Faculty of Law

University of the Western Cape

Trade Capacity Building In The Multilateral Trading System: How Can Developing And Least Developed Countries Benefit? A Case Study of Kenya and Zambia

A Mini Thesis Submitted In Partial Fulfillment of the Requirements for the LL.M: International Trade and Investment in Africa

By

Annie Senkwe Nsenduluka

Student Number: 2882440

Supervisor: Prof Ms Wandrag

KEY WORDS

(AFT) Aid for Trade

(COMESA) Common Market for Eastern and Southern Africa

Developing Countries

Doha Development Agenda-The Doha Development Agenda was adopted by the World Trade Organisation Ministerial Meeting in Doha in November 2001. The main objective of the Doha Development Agenda is to assist developing and least developed countries with capacity-building initiatives so that these countries can share in the growth in world trade and attain economic development

(GATT) General Agreement on Tariffs and Trade

Globalisation

(LDCs) Least Developed Countries

(SADC) Southern Africa Development Community

(TCB) Trade Capacity building-Support for developing and least developed countries to improve their ability to implement and observe their international treaty obligations in trade. Capacity-building programs are usually provided through multilateral and regional organizations, or through bilateral programs. Various methods and principles have been devised to make capacity-building more effective

(WTO) World Trade Organization

ABSTRACT

The provisions of the General Agreement on Tariffs and Trade (GATT 1994) generally give favourable consideration to developing and least developed countries.[1]

Firstly, at the core of these provisions is the principle of special and differential treatment of these countries. As such developing countries are to meet their obligations under the WTO agreements as and when the special needs of their economies permit. The GATT 1994 provisions exempt least developed countries from participating in the obligations under the WTO agreements until such a time that they attain a reasonable level of development.

Secondly, the Ministerial Meeting in Doha in November 2001 adopted a development agenda (that described capacity building activities as “core elements of the development dimension of the multilateral trading system”) and called for more co-ordinated delivery of trade-related technical assistance and capacity building.[2]

In this regard, developed members of the WTO have committed to provide technical assistance to developing and least developed members in order to build their capacity to participate effectively under the WTO.

The reality of the situation on the ground is that developing and least developed countries still face a lot of challenges which hinder their full participation and realization of the benefits under the multilateral trading system. It must be appreciated, at the same time that developing countries like China and India have been active and influential in the multilateral trading system, and additionally, their economies have and are experiencing overt growth. What lessons does Africa need to learn from China and India?

This study examines the causes of the poor performance of Sub Saharan Africa’s developing and Least Developed Countries in the multilateral trading system. In this regard, examples are drawn from two countries, namely, Kenya and Zambia.

Further, the study examines the initiatives the WTO provides to enhance the trade capacity of its developing and least developed members. In addition, the study examines African trade capacity building initiatives such the New Partnership for Africa’s Development (NEPAD) and

[1] Article XXXVI of GATT1994

[2] See Bonaglia F. And Fukasaku K, Trading Competitively: a study of Trade Capacity Building in Sub-Saharan Africa, Development Centre of the Organization for the Economic Co-operation and Development, (2007), at 31.

the African Capacity Building Foundation (ACBF) Initiatives, as well as the African Growth and Opportunity Act (AGOA) Initiative in order to establish how these initiatives can assist in enhancing the trade capacity of developing and least developed countries.

The study further examines the role of regional trade integration in enhancing the trade capacity building of developing and least developed countries. In this case, examples are drawn from the Southern Africa Development Community (SADC) and the Common Market for Eastern and Southern Africa-Developing Countries (COMESA). In this regard, the study concludes that fully-fledged regional integration has the potential to promote economic growth and industrial development in Africa.

The study also demonstrates the importance of the participation of governments and the private sector in improving a country's participation in the multilateral trading system. This study particularly takes key interest in the crucial role of the public-private partnerships in enhancing competitive forces and competitiveness necessary to maximize trade opportunities, which in turn produces economic development.

It is observed and concluded in this study that sustainably financed technical assistance and capacity building programmes have important roles to play in so far as integration of Sub Saharan Africa into the global trading system is concerned; and that developing countries in general and LDCs in particular are to be provided with enhanced Trade-Related Technical Assistance (TRTA) and capacity building to increase their effective participation in the negotiations, to facilitate their implementation of GATT/WTO rules and to enable them adjust and diversify their economies.

DECLARATION

I, **Annie Senkwe Nsenduluka**, hereby declare that this work is original and the result of my own research and effort. It has never on any previous occasion been presented in part or whole to any Institution or Board for the award of any degree.

I further declare that I have duly acknowledged every secondary information used in my work. I am responsible for any error whatever the nature or form in this work.

Student

Signed:…………………………………

Date: …………………………………

Supervisor

Signed:…………………………………

Date: …………………………………

DEDICATION

To

My late Parents, May You Rest in Eternal Peace, till we meet again.

To

My loving and caring brothers and sisters, and their wonderful families.

And to

Everyone working hard to ensure that Africa takes its rightful place in the global trading system.

ACKNOWLEDGEMENTS

I would like to express my sincere gratitude and appreciation to the following institutions and people:

To the **Centre for Human Rights, University of Pretoria and Faculty of Law, University of the Western Cape**, I say I am deeply indebted to the Centre for running such a formidable and commendable masters programme whose invaluable contribution towards Africa's advancement in the multilateral trading system cannot be overemphasized. For granting me a scholarship to pursue this programme, the Australian Agency for International Development (AusAID) deserve special mention here. I will forever remain thankful for the support and opportunity.

Professor Riekie Wandrag: I am deeply grateful to you for your tireless enthusiasm over this thesis. Your understanding, unwavering guidance and supervision, tolerance, patience, assistance and support as well as encouragement, made this work possible. Throughout the duration of the study, you ensured that I remained in perspective. In addition, you made my stay in South Africa pleasant at all times. To you Professor, I say thank you very much.

My list would be incomplete if failed to acknowledge **Professor Mwenda, Professor Bradlow, Dr Kessie, Dr Kwakwa, Mr Mosoti, Ms Lenaghan and all the lecturers** who taught me in this programme. To you all go my sincere thanks for the training and knowledge you imparted to me.

It would be an injustice to my list if I failed to mention **Tom Mzumara**. I am sincerely grateful to you for your unwavering support and contribution towards this work.

Precious Ndhlovu, Joseph Tshimanga Sowa, Reuben Matshoba, Anthony Duah, the Student Christian Organisation and the Light House Family Church: Thank you so much for your love and support. You truly made my stay in South Africa worthwhile and memorable.

I wish to further extend my gratitude and appreciation to all my classmates and to all, whose names I have not mentioned. You contributed in special and different ways.

Finally, my utmost gratitude goes to all members of my family, for their love, advice, support, patience and prayers throughout the time I have been away from home pursuing this programme. Thank you for your understanding. I love you all!

'Tis grace hath brought us safe thus far

And grace will lead us home.

John Newton, "AMAZING GRACE" (1779)

TABLE OF CONTENTS

CHAPTER TWO: Critical Analysis of the GATT/WTO Provisions Relating to Trade Capacity Building

CHAPTER THREE: A Brief Discussion of the NEPAD, ACBF and AGOA Initiatives

CHAPTER FOUR: The Role of Regional Integration, African Governments and the Private Sector, in Enhancing the Trade Capacity of the Sub Saharan African Members of the GATT/WTO: The Case of Kenya and Zambia

INTRODUCTION

Since the conclusion of the Uruguay Round and the establishment of the World Trade Organisation (WTO), the active participation of developing and least developed countries (LDCs) in the multilateral trading system has increasingly been recognised as a crucial element for their development, as well as imperative to ensure the legitimacy and sustainability of the world trade regime.[3] However, most developing countries and LDCs lack the experience and capacity of their developed-country partners, and as such fail to significantly influence the WTO negotiations or to implement the commitments agreed to multilaterally.

There are many countries that have acceded to the WTO which are still struggling to implement their WTO obligations or to find ways to participate effectively in multilateral trade negotiations.[4] For example, the political agenda of several developing African countries and LDCs is determined by more immediate and urgent development priorities; these countries do not have the required capacities, nor are they in a position to determine and voice their trade and development interests in the framework of the WTO.[5] Nevertheless, these countries are still convinced that trade is vital for them in order to build up the wealth needed to meet their development goals.

At the first Ministerial Meeting of the WTO in Singapore in 1996, the trade ministers adopted the Comprehensive and Integrated WTO Plan of Action for LDCs. The plan envisaged closer co-operation between the WTO and other multilateral agencies assisting LDCs in the area of trade.[6]

At this Ministerial Conference, WTO members resolved to address the problem of marginalization of LDCs and agreed to take positive measures such as duty-free access, on an autonomous basis, aimed at enhancing their overall capacity to respond to the opportunities provided by the multilateral trading system.

---

[3] See Sanoussi, B et al, Managing the challenges of WTO participation: case study 27. Available at: **http://www.wto.org/**. (accessed on 11/08/08)
[4] See Ideas Centre Geneva-Available at: **http://www.ideascentre.ch/**. (accessed on 23/09/08)
[5] Ibid.
[6] See WTO, WTO Plan of Action for the Least Developed Countries, WT/Min (96)/14 January, 1997.Available at: **http://docsonline.wto.org/gn**. (accessed on 12/08/08)

Further, WTO members committed themselves to giving operational content to the Plan of Action by enhancing conditions for investment and providing predictable and favourable market access conditions for LDCs' products in order to foster the expansion and diversification of their exports to the markets of all developed countries.

To implement the Plan, the High Level Meeting (HLM) on Integrated Initiatives for LDCs, in October 1997, established the Integrated Framework (IF) to provide trade-related technical assistance to LDCs.[7]

The IF is an international initiative through which the International Monetary Fund (IMF), International Trade Centre (ITC), United Nations Conference on Trade and Development (UNCTAD), United Nations Development Programme (UNDP), the World Bank and WTO combine their efforts with those of LDCs and donors to respond to the trade-development needs of LDCs.[8] The major objectives of the IF include mainstreaming trade into national development plans, such as the Poverty Reduction Strategy Process (PRSP), and to facilitate the coordinated delivery of trade-related assistance.[9]

In 2005 the World Bank and IMF endorsed the 'enhancement' of the IF, thus Enhanced Integrated Framework (EIF), which would ensure increased, predictable financial resources to carry out the national Action Matrices; strengthen national capacities to deal with the IF process and, finally, improve the IF decision-making and management structure to ensure effective and timely delivery of the increased financial resources and programmes.[10]

It is the author's intention to discuss the foregoing in detail in Chapter Two as one of the initiatives the WTO has endeavoured to implement in facilitating the integration of the LDCs into the multilateral trading system.

The international community has tried to address the issue of capacity of developing countries and LDCs by making technical assistance and capacity building a key component

[7] See the WTO, High Level Meeting on Integrated Initiatives for the Least Developed Countries. Trade Development, WT/LDC/HL1/Rev1'October 1997. Available at: **http://www.wto.org/.** (accessed on 16/09/08)
[8] See the Integrated Framework for Least Developed Countries (LDCs): how does it fit into aid for trade? Available at: **http://www.wto.org/**. (accessed on 12/01/09)
[9] Ibid.
[10] See **http://www.rtfp.org/**. (accessed on 12/01/09)

of the Doha Round.[11] This is clearly spelt out in paragraph 2 of the Doha Round of trade negotiations. Consequently, several donors such as the IMF, UNCTAD, UNDP, and the World Bank, have increased funding for trade capacity building.

The Ministerial Meeting in Doha in November 2001 adopted a development agenda (that described capacity building activities as "core elements of the development dimension of the multilateral trading system") and called for more co-ordinated delivery of trade-related technical assistance and capacity building.[12]

More specifically, at the 2005 Hong Kong WTO Ministerial Conference,[13] Ministers gave the WTO a mandate to help developing countries, especially the LDCs, build the trade capacity they need to take advantage of trade liberalization. Ministers considered that in many developing countries, Aid for trade is central to helping developing countries move from making trade possible to making trade happen.

PROBLEM STATEMENT

Developing countries and LDCs have not significantly benefited from the multilateral trading system since it was created over 60 years ago.[14] Although their share of the world trade has increased to 30 per cent,[15] the major beneficiaries are countries like India, China, Brazil and Chile.[16]The majority of developing countries and LDCs have seen their share of world trade stagnating or declining.[17] According to the WTO Secretariat the share of the world trade held by developing countries and LDCs has continuously declined over the years to less than 0.5 per cent.[18]

---

[11] See Hoekman B M and Evenett S J, (eds) Economic Development and Multilateral Trade Cooperation, (2006), at 220. See also Patrick O, Trade Capacity Building in Africa: Issues and Challenges, a Presentation for UN Economic Commission for Africa. Available at: **http://www.oecd.org/**. (accessed on 11/08/08)

[12] See Bonaglia F. And Fukasaku K, Trading Competitively: a study of Trade Capacity Building in Sub-Saharan Africa, Development Centre of the Organization for the Economic Co-operation and Development, (2007), at 31.

[13]See The WTO/OECD Report, Aid for Trade at a Glance (2007): Available at: **http://www.oecd.org/dac/trade/aft**. (accessed on 24/09/08)

[14] Dr. Kessie E, Basic Principles of the WTO Decision Making Process. Lecture presented at the Western Cape University Republic of South Africa (4-6 August 2008)

[15] As in 2006 and as of 2008 trade increased to 30 percent.

[16] See The World Trade Organization Statistics (2007): Supra

[17] Ibid.

[18] See UNCTAD Statistics (2007): Profiles of least developed countries. Available at: **http://www.unctad.org/**. (accessed on 05/09/08)

Undoubtedly, the participation of developing countries and LDCs in the multilateral trading system has been inadequate and produced very little results.

It is worthy of note that, although the LDCs represent 20 per cent of the world's population, they generate a mere 0.03 per cent of the trade flows.[19] In 2007, developing countries like Kenya contributed 0.042 per cent of the WTO budget, while Hong Kong China, which is equally a developing country, contributed 3.027 per cent of the WTO budget. India contributed 0.830 per cent of the WTO budget. Least developed countries which include Zambia only contributed 0.015 per cent of the said budget.[20]

Developing countries and LDCs in Sub-Saharan Africa do not have adequate human and institutional capacity to participate effectively in the WTO. This is due to the fact that they face financial and technical constraints; and, in this regard, developing countries and LDCs fail to adequately articulate their trade interests in terms of permanent missions in Geneva to assert their WTO membership rights and negotiate those interests strategic to them.[21] Most developing African countries only have a single trade attaché covering trade issues at the WTO, who also covers intellectual property discussions at the World Intellectual Property Organisation (WIPO) as well as trying to follow discussions at (UNCTAD).[22]

Most LDCs like Zambia, have either no permanent missions in Geneva or where they exist, they are under stuffed. This is because it is too expensive to maintain one and the national budgets cannot simply carry the costs involved. The Trade Ministries of most African countries are inadequately staffed, usually with a few people having responsibility not only for multilateral, but also bilateral trade relations. They are overburdened and cannot cope

[19] International Relations centre (2007): WTO and Developing Countries, Foreign Policy in Focus. Available at: http. (accessed on 08/09/08)
[20] See The Trade Profiles (2007): World Trade Organization, Switzerland.
[21] See Evenett S J, and Hoekman B M (eds), Economic Development and Multilateral Trade Cooperation, (2006), at 219.
[22] Oyejide A, Low- Income Developing Countries in the GATT/WTO Framework: The First Fifty Years and Beyond (paper presented at Symposium on the World Trading System. Geneva 30 April 1998)

with concurrent bilateral, regional and multilateral trade negotiations as well as monitoring the implementation of existing commitments.[23]

Indeed, most developing countries and LDCs face major challenges in determining and defending their positions in technical negotiations in the WTO multilateral trading system. Sometimes this proves to be the case even on issues which are of key strategic interest to them.[24]

Generally, these countries lack the power or leverage to negotiate because they simply do not have the means or ability to influence the trade process in the multilateral trading system.

The lack of capacity has hindered Africa from exploiting the investment and trade opportunities offered by the global economy, and this is clearly indicated by the statistics quoted above.

What must therefore, be done to ensure that developing countries such as Kenya and LDCs like Zambia, effectively participate in the multilateral trading system to fully realize the benefits of global trade?

RESEARCH OBJECTIVES

(a) To examine the (GATT) 1994 provisions which relate to trade capacity building and the participation of developing countries and LDCs in the multilateral trading system, and to discuss the trade capacity building initiatives provided under this discipline;

(b) To investigate why countries, like Kenya and Zambia, are not fully realising the benefits of the GATT 1994 provisions in so far as global trade is concerned;

(c) To examine the New Partnership for Africa's Development (NEPAD) and the African Capacity Building Foundation initiatives, as well as the African Growth and

[23] Dr Kwakwa E, Intellectual Property Regulation. Lecture presented at the University of the Western Cape, Republic of South Africa. (11-13 August 2008).
[24] Sanoussi B et al, Managing the challenges of WTO participation: case study 27. Available at: **http://www.wto.org/.** (accessed on 22/08/08)

Opportunity Act (AGOA) Initiative in order to establish how these initiatives help in enhancing the trade capacity of the developing countries and LDCs

(d) To critically analyze the role of the Southern Africa Development Community (SADC), the Common Market of East and Southern Africa (COMESA) and the private sector in strengthening the trade capacity of developing countries and LDCs in the multilateral trading system;

(e) To establish what the Kenyan and Zambian governments need to do in order to maximise the benefits of international trade; and

(f) To make recommendations on how the trade capacity of developing and least developed countries can be enhanced in ensuring their effective and full participation in the multilateral trading system for the purposes of attaining maximum economic benefits.

RESEARCH HYPOTHESIS

The investigative assumption, which this proposed research will examine, is that, unless the trade capacity of developing countries and LDCs is enhanced, these countries will not participate effectively in the multilateral trading system. Consequently, these countries will feel alienated and may get frustrated and become disruptive rather than constructive in the WTO negotiations. In the long run, their economies will start declining, thereby increasing the already high levels of poverty, and eventually leading to a global economic crisis.

Developing countries and LDCs in Sub-Saharan Africa need to know exactly where they are going wrong, or all the efforts by the WTO and other international organisations as well as the governments of these countries will be but a waste of time and resources.

Above all, the WTO will not achieve its objectives as provided in the Marrakesh Agreement establishing the WTO. This organisation has 153 members, the majority being developing countries and LDCs. It is, therefore, imperative that the capacity of these members is enhanced to ensure the legitimacy and sustainability of the world trade regime.

SCOPE OF THE STUDY

This research will mostly deal with the GATT Agreement. The focus is on the WTO initiatives, the NEPAD and the African Capacity Building Foundation initiatives. However, reference will be made to other similar initiatives such as AGOA.

The research will focus on two Sub-Saharan African countries, that is, Kenya and Zambia. The regional economic bodies under examination are SADC and COMESA.

In discussing the role of the private sector in trade capacity building, the analysis will be limited to the small and medium enterprises (SMEs) and non-governmental organisations in Kenya and Zambia.

SIGNIFICANCE OF THE RESEARCH

One of the main objectives of the WTO is to ensure security and predictability of market access. The WTO, therefore, encourages trade among its members. This is difficult to achieve if some of the members do not have the capacity to engage in effective trade with others. In addition, the WTO may not even achieve the objective to expand the production of, and trade in, goods and services in the absence of full participation and competitiveness by some of its members.

Enhancing the trade capacity of developing countries and LDCs to secure their full and effective participation in the multilateral trading system will contribute to the global eradication of poverty; will lead to a general improvement in the standards of living, and will ensure sustainable development.

RESEARCH METHODOLOGY

This dissertation is informed primarily by secondary data. Given such limitations as the permitted word limit for the work, as well as some financial constraints that could not permit the author to travel to Kenya and Zambia to collect primary data, through, say, the use of interviews and questionnaires in the said two countries, the dissertation will draw on the strengths of a broad range of secondary sources of data that make up for the absence of direct sourcing of primary data. Be that as it may, much of the literature reviewed in the preparation of this dissertation does, in fact, reference to many sources of primary data pertaining to Kenya and Zambia.

CHAPTER CONTENT

This study is divided into Five Chapters. Chapter one deals with the general introduction, which lays the background for the discussion. This chapter examines inter alia, the trade performance of Kenya and Zambia in the WTO during the period between 2003 and 2008. It also examines the causes of the trade capacity constraints in the two countries under discussion.

Chapter Two discusses the GATT/WTO provisions that relate to trade capacity and evaluates whether the provisions effectively address the trade constraints in Sub Saharan Africa. It also examines the GATT/WTO trade capacity building initiatives and illustrates whether the GATT/WTO initiatives indeed help enhance the trade capacity of developing countries and LDCs in facilitating their integration into the multilateral trading system.

Chapter Three looks at the NEPAD initiative as well as the African Capacity Building Foundation. This chapter discusses the contributions of these initiatives to trade capacity building of developing and LDCs and discusses how these countries can maximize the benefits provided by these initiatives. The chapter further evaluates the impact of AGOA on the trade capacity of the Sub Saharan African countries, with examples specifically drawn from Kenya and Zambia.

Chapter Four analyses the role of regional integration in enhancing the trade capacity of the Sub Saharan African members of the GATT/WTO vis-à-vis Kenya and Zambia. It also discusses the role of the African governments and the private sector in improving the trade capacity of developing and LDCs.

Finally, a conclusion shall be drawn from the study and recommendations proffered accordingly.

CHAPTER ONE

A BRIEF ANALYSIS OF THE TRADE PERFORMANCE OF KENYA AND ZAMBIA IN THE WTO OVER THE LAST FIVE YEARS (2003-2008)

1.1.1 KENYA

By way of brief background, Kenya is a developing country situated in Sub Saharan Africa. It is among the founding members of the WTO which came into existence when the Marrakesh was signed in Morocco on 15 April 1994. The notification process was completed by 31 December 1994, when accession to the WTO was completed. Going by the principle of the single undertaking, Kenya is signatory to all WTO agreements including the General Agreement on Tariffs and Trade (GATT), the Agreement on Agriculture (AOA), the General Agreement on Trade in Services (GATS), the Agreement on Textiles and Clothing (ATC) and the Agreement on Trade-Related Intellectual Property Rights (TRIPS).[25]

Kenya is the fourth largest economy in Sub Saharan Africa with a GDP per capita of US $580.[26] Although, international trade plays an essential role in the economic development of Kenya, statistics show a poor performance in 1998 compared to the previous years. And this was attributable to extreme decline in exports compared to imports.[27]

There is consensus in the economic literature that the performance of Kenya's export sector has been quite poor and exports have grown more slowly than the economy as a whole.[28]
Kenya's participation in the GATT/WTO largely revolves around agriculture: it forms the backbone of its economy and produces the country's major exports. Between 1962 and 2001, agricultural exports as a proportion of world trade declined from 23 per cent to less than 10 per cent.[29]In this regard, continued reliance on agricultural exports makes

[25]See Odhiambo W et al, Managing the challenges of WTO participation: Case Study 20: Kenya's Participation in the WTO: Lessons Learned, (2007). Available at: **http://www.wto.org/**. (accessed on 11/01/09)
[26] As recorded in 2007. Statistics available at: **http://www.tradeandindustry.go.ke/. (**accessed on 12/01/09)
[27] See The European Union remains Kenya's largest trading partner both as a source of imports and a destination for exports. Available at: **http://www.fco.gov.co.uk/**.(accessed on 07/01/09)
[28] See Mwega, Final Report Prepared for an AERC Collaborative Project on Africa and the World Trading System. Available at: **http://www.unctad.org/**. (accessed on 16/01/09)
[29] Kamau P, UNU-IAS Working Paper No. 138. Available at: **http://www.ias.unu.edu/**. (accessed on 11/01/09)

developing countries, including Kenya, susceptible to terms of trade shocks.[30] This prompted Kenya to diversify trade from primary commodities into labour intensive manufacturing for which garment is critical.[31] In this regard, Kenya started to promote the garment and textile industry. The Multifibre Arrangement (MFA) as well as the quota – restrictions provided protection for the garment firms in Kenya in order to ensure their competitiveness in so far as trade is at issue. This arrangement secured the growth and development of the fibre firms in Kenya. This was crucial for Kenya, because the MFA helped to secure market access to the industrial economies like Japan, Europe and the US which at this time were the major importers of garment.

However, on 1 January 2005, the MFA was abolished and the Agreement on Textile and Clothing (ATC 1995-2004) ceased.[32] Consequently, the textile industry became fully integrated into the GATT/WTO regulations like all other industrial products.[33]

The implication of this was the loss of protection for the fibre firms in Kenya, which left them without any choices but to face competition on the world market. As a result Kenya's performance in the multilateral trading system went down as the fibre industries could not produce high quality garments as those of the more advanced fibre industries in Asia.

This problem was compounded by the falling prices for fibre as international buyers started narrowing their sources on global scale.[34] These international buyers were only interested in high quality fibre; unfortunately, Kenya's fibre was way below the required standard, leading to a loss of market.

This was a serious blow to Kenya's economy, and resulted in the poor performance of this country in the multilateral trading system on account of Kenya's loss of preferences under the MFA.

[30] See Clarke. Available at: **http://www.ias.unu.edu/**. (accessed on 11/01/09)

[31] See Kamau P, UNU-IAS Working Paper No. 138. Available at: **http://www.ias.unu.edu/**. (accessed on 11/01/09)

[32] Ibid.

[33] Ibid.

[34] See Appelbaum (2004). Available at: **http://www.ias.unu.edu/**. (accessed on 11/01/09)

Technically the elimination of quotas in the garment trade is intended to help producers and consumers benefit from the streamlining of trade through the GATT/WTO. However, these gains accrue mainly to large Asian producers that invariably are in a better position in the value chain.[35] For instance, China which has a well integrated garment industry and technological capacity can produce virtually any garment item at any quality and cost. Accordingly, Asia has become the world's leading supplier in that regard.[36] In contrast, garment producers in Kenya and in many developing countries, and LDCs in Africa do not have the technological capacity and know-how to compete with their Asian counterparts, for example, a situation that has necessarily resulted in these countries losing their share in the garment trade at global level.

Thus, the abolishment of the MFA has mainly been responsible for Kenya's difficulty in competing on the world market; and by necessary implication, the abolishment of the MFA exposed Kenya's lack of capacity to produce the same quantity and quality as its Asian counterparts. This clearly, resulted in Kenya experiencing the huge loss of trade opportunity and consequently suffering a decline in its share of the world trade.

1.1.2 ZAMBIA

Zambia joined the GATT in 1982 and is a founding member of the WTO that was established in 1995.[37] During the period between 2003 and 2005, Zambia's per capita income stood at not more than US$385, and it is ranked among the twenty poorest countries in the world.[38] In this regard, Zambia has very specific difficulties as well as special circumstances in the formulation, negotiation and implementation of the multilateral trade rules.

Zambia, as a least developed country (LDC), has encountered greater difficulties in its participation in international trade negotiations. Yet, in spite of serious capacity constraints, Zambia has so far managed to remain a committed player.[39]

---

[35] Ibid.
[36] Ibid.
[37] Zambia and the Multilateral Trading system: The Impact of WTO Agreements, Negotiations and Implementation. Available at: **http://www.unctad.org/en**. (accessed on 11/01/09)
[38] Ibid.
[39] See Bilal S, How Regional Economic Communities can Facilitate Participation in the WTO: The Experience of Mauritius and Zambia. Available at: **http://www.wto.org/.** (accessed on 06/08/08)

Zambia supports the exemption of LDCs from tariff reduction commitments, and preservation of existing preferences.[40]

In 2003, about 50 LDCs among which 31 are GATT/WTO members, accounted for less than 1 per cent of global trade in goods and services, reflecting a continuing decline in the LDCs' share of global trade.[41] Zambia, therefore, has an extremely low share of the global trade, as shall be illustrated in the following analysis.

Zambia's main exports are copper and cobalt. In 1996, copper and cobalt exports in total provided US$761 million in export earnings.[42] Further, it is worth mentioning that since independence in 1964, Zambia has seen a huge expansion of non-traditional exports (NTEs) such as sugar, cotton, copper rods, textiles, cut flowers, gemstones, and cement.

The change of regime in 1991 (from one party participatory democracy to multiparty democracy) was followed by major structural changes to the extent that the private sector now dominates productive economic activity, making Zambia one of the most open economies in Africa.

There is, however, consensus in the economic literature that the performance of Zambia's export sector has been quite poor. Zambia's share in global trade declined from 0.038 per cent to 0.014 per cent between 1990 and 2003.[43] This decline is mainly attributed to the falling copper prices on the world market. The mining sector accounts for about 80 per cent of Zambia's export revenues, so that when the prices on the world market are soaring there is a huge positive effect on the economy and the converse is true. The falling price of copper, therefore, means there is potential for a huge balance of payment deficit. The other reason for the decline is the lack of technological capacity, which results in poor and low productivity. 21 per cent of Zambia's manufacturing industry is predominated by Manual Hand Driven Tools, 33 per cent is a combination of both Manual and Electrical Power

[40] Available at: **http://www.odi.org.uk/resources/.** (accessed on 15/01/09)
[41] WTO LDC GROUP; Ref: WTO/LDC/Issues. Available at: **http://www.wto.org/**. (accessed on 12/08/08)
[42] See Zambia and International trade. Available at: **http://www.nationsencyyclopedia.com/economies/africa/zambia/**. (accessed on 12/01/09)
[43] Available at: **http://www.integratedframework.org/**. (accessed on 16/01/09)

Driven Tools while 37 per cent accounts for Electrical Power Driven Machinery, and only 9 per cent constitutes highly advanced computer aided production machinery.[44]

Evidently, the lack of technology has resulted in low and poor production and, therefore, Zambia's manufactured products are of very low quality and lack competitiveness which inevitably leads to a huge loss of trade opportunity for Zambia.

Consequently, Zambia's lack of technological capacity as well as its dependency on few export commodities has resulted in her failure to take advantage of the trade opportunities created since the establishment of the GATT/WTO.

Further, the United Nations Conference on Trade and Development (UNCTAD)[45] observes that Zambia's export of goods and services seriously declined from 30.6 per cent in 2003 to 19.8 per cent in 2004. The poor performance is as a result of problems of geographical remoteness and high transport costs in international trade transactions.

This is compounded by the fact that Zambia is a landlocked country. Nevertheless, Zambia's main goal is the integration of her economy into the global trading system in a way that would enable her to reap more benefits from international trade.

However, for that to be attained, Zambia needs to mobilize investments on a massive scale to strengthen local productive capacities and to modernize her infrastructure bringing it in tandem with global trends.

This shall be examined in detail in the next discussion which looks at the major constraints developing and least developed countries face in their participation in the multilateral trading system.

Generally, LDCs, Zambia inclusive, have articulated their interests in in relation to the Non-agricultural Market Access (NAMA) negotiations at the GATT/WTO or the Doha Round through the African LDC Group and the ACP Group. For example, these groups have been pushing for Duty Free and Quota Free (DFQF) access to export markets and flexible rules of origin.[46] They have also taken a strong position on the issue of erosion of preferences.

---

[44] See The Final Report of the Ministry of Commerce, Trade and Industry Zambia, (June 2007), at 37

[45] See Investment Policy Review; UNCTAD (2006), Zambia United Nations

[46] See Dr. Kessie E, Basic Principles of the WTO Decision Making Process-Lecture presented at Western Cape University Republic of South Africa (4-6 August 2008)

Be that as it may, Zambia's involvement in the NAMA negotiations at the GATT/WTO or the Doha Round has been limited as it is not a key exporter of manufactured products. Regarding its principal exports, copper and cobalt, these do not face tariffs.[47]

It is observed here that Zambia is losing out on this trade opportunity as a result of its lack of technical capacity, both human and financial resources to process copper and cobalt into finished products and thereby add to its list of exports, manufactured products. It is not in dispute that efficient mining calls for some measure of investment in energy and mining equipment. Zambia's mining industry is faced with high energy costs and lack of proper mining equipment. Most mines have outdated equipment, which have often resulted in fatal accidents in the copper mines,[48] circumstances that have not helped the industry, and, therefore, Zambia's chances of participating in the NAMA.

In terms of trade in services, Zambia's share of the services sector in exports is relatively low. [49] The major services exports are tourism, power and temporary movement of people in sectors such as health. The importance of services in exports has not been recognized due to the lack of both human and financial resources as well as technological capacity.

According to the GATT/WTO trade statistics,[50] Zambia only owned about 0.03 per cent of the global trade share in 2007 and since the GATT/WTO budget contribution is established according to a formula based on a country's share of international trade,[51] Zambia is said to have only contributed 0.015 per cent to the GATT/WTO budget in 2007. In 2005, Zambia made a contribution of about 0.016 per cent.[52] During the month of November 2008, Zambia recorded a trade deficit valued at K 337.2 billion. This means that the country exported less in November 2008 than it imported in value terms.Clearly, the country's share of international trade has continued to decline.

Zambia faces enormous constraints in so far as its participation in the multilateral trading system is concerned. The Zambian Ministry of Commerce, Trade and Industry which is

[47] See **http://www.odi.org.uk/resources/**. (accessed on 13/01/09)
[48] Available at: **http://www.minesandcommunities.org/**. (accessed on 17 December, 2008)
[49] Ibid.
[50] Available at: **http://www.wto.org/en/. (**accessed on 07/09/08)
[51] WTO Annual Report2007-Opcit
[52] WTO Annual Report (2005). Available at: **http://www.wto.org/en/. (** accessed on 11/01/09)

responsible for conducting trade policy, for instance, faces serious (human) resource constraints, in particular at the technical level.[53] That is, Zambia has inadequate trade negotiation teams, in terms of skills mix, size and administrative support. As a result, Zambia is often in a weak position to negotiate with well-serviced missions. As such Zambia needs to build the capacity of its trade negotiation teams to participate effectively in international trade fora.

The global economic downturn and the subsequent, and/or resultant sharp decline in the world copper prices has had a telling effect on the operations of the mining sector as production costs have gone up leading to a growing unrest in the mines as a result of layoffs; mining companies have been forced into adopting cost serving measures. The net effect, undoubtedly, has been felt by the entire economy to the extent that Zambia is slowly moving towards economic diversification.[54]

However, economic diversification can only be attained with adequate availability of human and financial resources as well as technological capacity.

There is therefore, an urgent need for enhanced technical assistance to enable LDC members like Zambia to harness the potential benefits of WTO membership as a tool for promoting human development by addressing supply-side constraints and export diversification.
In this regard, initiatives provided under the multilateral trading system should be highly utilized in enhancing a country's economic performance and its trade capacity.
Unless these trade capacity inadequacies are addressed, there will be no equitable integration of LDCs like Zambia in to the multilateral trading system.

[53] Ibid.
[54] Investment Policy Review: UNCTAD-opcit.

WHAT ARE THE CAUSES OF THE TRADE CAPACITY CONSTRAINTS KENYA AND ZAMBIA ARE FACING?

1.2.1 THE EXPANDING SCOPE OF THE GATT/WTO OBJECTIVES

It is evident that trade negotiations and agreements have become regular features of the world economy and are slowly encompassing aspects of economic and social activities that were previously not considered part of the responsibilities of the multilateral trading system. In the early years of the GATT, market access was considered the prime objective of the multilateral trading system. Today, the scope has broadened to include such issues as intellectual property rights, development concerns, sanitary and phytosanitary regulations as well as technical barriers to trade.[55] For example, intellectual property is one of the new complex and somehow tricky issues. This area presents resource and research capacity constraints, in which many developing countries, especially Kenya, lack capacity for analysis and for turning such analysis into sound negotiating positions and opportunities.

It is submitted that the fact that negotiations have increased in scope has serious implications for the ability of developing countries like Kenya and LDCs like Zambia, to adapt to the trading system. It has also increased the challenges and constraints these countries face in a bid to cope with the enormous resource demands of the negotiations.

Undoubtedly, the complexity of the issues and the number of meetings and obligations in the GATT/WTO has multiplied significantly. In this regard, there is a need for additional institutional capacity in member governments both for a more effective representation in Geneva and home capitals.

1.2.2 INSTITUTIONAL WEAKNESSES

For many developing countries and LDCs institutional weaknesses are the major constraints in both meeting their obligations under the GATT/WTO and participating effectively in the

[55] See Osakwe P.N, Economic and Statistical Analyses of Trade Capacity Building in Sub Saharan Africa. Available at: **http://www.uneca.org/ATPC/**. (accessed on 15/01/09)

organizational and representation of their interests.[56] Competent and experienced trade officials and negotiators are scarce – one of the many signs of institutional weakness.

The Trade Ministries of most developing countries and LDCs are inadequately staffed, usually with a few people having responsibility not only for multilateral trade relations but also bilateral trade relations. They are overburdened and cannot cope with concurrent bilateral, regional and multilateral trade negotiations as well as monitoring the implementation of existing commitments. Most of them are not trained in international trade law making it difficult for them to understand the mechanics of the GATT/WTO issues.[57]

A further weakness is the lack of timely access to information and resources on trade issues. This is compounded by the fact that libraries, research institutes, and government departments in these countries are poorly financed and equipped, if at all, to provide resources on trade issues.

Another factor that makes it difficult for these countries to be active in the negotiations is the general lack of analytical and research skills necessary to assess the impact of different proposals and agreements on their economies.[58]

Kenya only has 4 members staff in the mission in Geneva accredited to the GATT/WTO.[59] In light of the considerable complexity of WTO rules and of the WTO institutional structure, the 4 trade officials cannot possibly follow all WTO developments. It has been estimated that there are over seventy different WTO councils, committees, working parties, and other groupings, involving over 2,800 meetings each year.[60] Unlike the US and EC, most developing countries cannot afford to fly in officials from the capital for specific WTO meetings. [61]

[56] See **http://www.worldbank.org/**. (accessed on 15/01/09)
[57] Ibid.
[58] See Patrick O, Trade Capacity Building in Africa: Issues and Challenges, a Presentation for UN Economic Commission for Africa. Available at: **http://www.oecd.org/**. (accessed on 11/08/08)
[59] See **http://www.tradeandindustry.go.ke/**. (accessed on 12/12/08)
[60] See file **http://www.worldtradelaw.net/articles/shafferdc/**. (accessed on 12/12/08)
[61] Ibid.

