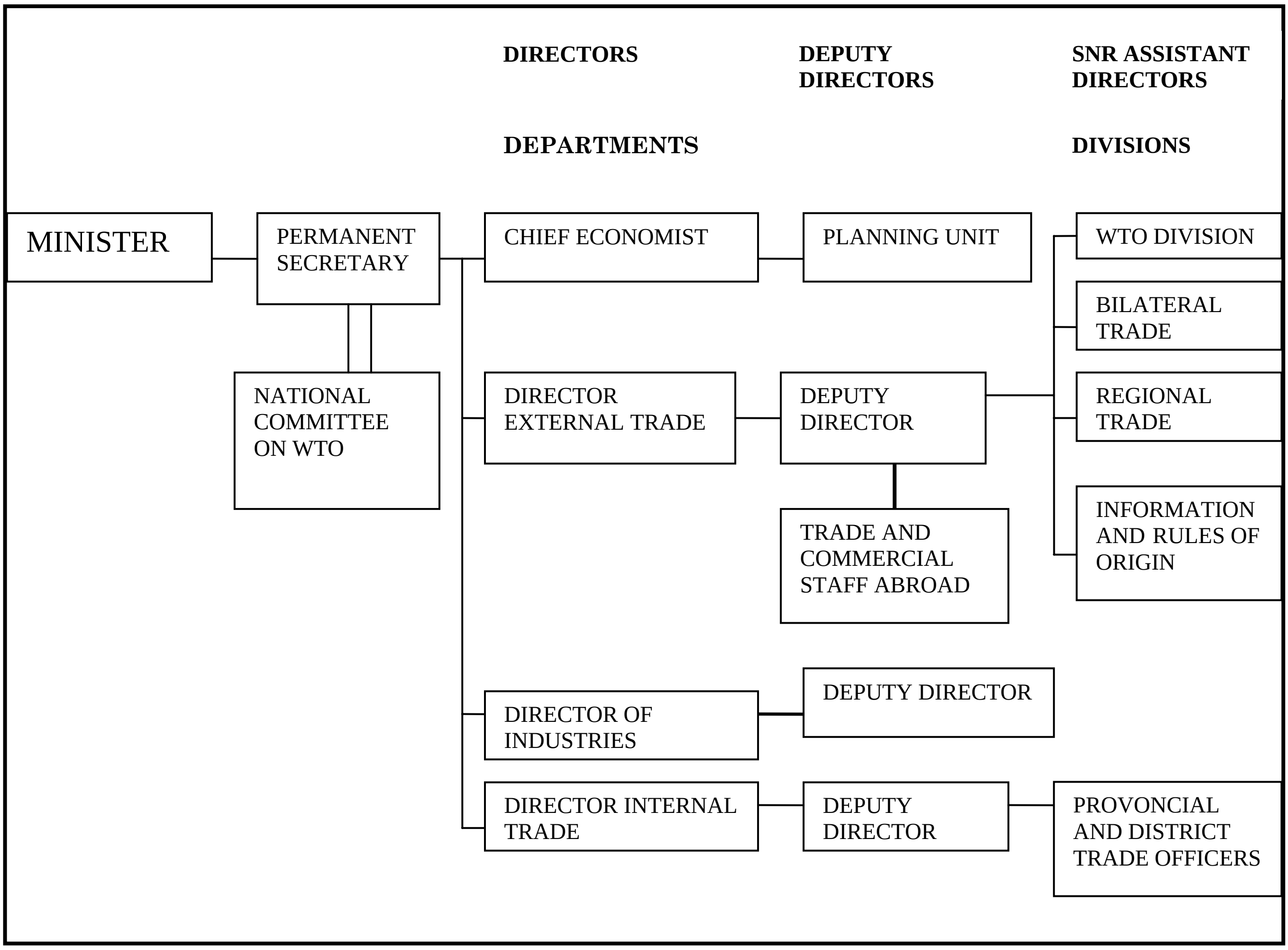
MoTI holds the official mandate for trade policy issues although various elements of trade policy are undertaken by other Ministries. Nevertheless, MoTI has the coordinating role for all trade matters. The Ministry's current institutional structure is the result of a number of changes that have occurred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

The overall senior management structure of MoTI is shown, to the extent relevant to the study, in figure 3 as a partial organogram. At the operational level, the Ministry is headed by the Permanent Secretary who has overall responsibility for the technical and administrative functioning of the Ministry. The Ministry then has four departments which are headed by Directors reporting direct to the Permanent Secretary. The following departments are focused on in this report: Planning; External Trade, Internal Trade, and, Industries.

The Ministry covers all matters relating to the WTO and multilateral trade negotiations and coordinates action on COMESA. The responsibility for EU/Cotonou affairs lies with the Ministry of Planning and the Ministry of East African Community co-ordinates EAC issues. These ministries are responsible for overall coordination of the broad issues but MoTI remains responsible for the trade elements and undertakes the trade negotiations.

Coordination between Ministries occurs through the Cabinet Sub-Committee on Trade, while consultation with other stakeholders occurs mainly though the NCWTO, the Joint Industrial and Commercial Consultative Committee (JICCC) and KEPLOTRADE cluster meetings. MoTI has the role of overseeing policy coordination through chairing both these committees and providing the secretariat. There is no equivalent consultative structure for coordinating bilateral and regional trade policy. The additional trade functions of MoTI are related to ensuring quality control and standards. The other mandate of MoTI is industrial policy development and this is mainly done through the Department of Industries and related institutions such as Kenya Institute for Research and Development (KIRDI).

Figure 2: Existing Organization of Ministry of Trade and Industry – partial organogram



Source: **Ministry of Trade and Industry, 2003**

a) The Planning Department

The Planning Department is headed by the Chief Economist, to whom the Deputy Chief Economist reports. It is responsible for the planning function for the whole Ministry, including providing data and information, assisting the Ministry in the preparation of the budget, interpreting policy guidelines laid down by the Ministry of Finance, monitoring, evaluating, preparing and initiating policy and advising the Permanent Secretary on economic matters.

Up until now, there has been no established policy framework for Kenya's trade policy, and a salient part of the MoTI Planning Department's role has been to lead the preparation of a Trade Policy Framework Paper. A first draft has already been produced by the Ministry's Economists and Trade Officers.

i) Qualifications, Skills and Training

The Department has well-qualified staff educated to degree level and with at least half holding degrees in economics. However, it was observed that the opportunities for undertaking short-courses in specific areas that would be directly useful to the work of the staff were limited. Training was often focused on obtaining postgraduate qualifications, often undertaken abroad, in order to qualify for promotion. In particular, training in policy analysis and development, management information systems (MIS), technical trade issues and negotiating skills were highlighted as being relevant to the work undertaken by the Planning Department and would be useful if provided locally.

ii) Research Capabilities

Currently there is little research within government to assess who are the gainers and losers from trade reform and little capacity for analysis of the impact on poverty. Any such studies are undertaken by consultants, with the Kenya Institute of Public Policy Research and Analysis (KIPPRA) which has the mandate to support the government, working closely with MoTI on trade policy issues. Also, research related to the negotiations (e.g. WTO, ACP-EU and EAC) is typically contracted-out to consultants. Although knowledge of advanced techniques is not necessary for MoTI staff, being able to undertake simple analysis of trade policy measures would be beneficial.

iii) Access to Resources

The department currently has no access to trade databases with information such as tariff levels, import and export information. As such, there is insufficient information to carry out any meaningful research.

b) Department of External Trade

The department is organized into the following four divisions:

i) WTO Division

The WTO Division employs ten professional staff, most of them trained on WTO issues. It is responsible for coordinating action within the Government on WTO negotiations.

ii) Regional Trade Division

The Regional Trade Division is responsible for coordinating action on COMESA matters. Since the change of Government, the parallel responsibility for the EAC has been transferred to the Ministry of East African Community.

iii) Bilateral Trade Relations Division

This Division handles bilateral trade relations and export promotion. The Division is divided into geographical sections, covering Europe, America, Africa, and Asia. It is the principal point of contact for commercial attaches in Kenyan missions in export markets. It reaches exporters chiefly through the Ministry's District Trade Offices, NGOs and through Chambers of Commerce and the Exports Promotion Council which is the implementing body for the export promotion strategy.

iv) Information and Rules of Origin Division

This Division is responsible for applying rules of origin to Kenyan exports (i.e. certifying that they are genuinely Kenyan) under trading agreements both within Africa (COMESA and EAC) and in the wider world (e.g. EU and the US).

c) Department of Internal Trade

The Department of Internal Trade played a central role in controlling the former centrally directed self-sufficient economy but now seeks to play a facilitating role in support of small and micro-enterprises. It employs some 50 professionals in 28 offices around the country (reduced from 60 in recent years).

The Department is organized into the following divisions:

i) Small Business & Support Services Division

This division encourages the growth of small businesses to take advantage of export opportunities, including product development, marketing and credit (now operating through a trust fund).

ii) Trade Policy & EAC Division

This division deals with business licensing (all businesses are required to be licensed, with the exception of small artisans) and internal aspects of the development of the East African Community.

iii) Trade Policy Monitoring, Research & Promotion Division

This division monitors the impact of trade liberalization to identify the employment effects of imports, counterfeiting and dumping. The division fulfils these functions partly through Provincial Trade Offices, which in turn co-ordinate a network of 28 District Trade Offices. These offices help small businesses get started, including training and helping them through the licensing process and advising them on export and other business opportunities, including organizing trade exhibitions. They also keep Kenya's export promotion network informed of promising products and monitor the impact of trade developments on local business.

d) Department of Industries

This department is responsible for the development of new industrial policies and the review and evaluation of existing industrial policy. It coordinates the District Industrial Development Officers (DIDO) and Field Services which are divided into 20 zones throughout the country and also oversees industrial registration activities and the investment code and incentive package. It has close links with the Kenyan Association of Manufacturers and also consults with the Kenyan National Chamber of Industry and the Federation of Kenyan Employers.

The department also deals with investment incentives. It is the biggest department in the Ministry with 173 staff, although there is insufficient staff within the department to carry out some of the more specialized functions. Additionally, there is no capacity to undertake research on the industrial impacts of changes in tariffs or quotas. Analysis of these types of issues at a sectoral level is necessary to inform policy decisions.

3.2.2 Other Ministries handling Trade Issues

a) **Ministry of Planning and National Development** coordinates policy-making of other Ministries and planning staff working in other Ministries. The Ministry of Planning and National Development considers itself responsible for all wider trade policy issues and regards MoTI as an implementing and negotiating body whose role excludes economic strategy. Nevertheless, it was stated by MoTI that its working relationship with the Ministry of Planning and National Development functioned smoothly. The Ministry of Planning and National Development is responsible for ACP/EU Cotonou negotiations since these negotiations have both a trade policy and a financial dimension, hence making it necessary for one Ministry to take an overall view. This, they felt, resulted in a clear Kenyan position. In addition, the Ministry sits on the NCWTO. It also plays a leading role in the consideration of tariff liberalization issues, in consultation with customs.

b) **Ministry of East African Community** is responsible for EAC matters.

c) **Ministry of Foreign Affairs** is responsible for the political implications of trade policy and trade alliances including bilateral trade arrangements.

d) **Ministry of Finance** is responsible for the implementation of government programs and projects in regard to finance. The ministry works very closely with the Ministry of Planning and National Development in the implementation of the Medium Term Expenditure Framework (MTEF). Usually, any actions that have financial implications have to be approved by the Ministry of Finance. This includes trade policy related issues.

e) **Ministry of Agriculture** plays an active role in the trade policymaking process. The NCWTO has a sub-committee on agriculture, chaired by the Ministry of Agriculture. The sub-committee also includes other Ministries, farmers' organizations, CSOs and agricultural research institutions.

In advance of meetings of the EAC committee on trade and development, briefing meetings of Ministries are held under the chairmanship of the Ministry of Agriculture. Also, to establish broader policy on agricultural trade in the EAC, a Policy Organization Committee of Ministries meets 3-4 times a year, again under the chairmanship of the Ministry of Agriculture. However, in spite of these arrangements, the Ministry did not consider trade issues well institutionalized in the Ministry of Agriculture (or between themselves and MoTI). The Ministry has no trade unit and only 3-4 members of staff are dedicated to working on trade issues. Furthermore, they have only received minimum training in trade related issues.

f) Other relevant Ministries

Other relevant ministries are: Ministry of Livestock and Fisheries; Ministry of Information and Communication; Ministry of Roads and Public Works; Ministry of Environment and Natural Resources; and, Ministry of Local Government. All the above are represented in trade committees and have their mandates outlined in Annex 1.

3.2.3 Other Trade Related Government Institutions/Parastatals

a) Export Promotion and Investments Bodies

i) Exports Promotion Council (EPC)

This is an independent body financed by MoTI, established in 1992 with donor support, to perform export promotion functions previously carried out within the Ministry itself. The aim was to create an institution governed by private sector principles and therefore with less bureaucracy. It operates under a board of directors appointed by the Minister for Trade and Industry, with a private sector chairman and with members drawn equally from Government (including MoTI, Ministry of Agriculture and the Central Bank) and the private sector.

The Council sees its role as identifying whatever bottlenecks obstruct exports and removing them. It maintains panels dealing with individual industrial sectors (e.g. horticulture) and with sectoral trade associations.

ii) Exports Processing Zones Authority (EPZA)

Kenya inaugurated her EPZ program in 1990 as part of the Export Development Program (EDP) being undertaken by the Government to transform the economy from import substitution to a path of export-led growth. EPZs are designed to further integrate Kenya into the global supply chain and attract export-oriented investments in the zones, thus achieving its economic objectives of job creation, diversification and expansion of exports, increase in productive investments, technology transfer and creation of backward linkages between the zones and the domestic economy.

The program has contributed significantly to achieving these objectives with over 40 zones in place, close to 40,000 workers employed and contribution of 10.7% of national exports. Over 70% of EPZ output is exported to the US under AGOA.

The EPZA is specifically mandated to promote investments in the EPZs and continue to provide investors with a predictable, attractive and efficient modus operandi for tackling regional and global markets for goods and services.

iii) Kenya Investments Authority (KIA)

Kenya Investments Authority (KIA) approves investment projects and provides information on investment policy, regulation and opportunities. KIA participates in trade policy formulation by recommending changes of investment-related policies, strategies and administrative procedures necessary to enhance the investment climate.

It also provides professional assistance, facilitation, information and advice for local and foreign investors seeking to establish a new investment or expand their existing investments in Kenya. KIA also provides information on business and investment opportunities in Kenya.

b) Quality Assurance Bodies

i) The Kenya Bureau of Standards (KEBS)

It was established under the Standards Act of 1973 as the national centre for metrology, standardization, testing and quality management. Operating under the National Standards Council, its functions are to:

- Develop Kenyan national standards for products, materials, processes and certification
- Assist and train Kenyan industry to implement standards
- Provide a laboratory base for testing for conformity with both Kenyan and foreign standards (the latter being relevant for Kenyan exports)
- Provide a certification marking scheme, with recognized marks of quality and safety
- To provide a National Calibration Service as a basis for measurement and calibration in Kenya, traceable to international standards

It operates from its Headquarters in Nairobi, from devolved laboratories in Western Kenya and Mombasa, and from inspection offices at ports and airports. Much of its work is trade-related as it is the main body involved in inspecting imports to ensure conformity with Kenyan requirements and certifying exports for compliance with foreign or international standards. It also acts as the National Enquiry Point on technical barriers to trade (TBTs), disseminates within Kenya all foreign proposals for standards-related regulation and provides notifications to the WTO Secretariat. Recently, a national accreditation body known as the Kenya Accreditation Service (KENAS) has been established for the purpose of carrying out certification services and accrediting calibration laboratories.

ii) The Kenya Plant Health Inspectorate Service (KEPHIS)

It was established as a Parastatal of the Ministry of Agriculture in 1996, combining several predecessor bodies. It has a headquarters in Nairobi, offices and laboratories in other regional centers, and inspection operations at ports and airports. It is responsible for:

- Coordination of all matters relating to crop pests and disease control
- Administration of Plant Breeders Rights (PBR) in Kenya and serves as a liaison office for the International Union for the Protection of new Varieties of Plants (UPOV)
- Inspection, testing, certification, quarantine control, variety testing and description of seeds and planting materials
- Grading and inspection of plants and plant produce at the ports of entry and exit
- Development and implementation of standards on both imported and locally produced seeds
- Approving importation and exportation licenses for plants and seeds issued by the ministry responsible for commerce and industry before such importation or exportation is implemented
- Implementation of the national policy on the introduction and use of genetically modified plant species, insects and microorganisms in Kenya

Several of its functions have an important bearing on Kenya's international trade. It is the National Enquiry Point for issues dealing with sanitary and phyto-sanitary measures (SPS). It also develops and implements standards for imported and locally produced seeds and approves import and export licenses for plant and plant products. The inspectorate is mandated to implement Kenya's policy on the introduction and use of GMO's, monitor levels of residues in agricultural products and represents Kenya in relevant international bodies (e.g. WTO) and in bilateral exchanges. In addition, as Kenya is developing a vibrant fresh produce export trade, including the breeding of new varieties, KEPHIS occupies a central position in the country's export development effort.

c) Regulatory Institutions

i) **The Central Bank of Kenya (CBK)** performs many roles that have a bearing on trade policy making. At the regional level and multilateral levels, the CBK is involved in the General Agreement on Trade in Services (GATS) negotiations on issues relating to trade in financial services. The CBK is usually represented in the NCWTO, KEPLOTRADE Committee and EAC deliberations. The CBK performs analytical work and outputs have included position papers and other publications. These publications usually include trade policy issues. The CBK is also an important reservoir of trade-related data to all the other actors including government, trade experts and private consultants.

ii) **Kenya Revenue Authority (KRA)** has the overall role to assess, collect, administer and enforce laws relating to revenue. It acts as an advisor to the government concerning these issues. KRA's mandate includes effective administration of tax laws relating to both domestic and international trade. It also controls the country's exit and entry points to ensure illegal goods do not infiltrate or pass through the country. Given these pivotal roles the authority is a member of various clusters of the KEPLOTRADE Committee.

3.2.4 Attorney General's Office

The office of the Attorney General is responsible for the publication and drafting of bills for parliamentary debate. It is also widely involved and consulted in providing legal opinion on various bilateral, regional and international trade agreements and treaties.

3.2.5 Parliament

The Parliament remains as the supreme law-making body in Kenya and, as such, exercises control of public finances. Legislative power is vested in the Parliament, which consists of the President and the National Assembly. The central legislative authority is the unicameral National Assembly, formed by 210 directly elected representatives, 12 nominated members, and two ex-officio members comprising the Speaker (elected by the National Assembly) and the Attorney-General (nominated by the President).

Parliament's role in trade policy-making includes the debate of drafted bills and makes any necessary amendments before being ratified. The Parliamentary Committee on Finance, Planning and Trade is charged with the mandate of handling trade issues. Parliament is also responsible for overseeing the implementation of policies which require rules and regulations that will ensure that the given policy is implemented. Policies are enforced through Acts of Parliament and monitoring of policy is also the responsibility of Parliament.

3.2.6 The Executive

The Cabinet initiates and formulates most legislative proposals - bills are drafted in consultation with the private sector and other stakeholders. After being read and passed by the National Assembly, bills are presented to the President who has 21 days to signify to the Speaker his assent or refusal. In case of refusal, he must, within 14 days, submit a memorandum to the Speaker indicating the specific provisions to be reconsidered by the National Assembly, including his recommendation for amendments. The National Assembly subsequently reconsiders the bill taking into account the President's comments, and either: (i) approves the President's recommendations with or without amendment and resubmits the bill to the President for assent; or (ii) refuses the recommendations and approves the bill in its original form by a resolution supported by a vote of not less than 65% of all members of the National Assembly (excluding ex-officio members), in which case the President must assent to the bill within 14 days.