China on the other hand has 70 staff members in their Geneva mission working on trade issues alone, and this provides a level of technical and negotiating expertise that even western countries would envy.[62]

South Africa and India have equally accumulated considerable trade-negotiating experience dating back to the Uruguay Round. These countries have high-profile permanent representatives to the GATT/WTO and well-staffed Geneva missions. They are active in GATT/WTO-committee work, negotiations and dispute settlement. In short, they are reasonably well-integrated into the GATT/WTO,[63] and can hold their own in current and future trade negotiations.

However, many developing countries and LDCs like Zambia, do not maintain official representatives resident in Geneva, but instead use their representatives in other European capitals to cover GATT/WTO matters. They usually use their missions to the EU in Brussels,[64] which, it is submitted, provides fewer opportunities for engaging specialized expertise in trade matters.

1.2.3 BUDGET CONSTRAINTS

In 2001, the shortfall in Zambia's national budget grew to 8 per cent, far above the 0.75 per cent that had been forecast. In 2008, 24 per cent of the national budget was externally financed.[65]

In 2007 the Zambian government spent 90 per cent of the projected expenditures on external debt service.[66] Poverty levels in Zambia remain high, especially in rural areas, where 80 per cent of the population is poor.[67] This is further compounded by the increase in HIV and AIDS cases. The high prevalence of HIV and AIDS has resulted in huge losses in terms of human capital, which has seriously affected the already low levels of productivity.

---

[62] See **http://www.newnt.org/features**. (accessed on 12/12/08)
[63] Michalopoulos C, Developing Countries and the WTO, at 171.
[64] Kessie E, The participation of Developing countries in GATT/WTO-Lecture presented at the University of the Western Cape, (4-6 August 2008).
[65] See **http://www.roundtableafrica.net/media/.** (accessed on 15/01/09)
[66] Ibid.
[67] See **http://www.sarpn.org.za/documents/.** (accessed on 15/01/09)

As for Kenya, the budgets of the Moi era (1978–2002) carried increasingly worrisome deficits, and the Kibaki government's first budget for fiscal year (FY) 2004 was similarly unbalanced. In 2006 Kenya's revenues totaled US$4.448 billion, while its estimated expenditures totaled US$5.377 billion.[68] Kenya has equally been grappling with high poverty levels as well as HIV and AIDS.[69]

Clearly, it is observed and submitted that the two countries are unlikely to fulfil commitments to the multilateral trading system, or exercise the rights of WTO membership, without jeopardizing important development goals. The implementation of multilateral and regional trade agreements often requires substantial investments in infrastructure and human resource development. It also requires institutional changes and the establishment of systems of checks and balances. With very limited domestic resources, Kenya and Zambia need external assistance to be able to implement these agreements without creating other development problems.

In the absence of external resources, the funds will have to be diverted from other pressing domestic projects thereby putting the key development priorities of these countries at risk.

1.2.4 LACK OF INFLUENCE IN THE MULTILATERAL TRADING SYSTEM

Although developing countries make up three-fourths of WTO membership[70] and by their vote can in theory influence the agenda and outcome of trade negotiations, they have never used this to their advantage. Most developing country economies are in one way or another dependent on the U.S, the EU, or Japan in terms of imports, exports, aid, and security, among others. Any obstruction of a consensus at the WTO might threaten the overall well-being and security of dissenting developing nations.

As earlier alluded to, developing countries like Kenya and LDCs like Zambia, have fewer human and technical resources. Many cannot cope with the 40-50 meetings held in Geneva each week.[71]

---

[68] See **http://en.wikipedia.org/wiki/Economy_of_Kenya.** (on 13/01/09)
[69] Ibid.
[70] See WTO and Developing countries. Available at: **http://www.fpif.org/**. (accessed on 07/08/08)
[71] Ibid.

Consequently, they often enter negotiations less prepared than their developed country counterparts. In this regard, these countries are not in a position to negotiate effectively on trade issues that are of key interest to them.

Kenya and Zambia do not have much influence in the multilateral trading system as a result of being small both in economic size and political power. They jointly account for less than 1 percent of the WTO annual budget. Consequently, they are typically not in a position to determine which issues should or should not be on the negotiation agenda.

1.2.5 STRINGENT RULES OF ORIGIN

Rules of origin are the laws, regulations and administrative guidelines that governments use to determine an imported product's country of origin. This is not always an easy matter when the raw materials, manufacturing, processing or assembly of a product can be provided in several different countries. [72] Rules of origin have many applications for example in setting duty rates (including anti-dumping and countervailing duties), granting tariff preferences, administering government procurement policies and applying safeguards.

However, stringent rules of origin have been used increasingly in recent years for trade restricting purposes.[73] As shall be illustrated in Chapter Two, rules of origin have frequently been used in the context of anti-dumping investigations. At other times, the issue has been quota eligibility, particularly for textiles, apparel, and steel products. As production has increasingly become globalized, rules of origin have increasingly become an effective protectionist weapon.

Kenya has on many occasions failed to access market for her apparel exports to the European Union (EU) due to the fact that certain conditions and requirements were not met.[74] In order to enjoy duty free entry into the EU, the rules of origin in this case require the two processing stages, that is, the processing of yarn into fabric weaving; and fabric into apparel assembly must take place in Kenya. In addition to these requirements, there are a number of other customs requirements that need to be satisfied. These include the fact that Kenya needs to show that it has an effective visa system and enforcement procedures to

[72] See **http://tcc.export.gov/tradeagreements/**. (accessed on 20/01/09)
[73] See Palmeter D, The WTO as a Legal System; Essays on International Trade Law and Policy, at 158.
[74] See **http://www.africaaction.org/**. (accessed on 16/01/09)

prevent unlawful trans-shipment and the use of counterfeit documents.[75] Preferential market access is in this case costly due to capacity constraints. Kenya may not have both human and financial resources as well as the industrial capacity to satisfy some of the requirements.

The rules of origin in preferential market access for LDCs not only vary from one preferential scheme to another, but also tend to be quite stringent.[76] Varying rules of origins dependent on the export destination and stringent requirements reduce price advantages to LDCs that could have been created by preferential tariff margins, thus undermine the effectiveness of preferences.

Zambia has been accorded preferential market access through the various agreements under the GATT/WTO; she has not been able to take advantage of these opportunities because of the associated, often stringent, rules of origin. This is because some of the rules of origin are not realistic, flexible or at least able to match the industrial capacity of Zambia or LDCs generally.

As an LDC, Zambia has market access opportunities to the EU and regional markets; however, it faces several trade restrictions in both the EU and the regional markets.[77] There are quota restrictions on exports to the EU, for example, there are quota restrictions on sugar exports under Everything but Arms (EBA). There are also quota restrictions on exports of sugar to the SADC market.[78] The rules of origin are cumbersome and the conformity costs are very high in both EU and SADC markets.

A further case in point is that of copper and tobacco which must not only originate from Zambia but also attain a certain grade and quality by way of graduation. Capacity constraints may sometimes make the graduation of these exports unfeasible. This is because graduation entails processing these products to meet the required standards. And this is to take place in the country of origin. The cost of compliance in this case is extremely high, and indeed a major handicap for vulnerable economies.

---

[75] Ibid.

[76] See the UNCTAD seminar for the WTO LDC group. Available at: **http://www.unctad.org/**. (accessed on 14/01/09)

[77] See Ndulo M, Zambia and the Multilateral Trading System: The Impact of the WTO Agreements, Negotiations and Implementation.' Available at: **http://www.unctad.org/**. (accessed on 04/12/08)

[78] Ibid.

It cannot be over emphasised, that rules of origin should be flexible and match the industrial capacity of the country of origin. In addition, developing countries like Kenya and LDCs like Zambia are in need of "behind the border" support, aimed at improving their supply capacity through strengthening technical and institutional infrastructure in order to make better market access.

It is against this background that LDCs have been advancing the position that rules of origin need to be transparent and simplified in order to provide effective market access for products originating in LDCs.[79]

1.2.6 DEFICIENCIES IN INFRASTRUCTURE

The ability of developing countries and LDCs to pursue and specialize in critical productive sectors is limited by poorly developed infrastructure (e.g. transport, power and storage facilities) and support services (e.g. telecommunications, financial services and other technical support service institutions). The general lack of trade facilitation measures also limits their ability to compete in a globalising world.[80]

Zambia, in addition to being one of the poorest countries in the world is small and landlocked with long distances to its major ports. This transport cost factor adversely affects the cost of its exports. This makes efforts at making Zambia globally competitive even more difficult,[81] a situation that is so prevalent in most African countries, including South Africa, wherein strategic infrastructure, particularly ports infrastructure, is more than 500 Kilometres away from the sectors it serves. This, therefore, increases logistical costs, as companies have to spend exorbitant amounts of money on transport.[82]

Although Kenya is the most industrially developed country in East Africa, manufacturing still accounts for only 14 percent of its gross domestic product (GDP). This level of manufacturing GDP represents only a slight increase since the country's independence. Expansion of the sector after independence, initially rapid, has stagnated since the 1980s,

---

[79] See paragraph 47 of the Hong Kong Ministerial Declaration, (WT/MIN (05)/DEC). Available at: **http://www.wto.org/**. (accessed on 15/01/09

[80] Mabuza C & Plessis Du L; Free Trade and Competition Policy in Africa. Available at: **http://www.essa.org.za/**. (accessed on 12/01/09)

[81] See Zambia and the multilateral trading system. Available at: **http://www.unctad.org/**. (accessed on 15/01/09)

[82] Mabuza C, opcit.

hampered by shortages in hydroelectric power, high energy costs, dilapidated transport infrastructure.[83]

According to the 2004 United Nations Commission for Africa (UNECA) Report,[84] the freight cost as a percentage of total import value was 13 per cent for Africa in 2000 compared to 8.8 per cent for developing countries and 5.2 per cent for industrial countries. At the sub regional level, the freight cost for West Africa as a percentage of total import value was 14 per cent while that for East and Southern Africa, including the Indian Ocean region, was 15.2 per cent. Undoubtedly, doing business is expensive in Africa, partly due to transportation constraints.[85]

1.2.7 HIV/AIDS AND CONFLICTS AS HINDRANCES TO CAPACITY

Sub Saharan Africa is currently facing many challenges, but the main challenges are the high poverty levels, HIV and AIDS, food security, corruption and lastly the increase of conflict.[86]

HIV and AIDS and conflict have adversely affected the development of capacity for the promotion of trade and investment in Africa. Both factors are threatening the sustainable formation of human capital and the growth of a qualified and healthy labour force.

Zambia has one of worst pandemics (HIV and AIDS) in the world, with an estimated 20 per cent of the adult population being HIV-positive. Life expectancy is plummeting, with the average Zambian lifespan dropping from 54 years to 37 years.[87]

Consequently, the HIV and AIDS pandemic in Zambia seriously threatens and undermines the country's prospects for sustainable economic development as it depletes the country's most educated, energetic, and productive population.

[83] See **http://en.wikipedia.org/wiki/economyofkenya/**. (accessed on 15/01/09)
[84] See **http://www.uneca.org/. (**accessed on 14/01/09)
[85] Ibid.
[86] See The Main Challenges facing Sub Saharan Africa. Available at: **http://www.changedesigns.co.za/**. (accessed on 05/09/09)
[87] See HIV/AIDS in Zambia. Available at: **http://www.medguide.org.zm/**. (accessed on 12/12/08

Conflicts and political instability have also been responsible for the destruction of physical infrastructure in Africa. For instance, after the general elections in 2007, Kenya went through serious economic challenges. The post-election violence saw more than 1,000 people killed and over 300,000 people were internally displaced, while billions of shillings worth of property was burnt or looted. The loss for the economy was over Ksh 100 billion (close to US$1.5 billion).[88]

There is, therefore, no doubt that the loss of labour on the magnitude associated with conflicts and HIV and AIDS in Africa have serious implications on the economic growth and development of the continent.

1.2.8 TRADE POLICY CHALLENGES

The weak participation of developing countries and LDCs in the WTO is largely a reflection and extension of policy making deficits at home. 'Most developing countries suffer from poor leadership, misguided policies (not least continuing protectionism) and basic institutional defects (such as corruption and the weak enforcement of property rights and contracts). Related to this, although insufficiently appreciated, is their lack of logistical wherewithal – the administrative capacity and expertise to deliver and sustain sound, credible trade policies.' [89]

A large number of African countries, however rich in tradable natural resources, have weak capacities in the design of effective development policies in the area of trade and investments.[90] In the case where trade and investment policies have been developed, they are inconsistent with the overall national growth and development strategy.

International trade has a vital role to play in helping developing countries and transition economies to boost their economic growth and generate the resources necessary for reducing poverty. A good policy environment is a key requirement for trade development, and it can also help ensure that the gains from trade are distributed equitably. But many poor countries need help to build their institutional capacity to address these policy challenges; to participate effectively in the WTO, in order to exploit the opportunities created through

[88] See **http://www.mfa.go.ke/**. (accessed on 19/12/08)
[89] See **http://www.lse.ac.uk/collections/internationaltradepolicyunit/**. (accessed on 16/01/09)
[90] See Sako S, Capacity Building for the promotion of Trade and Investment in Africa, at 4.

globalisation and the continuing trend towards trade liberalisation and regional economic integration.[91]

Like other developing countries, Kenya also lacks capacity in the formulation of trade policy,[92] and as such, still heavily depends on on a few agricultural exports that are vulnerable to world price fluctuations.

Access to information on trade issues is essential for effective policy-making as well as to exploit new opportunities arising from the multilateral trading system.[93] Recent advances in information and communication technologies (ICTs) have made it relatively easier to access and exchange information between people.[94] However, exploiting the potential of ICTs requires access to computers and telecommunications equipment which are costly and hence not readily available to countries like Kenya and Zambia.

1.2.9 LACK OF CAPACITY TO WITHSTAND EXTERNAL SHOCKS

This vulnerability to external shock is directly linked to developing countries and LDCs' failure to diversify their productive base and export structure as illustrated above. In the event of declining demand for the few export commodities, as in the case of copper in Zambia, these countries experience macroeconomic shocks, including foreign exchange constraints and high inflation and exchange rates; this is the situation in Zambia with the copper prices currently declining on the international market.

Developing countries and LDCs need to develop their capacity to anticipate economic shocks as they seek to join the world economy. Opening up to forces of global competition can bring with it significant social and economic dislocations to certain productive sectors, affecting rural farmers, infant industries, small businesses, among others.

A case in point is the unemployment of garment and textile workers in Kenya as a result of the expiration of the Multi-Fibre Agreement (MFA) in early 2005.[95]

---

91 Ibid.
92 See **http://www.ppl.nl/**. (accessed on 12/01/09)
93 See Osakwe opcit.
94 Ibid.
95 See Kamau P opcit.

An adequate macroeconomic framework in terms of monetary, budgetary and financial policies and a comprehensive development strategy are key driving forces in the expansion of trade and investment.

1.2.10 SANITARY AND PHYTOSANITARY MEASURES (SPS) AND STANDARDS

Many developing countries have argued that their access to developed country markets is denied by high costs associated with meeting health and technical standards.[96]

Developing countries and LDCs face serious challenges in meeting the SPS and Standards imposed by developed countries on agricultural imports.[97] These SPS measures are technically complex and so difficult as well as costly to meet by exporters in countries like Kenya and Zambia.

African countries do often complain about their exports being routinely subject to arbitrary sanitary and phytosanitary measures, unjustified technical regulations and standards and overly stringent rules of origin. More importantly, should the barriers to their exports remain, they would eventually find it difficult to increase and diversify their exports. There are several instances where barriers have been erected against Kenya's exports of fish and fish products in key markets.[98] For example, importing developed countries frequently require guarantees that the fish exports are derived from pest or disease-free areas, that minimum hygiene standards have been followed during processing, and that the fish is free of contaminants or residues.

In this case, Kenya as an exporting country must have the capacity to meet these requirements, and undertake the necessary conformity checks in order to ensure compliance. Sometimes this may call for the need to train farmers, and therefore, a cost on the Kenyan economy.

Despite the European Union's 'Everything but Arms' market access initiative for least developed countries such as Zambia, SPS-related barriers persist. Zambia's horticultural producers have often times complained about the strict SPS requirements in the developed

[96] See **http://www.imf.org/external/pubs/**. (accessed on 13/01/09)
[97] WTO LDC GROUP; Ref: WTO/LDC/Issues. Available at **http://www.wto.org/**.(accessed on 12/08/08)
[98] Ibid.

markets. These producers lament that the limited infrastructure to conduct tests and fulfill their SPS requirements has added to the burden.[99]

That is, the lack of appropriate technology to adjust to and comply with SPS measures necessary to achieve the levels of SPS requirements in foreign markets. In addition, there is limited capacity to develop standards based on science and conduct risk assessment.[100] Consequently, Zambia's horticultural industry has not benefitted much from the world market share.

There is, therefore, a need for technical and financial assistance to enhance the technical capacities of these countries to handle issues relating to SPS as well as to provide relevant scientific and technical information, necessary for compliance.

1.2.11 GOOD GOVERNANCE

The United Nations Development Programme (UNDP) defines governance as 'the exercise of political, economic and administrative authority to manage a nation's affairs. It is the complex mechanisms, processes, relationships and institutions through which citizens and groups articulate their interests, exercise their rights and obligations, and mediate their differences.'[101]

Further, 'Good governance has been defined as the presence of: General adherence to the rule of law, transparency, predictability, and accountability in government decision making, decision-making that consistently achieves effective and efficient outcomes for society, decision-making processes that consistently allow for public participation, responsiveness, consensus orientation, equity, and inclusiveness.'[102]

From these definitions, good governance entails; (1) checks on executive power, effective and informed legislatures, clear lines of accountability from political leaders down through the bureaucracy; (2) an open political system of law which encourages an active and vigilant civil society whose interests are represented within accountable government structures and

[99] See presentation by Zambia at a special meeting on SPS. Available at: **http://www.ipfsaph.org/**. (accessed on 20/01/09)
[100] Ibid.
[101] See **http://www.undp.org/governance/**. (accessed on 19/01/09)
[102] See **http://siteresources.worldbank.org/**. (accessed on 12/01/09)

which ensures that public offices are based on law and consent; (3) consistent, transparent rules for transactions that are necessary to modern economic and social development; (4) a professionally competent, capable and honest public service which operates within an accountable, rule governed framework and in which the principles of merit and the public interest are paramount; (5) the capacity to undertake sound fiscal planning, expenditure and economic management and system of financial accountability and evaluation of public sector activities; and (6) attention not only to central government institutions and processes but also to the attributes and capacities of sub-national and local government authorities and to the issues of political devolution and administrative decentralization.[103]

It can be said in no uncertain terms that good governance is the foundation of an effective trade capacity building for developing countries and LDCs. Poor governance on the other hand is a pathology that must be avoided, as it undermines all efforts to build both human and institutional capacity.

For instance, poor governance and corruption have had a negative impact, making it expensive to do business in Kenya.[104] According to Transparency International,[105] Kenya ranks among the world's half-dozen most corrupt countries. Bribery and fraud cost Kenya as much as US$1 billion a year. Twenty-three (23) percent living on less than US$1 per day pay up to 16 bribes a month, that is, two in every three encounters with public officials[106]

Corruption is deeply embedded in the political culture and poverty of many least developed countries (LDCs). For instance, in Zambia, regulatory bodies which include the Zambia Revenue Authority, the Energy Regulation Board, the Environmental Council of Zambia, Communication Authority, and Zambia Public Procurement Authority (formerly Zambia Tender Board)[107], among others, are particularly vulnerable to corruption as they have the power to make key decisions on profit-making activities. Corrupt regulatory bodies have thus dangerously hampered economic development in Zambia.

[103] See Mwenda K, 'Can Corruption and Good Governance be defined in Legal terms?)', (2005) Vol 1, *Journal of Global Change and Governance, at 4*
[104] See **http://en.wikipedia.org/wiki/economyofkenya/**. (accessed on 16/12/08)
[105] Ibid.
[106] Ibid.
[107] The Zambia Tender Board was abolished following the repeal of the Zambia Tender Board Act and enactment of the Zambia Public Procurement Act No. 12 of 2008

In 2006 the Government of the Republic of Zambia constituted a five institution committee (made up of the Anti-Corruption Commission, Governance Development Unit, Transparency International Zambia, the Cabinet Office and an Independent Consultant) to develop the National Corruption Prevention Policy and Implementation Strategy.

However, these institutions have not been as effective and efficient due to the lack of both human and financial resources as well as technological capacity in their fight against corruption in Zambia.

The World Bank and the International Monetary Fund have promoted attempts to suppress corruption in LDCs through the criminal justice system, by catching and punishing illegal behavior. [108] However, as most LDC criminal justice systems lack both the capacity to find the culprits and the judges to condemn them, the process is largely futile.

1.2.12 CONCLUSION

This Chapter has attempted to examine the critical issues relating to the weak trade performance of developing countries and LDCs in the multilateral trading system (GATT/WTO). Drawing examples from Kenya and Zambia, the Chapter revealed the vulnerability and structural difficulties, by way of constraints that developing countries and LDCS face in their participation in the GATT/WTO.

It has been concluded so far that most of the constraints and challenges are linked to the expansion and complexity of the multilateral trading system, ineffective policies, dependence on a few products, supply-side constraints, difficulty in meeting product standards in key markets, stringent rules of origin in preferential schemes, weak governance, institutional deficiencies, poor information flow, HIV and AIDS, heavy external debt, and conflict, among others.

Further, this Chapter has concluded that if developing countries and LDCs are going to be integrated into the multilateral trading system in ways that bring genuine benefits to these countries, it is crucial for these countries to secure technical and financial assistance that will adequately address the supply-side constraints in ensuring trade capacity building. This

[108] See **http://www.id2l.org/insights/**. (accessed on 12/01/09)

will also help these countries to participate effectively, efficiently and constructively in the multilateral trading system.

CHAPTER TWO

2.1 CRITICAL ANALYSIS OF THE GATT/WTO PROVISIONS RELATING TO TRADE CAPACITY BUILDING

One of the major challenges facing the WTO is how to facilitate the fuller integration of developing countries into the multilateral trading system. Though the share of developing countries as a group in world trade has increased to 30 percent in recent years, the majority of developing countries, particularly the LDCs, have seen their share in world trade stagnate or even decline. [109]

Historically, special and differential treatment (S&D), technical cooperation, and capacity building have been at the forefront of the GATT/WTO's efforts to make smooth progress of the integration of developing countries into the multilateral trading system.

S&D treatment refers to provisions which give developing countries such special rights or which give developed countries the possibility to treat developing countries more favourably than other WTO Members.[110] The question of S&D for developing countries and LDCs has been engaging the attention of trade negotiators from the days of the 1947-48 Havana Conferences onwards.[111]

Recently, doubts have been expressed as to the effectiveness of S&D treatment in facilitating the full participation of developing countries in the multilateral trading system as well as to derive significant benefits from the trading system.

Under the GATT/WTO, developing countries have undertaken far-reaching obligations regarding trade liberalisation. However, as noted above, the GATT/WTO has failed to deliver a fair share of the benefits of increased international trade to developing countries and LDCs.

[109] See George Bermann, WTO Law and Developing Countries. Available at: **http://www.cup.cam.ac.uk/**. (accessed on 20/01/09)

[110] See WTO Training Manual, 2nd ed. (October, 2003). Available at: **http://www.wto.org/c**. (accessed on 10/12/08)

[111] See Michalopoulos, Trade and Development in the GATT and the WTO: The Role of Special and Differential Treatment for developing countries at 2.

The lack of active participation of most developing countries in the multilateral trading system and the global economy has been a source of concern to the WTO. This is reflected in the second intent to the preamble of the WTO Agreement, which relevantly provides that Members of the WTO "[**recognize]**…that there is need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development".[112] (*emphasis added*)

Correspondingly, the Director-General of the WTO, Mr. Pascal Lamy, has on numerous occasions expressed his personal commitment and that of the institution he heads to the integration of least-developed countries in the multilateral trading system and the global economy. In that context, he has been pushing for the abolition of all tariffs on products of export interest to these countries.[113]

But the question that begs for a response is, to what extent do the GATT/WTO Agreement provisions address capacity constraints developing country-members and LDCs face to ensure that these countries do indeed benefit fully from the multilateral trading system?
This Chapter provides a critical analysis of the GATT/WTO provisions that are meant to address the needs and interests of developing and least developed members in order to promote their integration into the multilateral trading system.

It is worthy of mention that there are 145 S&D treatment provisions spread across the different Multilateral Agreements on Trade in Goods; the General Agreement on Trade in Services; The Agreement on Trade-Related Aspects of Intellectual Property; the Understanding on Rules and Procedures Governing the Settlement of Disputes; and various Ministerial Decisions.[114] Of the 145 provisions, 107 were adopted at the conclusion of the Uruguay Round, and 22 apply to least developed country members only.[115]

These provisions can be divided into six categories as follows:

---

[112] See the Marrakech Agreement. Available at: **http://www.wto.org/**. (accessed on 18/12/08)
[113] See **http://www.wto.org/doc/.** (accessed on 09/12/08)
[114] See Committee on Trade and Development; WT/COMTD/W/77-25 October 2000. Available at **http://www.wto.org/-** accessed on 10/12/08
[115] Ibid.

(a) Provisions aimed at increasing the trade opportunities of developing-country members;

(b) Provisions under which WTO members should safeguard the interests of developing-country members, especially when they are using trade remedies;

(c) Flexibilities of commitments, of action, and use of policy instruments;

(d) Transitional time periods;

(e) Technical assistance; and

(f) Provisions relating to least-developed members.[116]

The provisions are analysed hereunder in the order they are presented in the list above.

2.1.1 PROVISIONS AIMED AT INCREASING THE TRADE OPPORTUNITIES OF DEVELOPING COUNTRY MEMBERS

There are a number of provisions in the various WTO Agreements that encourage WTO Members to adopt measures which would increase trade opportunities for developing countries, particularly the least-developed ones among them. Other provisions permit developed countries to grant preferences to developing countries with a view to stimulate their export industries.[117] Most of these provisions were carried over from GATT 1947 into GATT/WTO. Thus, Article XXXVII of GATT/WTO, for example, provides that:

"[t]he developed… [Members] shall to the fullest extent possible…accord high priority to the reduction and elimination of barriers to products currently or potentially of particular export interest to…developing countries".[118]

Evidently the language used in Article XXXVII of the GATT/WTO, suggests that, developed countries are not under a legal obligation to reduce or eliminate barriers to products of current or potential export interest to developing countries. The use of the words "shall to the fullest extent possible" indicates that the obligation on developed countries is qualified. If the drafters wanted the obligation to be mandatory, they would have dispensed with the words "to the fullest extent possible".

---

[116] See Committee on Trade and Development. Implementation of Special and Differential Treatment provisions in WTO Agreements and Decisions, Note by the WTO Secretariat, WT/COMTD/W/77/Rev.1,dated 21 September 2001, para.3

[117] See Dr. Kessie E, Basic Principles of the WTO Decision Making Process'-Lecture presented at the Western Cape University Republic of South Africa (4-6 August 2008).

[118] Ibid.

These provisions do not create legally enforceable obligations for developed countries but simply encourage developed countries to adopt positive measures which would result in increased trade opportunities for developing countries.

In this case Kenya, for example, cannot bring the United States (US) before the Dispute Settlement Unit (DSU), to challenge measures or conditions the US puts in place against Kenya's fish exports. Evidently, even if Kenya did, the US, may argue that, Kenya's trade opportunity interests were taken into account, but the measures are necessary to protect the health and safety of the US citizens.

For example, the appellate body in the *Hormones case*[119] held *inter alia* that; strict consumer protection measures may be justified in the case of substances which are per se dangerous and which generally, as a category constitute a major risk to human and animal health as well as to the environment. As such, where there is risk assessment based on science, and the measures in question are not arbitrary, the said measures are acceptable.
Article IV of the GATS also contains similar language to that used in Article XXXVII of GATT 1994. It relevantly provides that:

"[t]he increasing participation of developing country Members in world trade *shall be facilitated through negotiated specific commitments*…relating to…the strengthening of their domestic services capacity and its efficiency and competitiveness, *inter alia*, through access to technology on a commercial basis;…the improvement of their access to distribution channels and information networks; and…the liberalization of market access in sectors and modes of supply of export interest to them".[120](*emphasis added*)

There is nothing in the language used in Article IV of the GATS that evinces the intention that it should create justiciable rights for developing countries. It would therefore be inappropriate to coerce developed countries to grant preference treatment to developing countries such as Kenya.

[119]See WT/DS26R/USA.
[120] See WT/DS2/AB/R; adopted on 20 May 1996 by the Dispute Settlement Body; see DSR, 1996:1 at 16.

Perhaps, the only obligation it imposes on developed countries is to enter into negotiations with developing countries which specifically request for market access in certain specific sectors.

Apart from the fact that this right is generally available to all Members of the WTO under the GATS, it cannot be said with any certainty that negotiations would succeed in opening a developed country's market to services provided by the developing country. It is highly unlikely that an action under the dispute settlement mechanism of the WTO would succeed on the charge that negotiations failed to produce the results that were anticipated by a developing country.

2.1.2 PROVISIONS WHICH REQUIRE GATT/WTO MEMBERS TO SAFEGUARD THE INTERESTS OF DEVELOPING COUNTRY MEMBERS

The developed-country members are in this case required to consider the special situation of developing countries, including their industrial capacity, before imposing any measures which might affect their trade interests.

Article 15 of the Anti-Dumping Agreement provides that;

"Special regard **must** be given by the developed country Members to the special situation of developing country Members when considering the application of anti-dumping measures. The Agreement also stipulates that constructive remedies provided for by the Agreement **must** be explored before applying anti-dumping duties where they would affect the essential interests of developing country Members."

In spite of this provision, exports of developing countries like South Africa, India, China, Argentina, Brazil, Kenya, Egypt etc, have been facing more frequent anti-dumping and countervailing measures.[121]

The most affected sectors by the anti-dumping measures are the metals sector, the textiles sector and the chemicals sector.[122] In the period 1987-1997, developing countries were

[121] See **http://www.maf.library.go/**. (accessed on 12/01/09)

responsible for only 31 per cent of investigations opened. At the same time, they were affected by 62 per cent of the investigations.[123] The WTO Secretariat reported that during the period 1 January 2008-30 June 2008, the number of initiation of Anti-Dumping actions showed a sharp 39 per cent increase compared with the corresponding period in 2007. Products exported from China were the most frequently subject to the measures.[124]

Usually, this is done without any regard to the special situation of the affected developing country and the constructive remedies provided by the Ant-Dumping Agreement are not explored. In fact, developed countries use anti-dumping measures as weapons in order to deny market access to developing country products. For instance, the US steel industry is clamouring for protection against steel imports from India to ensure its survival.[125] As such, anti-dumping actions are being repeated on India's steel export products.[126]

Evidently, anti-dumping regulations have now been transformed from a legitimate shield against unfair practices to a distortionary intervention in the marketplace, with both projectionist and investment-diverting consequences.

The average number of countries routinely initiating anti-dumping cases has more than quadrupled, from five in the late 1980s to more than 20 in today's 21st century.[127]The frequent use of anti-dumping actions against exports from developing countries by major trading partners has become a matter of serious and growing concern. In some cases, benefits from trade liberalization have been considerably neutralized by the use of anti-dumping measures by developed countries. Kenya shares similar concerns with other developing countries.[128] Anti-dumping measures in the US have greatly undermined Kenya's agricultural sector, more specifically, the textile and clothing industry.[129] This has

[122] See The WTO Secretariat, reports surge in new anti-dumping investigations. Available at: **http://www.cera.org.ar/**. (accessed on 23/02/09)
[123] See Rahghvan C, Call for Revision of Anti-Dumping, Subsidy Rules. Available at: **http://www.twnside.org.sg/**. (accessed on 23/02/09)
[124] See The WTO Secretariat, reports surge in new anti-dumping investigations. Available at: **http://www.cera.org.ar/**. (accessed on 23/02/09)
[125] See Venu S, Anti-dumping: Trade remedy or threat? Available at: **http://thehindubusinessline.com/**. (accessed on 23/02/09)
[126] Ibid.
[127] Venu S, ibid.
[128] Ibid.
[129] See Mwega, Kenya's Agricultural Sector. Available at: **http://www.uneca.org/**. (accessed on 16/12/08)

basically created instability and unpredictability in the market which militates against GATT/WTO basic principle of market access and predictability.

The EU is the second most frequent user of these measures, behind the United States, but some 40% of the anti-dumping investigations initiated by the EU are terminated without measures being taken.[130]

For example, goods of major export interest to Kenya such as leather, coffee, tea, fish and tropical fruits have not benefited much from the market share in developed countries as a result of anti-dumping actions against them. Since the expiry of the Agreement on Textiles and Clothing, (as noted in Chapter One of this Study), Kenya has had to face a wave of anti-dumping measures against her textile and clothing exports in the EU market.[131] In fact, the EU has long maintained restrictions on imports of textile and clothing products from a number of developing countries and transition economies.

However, the question that begs for an answer is, what exactly constitutes dumping?
If a company exports a product at a price lower than the price it normally charges on its own home market, it is said to be "dumping" the product.[132] Article 1 of the Agreement on the implementation of Article VI of the GATT/WTO, establishes the basic principle that a member may not impose an anti-dumping measure unless it determines, pursuant to an investigation conducted in conformity with the provisions of the Anti-Dumping (AD) Agreement, that there are dumped imports, material injury to a domestic industry, and a causal link between the dumped imports and the injury.

Article 2 of the AD Agreement contains substantive rules for the determination of dumping. Dumping is calculated on the basis of a fair comparison between normal value, that is, the price of the imported product in the ordinary course of trade in the country of origin or export, and export price or the price of the product in the country of import.

[130] See Anti-Dumping measures and developing countries. Available at: **http://www.wto.org/**. (accessed on 16/12/08)
[131] See the Impact of Anti-Dumping: Kenya's Experience. Available at: **http://www.unctad.org/**. (accessed on 15/01/09)
[132] See Vanroyeen F, The Agreement on the Implementation of Article VI of the GATT/WTO. Lecture presented at the University of the Western Cape South Africa, (29 October 2008).

Article 3 of the AD Agreement provides the basic requirement for determinations of injury. Thus, there must be an objective examination, based on positive evidence of the volume and price effects of dumped imports and the consequent impact of dumped imports on the domestic industry.

LDCs like Tanzania, Uganda, Zimbabwe and Zambia are dissatisfied with the anti-dumping rules as applied today by developed economies such as the US and the EU,[133] in this regard; they have submitted proposals to the WTO to bring in more disciplines to the anti-dumping rules. These LDCs are concerned about the arbitrary and artificial calculation of dumping margins. Many of them take the view that injury is determined without adequate causation analysis.

Article 12.3 of the Technical Barriers to Trade (TBT) Agreement provides that in the preparation and application of technical regulations, standards and conformity assessment procedures, members must take account of the special development, financial and trade needs of developing country members.

The major problem with Article 12.3 of the TBT Agreement is that the provision only imposes a duty on developed countries to consider what the impact of their measures would be on developing country members. The provision does not specify that developed members should refrain from implementing or withdraw their measures when it has been demonstrated by a developing country member that the measures in question would harm its trade interests. However, it is noted that, a duty to consider something cannot be equated with a duty to accept it.

For example, the majority of Kenya's manufacturers are in small and medium enterprises (SMEs)[134] without internet access and thus not covered in the electronic distribution of information, such as the WTO/TBT notifications as well as update bulletins. This being the case, non-compliance is inevitable. These are genuine capacity constraints meriting intervention of the developed members by way of refraining from implementing or withdrawing measures likely to harm the trade interests of developing members.

[133] See 'Still in the Dark'. Available at: **http://www.meti.go.jp/**. (accessed on 23/01/09)
[134] See WTO technical barriers to trade. Available at: **http://www.wto.org/kenya/**. (accessed on 23/0/09)

Zambia as an LDC is in no better position than Kenya; compliance with some of the TBT measures has not been and is not easy. This is so because information dissemination is inadequate, and as alluded to in Chapter One, Zambia currently faces infrastructural deficiencies and financial constraints, and in most cases compliance is expensive as the conditions and measures are rigid, complex and out of touch with the realities in the affected countries.

Article 10 (1) of the Sanitary and Phytosanitar (SPS) Agreement similarly provides that in the preparation and application of sanitary or phytosanitary measures, Members shall take account of the special needs of developing country Members, and in particular of the least-developed country Members.

According to the WTO classification[135] this provision contains an obligation of conduct as there is no defined target. It merely demands that prior to the application of sanitary measures the needs of developing countries have to be considered. It has been argued, however, that such an assessment of consequences hardly ever happens.[136]

For exporters from the developing countries and LDCs the health and hygiene standards of the industrialised countries present a high hurdle, and this is critical because these measures are closely linked to agricultural trade, a sector on which most developing countries and LDCs depend.

Very often, their products are rejected at the border because of sanitary reasons.[137]Kenyan Horticultural exports have on many occasions been threatened by '*Minimal Residual'* requirements in the EU. Kenya's Lake Victoria Fish industry struggles to access the EU market due to cases of cholera that have hit Kenya. Additionally, nuts, cereals and dried fruits, often face aflatoxin[138] regulations, and the estimated cost compliance is about US$670 million.[139] Clearly, exporting to the EU market has become extremely expensive as a result of Sanitary and Phytosanitary conditions.

[135] See Special and Differential Treatment. Available at: **http://www.wto.org/. (**accessed on 12/12/08)
[136] See Bossche P V, The Law and Policy of the World Trade Organisation; Texts, Cases and Materials, at 467.
[137] See **http://boell-latinoamerica.org/download_en/SDT_en.pdf. (** accessed on 16/09/08)
[138]This is a toxin produced by some moulds in crops, especially peanuts.
[139] See Andrew Mold, 'Preferential Agreements, Non-Tariff Barriers and Associated Market Access Issues.' Available at: **http://www.uneca.org/**. (accessed on 122/01/09)

In 2002, Zambia turned down food aid from the US because of the EU legislation[140] requiring food to be 99.9 per cent free of genetically modified elements (GM).[141] In this case Zambia feared losing the trade preferences enjoyed in the EU market.