4.0 INSTITUTIONAL ARRANGEMENTS FOR TRADE POLICY FORMULATION AND NEGOTIATIONS

4.1 Institutional Arrangements for Policy Formulation

The official institutional framework for public policy making in Kenya comprises the executive, legislature, judiciary, local authorities and political parties. In an effective setup, it is expected that these bodies interact with one another and with various interest groups within civil society and private sector. It is through such interactions that well thought out and effective public policies are expected to materialize (Odhiambo-Mbai, C., 1997).

The executive usually formulates two categories of policy: developmental and regulative. The two common approaches used in formulating development policies are the formation of sectoral working groups or experts and the appointments of a Presidential Committee or Commission. Within the Executive, the Ministry of Planning and National Development has the primary role of formulating development policies and coordinates their implementation nationally. The organizational structure extends further to the central and provincial organizational structures. At the central or national level, the organizational structure is made up of the Cabinet, the Ministry of Planning and National Development, the Ministry of Trade and Industry and the Planning Units within the various ministries. It is worth noting that policies that have immediate financial implications require the input of the Ministry of Finance. The provincial organizational structure is made up of various development committees (e.g. at the district level there are the District Development Committees (DDCs) in every district).

Most of the policies initiated by the executive arm of government require approval of the legislature before implementation. The judiciary, on the other hand, acts as a moderator of the possible excesses of the two arms of government and ensures that their operations are within the constitutional order. Local authorities pass bylaws that regulate developmental activities in their areas of jurisdiction. These include issues on trade, particularly domestic trade.

Competitive party politics usually provides an opportunity for a political party to convey its development policies and its subsequent election implies the approval, by the majority, of its public policies. This explains the similarity of development plans and party manifestoes (Odhiambo-Mbai, C., 1997). The key contents of the manifestoes usually originate from the party supporters or the civil society. This implies that party politics is a key way through which the general public or civil society contributes in the public policy making process.

4.1.1 Trade Policy Formulation Processes

As discussed in section 3.2, trade policy formulation, implementation and coordination are the responsibility of several Ministries with the MoTI spearheading the process.

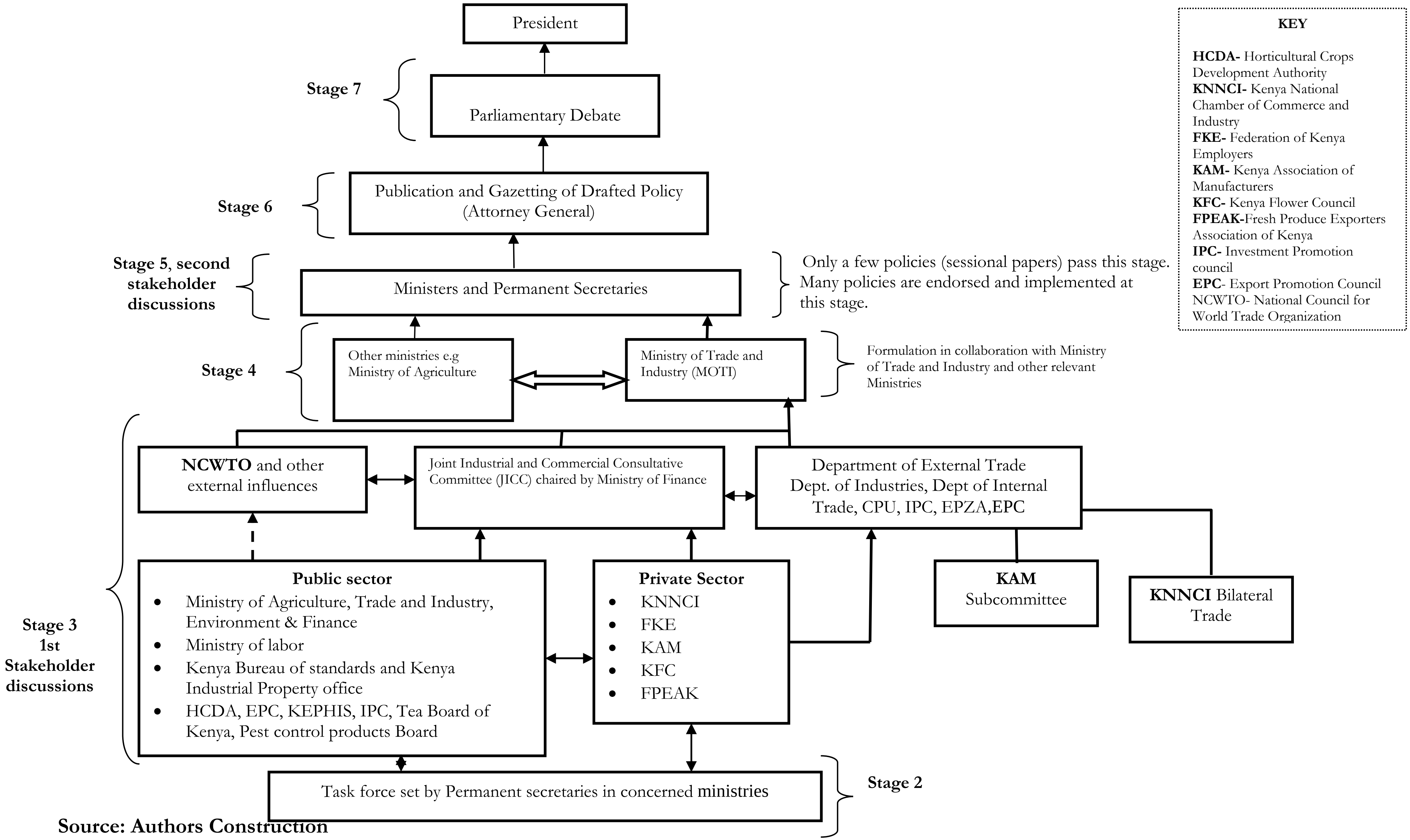
Figure 4 below illustrates a representative process of trade policy making in Kenya. In practice, there are an infinite number of ways of formulating and implementing trade policy. The process depicted here should be viewed as the comprehensive - or ideal - trade policymaking process within Kenya's existing institutional framework(s). In the ideal set up, the process of making trade policy is made up of various stages from the time a policy need is identified up to the time when it is given presidential assent. These stages are described below:

- Once a policy need[15] has been identified, the Permanent Secretary in the concerned ministry sets up a task force to collect views on the policy issue at hand and develop a Sessional Paper
- Then a stakeholder discussion of the views collected by the task force takes place. The JICCC and the Department of External Trade play a significant role in coordinating the discussions among the stakeholders
- After these deliberations have taken place, the Ministry draws up a Cabinet Memorandum seeking Cabinet approval
- Once approved by Cabinet, the Ministry in consultation with various stakeholders draws-up a draft policy
- The office of the Attorney General then prepares a draft bill for parliamentary debate
- The Cabinet and the President respectively approve the Sessional paper to give it legitimacy
- Once it receives Presidential assent, it becomes an Act of Parliament, which can be enforced by law
- The implementation of the policy is carried out by the relevant bodies either private or public depending on the sections of the Act

It should be noted that many other policy decisions are made at the Ministry level (often in consultation with stakeholders) through gazette notices etc.

[15] A policy need can be as a result of external influences, internal issues or through presidential decrees.

Figure 3: Trade Policy Formulation Process in Kenya



Source: Authors Construction

4.2 Institutional Arrangements for Regional Trade Agreements[16]

Kenya belongs to several regional trade agreements including the EAC, COMESA and the Cross Border Initiative (CBI). The EAC is composed of Kenya, Uganda and Tanzania and is now a Customs Union. COMESA is one of the largest trading blocs within Africa.[17] The Cross Border Initiative (CBI)[18] was started in 1992 to foster regional integration and to provide impetus for restoring the East African Cooperation.

4.2.1 Trade Policy Process within the EAC

4.2.1.1 Institutional Frameworks under the Defunct EAC (1977)

The three East African states, Kenya, Uganda and Tanzania formed the East African Community (EAC) in 1967 to foster development. Its headquarters were located in Arusha, Tanzania.

Institutionally, the EAC's top organ was the East African Authority (EAA). It consisted of the presidents of the three states and it was responsible for giving the general direction and control of the performance of the executive functions of the community. The EAA was assisted in its roles by the various Councils and the East African Ministers. Each Council (e.g. Council for Trade, Council for Agriculture, etc.) had a unique role to play and they reported directly to the EAA.

The EAC secretariat was chiefly responsible for the administration and day-to-day running of the institution. The other two institutional constructs were the East African Legislative Assembly (EALA) and the East African Common Market Tribunal. The main function of the EALA was to discuss the bills tabled to it and pass them on to the EAA for discussion and assent. The East African Common Market tribunal was put in place to discuss issues pertaining to the formation of a common market. Several disagreements led to the tribunal being disbanded.

The collapse of the EAC in 1977 was brought about by many factors: differences in political ideology; lack of political will among the leaders; inadequate participation by the private sector and the public in the cooperative activities; and, inequitable distribution of the benefits accrued from the cooperation. Also, while the EAC was in existence, trade policy formulation remained a preserve of the respective governments and there was negligible participation from the civil society and the private sector (Lyakurwa, W., et al, 1997).

4.2.1.2 Institutional Frameworks for Negotiations under the New EAC (1999)

The Treaty for the establishment of the EAC was signed by the leaders of the East African states at Arusha, in Tanzania, on November 1999. All the three countries of East Africa have ratified the Treaty.

The trade policy formulation process in the new EAC is complex and involves many stages. For Kenya, it begins with the formation of a High-level Task Force which consists of experts from key ministries, private sector representatives and Kenya Revenue Authority officials. Figure 5 below illustrates a representation of the process and the actors.

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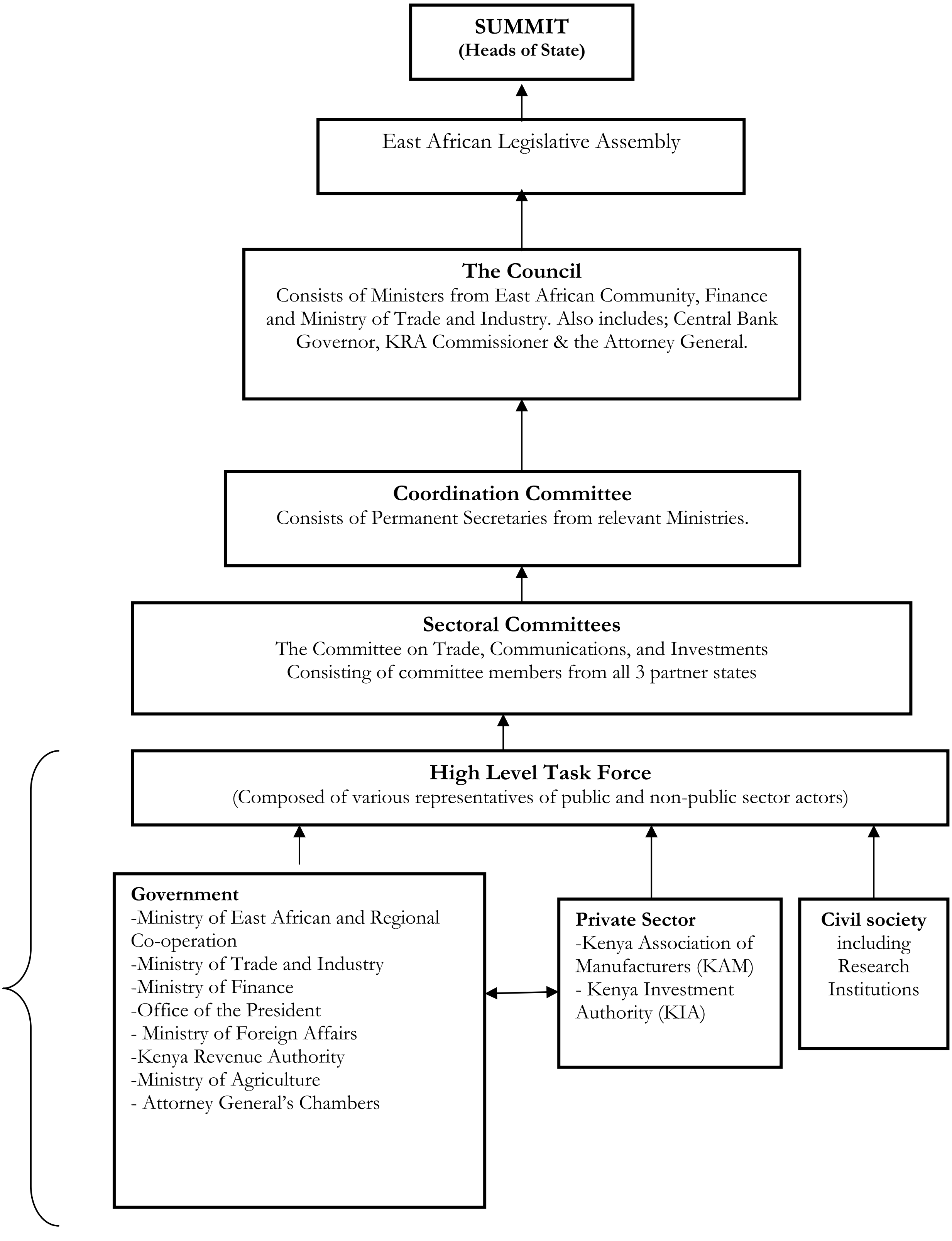
[16] This section borrows from the respective websites of the regional trade bodies. For EAC see http//www.eac.int/ and for COMESA refer to http://www.comesa.int/about/

[17] COMESA has 18 Members states (Angola, Burundi Comoros, D.R. Congo, Eritrea, Ethiopia, Madagascar, Malawi, Mauritius, Namibia, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia and Zimbabwe). Tanzania pulled out of COMESA in 2004.

[18] Members of the CBI include Burundi, Comoros, Kenya, Madagascar, Malawi, Mauritius, Namibia, Rwanda, Seychelles, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe

Figure 4: EAC Trade Policy Formulation Process and Actors

(Source: www.eac.int)



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

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

3. **Coordination Committee** consists of the Permanent Secretaries responsible for the EAC in each partner state (and other Permanent Secretaries as each partner state may determine). Thus for the Kenyan side, the Permanent Secretaries for Trade, Finance and Planning are also in the committee. The functions of the Coordination Committee are to:
   - Receive and consider reports from the Sectoral Committees
   - Submit from time to time, reports and recommendations to the Council either on its own initiative or upon the request of the Council
   - Implement the decisions of the Council as the Council may direct

4. The **Council** considers what is tabled from the Coordination Committee. The council may further hold discussions with the permanent tripartite commission, which consists of members from the three partner states, until a consensus is reached. The Council is thereafter responsible for tabling bills for discussion in the East African Legislative Assembly (EALA).

5. **The East African Legislative Assembly (EALA)** is one of the organs provided for under the EAC Treaty. It has 27 selected members, 9 from each of the partner states, and 5 ex-officio members consisting of:
   - The Minister responsible for the East African Community from each partner state
   - The Secretary General and the Counsel to the Community.

   The functions of the EALA include:
   - Liaison with the National Assemblies of the partner states on matters relating to the EAC
   - Discusses all matters pertaining to the EAC and make recommendations to the Council of Ministers, as it may deem necessary for the implementation of the Treaty

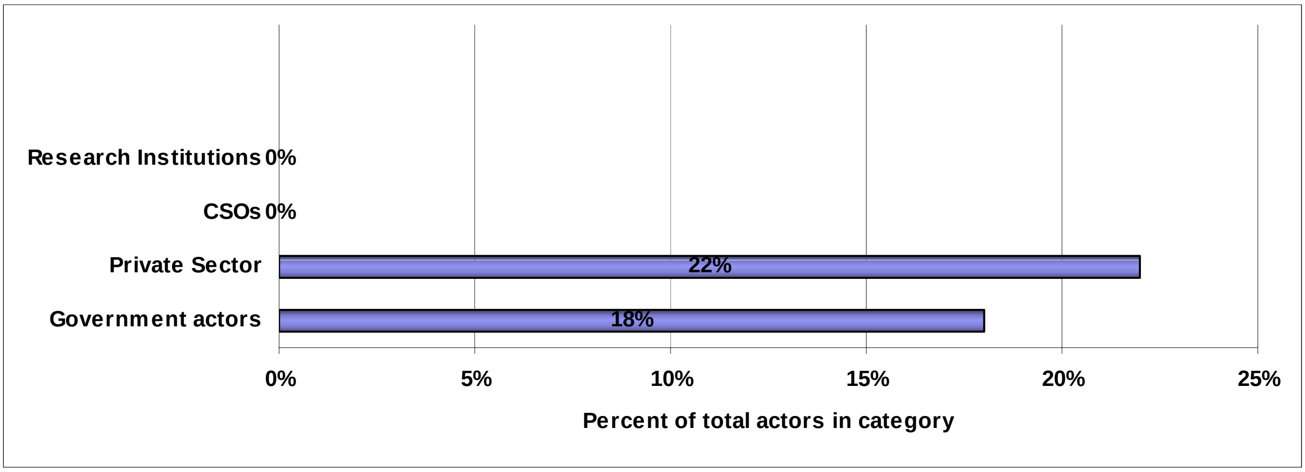
- May establish any Committee or Committees it deems necessary for purposes of carrying out its functions
- Discuss bills and further forward them to the Summit for assent

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

It is recognized that one of the causes of the collapse of the EAC was the low level of involvement of civil society and private sector actors in the policy making process. The new approach to regional integration emphasizes the need for participation of the various public and private stakeholders and considers their participation essential for the effectiveness and sustainability of regional integration efforts. Under Article 127 of the EAC Treaty, it states that the Secretary General shall provide the forum for consultations between the private sector, CSOs, other interested groups and appropriate institutions of the EAC.[19]

In Kenya, the formal framework for participation in the EAC includes ministries, parastatals, private sector representatives and research institutions (See figure 5 and annex 3) and appears inclusive. However, this may not be the case in practice as divulged by the 2006 stakeholder survey results. The survey results (Figure 6) indicate that government actors and the private sector have some representation in the EAC's High Level Task Force. However, only 18 percent of those government actors surveyed indicated that they are represented in the EAC compared to 22 percent for private sector. It is important to note that the particular firms represented by the private sector umbrella bodies do not generally feel that their interests are sufficiently represented. This survey included all the mainstream CSOs and research institutions. Although the civil society[20] is encouraged to participate effectively in all organs of the EAC, none of the groups interviewed in the 2006 stakeholder survey indicated that it was represented in the EAC negotiation process. These findings suggest that the participation and influence of these groups on the negotiation process may be minimal, if at all it exists.

Figure 5: Actor Representation in the EAC (% of those represented of total respondents in each category)



Source: 2006 stakeholder survey results.

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[19] See www.eac.int

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

4.2.2 Trade Policy Formulation Process within COMESA

The organizational structure of COMESA comprises of:

- The Authority
- Council of Ministers
- Court of Justice
- Committee of Central Bank Governors
- Inter-Governmental Committee
- National Technical Committees
- Secretariat
- Consultative Committee of the Business Community and other Interest Groups.

In Kenya, the trade policy formulation process under COMESA begins with:

- **STAGE I:** At the national level, an Inter-Ministerial/Inter-sectoral Committee comprising of public and private sector stakeholders spearheads negotiations at COMESA.