Challenging some of these measures before the DSU is not feasible. Resorting to dispute settlement procedures has proved to be extremely expensive from the perspective of developing countries. It is regarded that this system is not as accessible to developing countries as it should be.[142] To bring a dispute to the WTO is an expensive and legally intensive process requiring expertise, which is lacking in most of the developing countries.

The other problem is that, Article 10 paragraph 1 of the SPS Agreement is drafted in such a way that non-compliance is difficult to prove. It is very tricky to disprove a claim by an importing developed country that development considerations had been taken in to account. Developing countries and LDCs, therefore, demand a more pointed version of Article 10, paragraph 1, saying that SPS measures be withdrawn as soon as more than one developing country is concerned.[143] If a measure is not withdrawn, technical assistance has to be provided in order to enable the exporting countries to comply with the standards of the importing country.

Again, Article 10 of the SPS Agreement does not compel developed countries to change the measures they put in place even though there is a possibility that those measures may have a negative impact on the interests of developing countries.

Now what happens where it is alleged that a developed country failed to consider the effects that its measures may have on developing countries before implementing a given set of measures?

[140] Controversy exists concerning the placement on the EU market of genetically modified organisms (GMOs) and products that may contain GMOs or GMO derivatives. Amendments to the legislation are under consideration to ensure compliance with WTO rulings. See **http://www.wto.org/**. (accessed on 0/02/09)

[141] Ibid.

[142] See Kessie E, The Dispute Settlement Unit: "Early Harvest". Available at: **http://www.unctad.org/**. (accessed on 19/01/09)

[143] See **http://boell-latinoamerica.org/**. (accessed on 16/09/08)

Technically the developed country involved may have breached the provisions of Article 10.1 in this case. However, it would be extremely difficult to positively prove a case that a developed county had not taken into account the interests of a developing country or developing countries before implementing its measures. This is because, a mere statement by a developed country that it had done so would be difficult to rebut.

There is also the issue of what a panel could do in such circumstances. By virtue of Article 19 of the DSU, a panel or the Appellate Body may recommend that "the Member concerned bring the measure into conformity with that agreement." Since the measure may be in conformity with the SPS Agreement, the only option open to a panel may be to recommend to the developed country to make a mutually satisfactory adjustment.[144]

Evidently, as a result of the above technicalities, the interests of developing country members of the GATT/WTO have not been adequately safeguarded as intended.

2.1.3 PROVISIONS PERMITTING DEVELOPING COUNTRIES TO ASSUME LESSER OBLIGATIONS

Under Article 15(2) of the Agreement on Agriculture, developed countries are required to reduce their tariffs by 36% over 6 years while developing countries are required to reduce by 24% over 10 years.[145]

Developing countries are required to undertake lesser commitments than their developed counterparts and are also given a longer time-frame to implement their obligations. According to this provision developing countries are required to make at least a 10 percent reduction on each tariff line, while developed countries are expected to make a minimum reduction of 15 percent on each tariff line.[146] With respect to trade-distorting domestic support measures, developing countries are expected to reduce such measures by 13.3 percent over 10 years, while developed countries are required to reduce theirs by 20 percent over ten years.[147] Regarding export subsidies, Article 15 obligates developing countries to

[144] See Kessie opcit.
[145] See Christopher S, The Future of Special and Differential Treatment for Developing Countries in the WTO, at 2.
[146] See **http://www.wto.org/**. (accessed on 17/09/08)
[147] Ibid.

reduce their value and volume by 24 percent and 14 percent, respectively over ten years, while developed countries are expected to reduce theirs by 21 percent and 36 percent, respectively. Least Developed Countries were exempted from making any reduction commitments.

It is clear that the above provisions in the Agriculture Agreement have legal force, in the sense that a developing country cannot be compelled by any other Member of the GATT/WTO to undertake more obligations than are actually provided for under the Agreement. On the other hand, it would be open to any developing country Member to challenge any developed country which does not meet its obligations under the Agreement.

The Subsidies Agreement also confers S&D treatment on developing countries such as Kenya but only to a limited extent. As for countries like Zambia, whose GDP per capita is less than $1000, they are exempted from the prohibition against export subsidies, provided that they do not attain export competitiveness in a particular product for two consecutive years.[148]

In this regard, S&D does not make any difference to these countries; this is because, in a number of developing countries, agriculture has been penalized, rather than, supported, by government policy. And where it is supported, the capacity of governments to provide such support through budgetary transfers is quite limited.[149] These countries are not in a position to provide subsidies to their farmers; they are resource strapped and in heavy debt.

Thus, what Kenya and Zambia desperately need is assistance that will genuinely enhance their competitiveness to participate effectively in the multilateral trading system.

According to Kenya's Minister of Agriculture Honourable William Ruto, subsidies, going by Kenya's experience, are quite costly, and the government cannot afford even to assist farmers with fertilizer subsidies without the assistance of the private sector.[150]

[148] Ibid.

[149] See Special and differential treatment of developing countries in agricultural trade. Available at: **http://www.fao.org/**. (accessed on 11/01/09)

[150] See Hughes D, Maximizing Fertilizers Benefits for Kenyan Farmers. Available at: **http://www.ids.ac.uk/gos/**. (accessed on 23/02/09)

2.1.4 PROVISIONS RELATING TO TRANSITIONAL TIME PERIODS

With the notable exception of the Anti-Dumping Agreement and the Pre-shipment Inspection Agreement, almost all the major WTO Agreements contain longer transitional periods for developing countries to comply with their obligations. The flexibility takes the form of an agreed delay, on the part of developing countries, of certain or all provisions of the agreement concerned.[151]

Under the Agreement on Agriculture, for example, developing countries were given 10 years to implement their obligations, while developed countries were given 6 years.[152] Under Article 65 of the TRIPS Agreement, least-developed countries, developing and developed countries were given respectively, 11 years, 5 years and 1 year to bring their legislation into conformity with WTO disciplines. A developing country which was not providing product patents under its legislation was given an additional five years to comply with its obligations under the Agreement.

The TRIMS Agreement gave least-developed countries, developing countries and developed countries 7 years, 5 years and 2 years, respectively after the coming into force of the WTO Agreement to phase out all their inconsistent trade-related investment measures.

It is noted that provisions falling under this grouping are legally enforceable in the sense that if a developing country is within the transitional period, it is, in principle, insulated from any actions that may be brought by a developed country. In *India - Patent Protection for Pharmaceutical and Agricultural Chemical Products*,[153] the issue was not whether India could avail itself of the provisions of Article 65 of the TRIPS Agreement, but whether it complied with the conditions specified in Article 70.8. As noted by the panel:

"A critical part of the deal struck was that developing countries that did not provide product patent protection for pharmaceuticals and agricultural chemicals were permitted to delay the introduction thereof for a period of ten years from the entry into force of the WTO Agreement. However, if they chose to do so, they were required to put in place a means by

---

[151] See Laird, Developing Countries and the Multilateral Trading System: Past and Present (1999), at 10. Also available at: **http://www.wto.org/**. (accessed on 13/12/08)

[152] See Article 15(2) of the Agreement on Agriculture

[153] See WT/DS50/R. Available at: **http://www.wto.org/**. (accessed on 13/12/08

which patent applications for such inventions could be filed so as to allow the preservation of their novelty and priority for the purposes of determining their eligibility for protection by a patent after the expiry of the transitional period."[154]

According to most developing countries, these provisions have resulted in very little benefits.[155] Even the binding S&D provisions have not provided meaningful differential treatment.

However, there is considerable difference among developing countries depending upon the level of development they have achieved. A number of developing countries, particularly in South-East Asia, have achieved substantial growth through export-led development strategies and increased their share in world merchandise trade. On the other hand, many developing countries, particularly Kenya, have experienced a declining share in the total value of world merchandise exports.

It is common place that among developing countries, there are some countries that need more attention. Therefore, the developing countries require more research work on different provisions of S&DT in order to rank these provisions according to the needs of these countries and their level of development.

Many developing countries, Kenya inclusive, have argued against the approach most S&D treatment take. That is, "one size fits all." For example, while the Trade-Related Aspects of Intellectual Property Rights (TRIPs) Agreement adopted extended implementation periods for developing countries and LDCs, these were not based upon any assessment of their capacity for implementation.[156] The extended periods were purely negotiated dates to which all parties could agree actively or passively.

The danger in this is that countries which are at different levels of development are likely to be grouped together. The developing country group, for example, includes China,

[154] Ibid.

[155] See Kessie E, The participation of Developing countries in GATT/WTO-Lecture presented at the University of the Western Cape, (4-6 August 2008).

[156] See Special and Differential Treatment. Available at: **http://www.iisd.org/**. (accessed on 23/01/09)

Argentina, and other Cairns Group members, whose agricultural needs are quite different from those of, say, Kenya or Mauritius.

2.1.5 PROVISIONS RELATING TO TECHNICAL ASSISTANCE

It is documented that eighty percent of the technical assistance comes from bilateral sources, fifteen percent from the World Bank and only less than five percent from WTO.[157]

However, a number of the GATT/WTO Agreements require the WTO or its developed Members to provide technical assistance to developing countries to enable them comply with their obligations under the various WTO Agreements and also to assist them to participate effectively in the multilateral trading system.

For instance, Article 9 of the Agreement on Sanitary and Phytosanitary Measures provides that:

> "Members *agree to facilitate* the provision of technical assistance to other Members, especially developing country Members, either bilaterally or through the appropriate international organizations. Such assistance may be, *inter alia*, in the areas of processing technologies, research and infrastructure, including for the purpose of seeking technical expertise, training and equipment to allow such countries to adjust to, and comply with, sanitary or phytosanitary measures necessary to achieve the appropriate level of sanitary or phytosanitary protection in their export markets"

The general understanding by some developing countries seem to be that this provision creates a legal obligation on developed members. Further, that failure by developed countries to provide targeted assistance in this area could merit a complaint under the DSU.[158]

However, a critical examination of the language used in this provision reveals that the provision is not legally enforceable.

---

[157] See Report of the Brainstorming Meeting on Special & Differential Treatment. Available at: **http://www.cuts-international.org/**. (accessed on 15/01/09)

[158] See Kessie opcit.

This is so because, the use of the words "agree to facilitate" and "shall consider" would seem to indicate that it was not intended to make the provision of technical assistance obligatory. In other words, it is simply up to a developed Member country to decide whether or not it is going to provide assistance to a particular developing country. The same applies to technical assistance provided by WTO and other multilateral institutions. The provision of technical assistance is usually dependent on the availability of funds. It is just a best endeavour clause, and does not therefore create justiciable rights for developing or least developed countries.

As illustrated in Chapter One, the major technical assistance requirement for developing countries like Kenya, and LDCs such as Zambia is the need to strengthen their negotiating capacity in WTO.

However, very limited resources are currently being spent on achieving this objective, whether through bilateral or multilateral technical assistance.[159] Therefore, evaluation of the availability, effectiveness, adequacy, scope and implementation of technical assistance urgently require careful and detailed consideration.

2.2 HAVE THESE PROVISIONS ADEQUATELY ADDRESSED THE TRADE CONSTRAINTS THAT DEVELOPING AND LEAST DEVELOPED COUNTRIES IN SUB-SAHARAN AFRICA ARE FACING?

The major issue is whether special and differential treatment has in any way facilitated the integration of developing and least developed countries into the multilateral trading system. As early as the 1980’s, doubt had arisen over the effectiveness of Special and Differential Treatment to promote trade and development.[160] One such critique was the Leutwiler Report[161] which stated *inter alia* that:

“… Developing countries receive special treatment in the GATT rules. But such special treatment is of limited value. Far greater emphasis should be placed on permitting and

[159] See Report of the Brainstorming Meeting on Special & Differential Treatment. Available at: **http://www.cuts-internationa/.org/**. (accessed on 23/01/09)
[160] See Fukasaku Kiichiro, at p.6
[161] Leutwiler Report, GATT 1985:44. The Leutwiler Report was a GATT 1985 Report which was commissioned in 1983 to address the 'crisis in the trading system.’ The report recommended 15 specific, immediate actions, with the above being just one of the recommendations of the Report.

encouraging developing countries to take advantage of their competitive strengths and on integrating them more fully into the trading system, with all the appropriate rights and responsibilities…"[162]

In addition to the above view market access has not improved as much as expected. Arguably, these measures have not succeeded in addressing fundamental inequities in the trading system. Developed countries have continued to protect their markets and distort global trade in key sectors, stifling the development prospects of developing countries.[163] This is so because for example, agricultural products, which are the primary exports of countries like Kenya, continue to face high protective tariffs, as do the classic footwear, clothing, textile and steel sectors.[164]

Kenya has had to face tariff peaks, sometimes well over 100 per cent, and this is in textile and clothing, foot wear and agriculture, the chief areas of export interest to not only Kenya but many other developing countries as well.[165]

There is also preponderance of views that most of the provisions on special and differential treatment are couched in hortatory language and do not create any enforceable obligations. And some scholars have argued that special and differential treatment has not worked in the past, and that the way forward is to let developing countries implement all the relevant GATT/WTO disciplines.[166]

However, this is not tenable because, as already noted, most developing countries and LDCs lack the capacity to carry out their obligations under the GATT/WTO. In this case, suffice to say genuine capacity building targeting specific and critical areas is what is more likely to help integrate these countries into the multilateral trading system.

---

[162] Ibid.
[163] See Hoekman B M and Evenett S J, Economic Development and Multilateral Trade Cooperation, (2006), at 213.
[164] According to Fukasaku, the tariff peaks exceeding 12% ad valorem are maintained by developed countries in sectors such as textiles and clothing and footwear.
[165] Ibid.
[166] See Kessie opcit.

Indeed some developing countries have argued that special and differential treatment would be more effective if they effectively address supply-side constraints which hinder the effective participation of these countries in the GATT/WTO.[167]

They agree that special and differential treatment to pursue import substitution policies has not helped them in the past and that what they are seeking now is better market access for products of current and potential export interest to them. They also want longer time-frames to implement their obligations, and improved and targeted technical assistance which would not only help them to comply with their WTO obligations, but also facilitate their effective participation in the multilateral trading system.[168]

Further, developing countries have also been concerned about the legal enforceability of special and differential provisions. They are of the view that since they form an integral part of the WTO Agreements, they should have the force of law and not be regarded as "best endeavours" clauses which can be flouted at will by developed country Members.[169] It would certainly be much better, if in the future, S & D provisions are clarified in terms of identifying which ones are legally enforceable. At the moment, and as demonstrated above much of the WTO provisions dealing with special and differential treatment could be said to be unenforceable, as they are expressed in imprecise and hortatory language.

Undoubtedly, it is inconceivable for most developing countries, especially those in Africa to challenge a developed country before the DSU. African countries have complained that because of their lack of expertise in GATT/WTO matters, high legal costs and other impediments, they have not been able to take full advantage of the dispute settlement mechanism[170]

[167] See Developing Countries and LDCs in the GATT/WTO. Available at: **http://www.unctad.org/-** accessed on 08/08/08
[168] Ibid.
[169] See Kessie opcit.
[170] See Ochieng and Majanja, "Sub-Saharan Africa and WTO Dispute Settlement: A Case Study of Kenya", at p.28. Available at: http://www.mladvocates.com

For example, there are several instances where barriers have been erected against Kenya's exports of fish and fish products in key markets, but Kenya has never seriously contemplated having recourse to the dispute settlement system to challenge the legality of some of these measures.[171]

Had Kenya overcome its hesitancy and invoked the dispute settlement system to challenge the legality of the SPS and TBT measures imposed on its products by the European Communities, arguably, it could have succeeded with respect to some of these measures which appeared not to have any solid scientific justification.[172]

Undoubtedly, recourse to dispute settlement by Kenya would not only have resulted in an increase in its exports, but more importantly sent an unmistakable signal to its trading partners that it would not hesitate to challenge any unfair barriers erected against its exports. If countries know that they can get away with illegal barriers, they may be tempted to impose such measures without rigorous analysis of whether or not a well-grounded case exists.

Another case in point is the C*otton* case,[173] where the four West African States (Benin, Burkina Faso, Chad and Mali), although overwhelmingly dependent on cotton, chose not to initiate an action against the United States over its cotton subsidies. Had Brazil not taken the decision to challenge the United States, the West African States would have suffered in silence and seen their market share in cotton erode further deepening poverty and entrenching their marginalisation in the trading system.[174]

It is argued in this Chapter that the greatest obstacle to the integration of African countries in the multilateral trading system is supply-side constraints and that on current evidence, the special and differential treatment provisions in the GATT/WTO Agreements have not adequately addressed this problem.

[171] Ibid.
[172] Ibid.
[173] See WT/DS 267/R 8 September 2004 and WT/DS 267/AB/R 3 March 2005, and see also Shahin M, WTO Dispute Settlement for a Middle-Income Developing Country: A case study of Egypt, at 10
[174] Ibid.

S&D treatment measures are certainly not enough in enhancing the trade capacity of developing countries and LDCs. It is, therefore, imperative that these countries be assisted in improving their capacity to negotiate better and to implement coherent trade policies in order to derive significant benefits from the trading system.

2.3 GATT/WTO TRADE CAPACITY BUILDING INITIATIVES: HOW EFFECTIVE ARE THEY IN ENHANCING THE TRADE CAPACITY OF THE DEVELOPING AND LEAST DEVELOPED MEMBERS OF THE GATT/WTO?

The transition from the GATT system, in which developing countries acted more in a 'defensive' or 'passive' role, represented a major turning point for these nations in which many commitments had to be taken for the first time.[175] In view of the obvious massive demands imposed upon these countries in relation to participation in the new international trade system, especially with regard to adjustment of national trade policies to match the standards of the GATT/WTO agreements, it soon became evident that the developing countries would need assistance with regard to their trade capacity to fully participate in the multilateral trading system.[176]

Capacity building for developing countries and LDCs, expresses itself in two areas:[177] (i) Institutional capacity for more effective participation in the multilateral trading system, i.e. lack of capacity with regard to the formulation and management of a 'dynamic trade policy and to meet the demands of participation in the GATT/WTO framework', and, (ii) Constraints in the supply-side of African countries as trading nations, which emanates from a decline in competitiveness of African economies.

African world trade capacity building can be analysed in terms of 'two waves of responses'[178] largely involving the three Geneva trade agencies, (the WTO, UNCTAD and the ITC), with certain bilateral donors and development agencies such as the United Nations Development programme (UNDP), the World Bank and IMF.[179]

---

[175] See Tussie D and Lengyel M F, Developing Countries; Turning Participation into Influence, at 485.
[176] See Luke D F, Trade-Related Capacity Building for enhanced African participation in the Global Economy, at 510.
[177] See Tussie and Lengyel, ibid, at 487
[178] See Luke D.F, opcit, at 509.
[179] Ibid.

As shall be shown later in this discussion, inter-agency cooperation with regard to trade-related capacity building has not been easy.

The ‘first wave’ of efforts at building international trade capacity involved two initiatives which began with the adoption of the Joint Integrated Technical Assistance Programme (JITAP) at the UNCTAD IX in South Africa in 1996.[180] The primary objective of this initiative was human resource development, institutional capacity building and the strengthening of the export supply capacity.[181]

The second was the Comprehensive and Integrated WTO Plan of Action for LDCs. This was adopted at the First WTO Ministerial Conference in Singapore in 1996, and it aimed at ‘closer cooperation between the WTO and other multilateral and bilateral agencies assisting LDCs in the area of trade.[182] This led to the launch of the IF in 1997. Under this initiative, beneficiary countries were required to conduct a needs assessment in relation to trade-related technical assistance.

Suffice it to mention here, that the JITAP initiative under the first wave of efforts had various deficiencies and as such was not effective, whereas the IF completely failed to take off.[183]

This Study will mainly focus on the second wave of efforts, aimed at mainstreaming trade as an integral part of overall development and poverty reduction. This is clearly recognised under Paragraph 38 of the Doha Ministerial Declaration of 2001, which provides that:

> ‘We confirm that technical cooperation and capacity building are core elements of the development dimension of the multilateral trading system, and we welcome and endorse the New Strategy for WTO Technical Cooperation for Capacity Building, Growth and Integration. We instruct the Secretariat, in coordination with other relevant agencies, to support domestic efforts for mainstreaming trade into

[180] See Luke ibid, at 511
[181] Ibid.
[182] Ibid.
[183] Ibid.

national plans for economic development and strategies for poverty reduction...'[184]

Inevitably, the aim of the 'second wave' of efforts is to fit developing countries' trade obligations within their development concerns, hence dubbing the Doha Round the 'Doha Development Agenda'.

Paragraph 1(d) of the Decision adopted by the General Council on 1 August 2004, states that:

> '[The] Council affirms that [Developing countries and low –income countries in transition], and in particular LDCs should be provided with enhanced Trade-Related Technical Assistance (TRATA) and capacity building, to increase their effective participation in the negotiations, to facilitate their implementation of WTO rules, and enable them to adjust and diversify their economies. In this context the Council welcomes and further encourages the improved coordination with other agencies, including under the Integrated Framework for TRATA for the LDCs (IF) and JITAP.'[185]

The GATT/WTO supports the building of trade-related capacity of African countries and facilitates their integration into the multilateral trading system, particularly through programmes like the Joint Integrated technical Assistance Programme (JITAP) and the Integrated Framework. Africa remains the core of WTO technical assistance activities.

As alluded to in the introduction to this Study, the core objectives of technical assistance are: human capacity building on trade policy issues; institutional capacity development for trade policy formulation, advocacy and negotiations; support for other inter-governmental organisations/multilateral agencies in addressing supply-side constraints; and, technical support to assist African countries in mainstreaming trade policy into macroeconomic and regulatory policy so that trade becomes a true engine for development.[186]

---

[184] See the Doha Ministerial Declaration of 2001. Available at: **http://www.wto.org/**. (accessed on 12/08/08)
[185] See WT/L/579. See also paragraph 5 of Annex D on Modalities for Negotiations on Trade Facilitation. Available at: **http://www.wto.org/**.
[186] See Bonaglia F. And Fukasaku K. opcit.

2.3.1 GATT/WTO TRADE-RELATED TECHNICAL ASSISTANCE ACTIVITIES

In 2007, out of a total of 457 trade-related technical assistance activities organised and executed by the GATT/WTO, 166 (representing 36.5 percent) benefited African countries.[187] The activities include, the 12 week Geneva-based training courses for government officials, the regional three-month trade policy courses, the Intensive Courses on Trade Negotiations Skills, the Doha Development Agenda Advanced Training courses,[188] as well as other specialised and introductory courses of shorter duration.

Additionally, GATT/WTO has arrangements with the African Development Bank (AfDB), the United Nations Economic Commission for Africa (UNECA), the University of Western Cape and the University of Pretoria for training African trade policy officials and negotiators, and assisting the process of institutional trade capacity building in African countries.

As shall be discussed in the next Chapter the GATT/WTO Secretariat extends invitations to the NEPAD Secretariat to participate in these trade policy courses.[189]

The question however, is will these trade capacity building initiatives help enhance the participation of individual developing and least developed countries in the multilateral trading system and facilitate their integration therein?

The following discussion examines the experiences of Kenya and Zambia and evaluates whether the GATT/WTO initiatives have been successful in enhancing the trade capacity of developing countries and LDCs to ensure the effective participation of these countries in the multilateral trading system.

2.3.2 AID FOR TRADE (AFT)

Trade experts have argued that, removing obstacles to trade is often not enough for countries to reap the benefits of trade liberalization, including the ones that will come as a

[187] See WTO technical assistance. Available at: **http://www.un.org/africa/**. (accessed on 15/01/09)
[188] See **http://www.wto.org/**. (accessed on 15/01/09)
[189] See Akokpari J et al (eds), The African Union and its Institutions, at 241

result of a successful conclusion of the on-going negotiations under the Doha Development Agenda.[190]

To fully benefit from further trade liberalisation, countries require the right domestic policy framework, institutional capacity and economic infrastructure to be in place. This is as much a reality in the North as it is in the South, in the East as well as in the West.

The Doha Ministerial Declaration made technical assistance and capacity building a key component of the development dimension of this Round. In December 2005, the Sixth Ministerial Conference in Hong Kong created a new WTO work programme on Aid-for-Trade.[191] This programme is meant to help developing countries, especially the least developed, build the trade capacity they need to take advantage of trade liberalization. They did this in the belief that this could contribute to achieving their development goals.

Paragraph 2 of the Doha Declaration states that:"…well targeted, sustainably financed technical assistance and capacity-building programmes have important roles to play."

Aid for Trade is part of the overall development aid (ODA), but with the specific objective of helping developing countries, in particular the least developed, to play an active role in the global trading system and to use trade as an instrument for growth and poverty alleviation.[192]

Aid for Trade is not a substitute for trade liberalisation, but a necessary and increasingly important complement thereof. It is firstly needed for trade policy and regulation, that is, building the capacity of developing countries to formulate trade policy and to help these countries to participate in negotiations as well as to implement agreements. Secondly, Aid for Trade is needed for economic infrastructure. This basically refers to investing in infrastructure such as roads, ports, telecommunications, energy networks, that are needed to link products to global markets.[193] Simply put, Aid for Trade is meant to facilitate effective trade capacity for developing countries.

[190] See First Global Aid for Trade Review-Geneva. Available at: **http://www.wto.org/.** (accessed on 07/08/08)
[191] See Aid For Trade. Available at: **http://www.wto.org/. (**accessed on 03/09/08)
[192] Ibid.
[193] Ibid.

In Sub-Saharan Africa, alone, the annual infrastructure needs are $17-22 billion a year, while spending is about $10 billion.[194] Clearly, most developing and least developed countries in Sub Saharan Africa cannot afford to meet such expenses. Kenya and Zambia for instance, may wish to direct the little resources available to other more pressing needs. These countries are still grappling with poverty as well as HIV and AIDS challenges.

The third area where Aid for Trade is needed is productive capacity building. This entails strengthening economic sectors from improved testing laboratories to better supply chains and eventually to increase competitiveness in export markets.[195]

And finally, adjustment assistance, as the name suggests, refers to the help provided with any transition costs from liberalization, preference erosion, loss of fiscal revenue, or declining terms of trade.[196]

2.3.2.1 KENYA'S EXPERIENCE WITH AID FOR TRADE

Kenya's cut flower sector has seen a growth rate of 35% annually over the last 15 years, partly because of Aid for Trade.[197] As a result, there have been investments in new cold storage and transportation facilities, improved cargo facilities at Nairobi Airport, more efficient air transportation and increased frequency of flights and of course technology transfers.

However, flower exporters still face major obstacles, including; inability to meet certain international standards, such as the SPS requirements for the maximum pesticide residue. Other obstacles include, deteriorating road and rail networks as well as backsliding on the competitiveness of air freight.[198]

From the foregoing, it is observed that if Kenya is to fully benefit from Aid for Trade there is need for support to invest in developing her human, institutional, physical and technological capacities**.**

---

[194] Ibid.
[195] Ibid.
[196] Ibid.
[197] See Aid for Trade. Available at: **http://www.agritrade.org/events/speeches/zambia/Setipa.pdf-accessed** on 12/01/09
[198] Ibid.

In addition, the majority of Kenya's poor gain their livelihoods from the agricultural sector and / or in small and medium enterprises (SMEs) and face a wide range of constraints to expanding production and trade.[199]

The majority of producers in Kenya's agricultural sector are thus small-scale and usually with limited inputs such as tools, technology and capital, which constrain their production. They also struggle to get their goods to the market due to poor road and transport facilities.
This has worsened following a decline in the proportion of both public and aid investment in this sector[200] and Aid for Trade needs to help reverse this decline and address these constraints if it is to promote agricultural development and the competitiveness of Kenya's agricultural exports on the world market.

Past experiences in Kenya indicate that, investments in trade related infrastructure have all too often focussed on the top end of the production chain, [201] that is, getting goods out to export markets. Whilst this is important it has all too often failed to support grassroots producers to be integrated into supply chains and stimulate export producers to use local inputs.

Aid for Trade needs to address this imbalance if it is to effectively enhance Kenya's trade capacity and thereby its participation in the multilateral trading system.
Aid for Trade has produced little result for Kenya mostly because of the lack of aid management skills and coordination, as well as insufficient planning by the government of Kenya. Suffice it to say that Kenya needs to improve and streamline the processes for planning, monitoring, coordinating, tracking and reporting on international aid flows and activities.

In this regard, there is a need to strengthen the capacity of institutions such as the National Monitoring and Evaluation Unit (under the Ministry of Planning and National Development of Kenya) which is charged with the function of monitoring and evaluation of foreign aid. In addition, the department of external resources under Kenya's Ministry of Finance is in need

[199] See Victor O Kenya's experience with Aid for Trade. Available at: **http://www.cuts-london.org/**. (accessed on 12/11/08)
[200] Ibid.
[201] Ibid.

of technical and financial support to better manage aid and private capital flows to maximize the benefits provided by Aid for Trade.

2.3.3 INTEGRATED FRAMEWORK/ENHANCED INTEGRATED FRAMEWORK (EIF)

"The Integrated Framework (IF) is an international initiative through which the International Monetary Fund (IMF), International Trade Centre (ITC), United Nations Conference on Trade and Development (UNCTAD), United Nations Development Programme (UNDP), the World Bank and WTO combine their efforts with those of LDCs and donors to respond to the trade-development needs of LDCs."[202] The major objectives of the IF include mainstreaming trade into national development plans, such as the Poverty Reduction Strategy Process (PRSP), and to facilitate the coordinated delivery of trade-related assistance.[203]

This is meant to assist LDCs in addressing their supply-side constraints in order to enhance their capacity to become full and active players as well as beneficiaries of the multilateral trading system.

The Hong Kong Ministerial Conference called for an enhanced Integrated Framework to be launched by 31 December 2006.[204] The enhanced Integrated Framework (EIF) is an initiative to provide trade-related technical assistance to the world's poorest countries as a means of integrating them more fully into the multilateral trading system.

EIF was created in order to support governments in LDCs to successfully integrate trade into their development strategies in order to stimulate economic growth and reduce poverty on a sustainable basis.

Accordingly, in October 2008, the EIF established an executive secretariat charged with the functions of supporting governments in managing the enhanced IF process, as well as

---

[202] See the Integrated Framework for Least Developed Countries (LDCs): how does it fit into aid for trade? Available at**: http://www.wto.org/**. (accessed on 12/01/09)
[203] Ibid.
[204] See WT/MIN (05)/DEC Para 57 of the "Ministerial Declaration". Doha Work Programme. 22 December 2005

provide assistance to national focal points and national implementation structures.[205] According to the WTO Annual Report of 2008, there are now 46 LDCs, Zambia inclusive, that are beneficiaries of the EIF.

2.3.3.1 ZAMBIA AND THE ENHANCED INTEGRATED FRAMEWORK

The Zambia National Implementation Unit is responsible for the implementation of the EIF in Zambia. This unit falls under the Ministry of Commerce, Trade and Industry. EIF has not been a successful tool to address trade capacity constraints Zambia is currently facing. This failure is mainly attributed to the lack of political involvement both at Parliamentary and Ministerial levels, the consequence of which is a difficulty in getting buy-in and political support needed to mainstream the IF into the budget process and thus into the national plan for development.

Additionally, the Zambian government faces human and institutional capacity constraints. There is simply not enough staff to deal with all foreign trade issues (regional, bilateral, Economic Partnership Agreements (EPAs), and the WTO, among others). Staff retention is a general problem for the civil service as a result of poor service conditions. Economic hardship is equally to blame because most of the trained trade officials usually end up leaving government for greener pastures.[206]

Most co-operating partners have a very limited understanding of Trade Related Issues. Zambia is particularly affected by constant staff changes in donors and agencies, with four facilitators for the IF in two years.[207]

The lack of meaningful participation of the private sector has hindered the implementation of the EIF and consequently prevented Zambia from reaping the benefits under the EIF. In addition, the Zambian government faces the challenge of conflicting demands and structures of other trade-related initiatives such as JITAP, the EU Development Fund (EU EDF), the US Millennium Challenge Account (US MCA).[208] This is usually a problem if there is

---

[205] See 'the enhanced integrated framework.' Available at: **http://www.wto.org/**. (accessed on 16/09/08)
[206] See Tembo D, How Can Enhanced Trade Capacity and Coordination Help Increase Integration? Available at: **http://www.integratedframework.org/**. (accessed on 18/01/09). See also the Annual Report 2007, Ministry of Commerce, Trade and Industry Zambia, at 12.
[207] See **http://www.un.org/africa/**. (accessed on 15/01/09)
[208] Ibid.

inadequate articulation of the issues affecting the country and more often than not areas of national priority are not identified before making critical decisions. In this regard, opportunities provided by initiatives such as EIF are not fully utilised.

The implementation of the EIF has yielded little results in Zambia also because of the lack of good governance; the problem of corruption as discussed in Chapter One, has seriously hindered development leading to a huge loss of opportunities.

For example, there is currently a public outcry that the new Zambian President Mr.Rupiah Bwezani Banda has appointed an unprecedented number of ineligible people to the civil and public service. The Zambian people have lamented that the president has apparently thrown prudence to the wind by giving government jobs to the unqualified and incompetent individuals who campaigned for him. Most of these, if not all, are cadres, his relatives and friends from outside the civil or public service. Some of the individuals the president has appointed to high positions such as minister or permanent secretary seriously lack civil service eligibility and professional experience for their positions.[209]

If people in critical decision making positions are not selected on merit, but on political inclinations or tribal lines, this is likely to result in a poor policy environment with retrogressive implications on the economy. The benefits of the EIF will only be harvested where the economic and political environment is right.

2.3.4 JOINT INTEGRATED TECHNICAL ASSISTANCE PROGRAMME (JITAP)

The Joint Integrated Technical Assistance Programme (JITAP) was developed as a response to needs expressed by Trade Ministers of the African Union for assistance from the international community to help strengthen their capacity to participate meaningfully in trade negotiations and integrate into the new Multilateral Trading System (MTS).[210]

JITAP is essentially a capacity building programme serving three objectives, to wit: developing national capacity to understand and address the implications of the new Multilateral Trading System (MTS), building capacity to implement legislation and take the

[209] See Zambian news, politics, economics and society. Available at: **http://maravi.blogspot.com/**. (accessed on 09/01/09)
[210] See UNCTAD/DOM/EPU/2007/ 12. Available at: **http://www.unctad.org/**. (accessed on 12/12/08)

needed measures to conform to undertakings under the MTS in the most beneficial way, and enhancing the readiness of national exporters to take advantage of trading opportunities.[211] JITAP follows a Joint and Integrated Approach: it is jointly developed, coordinated and implemented by three agencies, UNCTAD, WTO and ITC, each having different trade-related specializations

.

During 2006-2007, the programme covered sixteen African countries, namely, Benin, Botswana, Burkina Faso, Cameroon, Côte d'Ivoire, Ghana, Kenya, Malawi, Mali, Mauritania, Mozambique, Senegal, Tunisia, Uganda, United Republic of Tanzania and Zambia. The estimated budget was close to $24 million. The sixteen countries represent a careful balance among LDCs, non-LDCs, different sub-regions of Africa, and different linguistic groupings.[212]

2.3.4.1 THE PERFORMANCE OF JITAP IN KENYA (YEARS 2003-2007)

In Kenya, the Ministry of Trade and Industry (MoTI) has been the focal point for JITAP, and JITAP activities are managed by the External Trade Unit under MoTI.

JITAP has been 'partially significant' on Kenya's efforts to mobilize resources for the multilateral trading system activities thereby setting trends for other trade –related technical assistance (TRATAs) to follow. It has been constrained to a 'moderate' extent by: insufficient staff, heavy workloads and competing priorities; insufficient 'know how' among those managing activities; and a lack of coherence across TRATA initiatives.[213] Further, there is a general lack of coordination between the public sector organizations, academia, non-governmental organisations/civil society and the donor community.

JITAP has not produced the intended results in Kenya mostly due to internal disorganisation. For instance, there is a general lack of information dissemination due to infrastructural constraints. The National Enquiry Points, which are expected to provide information on the MTS and trade issues of key interest to exporters in Kenya, are

[211] Ibid.
[212] See 'the World Trade Organization, Support to Nepad.' Available at: **http://www.un.org/africa/**. (accessed on 15/01/09)
[213] See JITAP final report 2007/Kenya. Available at: **http://www.jitap.org/reports/kenya/**. (accessed on 07/01/09)

inefficient. As such information on the SPS which may be crucial to fish exporters in Kenya is not readily available. Currently, the National Enquiry Point[214] on SPS issues (NEP-SPS), which was formed in 2004 is non-functional, and so is the National Enquiry Point on the General Trade in Services (NEP-GATS).[215] The National Enquiry Point on the Technical Barriers to Trade (NEP-TBT) faces serious financial constraints and has no capacity to contain the high and growing volume of TBT enquiries.[216] Consequently, enquiries on SPS, TBT or GATS go unanswered and this has devastating implications not only on the affected producers and exporters but on Kenya's performance in the multilateral trading system. In this regard, there is an urgent need to enhance the information dissemination by improving the capacity of the national enquiry points through adequate funding in this case as well as specific technical support.

The other constraints on the progress of JITAP are the complexities inherent in the formulation process (including long bureaucratic and legal procedures). For instance, JITAP's influence on the larger enabling environment for strategy development, Partnerships/working groups have formulated policy recommendations (six to date) aimed at improving supply capacities and enhancing trade policy. In all six cases, the results of this work have made moderate contributions. To date, none of the finalized strategies have been implemented.[217]

Therefore, the government of Kenya needs to ensure that capacity building programmes are prioritised in its national budget as well as in its national development plan in order to maximise the benefits JITAP presents.

2.3.4.2 JITAP PERFORMANCE IN ZAMBIA (YEARS 2003-2007)

In Zambia, JITAP has been managed by the JITAP Country Focal Point under the Ministry of Commerce Trade and Industry.[218]

---

[214] NEP is responsible for providing answers to questions relating to the measures, various procedures regarding control, inspection, risk assessment etc. It is also concerned with a country's participation in international and regional organisations, bilateral or multilateral arrangements. See Das B L (2000): The World Trade Organisation-A Guide to the Framework for International Trade, at 136.

[215] Ibid.

[216] In 2004 and 2005 the NEP-TBT received over 300 enquiries and this is expected to go up. See **http://www.jitap.org/reports/kenya/**. (accessed on 07/01/09)

[217] Ibid.