- **STAGE II:** Technical Committees and the National Working Group under the Regional Integration Facilitation Forum (RIFF) review, negotiate, and monitor implementation of specific sectoral programs and activities (see Annex 2 for membership). The National Working Group also reviews proposals by COMESA Secretariat on the Common Tariff Nomenclature.

- **STAGE III:** After deliberations with the Technical Committees, the next step is for a technical proposal to be tabled at the COMESA Intergovernmental Committee, which consists of Permanent Secretaries from the member states responsible for the development and management of programs and action plans in all sectors of cooperation, with the exception of the finance and monetary sector.

- **STAGE IV:** The action plans are then presented to the COMESA Council of Ministers which takes policy decisions on the programs and activities.

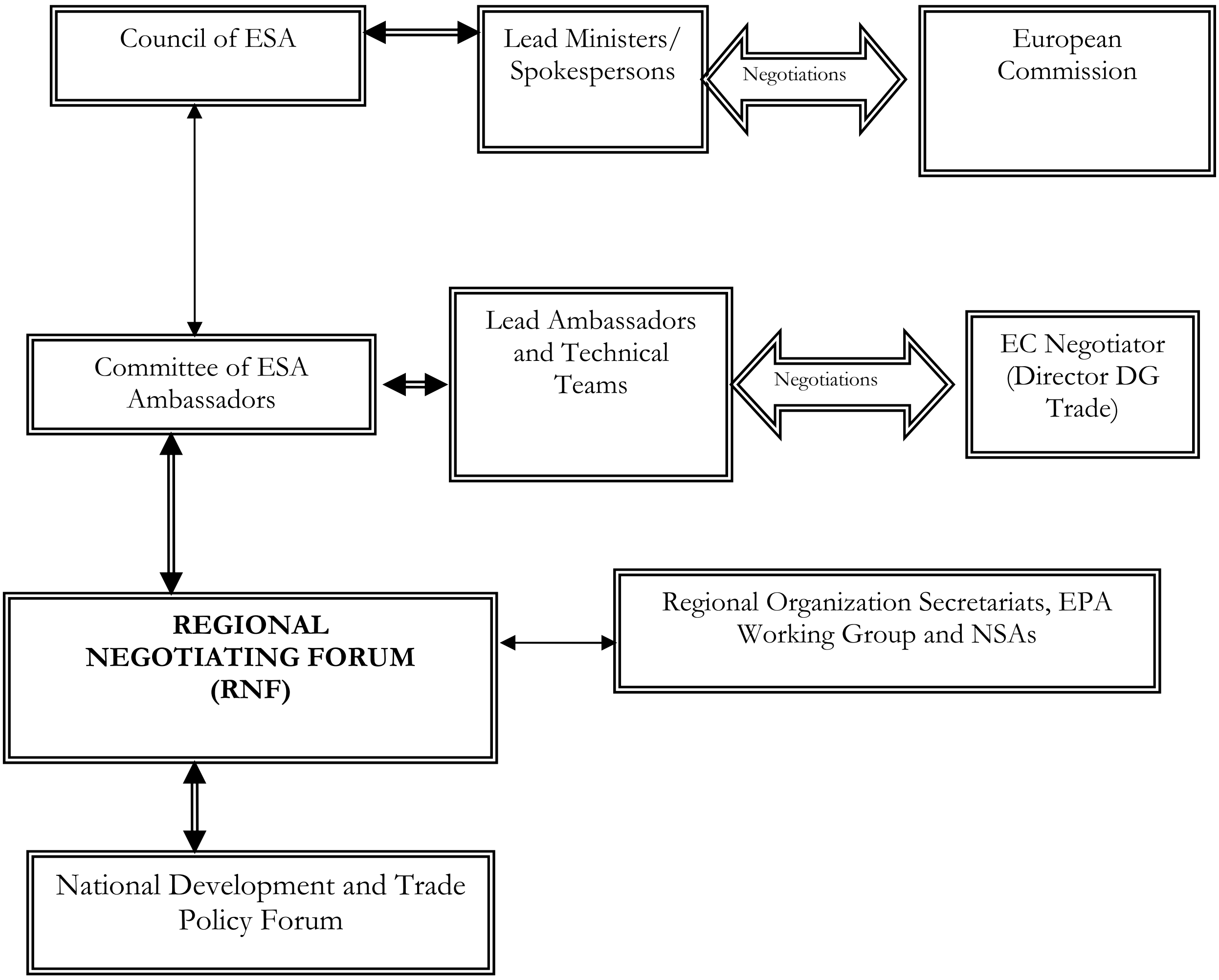
- **STAGE V:** The said policies are then passed over to the ultimate Authority, composed of Heads of State and Government and who are responsible for giving assent to the policies.

4.2.3 Negotiating Frameworks under the Economic Partnership Agreements (EPAs)

Discussion with MoTI officials indicate that prior to the Cotonou Agreement there was no negotiating framework for the Lome Conventions. Negotiations were purely a Government affair comprising of MoTI officials and there was no consultation with the private sector or civil society. This changed when the new negotiations on Economic Partnership Agreements (EPAs) began in September 2002. The negotiations are between the EU and various groupings of the ACP countries and are to be concluded by 2008. Kenya's negotiation with the EU will be conducted through the Eastern and Southern Africa (ESA) group consisting of 16 countries.[21] The countries are expected to prepare their individual positions and feed into a unified stand under the regional groupings. The organizational structures established by the ESA Ministers for the negotiations are presented in figure 6 below.

[21] The countries are; Burundi, Comoros, DR Congo, Djibouti, Eritrea, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Uganda, Zambia and Zimbabwe.

Figure 6: Negotiating Framework of EPAs under ESA



Source: Ministry of Trade and Industry, 2003

The Secretariats of the regional organizations involved in the ESA-EPA negotiations are mandated to act as the Secretariat for the Regional Negotiation Forum (RNF), with COMESA taking the lead and coordinating role. The Secretariats will assist the RNF in the preparation of a series of written negotiating briefs to be used by the negotiating teams which are to negotiate an EPA with the EU. Members of the RNF will be part of the team to support the ESA Ambassadorial lead spokespersons in the EPA negotiations.

The Ministerial Committee of lead spokespersons, together with Ambassadorial lead spokespersons and their negotiating teams selected to negotiate in each cluster, are mandated to develop an acceptable fall-back position. If the Ambassadorial lead spokespersons are not able to negotiate either the optimum position or the fall-back position, the issue will go back to the RNF for them to develop another negotiating position.

The Ministerial lead spokespersons and the Ambassadorial lead spokespersons select a Chairperson amongst themselves. The Chairperson is overall spokesperson of the ESA countries with the EC when negotiating groups hold a joint negotiation session. The post of Chairperson is alternated every six months.

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

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

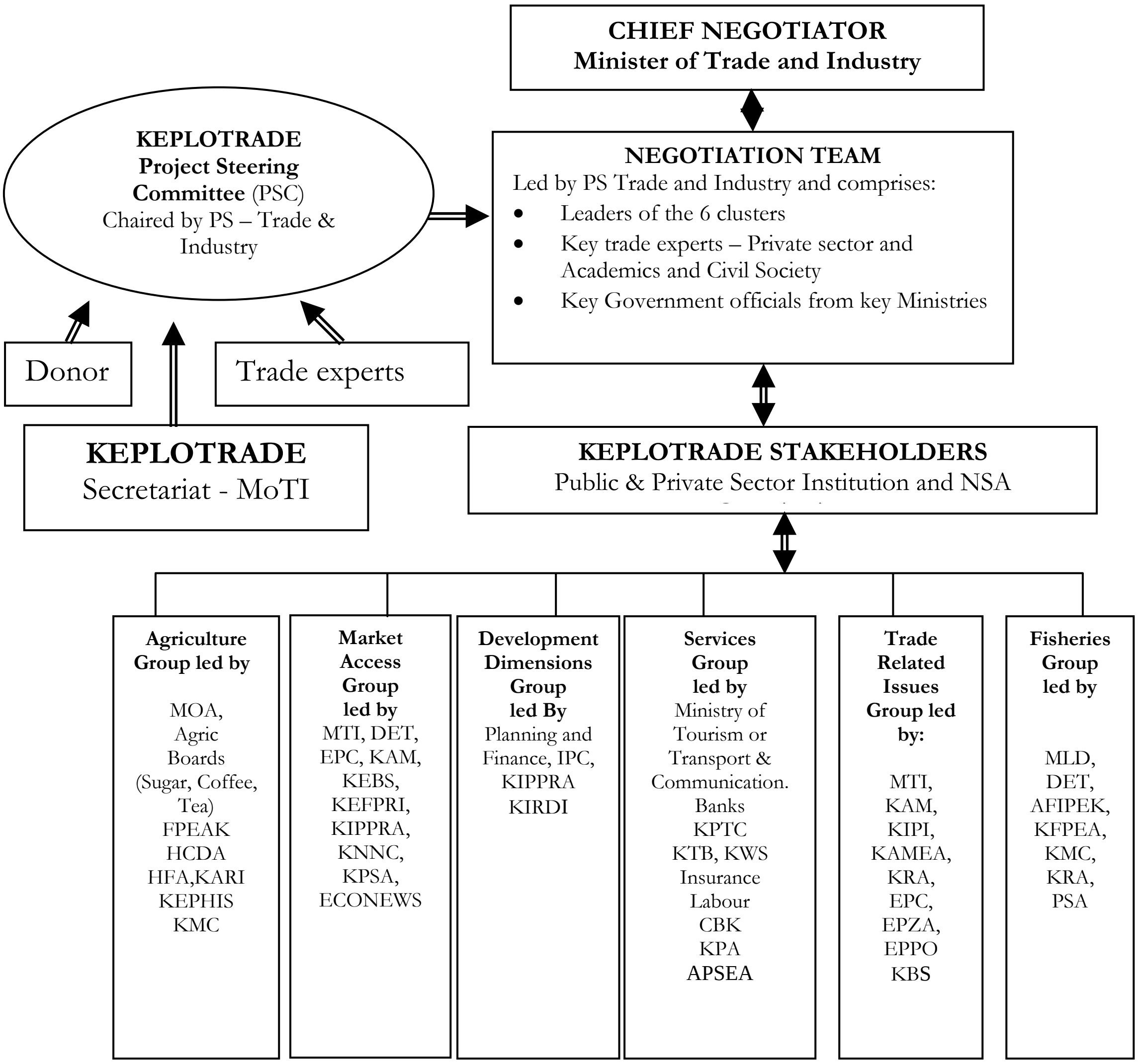
4.2.3.1 The Organization of the EPA Negotiation Process in Kenya

In Kenya, preparations for the EPA negotiations are being facilitated through the KEPLOTRADE Trade Negotiations Support Programme. The national negotiation structure comprises an institutional framework comprising of six clusters (i.e. market access, development, agriculture, fisheries, services and trade) (see figure 8). The Minister for Trade and Industry leads the negotiations as the Chief Negotiator. The Chief Negotiator receives the country position from the negotiating team, which synthesizes reports from various clusters. The Clusters are in charge of carrying out analytical studies on the broad sectoral categories after which they form positions through the consultative process.

Some of the strategies being applied by the KEPLOTRADE Trade Negotiations Support Programme include:

- Analytical studies in support for the development of negotiations
- Capacity building and training on Cotonou, EPAs and WTO issues
- Stakeholder (public and private sector and civil society) consultations as the vehicle through which all negotiation positions are identified and developed
- Information dissemination on EPA negotiations

Figure 7: Negotiating Framework for EPAs in Kenya



Source: http://www.keplotrade.org/subsection.asp?ID=10

The negotiating framework for EPA is clearly well structured. The structure not only permits wide participation but also allows for specialized participation of the various actors in their respective relevant clusters. As an advantage over other structures, the KEPLOTRADE arrangement can potentially accommodate the strong presence or influence of CSOs and research institutions in the negotiating team.

From the survey findings, there appears to be relatively good representation of the various actors surveyed in most of the KEPLOTRADE clusters (see table 1 below). However, there are weaknesses. One of these is the weak participation in the trade-related issues cluster (i.e. trade and environment, technical barriers to trade [TBT], trade-related intellectual property rights (TRIPs), e-commerce, etc). Although these issues are important for the country's overall development, only one Parastatal indicated that it is represented in this group. Furthermore, the fact that none of the respondents indicated participating in the fisheries group may imply that these two clusters may need to be revamped. It should be noted that participation of the various actors in the services group is also relatively weak.

Table 1: Representation of actors in the various clusters of KEPLOTRADE

	Government Ministries	Parastatals	Private Sector	Research Institutions	CSOs
% of total actors surveyed represented in KEPLOTRADE	**30%**	**63%**	**38%**	**14%**	**40%**
Distribution of total in various clusters					
1. Agriculture Group	30%	28%	50%		43%
2. Services Group	30%	11%	10%		14%
3. Trade Related Issues (IPRs)		6%			
4. Development Dimensions Group	20%	22%	30%	100%	29%
5. Market Access Group	20%	28%	10%		14%
6. Fisheries Group					

Note: The grey areas signify non-representation in these clusters among the interviewed stakeholders.
Source: 2006 stakeholder survey results

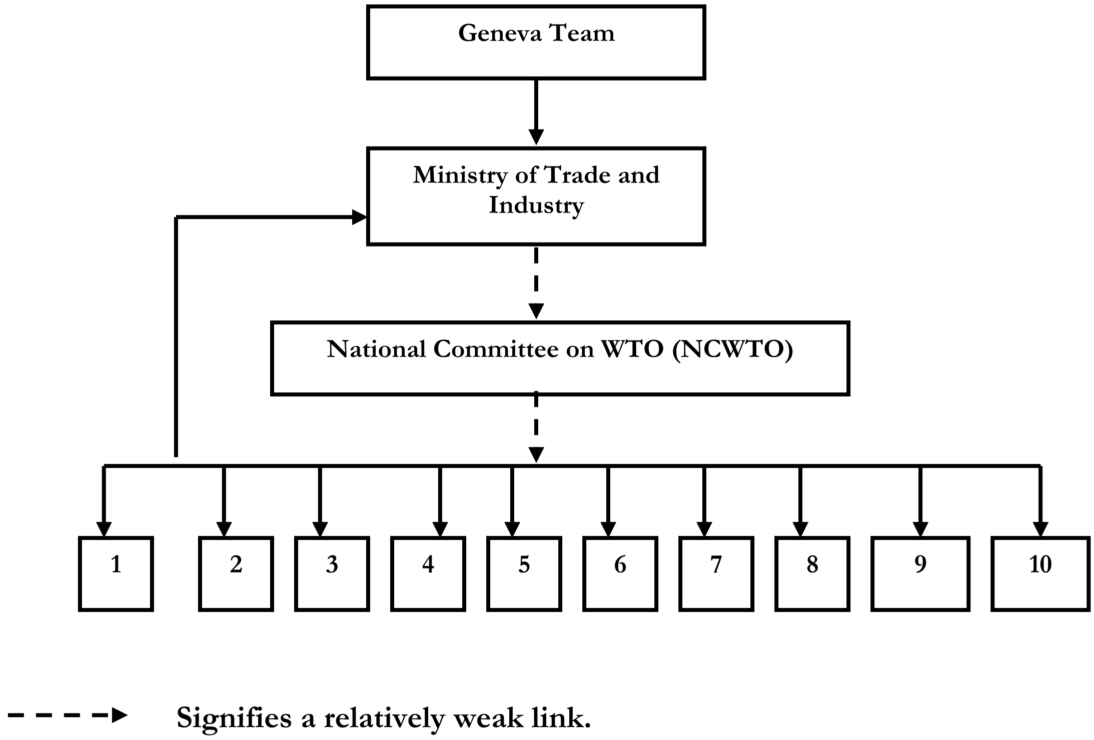
Hence, it is possible that the views of actors may not be effectively represented on issues related to fisheries, trade-related issues and services. From the survey results, it may be the case that resource constraints and capacity gaps may be the main limiting factors hindering effective participation of the actors in these clusters.

4.3 Institutional Arrangements for Multilateral Trade Negotiations

4.3.1 Organizational and Institutional Arrangements for WTO Issues

Kenya signed the Marakech Agreement on 15th April 1994 in Morocco and completed the notification process by December 31 1994, thus becoming a founder member of the WTO (Ddamilura, D. and Abdi, H., 2003). In order to effectively implement Kenya's obligations under the WTO, a National Committee on WTO issues, NCWTO, was formed in 1995. Figure 8 illustrates the structure of Kenya's participation in the WTO.

Figure 8: Structure of Kenya's participation in the WTO.



Note: The boxes numbered 1 to 10 represent the various sub-committees under the NCWTO. These are elaborated in the subsequent text.
Source: Adapted from Odhiambo, W. *et al* (2004).

4.3.2 Structure, Organization and Functions of the NCWTO

Within MoTI, the WTO Division in the Department of External Trade is responsible for coordinating action within government on all WTO matters. The WTO Division has a number of professional staff both within Kenya and at the Kenyan mission in Geneva. The Department of External Trade coordinates meetings and activities of the NCWTO, whose membership is drawn from government ministries, parastatals, universities and private sector organisations. The NCWTO currently has 45 members and is chaired by the Permanent Secretary in the Ministry of Trade and Industry (see Annex 3 for NCWTO membership). Currently, the NCWTO is an informal body which has no legal mandate. The purpose of the NCWTO is to:

- Develop modalities for the implementation of the WTO Agreements in order to maximize benefits to the country
- Provide the Government and the private sector with market information which will assist the identification of trading opportunities
- Assist the Government in identifying areas that require legislative or administrative changes for implementing the WTO Agreements

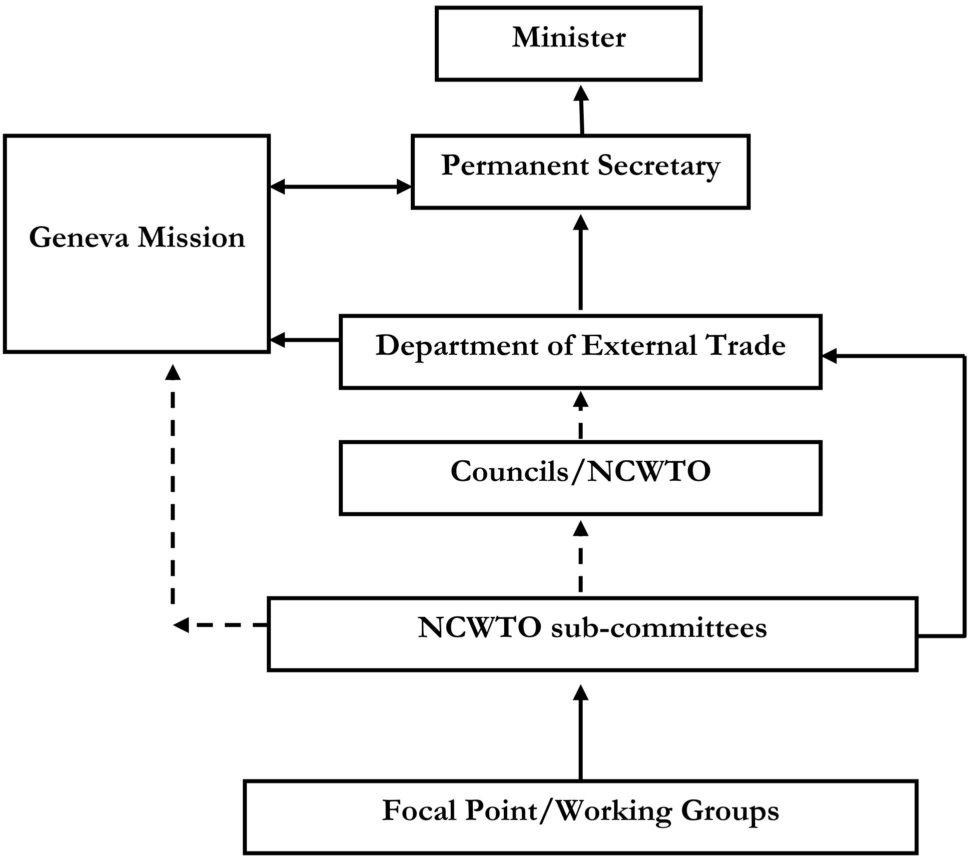
The NCWTO includes sub-committees with specific expertise to handle different issues including:

- Agriculture sub-committee (chaired by the Ministry of Agriculture)
- Services sub-committee (chaired by the Ministry of Transport and Communications)
- Market Access sub-committee (chaired by the Department of Industry)
- Trade and Environment sub-committee (chaired by the National Environmental Management Authority (NEMA))

- Trade Facilitation sub-committee (chaired by the Department of Internal Trade)
- Trade and Competition sub-committee (chaired by the Monopoly and Price Commission)
- Trade and Investment sub-committee (chaired jointly by the Investment Promotion Council (IPC) and the Ministry of Finance)
- Transparency and Government Procurement sub-committee (chaired by the Ministry of Finance)
- E-Commerce sub-committee (jointly chaired by the Ministry of Transport and Communication)
- Trade-related Intellectual Property Rights sub-committee (chaired jointly by KIPI and the MoTI)

Each sub-committee has a Focal Point. These are organizations with expertise and competence in particular WTO issues and can be technical institutions, ministries, etc. These Focal Points provide technical inputs on specific issues. Similarly, there are National Enquiry Points (NEPs) established to help disseminate crucial information related to trade issues (e.g. KEBS and KEPHIS – see section 3.2.3). There are also a number of Reference Points that store and disseminate WTO-related reference materials. They include the Department of External Trade within MoTI, which is the Reference Point for the public sector and the Centre for Business Information in Kenya (CIBK) within the Export Promotion Council for the business community.