[218] See JITAP performance in Zambia. Available at: **http://www.jitap.org/zambia/**. (accessed on 07/01/09)

With regard to the information on the Multilateral Trading System (MTS), there are four national enquiry points (NEPs) and three reference centres (RCs) are established though one remains to be officially launched and at least three more face operational constraints; most notably a lack of budgetary resources and dedicated, trained staff.[219]

Generally, most information points lack capacity to promote their services both in terms of communication infrastructure and knowledge of the materials that are available. All but one information points have reliable internet connection and are networked, albeit in an *ad hoc* manner.

This being the case JITAP has seen very little positive results in Zambia.
It is worthy of note though that at least 28 men and 13 women have participated in MTS related training provided jointly by ITC, UNCTAD and WTO. To date, there is only one MTS related professional network in place (a positive development since 2006) but as yet without a work plan.[220]

On the whole, however, there remains a lack of proper expertise in international trade/WTO matters and a paucity of financial resources with which to provide the scale of training required. Overall, it appears that JITAP has not been able to generate a critical mass of MTS knowledge providers.

Although JITAP has to a small extent provided support to the horticultural sector (fresh vegetables, flowers, honey and cotton), progress in this sector has been heavily hampered by lack of access to market analysis tools and supply capacity information.

At a regional level the participation of private sector bodies has been less than satisfactory in many countries, and is seen as a concern in many African countries including Kenya and Zambia. The preparation of technical inputs also faces challenges in some countries, as they are not translated into country priorities.[221] Therefore, the technical inputs from developed

[219] Ibid.
[220] Ibid.
[221] See JITAP final report 2007/Kenya/Zambia. Available at: **http://www.jitap.org/reports/kenya/**. (accessed on 07/01/09)

countries are of limited use, and on this score JITAP has not adequately facilitated the integration of these countries into the multilateral trading system.

2.3.5 CONCLUSION

This chapter attempted to examine the various GATT/WTO provisions relating to trade capacity in relation to developing and least developed countries. In particular the concept of special and differential treatment (S&D) was analysed.

It was observed that most developing countries are at widely differing stages of economic development with the effect, for example, that application of the same set of rules to China and Kenya would create inequitable results.

On this account it has been submitted that it is crucial for S&D treatment provisions incorporated in the GATT/WTO Agreements to be strengthened in order to make them more precise, effective and operational.

It was further observed in this Chapter that most S&D provisions are couched in hortatory language and do not create any enforceable obligations, and as such are inadequate to facilitate the integration of developing countries in the multilateral trading system. It is, therefore, imperative that developing countries be assisted in enhancing their negotiation capacity in order to implement coherent trade policies to derive significant benefits from the multilateral trading system.

It is thus far concluded in this Chapter that the greatest obstacle to the integration of African countries in the multilateral trading system is supply-side constraints and that on current evidence, the special and differential treatment provisions in the GATT/WTO agreements have not adequately addressed this problem.

This Chapter also examined the GATT/WTO trade capacity building initiatives, as including Aid for Trade, Enhanced Integrated Framework (EIF) as well as the Joint Integrated Technical Assistance Programme (JITAP).

In discussing the EIF and JITAP, it was established that, while the EIF has a broader focus on the macro policy environment, donor coordination, internal trade aspects, and trade infrastructural needs; JITAP's main objective is institutional trade capacity and targets African LDCs and non-LDCs. It is also delivered at regional and sub-regional level, owing to its joint integrated approach.

It is concluded at this stage that these are good initiatives that can genuinely help to build the trade capacity of developing countries and LDCs and having the potential to facilitate their full participation in the multilateral trading system. Fully-fledged JITAP programme in African LDCs would make an important contribution to strengthen their overall trade capacity, a goal that will be pursued through the EIF.

However, as illustrated by the Kenya and Zambia examples, implementing these initiatives has been the major challenge. Firstly, these countries do not have the capacity to implement the initiatives. The constraints in this case cut across various issues, which include; lack of the necessary infrastructure, lack of resources, inadequate and unpredictable funding by donors, poor planning and coordination on the part of the beneficiary countries, a lack of political will and poor governance, and generally very low levels of private sector participation.

It is apparent that, considerable work is required in these countries, to augment trade capacity across all ministries and government departments that are involved in trade and trade related issues, and also within the private sector.

Thus, in the short to medium term, it is necessary to increase capacity in government and among stakeholders to address existing trade policy issues, negotiations and training needs. This of course requires capacity to conduct the necessary economic analysis.

It is thus concluded at this stage that the GATT/WTO initiatives can only produce successful and meaningful results if the beneficiary countries have the capacity to implement the programmes. In addition, the capacity building initiatives would produce more positive results if they targeted areas that genuinely and critically need their intervention, and this has to be in an environment that is economically and politically right and proactive.

Suffice it to also state that the GATT/WTO initiatives are not adequate to address some of the trade capacity constraints. In as much as African governments need support in addressing governance challenges; they are to do the most work in ensuring that the trade policies are appropriate and most important, that transparency and accountability are guaranteed. As long as good governance is embraced, the active participation of the private sector is inevitable and necessary.

CHAPTER THREE

A BRIEF DISCUSION OF THE NEPAD, ACBF AND AGOA INITIATIVES

It is intended, in this Chapter, to briefly discuss the New Partnership for Africa's Development (NEPAD), the African Capacity Building Foundation (ACBF) and the African Growth and Opportunity Act (AGOA) initiatives, and evaluate their contributions to trade capacity building in Africa and how African countries can maximize the benefits provided by these initiatives, with particular attention given to Kenya and Zambia. In delving into the discussion of the foregoing initiative, the question that is sought to be answered, therefore, is "how can Africa maximise the benefits under these initiatives in order to attain the necessary trade capacity needed for effective participation in the multilateral trading system"?

3.1 THE NEW PARTNERSHIP FOR AFRICA'S DEVELOPMENT (NEPAD)

3.1.1 ORIGINS OF NEPAD

The New Partnership for Africa's Development (NEPAD) is an economic development program and initiative of the African Union (AU). NEPAD was adopted at the 37th Session of the Assembly of Heads of State and Government in July 2001 in Lusaka, Zambia. It was launched in Abuja, Nigeria in October 2001, when African leaders, (among them, the former president of South Africa, Mr. Thabo Mbeki, presidents Abdoulaye Wade of Senegal, Abdelatif Bouteflika of Algeria, Olusegun Obasanjo of Nigeria and Hosni Mubarak of Egypt), met in Abuja, Nigeria.[222]

It is worth noting that NEPAD is the outcome of the continuing search by African leaders for Pan-African structures that have the potential to bring about the social and economic transformation of the continent. It is a vision and strategic framework for Africa's renewal.

In basic terms NEPAD is an undertaking by African leaders to eradicate poverty and spur sustainable economic development by participating actively in the world economy. It is a "new framework of interaction with [the] rest of the world,"[223] and one that is "based on

[222] See Organisation of African Unity (OAU), The New Partnership for Africa's Development (NEPAD), Addis Ababa, (October 2001).
[223] See The New Partnership for Africa's Development (NEPAD), at para.48. Available at: **http://www.touchtech.biz/nepad/files/documents/nepad/**. (accessed on 11/10/08).

Africans setting their own agenda,"[224] a long-term vision of an African-owned and African-led development programme."[225]

NEPAD recognises the potential and benefits of globalization. Accordingly the NEPAD document[226] states that globalization has resulted in opportunities for lifting millions of people out of poverty, except that Africa has not reaped these benefits due to lack of capacity to compete effectively on the global market. Additionally, the absence of fair and just global rules through which the strong have been able to advance their interests to the detriment of the weak, especially in the areas of trade, finance and technology, has been cited as another reason why Africa has not reaped the benefits of globalisation.[227]

NEPAD takes the deliberate strategy of promoting Africa as a favourable destination for foreign direct investment through initiatives on good governance and fiscal responsibility.[228] The NEPAD idea embraces the understanding that global trade and investment are crucial engines for growth, and increasingly play a vital and pivotal role in any meaningful effort that seeks to ensure faster development in, and for Africa.[229]

In this regard, NEPAD, from the outset, stressed certain principles: African ownership and leadership, accelerating and deepening regional and continental economic integration, building the competitiveness of African countries and the continent, and negotiating a new partnership with the industrialized world.[230]

The NEPAD idea is anchored on the determination of Africans to extricate themselves and the continent from the malaise of under-development and exclusion in a globalizing world.[231]Undoubtedly, NEPAD can be a useful vehicle for capacity building and technical assistance programs can be sourced and implemented through it. This is because, a solid

[224] Ibid.
[225] Ibid. at para.60.
[226] See The New Partnership for Africa's Development (NEPAD), at Para. 32, opcit.
[227] Ibid, para.33
[228]See Mosoti V, The New Partnership for Africa's Development: Institutional and Legal Challenges of Investment Promotion. *San Diego International Law Journa*l (2004) Vol 5, at 145.
[229] See The New Partnership for Africa's Development document, opcit.
[230]See Ngcukana C, "NEPAD: Three Years of Progress", paper presented at the CCR-CPS Policy Seminar: The AU/NEPAD and Africa's Evolving Governance and Security Architecture, Johannesburg, 11-12 December 2004.
[231] See NEPAD, opcit, at para.1

secretariat, with a corps of well qualified and competent professionals can serve as the intellectual nerve centre for forging continent-wide common positions on global trade and investment promotion. Evidently, this would enhance the negotiation muscle for developing countries and LDCs in Africa.

NEPAD can be a vital tool for Africa firstly, because it recognises and takes into account the diversity and variations in development levels in the continent. In this regard, it places very high premium on regional cooperation and integration. Secondly, if it is fine-tuned to be consistent with the paradigm strategy and policy framework based on four fundamental principles, which include; self-reliance, national and collective self-sustainment, democracy and sustainable human development.

It is important, however, that NEPAD presents a discernable vision of development with an integrated agenda for its realisation, as in the case of the Lagos Plan of Action.[232]In the circumstance, NEPAD needs to accord high priority to development and manufacturing, in addition, it must place emphasis on serious macro-economic analysis. Once development transformation through wealth creation becomes NEPAD's primary concern, the centrality of domestic savings and the imperative of the reduction of capital wastages and of plugging capital leakages would be prioritised. Inevitably, this would lead to high and sustainable continent-wide economic growth; reduction in poverty and inequality; diversified productive capacities; enhanced international competitiveness and increased exports; and a more cohesive continent through integration.[233]

It has been argued that, NEPAD has tremendous capacity to significantly increase Africa's level of participation in the multilateral trading system, by increasing its competitiveness as well as increasing foreign direct investment inflows into Africa.[234] This arises from the fact that NEPAD is developed, owned and managed by Africans, in keeping with the idea of an African renaissance, which has its roots in a uniquely African perception and intellectualisation of global issues.

[232] See Onimode B et al, African Development and Governance Strategies in the 21st Century, (2003), at 240.
[233] Ibid.
[234]See Akokpari J etal (eds), The African Union and its Institutions, at 213.

This section of the Chapter endeavours to evaluate the contributions of the NEPAD initiative to trade capacity building in Africa. It shall examine how African countries like Kenya and Zambia, can maximise the benefits the NEPAD initiative is endowed with.

3.1.2 NEPAD'S NARROW EMPHASIS ON FOREIGN DIRECT INVESTMENT (FDI)

A review of literature reveals that some scholars have argued that NEPAD is based on a narrow and tapered neo-classical economic model and strategy parading as a developmental paradigm; and that the economic dimensions of NEPAD, with its over-reliance on FDI, are based on misplaced and warped strategies, and built more on hope instead of clear policy calculations.[235] These scholars have concluded that, an obsession with or over-reliance on FDI cannot bring about development in Africa.[236]

Further, they argue that NEPAD is deeply free-market oriented, committing itself to establish the conditions that would enable the foreign capitalist community take rational business decisions to make long-term investments in Africa.[237] Indeed, this may not be feasible in a Pharisee society of self-interest, where the rich and the powerful are getting richer and more powerful and the poor and powerless are becoming poorer and marginalised.

Additionally, the view held by many critics is that NEPAD does not posit a real and credible development strategy for Africa, as it heavily relies on the idea of massive injections of FDI as a substitute to development; one of the major flaws is that it does not encourage genuine development on the national, sub-regional, and continental fronts.[238] In this regard, NEPAD can learn significant lessons from preceding African initiatives such as the Lagos Plan of Action, which places huge emphasis on intra-Africa economic cooperation and agricultural industrialisation, as well as lessening dependency on extra-African resources and largesse.[239]

[235] Ibid.
[236] Ibid.
[237] Ibid, at 214.
[238] See Akokpari J, ibid.
[239] Ibid.

However, these critics should recognise that, beyond the narrow focus on FDI, there have been important developmental elements put on NEPAD's agenda. As earlier alluded to, there is a serious policy strategy to try to extract commitments from the industrialised powers by forging a new partnership with them.[240] Indeed the NEPAD strategies have insisted that the countries of the North should underwrite 'new' African initiatives through debt relief, increases in levels of overall development aid (ODA), support for infrastructural development, and promotion of FDI.[241]

3.1.3 NEPAD AND AFRICAN STATES

Notwithstanding its potential, NEPAD faces a lot of challenges, which seriously undermine its effectiveness and efficiency in realizing its objectives. Topping the list is the lack of political will on the part of many African states, which remain reluctant to live up to NEPAD's commitments, as well as divisions and political differences over NEPAD.[242] Some African leaders have simply refused to embrace NEPAD.

For example, some countries, such as Zimbabwe and Libya, regard NEPAD as a Western ploy, and have openly campaigned against it.[243] These countries have argued that NEPAD is inspired by the IMF and World Bank strategies of structural adjustment programmes (SAPs), trade liberalization that continue to subject Africa to unequal exchange, and strictures on governance borrowed from the practices of western countries and not rooted in the culture and history of the people of Africa.[244]

More recently, NEPAD has also been criticized by some of its initial backers, notably Senegalese President Abdoulaye Wade, who accused NEPAD of wasting hundreds of millions of dollars and achieving nothing.[245] Northern Africa has largely been a distant observer of the NEPAD process. In this vein, for instance, although President Hosni Mubarak of Egypt is listed as a member of the NEPAD Heads of State Implementation

---

240 Ibid.
241 Ibid, at 215.
242 Ibid.
243 Ibid.
244 See Akokpari J, ibid.
245 See Diadie B, "Senegalese president slams NEPAD". Available at: **http://www.iol.co.za/**. (accessed on 17/10/08)

Committee, he has never attended a single meeting of that committee.[246] Regrettably also, Morocco, another country whose economic strength would have made it a key player in the NEPAD process, is not a member of the AU and is, by necessary implication, absent from the NEPAD process.

Unfortunately, the lack of acceptance of NEPAD among some African states has affected the progress of vital projects under this initiative. For example, recently, the NEPAD Broad Band project, which aims to connect all African countries to a broad band infrastructure network, (in order to reduce the high cost of communication and broadband services including the cost of bandwidth), has run aground after failing to secure the support of a critical mass of countries for the plan's policies and conditions.

In particular, the Kenyan Government, despite being the seat of the project's secretariat, refused to sign the Protocol for the NEPAD Broadband infrastructure and announced that it will support the building of a separate cable.[247] Out of 53 African countries, only 12 countries have signed up for the project and there is no indication that the other countries will soon back it.[248]

Zambia has so far not benefited much from NEPAD. For instance, no single project under the Zambia NEPAD Action Plan (ZNAP) has been launched as yet and a fully- fledged secretariat has also not been established.[249]

ZNAP projects include a number of programmes, namely; the Zambia-Angola Rail and Road Link, new oil refinery establishment, strategic fuel reserve establishment, liquefied petroleum gas (LPG) promotion, the pineapple and cassava commercialization, low cost irrigation promotion, and food fortification.

[246] See declaration on the Implementation of the New Partnership for Africa's Development, opcit , para.11.
[247] See Southwood R, "EASSY Parties in disconnect over end of the beginning". Available at: **http://www.mybroadband.co.za/**. (accessed on 11/01/09.
[248] See Malakata M, "Africa's NEPAD broadband project falters". Available at: **http://www.computerworld.co.ke/articles**. (accessed on 11/01/09)
[249] See Nazare F, "SADC regional infrastructure projects". Available at: **http://www.triomedia.co.za/**. (accessed on 11/01/09)

If implemented, these projects would help the nation's existing potential in all sub-sectors of the economy. The programmes under NEPAD have a high potential to generate accelerated and sustainable levels of economic growth.

Therefore, it is imperative that the Zambian government becomes actively involved with, and ensures that there is appropriate, sufficient and effective investment in these projects.

3.1.4 NEPAD AND THE CIVIL SOCIETY

NEPAD has not received any blessings from the civil society in Africa. The position held is generally that NEPAD is mainly concerned with raising external financial resources, appealing to and relying on external governments and institutions.[250]

In addition, the civil society of Africa is of the view that, NEPAD is a top-down programme driven by African elites and drawn up with the corporate forces and institutional instruments of globalisation, rather than being based on African peoples' experiences, knowledge and demands.[251] The argument advanced by the Zambia Congress of Trade Unions and the Kenya Debt Relief Network[252] is that a legitimate African programme has to start from the people and be owned by the people.

Consequently, the civil society in Africa, have equally campaigned against NEPAD. For example, the African Social Forum in Mali, and the jointly held conference by the Council for Development of Social Science Research in Africa (CODESRIA) and the Third World Network in Accra both held in 2002, drew attention to the flaws of NEPAD and the extent to which the people of Africa, particularly women, will be marginalised even further by the plan.[253]

Part of the problem in this rejection was that the adoption process of NEPAD was insufficiently participatory; civil society was almost totally excluded from the discussions

---

[250] See para. 3 of the African Civil Society Declaration document of 8 July 2002. Available at: **http://www.fntg.org/**. (accessed on 16/12/08)
[251] Ibid.
[252] See The African Civil Society Declaration on Nepad, "We Do Not Accept Nepad!! Africa Is Not For Sale!!" Available at: **http://www.urif.org/**. (accessed on 16/12/08)
[253] See Akokpari J etal (eds), The African Union and its Institutions, at 236.

which led to its adoption. The poor quality of the actual NEPAD document, it is argued, is to some extent a reflection of this lack of consultation.

Undoubtedly, the architects of NEPAD have faced intense criticisms for violating the human rights of their citizenries on a large scale. This refers to what was sometimes described as a 'genocidal' HIV and AIDS policy in South Africa and rampant civil/military/religious oppression in Algeria and Nigeria.[254] Many people can no doubt remember how, in January 2002, Nigerian police tear gassed a non-violent demonstration of workers protesting against fuel price increases and arrested members of the Nigerian Labour Congress.[255] Mr Obasanjo was equally said to have committed election fraud in the 2003 general elections.[256]

In this regard, the NEPAD notion of partnership has been dismissed as being insignificant, unless the playing field is level and each partner is treated with dignity and on equal terms.[257]

Worse still some critics have stated that NEPAD lacks the necessary dosage of legal and institutional grounding necessary for an initiative of its influence. The view taken in this regard is that it was a mistake to place NEPAD under the unwieldy umbrella of the AU.[258] In this regard, it has been argued that the NEPAD must be extricated from the AU and imbued with a legal and institutional life of its own.

It is also important that, NEPAD be regionally balanced and shun any indication of control by any single country, if it is to be accepted as an independent credible inter-governmental investment promotion strategy, and vehicle for Africa's much needed economic growth.

[254] See Nabudere D, NEPAD Needs a More Introspective Approach, Sunday Independent, South Africa (27 October 2002).
[255] Ibid.
[256] See Taylor I, NEPAD, Towards Africa's Development or Another False Start? (2005), at 51
[257] See Akokpari J etal (eds), The African Union and its Institutions, at 232.
[258] See preamble to the declaration on the implementation of the New Partnership for Africa's Development (NEPAD). Available at: **http://www.african-union.org/**. (accessed on 11/10/08)

3.1.5 HOW CAN AFRICA MAXIMISE THE BENEFITS UNDER NEPAD TO ENHANCE ITS TRADE CAPACITY?

As a starting point, it is undoubtedly imperative that Africa unites and embraces the NEPAD initiative, with a view to transforming it into a genuine developmental programme. In this regard, African states must move away from NEPAD's neo-classical contours, as well as coupling its external focus with greater emphasis on intra-African solutions, while creating space for active civic engagement in policy and governance processes.

African states, Kenya and Zambia inclusive, will have to stress genuine home grown strategies, particularly in the areas where Africa has comparative advantages, such as agriculture, infrastructure development, and indeed bolster intra-African trade and investment.

NEPAD should be able to garner the support of all stake holders and civil society once it is seen as a genuine initiative which will not exacerbate Africa's dependence and dispossession but rather deepen democracy and popular participation in the fragmented continent that Africa is. The ultimate truth is that, oppositionalism and protest alone cannot bring about change and turn the current plans and programmes[259] in to the much needed economic development.

It is submitted therefore, that African governments and civil society alike need to seriously consider engaging each other for purposes of accelerated development; and this is what policy and governance involves.

African states, as illustrated by Kenya and Zambia's international trade statistics,[260] have not and do not effectively participate in the multilateral trading system. It is also evident that African states lack the capacity to ensure that countries of the industrialised north live up to their significant commitments in the areas of, inter alia, trade concessions, debt relief, and market access in favour of developing and least developed countries.[261]

---

[259] See Stiglitz, Globalization and its Discontents, at 9.

[260] See Mwega, Final Report Prepared for an AERC Collaborative Project on Africa and the World Trading System. Available at: **http://www.unctad.org/**. (accessed on 16/01/09) and also Zambia and the Multilateral Trading system: The Impact of WTO Agreements, Negotiations and Implementation. Available at: **http://www.unctad.org/en**. (accessed on 11/01/09).

[261] See stiglitz opcit.

It is therefore crucial that this gap be addressed as matter of urgency and necessity. Developed countries would perhaps be more appreciative if Africa could hold itself politically and economically accountable and competitive, thereby creating conditions for the attraction of foreign capital to the continent, and as a consequence, the developed countries should be able to give Africa greater access to their markets.

It is therefore not in dispute that NEPAD would be of greater value if it were effectively and fully implemented.

While it is observed that the advantage with NEPAD is that it places a lot of emphasis on partnerships,[262] Africa (with the exception of South Africa), unfortunately, has neglected the south-south partnership. It is worthy of note that South Africa has been active in forming partnerships, and has by far, the most sophisticated south-south strategy.[263]

For example, South Africa was key in the establishment of the India-Brazil-South Africa (IBSA) Trilateral Forum the Afro-Asia Regional Solidarity Forum (AASROC) and the Africa-Asia Strategic Partnership.[264]

However, conventional wisdom holds that Africa cannot build strong south-south solidarity on the back of one country, and therefore, more African countries, if not the whole of Africa, need to enter the fray in as far as partnerships are in issue. South-South strategies are crucial in ensuring that Africa and the South speak with one voice on key issues such as trade and market access, debt relief, altering power relations between the North and South, and restructuring global institutions to better serve their interests. Perhaps, on this score NEPAD, is indeed a useful tool for Africa.

Africa relies, at present far too much on external resources, rather than placing emphasis on intra-Africa initiatives.[265] The major drawback could be corrected, in part at least, through

---

[262] See The New Partnership for Africa's Development (NEPAD), at para.48. Available at: **http://www.touchtech.biz/nepad/files/documents/nepad/**. (accessed on 11/10/08).

[263] See for example, Department of Foreign Affairs, Strategic Plan 2006-7, 2007-8, 2008-9, Presentation to the Parliamentary Portfolio Committee on Foreign Affairs, 10 May 2006; also see Nazeem Mahatey, "Presidential address to the G-8 Summit and its implications for the South". Available at: **http://www.igd.org.za/pub/g-dialogue/official-view/presidential.html/**. (accessed on 15/11/08)

[264] See Akokpari J etal (eds), The African Union and its Institutions, opcit at 224.

indigenising NEPAD and transforming it into a genuine development programme that is held by Africa as a home-grown initiative. It is high time Africa embraced self-reliance; financial aid is useful but cannot be available on a more sustainable basis. Africa, therefore, needs to build its own capacity to absorb and spend resources. As such, there is an urgent need to ensure that continental institutions possess the capacity to spend resources effectively on proper development plans.

Undoubtedly, corruption has been yet another major drawback for Africa. Corruption denies the private sector in Africa the equal opportunities to participate in, and contribute to many developmental initiatives. It provides only those companies with influence, usually acquired corruptly, to engage in business and so reduces the benefits of competitive business.

Corruption also diverts resources set aside for certain important projects to individuals and in doing so it denies society an opportunity to experience meaningful development. For Africa to appropriately pose real global competitive edge, African governments must enforce proper fiscal discipline, hinged on good governance, integrity and accountability.

It is these principles that will advantage Africa in spurring sustained economic growth, and in the long-term, Africa's competitiveness in the global economy.

The Africa Peer Review Mechanism under NEPAD, as a tool of governance has been formulated to ensure continual monitoring and self analysis.[266] It has a strong component of engaging the citizenry in the quest for improved governance through sustained dialogue on the key aspects of institutionalizing the principles of good governance. This is through encouraging good political governance and democratic processes, sound economic management strategies and solid corporate governance frameworks.[267] All of this aims at ensuring a decent socio-economic environment for development in Africa. The reduction of corruption within the continent remains firmly within the agenda of APRM and NEPAD.

---

265 ibid.

266 See Ongile G A, Transparency Watch; NEPAD. Available at: **http://www.transparency.org/publications/**. (accessed on 16/12/08)

267 See Taylor I, NEPAD, Towards Africa's Development or Another False Start? (2005), at 43.

Nevertheless, NEPAD must not separate political governance from economic governance, which are not only intertwined, but are both crucial for sustainable economic development.

Thus far, it is submitted that NEPAD is one initiative that must not go wrong. However, it must place more emphasis on industrial development and manufacturing, as well as on the importance of having in place sound macro-economic policies.

In the final analysis, NEPAD is an opportunity for Africa to participate in, and influence the making of its own history[268] in so far as economic development is concerned, regardless of its imperfections (actual or perceived) and the different takes on it by different players.

3.2 THE AFRICAN CAPACITY BUILDING FOUNDATION (ACBF)

ACBF was established on 9 February 1991 through the collaborative efforts of the African Development Bank (ADB), the United Nations Development Program (UNDP), the World Bank, bilateral donors and African governments.[269]

It represents a response to the severity of Africa's capacity constraints and the challenge to invest in indigenous human and institutional capacity in sub-Saharan Africa. The mission of the ACBF is to build capacity for sustainable development and poverty reduction in Africa.[270]

Initially, ACBF focused on providing financial and technical support to the building and strengthening of Economic Policy Analysis and Development Management capacity in sub-Saharan Africa. However, since January 2000 the Foundation's mandate has been expanded,

[268] See Shadreck B.O, The Rule of Law, Human and Peoples' Rights and compliance/Non Compliance with Regional and international Agreements and standards by African States, prepared for presentation at the African Forum for Envisioning Africa (26-29, April 2002). Available at: **http://www.worldsummit2002.org/texts/ShadreckGutto2.pdf/**. (accessed on 17/10/08)

[269] The current membership comprises the three sponsoring agencies; AFDB, UNDP, World Bank, the IMF which joined the Foundation in April 2002, as well as the 41 African countries, and non African countries and institutions, namely, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Canada, Chad, Cote d' Ivore, Congo (Brazzaville), Democratic Republic of Congo, Denmark, Finland, France, Gabon, Ghana, Greece, India, Ireland, Kenya, Madagascar, Malawi, Mali, Mauritius, The Netherlands, Niger, Nigeria, Norway, Rwanda, Sao Tome and Principe, Senegal, Sudan, Swaziland, Tanzania, Uganda, UK, US, Zambia and Zimbabwe. In addition Japan has contributed to the Foundation through the Policy Human Resources Development (PHRD) Trust Fund at the World Bank. See Chifamba T. Multilateral Trade Negotiations: How Sensibly Must African Countries and Trade Negotiators Stand?-Some Lessons From WTO Experience, at 1.

[270] Ibid.

following the integration of the Partnership for Capacity Building in Africa (PACT) initiative into its fold.[271]

The expanded mandate of the ACBF seeks to provide an integrated framework for a holistic approach to capacity building in Africa. In addition, to build a partnership between African governments and their development partners, which allow for effective coordination of interventions in capacity building and the strengthening of African's ownership, leadership and responsibility in the capacity building process.

Further, the expanded mandate of the ACBF seeks to provide a forum for discussing issues and processes, sharing experiences, ideas and best practices related to capacity building, as well as mobilizing higher levels of consciousness and resources for capacity building in Africa.[272]

3.2.1 KENYA'S EXPERIENCE WITH ACBF

One of the major contributions of the ACBF interventions to Kenya is the support in the establishment of the Kenya Institute of Public Policy and Research Analysis (KIPPRA). KIPPRA was established in 1998 as an autonomous public institute. Its primary function is to provide quality public policy advice to the government of Kenya and to the private sector.[273]

KIPPRA has over the years enhanced the capacity of the Kenyan Government and non-state actors in the country to conduct policy analysis and research. In recognition of its importance, the Kenyan Government instituted KIPPRA through an Act of parliament, namely; the KIPPRA Act, which commenced on 1st February 2007 and whose new Board, was appointed through Gazette Notice. The KIPPRA Act governs the operations of the Institute.[274] The Institute is responsible for the preparation of an annual economic report to be tabled before the National Assembly by the Minister for Planning and National Development by March of every financial year. This continues to provide an opportunity for

[271] See Chifamba, ibid.
[272] Ibid.
[273] An agreement for US $1.7 million was signed on 1 November 2003 and declared effective on the same date; it is scheduled to close on 1st May 2009. See **http://www.acfb-pact.org/**. (accessed on 17/01/09)
[274] Ibid.

the Institute to make a greater contribution to public policy in Kenya. To strengthen managing for results, KIPPRA negotiated a performance contract with the Government of Kenya.[275]

KIPPRA has continued to contribute to the overall goal of improving public policy for growth, equity and poverty reduction through macroeconomic policy analysis and research, capacity building and networking. In particular, in performing capacity building of Government officers, KIPPRA enhances their capacity to formulate and implement policy and to absorb policy advice. Regarding the private sector and civil society stakeholders, KIPPRA improves their understanding in the policy process for an effective lobbying in implementation of policies.

Evidently, KIPPRA is helping to enhance Kenya's trade capacity which is likely to improve its performance in the multilateral trading system.

On 2nd September 2005, the African Capacity Building and the Institute of Policy Analysis and Research (IPAR), Kenya signed a Grant Agreement of US$12,000,000 for the third phase (IPAR III), geared towards the strengthening of capacity for economic policy analysis and research in Kenya.[276]

Since its inception in 1994,[277] IPAR has been at the forefront in conducting policy research and analysis, building capacity of policymakers, promoting objective policy dialogue and presenting viable policy alternatives to the government and development partners in Kenya. IPAR has built solid relationships with a broad spectrum of stakeholders that include government ministries and departments, local authorities, private sector entities, parliamentarians, donors, academia and research institutions, civil society organizations, the media, policy advocates and the general public, among others.[278]

---

[275] Ibid.
[276] See Third Phase of The Institute of Policy Analysis and Research (IPAR III). Available at: **http://www.acbf-pact.org/**. (accessed on 14/01/09)
[277] Ibid.
[278] Ibid.

In 2004 a review was carried out of the IPAR Phase II (2001-2005) and concluded that IPAR had stabilized as a national policy center for policy analysis and research. The review also highlighted the fact that IPAR had demonstrated effectiveness in promoting objective policy dialogue with the various stakeholders. Hence IPAR is now in its third phase (2005-2009).[279]

Other successful projects under the ACBF include; the African Economic Research Consortium (AERC) Collaborative Master's Degree Program in Economics (a regional program, which is based in Kenya), the AERC Collaborative Ph.D. Program (a regional program, which is also based in Kenya).[280]

These have not only helped to upgrade the quality of evidence-based policy research in Africa and influenced the content and scope of economic policies in the countries where they are based, but have also produced sound analysts and development managers who have gone on to become cabinet ministers, governors of central banks and prime ministers.[281] The training programs have increased the supply of a critical mass of high-caliber policy analysts and development managers who are becoming, and will become captains of development in the years ahead.

Further, ACBF has been instrumental in Kenya's rural development and agricultural policy reforms. For example, the ACBF has through the FARM-Africa's Dairy Goat and Capacity Building project directly assisted 1,050 very poor rural farmers (60% women) in 21 farmers' groups in 10 locations in the Kitui and Mwingi districts of Eastern Kenya.[282] These districts are characterised by high levels of poverty and the project's principal aim is to reduce poverty and insecurity in a sustainable way: very poor farmers are supported in building their productive assets through dairy goat breeding.

[279] See Third Phase of The Institute of Policy Analysis and Research (IPAR III). Available at: **http://www.acbf-pact.org/**. (accessed on 14/01/09)
[280] Ibid.
[281] See Forlemu E N, The African Capacity Building Foundation. Available at: **http://www.acbf-pact.org/**. (accessed on 11/01/09)
[282] See the Dairy Goat and Capacity Building Project (Kenya). Available at: **http://www.farmafrica.org.uk/**. (accessed on 19/01/09)

ACBF is also involved in the preparation of Kenya's national development plans and vision documents to increase the quality of development policies and programmes that will improve Kenya's international competitiveness for sustainable economic growth.

It must be emphasised that although the ACBF is important, its programmes in Kenya have not contributed much to this country in terms of globalization and trade policy. This is mainly attributed to lack of funding and resource sustainability. KIPPRA in particular, faces a lot of problems in relation to the retention of skilled staff, as a result of financial constraints. In this regard, skilled members of staff have been difficult to maintain.[283]

3.2.2 ZAMBIA'S EXPERIENCE WITH ACBF

The presence of the ACBF in terms of capacity building efforts has also been felt in Zambia. As earlier alluded to,[284] this has been mainly in the ACBF's core competence areas, which include: economic policy analysis and management; financial management and accountability; strengthening and monitoring of national statistics; public administration and management; strengthening of the policy analysis capacity of national parliaments; and professionalization of the voices of the private sector and civil society.

On 23 August 2005, the ACBF and the Government of Zambia signed a Grant Agreement meant to provide US$1.5 million, over a four-year period, to support the establishment of a semi-autonomous Institute for Policy Analysis and Research in Zambia, thus, the Zambia Institute for Policy Analysis and Research (ZIPAR).[285]

The Institute's main objective is to bolster economic governance and promote quality policy analysis and policy formulation in Zambia.

ACBF's support seeks to address the policy analysis needs in Zambia that are still weak. Notably, between 1995 and December 2003, the ACBF assisted the Government of Zambia in its efforts to build capacity in macroeconomic policy analysis and economic

[283] See Presentation by KIPPRA at the Capacity building workshop for selected African research centres, held in Bujumbura, Burundi; (29-30 May 2007). Available at: **http://knowledge-sharing.uneca.org/**. (accessed on 11/01/09)

[284] See Chifamba, opcit.

[285] See ACBF provides US$1.5 million to strengthen policy analysis and research capacity in Zambia (ZIPAR). Available at: **http://www.acbf-pact.org/**. (accessed on 12/01/09)

management.[286] This assistance was provided through the Directorate of Macroeconomic Policy Analysis in the Ministry of Finance and National Planning. ZIPAR will consolidate the gains that were made in this first capacity-building intervention.

If the project is fully implemented, it will contribute to the development of: (i) an effective public sector able to formulate sound economic policies in line with the medium- and long-term objectives of Zambia; (ii) a better informed private sector and civil society to effectively play their respective roles as development partners; and (iii) more effective participation of civil society and the private sector in policy dialogue for equitable distribution of the gains of growth in order to alleviate poverty.

3.2.3 HAS ACBF ADEQUATELY ADDRESSED THE TRADE CAPACITY CONSTRAINTS KENYA AND ZAMBIA ARE FACING?

Although ACBF has been actively involved with Kenya and Zambia in terms of capacity building, it has not adequately addressed the supply-side constraints the two countries currently suffer from. Kenya and Zambia still lack both human and institutional capacity. It is noted that appropriate and adequate institutional framework and infrastructure are the foundation upon which successful project implementation is built. Further, it is noted, when institutional capability is high and untainted by corruption and arbitrariness, the rate of progress is accelerated.

For example there has been too little attention, respect and resources given to accountability institutions such as the Anti-Corruption Commission in Zambia, the Auditor General's Office, the Investigator General of Zambia (Ombudsman's office), Transparency International, Zambia, the Zambia Police Services and the Judiciary.[287]

Accountability institutions need to be strengthened to hold public officials accountable and to operate in a transparent manner. This will ensure that resources are effectively absorbed and used for the intended purpose. Cambodia has taken this route, and is slowly but surely scoring success.[288]

---

[286] Ibid.
[287] See Mwenda K, opcit.
[288] See Cambodia: Enhancing Governance for Sustainable Development. Available at: **http://www.cdri.org.kh/webdata/.** (accessed on 06/03/09)

This is crucial even for Kenya, which, as illustrated in Chapter One, is seriously grappling with institutional weaknesses and corruption.

It is thus submitted that capacity building for good governance which includes human resource development, is what most developing countries and LDCs in Africa need.

KIPPRA and ZIPAR, for example, are governmental institutions, which inevitably are not immune from political interference in relation to research agenda. Such political interference, as a consequence, makes it more challenging to conduct research that contributes to the national development of the country as a whole. It is in this vein that researchers must not only have the national interest at heart but must be independent as well. Further, researchers need adequate access to policy makers, to ensure that appropriate policies that are development oriented are formulated and implemented to attain economic growth.

ZIPR in particular is known for staff fluctuations,[289] which clearly undermines continuity necessary for longer term research as well as for sufficient communication. In addition, both KIPPRA and ZIPAR have a serious lack of local expertise, and this holds true for most other countries in Africa.[290] This has seriously hindered the progress of most capacity building initiatives as well as economic development in Africa. The problem has largely been attributed to "brain drain".

African governments need to proactively invest more resources in human resource development. Additionally, African governments must, of necessity, build their capacity to provide good conditions of service, necessary for the retention of professionals who in most cases have opted to leave for greener pastures, if the problem of "brain drain" will be overcome.