Figure 9: Negotiating Structure for Kenya under the WTO



Source: Ministry of Trade and Industry,2003

4.3.3 Negotiation Structure and Frameworks for WTO Issues

Decision-making in the NCWTO is by consensus. However, when decisions cannot be reached by consensus, voting may be used. The membership of sub-committees is more open than with the NCWTO, as it depends on the subject being handled and the stakeholders' interests. The sub-committees meet more often than the NCWTO. At the sub-committee level, the decision-making process begins with the Focal Point which will make proposals on WTO issues coming from Geneva. However, before these proposals are presented to the sub-committee, either the Ministries or the organizations where the Focal Point is based must ratify them. When the sub-committee meeting is held, members consider the position taken by the Focal Point for further deliberations. The decision taken by the sub-committee is then forwarded to the MoTI or the Geneva Mission (and very rarely the NCWTO since it has not been an effective body), where all members deliberate on the position and adopt or amend it. At this level, decisions are made by consensus. This negotiation structure is illustrated in Figure 9.

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

4.3.4 Challenges facing the NCWTO

The NCWTO faces a number of challenges. The body has no legal mandate and this has led to two shortcomings. Firstly, treasury is not obliged to allocate it funds, and therefore it does not have its own budget from the government. Earlier sources of funds under the Joint Integrated Technical Assistance Program (JITAP) elapsed. Secondly, the government is not under any obligation to adopt its findings and recommendations, as such, its role is purely advisory and the Minister for Trade and Industry during any negotiations is not obliged to follow the position developed by the NCWTO (Ddalimura, D. and Abdi, H., 2003).

Discussion with Ministry officials and stakeholders involved in the NCWTO highlighted several problems: irregular meetings, poor information flow and poor coordination among members. Lack of human resources makes NCWTO rely on members of staff from MoTI who are also required to perform other ministerial duties. In practice, members often fail to attend meetings and therefore are not up-to-date, slowing down the entire process as clarifications are sought. It was observed that there is lack of consistency in individuals participating in the meetings, as 'new faces' keep turning up, reducing the productivity of the meetings.

Findings from the survey indicate that only 32 percent of the state actors and 40 percent of the private sector group surveyed mentioned that they are represented in the NCWTO. Although 55 percent of the CSOs are represented, they only featured in two clusters (i.e. agriculture and services). Out of the 6 major research institutions, only KIPPRA is occasionally invited to the NCWTO. Table 2 summarizes the representation of the various actors on the NCWTO and its various clusters.

Table 2: Representation of Actors in the NCWTO and Clusters (%)

	Government Ministries	Parastatals	Private Sector	Research Institutions	CSOs
% of total actors represented in NCWTO committee	**27%**	**55%**	**40%**	**16%**	**55%**
Distribution of total in the various clusters/sub-committees					
1. Agriculture	11%	37%	42%		43%
2. Services	44%	11%	42%		57%
3. Trade and Environment		21%			
4. TBT Agreement	11%	5%			
5. Development		5%			
6. Market Access		5%	8%		
7. TRIPS Agreement		10.5%			
8. NAMA	11%	5%	8%		
9. Competition Policy	11%				
10. E – Commerce	11%				

Note: The grey areas signify non-representation among the interviewed stakeholders.
Source: 2006 stakeholder survey results

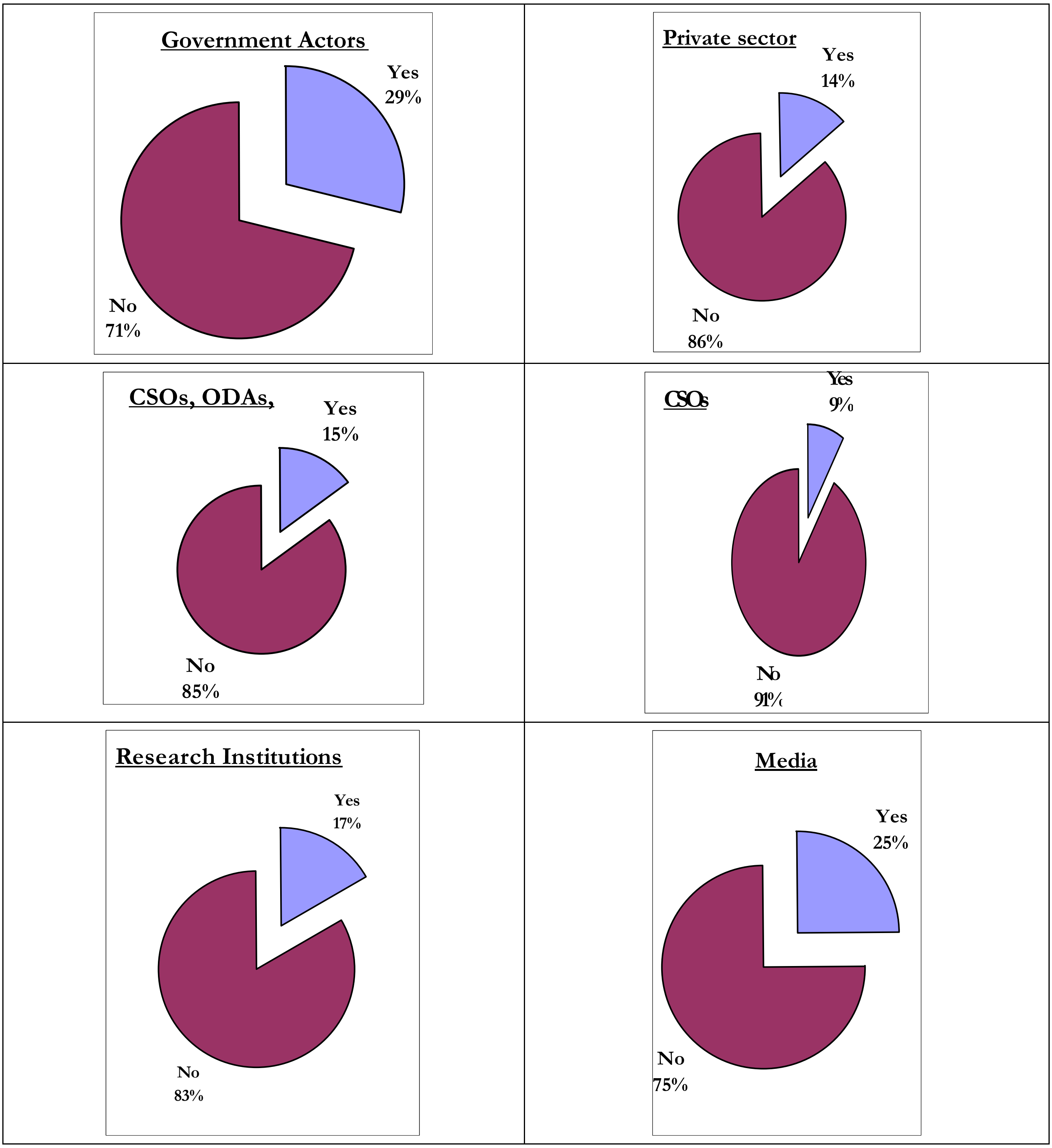
The table suggests that apart from the agriculture and services clusters, representation or participation of non-state actors in the other clusters/sub-committees is weak. This implies that there may be need to expand representation and participation in the WTO committees.

4.4 Participation and Role of State and Non-State Actors in Trade Policy-making Processes

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

This study examines to what extent the institutional arrangements promote participation of all stakeholders, making the process of formulating policy legitimate and transparent. Although MoTI is more active in involving stakeholders, the survey indicates that there is a feeling among all actors that they are not sufficiently represented in trade policy formulation and negotiations (see figure 10). This was true for 70 percent of the state actors and 80 percent of the non-state actors. Inadequate human and financial resources tallied high as the main constraints inhibiting effective and sufficient participation and hence representation of actors in the various committees.

Figure 10: Stakeholders Views on Representation in the Trade Policy-making Process



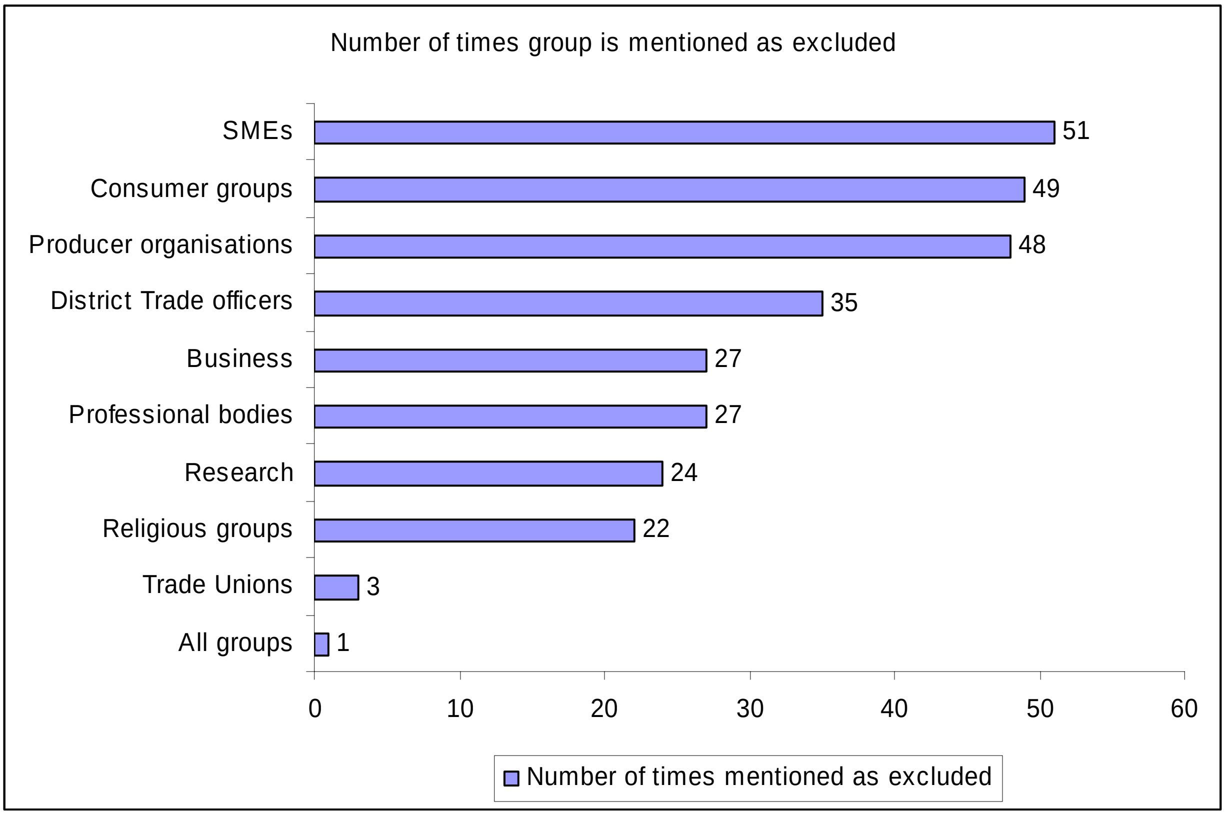
Note: Apart from the associations, the private sector includes manufacturers, exporters and importers. 'No' means that the actors do not feel sufficiently represented.
Source: 2006 stakeholder survey results.

It should also be noted that some of the trade policy negotiation processes discussed in the previous sections are largely – if not wholly – donor funded. Examples are the NCWTO and KEPLOTRADE processes funded by JITAP and the EU respectively. These arrangements raise issues about the sustainability of the local trade negotiation processes once funding is withdrawn. Stakeholders view such arrangements as inherently fragile or perhaps temporary. There is need for the state to urgently think about independent financing arrangements of the trade policymaking processes in Kenya. Independent financing, and one that involves local stakeholders, will bring the added benefits of (i) ownership, and (ii) prominence of local interests and agenda.

There are many other factors that can affect participation of stakeholders. For instance, stakeholders may shy away if their contributions in the proceedings are not utilized to shape policy or if they perceive that there is lack of transparency in the process. Survey results indicate that the non-state actors largely perceive their influence as weak. Although the state actors perceive their influence as moderate, only 50 percent stated that they determined the negotiating agenda. Also, 80 percent of the producers and 30 percent of state actors declared that the process is not transparent. Another factor that may affect participation is poor coordination. Some respondents pointed out that scheduled meetings of the various processes tended to occur simultaneously and hence deterred effective participation of actors.

The respondents (both state and non-state actors) consider that small and micro enterprises, consumer groups and producer organizations (including farmer associations) are largely excluded from the trade policy-making process. District Trade Officers, research institutions and professional bodies are also seen as largely excluded. Figure 11 illustrates the views of all the actors.

Figure 11: Groups Excluded from the Trade Policy-making Process



Source: 2006 stakeholder survey results

It is evident from these observations that there are bottlenecks that still thwart the expected participation of the stakeholders in the trade policy making process.

4.4.1 Participation and Role of Non-State Actors

4.4.1.1 Private Sector Organizations

The private sector actors usually interact in a formal manner with the government (and other actors) through private sector umbrella bodies like the Kenya National Chamber of Commerce and Industry (KNCCI) and the Kenya Private Sector Alliance (KEPSA). The effectiveness of the participation of the private sector is usually pegged on the strength of these umbrella bodies. Their role should be to represent the interest of their members especially when there are policy changes that affect them. Their effective participation in policy making is important to boost ownership and therefore the implementation of policies - which is still perceived to be poor.

In the survey, individual private sector companies mentioned that they do not feel sufficiently represented by the KNCCI. They attribute this weak representation to ineffectual management of the KNCCI. KEPSA is relatively new, however its participation in the various negotiation processes seems to be strong.

4.4.1.2 Civil Society Organizations

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

The relationship between the Government and CSOs has changed over the years. The relationship was originally one of mistrust and there was limited policy dialogue. However, over the last few years, relations have progressively improved and the government's appreciation of the civil society's contribution to development issues has broadened. The relationship reached an all-time high after the 2002 elections that ushered the NARC coalition (some of whose members had been working closely with CSOs) to power. Now, the critical issues are:

- Whether there are adequate institutional arrangements to facilitate the effective participation of CSOs in trade policy formulation and other related issues
- Whether the CSOs are clear on what issues clearly fall within their mandates/missions
- Whether the CSOs have the capacity (human, facilities and financial) to reasonably contribute to trade policy issues and, for the purpose of this study, pro-poor trade policy issues

The survey[22] results provide some useful insights on these issues. The findings indicate that the CSOs do not feel sufficiently represented in trade policy formulation and negotiations. Effective participation of CSOs is curtailed chiefly by human and financial resource constraints, but also by poor coordination between state and non-state actors and the poor organization of negotiations (e.g. late communication about meetings).

It appears that the CSOs are guided by clear mandates (all could provide a mission statement). Most of the CSOs interviewed had one to four individuals engaged in trade-related work. A key observation is that their apex staff exhibited relatively good knowledge of the trade policy issues within their respective mandates and those that are affecting the country. Nearly all indicated that they had workforce shortages largely due to insufficient financial resources rather than unavailability of qualified personnel. Under these and other circumstances, CSOs sometimes miss multiple scheduled meetings for trade policy-making. The downside of this is that it may appear like the CSOs have less interest in the issues concerning their

[22] The survey captured eighteen CSOs of which six were research institutions.

mandate. A vicious cycle may be conceived if the government actors go ahead to discontinue invitations based on past attendance records.

Most of these CSOs perform general or analytical research on trade policy issues and boast of high capability to evaluate impacts of trade policy in terms of potential winners and losers, monitor these impacts and to lobby. Although most of these CSOs are involved in various trade capacity-building programs, mostly as trainers (78 percent), all but one admit that they have insufficient finances and lack relevant software programs for analysis.

4.4.1.3 Research Institutions

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

International organizations (e.g. donors, research institutions and NGOs) have a long tradition of engaging the services of the local research institutions on key trade policy works. These relationships are important but do raise a question on who shapes the direction of research. A casual observation indicates that most of the ongoing trade related projects are funded by foreign interests (annex 4). This may unintentionally promote interests that are not home grown or may compromise the relevance of these studies. Some arrangements however do promote home grown ideas. For instance, the AERC[23] funds collaborative research projects. These research teams are usually encouraged to include the local policy makers.

The survey revealed strengths and weaknesses of the research institutions. Their strengths are that they have (according to their self assessments) generally high capabilities to evaluate trade policies in terms of impacts. They can also effectively lobby and monitor trade policies. They have adequate internet connections and most believe they have sufficient software programs for analytical work. Their key weakness, according to the research institutions, was a lack of finances which may undermine their operations and role in trade policy-making in Kenya.

4.4.2 Perceived Influence of State and Non-State Actors

Having looked at the roles of the various actors, it is important to look at the influence the various actors perceive others and themselves as having in the trade policy-making process. Figures 12 and 13 illustrate these perceptions. The non-state actors were quite diverse and their self-assessed levels of influence were roughly spread evenly from strong, moderate, and weak to very weak. The state and non-state actors were unanimous that multilateral organizations, government actors and overseas development agencies exert the strongest influences on trade policymaking process. About 70 percent of the government actors rated the influence of these groups as either strong or very strong.

About 90 percent of the non-state actors classified the government's influence as either strong or very strong and about 60 percent thought the influence of multilateral organizations and overseas development agencies was strong or very strong. Non-state actors considered the influence of civil society, farmer associations and the media on the trade policy-making process as largely weak or only moderate. This is consistent with the earlier results about the exclusion of these groups from the trade policy making process.

[23] Strictly speaking AERC is not a research institution. It is a public not for profit organization.

Figure 12: Level of Influence of Players (Rated by Government Actors)

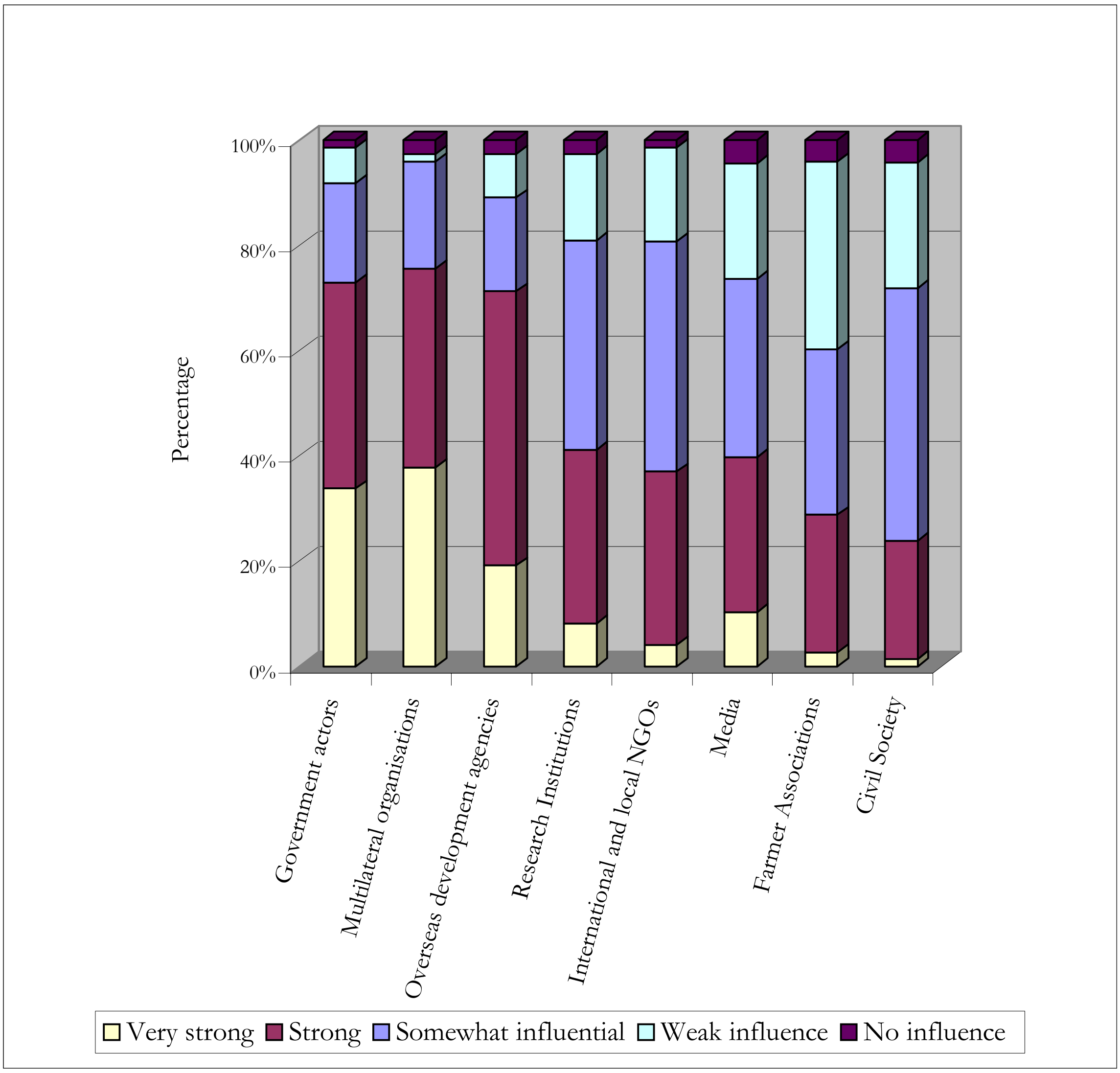


Figure 13: Level of Influence of Players (Rated by Non-state Actors)

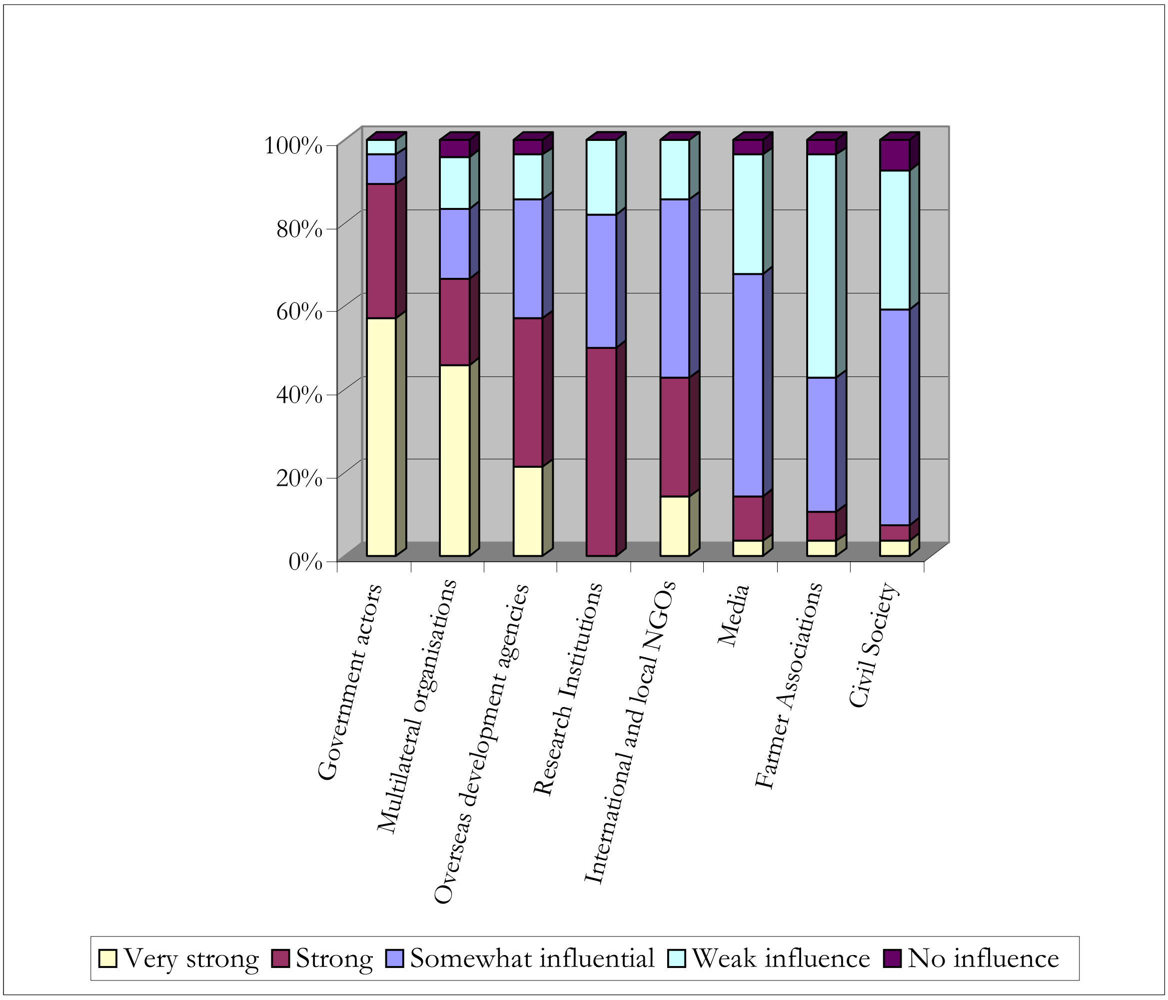
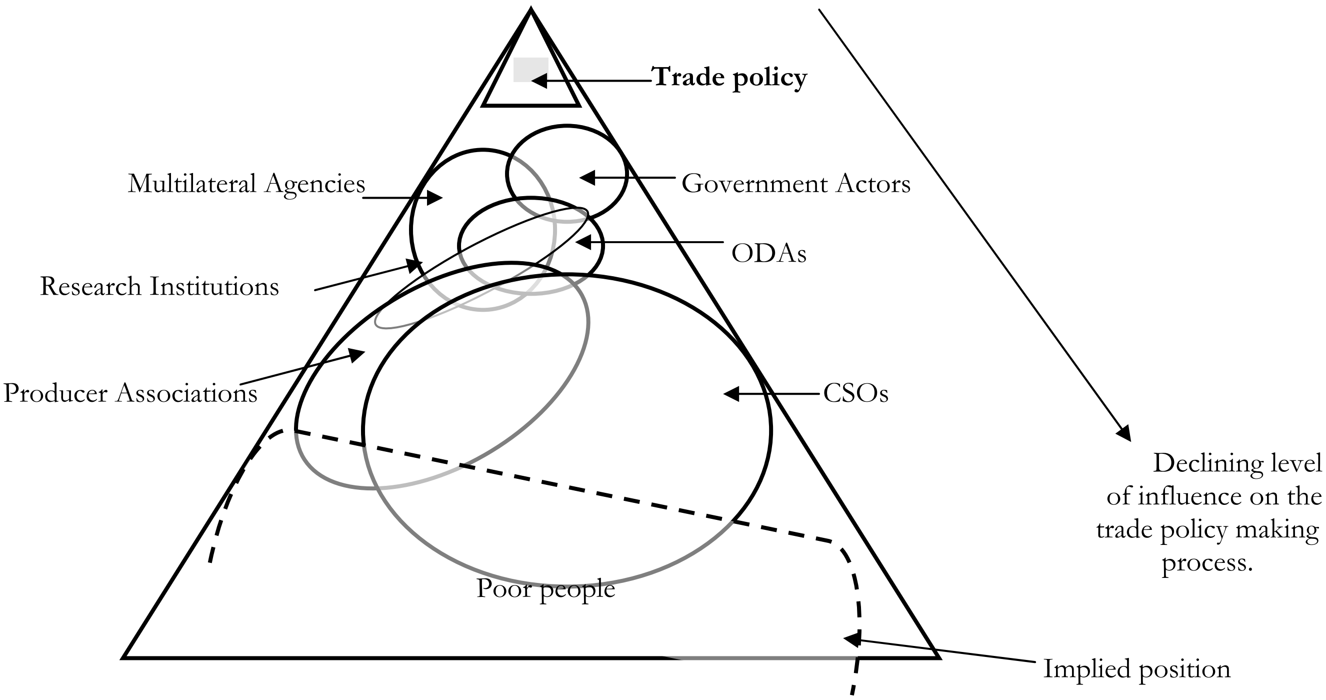


Figure 14 attempts to illustrate the perceptions of non-state actors regarding the influencers of the trade policymaking process in Kenya. The perception that producer associations and CSOs have little influence implies that the poor have little say, since these organisations typically represent the interests of the poor.

The stakeholders consider that the trade policy agenda is not necessarily conceived by government but largely influenced by the multilateral organizations. The perception of state actors is largely similar to the one illustrated in figure 14 except that the multilateral organizations are seen to be the most influential group.

Figure 14: Influence of Actors in the Trade Policy Making Process as Perceived by Non-state Actors



Notes:

- ODA – Overseas Development Agencies
- CSOs – Civil Society Organizations (including Research Institutions)
- Producer associations include the private sector umbrella bodies, and farmer's associations.

4.5 Monitoring and Evaluation of Trade Policy Implementation

Monitoring and evaluation (M&E) is a process that determines the relevance, effectiveness, efficiency and impact of strategies vis-a-vis the initial objectives. It is usually done to assess the degree of performance with respect to established yardsticks. Although one of the key features of an M&E framework is that it is decision-oriented and hence should be formulated consultatively, the survey results indicate that nearly half of the government actors are not aware if there is any M&E framework for trade policy. Table 3 summarizes key attributes of a good M&E framework vis-à-vis the identified weaknesses in Kenya.

Table 3: Weaknesses in M&E for Trade Policy in Kenya

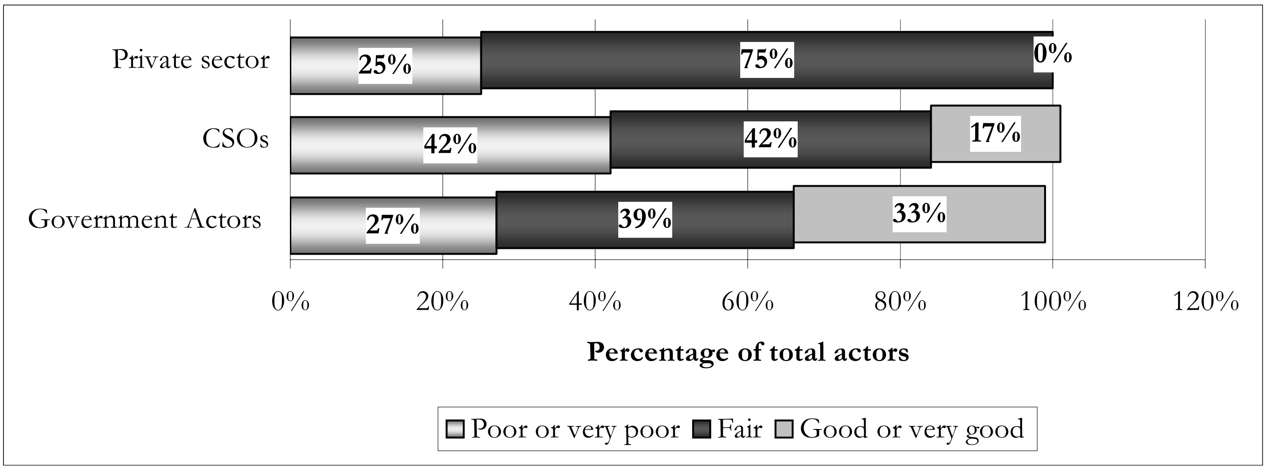
	Key attributes of a good M&E process or framework	Identified weaknesses of current M&E framework (from survey results)
1	It is decision-oriented hence should be formulated consultatively.	Nearly half of the government actors do not know of the existence of an M&E framework for trade policy in Kenya.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

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

4.6 Coordination of Trade Policy-making Process

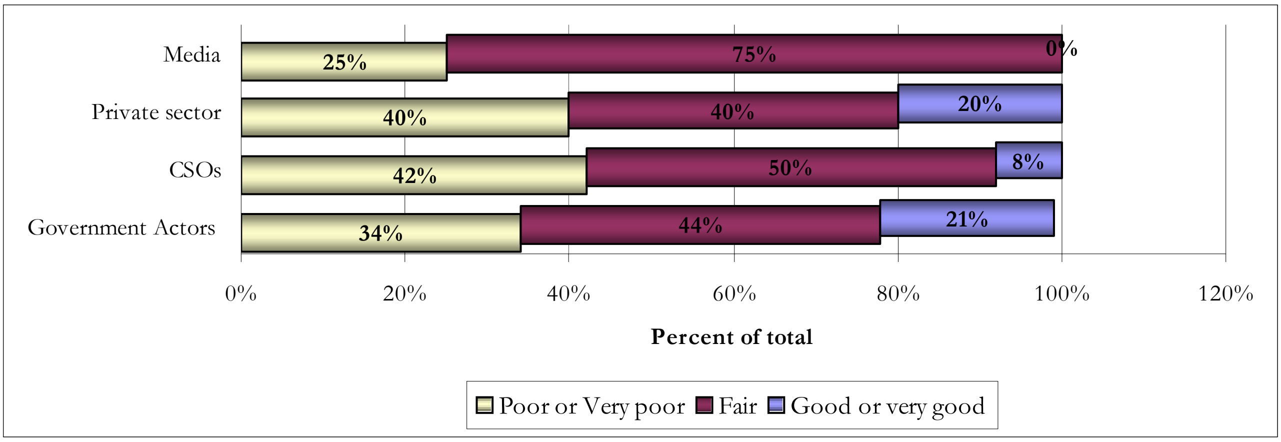
Many contributors to the trade policy-making process in Kenya suggest that the inter-ministerial coordination of trade policy making is poor (Odhiambo, W. et al, 2004). This is supported by the survey results which indicate that 66 percent of government actors view the inter-ministerial coordination as poor and that inclusion and consultation of the relevant ministries is moderate or weak (see figure 15). 75 percent of actors from the private sector consider that inter-ministerial coordination is fair whereas 59 percent of CSO actors surveyed consider inter-ministerial coordination to be fair or good/very good.

Figure 15: Perception of Inter-ministerial Coordination of Trade Policy-making



The surveyed institutions and organizations also described the trade policy formulation process in Kenya with respect to coordination between state and non-state actors (figure 16). Only 21 percent of government actors thought coordination between the state and non-state actors was good, while 44 percent thought it fair and 34 percent thought it poor. Although the private sector group largely described intra-governmental coordination as fair, they were more skeptical about the co-ordination between state and non-state actors with 40 percent describing it as poor. 42 percent of the CSOs described coordination between state and non-state actors as poor.

Figure 16: Description/perception of the coordination between state and non-state actors in formulating trade policy.



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

The main reasons for the poor coordination are:

i. Lack of a central coordinating body. At the moment, the Ministry of Trade and Industry lacks sufficient mandate to coordinate other Ministries and government departments/agencies on trade policy issues and negotiations. At the cabinet level, there lacks a specific committee dealing with matters related with trade. Currently, trade matters are handled within the cabinet committee on Finance, Planning and Trade. Within this arrangement and given the dominant role that finance and planning play in the Kenyan economy, there is every likelihood that trade issues would be subjugated to the periphery hence resultant coordination problems;

ii. Lack of harmonized approach to trade policy making and negotiations. As discussed elsewhere, Kenya currently lacks a harmonized approach to trade policy making. Although most trade negotiations and issues are handled under the Ministry of Trade and Industry, there are some issues which are handled by different Ministries. A case in point are negotiations for East African Community which are currently dealt with under the Ministry of East African Community while the Ministry of Planning and National Development is responsible for ACP/EU Cotonou negotiations;

iii. Informal negotiation frameworks. Most of the institutions currently established for supporting government in trade negotiations are informal e.g NCWTO and the clusters established for the purpose of negotiating EPAs. It is difficult to have effective coordination within such informal arrangements

iv. Inadequate funding. As stated in section 2.2.2, money is one of the most important assets for shaping trade policy (the other one being analytical knowledge). However, the current level of funding to the MOTI is not sufficient to enable it carry out its functions and coordinate effectively.

5.0 Institutional Capacity Assessment

5.1 Institutional Capacity Assessment of Actors

Capacity refers to the abilities, skills, understandings, attitudes, values, relationships, behaviors, motivations, resources and conditions that enable individuals, organizations, networks/sectors and broader social systems to carry out functions and achieve their development objective over time.