Further, poor infrastructure in the two countries discourages new investment and significantly reduces the progress of projects. For example, agricultural areas in Kenya are impassable

---

[289] See ACBF provides US$1.5 million to strengthen policy analysis and research capacity in Zambia (ZIPAR). Available at: **http://www.acbf-pact.org/**. (accessed on 12/01/09)
[290] See **http://www.lusaketimes.com/**. (accessed on 12/02/09)

during the rainy season. This has seriously affected agricultural productivity as well as the ACBF projects, and ultimately, Kenya's competitiveness in the global economy.[291]

It is argued that while the ACBF projects have a role to play in the development of developing and least developed countries in Africa, projects in themselves do not amount to development. The ACBF initiative must address the more pressing needs, such as investment in infrastructure; building the capacity of participating countries, which capacity is necessary to implement trade capacity building initiatives; and human resource development, which is very crucial.

It is argued and submitted that addressing the above needs will ensure that beneficiary countries are more proactive in driving their development agenda and will facilitate ownership of the projects by these countries, which carries with it a sense of responsibility. Further, the ACBF does not adequately emphasise the fact that these countries also need to integrate trade into their development strategies in order to stimulate economic growth and reduce poverty on a sustainable basis.

Additionally, insufficient and unpredictable funding is equally a challenge for the ACBF initiative. In this case it has been extremely hard for ZIPAR, for instance, to extract pledges from donors such as the World Bank, EU and USAID on a sustainable basis.[292] Coupled with this challenge is the lack of capacity of Kenya and Zambia, as well as other African countries, to absorb and spend resources effectively on proper development plans. Undoubtedly, this hinges on issues of governance, which as earlier illustrated by the examples in the two countries, is seriously lacking in Africa generally.

This has been compounded by lack of political will and again heavy dependency on external resources on the part of governments of beneficiary countries.[293] As earlier cited, there is very low participation by the private sector, especially when it comes to issues relating to trade capacity building. And this is true for both Kenya and Zambia. It is essential that

[291] See Preparation of an Inventory of Research Work Undertaken in Agricultural / Rural Sector in Kenya. Available at: **http://www.aec.msu.edu/**. (accessed on 16/01/09)

[292] See Jacques G and Lesetedi G N (eds), The New Partnership for Africa's Development, Debates, Opportunities and Challenges, 50-74.

[293] See Victor O, opcit.

capacity building and trade promotion and private sector development programs are closely coordinated in order to leverage the complementarities.

An effective public-private partnership is also vital in order to create an enabling environment to accelerate capacity building process as well as export-oriented growth necessary for an effective participation in the multilateral trading system. Latin America has clearly led the way in the revival of private participation in all the relevant sectors of their economies.[294] Many Latin American governments have had positive experience in building their infrastructure in all sectors including telecommunications, and water and sanitation[295]

One of the major setbacks for capacity building initiatives in Kenya and Zambia is poor coordination and lack of proper implementation strategy. For instance, various ministries and agencies including the Ministry of Finance of Zambia, the Ministry of Commerce, Trade and Industry, the Zambia Development Agency (ZDA), share the responsibility of formulating and implementing trade policies, but inter-agency coordination is weak.[296]

In this case it is necessary to incorporate trade issues explicitly and fully into a strong and reliable inter-agency implementation mechanism. In addition, ZIPAR lacks establishment support, and there have been calls to establish a unit under the Ministry of Commerce, Trade and Industry.[297]

Capacity building projects are in most cases not streamlined and integrated into the national development plans or the national budgets. This is the case for both ZIPAR and KIPPRA which are externally funded. For example, ZIPAR does not receive proper budgetary allocation.[298] Inevitably, the governments in the beneficiary countries need to deliberately create conditions that will spur high performance of capacity building projects.

---

[294] See The Private Participation in the Rail Sector. Available at: **http://rru.worldbank.org/documents**. (accessed on 06/03/09)

[295] Ibid.

[296] See The Zambia Diagnostic Trade Integration Study. Available at: **http://www.integratedframework.org/**. (accessed on 12/02/09)

[297] See Mwenda K, 'Can Corruption and Good Governance be defined in Legal terms?)', Vol 1, *Journal of Global Change and Governance, at 4.*

[298] See Chifamba, opcit.

Political instability and conflict in the Sub-Saharan African countries have equally stalled capacity building processes and initiatives.[299] At present, by way of example, it is very unlikely that a capacity building initiative in Zimbabwe would easily attain permanency and predictability. The economic and political environment in Zimbabwe will not simply allow it.

Undeniably, the ACBF initiative can successfully build the trade capacity of developing countries and LDCs, if governmental and non-governmental actors nurture the will to develop strategies, national priorities and development goals on the basis of mutual participation, respect, responsibility and accountability.

In view of the foregoing, the ACBF initiative alone is not adequate to build the trade capacity of Kenya and Zambia, in particular, and other African developing countries and LDCs in general.

3.3 THE AFRICAN GROWTH AND OPPORTUNITY ACT (AGOA)

The African Growth and Opportunity Act (AGOA) offers preferential access to Sub-Saharan Africa's products into US markets. In turn, beneficiary countries are required to commit themselves to improve their economic policy environment, participate more actively in the globalization process, promote political and economic stability, and foster human and workers' rights in their countries.[300]

The AGOA which was enacted in 2000 originally expired on September 30, 2008 but as a result of the July 13, 2004 signing of the AGOA Acceleration Act of 2004, the AGOA has been extended until September 30, 2015.[301]

---

[299] See The Standing Senate Committee on Foreign Affairs and International Trade, Overcoming 40 Years of Failure: A New Road Map for Sub Saharan Africa. Available at: **http://www.parl.gc.ca/**. (accessed on 19/12/08)

[300] See Nouve K and Staatz J, Has AGOA Increased Agricultural Exports from Sub-Saharan Africa to the United States? Available at: **http://www.ecostat.unical.it/2003/**. (accessed on 15/02/09)

[301] See The Southern Africa Global Competitiveness Hub. Available at: **http://www.satradehub.org/**. (accessed on 16/02/09)

The AGOA benefits are currently extended to 37 Sub Saharan African (SSA) countries including Kenya and Zambia, and to more than 1,800 tariff line items in addition to the 4,600 items already enjoying duty-free status under the U.S. Generalized System of Preferences (GSP) program. AGOA has added to the list of duty-free products such major import-sensitive items as apparel, footwear, luggage, handbags and watches.[302]

In this regard, AGOA accords duty-free access for eligible products to the largest single market in the world. It also provides beneficiary countries with a significant competitive advantage over non-AGOA countries that must pay normal tariff rates to enter the United States. This is particularly true with respect to products that have high U.S. tariff rates in many instances, such as apparel, footwear and agricultural products.[303]

The program also promotes export diversification in AGOA countries through its provision of duty-free and quota-free benefits to virtually all products.

AGOA also encourages expanded regional integration and production sharing among beneficiary countries, and provides job creation and economic growth within those countries.[304]

In addition, AGOA provides significant opportunities for companies and business organizations to build relationships with their U.S. counterparts. It also provides security for both SSA exporters and potential U.S. investors by ensuring AGOA benefits until 2015.[305]

The question that begs an answer is, “to what extent has AGOA contributed to the trade capacity building of countries such as Kenya and Zambia?” In answering this question, it is intended to draw insight into the activities of AGOA in Kenya and Zambia in order to evaluate the extent of AGOA’s contribution to the trade capacity building of the two countries.

[302] Ibid.
[303] See Erkul B, US-African Trade and Investment. Available at: **http://www.agoa.gov/.(accessed** on 15/02/09)
[304] See The Southern Africa Global Competitiveness Hub. Available at: **http://www.satradehub.org/**. (accessed on 16/02/09)
[305] Ibid.

3.3.1 KENYA'S EXPERIENCE WITH AGOA

Kenya's main exports to the United States are garments traded under the terms of the African Growth and Opportunity Act (AGOA). Despite the opportunities presented by AGOA, Kenya's apparel industry is struggling to hold its ground against Asian competition and runs a trade deficit with the United States.[306]

In terms of Trade Balance, Kenya typically has a substantial trade deficit. The trade balance fluctuates widely because Kenya's main exports are primary commodities subject to the effects of both world prices and weather.[307]

On 11 February 2009, the Kenya Trade Permanent Secretary, Cyrus Njiru , stated in his speech, as he addressed Kenyan traders that, Kenyan exporters must diversify their product offering targeted at the US market under the AGOA preferential trade agreements should they harbour ambitions of growing their share of the market.[308] Mr. Njiru further notes that Kenya is yet to reap the benefits of AGOA due to its narrow product offering and the fact that its traditional exports are facing stiff competition from other Sub Saharan nations. He further observes that it is pitiable that out of over 6,000 types of products that are allowed entry either duty free or quota free to the US under the AGOA arrangement, Kenya exports only 12 products.

So far, Kenya has relied heavily on the textile business as entry into the US market, but stiff competition and the high cost of doing business has seen other countries, such as China and India munch its share of the US textile market.[309] Figures from the AGOA website indicate that exports to the US have dropped from a value of Sh21 billion in 2005 to Sh19 billion in 2007, in a year when it managed to export agricultural products worth Sh4 billion despite agriculture being the country's economic mainstay. As a result, its overall trade volumes to the US has remained at near static over the past three years at about Sh24 billion. The

[306] See Country Profile: Kenya. Available at: **http://Icweb2.loc.gov/**. (accessed on 14/02/09)
[307] See Rolfe J R and Woodward D P, African Apparel Exports AGOA and Trade Preferences Illusion: Global Economy Journal 5,3/6
[308] See Sanga B, Kenyan traders asked to grow share of AGOA market. Available at: **http://www.bdafrica.com/**. (accessed on 23/02/09)
[309] Ibid.

figures indicate that the country has a long way to go if it were to catch up with other African countries in this 360 million market people.[310]

Evidently, AGOA has not adequately contributed to Kenya's trade capacity. There is a need to put a little more emphasis on enhancing Kenya's competitiveness. According to Honorouble Uhuru Kenyatta, the Deputy Prime Minister and Minister of Trade of Kenya, AGOA is in need of strengthening, if it is to produce the desired results, that is, improve Kenya's trade profile. Honourable Kenyatta complains that AGOA lacks institutionalized follow-up mechanisms to monitor and track progress of implementation.

He further observed that AGOA lacks permanency and predictability, which are necessary for long term objective to attract FDI. He further stated that AGOA must set clear targets and benchmarks with verifiable indicators as part of the monitoring and evaluation process.[311]

It is observed in this study that AGOA's stringent rules of origin have seriously undermined the benefits it presents.

3.3.1.1 AGOA'S STRINGENT RULES OF ORIGIN

The rules of origin under AGOA are quite stringent and restrictive rules of origin deprive producers of access to raw materials or intermediate product from low cost international sources and hence raise the cost of producing products for export to the US market.

Under AGOA, Kenya is required to source raw materials either locally from within Kenya, from other AGOA eligible Sub Saharan African countries, or from the US.[312] Undoubtedly, this is not feasible for Kenya apparel producers. High quality fabric and yarn may be, for example, available in the US but sourcing them to make apparels will at least double the unit cost of apparels and make them uncompetitive in terms of the US market.

[310] See AGOA-Kenya. Available at: **http://www.agoa.org/**. (accessed on 23/02/09)

[311] See The Speech of Honourable Uhuru Kenyatta, Deputy Prime Minster and Minster of Trade. Available at: **http://www.trade.go.ke/downloads/**. (accessed on 23/02/09)

[312] See KIPPRA's discussion paper No. 4: Prospects of Kenya's Clothing Exports under AGOA after 2004. Available at: **http://www.kippra.org/**. (accessed on 23/10/08)

Cotton production in Kenya is insufficient and the capacity to produce high quality and competitive fabric is lacking. The option of sourcing fabric and/or yarn from other AGOA-eligible SSA countries is limited by the fact that the region does not meet the fabric requirements of its apparel sub-sector due to various supply constraints.[313]

Moreover, the fabric produced locally and regionally falls short of the standard in terms of variety and quality demanded by the US market.[314]

For Kenya and the rest of SSA, the solution lies in sourcing fabric from the local cotton-textile industries, or the region through collaborative and strategic regional cotton-textile supply chains. For quality fabrics to be supplied locally and competitively, substantial capacity building in the lower parts of the cotton-textile chain is required. Critical inputs into this capacity building include establishment of an apex stakeholder institution to coordinate the industry and provide necessary regulation, cost-reducing interventions at all points in the chain, incentives to stimulate investment (at the ginning, spinning and fabric finishing parts of the supply chain), improved macroeconomic management, identification of niche markets, and accumulation of the necessary capital and skills.[315]

3.3.2 ZAMBIA'S EXPERIENCE WITH AGOA

The African Growth and Opportunity Act (AGOA) initiative has provisions under which countries like Zambia could export agricultural produce like peas, beans, grains, vegetables and other farm produce.[316]

This appeared to have been a chance for Zambia's agriculture and the manufacturing sector to hitch onto the band wagon and boost export earnings. But to date things have not turned out as expected. According to the Zambia Chamber of Small and Medium Business Association (ZCSMBA) the AGOA initiative has been a failure in Zambia because local entrepreneurs have not benefited[317] from it.

---

[313] Ibid.

[314] See KIPPRA's discussion paper, ibid.

[315] See Prospects of Kenya's Clothing Exports under AGOA after 2004 Discussion Paper No. 24. Available at: **http://www.kippra.org/resources**. (accessed on 13/02/09).

[316] See Zambia: The AGOA initiative has been a failure in Zambia. Available at: **http://www.allafrica.com/**. (accessed on 17/01/09)

[317] Ibid.

From the time the initiative took off, only a trickle of the anticipated stupendous exports have been recorded from Zambia. For example, according to an independent AGOA facility trade research finding, there was only a 15 per cent increment in total apparel export under AGOA between 2005- 2006.[318]

Further, the 2004 COMESA annual report for instance indicates that revenues realized from Zambia's exports to the US market under AGOA were far much below US$10 million in total.[319]
The 2005 annual report explains that the facility had failed to fully realize the intended results because, despite declaring the market open, the US still upholds agricultural subsidies that have rendered African agricultural products uncompetitive.

Access by Zambian goods to the US market under the African Growth Opportunity Act (AGOA) has not succeeded because of the uncompetitiveness of Zambian products.[320] Zambian exports are at a disadvantage on the US market because of factors like quantity and quality, the cost of transportation, pricing and the category of the products.[321] At the bottom of this state of affairs has been the lack of capacity to achieve volumes in terms of exportable products by local producers. The American export market demands high volumes which most single industries in a set up like Zambia are not able to achieve[322] and sustain.

Additionally, Zambian exports have effectively been unable to penetrate the American market because of being subjected to many administrative barriers, such as stringent and elaborate Sanitary and Phytosanitary (SPS) requirements for agricultural exports. For instance, the lengthy and cumbersome nature of processing involved in the US Pest Risk Assessments that tend to discourage the exporters.[323]

Stringent rules of origin have equally hampered AGOA's progress in Zambia. Just like in the case of Kenya, Zambian garment manufacturers have to source their yarn and fabric from the

[318] See Ngobeka l,Business Review - AGOA has failed to work in Zambia? Available at: **http://www.times.co.zm/**. (accessed on 17/01/09)
[319] Ibid.
[320] See Zambia: The AGOA initiative has been a failure in Zambia. Available at: **http://www.allafrica.com/**. (accessed on 17/01/09)
[320] Ibid.
[321] See Benajee S et al, Investment Policy Review: Zambia, at 42.
[322] Ibid.
[323] See Ngobeka L, opcit.

US or accredited Southern African countries, if not, the Zambia's garment exports to the US market would not qualify for duty-free and quota-free access to the US.[324]

In this regard, Zambia's garment manufacturers are not yet in a position to take advantage of the benefits under AGOA, mostly because quality yarn and fabric is not easily accessible as it means added cost to production; besides that their machinery is not modern[325] and as such cannot meet the quality standards of garments. Consequently, Africa has in this case lost the market share to China and India which have the technological capacity to meet the quality and the required volumes.

The trade conditions under AGOA are not user friendly to most developing countries and LDCs in Sub Saharan Africa. This is evident, for example, from the fact that of the 37 AGOA-eligible countries in Sub Saharan Africa, only two countries, that is, South Africa and Ghana, export a broad variety of products to the United States. Nine export mostly apparel items, four export mainly petroleum based products, over 20 are exporting just a limited number of products, and there are countries that are yet to export any items under AGOA or see one dollar of investment[326] In respect thereof.

Most of the AGOA eligible African countries remain unable to take advantage of the broad market access provided by AGOA, and there are a number of reasons why this is so, including supply side constraints such as inadequate infrastructure and other factors such as the lack of capacity to produce competitive and value-added products. Market access alone is not enough for many African countries, especially if it is based on conditions that do not correspond with the industrial capacity of the countries involved. What countries like Kenya and Zambia need is trade capacity enhancement aimed at helping these countries in particular and African countries in general, to expand and diversify their exports under AGOA. In addition, programmes to support the development of supply side capacity of African countries related to infrastructure development, water and transport, can also enhance the capacity of these countries to trade.

[324] See The Cotton-Textile-Apparel Value Chain Report: Zambia, at 9. Also see **http://www.cottonafrica.com/**. (accessed on 18/01/09)

[325] Ibid.

[326] See AGOA: Hearing Before The Subcommittee On Africa Of The Committee On International Relations House of Representatives. Available at: **http://www.commdocs.house.gov/committees/**. (accessed on 18/01/09)

3.3.3 LESSONS AFRICA CAN DRAW FROM AGOA AS A CAPACITY BUILDING INITIATIVE

Generally, trade has increased between the United States and Africa. However, it remains concentrated in oil from countries like Nigeria, and other commodities such as motor vehicle components, textiles (cloth and other fabrics) and apparel (clothing manufactured from textiles) and wine from South Africa. In addition, the US also imports agricultural products such as bananas from Ghana.[327]

Evidently, it is only commodities produced in a handful of countries that are gaining some benefits under the AGOA initiative. Some analysts say the AGOA's objective of spurring African economies will only be reached by steps such as the opening up of agricultural trade between Africa and the United States, and improvements in the capacity of African states to trade with the United States and with each other.[328]

AGOA added 1,800 products to th**e** list of duty-free products included in the GSP, giving eligible countries duty-free benefits for approximately seven thousand products, including motor-vehicle components, wine, footwear, and some agriculture products. Due to U.S. congressional opposition, agriculture products that Africa would have a competitive advantage in exporting, such as sugar, tobacco, peanuts, and beef, were not included on the list.[329]

Undoubtedly, Africa has not benefited a great deal from the AGOA initiative. Accordingly, it is suggested that the benefits that the AGOA offers are illusory.

African countries need to unite and accept that any initiative claiming interest in capacity building must be able to adequately address the supply side constraints as a matter of urgency. Africa needs to take a more cautious approach when signing international trade protocols, generally.

As has been observed so far in case of AGOA, only a few countries seem to be maximizing the benefits under AGOA. Poor countries like Zambia have reaped very little from the initiative, and it is very likely that poorer countries will start feeling left out, and as noted by the Cairo

---

[327] See The Africa Growth and Opportunities Act: US-Africa trade. Available at: **http://www.agoa.org/**. (accessed on 18/01/09)

[328] See Hanson S, the African Growth and Opportunity Act. Available at: **http://www.cfr.org/**. (accessed on 18/01/09)

[329] Ibid.

Conference of African Ministers of Trade,[330] a situation that will simply undermine regional economic co-operation efforts by African countries.

Simply put, Africans will have to learn to be more aggressive in the pursuit of national interests on the international market place. For example, very few of the countries that have qualified to take advantage of AGOA have ever penetrated the American market to establish business linkages.

Further, it is disheartening to see many African governments reducing AGOA to a mere forum where they go and beg for aid. It also appears that governments and NGOs dominate AGOA while the private sector that should be at the center of the programme are simply sidelined and left out of the AGOA process. It is thus submitted that, there is an urgent need for the private sector to be proactive and support programmes aimed at enhancing the trade capacity of developing countries and LDCs in Africa.[331]

3.4 CONCLUSION

This Chapter endeavored to evaluate NEPAD, ACBF and AGOA, as initiatives, aimed at capacity building for African countries. More specifically, these initiatives were examined in relation to the contributions (or the lack thereof) they have made to enhance the trade capacity of Kenya and Zambia.

NEPAD, the initiative firstly discussed, is an undertaking by African leaders to eradicate poverty and spur sustainable economic development by participating actively in the world economy. Unfortunately, NEPAD has had no real impact on most African states in terms of trade capacity building. Most scholars[332] have argued that NEPAD seems to maintain a narrow emphasis on FDI, and as such does not posit a real and credible development strategy for Africa. Worse still many African states, Kenya and Zambia inclusive, have been suspicious of the NEPAD concept and doubted the claims that NEPAD has Africa's interests at the heart of its objectives.

[330] See Machipisa L, African Civil Society and AGOA. Available at: **http://www.twnside.org/**. (accessed on 28/12/08)

[331] See Raghavan C, African NGOs Campaign Against AGOA. Available at: **http://www.twnside.org.sg/**. (accessed on 14/02/09)

[332] See Akokpari J, opcit.

Further, some countries, such as Zimbabwe and Libya, regard NEPAD as a Western ploy, and have openly campaigned against it. These countries have argued that NEPAD is inspired by the IMF and World Bank strategies of structural adjustment programmes (SAPs), trade liberalization that continue to subject Africa to unequal exchange, and strictures on governance borrowed from the practices of western countries and not rooted in the culture and history of the people of Africa.

The civil society of Africa has also added it misgiving about NEPAD and is of the view that, it is a top-down programme driven by African elites and drawn up with the corporate forces and institutional instruments of globalization, rather than being based on African peoples experiences, knowledge and demands. Consequently, the civil society in Africa has equally campaigned against NEPAD.[333]

Unfortunately, the lack of acceptance of NEPAD among some African states and the African Civil Society, has affected the progress of vital projects under the NEPAD initiative which have a high potential to generate accelerated and sustainable levels of economic growth.

This Chapter has so far concluded that it is imperative that Africa unites and embraces the NEPAD initiative, in order to transform it into a genuine developmental programme. In this case, African states must move away from NEPAD's neo-classical contours, as well as coupling its external focus with greater emphasis on intra-African solutions, while creating space for active civic engagement in policy and governance processes.

It has also been concluded that there is a need to enforce South-South Cooperation. African countries must emulate South Africa, whose efforts in this case are evidently manifest as can be seen in the example of the South Africa-Brazil-India cooperation, in which South Africa played a leading role.

It is thus concluded that, NEPAD is an opportunity to participate and influence the making of Africa's own history, regardless of its imperfections and the different takes on it by different African countries.

[333] See Raghavan C, African NGOs Campaign Against AGOA. Available at: **http://www.twnside.org.sg/**. (accessed on 14/02/09)

Ultimately, the achievement of NEPAD will not be calculated in terms of the amount of conferences and workshops that it generates but in measured increases in democracy, clean government, and economic growth and development.

It is the contention of this study that, the neo-patrimonial nature of most of the African states is fundamentally deleterious to broad-based development and good governance and it is this that may well ultimately sabotage the high aspirations contained in NEPAD.

In looking at ACBF, it is concluded that, African initiatives need to focus on adequately addressing supply-side constraints, such as infrastructure, which is one of the biggest stumbling blocks to capacity building. Africa in general must refrain from depending heavily on external resources, and accordingly, African Governments must build their own capacity not only to assimilate resources but to spend resources effectively.

Further, although, the general picture given is that AGOA has facilitated an increase in trade from Africa into the US market, the AGOA trade statistics as revealed by Kenya and Zambia attest otherwise. Kenyan and Zambian exports have effectively been unable to penetrate the American market because of stringent rules of origin and also as a result of being subjected to many administrative barriers, such as stringent and elaborate Sanitary and Phytosanitary (SPS) requirements for agricultural exports. A case in point, for instance, is the lengthy and cumbersome nature of processing involved in the US Pest Risk Assessments that tend to discourage the exporters.[334]

As such it is observed thus far that AGOA has delivered very little of what was promised to Africa.

It is, therefore, concluded that African countries need to emphasize the issue of ownership which is considered critical for the effectiveness of capacity building initiatives. Capacity building initiatives must not seek to micro-manage the development agenda of beneficiary countries, they must be allowed to develop their own ideas and strategize their own development agenda. African countries must as such employ a more cautious approach when signing international trade protocols.

[334] See Ngobeka L, opcit.

CHAPTER FOUR

THE ROLE OF REGIONAL INTEGRATION, AFRICAN GOVERNMENTS AND THE PRIVATE SECTOR, IN ENHANCING THE TRADE CAPACITY OF THE SUB SAHARAN AFRICAN MEMBERS OF THE GATT/WTO: THE CASE OF KENYA AND ZAMBIA

4.1 GATT/WTO RULES ON REGIONAL TRADE ARRANGEMENTS

The foundation of the GATT/WTO Agreements is the non-discrimination principle, under which there are two main rules. The first one is the most-favoured-nation (MFN) principle, which prohibits the granting of any benefit, favour, privilege or immunity affecting customs duties, charges, rules and procedures to a particular country or group of countries, unless they are made available to all like products originating in all other Members of the WTO.[335]

The second rule is the national treatment principle under which Members of the WTO are prohibited under certain conditions from discriminating between imported products and domestic products. It follows from the non-discrimination principle that no country or group of countries may be favoured within the GATT/WTO legal framework.[336]

In so far as the MNF principle is concerned, one of the most important and controversial exceptions thereto is Article XXIV of the GATT/WTO.[337] This provision authorises the formation of customs unions and free trade areas (FTAs). Some scholars have qualified Article XXIV as “the curtain behind which members of regional groupings could sin (against the sacrosanct MFN principle) without being seen”.[338]

For more than three decades, Sub Saharan African countries have pursued regional integration as a strategy to accelerate industrialization and growth,[339] on the basis of the firm belief that regional integration can strengthen the efforts of countries to manage relations

---

335 See Lester S et al, World Trade Law: Text, Materials and Commentary, 273-338.
336 ibid.
337 See Mathis J H, Regional Trade Agreements in the GATT/WTO, (2002), at 1.
338 See Dieter H (ed), The Regionalization of the World Economy and Consequences for Southern Africa, at 145.
339 See Mills G, Economic Integration, South African Journal of International Affairs, 11

with powerful external actors and can facilitate the expansion of markets that will aid industrialization in turn.[340]

African countries have also recognized the key potential role of international trade for their sustainable development, many of these countries have entered into various bilateral and regional trade agreements and followed a dual path of multilateralism and regionalism.[341]

Further, conventional wisdom is that regional integration provides one of the cures to the myriad social, economic and political problems facing Africa and will assist in offering a path away from its trajectory of increasing global economic marginalisation.[342]

Empirical evidence proves that developed countries such as those of Europe, have benefited from regional trade integration, whilst the gains from regional trade integration failed to materialise in developing countries, especially those in Sub Saharan Africa.[343]

SADC Member States have chosen regional integration as part of their strategy for global participation.[344] However, the specific question addressed in this part of the chapter is the extent to which the participation of Kenya and Zambia in regional economic communities (RECs) has facilitated, or on the contrary hampered, their participation in the GATT/WTO. The RECs under examination are SADC and COMESA.

4.1.1 THE SADC FREE TRADE AREA

In terms of its historical background, SADC has been in existence since 1980. It was formed in Lusaka, Zambia on April 1, 1980, following the adoption of the Lusaka Declaration for Southern Africa: Towards Economic Liberation, as a loose alliance of nine majority-ruled States in Southern Africa known as the Southern African Development Coordination

---

[340] See Ake C, A political economy of Africa, at 160.
[341] See Gallagher P et al (eds), Managing the Challenges of WTO Participation: 45 Case Studies: How Regional Economic Communities can Facilitate Participation in the WTO: The Experience of Mauritius and Zambia, at 374.
[342] Ibid.
[343] See Umurungi F, A Critical Overview of Regional Trade Integration: Lessons for COMESA, (2005), at 5.
[344] See Flatters F, SADC Rules of Origin: Undermining Regional Free Trade. Available at: **http://www.tips.org.za/files**. (accessed on 20/09/08)

Conference (SADCC). Its main aim was to coordinate development projects in order to lessen economic dependence on the then apartheid South Africa.[345]

The founding Member States are: Angola, Botswana, Lesotho, Malawi, Mozambique, Swaziland, United Republic of Tanzania, Zambia and Zimbabwe. The transformation of the organization from a Coordinating Conference into a Development Community (SADC) took place on August 17, 1992 in Windhoek, Namibia when the Declaration and Treaty was signed at the Summit of Heads of State and Government thereby giving the organization a legal character.[346]

Thus, SADC was established under Article 2 of the SADC Treaty by SADC Member States represented by their respective Heads of State and Government or duly authorized representatives to spearhead economic integration of Southern Africa.[347]

This intention is evident from Article 5 of the SADC Treaty which provides for a broad range of objectives varying from self-sustained development, economic growth and poverty alleviation to common political values, systems and institutions.

It is worthy of note that the signatories of the SADC Treaty agree that underdevelopment, exploitation, deprivation and backwardness in Southern Africa will only be overcome through economic cooperation and integration.[348] In pursuit of this agenda, the SADC Free Trade Area (FTA) was launched on August 17, 2008 at Sandton, South Africa during the 28th Summit of SADC Heads of State and Government.

As envisaged by the SADC Trade Protocol, SADC is expected to liberalise 85 per cent of all intra-regional SADC trade by 2012.[349]

Although the SADC Protocol on Trade entered into force on 25 January 2000 after ratification by two thirds of the signatory states, the necessary tariff adjustments and rules of origin still

---

[345] See Lester S et al, opcit.

[346] The current membership includes: Angola, Botswana, Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. See The SADC Profile. Available at: **http://www.sadc.org/**. (accessed on 15/09/08).

[347] Ibid.

[348] See The Preamble of the SADC Treaty. Available at: **http://www.sadc.org/**. (accessed on 15/09/08)

[349] See the SADC Trade Protocol. Available at: **http://www.sadcfta.org/**. (accessed on 17/09/08)

have to be finalised and agreed between the SADC members, before the implementation of the Trade Protocol.[350]

Suffice to state here that not all SADC Member States are members of the Free Trade Area as Angola and the Democratic Republic of Congo are currently not applying the Trade Protocol, and have asked for more time to implement the SADC protocol.[351]

SADC has also adopted milestones[352] to facilitate the attainment of the Customs Union (CU) by 2010, the Common Market (CM) by 2015, Monetary Union (MU) by 2016 and the Single Currency by 2018, an ambitious agenda albeit.

Despite the ambitious nature of the agenda of the Trade Protocol, progress so far has been very limited. In the first instance, little to no liberalisation at all is about to happen in the immediate future. An audit report[353] undertaken by the Southern Africa Global Competitiveness Hub (SA Trade Hub) revealed significant non-compliance among players. The audit findings were that four member states- Malawi, Mozambique, Zimbabwe and Tanzania were still on the implementation of their tariff phase-down schedules. Malawi had only made one tariff reduction in 2001 with no further reductions being made.[354]

SADC countries have significantly back-loaded their tariff reduction schedules, so that nearly all tariffs for competing products will not be liberalised until the latter part of the implementation period.[355] In the second instance, tariff revenue generation has been applied as a proxy for product sensitivity, excluding some of the most important product lines (such as

---

[350] See **http://www.deloitte.com/dtt/** (accessed on 30/03/09)

[351] See **http://www.chathamhouse.org.uk/**. (accessed on 30/03/09)

[352] A free trade area is a zone where regulations have been removed but each member country can still maintain their individual customs on specific areas. It's usually done to encourage development in some areas where there is not big competition. A customs union goes a step farther and requires all members to have the same external tariff policy to goods coming in from outside the customs union. Custom unions are made to encourage trade between desired countries or to avoid trade with specific countries by charging equally higher customs for products from outside the union. A Common Market like the EU is a customs union with common policies on product regulation, and freedom of movement of the factors of production **(**capital and labour) and of enterprise. The goal is that movement of capital, labour, goods, and services between the members is as easy as within them. This is the fourth stage of **e**conomic integration. And finally, a Monetary Union entails the the unification of national monetary policies and the acceptance of a common currency administered by a supranational monetary authority. See **http://en.wikipedia.org/wiki/**. (accessed on 30/03/09), see also the SADC Profile. Available at: **http://www.sadc.org/**. (accessed on 15/09/08)

[353]See The Audit Report on the Implementation of the SADC Trade Protocol. Available at: **http://www.mic.org/docsrel/**. (accessed on 21/09/08)

[354] Ibid.

[355] See SADC and Regional Coherence. Available at: **http://www.ecdpm.org/**. (accessed on 18/09/08)

Sugar and related products, Coffee, tea, cocoa, Fish and related products, footwear, among others) from any liberalisation.[356]

In the third instance, contrary to the 85% criterion agreed in the Protocol, the trade volume of goods that SADC states wish to exclude a priori from any regional liberalisation is worth more than 15% of all trade.[357] Evidently, the goals as envisaged by the protocol are not being achieved. Further, this lack of progress, it is noted, entails missed opportunities for effective regional integration, thereby endangering the future of the economic integration process as envisaged by the Trade Protocol.

Generally, every FTA has to pass the GATT Article XXIV test (must cover "substantially all [of the] trade").

it is must however be emphasized that since the SADC Trade Protocol is a regional trade arrangement between less developed countries, it is covered by the exemption provided for in the Enabling Clause (Contracting Parties Decision of 28 November 1979) and therefore it does not have to comply with GATT Article XXIV.[358]

It is also observed although there is no exact definition as to what constitutes substantially all trade, the practice has been that at least 90 per cent of trade in goods must be liberalized.[359]

It is noteworthy to state that SADC is a region composed of economies with highly unequal per-capita incomes and growth rate.[360] The case of richer countries in the group, such as Mauritius, South Africa, Namibia and Botswana is no better as the per capita income numbers in those countries are deceptive because of the marked income inequality that prevails within SADC countries.[361]

---

[356] Ibid.
[357] Ibid.
[358] See Decision of 28 November 1979 (L/4903). Available at: **http://www.wto.org/english/documents**. (accessed on 24/08/08)
[359] See Mathis J, opcit, and see also Berridge S, The EPAS: Opportunity or Threat? Available at: **http://www.krittivisianlife.com/**. (accessed on 30/03/09)
[360] See Hansohm D et al (eds), Monitoring Regional Integration in Southern Africa, (2003), at 9.
[361] See Venter D and Neuland E, Regional Integration: Economic Partnership Agreements for Eastern and Southern Africa, (2007), at 130.

Such different levels and uneven development between SADC member states is likely to impel weaker economies like Zambia and Malawi to protect themselves against stronger members such as South Africa, Mauritius, Namibia and Botswana.[362]

It is trite that both theory and practice show that economic convergence is an important goal when unequal economies integrate;[363] that is, there is an expectation that there will be a process of catch up by the lesser developed member states with the more developed ones.

However, it must be realized also that FTAs between countries with vastly different levels of economic development may damage the weakest party. For instance, market access liberalisation in goods and services may result in surges of imports; moreover, tariff elimination, besides depriving poor countries like Zambia of revenues, removes powerful instruments of industrial and agricultural policy to protect their infant industries.

This is critical because 4 of the 18 SADC countries are classified as Heavily Indebted Poor Countries (HIPC); these include Angola, Malawi, Mozambique and Zambia, with Zambia having an external debt of US$ 5.09 billion or 174 per cent of GDP (2000).[364] Although there was a reduction in debt, between 2000 and 2006, as a result of debt cancellation, the figures have increased between 2006 and 2007. Thus, the stock of Zambia's external debt during 2007 increased by 9.5% to US$2,035.2 million from US$1,859.0 million in 2006.[365] This trend is likely to continue given the huge investment required by the mining sector in terms of technological capacity, skilled man power and infrastructure improvement.

Undoubtedly, the highly different economic structure of SADC economies poses a problem or serious setback for deeper economic integration, as countries will be affected differently and will react to global economic shocks differently.[366] For example, South Africa has a mature manufacturing industry while Zambia is experiencing a reversal of industrialization, that is, it has moved back towards agriculture.[367]

---

[362] See Buthelezi S, Regional Integration in Africa: Prospects and Challenges for the 21st Century, (2006)1 at 162.
[363] Ibid.
[364] See The African Development Bank, African Development Report 2001, at 83.
[365] See Beyond Figures: 2008 budgetary changes. Available at: **http://www.pwc.com/extweb/**. (accessed on22/02/09)
[366] I See Venter D and Neuland E, Regional Integration: Economic Partnership Agreements for Eastern and Southern Africa, (2007), at 52
[367] Ibid.

Further, if Zambia and South Africa become members of the SADC Customs Union then Zambia will have the same tariffs as South Africa and no tariffs will exist between South Afric a and Zambia. The question that begs an answer is how will an LDC and vulnerable economy like Zambia that is desperately in need of revenue, handle this change? It is submitted that Zambia will have no choice but to count the cost, because this, without doubt, has serious implications not only on the government revenue but the private sector and capital flows.

The principal weakness of the SADC economies is heavy dependence on exports of primary commodities, (the composition of goods traded is mainly primary and unprocessed goods, with about 90% of exports comprising of mineral and agricultural products),[368] with the most important being oil from Angola, diamonds from Botswana, Namibia and South Africa, platinum and gold from South Africa, copper and agricultural produce, such as tobacco, horticulture, cotton and beef from Zambia. In terms of imports, these are dominated by manufactured products, machinery, chemicals and heavy equipment.[369]

Generally, it is submitted that the SADC region faces the challenge of low productive capacity, characterized by low volumes of intra-SADC trade. This is mainly as a result of the non-complementary trade structure and low industrialisation degree in the region.[370]

Since SADC economies continue to be based on monocultural production, it is safe to submit that diversification of SADC economies' production and export base is likely to increase intra-regional trade.[371]

Meanwhile, trade relations in the SADC region are characterised by a number of overlapping bilateral treaties, regional arrangements and various multilateral forms.[372] For instance, South Africa is not only a member of SADC it is also a member of SACU. Other than that, the European Union and South Africa have concluded a bilateral agreement covering trade relations, development cooperation, economic cooperation and numerous other fields such as socio-cultural cooperation and political dialogue, the TDCA, among others. Zambia on the other hand, is a member of both SADC and COMESA, while Kenya belongs to both the EAC and COMESA.