5.1.1 Government Institutions and Private Sector

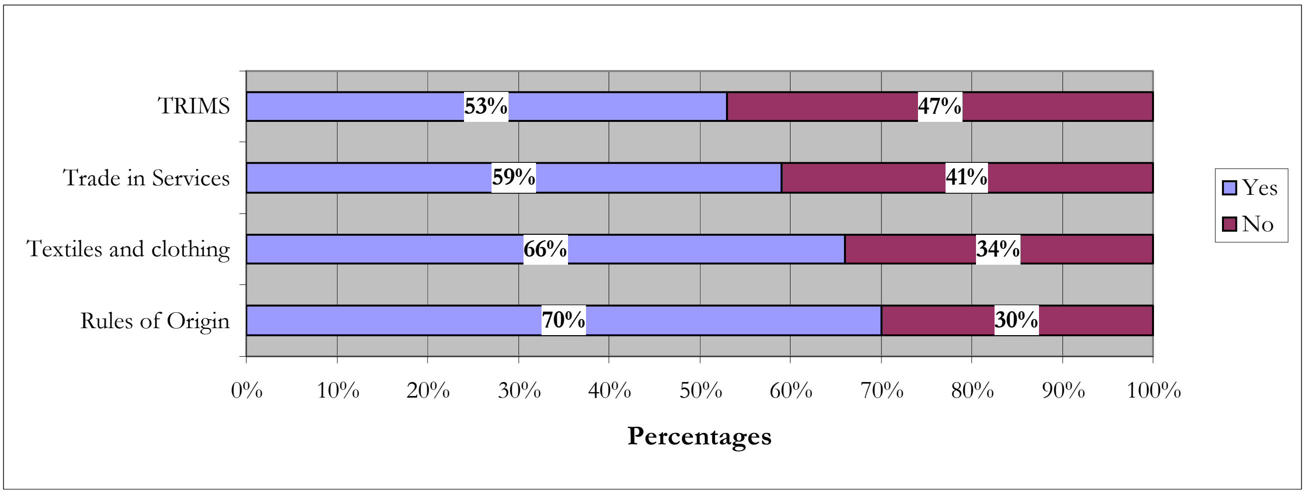
The respondents were tested on their levels of awareness of trade policy instruments. Seventeen instruments were listed. For the private sector actors, only 20 percent declared they were aware of all the seventeen instruments. Of the seventeen instruments listed, only 7 instruments had an awareness rating of 50 percent or more among the private sector actors. 8 percent of the state actors were aware of all the instruments and about 12 instruments had awareness ratings of about 50 percent or more among these state actors.

At least 70 percent of state actors were aware of recent trade policy changes that have affected Kenya. The level of awareness of the private sector actors was 80 percent. About half of the state and private sector groups could give at least one example of policies that were introduced by government to enable Kenyan farmers, industrialists and entrepreneurs to take advantage of trade policy changes. However, only a quarter of state actors and a third of private sector actors could identify similar policies for consumers. Sixty percent of state actors stated that they did not know of such consumer related policies.

These levels of awareness may not tell us much unless we look at what the actors are aware of. The majority of actors are aware of highly publicized policy changes (e.g. AGOA, EAC and COMESA). These accounted for over 50% of the responses on recent trade policy changes affecting Kenya. For those who mentioned that they are aware of policy changes, there was a tendency to give, not specific, but rather general policy changes e.g. 'AGOA' and 'price regulations.' It should be noted that besides the government ministries and departments, actors pointed out that the research institutions and the media were important sources of information on trade policy changes.

The state actors were assessed on the level of awareness on four trade agreements. About 70 percent were aware of the agreement on rules of origin and the agreement on textiles and clothing. 40 percent of the respondents were not aware of the agreement on trade in services and nearly 50 percent were unaware of the agreement on Trade Related Investment Measures (TRIMS). Figure 17 illustrates these observations.

Figure 17: Awareness Levels of Government Actors on Trade Agreements



The above observations on awareness perhaps suggest that:

- There is still much room for improvement in the levels of awareness of trade policy instruments, trade policy changes and trade agreements.
- The level of awareness on consumer issues e.g. trade policies that relate to consumer welfare is relatively low.
- Despite the growing importance of trade in services, the relative levels of awareness by state actors on issues to do with services and investments may be lower in relation to the other issues.

The respondents did a self-assessment of their research and analytical capabilities with respect to various criteria. These criteria included the ability to: (i) evaluate impacts of alternative trade policies; (ii) analyze the effects of bilateral regional and multilateral trade; (iii) lobbying; and, (iv) mainstreaming trade policies into national development strategies. For each of these criteria, 40 percent of the state actors thought they had moderate capacity. About 20 percent thought they had high capability or low capability respectively. Most of the private sector actors (90 percent) do not perform general or analytical research on trade policy issues. Their overarching opinion is that they have low or no analytical capabilities in respect of the above criteria.

About 50 percent of the state actors are involved in trade-related capacity building programs. Only 30 percent said they were involved as trainees with the rest involved as trainers. Forty percent of the state actors opine that existing capacity building programs meet their needs. One of their key observations is that the frequency of training should be increased. The state actors identified negotiation skills as an important area for further capacity building.

In terms of physical and other infrastructure, the following comments can be made:

- Financial capacity was largely thought to be insufficient by the actors. This was mentioned by over 60 percent of the state actors and over 70 percent of the non-state actors.
- Information availability seems to be a problem for about 60 percent of the non-state actors. For the state actors only 40 percent mentioned that it was a problem.
- About 70 percent of both groups indicated that they had insufficient software programs used to perform analysis. However, the actors largely viewed internet connection to be sufficient. For the state actors, about 60 percent said internet connections were sufficient. The corresponding figure for non-state actors was 70 percent.

5.1.2 Civil Society and Research Institutions

The respondents conducted the same self-assessment of their research and analytical capabilities as the government and private sector actors. Apart from mainstreaming trade policy into national development strategies, civil society stated that they had generally high capability on all criteria. The research institutions also rated their capabilities highly.

Most of the CSOs and research institutions are involved in trade capacity building programs. Research institutions are mostly involved as trainers and in offering internship program to government and other institutions.

The CSOs and research institutions rated other groups in terms of being able to engage in trade policy formulation and negotiation. Government is rated as largely strong while the Parliament was thought to be weak or very weak by at least 50 percent of the respondents.

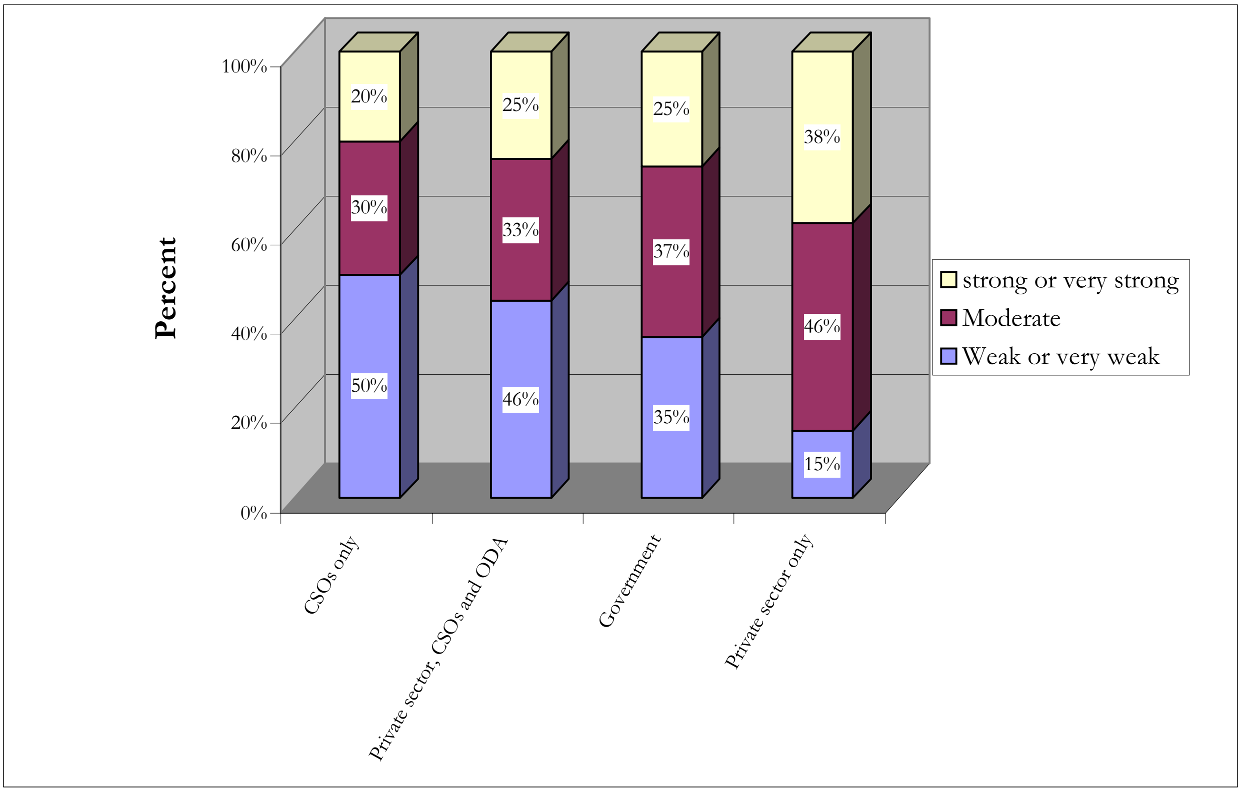
Some of the key capacity constraints include:

- Lack of finance
- Workforce shortages
- Insufficient software programs to perform analysis
- Weak analytical capacity and poor understanding of trade issues
- Weak negotiation skills
- Poor understanding of trade issues

5.1.3 Parliament

Despite capacity building programs for members of parliament, other actors rate the capacity of parliament members to engage in trade policy formulation and negotiations as weak. These views are summarized in figure 18.

Figure 18: Capacity Assessment of Parliament Members by Various Actors to Engage in Trade Policy-making



Source: 2006 stakeholder survey results

5.2 Trade-related Capacity Building and Support Programs

Capacity building or capacity development is used here to refer to the approaches, strategies and methodologies used to improve performance. Capacity development is fundamentally about transformation and is therefore most likely oriented towards a goal. This implies that it goes beyond the conventional perception of training.

There are numerous ongoing trade and investment related capacity building and support programs in Kenya mainly funded by overseas development agencies. Annex 4 attempts to list all of the programs. There are many initiatives to improve market access for small-scale producers and empower disadvantaged groups (i.e. women and youth) with respect to their engagement in trade. There are only three programs (Support to KEPSA, KEPLOTRADE and e-government – see Annex 4) that support initiatives to improve the trade policy-making process in Kenya. The EU-funded KEPLOTRADE program covers only a small subset of the issues that concern trade policy-making in Kenya since it only focuses on the issues between Kenya, ESA and the EU countries. Support given to KEPSA would perhaps boost the voice of the private sector and enhance their participation in the trade policy-making process. However, KEPSA does not necessarily include the voices of the most disadvantaged groups in the trade policy-making process (i.e. the small and micro-enterprises, consumer groups, producer associations and the District Trade Officers). The e-government program has the potential to improve information flows and hence inter-ministerial coordination.

It is customary and a widely accepted benchmark to measure effectiveness of a program based on its developmental impact(s). However, especially for new programs, it may not be possible to observe these impacts. To assess the effectiveness of these programs, both recipients and donors were asked to rate the observed level of effectiveness. Their views were quite divergent as Table 4 indicates.

Table 4: Effectiveness of Trade- and Investment- related Capacity Building Programs

	Very effective	Effective	Moderate	Not effective
Private sector*	0%	10%	20%	70%
CSOs and ODAs	75%	25%	0%	0%
Government and parastatals	14%	59%	23%	5%

Source: 2006 stakeholder survey results
*Includes producers, exporters and importers.

The ODAs and CSOs who offer capacity building programs rated these as being either effective or very effective. A large majority of the state actors (over 70%) also thought that the programs are effective or very effective. 70 percent of the private sector – a major recipient of the programs - thought that the programs were not effective hence revealing a dichotomy between the recipients and the donors. Those who thought the programs to be ineffective lamented, among other things, about their sporadic nature.

The capacity building efforts are commendable. However there seems to be inadequate efforts to improve analytical and negotiation skills, and monitoring and evaluation skills. Evidently, there is great potential for indigenous capacity building initiatives – as opposed to donor supported initiatives – which are yet to be exploited.

6.0 Options for Re-organizing Trade Policy Institutional Frameworks

Although significant progress has been made towards the introduction of formal frameworks for trade policy negotiations and processes, findings from this study suggest that there are still some critical shortcomings, particularly regarding institutional frameworks for trade policy formulation and implementation that need to be addressed. The preceding sections have highlighted some of the major shortcomings, which include:

1. **Poor intra-government coordination BETWEEN the lead Ministry (MoTI) and other Ministries and parastatals**. At the moment, there is little evidence of attempts to mainstream trade policy into national development objectives. Each Ministry largely operates independently and there is very limited consultation and prioritization of activities. For example, this is more conspicuous in the case of EAC negotiations, which are carried out within the Ministry of East African Community, and with minimal consultations with MoTI and other relevant bodies.

2. **Lack of coordination and harmony WITHIN the Ministry of Trade and Industry.** While there are various departments (and in some cases different ministries) dealing with bilateral, regional or multilateral trade arrangements, there currently lacks a formal framework for harmonizing positions taken in these different trade arrangements. There are also poor linkages between the Department of External Trade and the Department of Internal Trade. This is specifically conspicuous with the lack of linkages and information flow from the District Trade Officers to the Department of External Trade.

3. **Coordination between state and non-state actors in the trade policy process is weak.** There are no legal or formal frameworks for participation of research institutions, civil society, parliament, private sector and producer groups in the trade policy process. There is no clear mechanism for involving non-state actors in trade policy process.

4. **Information asymmetry between those involved in negotiations and other stakeholders.** Often, trade-related policy decisions are made at a higher level without ensuring that information reaches the concerned and affected groups such as producers and the private sector.

5. **Non-involvement of some stakeholders in trade policy processes.** Even though there has been an improvement in the involvement of a wide variety of stakeholders in the trade policy formulation and negotiation processes, some groups such as micro-and small enterprises and most of the producer groups have no representation in the process. There are no frameworks provided for their participation and most of these groups still exert very weak influence in the process. This is also partly caused by their weak capacity in terms of human and financial resources.

6. **Capacity gaps**. This has been cited as a major impediment to the trade policy formulation and negotiation processes in Kenya. There is a general lack of analytical capacity within MoTI and poor linkages with research institutions to inform trade negotiations. Capacity gaps have also been identified within civil society and private sector in terms of staff numbers, knowledge on trade issues and analytical skills. More serious is the capacity weakness of members of parliament on trade issues, which needs to be urgently addressed.

7. **Insufficient capacity building programs.** Trade related and capacity building support programs offered by various overseas development agencies are not sufficient to address the existing institutional and knowledge capacity gaps within the various groups and hence there is a need to design a comprehensive trade-related capacity building program which is institutionalized and fully sustainability to ensure continuity of such programs.

8. **Inadequate Monitoring and Evaluation framework**. It has been observed that the existing M&E framework of trade policy is quite weak and not well coordinated. This is in part due to the lack of clear guidelines for M&E as well as no existing logical framework to monitor indicators. There is no specific body responsible for overseeing the M&E process and ensuring accountability.

Due to these shortcomings, a large majority of stakeholders do not play an effective role in the trade policy processes. Although stakeholders were not explicitly asked about the effectiveness of actual trade policy formulation and implementation, the majority were of the opinion that their views were not represented in the trade policy making processes and that they exerted very little influence over the process (see section 4.4). Most stakeholders are not aware of any trade policy formulations going on. Research institutions and civil societies are also not effectively utilized in evaluating gains and losses of any potential trade arrangements the country may opt for.

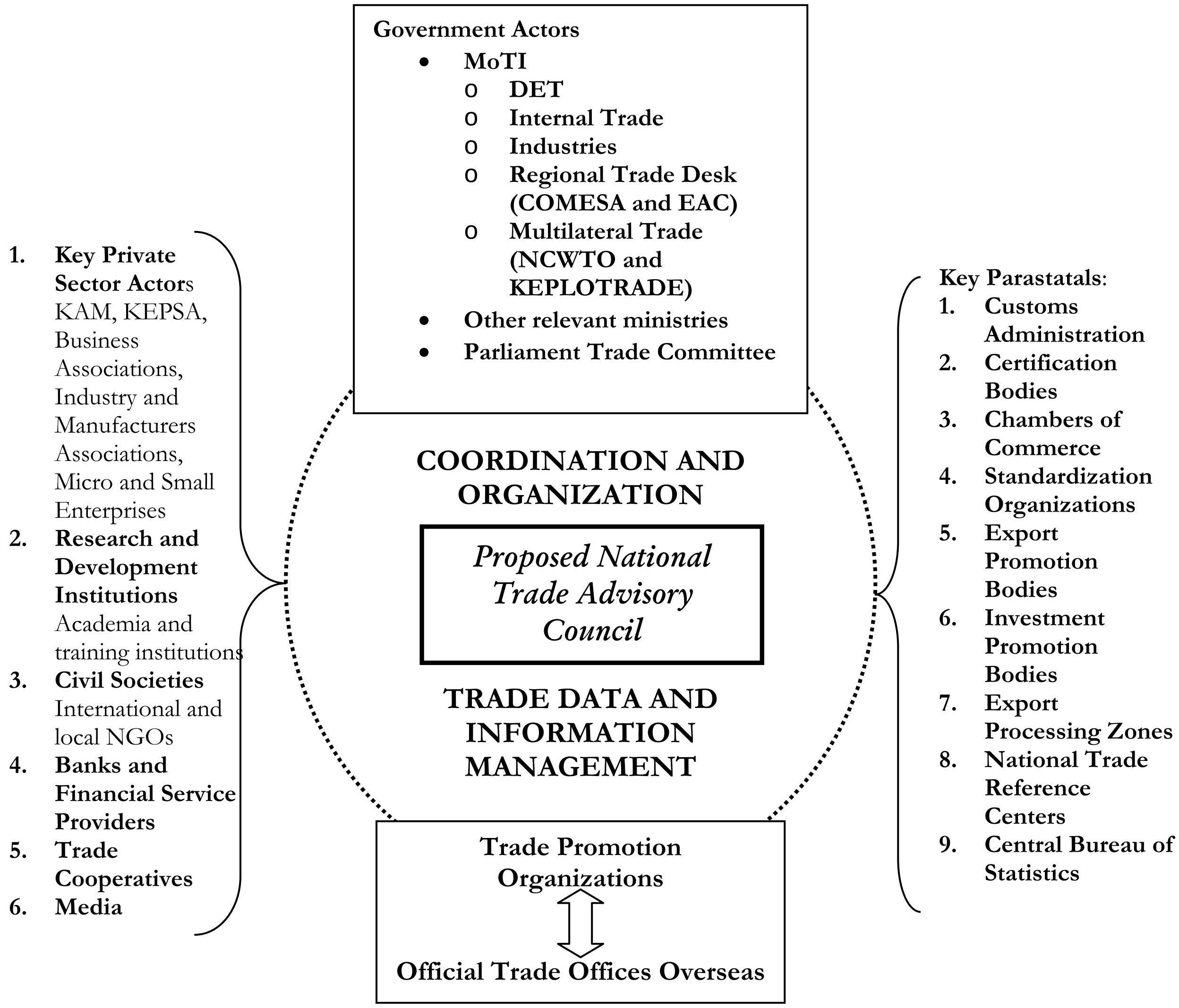
6.1 Establishment of a Trade Support Network and other Important Institutions

One way of improving the effectiveness of trade policy formulation and implementation is by establishing a Trade Support Network (TSN) in which relevant institutions and bodies come together through formally constituted guidelines and with legal mandate for their participation. Such a network should include all relevant government actors, a parliamentary trade committee, key private sector actors, research and development institutions, civil societies, small producer groups, consumer groups and other relevant groups as illustrated in figure 19. The TSN should be all-inclusive and should be coordinated by a central body based at MoTI. It is proposed that a **National Trade Advisory Council (NTAC)** be established at the Ministry with the sole purpose of coordinating and overseeing the formulation of strategic trade initiatives and in the formulation of pro-poor trade strategies. The Council should aid the Ministry in ensuring policy coherence in the various trade arrangements, both at multilateral and regional levels as well as domestic trade issues. It should help in mainstreaming trade into national development goals and ensuring proper implementation of trade policy objectives within the relevant ministries and bodies. The Council should also have the responsibility of maintaining trade databases for use by all relevant stakeholders. In order to be effective in carrying out these roles, the Council may have to draw on very senior qualified officers seconded from key Ministries (e.g Ministries of Trade and Industry, East African Community, Agriculture, Livestock and Fisheries Development, Foreign Affairs, Finance, Planning and National development etc) and experts in international trade and negotiations. Given the dominant role played by the agricultural sector in trade policy and negotiations, it is important that the Ministry of Agriculture supports establishment of an Agricultural Trade Forum (more or less similar to the South African one discussed in section 2.4.4).