[368] See Buthelezi S, Regional Integration in Africa: Prospects and Challenges for the 21st Century, (2006)1 at 162.
[369] Ibid.
[370] See Venter D and Neuland E, Regional Integration: Economic Partnership Agreements for Eastern and Southern Africa, (2007), at 130.
[371] See Kalenga and Chipeta C, The SADC Protocol: What are the SADC Countries Looking for? In Hartzenberg et al. and McCarthy C, Trade Policy Prerequsites for Regional Trade Gains, (2002) at 35.
[372] See Buthelezi S, Regional Integration in Africa: Prospects and Challenges for the 21st Century, (2006)1 at 181

Such overlapping memberships are likely to lead to tariff structures, preferences and rules of origin that are trade diverting. This may also lead to inefficiencies related to customs administration and customs revenue collection. Undoubtedly, the consequence of these inefficiencies is likely to have negative effects on smaller and more fragile economies.[373]

It is commonplace that SADC features a dominant economy, South Africa, which constitutes about 20% of the population but 70% of the regional aggregate GDP. The South African economy is more sophisticated and diversified, for instance, the share of manufacturing in its GDP and total exports is larger, and its financial depth is greater. In addition, South Africa exports five times as much to other SADC countries as it imports from them, and has bilateral surpluses with each of them.[374]

In addition to different income levels, the countries also highly differ with respect to their macroeconomic indicators and policies.[375] For instance, countries like Zambia and Malawi clearly have insufficient capital supply and limited convertible currencies; they have small stock exchanges that are highly illiquid. These countries also lack public infrastructure, experience a low labour productivity and missing export market information, as well as missing backward- and forward linkages in production process.

In addition, for South Africa the import tariff is an instrument of industrial policy, to be used selectively to protect selected industries (e.g. clothing and textiles and automotive industry). For many other member states, Malawi, Angola and Zambia inclusive, the tariff is an important source of government revenue, and tariff reduction poses challenges for fiscal policy.[376]

In pursuance of the intention of this Chapter, the question that begs for an answer at this point is how can the SADC FTA facilitate the integration of its members into the multilateral trading system and enhance their participation in global trade?

In order to adequately address this question, it will be proceeded to examine the contributions SADC has made to improving Zambia's trade capacity both at regional and global level.

---

[373] See Kalenga P, An Overview of Trade Relations in SADC: Some Empirical Observations, in Hartzenberg et al (eds), Trade Relations in the 21st Century: Focus on the Southern African Development Community, (2002), at 35.
[374]See **http://web.worldbank.org/**. (accessed on 30/03/09)
[375] See Meyn M, The Progress of Economic Regionalisation in Southern Africa – Challenges for SADC and COMESA. Available at: **http://www.iwim.uni-bremen.de/africa/**. (accessed on 31/03/09)
[376] See Kalenga P and Elago P M, Wither the SADC Custom Union? Available at: **http://www.nepru.org.na/**. (accessed on 31/03/09)

4.1.1.1 ZAMBIA'S EXPERIENCE WITH SADC

Zambia participates in both multilateral and regional trading agreements. As already stated, it is a member of the GATT/WTO, COMESA and SADC. Zambia has substantial market access to its major regional trading partners, through participation in the COMESA FTA and the SADC FTA.[377] Zambia considers regional and bilateral trade agreements as a first step towards greater integration and wider liberalization. However, its membership in several trade agreements, with different provisions, goals, geographical coverage, and trade liberalization agenda, is difficult to manage.

Multiple and overlapping memberships in regional economic communities (RECs) have created a complex web of competing commitments which together with different trade rules result in high costs for intra-Africa trade and undermine trade facilitation efforts that should be at the core of the integration agenda.[378] In any case Zambia does not have capacity in terms of both financial and human resources to meet the demands of its membership in the several trade agreements.

Multiple membership of overlapping regional blocs with different trade regimes can introduce particular complexities and concerns for such countries, their governments and private sector. Suffice to say that it is particularly joint-members of SADC and COMESA that are increasingly facing confusing and conflicting situations as the respective integration agendas are deepening simultaneously.[379]

---

[377] Ibid.

[378] The latest initiative aimed at resolving the challenges arising from overlapping memberships is the so-called Tripartite Alliance involving COMESA, SADC and the East African Community.
Though the alliance recently received major political support from heads of states and government, and has many important trade facilitation objectives, it still purportedly aims to establish a customs union in the long term. Many African scholars and policy makers believe its original idea of having only a free trade agreement was the most viable way forward, albeit difficult to achieve in practice. This is because simply declaring a customs union may give its authors a sense of achievement but the union might turn out to be largely hollow in substance. See Khumalo N, [DTTP] Development through Trade: Opinion. Available at: **http://www.saiia.org.za/**. (accessed on 24/02/09)

[379] Traders have to operate within a number of trade regimes each with its own tariff rates, rules of origin and procedures. The risk of trade deflection becomes high as goods that have been preferentially imported from say Kenya (a member of one of these regimes) by say Malawi (a member of both regimes) are subsequently preferentially re-exported to say South Africa (a member of only the other regime). The official barriers to trade become very porous in such situations.
Whilst it is technically possible (although difficult) for the COMESA and SADC FTAs to co-exist, it will be impossible for any member state to belong to more than one regime when (if) they adopt a Common External Tariff (CET) and become a Customs Union (CU), unless each regime adopts the same CET and the same CU regulations. Should COMESA become a CU, those COMESA countries that are also participating in the SADC FTA implementation program may well be in violation of GATT Article XXIV if they seek to maintain preferential tariffs for imports from the SADC countries.

In this regard, FTAs pose a deep threat to multilateralism and the core values of the WTO. Firstly, they directly contradict the MFN principle, the cornerstone of the multilateral trading system. Secondly, they create a maze of overlapping arrangements, leading to substantial trade diversion as countries discriminate against efficient, low-cost suppliers outside of the trade agreement in favour of less efficient suppliers from within the trading bloc. Costs of trade increase further, because each agreement has its own rules of origin, tariff schedules, and periods of implementation.[380]

Zambia's trade within SADC is dominated by the country's trade with South Africa. Major products imported include iron, steel, vehicles, paper and paper products, industrial equipment, petroleum products, foodstuffs and beverages.[381] The major exports are cotton lint, poly cotton, cotton yarn, cotton seed and stock feeds, fresh vegetables, sugar, molasses, processed foodstuffs, copper rods, wires and cables, scrap metal, wood and electricity.[382]

However, Zambia faces a number of export market access problems linked to technical barriers to entry.[383] The case in point is Zambian sugar exports to the SADC, the EU regions, and mainly SACU which are limited by quotas, and onerous rules of origin, especially for goods. This is more so for produce such as cotton, which needs to be processed only up to a specified level to secure entry into these markets.[384] For instance, under the EU, SADC, as well as SACU rules of origin, there is a general provision specifying that very simple operations, such as, repackaging, relabeling, simple mixing and assembly and other 'screwdriver' operations are

In addition, for Namibia and Swaziland, their joint membership of COMESA and SACU has become a dilemma with the introduction of the COMESA FTA. These countries have been unable to implement preferential tariffs for other COMESA countries and cannot introduce free trade for imports from other COMESA countries in terms of this FTA. The SACU agreement CET cannot be broken by some members granting preferences in terms of other FTA regimes, unless all the other members agree to this arrangement. South Africa, Botswana and Lesotho have not given their consent to such action by Namibia and Swaziland, because once the CET wall is broken it would be very difficult to prevent goods illegally crossing to other SACU members without payment of duty. This is probably also in violation of GATT Article XXIV paragraph 8 (a) (ii).
See also Kritzinger V N and Moreira P E, Regional Integration: Concepts, advantages, disadvantages and lessons of experience. Available at: **http://www.sarpn.org.za/**. (accessed on 19/02/09)

[380] See Trade, Investment and Regional Integration. Available at: **http://www.europafrica.files.wordpress.com/**. (accessed on 25/02/09)

[381] See Lewis J P et al, Free Trade Agreement and the SADC Economies. Available at: **http://www-weds.worldbank.org/**. (accessed on 19/10/08)

[382] Ibid.

[383] See Mudenda D, Intra-SADC Trade Performance Review Zambia. Available at: **http://www.sadctrade.org/tpr/**. (accessed on 15/09/08).

[384] See Mudenda D, Intra-SADC Trade Performance Review Zambia. Available at: **http://www.sadctrade.org/tpr/**. (accessed on 15/09/08).

not sufficient for products to qualify as regionally produced for the purpose of obtaining tariff preferences.[385]

And for cases in which two or more countries have taken part in the production of the good, the rules of origin in this case define the methods by which it can be ascertained in which country the particular product has undergone sufficient working or processing or has been subject to a substantial transformation.[386]

A further case in point is that of copper and tobacco which must not only originate from Zambia but also attain a certain grade and quality by way of graduation. Capacity constraints may sometimes make the graduation of these exports unfeasible. This is because graduation entails processing these products to meet the required standards. This is to take place in the country of origin. The cost of compliance in this case is extremely high, and indeed a major handicap for vulnerable economies.

It cannot be over emphasised, that rules of origin should be harmonised, simplified and transparent and must, if possible, match the industrial capacity of the country of origin.

In this regard, there is also need for more coordinated measures to boost productive capacity and competitiveness and to ensure the development and expansion of a balanced industrial base that optimally utilizes the region's resources, particularly in mining and agriculture.

The other example relates to wheat flour: there has been considerable resistance to liberalization of SADC trade in wheat flour and its products.[387] For example, the principal wheat producing Members have proposed a highly restrictive rule requiring that at least 70 percent by weight of the raw materials used wholly originate in the region.[388]

This has seriously hampered Intra-SADC trade, in any case, and as clearly stated above, most countries in the region lack the necessary capacity to meet such requirements.

---

385 See Flatters F, **SADC Rules** of **Origin**:Undermining Regional Free Trade. Available at: **http://www.tips.org.za/**. (accessed on 31/03/09)

386 Ibid.

387 See Zambia and the Multilateral Trading System: The Impact Of WTO Agreements, Negotiations And Implementation. Available at: **http://www.unctad.org/**. (accessed on 17/12/08)

388 Ibid.

Further, Zambia has particularly encountered difficulty in exporting electric cables to South Africa, mainly due to the stringent rules of origin meant to enforce safety standards.[389]

Manufacture of electric cables includes the production of copper or aluminium wire to the correct standards, combining the appropriate numbers and types of threads for each conductive element, insulating and wrapping each conductor, and wrapping the entire cable. In the case of South Africa, the South African Bureau of Standards (SABS) defines safety standards for all cable products sold in the country. All cable imports require a letter of authorization from SABS. This has technically created an artificial barrier to cable trade in the region.[390]

However, SADC is an important market for Zambian exporters. Zambia's trade with SADC countries is substantial and increasing. South Africa is the major export destination for Zambian products. It contributed to 49 per cent of total SADC exports in 2003. It is also a major source of imports. It contributed to 74 per cent of total imports from SADC countries in 2003. The other important SADC trading partners are Zimbabwe, Congo D.R. and Malawi. Congo D.R., Malawi and Zimbabwe respectively contributed 9 per cent, 5 per cent and 4 per cent to total SADC exports in 2003. Congo D.R., Malawi and Zimbabwe are also Zambia's major trading partners under the COMESA FTA.[391]

4.1.1.2 DOES THE SADC FTA IN ANY WAY HELP TO ENHANCE THE TRADE CAPACITY OF ZAMBIA?

Given the small size of some of the economies in the SADC region and their tendency towards dependency on a few primary commodities, regional integration can offer these countries mutually beneficial development gains.

It is however, observed that, countries under the same regional trade integration do not always have equal chances to benefit from the integration, and some of them even end up losing, through switching their imports from the lower-cost non-partner producer to the high-cost partner producer.[392] For example, South Africa, Namibia and Botswana, which have relatively

[389] Ibid.
[390]See Zambia and the Multilateral Trading System: The Impact of WTO Agreements, Negotiations and Implementation. Available at: **http://www.unctad.org/**. (accessed on 19/09/08)
[391] Ibid.
[392] See Umurungi F, A Critical Overview of Regional Trade Integration: Lessons for COMESA, (2005), at 11.

more developed economies, gain more than countries like Zambia and Malawi which are still at a low level of economic development.[393]

One way of helping the losing countries is to pool the revenue from trade and share it. This kind of revenue sharing has greatly helped small countries in SACU.[394] That is, all customs and excise duties collected by the five members of the Southern African Customs Union (SACU) are pooled into a Common Revenue Pool (CRP), and distributed to them according to a Revenue Sharing Formula (RSF).[395]

However, in an FTA like SADC, countries cannot pull revenue together, because the external tariffs differ. Therefore, it will not only be impossible to help the disadvantaged countries, but the imports from outside the FTA will also always be deflected by the lower-tariff member, who will receive all the FTA's tariff revenue. Undoubtedly, this will exacerbate the problem of the distribution of gains from regional trade.

Thus, the answer lies in the improvement of the productive capacities and competitiveness of the SADC members as well as improvements to infrastructure, elimination of Non-Technical Barriers in order to address trade facilitation measures. It is also important to create an investor friendly region. The question, however, is whether SADC does address these issues?

If effectively implemented, (with time, adequate planning and a lot of hard work as well as patience), the SADC FTA can promote the pooling of resources, expanded markets, increased intra-regional trade and investment, greater diversification and value addition.[396] In turn it can reduce dependency on a small number of Northern markets and diminish vulnerability to a downturn in those markets. Moreover, in the longer term such regional projects could place countries in a stronger position to trade in higher value-added products on a more level playing field with major trading partners like the EU.[397]

---

[393] Ibid.

[394] SACU was created in1910 between Botswana, Lesotho, Namibia, South Africa and Swaziland.

[395] However, this revenue pool is now gradually declining due to trade liberalization in the context of the World Trade Organization (WTO), the Trade Development and Co-operation Agreement (TDCA) between South Africa and the European Union (EU), SACU's bilateral tariff liberalization with certain strategic trading partners (such as the US, MERCOSUR, China and India) and the prospective EU's Economic Partnership Agreement (EU) with the BLNS See Kalenga P, Challenges of the New SACU Revenue Sharing Formula. Available at: **http://www.tralac.org/**. (accessed on 31/03/09)

[396] See Trade, Investment and Regional Integration: Contribution to African Civil Society Organisations' Consultation on AU/EU Joint Strategy for Africa's Development Organised by the AUC in Accra, Ghana, 26-28 March 2007. Available at: **http://www.europafrica.files.wordpress.com/**. (accessed on 25/02/09)

[397] Ibid.

This is likely to uplift the productive capacity as well as increase the competitiveness of most of the vulnerable economies in the region. No doubt, this would enhance the much needed participation of LDCs like Zambia in the multilateral trading system.

It is noteworthy, however, that regional integration is still in its infancy in most regions in Africa, and opening to EU imports before regional markets have been consolidated could undermine rather than support the process.

It is well documented, in this respect, that regional integration is a slow and complex process which needs to be allowed to go at its own internally-driven pace.[398] Currently there are many challenges hampering regional integration efforts in Africa. These include: lack of national mechanisms to coordinate, implement, and monitor integration policies and programmes; inability to make integration objectives, plans, and programmes part of national development frameworks; failure to provide equitable distribution of integration's costs and benefits; insufficient technical and financial support to regional integration programmes; and lack of compatibility among RECs which are supposed to promote the goals of a continent-wide community.[399] As illustrated by both Kenya and Zambia, the above deficiencies are so evident in the SADC and COMESA regions.

With regard to the SADC region, adjacent states are largely confined to the production of the same limited basket of primary commodities for export outside the region. In this case market infrastructure and institutional frameworks tend to have an outward orientation, and the intra-regional enabling environments for trade tend to be weak.[400] These realities add up to a lack of immediate complementarity of neighboring states for intra-regional trade.

Without first addressing these structural weaknesses in a way that leads to increased economies of scale and regional economic integration within the region, there is little possibility of equitable economic exchange with economic giants such as the US and the EU.

[398] See Schiff M and Winters L A, Regional Integration and Development, at 13
[399] See Khumalo N, Africa: Economic Integration Requires New Strategies. Available at: **http://www.allafrica.com/stories/**. (accessed on 24/02/09)
[400] Ibid.

The EU in itself is a good example of a successful regional integration story. However, it must be noted that this success did not happen in one day, it took a long time, adequate planning, patience and a lot of hard work.[401]

Zambia is likely to benefit from the SADC FTA which is either already facilitating the movement of goods or shortly going to do so through: Harmonizing customs procedures and customs classifications; Increased custom co-operation; Reducing costs by introducing a single, standardized document (Single Administrative Document) for customs clearance throughout the region; Establishing "one stop" border posts which cut the time spent at the border in half.[402]

High transport costs in the Southern Africa region are a critical constraint to increasing trade, particularly cross-border trade in the region. Transport costs in Southern Africa are on average 73 per cent higher than those in for instance the USA and EU.[403] The high transport costs undermine the competitiveness of exports and make it more difficult for the countries of the region to meaningfully participate in regional trade.

In response to the high transport costs in the Southern African region, the United Kingdom through the Department for International Development (DIFD), has helped to finance the Regional Trade Facilitation Programme (RTFP) aimed at tackling this problem in order to reduce bottlenecks and to bring about a reduction in the time and administration costs in the North-South corridor by 10 per cent by this year (2009).[404] This will benefit potentially eight countries (Tanzania, Burundi, Malawi, Zambia, Democratic Republic of Congo, Zimbabwe, Botswana and South Africa),[405] and will lead to an increase in trade and economic development.

There are currently three pilot projects in this regard, namely: the Forbes - Machipanda at the border of Mozambique and Zimbabwe; the Lebombo Ressano Garcia at the South Africa and Mozambique border; and the Chirundu Border between Zimbabwe and Zambia. This is meant

[401] Ibid.
[402] See The Launch of the SADC FTA 2008. Available at: **http://www.sadc.org/**. (accessed on 16/09/08)
[403] Ibid.
[404] See **http://www.rtfp.org/**. (accessed on 23/02/09)
[405] Ibid.

to make transshipment easier by enabling a single bond to be used when transporting goods across several borders within the Community.[406]

The launch of the SADC Corridor Development Strategy attests to a renewed commitment to regional infrastructure development and there are already improved levels of cross-border collaboration involving two or more member states. The major infrastructural developments include projects such as the Kazungula Bridge, between Botswana and Zambia; the route to Nacala through Malawi all the way to the Mozambican coast; and the railway system to Lobito Angola as well as the Walvis Bay.[407]

In Zambia, the National Road Fund Agency has developed a $1, 6 billion, and a 10 year programme for the expansion, upgrading and maintenance of roads. This initiative includes building tolled highways using public private partnerships.[408]

These initiatives and efforts are consistent with the belief that, regional transport networks facilitate connectivity between regions and subsequently enhance regional and international trade. The reverse is also true, weak infrastructure is a major impediment to trade, competitiveness and sustainable development in most LDCs, particularly land-locked LDCs like Zambia.

COMESA, East African Community & SADC have agreed to develop a common regional Aid for Trade Strategy, the implementation of which could be at least partly financed by the COMESA Fund. (The EAC development fund is in progress whereas work on SADC Aid for Trade is still at the development stage).[409]

This intends to bring together all the ongoing initiatives taking place along the North-South corridor, Africa's busiest in terms of freight volumes, under one umbrella, to ensure that reforms to customs, border management, infrastructure, and transport regulation are mutually reinforcing and properly sequenced.[410] The aim is to maximize synergies and to ensure that improvements in one area are not nullified by bottlenecks in another.

---

[406] Ibid.
[407] See Rocha J, Regional Infrastructure Gains Ground in SADC. Available at: **http://www.rtfp.org/news/**. (accessed on 15/09/08)
[408] Ibid.
[409] See Regional Strategy. Available at: **http://www.rtfp.org/regional-strategy.php/**. (accessed on 25/02/09)
[410] See Mobilising Aid for Trade: Focus on Africa- Report and Recommendations, (2007), at 6. Also available at: **http://www.uneca.org/**. (accessed on 18/02/09)

Above all it addresses the need to mainstream trade in national as well as regional strategies, in order to better synchronize national and regional programmes.

The aim of the regional Aid for Trade strategy is capacity building and it will therefore focus upon trade-related infrastructure and trade related adjustments. It is designed to finance regional solutions to infrastructural constraints that are multi-sectoral and multimodal. [411]

A regional strategy is vital because for many countries, the solution to growth in trade can lie outside their immediate jurisdiction and control. For example, Zambia, as a land-locked country relies on roads, railways and port systems of neighbouring countries in order to export its goods.

However, the main challenge facing this initiative is capacity to mobilize adequate resources to implement the programme.[412]

Nevertheless, suffice to state, that it is too early to assess the effectiveness and efficiency of this strategy, as it is still in its formative stage.

Zambia can maximise the benefits under the SADC FTA by attending SADC workshops sponsored by USAID on WTO-consistent approaches to the implementation of SPS regulations, as part of the Policy Approaches to SPS International Standards & Trade Policy Implications project.[413] A task considered critical is the need to raise awareness of the importance of investment in SPS control among politicians and senior decision-makers in beneficiary countries in order to improve the country's participation in regional and multilateral trade agreements.[414]

SADC has also undertaken work to assess the compliance of its member states with WTO rules, such as the notification requirements under the WTO SPS and TBT agreements. Out of

---

[411] See Regional Strategy. Available at: **http://www.rtfp.org/regional-strategy.php/**. (accessed on 25/02/09)
[412] See Mobilising Aid for Trade: Focus on Africa- Report and Recommendations, (2007), at 6. Also available at: **http://www.uneca.org/**. (accessed on 18/02/09)
[413] See Chiwele D, Aid for Trade and Agro-Based Private Sector Development in Zambia. Available at: **http://www.oecd.org/dataoecd/**. (accessed on 16/02/09)
[414] Ibid.

this work, draft annexes on SPS and TBT to the Trade Protocol have been developed, aimed at harmonizing regional SPS and TBT measures and regulations.[415]

In terms of improving its soft infrastructure, Zambia is a member of the SADC Banking Association. The Association was established in July 1998 with the objective of coordinating activities of national associations of banks in the SADC countries.[416] It was to establish international banking standards and regional payment systems organize training and harmonise legislation in the region. In 1999, governors of SADC central banks, including the Bank of Zambia, determined to strengthen and harmonize banking procedures and technology in order to facilitate financial integration of the region.[417]

The Bank of Zambia and all banking institutions in Zambia are likely to benefit from this association and its programmes. This is because the association has helped to develop good banking practices and train government officials to prepare for various public-private partnership programmes. Emphasis is placed on enhancing the banking environment, and improving the efficiency and effectiveness of banking in Zambia in order to stimulate its competitiveness.

However, it is the contention of this Study that, these efforts do not adequately address the trade capacity needs of the members. In this regard, there is an urgent need for SADC members to harmonise their trade policies. In addition, there is need to emphasise the importance of macroeconomic convergence, co-ordination of direct and indirect taxes, liberalization of current and capital account transactions. Further, the payments systems in the region are in need of reform.

Additionally, member states must encourage resource mobilization through development finance institutions and other financial entities as well as improving incentives for investment. It is also important that national investment acts, codes or guidelines are framed in such a manner so as to facilitate investment in the region and the free movement of capital in the SADC region.

---

[415] See Bilal S and Szepesi S, Managing The Challenges of WTO Participation: Case Study 27-How Regional Economic Communities Can Facilitate Participation In The WTO: The Experience Of Mauritius And Zambia. Available at: **http://www.wto.org/**. (accessed on 23/08/08)

[416] See SADC Banking Association. Available at: **http://www.banking.org/**. (accessed on 01/03/09)

[417] See Buthelezi S opcit, at 177.

The Stock Exchanges in the SADC Region are faced with a number of challenges including globalization and technological revolution whose trends have heightened competition between unequal partners.[418] In this age of global capital flows and technology, it is crucial for the SADC region to become the preferred investment destination and a market place which attracts capital and investment. It cannot be overemphasised that there is an urgent need for the region to cope with technological changes and globalization waves or else Southern Africa risks losing global trade and investment opportunities. It is in this vein that there are efforts at achieving integration of the stock exchanges in the region. To this end, efforts to harmonize stock exchanges in the region were initiated in 1999.[419]

It is well established that cooperation and integration of national stock exchanges could improve the liquidity, efficiency, and competitiveness of the region's exchanges, thereby enhancing their ability to mobilize local and international capital for development. However, this must be carried out at the right pace and in a pragmatic way.[420]

However, cooperation and integration of national stock exchanges in the Southern region has been hampered seriously by macroeconomic instability by most member states.[421]

Nevertheless, this paper concludes that regional cooperation and, at a later stage, integration, if carried out at the right pace and in a pragmatic way, could improve the liquidity, efficiency, and competitiveness of the stock exchanges in the region. Further progress in developing national financial markets must precede any actual moves to integrate securities markets. These exchanges could meanwhile benefit from closer cooperation, including by encouraging more cross border listings and information/technology sharing.

The biggest challenge for the SADC region however, is the variations in the level of development of the member countries. In addition, there is insufficient interest and motivation

[418] See Speech By The Deputy Minister For Finance, Hon. Abdisalaam I. Khatibu (Mp) on The Occasion of the SADC Stock Exchanges Committee (COSSEs) Meeting To Be Hosted By The Dare Es Salam Stock Exchange In Arusha, Arusha Hotel , (24-25 January, 2005). Available at: **http://www.mof.go.tz/mofdocs/**. (accessed on 01/03/09)
[419] See Buthelezi S, opcit.
[420] See Irving J, The Regional Integration of Stock Exchanges in Eastern and Southern Africa: Progress and Prospects, (2005), at 9
[421] See Financial Integration in Africa. Available at: **http://www.uneca.org/**. (accessed on 01/04/09)

from within the region, which seriously impedes development and efforts aimed at improving the productive capacity of the region.[422]

The SADC FTA needs to focus a little more on building productive capacity and building the competitiveness of African industry through lowering costs and dealing with the supply side constraints that are keeping intra-African trade at low levels.

In SADC, trade issues have traditionally received less attention than in COMESA.[423] This is because SADC has a broader mandate, encompassing development and political dimensions. In addition, the SADC restructuring process which is centralizing the programmes that were previously managed by the member states has not yet been fully completed.[424] The Secretariat remains understaffed and is characterised by insufficient financial and technical means and absorption capacity to cope with an increasing regional agenda. In these conditions, it is difficult for the SADC Secretariat to contribute significantly to strengthening the trade capacity of its member states on WTO issues.[425]

Despite the absence of an SADC programme dedicated to addressing WTO issues systematically for the region, the SADC Secretariat has organized a number of activities that have directly concerned the WTO.[426] In response to requests from member states, and with technical assistance from UNCTAD, specific support has been provided on the issue of trade in services.[427] The work concerned the identification of key service sectors and the drafting of a legal framework to facilitate the intra-regional liberalization of services. A study on domestic agricultural support measures was also carried out, with the aim of facilitating a regional position on this issue and was later used as background material for the WTO negotiations.[428]

In addition, the SADC Secretariat has also been collaborating with the Southern Africa Trade Research Network (SATRN). This network organizes an annual symposium on WTO issues and brings together researchers as well as policy-makers and negotiators from the SADC

[422] This is so evident from the negative reception received by initiatives such as NEPAD and the African Stock Exchanges Association (ASEA), Ibid.
[423]See Zambia and the Multilateral Trading System: The Impact of WTO Agreements, Negotiations and Implementation. Available at: **http://www.unctad.org/**. (accessed on 19/09/08)
[424] Ibid.
[425] Ibid.
[426] Ibid.
[427] Ibid.
[428] See Zambia and the Multilateral Trading System: The Impact of WTO Agreements, Negotiations and Implementation. Available at: **http://www.unctad.org/**. (accessed on 19/09/08)

region to share views on WTO issues and developments.[429] This is beneficial to member countries such as Zambia, because, it provides access to a wide range of experiences, technology and greater provision of ideas.

It has been observed that, unlike in the past, SADC is now forced to deal, over the short term, and in very practical ways, with sectorally cross-cutting issues such as, competitiveness, regional dimensions of poverty and trade efficiencies. However, SADC has not been able to adequately address these issues due to institutional constraints.[430]

These constraints relate to the SADC Secretariat's lack of power, authority and resources required for facilitating regional integration; the sector coordinating units' highly uneven capacity to pursue and implement policies; the SADC Program of Action's lack of a clear regional focus; the limited capacity to mobilize the region's own resources and resultant dependence on external financial resources and the failure to address governance, peace and security issues in the wake of growing political divisions within SADC.[431]

For example, SADC has repeatedly failed to adequately address the desperate humanitarian, economic, and political crisis in Zimbabwe.[432] African governments do not seem as concerned about the situation in Zimbabwe following the recent agreement between the opposition and the party of President Robert Mugabe to forge a unity government. Mugabe's ZANU-PF party and its rival Movement for Democratic Change (MDC) agreed to break a near-five-month impasse over the formation of a coalition government at a meeting of the Southern Africa Development Community (SADC) in Pretoria, South Africa.[433] At the moment, though the pact between the ruling ZANU-PF and opposition MDC is intact, the picture is one of "wait-and-see", making the whole phenomenon unpredictable.

All in all, SADC does not adequately meet Zambia's trade capacity needs. However, SADC has to a certain extent helped Zambia to improve its infrastructure and trade opportunities. With

---

[429] Ibid.

[430] See Venter D and Neuland E, Regional Integration: Economic Partnership Agreements foe Eastern and Southern Africa, (2007), at 250. See also Kritzinger V N and Moreira P E, Regional Integration: Concepts, advantages, disadvantages and lessons of experience. Available at: **http://www.sarpn.org.za/**. (accessed on 19/02/09)

[431] Ibid.

[432] See Chebud M, Activists Press AU for Firm Action on Zimbabwe. Available at: **http://us.oneworld.net/issues**. (accessed on 20/02/09)

[433] Ibid.

effective strategies in place and sustainable resources as well as commitment on the part SADC states, SADC would contribute a little more to trade capacity building of its member states.

4.1.2 THE COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA (COMESA)

The Common Market for Eastern and Southern Africa (COMESA) was established in 1994 to replace the Preferential Trade Area for Eastern and Southern Africa States (PTA), which was established in 1981.[434] The PTA was one of the six African regional bodies created within the framework of the Lagos Plan of Action and the final Act of Lagos of the Organization of African Unity (OAU) to promote economic integration of the continent through regional economic communities that could later be linked together to create the African Economic Community (AEC).[435]

In October 2000, substantial progress towards the eventual creation of a Customs Union was made with the announcement in Lusaka of the formation of a Free Trade Area (FTA). The member states agreed to eliminate tariffs on goods which conform to the COMESA Rules of Origin.[436]

COMESA's vision is to attain a fully integrated internationally competitive regional economic community with high standards of living for its people and where goods, services, capital and labour move freely across borders.[437] The aims and objectives of COMESA have been designed so as to remove the structural and institutional weaknesses in the member States by pooling their resources together in order to sustain their development efforts either individually or collectively.[438]

Within the framework of NEPAD and the African Union, COMESA is developing closer and more cooperative links with other regional organizations in Africa.[439] For example, COMESA

---

[434] COMESA has now 20 members: Angola, Burundi, Comoros, Democratic Republic of Congo (DRC), Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia and Zimbabwe. Nine members of COMESA, i.e. Angola, DRC, Madagascar, Malawi, Mauritius, Seychelles, Swaziland, Zambia and Zimbabwe are also members of the Southern African Development Community (SADC). See Strengthening Capacity for Trade Negotiations and Trade Policy Development within the Common Market for Eastern and Southern Africa (COMESA), Lusaka, Zambia. Available at: **http://www.acbf-pact.org/**. (accessed on 18/02/09)
[435] Ibid.
[436] See COMESA Profile. Available at: **http://www.iss.co.za/AF/RegOrg/**. (accessed on 18/02/09)
[437] See The COMESA Treaty. Available at: **http://www.comesa.org/**. (accessed on 17/02/09)
[438] See **http://www.icao.int/icao/**. (accessed on 19/02/09)
[439] See COMESA Profile. Available at: **http://www.iss.co.za/AF/RegOrg/**. (accessed on 18/02/09)

has good working relationships with the East African Community (EAC), the Intergovernmental Authority on Development (IGAD) and the Indian Ocean Commission (IOC). COMESA has signed co-operation agreements with IGAD and the Economic Community of Western African States (ECOWAS) and will soon also sign an agreement with the IOC. At a meeting of the COMESA Council of Ministers held in January 1997, it was agreed that COMESA and SADC should co-exist and cooperate. Consequently, COMESA and SADC are in the process of establishing a framework that will lead to complementarity and co-operation in their activities.[440]

COMESA has looked at the benefits of regionalism as deriving almost exclusively from the trade side.[441] The COMESA integration programmes are consequently centred on trade, specifically: the removal of tariff and non-tariff barriers; programmes to obtain trade efficiency; and other trade-related issues, such as trade and investment, trade and competition policy, trade and labour migration, trade and finance (payment and settlement systems, currency convertibility, trade finance), and trade and procurement policy.[442]

Hence, notwithstanding its narrower focus on trade and economic issues, COMESA appears better equipped to support the preparation for various trade negotiations of the member countries than SADC.

For example in light of the desperate need for trade facilitation in the region, COMESA is implementing programmes to improve the transport and communications systems of the region as well as improving information available to businessmen wishing to trade both within the region and overseas.[443]

Such initiatives include: The harmonized Road Transit Charges which specifies the road charges for heavy trucks; The COMESA Carriers License allows commercial goods vehicles to be licensed with one license, which is valid throughout the region; COMESA Yellow Card Scheme which is vehicle insurance scheme that covers third -party liability and medical expenses for road accident victims caused by foreign motorists from the COMESA region;

---

[440] Ibid.
[441] See Venter D and Neuland E, Regional Integration: Economic Partnership Agreements foe Eastern and Southern Africa, (2007), at 250. See also Kritzinger V N and Moreira P E, Regional Integration: Concepts, advantages, disadvantages and lessons of experience. Available at: **http://www.sarpn.org.za/**. (accessed on 19/02/09)
[442] Ibid.
[443]See The Investment Opportunities in the Common Market of East and Southern Africa (COMESA). Available at: **http://www.epzakenya.com/**. (accessed on 21/02/09)

Other initiatives include COMESA Customs Bond Guarantee Scheme, Advance Cargo Information System, Telecommunications Interconnectivity, and liberalization of the skies.[444]

With regard to the regional competition policy, COMESA is in the process of finalizing a regional competition law and policy.[445] This is intended to harmonise existing national competition policies to avoid contradictions and provide a consistent regional economic environment.[446] The development of the law has been necessitated by the increased competition in the region as a result of the increased trade attributed to the reduction in tariff and non-tariff barriers in the region.[447] Such a policy will ensure the efficiency of the regional market and as such attract more investors.

In relation to the WTO activities, COMESA has established a Working Group on WTO issues, which operates as a sub-committee of the COMESA Trade and Customs Committee. The core functions of this Working Group are to provide technical back-up and analysis of WTO issues and to suggest appropriate recommendations.[448] In this regard, member countries are able to benefit in that they are not only prepared for the WTO trade negotiations, but their bargaining muscle is strengthened and as such are able to participate more effectively in the negotiations.

COMESA also facilitates EPA negotiations with the EU for sixteen ESA countries (i.e. all COMESA members except Egypt, Angola and Swaziland).[449]

However, although the COMESA strategy is seemingly functioning smoothly on the regional level and pushes forward its regional integration agenda, there has not been effective support through country institutional changes or through addressing the prevailing structural constraints required to successfully implement the agenda.[450] This is mainly because, most member countries are LDCs and as illustrated by the Zambian example, these countries do not have the capacity to support such strategies, and this is in terms of financial resources, human capital and institutional capacities.

[444] Ibid.
[445] Ibid.
[446] Ibid.
[447] Ibid.
[448] Ibid.
[449] See Bilal S and Szepesi S, Managing The Challenges of WTO Participation: Case Study 27-How Regional Economic Communities Can Facilitate Participation In The WTO: The Experience Of Mauritius And Zambia.
[450]Ibid, at 251.

In May 2002, the Executive Board of African Capacity Building Foundation approved a grant of US$1,500,000 in support of the project: "Strengthening Capacity for Trade Negotiations and Trade Policy Development within COMESA". The Grant Agreement was negotiated and signed on 30 August 2002 and it became effective on 17 June 2003.[451]

This project aims at fostering regional integration among COMESA member countries as well as their integration into the global economy. This, it is hoped, will be achieved by: strengthening the COMESA Secretariat in issues relating to trade negotiations as well as trade policy and management at the regional and international levels, including policy issues relating to the establishment of a customs union.[452]

In addition, it is hoped that COMESA member states will be strengthened in the area of trade negotiations as well as trade policy and management at the regional and international levels. Further, the project aims at strengthening the institutional capacity of the COMESA Secretariat to enable the consolidation of the FTA and its smooth transformation into a Customs Union and later into a fully integrated economic community by 2025. Finally, the project intends to professionalize private and civil society voices in order to enhance their participation in trade policy and integration issues in support of regional and global integration of the COMESA countries.[453]

Evidently, COMESA has played a vital role in resource mobilization for its members. This in turn is a contribution to the enhancement of the trade capacity of the member states, which will consequently help to improve their participation in the multilateral trading system.

4.1.2.1 KENYA'S EXPERIENCE WITH THE COMESA FTA

Kenya participates actively in several regional initiatives. She is a member of the East African Community, Common Market for Eastern and Southern Africa (COMESA), ACP-EU, Intergovernmental Authority on Development (IGAD), Indian Ocean Rim Association for Regional Co-operation, among others.[454] This co-operation is borne out of the realization that the development and prosperity of Kenya are intimately tied with her neighbors in the region. With the advent of globalization and liberalization, the country's external relations are being

---

[451] See COMESA Profile. Available at: **http://www.iss.co.za/AF/RegOrg/**. (accessed on 18/02/09)
[452] Ibid.
[453] Ibid.
[454] See Kenya's Foreign Policy. Available at: **http://www.kenyamission-un.ch/**. (accessed on 04/03/09)

governed more and more by the need to promote a favorable environment for trade and investment.