For the NTAC to be effective, it is important that they are provided with technical and analytical support. Internationally, it is recognized that important inputs into trade policy formulation can come from think tanks and research institutes (Sally, R., 2005) and from CSOs/specialized NGOs as well as trade unions. At the moment, trade analytical research is disorganized and mainly funded by foreign agencies. To streamline the current set-up and make it more effective, the government should establish a **Trade Policy Center (TPC)** to provide technical and analytical support for improved trade policy formulation and implementation. Such a center could be based in an existing research institution.

Formulation and implementation of trade policy can also be improved through other policy areas especially **foreign policy**. Ministers of Foreign Affairs and Ambassadors usually play critical roles, which influence trade policy. Ideally, foreign policy and trade policy should go hand in hand but much depends on the involvement of the Ministry of Foreign Affairs in trade policy processes and the caliber of those appointed as foreign ambassadors. For Kenya to achieve its trade objectives, it is important that foreign ambassadors in countries where Kenya has substantial trade interests are well qualified and experienced in international trade and negotiations.

Figure 19: Proposed Trade Support Network



Source: Authors' Construction

6.2 Re-organization of the Ministry of Trade and Industry

In order to improve coordination and harmony in formulation of Kenya trade policy and pursuance of trade negotiations under bilateral, regional and or multilateral trade negotiations, there is clearly a need for re-organization of MOTI. While this is certainly an issue that requires a deeper analysis and discussion, hence probably requiring a study on its own, it is important that any re-organization of the Ministry takes note of the following:

i. The need to consolidate all trade negotiations (whether bilateral, regional or multilateral) under one department;
ii. Importance of organizing directorates along WTO issues and international trade negotiations;
iii. The need to establish a research department which can be liaising with other research institutions as analytical knowledge is key to successful trade negotiations and policy formulation.
iv. Experiences from other parts of the world.

In section 2.4, best practices from other countries were presented. Annex 5 and 6 provides a more detailed description of the organization structures of the South African Department of Trade and Industry (DTI) and Singapore's Ministry of Trade and Industry (MTI). The institutional arrangements in these two countries provide good examples of how to:

i. Consolidate all trade negotiations under one Department probably headed by a Director General who should also be the Chief Negotiator for the country;
ii. Organization of directorates in line with WTO issues and trade negotiations; and
iii. The important role played by the research departments.

In view of the above, it is proposed that the MOTI considers adopting the institutional structure proposed under Annex 7. The Ministry should also consider establishing an International Trade Administration Commission in line with the one established in South Africa (see Annex 5).

7.0 Conclusions and Recommendations

7.1 Conclusions

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

Despite this progress however, this study brings out various critical shortcomings in the Kenyan trade policy process which include: (i) poor intra-government coordination between the lead Ministry and other Ministries and parastatals; (ii) lack of coordination and harmony within MoTI; (iii) poor coordination between state and non-state actors; (iv) information asymmetry between those involved in trade negotiations and other stakeholders; (v) non-involvement of some stakeholders in trade policy processes; (vi) insufficient capacity building programs; and (vii) inadequate M&E Framework.

Owing to these shortcomings, the majority of the stakeholders were of the opinion that their views were not represented in the trade policy-making processes and that they exert very little influence over the process. They are hardly aware of any trade policy formulations going on. It also emerged that research institutions and civil societies are not being effectively utilized in providing technical and analytical support to trade policy negotiators and implementers.

7.2 Recommendations

With the above-identified shortfalls in the trade policy formulation and negotiation process, there are certain key changes that need to take place if the country is to benefit from trade:

1. There is an urgent need to **improve coordination between the MoTI, other ministries and relevant stakeholders**. Stakeholder participation should be enhanced and all relevant groups included in the whole process. Further, linkages with the District Trade Officers and other District based officers should be enhanced to ensure that the poor benefit from trade policies. A formal framework for participation of all relevant stakeholders with clear guidelines as to what their mandate is and what is expected of them should be developed. This therefore calls for re-organization of the institutional framework of trade policy formulation and negotiations and the establishment of a Trade Support Network (see section 6.1).

2. **Improve policy coherence** by improving coordination and harmonizing negotiation positions pursued under bilateral, regional and multilateral agreements. It is important that the various desks handling these issues be placed under one ministry and department. This calls for review of the organization structure of the Ministry of Trade and Industry (see Annex 7 for proposed structure). In addition, a National Trade Advisory Council should be established under the Ministry of Trade and Industry (see section 6.1) with the responsibility of coordinating and overseeing the formulation of strategic trade initiatives and ensuring policy coherence in the various trade arrangements that Kenya pursues. The Council should maintain trade databases for use by all relevant stakeholders and help in mainstreaming trade into national development goals and ensuring proper implementation of trade policy objectives within the relevant ministries and bodies.
3. Re-organize and formalize the trade policy/negotiation consultation processes. In particular, the **NCWTO** should be strengthened and given legal mandate. It is also recommended that Trade Forums be established both at the sectoral level and national level. This is very important particularly for sectors such as agriculture which have previously been adversely affected by trade liberalization. The MOTI and Ministry of Agriculture should seek to build strong consultative frameworks in the agricultural sector by supporting establishment of an **Agricultural Trade Forum**. A **Permanent Trade Forum** should be established at the level of Permanent Secretaries and relevant Ministers to improve coordination and consultations between various Ministries and relevant agencies.
4. Establish an **International Trade Administration Commission** for the purpose of administering and encouraging fair trade through Customs tariff investigations, trade remedies and import and export control. The Commission should be given mandate, through an Act of Parliament, for administering all international trade agreements that Kenya is party to.

5. There is a need to **establish a Trade Policy Center for providing the government, trade negotiators and other stakeholders with technical and analytical support on trade matters** (see section 6.1).

6. **Integrate foreign policy with trade policy**. In those countries where the country has substantial trade interests, the government should appoint foreign ambassadors who are well-qualified and experienced in international trade and negotiations. This would enable the country to achieve both its political and trade goals.

7. **Trade-related capacity issues should be addressed as a matter of urgency**. With the end of JITAP, there is no institutionalized trade-related capacity building program and, as is evident from this study, the existing frameworks for capacity building do not effectively address capacity needs and gaps for various institutions (government, private sector and civil society). There is a need to design a proper capacity building framework to take care of both institutional capacity needs as well as individual capacity needs in terms of training.

8. The government should **increase the funding allocated to the Ministry of Trade and Industry**. This should help in reducing the current high dependency on donor funds for capacity building programmes in trade negotiations.

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ANNEXES

Annex 1: Institutions - Mandate and Functions

Table A1.1: Institutions Mandate and Functions Matrix

No.	Institution	Year of Establishment	Mandate and Function
1.	Ministry of Trade and Industry (MoTI)		To create an enabling environment for the business community to carry out trade activities both internally and externally for economic growth of the country.
2.	MoTI- EAC desk		To provide an enabling environment for rapid and sustainable development of trade & industry.
3.	MoTI- STO-WTO desk		Facilitate, develop and promote trade & industry for economic growth & poverty eradication.
4.	MoTI-External trade		To create and facilitate an enabling environment for sustainable development of trade and Industry.
5.	MoTI-KTPP		Pro-poor policy development and mainstreaming the poor into trade policy making processes.
6.	MoTI-Internal Trade		Promotion and facilitation of Trade development process.
7.	Ministry of Livestock and Fisheries Development		To create a favourable legal framework for the sustainable development of the livestock and fisheries industry, and to provide support services that increase productivity, value addition and market access for the sub-sector products.
8.	Ministry of Planning and National Development		To lead in policy formulation, co-ordination and implementation of sound economic policies for sustainable development.
9.	Ministry of Agriculture		To promote and facilitate production of food and agricultural raw materials for food security and incomes, advance agro-based industries and agricultural exports, and enhance sustainable use of land resources as a basis for agricultural enterprises.
10.	Ministry of Local Authorities		To promote development and provision of services at the local county council level.
11.	Ministry of Roads and Public Works		Facilitating development of road and other public works infrastructure.
12.	Ministry of Finance		To Pursue fiscal and monetary policies and effectively coordinate government financial operations for rapid and sustainable development of Kenya.
13.	Ministry of Foreign Affairs, Economic and Trade Division		To articulate and implement Kenya's foreign policy in the interest of the people of Kenya globally through effective diplomatic engagement.
14.	Ministry of East African Community	2004	East African Community Affairs.
15.	Ministry of Tourism and Wildlife		Facilitate sustainable tourism development and conservation of wildlife as part of our national heritage and prosperity.
16.	Kenya Industrial Property Institute (KIPI)		To administer Industrial Property rights (IPR), through provision of Technological Information and training in IPR to the public and promotion of Inventiveness and Innovation for sustainable growth.
17.	Kenya Industrial Estate	1967	Put up shades, cluster enterprises together, offer technical services & training and provide finance to local mall upcoming entrepreneurs.
18.	CBK	1966	To formulate and implement monetary policy directed to achieving and maintaining stability in levels pf prices & to foster the liquidity solvency and proper functioning of a stable market based financial system.
19.	Kenya Tourism Board	1997	To support and serve the tourism Industry through marketing Kenyan physical and non physical attraction with

			diligence, dedication and professionalism for the benefit of all stakeholders.
20.	Kenya Sugar Board	1973	To effectively develop, promote and regulate a competitive and sustainable sugar industry in Kenya through effective leadership.
21.	Kenya Plant Health Inspectorate Service (KEPHIS)		To promote a dependable effective, efficient and competitive regulatory service for ensuring quality agricultural inputs and produces thereby promoting sustainable agriculture & economic growth.
22.	School of Economics, University of Nairobi	1969	Training and Research.
23.	Capital Markets Authority	1989	To facilitate the development of orderly and efficient capital in Kenya through effective regulation that encourages innovation and safeguard market integrity.
24.	Kenya Industrial Research Development Institute (KIRDI)	1979	To undertake research & development in industrial & allied technologies including, civil, mechanical, electrical chemical engineering, industrial chemistry, food, power resources, mining, ceramics & clay technologies.
25.	School of Economics University of Nairobi		Education and Research
26.	Kenya Bureau of Standards(KEBS)	1974	To excel and be internationally recognized in metrology, standardization, testing and quality management (MSTQ)
27.	Communication Commissions of Kenya (CCK)	1999	To license and regulate telecommunications, radio-communication and postal/courier services in Kenya.
28.	Kenya Tea Development Authority		To provide effective Management service to the Tea sector for efficient production, processing & marketing of high quality Tea for the benefit of farmers & other stakeholders.
29.	IPAR	1994	To strengthen the National capacity to develop, implement and evaluate public policy by undertaking independent policy analysis.
30.	Commission of Insurance		To supervise and regulate the Insurance Industry in Kenya.
31.	National Environment Management Authority	2003	To exercise general supervision and co-ordination over all matters relating to the environment & to be the principal instrument of the Government. In the implementation of all policies relating to the environment.
32.	Coffee Board of Kenya		Regulation of the Coffee Industry and promoting sustainable cost effective production and processing of high quality coffee.
33.	Export Processing Zones Authority	1990	To create and promote an enabling environment for Export Development in Kenya's EPZs.
34.	Kenya Airports Authority	1991	To operate Airports facilities in this country/To provide our customers safe, secure and efficient airport facilities that offer a consistent and comfortable airports experience.
35.	Kenya Investment Authority	1986	To provide exceptional services to attract, facilitate and retain investments in Kenya.
36.	Kenya Institute for Public Policy Research and Analysis (KIPPRA)	1997	To provide quality public policy advice to the government of Kenya and to the private sector in order to contribute to achievement of national development goals
37.	Kenya Ports Authority	1978	To manage the port of Mombasa as well as other small ports in Kenya.
38.	African Economic Research Consortium	1988	To strengthen local capacity for conducting independent rigorous inquiry into problems pertinent to the management of economies in SSA.
39.	Tea Board of Kenya	1950	To promote the production and supply of high quality tea to the domestic and International markets.
40.	Tegemeo Institute	1988	Inform policy through empirical research and analysis.
41.	British American Tobacco (Kenya)	1907	Manufacture and distribution of Cigarettes., and tobacco growing.
42.	Kenya Livestock Marketing Council	2000	Marketing of Livestock & Livestock products, lobby and advocacy.
43.	Home grown Ltd	1982	The leading grower and exporter of horticultural produce.
44.	Cereals Growers Association	1996	To lobby for favourable government policies in the cereals

			sub-sector and facilitate the members to undertake trade/business profitably.
45.	National oil Corporation of Kenya	1981	Import and distribute petroleum products, Implement oil exploration programs for the government.
46.	Nation Media	1960	To develop an informed perspective that enables communities to fulfill their true potential. Creating multiple media opportunities to inform and educate.
47.	Citizen T.V		To be a provider of reliable relevant and fair news coverage.
48.	KBC		Inform public of news occurrences, educate and entertain public.
49.	NISCOF	2005	Facilitating, strengthening and mobilizing the informal traders organisations for active participation in policy management, governance and provision of business development services through effective lobbying and advocacy in order to obtain a conducive business environment, supporting a sustainable internal sector growth and development in line with MDGs.
50.	CUTS	2002	Dealing on aspects of International trade- capacity building advocacy and research.
51.	Southern and Eastern Africa Trade Information & Negotiation Institute.	2003	To strengthen Africa's capacities to take a more effective part in the emerging global trading system and to better manage the process of globalization.
52.	KEPSA		Through Constructive dialogue engage the government in the formulation and implementation of pro-growth policies that maximize Kenya's competitive and create wealth.
53.	Consumer Information Network (CIN)	1994	To Empower Consumers
54.	ECONEWS	1996	Research and Advocacy organization. Also does capacity building in International trade and community media.
55.	DFID	1997	International Development work of the United Kingdom.
56.	KNCCI	1965	Protect, promote and develop the commercial and industrial interests of our members and the business community in general.
57.	Institute of Economic Affairs	1993	A Civic forum that seeks to promote pluralism of ideas through open active and informed debate on public policy.
58.	Oxfam GB Kenya	1972	Working with others to overcome poverty and suffering.
59.	COTU (K)	1965	Defend workers' rights, Lobby to improve workers standards of living.
60.	Kenya National Chamber of Commerce and Industry		Provision of information to members, Assist in formulation of trade and business policies.
61.	Association of Professional societies in East Africa (APSEA)	1961	To enhance the competence of professionals in East Africa by integrating trade in professional services through removal of barriers, creation of appropriate institutions and building strategic alliances and networks to contribute to the social-economic development of the region.
62.	UNDP	1966	The development arm of the United Nations. Its currently working in 166 countries with the Head Quarters in New York.
63.	Kenya Cotton Growers' Association	2001	Lobby and advocate in the interest of Cotton farmers to address their marginalization and input their contribution to the National Cotton Dialogue.
64.	FKE	1959	Promotion of business environment and sound industrial relations.
65.	Kenya Sugarcane Growers association	1982	To organize and represent the sugarcane farmers on union matters.
66.	Kenya Electrical Traders and Allied workers Union		To negotiate collective bargain Agreement of employees in KenGen, KPLC and other allied firms and advocate a conducive working environment.
67.	Kenya Livestock Marketing Council (KLMC)	2000	Lobby and source market for quality disease free livestock and livestock products, advocacy for policy change.
68.	RNE Royal Netherlands Embassy	1967	Development and trade co-operation between Kenya and Netherlands.

69.	Kenya Veterinary Association	1967	Safeguard professional interest in veterinary Associations.
70.	Association of Kenya Insurers	1978	Protect, promote and advance the interests of the insurance industry in Kenya.
71.	Action Aid International Kenya	1972	Work with poor and excluded people in a bid to strengthen their institutions/movements to acknowledge and demand their rights accountability from systems of governance as well as challenge power imbalance that exists between right holders and duty bearers.
72.	IDRC	1970	Empowerment through knowledge. Provides funds and expert advice to developing country researches. Working to solve critical development problems.
73.	Kenya Bankers Association		To build a strong and respected banking industry through dynamic leadership.
74.	KENFAP	1946	Lobby and advocacy, Service provision, Farmer representation
75.	EPC	1992	To develop and promote Kenya's Exports of goods and services and harmonize export related activities.
76.	Mumias Out growers Company	1972	Representing over 65,000 cane farmers on issues pertaining to cane production, processing and farm diversification.
77.	Horticultural Crops Development Authority	1967	To promote, develop and facilitate production and marketing of horticultural products that meet customer driven needs at competitive cost through appropriate policies and technologies and enhance socio – economic sustainability.
78.	H Young & Co. (East Africa)	1951	To be number one in East Africa in construction and related services.
79.	Kenya Shell Ltd	1900	To be the leading oil brands in the oil industry in Kenya, To deliver world class shareholder returns by constantly providing distinctly superior value propositions to the consumer, To conduct business with due regard to the society and shareholders.
80.	Centre for Governance and Development	1993	Strengthening representative institutions and empowering civil actors and economic groups for a just and equitable society.