In this regard, Kenya attaches greater significance to COMESA, as it provides a market for its manufactured products. The COMESA region is a vibrant economic area and membership to the Free Trade Area (FTA) launched in October 2000, is expected to boost trade and investment. COMESA is the leading destination of Kenya's export, constituting over 40% of the total exports.[455]

Kenya like many other COMESA countries, to a large extent, depends on customs duties for budgetary resources.[456] In terms of absolute values, Kenya is one of those COMESA member countries that stand to lose the most from the elimination of tariffs.[457] Kenya's trade taxes account for at least 10 percent of total government revenue. It must be noted that past experience has revealed that African countries have had very limited success in replacing lost trade taxes with revenue from other sources.[458]

However, this dependence, in relation to the tariff earnings runs the risk of becoming a major constraint for the financing of development activities aimed at enhancing the competitiveness of these countries.

COMESA has designed a Regional Food and Agricultural Marketing Information System, (FAMIS), an electronic web based system that features key information on major agricultural commodities, trade and investment opportunities in the region.[459] FAMIS is part of the harmonisation of the agriculture market access systems that have been developed elsewhere by other companies in the COMESA region, with the aim of guiding investments in the sector and facilitation of the enhancement of food security in the region.[460]

In order to maximize the benefits under this initiative, the Kenya Agriculture Commodity Exchange (KACE) has partnered with this programme to help farmers in Kenya access relevant agriculture marketing information, reducing the information gap that middlemen exploit to

[455] See Kenya's Foreign Policy. Available at: **http://www.kenyamission-un.ch/**. (accessed on 04/03/09)
[456] See Jallab S M, Kenya. Available at: **http://www.uneca.org/**. (accessed on 03/03/09)
[457] Ibid.
[458] See Khandelwal P, COMESA and SADC: Prospects and Challenges for Regional Trade Integration. Available at: **http://www.imf.org/**. (accessed on 17/02/09)
[459] See Mbogo S, Kenya: COMESA Electronic Marketing System to Benefit Farmers. Available at: **http://www.allafrica.com/stories**. (accessed on 03/03/09)
[460] Ibid.

make a windfall at producers' expense.[461] It is hoped that this will improve the competitiveness and production capacity of the agricultural sector.

Kenya has since the year 2000 been enjoying a safeguard on sugar aimed at creating a conducive environment for the Sugar industry to be competitive. In addition to the safeguard, the COMESA FTA provides Member States with Policy space that allows them to put in place measures to protect their countries from any adverse effects that may be associated with the Customs Union. This therefore implies that Kenya for example can protect highly fragile industries such as the Sugar industry by invoking such measures as high tariffs or quotas on importation of such products.[462]

In this regard, member countries have submitted to COMESA a list of sensitive products that each country believes require special treatment under the Customs Union arrangement. For instance, Kenya has submitted the list that is currently being used under the East African Community.[463]

Following approval by the COMESA Summit in 2007, its Secretariat established an Aid for Trade Unit on 1 October 2008, which is intended to help countries identify, design and implement projects and programmes that aim to remove trade related supply-side constraints.[464]

The Aid for Trade implementation plan is merging various initiatives currently being undertaken such as the One Stop Border Programmes; the implementation of the COMESA Fund; the North-South Corridor among others.[465] The funding of the Aid for Trade programme is mainly through, inter alia, regional development banks; infrastructure funds and private sector sources, and the Unit works closely with such agencies as the World Bank; African Development Bank; NEPAD Secretariat; IMF and the UN to draw on their expertise and to ensure there is no duplication of effort. The Aid for Trade Unit provides support to country activities on Aid for Trade and is so far developing national AfT strategies in two pilot countries (in Zambia and Mauritius).[466]

---

[461] Ibid.

[462] See The Investment Opportunities in the Common Market of East and Southern Africa (COMESA). Available at: **http://www.epzakenya.com/**. (accessed on 21/02/09)

[463] Ibid.

[464] See The Aid for Trade Unit. Available at: **http://www.rtfp.org/**. (accessed on 19/02/09)

[465] Ibid.

[466] Ibid.

In terms of infrastructure development, Kenya is likely to benefit from the COMESA Fund [467] which is an instrument of Aid for Trade that addresses productive capacity and infrastructure needs, as well as adjustment costs associated with integration and economic reforms.[468] The fund has an Adjustment Facility to address costs that may arise from implementing regional integration measures, including trade. The fund also has an Infrastructure Window intended to mobilize resources for the construction and maintenance of infrastructure, and addressing some of the limited productive capacity of its individual member states.[469]

In order to ease traffic congestion, and facilitate free trade flow, COMESA established the Malaba Border between Kenya and Uganda.[470]

The East African Roads Network has been classified into 5 corridors, which form the priorities in this sub-sector. With the help provided by the Regional Facilitation Trade Programme (RTFP) through the COMESA Fund, several of these roads are undergoing rehabilitation and construction. The RTFP project is in the process of implementing a civil aviation safety of navigation project with the aim of improving air travel in the region.[471]

RTFP is making it easier and quicker for businesses to trade between countries in Southern and Eastern Africa so that the economies of the region become more competitive and people benefit through job creation and increased wealth.

As part of its activities, COMESA has developed training programmes for trade officials of member countries and the private sector and civil society. Kenya, to a certain extent, has benefited and continues to benefit from such training, and according to conventional wisdom, such training facilitates knowledge sharing and research partnerships between professional networks and organizations. Additionally, this will not only link knowledge-generating

[467] In 2005 the protocol for the establishment of the COMESA Fund for Cooperation, Compensation and Development was signed during the Seventh Summit of the Common Market of Eastern and Southern Africa (COMESA), in Addis Ababa.See Protocol on COMESA Fund to Be Signed in Summit. Available at: **http://www.news.xinhuanet.com/**. (accessed on 17/02/09)

[468] See Musonda J, Aid for Trade in COMESA: Past Experience, Lessons Learnt and the Way Forward. Available at: **http://www.slideshare.net/eufori/**. (accessed on 17/02/09)

[469] Ibid.

[470] See The Basic Facts about COMESA. Available at: **http://www.meaindia.nic.in/foreignrelations/**. (accessed on 23/03/09)

[471] See **http://www.rtfp.org/**. (accessed on 23/02/09)

institutions with knowledge end-users (Policy makers), but also strengthen indigenous policy-oriented research and analysis.[472]

COMESA is now pursuing integration objectives such as liberalisation of visa facilities for the COMESA citizens and introduction of COMESA wide telephone system to provide cheaper and direct telecommunications facilities among member countries. Future COMESA goals include achievement of macro-economic convergence, harmonisation of policies in energy, agriculture, free movement of services by 2010, free right of residence by 2014 and establishment of an Economic Community by 2025.[473]

Although this is perceived to be an appropriate mechanism for the expansion of trade, income and bargaining power, it is the contention of this study that translating this desire for collaboration into effectively functioning institutional reality covering the majority of the region's states is going to be a slow and potentially acrimonious process that can only be understood fully through an examination of regionally specific circumstances and global trends on one hand and changing global trends on the other hand.

It is also submitted that trade capacity building cannot be done in isolation; the ideal context in which this must be done requires that it be integrated into a country's mainstream development strategies. However, mainstreaming trade into development strategies is not a costless activity; it therefore, imposes enormous challenges for African countries. It is, therefore, imperative that African countries unite and embrace a common vision aimed at enhancing Africa's competitiveness and productive capacities necessary for poverty eradication and ultimately sustainable economic development.

Nevertheless, regional integration has a particularly important role to play in helping to promote economic growth. Closer regional economic integration creates the conditions for increased trade, and by increasing market size, it can also help to attract both domestic and foreign investment. Regional capital markets can help overcome the narrowness of national markets. This is evident from the original European Economic Community (EEC) and the

[472] See Osakwe P, opcit.
[473] See The Basic Facts about COMESA. Available at: **http://www.meaindia.nic.in/foreignrelations/**. (accessed on 23/03/09)

Caribbean Community and Common Market (CARICOM), [474]which African countries can use as examples.

The development of infrastructure and the management of natural resources both require a regional approach. For instance, this would be ideal on issues of, but not limited to trans-boundary water management. Experience from elsewhere attests that such initiatives have been active in the promotion of democracy and good governance, and on peace and security, among others. The African-led peace-keeping forces in Liberia and Cote d'Ivoire were put in place by the Economic Community of West African States (ECOWAS). Regional instruments on the control of Small Arms and Light Weapons have been developed by states in East Africa, Great Lakes, and Horn of Africa regions, and by ECOWAS.[475]

The initial Southern African Development Coordination Conference (which later became SADC), also played a vital role in the liberation of South Africa from apartheid.[476]

As noted, both COMESA and SADC are implementing a free trade area and have plans to form customs unions. Progress in COMESA has been limited by country-level implementation problems while SADC has been hampered by complicated and restrictive rules of origin. Overlapping memberships have led to conflicting goals and limited progress in both organizations, and reveal a lack of political commitment. The estimates of product complementarities in the region suggest limited scope for intra-regional trade. A commitment to open regionalism and deep integration would help address some of these problems and create a healthy basis for regional and global trade integration.

4.1.2.2 ZAMBIA'S EXPERIENCE WITH COMESA

Zambia is a founding member of the Preferential Trade Area for Eastern and Southern African States (PTA), which became COMESA in late 1994[477] and as already alluded to, in 2000, COMESA transformed into what it is now, an FTA and it is projected that it will become a customs union by 2010.

[474] See The World Bank Report, (2000), at 18. Also available at: **http://www.worldbank.org/**. (accessed on 23/02/09)
[475] See Peace and Security in Africa. Available at: **http://www.iss.co.za/**. (accessed on 26/02/09)
[476] See Cilliers J, The Evolving Security Architecture in Southern Africa. Available at: **http://www.iss.co.za/**. (accessed on 26/02/09)
[477] See Trade and investment Regimes, Zambia WT/TPR/S/106. Available at: **http://trade.wtosh.com/**. (accessed on 01/04/09)

Zambia's non-traditional exports (NTEs) to the COMESA FTA amounted to US$34.7 million or 34% of the total value of NTEs during the first half of 2001. This compares with US$29.4 million during the same period of 2000, an increase of 18%. The increase is partly attributed to the increased market access following the launching of the COMESA FTA.[478] Several institutions have been established to assist COMESA members in their development. The Eastern and Southern African Trade and Development Bank (PTA Bank) provides trade and project financing to public and private investors domiciled in a bank member state, which includes Zambia.[479]

Like Kenya, Zambia is generally benefiting from the COMESA Aid for Trade Initiative which is intended to help countries identify, design and implement projects and programmes that aim to remove trade related supply-side constraints.[480]

However, the benefits under COMESA are seriously undermined by the fact that Zambia is also a member of the SADC FTA. This is a typical product of dual membership where the competing interests of demands of the regional groupings concerned are not harmonized. The challenges of dual membership in the context of Zambia COMESA FTA and SADC FTA are briefly discussed in the section below.

4.1.2.3 ZAMBIA'S DUAL MEMEBERSHIP

Zambia is believed to be a victim of the various agreements and protocols, which the government signed indiscriminately and in some instances without even digesting contents and assessing the kind of impact these may have on the economy.

The result of this blundering is the multiple and overlapping membership, which has led to complex structures and conflict, often confusing commitments.

As already observed, Zambia is actively involved in both regional and bilateral arrangements. Apart from being a member of the WTO, Zambia belongs to two main regional trading arrangements, that is COMESA and SADC. Zambia is also a member of the EBA initiative, the AGOA initiative, and has signed a number of bilateral agreements with China, India, among others.

---

[478] Ibid.
[479] Ibid.
[480] See The Aid for Trade Unit. Available at: **http://www.rtfp.org/**. (accessed on 19/02/09)

Thus, Zambia's membership in respect of these regional and bilateral arrangements is overlapping in nature to the extent that these arrangements make Zambia's trade regime more complex owing to the fact that the different arrangements have different geographical coverage, trade liberalization agenda, phase-in periods, trade policy instruments (such as non-tariff measures, including rules of origin, technical barriers to trade, sanitary and phytosanitary measures, internal taxation systems), and goals.[481]

Zambia's trading partners receive different access conditions to its market depending on which agreement is applicable as the case may be, and the stage of implementation of the agreement by the partners. As such, members of more than one agreement can trade with Zambia under either agreement. The same applies to Zambia's exports to these markets. Evidently, this has the potential to distort, and has often distorted trade and preferential/incentive patterns in an unpredictable manner, resulting in inconsistent obligations being undertaken by Zambia.

For instance, by virtue of being a member of SADC, Zambia is precluded from imposing tariffs on goods entering it from South Africa. Yet as a member of COMESA, Zambia must charge tariffs on goods coming from outside COMESA. How does Zambia deal with South Africa? This presents a policy headache for Zambia.

According to a study carried out in 2003 by the Consumer Unity and Trust Society (CUTS) Africa Resource Centre,[482] Zambia has not benefitted much from COMESA. For a start Zambia's major trading partner is South Africa which is not in COMESA but in the rival SADC.

The study further notes that in between 2002 and 2003 Zambia imported from SADC member countries goods and services valued at US$1.001 billion against only US$260 million from COMESA states, while annual exports to SADC stood at US$424 million against a mere US$91 million to COMESA.[483]

According to the 2008 African Economic Outlook Report,[484] for both exports and imports, the SADC FTA is Zambia's main trading partner, followed by Asia, which has increased its share

[481] See COMESA Regional Trade Agreements – The Zambian Experience (CUTS-ARC No.3/2003). Available at: **http://www.cuts-international.org/**. (accessed on 01/04/09)
[482] Ibid.
[483] Ibid.
[484] Available at: **http://www.oecd.org/**. (accessed on 04/04/09)

significantly over the past decade. The COMESA FTA only accounts for around 10 per cent of trade.

Zambia was to have benefited immensely under COMESA's large market base, but what emerges is a contrary picture: that of a victim of dishonest trading by her partners. A case in point is the non-compliance with rules of origin by such countries as Kenya that has continued to sell edible oils, estimated at 18,000 tonnes a year, to Zambia untaxed even though these are originally coming from the Far-East, which are non-COMESA countries.[485]

Ordinarily, these oils could have attracted at least 25 per cent tax but because Kenya is a member of COMESA, the oils enter Zambia duty free, leading to a huge loss of revenue to Zambia's detriment.

Furthermore, the study notes that it is also a pertinent concern that some (Zambian) industries have disappeared as a result of increased competition and relocation to more cost effective regions.

The case of Colgate Palmolive (Zambia Limited) is illustrative on this issue. The then Ndola (Zambia) based multinational company decided to rationalize operations by first of all laying off 112 Zambian workers and eight managers (from a total workforce of 170 in Ndola alone). Then it closed down its soap production line and moved several production facilities to Harare, the Zimbabwean capital. Part of the reason for the move was to take advantage of economies of scale, as Harare was seen by the company as more central and more cost effective than other alternative locations including Zambia's Ndola.[486]

In the final analysis, multiple and overlapping memberships in regional economic communities (RECs) have created a complex web of competing commitments which together with different trade rules result in high costs for intra-Africa trade and undermine trade facilitation efforts that should be at the core of the integration agenda. In this regard, there are currently efforts towards the harmonisation of rules and objectives of SADC and COMESA.[487]

[485] Ibid.

[486] See Muuka G N et al, Impediments to Economic Integration in Africa: The Case of COMESA, Journal of Business in Developing Nations. Available at: **http://www.ewp.rpi.edu/. (accessed on 01/04/09)**

[487] The latest initiative aimed at resolving the challenges arising from overlapping memberships is the so-called Tripartite Alliance involving COMESA, SADC and the East African Community.

Though the alliance recently received major political support from heads of states and government, and has many important trade facilitation objectives, it still purportedly aims to establish a customs union in the long term. Many African scholars and policy makers believe its original idea of having only a free trade agreement was the most

4.2 THE ROLE OF AFRICAN GOVERNMENTS IN ENHANCING THE TRADE CAPACITY OF THE SUB-SAHARAN AFRICAN MEMBERS OF THE WTO: KENYA AND ZAMBIA

It is trite that national governments can and do play a decisive role in affecting the competitiveness of the economic activities located within their borders. This is evident when governments provide the appropriate incentives for domestic firms to upgrade the quality of their ownership-specific assets; by ensuring that the location-bound general purpose inputs (including educational facilities and communication infrastructure), necessary for these assets to be fully and efficiently utilized, are available.[488]

Some scholars have argued that the critical role of modern democratic governments is to create and sustain an efficient economic system.[489] From the perspective of upgrading competitiveness of the resources and capabilities within their jurisdictions, it simply means that governments must create and effectively communicate to their constituents a distinctive and challenging economic vision. In addition, the government must ensure that the institutions responsible for translating that vision into reality are both willing and able to adjust to the changes of view, required of them by a learning and innovation-driven economy.[490]

Further, it is the responsibility of governments to ensure that the availability, quality, and cost effectiveness of general purpose inputs match up to their global competitors. Governments also need to create and sustain an institutional framework and ethos that facilitates a continuous upgrading of resources and capabilities within its jurisdiction. This simply means markets for wealth creating assets function efficiently; and that entrepreneurship is adequately motivated, consumers are persuaded to be more demanding of technical standards and product quality, and that there is sufficient quality of inter-firm rivalry to promote learning and a continual improvement of asset usage.[491]

Lastly, governments must do everything to encourage, and nothing to impede the formation of micro-regional clusters development, as it is becoming increasingly apparent that the

viable way forward, albeit difficult to achieve in practice. This is because simply declaring a customs union may give its authors a sense of achievement but the union might turn out to be largely hollow in substance. See Khumalo N, Trade Talks Challenge Govts to Practical Action. Available at: **http://www.allafrica.com/stories/**. (accessed on 01/04/09)

[488] See Dunning J H, Governments, Globalization, and International Business, (1999), at 114.
[489] See Porter in Dunning, ibid, at 120.
[490] Ibid.
[491] See Dunning J H, Governments, Globalization, and International Business, (1999), at 119

competitiveness of a country's industries is dependent not only on the efforts of the constituent firms, but also on ways in which they interact with their suppliers, customers and competitors.[492]

The contention of this Study is that, governments need to create an enabling policy environment if they are to successfully stimulate the productive capacities in order to enhance the trade competitiveness of the country in the multilateral trading system.

In addition, governments must provide the necessary infrastructure and institutional support for the exporters in order to ensure that exports meet the technical standards in the export market. However, this comes with a lot of challenges. Firstly, there will be a need to balance the degree of commitment to trade and trade capacity building with that of other development problems, such as HIV and AIDS, and poverty challenges. Additionally, the government will be faced with the problem of reducing risks of policy reversals to ensure sustainability of capacity building programmes. The government will at the same time be carrying on its shoulders the obligations of ensuring that all local stakeholders participate actively in the process. Further, there will be a need to enhance coordination and timely exchange of information among government departments to ensure policy coherence.

The focus of this Study, with the foregoing in mind, will be on the two countries under examination, that is, Kenya and Zambia.

4.2.1 THE ZAMBIAN GOVERNMENT

Since late 1991, the government of Zambia has been pursuing liberal economic policies. Important to this policy framework has been embarking on a very rigid, rapid and far-reaching structural adjustment programme. This strategy (supported by IMF and World Bank) was a dramatic shift from the previous government controlled approach to economic management.[493]

At the heart of the new order of economic management has been, inter alia, trade liberalization, removal of foreign exchange controls, public service reform and the introduction of cost sharing (arrangement where both government and citizens share the responsibilities of meeting the costs). With respect to the social sectors, such as education and health, the heralded

[492]Ibid, at 120.

[493] See Business and Economy in Zambia: FDI in Zambia. Available at: **http://www.thezambian.com/**. (accessed on 23/02/09)

privatization programme has meant government withdrawal from running these businesses. In this regard, privatization has tended to stand out as the major driving force for economic development.[494]

The Zambian government has been and is committed to promoting private investment and has devised strategies to uphold the sanctity of property rights. This government has been seen, in part, in its review of some or all principal legislation whose provisions contradict the current policy of economic liberalization and the national investment policy, in tandem with the changing global trends.

Thus, for example, when the Zambian government recognised the need for efficiency in maximising the trade and investment opportunities in the region and around the globe, it repealed the Zambia Investment Act of 1993, which was seen to be inconsistent with the prevailing policy of economic liberalization and national investment policy. It was replaced by the Zambia Development Agency (ZDA) Act No. 11 of 2006, which came into effect on 7 July 2006; it is under this Act that the Zambia Development Agency (ZDA) is established.

ZDA is responsible for fostering economic growth and development in Zambia through promoting trade and investment and an efficient, effective and coordinated private sector led economic development strategy. The Agency also has the challenge to develop an internationally competitive Zambian economy through innovations that promotes high skills, productive investment, and increased trade.[495]

The ZDA as a statutory entity is a merger of the Zambia Privatization Agency, Zambia Investment Centre, Export Board of Zambia, Zambia Export Processing Zones Authority and the Small Enterprises Development Board. In this regard, the ZDA presents a one stop investment established to enhance efficiency[496]and provide incentives to further encourage both domestic and foreign investment. In its endeavour to promote investment, the Government desires to maintain a legal system that gives due guarantee of protection to both domestic and foreign investments and properties.

Further and as noted above, the Zambian government embarked on privatisation of state owned enterprises as a way of fostering economic development. Privatisation of state enterprises and

[494] Ibid.
[495] See **http://www.zda.org.zm/**. (accessed on 22/02/09)
[496] See The Zambia Development Agency. Available at: **http://www.zda.org/**. (accessed on 24/02/09)

liberalisation in the wake of the structural adjustment programme necessitated the need for competition regulation. As a consequence, in May 1997 the Zambia Competition Commission (ZCC) was established through the enactment of the Competition and Fair Trading Act, 1994, which came into force on 15 February 1995.[497]

The main objectives of the Act include: encouraging competition in the economy by prohibiting anti-competitive trade practices; regulating monopolies and concentration of economic power so as to protect consumer welfare; strengthening the efficiency of production and distribution of goods and services; securing the best possible conditions for the freedom of trade and expansion of entrepreneurship base.[498]

It is noteworthy, however, that competition and the competition law are still in their infancy in Zambia.[499] The Commission suffers from an acute short-fall of financial and human resources which have severely limited the scale of its operations and advocacy efforts. The level of understanding and awareness on competition law, procedure and remedial action among the consumers and business concerns is quite low.[500] Although ZCC's performance seems to be quite impressive despite the constraints, building its capacity as envisaged in the Act remains an important challenge, but inevitable.

This is necessary because, in the final analysis, competition law prevents and dismantles anti-competitive structures and practices and thus promotes responsibility and accountability of corporate actors at both national and international level, thereby enabling developing countries' producers, enterprises and consumers to take advantage of trade liberalization.

The Ministry of Commerce, Trade and Industry (MCTI) is mandated to prepare the trade policies and strategies (like National Export Strategy). The goal is to facilitate and promote the growth, development and competitiveness of commercial, trade and industrial sectors in order to enhance socio-economic development. This Ministry has a number of institutions that facilitate trade such as the Zambia Bureau of Standards, Zambia Development Agency, Weights and Measures, among others. It also hosts a number of donor-funded projects as well

---

[497] See Competition Policy in Zambia. Available at: **http://www.globalcompetitionforum.org/regions/**. (accessed on 26/02/09)
[498] Ibid.
[499] See The Competition Policy in Zambia. Available at: **http://www.globalcompetitionforum.org/**. (accessed on 25/02/09)
[500] Ibid.

as the Private Sector Development and Capacity Building Programme, JITAP/IF, among others.[501]

The Zambian Government has to some extent made notable efforts to improve the agricultural sector by enhancing its competitiveness and productive capacity. In this regard the Ministry of Agriculture and Cooperatives is mandated to facilitate and support the development of a sustainable and viable agriculture sector in Zambia.[502]

The vision is to promote development of an efficient, competitive and sustainable sector. The overall agricultural policy objective is to achieve accelerated growth and competitiveness in the agricultural sector which will lead to the goal of poverty reduction and income growth. Government stated strategy is to support private sector led development while government focuses on infrastructure and support services.[503]

However, the Zambian government has struggled to implement this strategy particularly in the maize sub-sector. For example, instead of promoting private sector led marketing of maize, the government in 2006 emerged as the single largest domestic market player and the only maize exporter.[504]

However, despite the recent efforts in the macroeconomic front, Zambia has not yet experienced the sustained rapid economic growth necessary for reducing poverty. This is partly because the key measure of privatising the mining industry was not effectively undertaken.[505] Firstly, the privatization programme faced resistance and opposition from several critical stakeholders, such as the Zambia Industrial and Mining Company (ZIMCO) and other holding companies were against privatization and often used their best endeavours and privileged access to the high echelons of government to undermine and frustrate privatization.[506]

Secondly, there was a deliberate effort by powerful business interests in government to treat enterprises and assets lined up for privatization as goods fallen from the back of a delivery

---

[501] See Zambia National Report on the Implementation of Agenda 21. Available at: **http://un.org/jsummit/**. (accessed on 27/02/09)

[502] See the Government of the Republic of Zambia, 2005. Available at: **http://www.fao.org/**. (accessed on 25/02/09)

[503] Ibid.

[504] See the Compatibility between domestic and external maize trade policies in Zambia. Available at: **http://www.fao.org/**. (accessed on 25/02/09)

[505] See the Republic Of Zambia Ministry Of Finance And Economic Development. Available at: **http://poverty2.forumone.com/files/zambia**. (accessed on 23/02/09)

[506] See Interview with former Zambia Privatisation Agency (ZPA) director James Matale. Available at: **http://maravi.blogspot.com/** (accessed on 31/03/09)

truck.[507]

Thirdly, there was pressure from quarters of the donor community to fast- track the programme and for specific assets in the privatization portfolio. Some donors were clearly frustrated by the elaborate processes that ensured that the enterprises were properly privatized to meet the provisions of the law, including transparency and integrity.[508]

Therefore, the attainment of growth and competitiveness is to be aided by institutional and structural reforms in various sectors of the economy.

In this regard, improved trade policies including the elimination of anti-export bias are necessary for accelerating the export growth necessary for the attainment of economic growth. It is also necessary to ensure macroeconomic stability, efficient infrastructures, a positive private sector enabling environment to encourage private investment in export-oriented sectors, and a more effective supply-side response to trade policies. Therefore, a sound policy package to accelerate export growth would include a combination of the above priority measures as well as trade policies.

It is also necessary to note that increasing exports should not be viewed as an end in itself; it is a precondition for strengthening the private sector, accelerating growth, and reducing poverty.[509]

Enhancing trade policy formulation and implementation requires increased analytical capacity within and outside government, more regular and informed dialogue between government and key stakeholders, improved coordination between Ministries and agencies, and cooperation between the donors to address short, medium- and long-term priorities.[510]

The recent creations of the Zambia Business Council (ZBC), the Private Sector Development (PSD) Steering Committee, and the New Working Group on Trade (NWGT) consisting of members from the private sector and government are a welcome development. The NWGT is intended to provide oversight for a whole series of working groups focusing on each of the

[507] Ibid.
[508] Ibid.
[509] See Zambia Diagnostic Trade Integration Study (Trade Component of Private Sector Development Program for Zambia). Available at: **http://www.integratedframework.org/**. (accessed on 23/02/09)
[510] Ibid.

trade agreements, as well as for donor programmes.[511] Given the scarce technical capacity to service multiple committees, it is therefore submitted that there should only be four sub-committees within NWGT – agriculture, services, manufacturing and trade facilitation.

The Zambian government has not effectively utilized its role in trade capacity building. This is mainly due to a lack of investment in infrastructure resulting from the lack of political will. The marketing infrastructure (that is, information, storage) is deficient, while the communication sector remains underdeveloped.[512]

This has seriously undermined the inflow of foreign investment and has resulted in a huge loss of trade opportunity for Zambia.[513]

Zambia's post-independence economic history has been dominated by two features. The first has been the inability of the general public to benefit from the country's large, and still untapped, natural resource endowment. The second has been the loss of income and wealth resulting from poor leadership, inappropriate policies, and economic mismanagement.[514]

It is observed that, with proper management and appropriate policies, Zambia's natural resources (such as Minerals, wildlife, water resources, among others), could be generated in ways that enhance the country's trade capacity to effectively participate in the multilateral trading system.

Further, appropriate behind the border policies will for instance expand export production. This is because Zambia's increased participation and integration in the world economy hinges on increased market access opportunities and the competitiveness of the domestic economy.[515] Efficient behind the border policies will reduce costs for exports and promote the overall competitiveness of the domestic economy.

Government initiatives geared at export diversification must be placed within a comprehensive and coherent policy framework. Switching from the primary to manufacturing sector is a

---

[511] See Zambia Diagnostic Trade Integration Study (Trade Component of Private Sector Development Program for Zambia). Available at: **http://www.integratedframework.org/**. (accessed on 23/02/09)
[512] See the Zambia Commerce Gazette, January/February 2008, at 9. Available at: **http://www.jctr.org.zm/**. (accessed on 25/02/09)
[513] Ibid.
[514] See Chigunta F, Sustaining Growth and Development in Zambia, Zambia Commerce Gazette, January/February 2008, at 9. Available at: **http://www.jctr.org.zm/**. (accessed on 25/02/09)
[515] See the UNCTAD 2006 Report. Available at: **http://www.unctad.org/Templates/Download.** (accessed on 25/02/09)

medium- to long-term goal. Increasing the efficiency of firms operating in the primary sector and developing non-traditional primary exports is a more immediate and feasible option for these African countries, like Zambia, which enjoy low labour costs and favourable agro-ecological conditions, but still lag behind in terms of skills.

Be that as it may, successful stories exist in Africa as well.[516] For instance, by exploiting its sugar revenues, attracting export-oriented FDI and at the same time granting selective incentive measures Mauritius has been able to develop a competitive textile sector. The success of this "unorthodox" policy-mix is partly explained by the governance structure existing in Mauritius, where an effective public-private partnership in policy design and implementation exists, securing a large support for the overall development strategy.[517]

Economic policy, especially at the micro-economic level, needs to set priorities that reflect the most important constraints to competitiveness in each country. This enables countries to move beyond abstract theoretical policy debates and identify the specific tasks ahead of them.[518] The examples of countries like Mauritius provide hope for Zambia, only if Zambia and its leadership can emulate their counterparts, move beyond political rhetoric and abstract theoretical policy debates, and identify specific tasks aimed at achieving Zambia's vision of socio economic development.

4.2.2 THE KENYAN GOVERNMENT

Kenya's economy is market-based, with some state-owned infrastructure enterprises, and maintains a liberalized external trade system.[519] The economy's heavy dependence on rain-fed agriculture and the tourism sector leaves it vulnerable to cycles of boom and bust. The agricultural sector employs nearly 75 percent of the country's 37 million people, and half of the sector's output remains subsistence production.[520]

Kenya's economic performance has been continuously hampered by numerous interacting factors: heavy dependence on a few agricultural exports that are vulnerable to world price

[516] See Bonglia F and Fukasaku K opcit.
[517] Ibid.
[518] See Porter M Harvard Business School- Kenya. Available at: **http://www.allafrica.com/stories**. (accessed on 23/02/09)
[519] See The Economy of Kenya, Wikipedia, the free encyclopedia. Available at: **http://en.wikipedia.org/**. (accessed on 26/02/09)
[520] Ibid.

fluctuations, population growth that has outstripped economic growth, prolonged drought that has necessitated power rationing, deteriorating infrastructure, and extreme disparities of wealth that have limited the opportunities of most Kenyans to develop their skills and knowledge. Poor governance and corruption also have had a negative impact on growth, making it expensive to do business in Kenya.[521]

In this regard, it is imperative that the Kenyan Government invests sufficient funds in the diversification of the product base to other areas so as to cut a market niche in the multilateral trading system. In this regard, attempts by the Sugar industry to diversify to co-generation and ethanol production will for example contribute to the competitiveness of the industry. This will of course depend on government's policy on co-generation and blending of fuel, which is still at an infancy stage.[522]

The Kenyan Government, whose role is to create a conducive environment for the private sector to operate and thrive will need to ensure that the environment is attractive to investors and the cost of doing business, is low. In this respect, all the issues as identified in Kenya's Private Sector Development Strategy including: poor infrastructure, corruption, crime and insecurity, cost of electricity and communication, access to finance, taxes and tax administration, the regulatory environment, labour and capital productivity[523] will have to be addressed. This will ensure that Kenya is able to compete favourably as an investment destination in the region and the goods produced are also competitive in the larger COMESA market, and beyond.

It cannot be overemphasized that there is indeed a need to improve the competitiveness of Kenya's productive capacities of its industries. This, on the part of Kenya's manufacturers, calls for innovation and adoption of better modern technology in their production for the purpose of enhancing their competitiveness with respect to other products. Additionally, there is need to adopt better marketing strategies, including branding to improve the quality and standard of goods produced and the packaging thereof.

As a consequence, Kenya's trade policy objectives include moving towards a more open trade regime, strengthening and increasing overseas market access for Kenyan products, especially

[521] See The Economy of Kenya, Wikipedia, the free encyclopedia. Available at: **http://en.wikipedia.org/**. (accessed on 26/02/09)
[522] Ibid.
[523] See The Investment Opportunities in the Common Market of East and Southern Africa (COMESA). Available at: **http://www.epzakenya.com/**. (accessed on 21/02/09)

processed goods, and further integration into the world economy. These policy objectives have been pursued through unilateral liberalization, and regional and bilateral trade negotiations, in particular within the African region, as well as through its participation in the multilateral trading system.[524]

For instance on 12 September 2008, President Mwai Kibake officially opened the new Coca Cola office complex at Upper Hill in Nairobi. The president, in his address to the business community, reaffirmed the government's commitment to eliminate impediments to Kenya's competitiveness by strengthening local production capacity to attract more foreign investments.[525]

In this regard, the Kenyan Government has embarked on a number of projects to improve the infrastructure and to facilitate the enhancement of human capital. The projects, among others, include the Kenya Northern Corridor Transport Improvement Project[526] and the Institutional Reform and Capacity Building Technical Assistance Project.[527]

Further, the government is committed to improving the efficiency and sustainability of the energy sector. To this end, in 2008 alone, the government allocated Ksh. 4.5 billion to the energy sector to ensure that the Kenyan citizens had access to affordable electricity.[528]

Further, the President outlined some of the projects to be implemented under vision 2030, which include development of industrial and manufacturing zones in different regions of Kenya. Other projects include the development of five small and medium enterprises industrial parks in order to increase the capacity utilization.[529]

---

[524] See The Pursuit of structural reforms can help attract needed investment in Kenya. Available at: **http://www.wto.org/**. (accessed on 17/02/09)

[525] See The Address by H.E President Mwai Kibake, Office of Public communications. Available at: **http://www.communication.go.ke/**. (accessed on 24/02/09)

[526] The Project seeks to increase efficiency of road transport along the Northern Corridor, to facilitate trade, and regional integration, enhance aviation safety, and security to meet international standards; and, promote private sector participation in the management, financing, and maintenance of road assets.See Northern Corridor Transport Improvement Project. Available at: **http://web.worldbank.org/**. (accessed on 24/02/09)

[527] This project is aimed at strengthening the public financial management systems to enhance their transparency, accountability, and responsiveness to public expenditure policy priorities as well as to improve public service delivery.Ibid.

[528] See The Address by H.E President Mwai Kibake, Office of Public communications. Available at: **http://www.communication.go.ke/**. (accessed on 24/02/09)

[529] Ibid.

The head of state cited roads and other infrastructural investments as some of the projects that the Government had embarked on to improve on the efficiency of the national supply chain by ensuring quick and cost-effective access of markets.[530]

The concessioning of railways, the commencement of the restructuring of Telkom Kenya and increased competition in the telecommunications sector, and the management contract for Kenya Power and Light Company will help improve the efficiency of key infrastructure parastatals and create conditions for attracting higher private investment in these areas. The announcement by the Minister of Finance in the 2006/07 budget speech of the government's intention to introduce private sector participation in the operations of the container terminal at Mombasa port will enhance the competitiveness of Kenya leading to improved participation of Kenya in international trade. This will undoubtedly contribute to poverty reduction and economic development in Kenya.[531]

The Kenyan government has also committed itself to prohibit any practice that adversely affects the objectives of free and liberalized trade. Further, the Kenyan government, as a member of COMESA, has through Article 55 of the COMESA Treaty agreed to the prohibition of any practice which negates the objective of free and liberalized trade.[532]

In this regard, the government has taken up its regulatory functions to encourage fair and open competition. This has been done through Kenya's competition law, which applies to all sectors including state enterprises.[533] The relevant provision (Section 73) of the Kenyan Competition law states:

"Except insofar as exempted from the application of the provisions of this Act by section 5 or any other written law, everybody corporate in which the Government holds one or more shares, whether as sole, majority or minority shareholders, and which is carrying on any trade is a person to whom this Act applies and who may be investigated by the Commissioner…"

Section 5, however, has exemptions relating to trade practices which are allowed by another Act of parliament and trade practices which are directly and necessarily associated with the

---

[530] Ibid.

[531]See The International Development Association and International Monetary Fund: Republic Of Kenya. Available at: **http://www.siteresources.worldbank.org/** (accessed on 23/02/09)

[532] See Njoroge P M, Enforcement of Competition Policy And Law In Kenya Including Case Studies In The Areas of Mergers And Takeovers, Prevention of Possible Future Abuse of Dominance And Collusion/Price Fixing. Available at: **http://www.ifc.org/**. (accessed on 21/02/09)

[533] Ibid.

licensing of participants in certain trades and professions by government agencies in accordance with authority conferred by an Act of Parliament. In all matters affecting Competition, Kenya's Competition Law applies to all regulated sectors.

Further, Kenya has dismantled its quantitative import restrictions and price controls on major products and the tariff is now the main trade policy instrument. The tariff structure has been rationalized, as have incentive schemes. Several public enterprises have been restructured and the influence of most agricultural boards reduced. Following three devaluations of the Kenyan shilling in 1993, a managed floating exchange rate system was adopted in 1994. However, investor confidence has been affected by several elements, including issues of governance, labour unrest, power shortages and high utility costs, and adverse weather conditions that further weakened the infrastructure.[534]

Evidently, there is also need for efficient and strong institutions to execute Government policies. In this case, Anti-corruption laws and institutions must also exist to spearhead the crusade. Similarly, a concerted public awareness campaign to change the attitudes of public servants and the general citizenry to realize that corruption is expensive must be initiated.