Annex 2: COMESA Membership, Committees and Working Group

Table A2.1: COMESA Membership

Government Ministries	Key Parastatals
Ministry of Trade & Industry - COMESA Desk - Department External Trade - Department of Industries - Department of Internal Trade Ministry of Finance Ministry of Planning & National Development Ministry of Agriculture Ministry of Fisheries & Livestock Development Ministry of Information & Communication Ministry of Roads & Public Works Ministry of Lands & Housing Ministry of Transport Ministry of Health The Attorney General's Chambers	Export Promotion Council Kenya Bureau of Standards Investment Promotion Centre Export Processing Zones Authority Kenya Bureau of Standards Kenya Revenue Authority Kenya Industrial Property Institute Kenya Sugar Board National Cereals & Produce Board Kenya Plant Health Inspectorate Services Central Bank of Kenya Telkom Kenya Ltd Communications Commission of Kenya National Communications Secretariat Kenya Civil Aviation
Private Sector Bodies Kenya Association of Manufactures Kenya International Freight and Warehousing Association Kenya National Chamber of Commerce and Industry	**Research Institutions** Kenya Institute of Public Policy Research and Analysis

Table A2.2: COMESA Technical Committees

Technical Committee on Trade and Customs	Technical Committee on COMESA Rules of Origin
COMESA Desk Department of External Trade Department of Industries Department Internal Trade Export Promotion Council Kenya Bureau of Standards Investment Promotion Centre Export Processing Zones Authority Kenya Bureau of Standards Kenya Industrial Property Institute Ministry of Finance Central Bank of Kenya Kenya Revenue Authority Central Bureau of Statistics Kenya Association of Manufacturers Research Institution: Kenya Institute of Public Policy Research and Analysis	COMESA Desk Department of External Trade Department of Industries Department Internal Trade Ministry of Finance Kenya Revenue Authority Central Bank of Kenya Research Institution: Kenya Institute of Public Policy Research and Analysis

Technical Committee on Transport and Communications	Technical Committee on Agriculture
COMESA Desk Ministry of Transport Ministry of Information & Communication Kenya Civil Aviation Ministry of Roads & Public Works Telkom Kenya	COMESA Desk Ministry of Agriculture Ministry of Planning & National Development Ministry of Fisheries & Livestock Kenya Institute of Public Policy Research and Analysis

Table A2.3: COMESA National Working Group

National Working Group
Ministry of Trade & Industry COMESA Desk Department of External Trade Department of Industries Department Internal Trade Export Promotion Council Investment Promotion Centre Export Processing Zones Authority Ministry of Finance Headquarters Kenya Revenue Authority Central Bank of Kenya Ministry of Planning & National Development Central Bureau of Statistics Kenya Association of Manufactures Kenya International Freight and Warehousing Association Kenya National Chamber of Commerce and Industry Research Institution: Kenya Institute of Public Policy Research and Analysis

Annex 3: NCWTO Membership, EAC Membership and KEPLOTRADE Membership

Table A3.1: NCWTO Membership

Government Ministries Ministry of Trade & Industry - Department External Trade - Department of Industries - Department of Internal Trade Ministry of Finance Ministry of Planning & National Development Ministry of Agriculture Ministry of Fisheries & Livestock Development Ministry of Information & Communication Ministry of Roads & Public Works Ministry of Lands & Housing Ministry of Transport Ministry of Health The Attorney General's Chambers	**Key Parastatals** Export Promotion Council Kenya Bureau of Standards Kenya Investment Authority Export Processing Zones Authority Kenya Bureau of Standards Kenya Revenue Authority Kenya Industrial Property Institute Kenya Sugar Board National Cereals & Produce Board Kenya Plant Health Inspectorate Services Central Bank of Kenya Telkom Kenya Ltd Communications Commission of Kenya National Communications Secretariat Kenya Civil Aviation National Environmental Management Agency Horticultural Crops Development Authority Kenya Tea Development Agency
Private Sector Kenya Association of Manufactures Kenya International Freight and Warehousing Association Kenya National Chamber of Commerce and Industry Fresh Produce Exporters Association of Kenya Kenya Flower Council Kenya Association of Insurers Federation of Kenya Employers Kenya National Federation of Agricultural Producers Association of Professional Societies in East Africa Association of Fish Processors and Exporters in Kenya Kenya Dairy Association Kenya Institute of Organic Farming	**Civil Society** Consumer Unity & Trust Society ECONEWS Institute of Economic Affairs Society for International Development Action Aid International Consumer Information Network OXFAM Kenya Human Rights Commission
Research Institutions Kenya Institute of Public Policy Research and Analysis Tegemeo Institute for Agricultural Development University of Nairobi	

Table A3.2: EAC Membership

Government Ministries Ministry of Trade & Industry -Department External Trade -Department of Industries -Department of Internal Trade Ministry of Finance Ministry of Foreign Affairs Ministry of East African And Regional Co-operation Office of the President Attorney General's Chambers	Kenya Revenue Authority (Parastatal) Kenya Association of Manufacturers (Private sector)
Private Sector Bodies Kenya Association of Manufacturers	**Research Institutions** Kenya Institute for Public Policy Research and Analysis

Table A3.3: KEPLOTRADE Membership

Government Ministries Ministry of Trade & Industry - Department External Trade - Department of Industries - Department of Internal Trade Ministry of Finance Ministry of Planning & National Development Ministry of Agriculture Ministry of Fisheries & Livestock Development Ministry of Information & Communication Ministry of Roads & Public Works Ministry of Lands & Housing Ministry of Transport Ministry of Health Ministry of Tourism The Attorney General's Chambers	**Key Parastatals** Export Promotion Council Kenya Bureau of Standards Kenya Investment Authority Export Processing Zones Authority Kenya Bureau of Standards Kenya Revenue Authority Kenya Agricultural Research Institute Kenya Industrial Research and Development Institute Kenya Tourist Board Kenya Industrial Property Institute Kenya Sugar Board National Cereals & Produce Board Kenya Plant Health Inspectorate Services Central Bank of Kenya Telkom Kenya Ltd Communications Commission of Kenya National Communications Secretariat Kenya Civil Aviation National Environmental Management Agency Horticultural Crops Development Authority
Civil Society Consumer Unity & Trust Society ECONEWS Institute of Economic Affairs Society for International Development Action Aid International Consumer Information Network OXFAM	**Research Institutions** Kenya Institute for Public Policy Research and Analysis (KIPPRA) Tegemeo Institute for Agricultural Development University of Nairobi

Kenya Human Rights Commission	
Private Sector Bodies Kenya Association of Manufactures Kenya International Freight and Warehousing Association Kenya National Chamber of Commerce and Industry Fresh Produce Exporters Association of Kenya Kenya Flower Council Kenya Association of Insurers Federation of Kenya Employers Kenya National Federation of Agricultural Producers Association of Professional Societies in East Africa Association of Fish Processors and Exporters in Kenya Kenya Dairy Association Kenya Association of Manufacturers Exporters Association Kenya Institute of Organic Farming Kenya Tea Development Agency	

Annex 4: Existing Capacity Building and Support Programs

Table A4.1: Existing Capacity Building and Support Programs

Donor	Project/Program	Date of Commence	Duration	Target group/main beneficiaries	Amount in US Dollars (optional)	Co-funded by
1. IDRC	1. Foreign Direct Investment (FDI) in tourism: the development dimension			Government and private sector		None
	2. Facilitating small producer access to high value markets	Oct. 2005	Oct. 2005 - Oct. 2007	Small scale producers	$250, 000	
	3. Re-governing markets - the keys to inclusion of small scale producers in dynamic markets			Small scale producers		None
2. MINBUZA (Royal Netherlands Embassy)	4. Kenya Investment Authority (KIA)	2005	2 years	Exporters	650,000 Euros	Netherlands
MINBUZA	5. Linking Small and Micro Enterprises (SMEs) to export markets	2005	-	Local processors esp. Innovative producers	Max of 600,000 Euros	Netherlands
MINBUZA	6. Women development	2004	-	Exporters		Netherlands
MINBUZA	7. Youth employment scheme	2005	2 years	Small scale exporters		Netherlands
3. UNDP	8. Kenya Private Sector Alliance (KEPSA)	July 2005	1 year	Private sector		DFID & Netherlands
UNDP	9. Kenya Investment authority (KIA)	July 2004	1 year	Exporters	450000	None
UNDP	10. Credit rating of Kenya	July 2005	1 year	FDI Households	168,000	None
UNDP	11. Linking SMEs to Export Markets	July 2004	1 year	Local processors	120,000	None
UNDP	12. Women Entrepreneurship Development	July 2004	1 year	Women entrepreneurs	160,000	None
UNDP	13. Youth employment Scheme	July 2006	1 year	Youth	130,000	None
	14. Enhancing capacity for integrated assessment and planning in Kenya				38,800	
4. DFIDK	12. Kenya Trade Poverty Project (KTPP)	2002	3 years	Government		None
DFIDK	13. Private Sector Development Strategy (PSDS)	2002	5 years	Government Private sector		None
DFIDK	Support to Kenya Private Sector Alliance (KEPSA)	2003	4 years	Private sector		UNDP and Royal Netherlands

						Embassy
5. USAID	14. SMEs/JUAKALI	2005	4 years (2005-2008)			
USAID	15. Trade/export Development Promotion					EPC
6. European Union	16. KEPLOTRADE	2002	7 years (2002-2008)			
7. World Bank	17. Legal financial sector technical assistance					
World Bank	18. Micro, Small & Medium Enterprises (MSME) competitiveness project		Long term			
8. UNCTAD	18. WAPA study tours policy					
9. GTZ	19. Livelihood improvement	2003				
10. JICA	20. Improved Jikos for local processing	2006				
11. Various	21. Joint Integrated Technical Assistance Programme (JITAP II)	Jan. 2004	2.5 years			ITC, UNCTAD, WTO
Various	22. Trade policy review/ Investment policy review					UNCTAD/ WTO
12. Government of Canada	E-government	2004				
Government of Canada	Rural Telecoms project					
13. Consumer Unity Trust Society (CUTS)	Linkages between trade, development and poverty reduction (TDP).				15,000	
14. Pro-invest	Capacity building investment promotion					
Ministry of Trade and Industry	Impact assessment study for Kenya readiness for the EPA negotiations				41,973	
BAT/Eveready Batteries	Illicit trade in East Africa				76,333	
Projects that cut across various countries, including Kenya						
1. World Bank	East Africa trade facilitation project					
2. IDRC	1. South-South links: Third world multinationals and development	Aug. 2005	2005-2007	Governments Private sector	CAD$ 475,000	None

Source: 2006 stakeholder survey results

Annex 5: South Africa Trade Institutional Framework

The Department (Ministry) of Trade and Industry (DTI) is the lead department in the formulation and implementation of trade policy in South Africa. The key institutions under DTI are the International Trade and Economic Development Division (ITED), which handle negotiations; a newly established International Trade Administration Commission, which administrates trade policy; and Trade and Investment South Africa, which promotes exports and investment. ITED plays the central role in trade policy formulation.

(a) International Trade and Economic Development Division (ITED)

ITED has three divisions: International Trade Administration Business Unit, International Trade Development Business Unit (ITD) and African Development Business Unit. ITD is the unit that leads international trade negotiations. Its broad role is to develop trade and investment links with key global economies and promote economic development, negotiating preferential trade agreements and supporting a strong equitable multi-trading system. ITD comprises of two chief directorates: Bilateral Trade Relations and Trade Policy and Negotiations.

(i) Bilateral Trade Relations

The Directorate of Bilateral Trade Relations has mandate of managing multilateral and regional trade negotiations and arrangement alongside designing the multilateral and regional trade policies.

(ii) Trade Policy and Negotiations

The Chief Director in charge of Trade Policy and Negotiations is the Chief Negotiator of the Republic of South Africa in all international trade negotiations. Within this directorate, there are directors responsible for the different negotiation clusters viz:

- Director in charge of Agriculture
- Director in charge of services
- Director in charge of NAMA
- Director in charge of TRIPS
- Director in charge of Legal Affairs

The directorates are specialized and are headed by experts in the different fields. The director is assisted by a secretariat of up to five officers. The directors are in charge of developing country positions and guiding negotiations in their areas of competence. They have the responsibility of disseminating information relating to their areas of operation and building networks with industry, private sector, civil society, research institutions and the general populace. Notably, there is diversification in the hosting of the clusters. For instance, agriculture is hosted within the Department of Agriculture.

(b) Economic Research and Policy Coordination (ERPC) Division

This Division plays a critical role in increasing the DTI's capabilities to effectively undertake strategic, cross-cutting policy research and analysis pertinent to trade, competition and industrial policies. It assists DTI by improving policy coherence and certainty by providing high quality analysis and advice to address strategic and cross-cutting policy matters. ERPC has five business units**:** Policy Coordination (External Relations) Unit; Policy Analysis and Management Unit; Impact Assessment

Unit; Statistical Analysis and Modeling Unit; and Research Management Unit. The Division plays a key role in creating strong linkages with other research institutions.

c) Consumer and Corporate Regulation Division (CCRD)

CCRD has three business units:

- Policy and Legislation
- Enforcement and Compliance
- Regulatory Services

Policy and Legislation Business unit is responsible for developing and reviewing regulatory systems in the areas of competition, consumer, company and intellectual property regulation, as well as public interest regulation. Impact assessments will also form an integral part of the functions in order to determine the impact of legislation on the economy.

Enforcement and Compliance Business Unit is responsible for the implementation of policies developed by the Policy and Legislation Business Unit, and to provide a business regulatory investigative framework that promotes competitive, fair and efficient markets, that inspire investor and consumer confidence.

Regulatory Service business unit is responsible for building of new institutional capacity and the monitoring and assessment of existing capacity. This business unit oversees a range of regulatory agencies, including the Competition Commission and Tribunal, National Gambling Board, National Lotteries Board, and the Micro Finance Regulatory Council.

(e) National Economic Development and Labour Council (NEDLAC)

NEDLAC is established through an Act of Parliament. It is mandated to build consensus on key policy issues, and in pursuit of this to review legislation emanating from the executive. The Council represents four constituencies: government; labour; business and community[24]. Although the NEDLAC Act requires that legislation be referred to it for consideration prior to being submitted to Parliament, Draper (2007) observes that the government patchily observes this. The institution plays a valuable role in the consensus-seeking process on the broad trade negotiations agenda but the trade unions which are very active in NEDLAC often seeks to protect their members hence viewing market openings via trade negotiations in a dim light.

(f) Permanent Trade Forum

This exists at the national level. It comprises of Ministers and Director Generals (P.S s) of the different ministries. The Chief Negotiator presents the country's negotiation positions to this body for confirmation and ratification to form South Africa's position at the international level.

(g) The International Trade Administration Commission (ITAC) of South Africa

This was established through an Act of Parliament with the aim of administering and encouraging fair trade through Customs tariff investigations, trade remedies and import and export control. Its mandate involves administering all the international trade agreements South Africa is party to and to which its mandate extends. ITAC is established as an independent statutory Commission deriving its mandate

[24] It is not clear what this label means nor whom it purports to represent (Draper, 2007).

from and subject to the Constitution of South Africa. Its independence is guaranteed under the Act with the other government institutions under a duty to ensure it retains its independence and impartiality. Its statutory functions are:

- Investigating and evaluating any applications and claims arising from customs duties, anti-dumping duties, counter-availing duties and safeguard measures.
- Investigate, evaluate, determine and issue permits and certificates in terms of rebate and drawback provisions of the Customs and Excise Act.
- Monitor and review any matters touching on trade and industry within its functions or as may be assigned by the Minister.

Annex 6: Singapore Ministry of Trade and Industry

The Singapore's Ministry of Trade and Industry is organized into the following Divisions

Economics & Strategy Division (ESD) which provides a good understanding of the Singapore economy for rational policymaking. Studying and identifying key sectors and clusters in Singapore, it assesses the impact of policy initiatives by other government agencies besides carrying out research and analyses of the Singapore economy and global trends. ESD works closely with other Ministries and Statutory Boards to provide an objective analysis of global trends and competitive benchmarking.

Industry Division formulates and reviews policies to develop Singapore's manufacturing and services clusters to ensure that they continue to create wealth and generate employment. It works closely with economic development agencies.

Research and Enterprise Division (RED) focuses on creating a conducive business environment for Singapore-based enterprises to form, compete and grow. This includes ensuring that the country has pro-enterprise rules and policies, a conducive tax environment, access to financing, and integrated multi-agency government e-services so that enterprises can develop their capabilities.

Resource Division (RD) develops policies for industrial land to achieve competitiveness in land costs and flexibility in usage. It sets the strategic direction and policies for energy security and the liberalization of the electricity and gas markets. It also oversees the national strategic plan for public sector R&D, to develop the human capital to support Singapore's economic strategies and to strengthen intellectual property frameworks to anchor the country's knowledge economy.

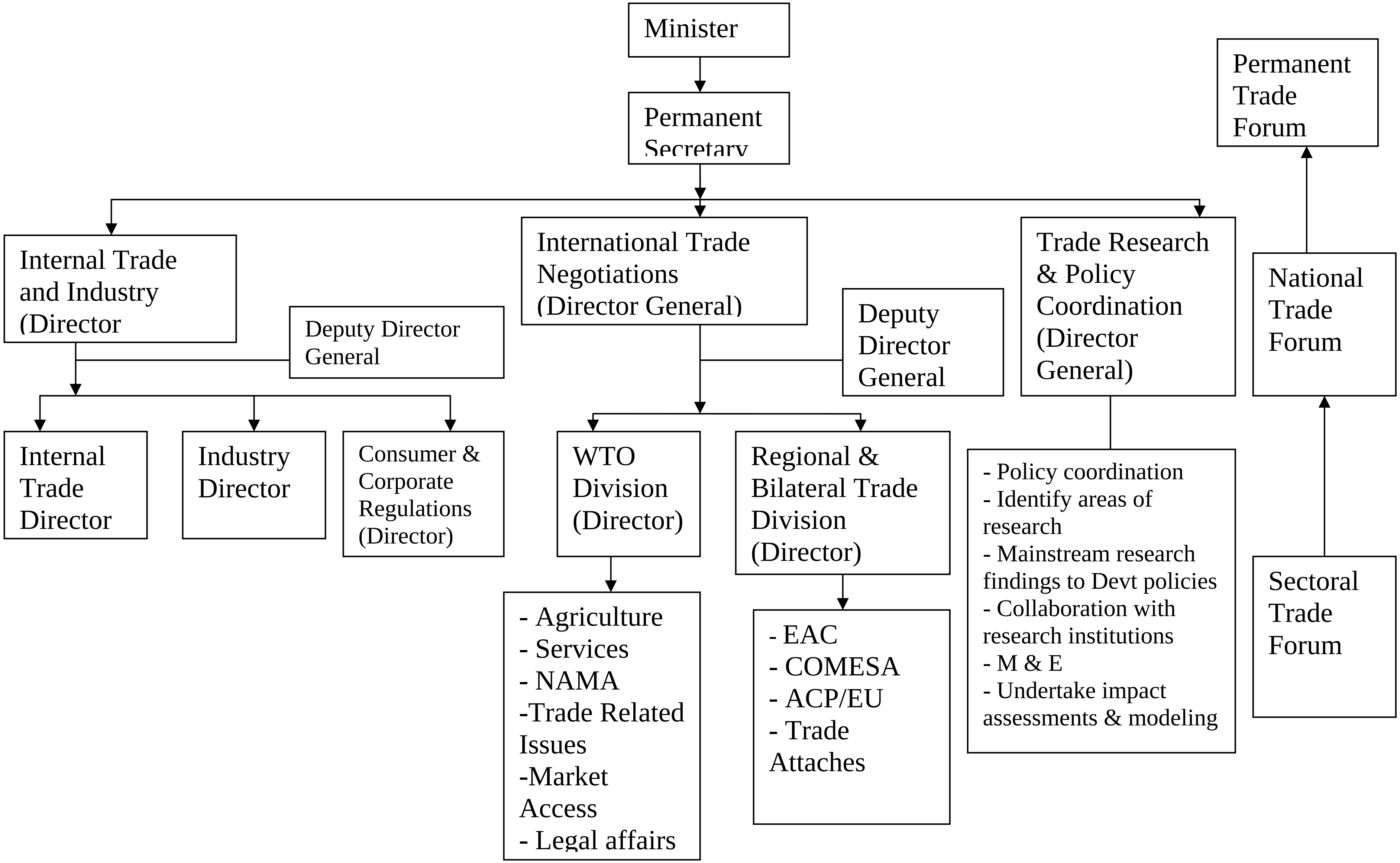
Energy Planning Division (EPD) formulates and coordinates energy and energy-related strategies and policies that address energy security, economic competitiveness, environmental sustainability and industry development. It works closely with other ministries and agencies.

Trade Division (TD) deals with Singapore's external economic ties. It manages trade relations at the multilateral, regional and bilateral levels with the objective of securing favourable conditions in external markets for Singapore-based enterprises. TD is organised around directorates focusing on WTO issues & international trade negotiations, Singapore's participation in ASEAN and APEC, and bilateral relations with countries in Southeast Asia, Northeast Asia, Europe, Central Asia, the Americas, South Asia, Middle East and Africa.

Corporate Communications Division (CCD) takes charge of the ministry's media relations, marketing communications and service quality. CCD works with all other divisions within MTI to advise them on the optimal methods of announcing their policies, new initiatives, and visits; as well as with other statutory boards on their various communications plans. Besides media matters and event management, CCD also plays a role in national marketing.

Corporate Development Division supports the operations of the Ministry and is responsible for personnel and financial administration, computerisation and office management.

Annex 7: Proposed Organization Structure for the Ministry of Trade and Industry



Source: Authors Construction