The Kenya Anti-Corruption Commission, Department of Ethics and Governance, The National Anti-Corruption Steering Committee, Efficiency Monitoring Unit, the Office of the Controller and Auditor General, the Inspectorate of State Corporations are such Institutions playing different and distinct roles in the fight against corruption. In this regard, serious commitment on the part of government in terms of the provision of financial support, and the enactment of strong anti-corruption laws, is needed to strengthen these institutions in order to enhance their efficiency and sustainability. Transparency and accountability need to be encouraged.

It deserves mention that all public servants are required by law to declare their wealth annually. Soon such declarations shall be available to public scrutiny.[535]

Reforming the judiciary, strengthening the rule of law and security, and implementing reforms in public administration are critical to improving transparency and accountability. As such Kenya's implementation of the Governance, Justice, Law and Order Sector Reform Program, which is assisting with policy reforms and institutional strengthening that are required to fight

[534]See The Pursuit of structural reforms can help attract needed investment in Kenya. Available at: **http://www.wto.org/**. (accessed on 17/02/09)
[535] See the fight Against Corruption, Office of Public Communication. Available at: **http://www.communication.go.ke/**. (accessed on 25/02/09)

corruption and promote good governance across all levels of government could never have come at a better time than now.[536]

4.3 THE ROLE OF THE PRIVATE SECTOR IN ENHANCING THE TRADE CAPACITY OF THE SUB-SAHARAN AFRICAN MEMBERS OF THE WTO: KENYA AND ZAMBIA

The private sector can be broadly defined as "a basic organising principle of economic activity where private oownership is an important factor, where markets and competition drive production and where private initiative and risk taking set activities in motion."[537] The term therefore covers all private actors, that is, the poor and the rich, individuals and businesses engaged in risk-taking activities to earn profits and income through market exchange. It applies to smallholder farmers as well as to very large multinational corporations (MNCs).[538]

The role of the private sector in trade capacity building anywhere in the world cannot be overemphasised. It enhances competitive forces and competitiveness necessary to maximise trade opportunities, which in turn produces economic development.[539] Through the divestiture of activities that the private sector can do as well better, it allows governments to reduce waste and gain the fiscal space needed for greater investments in all sectors of the economy including infrastructure. Those investments are the income equalizers that provide skills and the services required by the private sector to compete in today's skill based global economy.[540] Simply put, the private sector plays a pivotal role in the overall strategy for sustainable economic development.

Many previously low-income countries have made impressive advances in the past few decades. It is well documented that the best performers have been in Asia, China's growth has been particularly spectacular.[541]

---

[536] See The International Development Association and International Monetary Fund: Republic Of Kenya. Available at: **http://www.siteresources.worldbank.org/** (accessed on 23/02/09)
[537] See OECD, 2004. Available at: **http://www.oecd.org/**. (accessed on 22/02/09)
[538] See The Business Development Report, (2007). Available at: **http://www.oecd.org/**. (accessed on 22/02/09)
[539] See the World Bank, Private Sector Development in Low-Income Countries, (1995), at ix.
[540] Ibid.
[541]Increased private activity in Asia has stimulated the financial sector and is beginning to attract substantial foreign investment, particularly in infrastructure and the stock market. China's non-state and private firms grow at

Asia is known to have pursued market-friendly development strategies.[542] Their private sector have been the engines of growth, generating sustained increases in incomes to allow investments in broadly based and long term development. And their governments have been focusing on macroeconomic stability, on the business environment, and on basic physical infrastructure and human resources.[543] Undoubtedly, the results have been sustained high growth rates, with widely shared gains in living standards.[544]

Many of today's low-income countries, especially those in Sub Saharan Africa, have adopted parts of that strategy, but with major differences. The big question is, what are these countries doing wrong? To answer this question, this section of the Chapter shall examine the private sector experiences of Kenya and Zambia.

4.3.1 ZAMBIA AND THE PRIVATE SECTOR

The Zambian government has recognized the private sector as strategic partner in the crusade towards achieving economic recovery and that it has potential to contribute to national development through effective and quality service delivery.[545] In this regard, the Government has continued to refine its policies to create a conducive and enabling environment for the private sector to flourish and contribute to effective and quality service delivery in various sectors of the economy.

In 2004, the Zambian government launched a comprehensive Private Sector Development (PSD) Programme which was aimed at reducing various administrative barriers to commerce, and providing an enabling environment for investments.[546]

Over the last few years the private sector has made fair contributions to improving the agricultural sector and rural development. For example, the Zambia Agribusiness Technical Assistance Center (ZATAC) began providing assistance to a "Smallholder Export Organic Honey Project" in Mwinilunga district in Zambia's poorest province, the North Western

---

20 per cent a year and account for 75 per cent of industrial growth. See the World Bank, Private Sector Development in Low-Income Countries, (1995), at 1.

[542] Ibid.

[543] Ibid.

[544] See the World Bank, Private Sector Development in Low-Income Countries, (1995), at 1.

[545] See Kalero R, Consortium out to establish mining, industrial studies training institute. Available at: **http://www.times.co.zm/news/**. (accessed on 19/02/09)

[546] See Simumba T, Joint Civil Society Trade Network Zambia (CSTNZ) & Consumer Unity and Trust Society (Cuts) Consultative Workshop on Economic Partnership Agreements. Available at: **http://www.cuts-epa.org/documents/**. (accessed on 24/02/09)

Province. ZATAC's approach of providing marketing, technical and financial linkages between producers and agribusinesses paid off very quickly in the sub-sector.[547]

Approximately 3,000 honey farmers were trained through ZATAC support in proper procedures in honey production, honey harvesting, and handling of certified organic honey for export. In less than a year, the certified organic honey being exported from North Western Province leaped from 50 tons to 180 tons, a 260% jump. This exponential rise in volume has now successfully placed Zambian organic honey on the world organic honey map.[548]

There is potential for much more export diversification and expansion of the private sector. Potential exists for export diversification particularly in sectors such as floriculture, horticulture, agro-processing, textiles and garments, gemstones, and tourism.

Realising these opportunities requires a refocusing of the reforms in a more comprehensive and consistent policy package so as to eradicate the binding constraints to private sector development and export promotion. Zambia needs to tackle a wide range of issues to achieve broad based export-oriented growth led by the private sector.[549] These issues include: adequate investment in infrastructure, sufficient provision of credit facilities to exporters, government has to secure the active participation of the private sector, among others.

The mining sector, the supply of goods and services has been taken up by private companies including those that can be classified as SMEs. Similarly, the transport sector, which was dominated by Government through the United Bus Company of Zambia (UBZ), Zambia Railways and Zambia Airways, etc, is now largely run by the private sector, consisting mostly of small and medium entrepreneurs.[550] One can go on to mention the tourism, manufacturing, real estate, construction and others. This development is of great benefit to the economy in general and individual entrepreneurs in particular. Therefore, small- and medium-scale enterprises have the potential to make a significant contribution to enhancing the country's

[547] See Smallholder Export Organic Honey Production and Sale Increases – A case of Mwinilunga Small Holder Producers. Available at: **http://www.usaid.gov/zm/**. (accessed on 03/03/09)

[548] Ibid.

[549] See Simumba T, Joint Civil Society Trade Network Zambia (CSTNZ) & Consumer Unity and Trust Society (Cuts) Consultative Workshop on Economic Partnership Agreements. Available at: **http://www.cuts-epa.org/documents/**. (accessed on 24/02/09)

[550] See Opening Remarks by the Governor of the Bank of Zambia Dr Caleb M. Fundanga. Available at: **http://www.boz.zm/**. (accessed on 03/03/09)

competitiveness and the growth of the economy, thereby improving the economic welfare of the population.

However, the private sector bodies in Zambia are under-resourced and unable to attend important meetings prepared with strong arguments for why reform is necessary. The private sector has faced difficulties in accessing credit for working capital and expansion of their investments. Even if more SMEs wished to modernise their plant and equipment, they would find it hard to do so because of the difficulty of obtaining financing. They need help with outside technical inputs and with training on how to go about engaging constructively in an investment climate reform process.[551]

The Zambian government needs to support the private sector by improving the country credit ratings by establishing an effective financial system to ensure that the private sector has access to finance.

The private sector in Zambia is at the centre of the economic activities, as such, any initiatives aimed at enhancing the economy cannot be effectively implemented in the absence of the participation of the private sector, the engine for economic growth. The challenge for the Zambian government therefore is to remove all legal and other constraints to private sector participation in the economic activities. There is also a need to strengthen the public-private partnership.

An efficient and dynamic financial sector is crucial to a growing market-oriented economy. Financial sector restructuring and policy reform are often needed to raise the efficiency and effectiveness of resource mobilization and allocation to the private sector.[552] Conventional wisdom holds that, private owners possess the capacity and the incentives to use resources more efficiently and to bring new capital to investment-starved enterprises.

It cannot be overemphasized that indeed, the private sector can stimulate effective trade capacity building with positive results.

---

[551] See the Review of the Government of Zambia's Private Sector Development Reform Program (PSDR) and Recommendations for Enhancing Impact. Available at: **http://www.enterprise-development.org/downloads/**. (accessed on 26/02/0)

[552] See the World Bank, Private Sector Development in Low-Income Countries, (1995), at 1.

4.3.2 KENYA AND THE PRIVATE SECTOR

The Kenyan private sector has over the years substantially contributed to the country's economic development process. The sector contributes over 80 per cent of the GDP, a substantial percentage of total employment, and the bulk of export earnings.[553] The major growth sectors are Trade in goods and services, restaurants and hotels; Agriculture, Manufacturing, Finance, insurance, real estate and business support services; and Transport, communications and storage.[554] Evidently, the private sector has a crucial role to play in trade capacity building for Kenya as a developing economy.

However, the private sector in Kenya is fragile and it lacks a consolidated business culture and expert experience.[555] The institutional framework for trade support services that is agencies such as the Kenya Export Promotion Council (KEPC) and other agencies in charge of the regulations governing trade and investment promotion, suffer from several shortcomings.[556] They seriously lack market information and the supply infrastructures as well as the shipping services are quite inadequate.[557]

Most institutions that support private sector activities are either weak or under-funded.[558] For those that are membership based, for example Kenya Association of Manufacturers, Kenya National Chamber of Commerce and Industry, Fresh Produce and Exporters Association of Kenya, Kenya Flower Council, Fish Producers and Exporters Association of Kenya, and the Kenya Private Sector Alliance, they do not have internal capacity to analyse private sector constraints and impacts to business, and also lack internal capacity to offer business development services.[559]

This situation is made worse by the fact that for institutions funded under the public budget which could have filled the gaps, they are under-funded and therefore unable to fully discharge their mandates. On the other hand, such public institutions in many cases handle almost similar activities without complementing each other's efforts. Such institutions include the Export Promotion Council, Export Processing Zones Authority and Investment Promotion Authority,

[553] See Private Sector Development in Kenya. Available at: **http://siteresources.worldbank.org/intkenya/**. (accessed on 03/03/09)
[554] Ibid.
[555] See Bonglia F and Fukasaku K, opcit, at 18.
[556] Ibid.
[557] Ibid.
[558] See Private Sector Development in Kenya. Available at: **http://siteresources.worldbank.org/intkenya/**. (accessed on 03/03/09)
[559] Ibid.

regarding attracting export oriented investments.[560] There is therefore a need to have a national strategy on investment and export promotion, which is centrally coordinated, so as to maximize the meagre resources available to the country.

There is also no collaboration between Customs and other agencies involved in clearance of import and export cargo, such as the Kenya Bureau of Standards (KEBS) and the Kenya Plant Health Inspectorate Service (KEPHIS). KEBS carries out physical audit on samples of all imports, regardless of the results that may have been achieved on similar imports by the same importer.[561] The KEPHIS procedure is currently a key challenge for horticultural exports due to the new EU requirement that horticultural exporters have to submit a copy of the phytosanitary certificate and EURO 1 form two hours before arrival of cargo by plane at the port of entry, while KEPHIS does not have the capacity to facilitate compliance to this new EU requirement.[562]

The Kenya Revenue Authority[563] is regarded by businessmen as obsessed with maximizing revenue collection, which is evident in the heavy reliance on financial auditing, punitive penalties, delays in refunding monies owed to taxpayers (*particularly VAT refunds*), and a perceived reluctance to issue rulings. These issues encourage rent-seeking practices especially among small-scale businessmen, and ultimately affect the efficiency and cost of doing business in Kenya.

In addition, the current business registration is archaic, inefficient and unreliable, and imposes additional cost to investors in terms of money and time, and is especially a burden to SMEs. There are about 12 business registration procedures, in comparison to 7 in Ethiopia, 9 in South Africa, 6 in Zambia, 5 in Hong Kong and 6 in UK.[564]

Providers of trade support services fail to meet the Kenya exporters' needs. For example, exporters are not adequately assisted in terms of meeting the technical standards (SPS and TBT measures) in the import markets.[565] According to the Kenya Private Sector Alliance (KEPSA), there is a mismatch between exporters' needs and government policies concerning the

---

[560] Ibid.
[561] See Private Sector Development in Kenya. Available at: **http://siteresources.worldbank.org/intkenya/**. (accessed on 03/03/09)
[562] Ibid.
[563] Ibid.
[564] See Private Sector Development in Kenya. Available at: **http://siteresources.worldbank.org/intkenya/**. (accessed on 03/03/09)
[565] Ibid.

provision and use of trade support services. For instance, the government has put in place very restrictive import regulations not to mention the cumbersome customs procedures and the uncertainty in the exchange rate.[566]

It must be realized that trade support services play an important role in facilitating international business development by reducing transaction costs, improving learning process and building the capacity of private firms.

Generally, African governments face the daunting task of providing better education, upgrading local technological capabilities, modernising infrastructure and creating a legal framework that allows both domestic and foreign firms to make long-term investments.

It is certainly a tall order for any government to tackle all of these at once, and this is why the development of effective public-private partnership is critically important.

The Government of Kenya has on numerous occasions stated that it's committed to reversing the past decades' economic decline, mismanagement, contraction in per capita income and increase in the numbers living below poverty line. It has prepared the Economic Recovery Strategy for Wealth and Employment Creation, 2003-2007 (ERSWEC) which outlines a recovery centred on a reanimated private sector. Reviving the private sector activity and investment and, specifically, micro, small and medium sized enterprise (MSME) development, feature prominently in the government's strategy for raising incomes and employment.[567]

The Government of Kenya has created investment laws purposely creating a favourable atmosphere for investment. The Foreign Investment Protection Act (cap518), guarantees the right of the investor to repatriate any profits back to their country. It also guarantees against

[566] Ibid, at 59.
[567] Tax advantages offered to foreign enterprises and local investments aimed at manufacturing for export include: All capital goods and basic goods are zero rated under the Value Added Tax; Investment allowance is provided as an incentive for investment in the manufacturing and hotel sectors at the rate of 100% countrywide.
In manufacturing under Bond 9Manufacturer solely for export), the applicable rate on investment allowance is 100% on plant, machinery, equipment, equipment and building.
The Manufacture Under Bond programme, which is facilitated by Investment Promotion Centre and is administered by Kenya Revenue Authority, enjoys the following incentives: Exemption from Customs/excise duty and VAT on imported plant, machinery, equipment, materials and other imported inputs; 100 per cent investment allowance on plant, machinery, equipment and buildings Duty Remission facility where raw materials utilized for products for export are granted.
Export processing Zones incentives;10 year Corporate tax holiday and 25 per cent thereafter; 10 year withholding tax holiday stamp duty exemption; 100 per cent investment deduction over 20 years on initial investment perpetual duty and VAT exemption on raw materials, machinery and other inputs
See The Private Sector Involvement, Office of Public Communication. Available at: **http://www.communication.go.ke/**. (accessed on 25/02/09)

compulsory taking of any enterprise or its property by the Government. Private sector investment incentives include, investment allowance, depreciation, loss carried forward, remission from customs duties.[568]

It is quite crucial for the Kenyan Government to ensure that an enabling environment is created in order to stimulate the private sector. This is because the Kenya private sector has proved its resilience to external shocks, which require strengthening.[569]

Kenya is still in the process of liberalising its economy, although the process is quite slow.[570] This has helped in encouraging the private sector which has in turn contributed significantly to the creation of a diversified economy, as evidenced by the broad range of private sector activities that take place under the monetary economy.[571]

For example, a strong and diversified regional financial centre has developed over the years, enabling the banking sector to be well capitalized with an estimated average risk weighted capital adequacy ratio of 17.2%, well above the 12% minimum national requirement.[572] Additionally, a strong stock market has evolved in the country, enabling Kenya to be rated as having the second largest stock market in Africa. The country has been able to build a large and strong manufacturing sector, which on average contributes 13% of the GDP, and which enabled the country to quickly turn around after the economic liberalization of early 1990, from reliance on the traditional EU market to the regional COMESA market.[573]

---

[568] Ibid.
[569] See The Kenya Private Alliance (KEPSA). Available at: **http://siteresources.worldbank.org/intkenya/**. (accessed on 25/02/09)
[570] See Kamau P, opcit.
[571] In terms of their contributions to the monetary GDP,
the five most important sub-sectors in order of priority are: Trade, restaurants and hotels, which contributed 29% in year 2000, 30% in 2001, and 31% in both 2002 and 2003; Agriculture, which contributed 22% of the monetary GDP in 2000, 20% in 2002, 18% in 2002,and 17% in 2003; Manufacturing, which contributed 16% in 2000, 15% in both 2001 and 2002, and 16% in 2003; Finance, Insurance, real estate and business services, which contributed 12% in 2000, 11%
2001, 10% in 2002 and 11% in 2003; Transport, storage and communications, which contributed 9% in both 2000 and 2001, and 10% in both 2002 and 2003.
Combined, these five sub-sectors took 87% of the Monetary Economy's GDP in 2000, 85% in 2001,84% in 2002, and 86% in 2003. In terms of employment, the country's total formal employment grew from 1,695,300 employees in 2000 to 1,677,200 in 2001, 1,699,700 in 2002, and to 1,727,700 in 2003. The private sector contributed the bulk of this employment, at 1,002,800 or 59% in 2000, 1,018,700 or 61% in 2001, 1,040,900 or 61% in 2002 and 1,068,600 or 62% in 2003. See **http://siteresources.worldbank.org/**. (accessed on 25/02/09)
[572] Ibid.
[573] Ibid.

It is therefore, submitted that the private sector has a crucial role to play in the trade capacity building in Africa. In this case, it is necessary for African countries to open up to the formation of strong public-private partnerships as they endeavour to address development problems as well as the supply-side constraints to effective trade.

4.4 CONCLUSION

The Chapter endeavoured to examine the role played by regional integration on one hand and African governments and the private sector on the other hand.

It is so far concluded that, effective implementation of regional integration will only take root in a healthy and democratic environment where economic management is both transparent and accountable.

It is further concluded that, fully fledged regional integration has the potential to promote economic growth and industrial development in Africa.

Even so, the proliferation of regional trade agreements (RTAs) raises the question whether these can be reconciled with the WTO multilateral liberalisation agenda. Furthermore, it is doubtful if RTAs can work for African countries so long as their legal, institutional and economic concerns within the WTO remain unresolved.

The multilateral trade regime provides a global framework for African countries to pursue their policies but it should never be reviewed as a panacea for their development problems. For this reason it is imperative that African policy makers create domestic conditions conducive to effective and beneficial participation of the continent in the global economic system.

In the final analysis, regional integration, as illustrated by the SADC and the COMESA examples, leads to an increase in the size of market, helps to promote good governance and facilitates infrastructure development which in turn enhances the competitiveness of member countries. This results in the attraction of investors who are mostly constrained by the small markets in individual countries.

The findings in this Study are that for regional trade integration to be successful enough to contribute to trade capacity building, there are many conditions that need to be complied with. Firstly, there must be a favourable macroeconomic environment, a diversified export base and adequate infrastructure. Experiences in the EU, ASEAN, SADC and COMESA, indicate that the satisfaction of these conditions may be possible through government activity coordination and the project cooperation approach to regional integration.

The contention of this Study is that, governments need to create an enabling policy environment if they are to successfully stimulate the productive capacities in order to enhance the trade competitiveness of the country in the multilateral trading system.

In addition, governments must provide the necessary infrastructure and institutional support for the exporters in order to ensure that exports meet the technical standards in the market of export. However, this comes with a lot of challenges.

Firstly, there will be a need to balance the degree of commitment to trade and trade capacity building with that of other development problems, such as HIV and AIDS and poverty challenges. Additionally, the government will be faced with the problem of reducing risks of policy reversals to ensure sustainability of capacity building programmes. The government will at the same time be carrying on its shoulders the obligations of ensuring that all local stakeholders participate actively in the process. Further, there will be a need to enhance coordination and timely exchange of information among government departments to ensure policy coherence.

It is also concluded so far that, the role of the private sector in trade capacity building anywhere in the world cannot be overemphasised.

The private sector enhances competitive forces and competitiveness necessary to maximise trade opportunities, which in turn produces economic development. Through the divestiture of activities that the private sector can do as well better, it allows governments to reduce waste and gain the fiscal space needed for greater investments in all sectors of the economy including infrastructure.

Those investments are the income equalizers that provide skills and the services required by the private sector to compete in today's skill based global economy. Simply put, the private sector plays a pivotal role in the overall strategy for sustainable economic development.

Many previously low-income countries have made impressive advances in the past few decades. It is well documented that the best performers have been in Asia, China's growth has been particularly spectacular.

However, it must be emphasized that, the effective participation of the private sector highly depends on the African governments. As such it is imperative for them to improve the business environment by increasing private sector participation and activity. This is vital because increased private activity stimulates the financial sector which in turn attracts substantial foreign investment, particularly in infrastructure and the stock market. This is particularly exemplified by Asia's China.

The governments must strengthen the legal and judicial system. Additionally, the barriers to competition and improved regulation must be reduced. There is also a need for governments to support entrepreneurial development. Lastly, governments must promote global integration to complement trade reform.

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5 INTRODUCTION

This last Chapter intends to summarise the findings and observations of this study as outlined in the preceding Chapters. On the basis of these findings and observations recommendations will be made as to how the trade capacity of developing and least developed countries can be enhanced in ensuring their effective and full participation in the multilateral trading system for the purposes of attaining maximum economic benefits attendant thereto.

5.1 CONCLUSIONS

The study revealed that developing countries and LDCs, especially those in Sub Saharan Africa, are not able to adequately participate in the multilateral trading system, a phenomenon that has resulted in these countries not benefiting much from the WTO since its creation in 1995.

The Study adopted the argument by Richard Blackhurst[574] that fully-fledged integration of Sub Saharan African countries into the global trading system requires building the requisite capacity to enable them to contribute to shaping and designing the rules and regulations for its management by active participation in WTO activities.

Further, the study concurred with the Doha Declaration[575] that sustainably financed technical assistance and capacity building programmes have important roles to play in so far as integration of Sub Saharan Africa into the global trading system is concerned; and that developing countries in general and LDCs in particular are to be provided with enhanced Trade-Related Technical assistance (TRTA) and capacity building to increase their effective participation in the negotiations, to facilitate their implementation of GATT/WTO rules and to enable them to adjust and diversify their economies.

However, without prejudice to the foregoing, it has been the submission of this study also in relation to the notion that trade capacity building as provided by the GATT/WTO is the only

[574] See Blackhurst R et al, Options for improving Africa's Participation in WTO, (2000), at 491

[575] See the Doha Development Agenda: July 2004 Package. Available at: **http://www.wto.org/**. (accessed on 28/07/08)

solution to the poor performance of Africa, particularly Kenya and Zambia in the multilateral trading system, that there exists other challenges that potentially hinder the participation of these countries in the multilateral trading system.

It is in that vein that the study observed that the main obstacles for countries like Kenya and Zambia are the inadequacies in infrastructure, institutional deficiencies, dependency on few primary exports, stringent rules of origin, Sanitary and Phytosanitary requirements, corruption, lack of financial and human resources, HIV and AIDS, poor economic policies, political instability, among others. It is obvious from the list of obstacles given that challenges like corruption, dependency on few primary exports, HIV and AIDS, poor economic policies and political instability have very little to do, if at all, with a country's general positioning within the GATT/WTO.

In Chapter Two, the study examined the adequacies and inadequacies of the Special and Differential Treatment (S&D) Principles in addressing some of the challenges the developing and least developed countries experience. Most of the S&D principles are couched in hortatory language and do not create any enforceable obligations. This being the case, they do not effectively address supply-side constraints which hinder the effective participation of these countries in the GATT/WTO. Accordingly, the study has concluded that, in their current form, S&D Principles have not adequately helped developing countries in Africa in addressing the challenges that these countries face in the global trading system.

It is also a submission of the study that Aid for Trade, EIF and JITAP (initiatives) have not been effective in enhancing the trade capacity of developing countries and LDCs. This is attributable to the fact that these countries do not have the capacity to implement the initiatives. The constraints in this case cut across various issues including lack of the necessary infrastructure, lack of resources, inadequate and unpredictable funding by donors, poor planning and coordination on the part of the beneficiary countries, a lack of political will and poor governance, and generally very low levels of private sector participation.

Furthermore, it was observed in Chapter Three that African initiatives such as the ACBF, NEPAD, the Lagos Plan of Action, among others, have a very important role to play in ensuring the active participation of developing countries like Kenya, and LDCs like Zambia, in the multilateral trading system. In this regard, it has been submitted that this can only be realized if African states work together, embracing a common vision while stressing genuine home grown strategies, particularly in the areas where Africa has comparative advantages, such as agriculture, infrastructure development, and indeed bolster intra-African trade and investment within the continent, and regions of the continent. In so far as successful project implementation is concerned, it is noted that appropriate and adequate institutional framework and infrastructure are the foundation upon which successful project implementation is built. Further, it is noted that when institutional capability is high and untainted by corruption and arbitrariness, the rate of progress is accelerated.

In Chapter Four of the Study, with SADC and COMESA as case studies, it was illustrated that if adequately implemented, regional integration leads to an increase in the size of markets, helps to promote good governance and facilitates infrastructure development, which in turn enhances the competitiveness of member countries. This positive result of regional integration is in fact responsible for the attraction of investors who are mostly constrained by the small markets in individual countries.

Further, a rider was placed on embracing regional integration owing to the observation that multiple and overlapping memberships in regional economic communities (RECs) have created a complex web of competing commitments which together with different trade rules result in high costs for intra-Africa trade and undermine trade facilitation efforts that should be at the core of the integration agenda.

Chapter Four also inquired into the special role of African governments and the private sector in economic development and investment initiatives in the context of the multilateral trading system. In this connection, it has been established that the success of any project anywhere in the world, highly depends on the quality of leadership of the beneficiary country; it is trite that good leadership entails sober economic policies, political stability, rule of law and a proactive private sector, which are key elements for social economic and political development of any nation. It is, therefore, the submission of this study that effective trade capacity building requires that GATT/WTO builds a formal relationship with institutions such as the ACBF, governments of the beneficiary countries, the private sector, civil society and other institutions that have the expertise in building supply-side capabilities for member countries in general and the countries that are in most need, in particular.

5.2 RECOMMENDATIONS

It is conceded that most Sub Saharan African countries are faced with a myriad of challenges ranging from socio-economic to political challenges. In this regard, any recommendations made to inform the process of how trade capacity of developing and least developed countries can be enhanced in ensuring their effective and full participation in, and maximize benefits under the multilateral trading system must take into account the special circumstances, political, economic, social or otherwise, of the continent. Thus, with the aforesaid in mind, the following are recommended:

5.2.1 Diversification of Exports and Enhancing the Production and Technological Capacities

In the African context, trade capacity building must place more emphasis on the diversification of exports and enhancing the production and technological capacities of developing countries and LDCs. This recommendation is made against the background that continued reliance on few agricultural exports makes developing countries and LDCs susceptible to terms of trade shocks. It is therefore important that the GATT/WTO, the World Bank, UNCTAD, IMF, among others, partner up to support initiatives aimed at supporting efforts of the governments of members to diversify their export base.

In the case of Zambia, there is need for the government to invest in Non-traditional Exports (NTEs), such as cut flowers, tourism, and hydroelectricity-power generation, among others.

The Zambian government should partner with the private sector in building or expanding the capacity of the existing hydroelectricity-power generation and export hydroelectricity-power to the rest of Southern Africa. In addition, the government should invest more in infrastructure, and repackaging of the tourism marketing strategies. For instance, the government can improve the transportation system to tourist destinations, and enhance the marketing strategies in the tourism industry by sustained aggressive campaigns aimed at wooing tourists to Zambia.

As regards cut flowers, there is need for more investments in new cold storage and transportation facilities, improved cargo facilities at the Lusaka International Airport, more efficient air transportation and increased frequency of flights to facilitate timely transportation of these products. Clearly, this will also call for introduction of new technologies in order for Zambia to efficiently export cut flowers to the EU and US markets. It is recommended that technology transfers in this regard must be a part and parcel of the implementation strategy. In addition, access to credit facilities, and inputs such as seed and fertilizer need to be improved. There is also need for government to train farmers and SMEs on the importance of diversification.

In so far as rules of origin are concerned, it is recommended that they should be harmonised, simplified and transparent. In addition, developing countries like Kenya and LDCs like Zambia are in need of “behind the border" support, aimed at improving their supply capacity through strengthening technical and institutional infrastructure in order to make better market access. Further, rules of origin need to be transparent and simplified in order to provide effective market access for products originating in LDCs.[576]

There is also a need for more technical and financial assistance to enhance the technical capacities of African countries to handle issues relating to SPS as well as to provide relevant scientific and technical information, necessary for compliance. This will further address the issue of Non-Technical Barriers to Trade (NTBs), as the same affects developing countries like Kenya and LDCs. The overall result will be efficiency and competence (including ability to comply with rules in the export market) of these African countries in their participation in the world trading system.

The above recommendations are directed, on the one hand, at the concerned member countries, which must pursue, and on the other hand, the GATT/WTO, World Bank, UNCTAD, and IMF, which must embrace, encourage and support the partnerships with African countries. In this regard, a leaf must be picked from other jurisdictions or countries like Korea, Taiwan, Mauritius, Finland, China, and Chile where diversification of exports has brought them generous rewards both in terms of their participation in the multilateral trading system and their economic growth.[577]

5.2.2 Review and/or Reform of the S&DT

There is a need to carry out more research work on different provisions of S&DT in order to rank these provisions according to the needs of the developing and least developed countries

[576] See paragraph 47 of the Hong Kong Ministerial Declaration, (WT/MIN (05)/DEC). Available at: **http://www.wto.org/**. (accessed on 15/01/09

[577] See Agosin M R, Export Diversification and Growth in Emerging Economies. Available at: **http://www.bcentral.cl/conferencias/**. (accessed on 15/03/09)

and their respective levels of development. It has been noted that many developing countries, Kenya inclusive, have argued against the approach, that is, "one size fits all" approach of most S&D Treatment principles. For example, while the Trade-Related Aspects of Intellectual Property Rights (TRIPs) Agreement adopted extended implementation periods for developing countries and LDCs, these were not based upon any assessment of their capacity for implementation.[578]

The extended periods were purely negotiated dates to which all parties could agree actively or passively. The danger in this is that countries which are at different levels of development are likely to be grouped together. A typical case scenario is taking the developing country group including China, Argentina, and other Cairns Group members, whose agricultural needs are quite different from those of the developing countries like Kenya and Mauritius, for example. Therefore, the recommendation to review and/or reform the S&D Treatment is an imperative requiring urgent attention by all players involved.

5.2.3 Enhanced Trade-Related Technical and Financial Assistance (ETRTFA)

Firstly, there is urgent need to build the capacity of developing countries and LDCs to effectively manage Financial Aid. In this regard, there must be an effective system in place to ensure accountability of the financial assistance as well as to ensure that it gets to the intended beneficiaries who must effectively utilize it.

In addition, there is need to build capacity and technical know-how and of implementers of the trade capacity programmes. In this case, this case there is need for more funding to train lawyers in the Ministry of Justice, Ministry of Trade and Industry, Zambia Development Agency and economists in the Ministry of Finance, among others to better equip them for the effective implementations of trade capacity building programmes. Human capacity building may also be by way of secondment of trade experts (even from the private sector) to government projects, for limited duration.

Thus, to ensure proper management of financial aid in Zambia, the Ministry of Finance, the Ministry of Commerce Trade and Industry, and the Zambia Development Agency, must be courted by the Aid provider to work closely with the civil society, the private sector and the

[578] See Special and Differential Treatment. Available at: **http://www.iisd.org/**. (accessed on 23/01/09)

Zambia Business Association to ensure transparency and effective implementation of programmes and accountability in respect thereof.

Furthermore, there is a need to improve coordination among the institutions involved in the design and implementation of trade policy within the member countries. In a typical Sub Saharan African country, and as exemplified by Kenya and Zambia, trade policy making involves a number of government ministries, departments and related institutions. There is great strength and benefit in this kind of approach.

It is in this vein that this Study recommends that Ministries of Finance, and Trade and Development must play a pivotal role in formulating trade policies that will help enhance the trade capacities of African members of the GATT/WTO. As the expanding mandate of the GATT/WTO has drawn more domestic institutions into the process of designing and implementing trade-related policies, effective coordination within and among ministries such as the Ministry of Finance, Ministry of Trade and Industry, Ministry of Agriculture and other governmental agencies cannot be overemphasised.

The enactment of strong anti-graft laws and the strengthening of law enforcement agencies and the competent independent judiciary have to a certain extent helped the eradication of corruption in Malaysia.[579] Thus, this recommendation is made bearing in mind that living examples, like Malaysia exist to provide the much needed precursor.

In the case of Zambia, the issue of the independence of the judiciary is a real and thorny one. The President of the Republic of Zambia is constitutionally empowered to appoint (of course in conjunction with the Judicial Services Commission and the Law Association of Zambia, and subject to ratification by Parliament) and remove judges of both the Supreme Court and the High Court. The President's power to remove sitting judges is an affront to the independency of the Judiciary in any democratic government.

Thus, in order to ensure and enhance the independence of the judiciary in Zambia, the constitution must be amended accordingly, so that the President of the Republic of Zambia, no longer retains his constitutional power to get involved in the removal of sitting judges. This will provide security of tenure of sitting judges and guard against the frowned upon syndrome

[579] See Abduhlla N W, Eradicating Corruption: The Malaysian Experience. Available at: **http://www.joaag.com/**. (accessed on 22/02/09)

of judges pledging allegiance to their appointing authority for fear of arbitrary removal from office.

In terms of fighting graft, Zambia has made significant strides in that direction and as of March 2009, the Vice President of the Republic of Zambia announced, in parliament, the adoption of the anti-graft policy by the Government of the Republic of Zambia intended to provide a comprehensive institutional and legal framework to act as a national agenda for the anti-corruption crusade.

It is conceded that the current institutional framework in the fight against corruption requires a more enhanced co-ordinated approach; it lacks transparency and accountability. The next step, therefore, for Zambia is the enactment of strong anti-graft legislation or strengthening of existing legislation consistent with the adopted anti-graft policy.

5.2.4 Effective and Efficient Monitoring, Consultative and Coordination Systems

There is also need to establish within the institutions dealing with trade issues, an effective and efficient monitoring, consultative and coordination system, made up of personnel with requisite knowledge of international trade, who should help in analysing the trade policies of key trading partners. For example, Nigeria has the Tariff Board, which is a home-based support staff of skilled professionals who provide technical support to trade negotiators.[580]

It is trite that in any democratic society, policy derives its legitimacy and ultimate acceptance from the governed. Thus, there is need for African governments to be more transparent in their articulation, coordination and implementation of trade policies. Accordingly, any proposed trade policies must be subjected to public scrutiny and debate prior to their adoption, and an independent body of trade experts must always have their chance to scrutinise proposed trade policies. This would be likened to Nigeria's experience vis-à-vis the Tariff Board aforementioned.

5.2.5 Economic Reforms in a Changing Global Economy

African countries stand to derive more benefit from the Doha Development Round if they effectively reform their domestic economic policies and institutions. In this regard, the recommended reform efforts include maintaining prudent fiscal and monetary policies, avoiding exchange-rate overvaluation, facilitating the free operation of markets, investing in

[580] See Blackhurst R, et al, opcit at.495.

human capital and productive infrastructure, particularly in agricultural production and rural areas, and ensuring equitable access to land and water. It is the concession of this Study that such reforms will not only improve the operation of African countries' economies, but also encourage and facilitate productivity increases in agriculture through new research and dissemination of improved technologies.

It is noted that countries that focus on internal reforms, especially those benefiting agriculture and the poor, are more likely to gain more from the next round of trade negotiations. For example, at a global level, China and India have demonstrated the value of economic reforms, particularly over the past decade their economic reforms have been rewarded by expanded access to international capital markets and foreign direct investment, which has brought new markets, new technologies, and the much needed competition.

African countries like Kenya and Zambia have in the last decade made tremendous efforts towards economic reforms but the process has been slow and ineffective. There is need for these countries to mainstream public-private partnerships at state level as this will ensure that the private sector participates in the improvement of infrastructure as well as meeting financial gaps of governments in other capacity building activities. By way of exemplifying the efficacy of the public-private partnerships, regard must be hard to the example of India. Public-private partnerships have to a certain extent helped the Indian Government.[581]

It is recommended that African governments must have in place a mechanism to harmonise and coordinate efforts by different players, that is, donors, the private sector and the civil society for positive results.

5.2.6 Enhancing Financial and Technical Assistance for Permanent Missions in Geneva

Given the cost constraints faced with most African countries, the countries' permanent missions in Geneva can play a significant role as a medium through which African countries like Kenya and Zambia can effectively and efficiently participate in the bilateral, regional and multilateral trade negotiations while minimising the attendant costs. Thus, governments should strategise and prioritise resource allocations to their missions in Geneva through their national budgets, and capacity building of their human resource in those missions for the purposes of ensuring effective and efficient participation in the multilateral trade negotiations. It must be

[581] See India: Mainstreaming Public-Private Partnerships at State Level. Available at: **http://www.muidcl.com/downloads/**. (accessed on 22/03/09)

noted that country representatives in the permanent missions provide a vital link between the concerned countries and the world at large. It is recommended that governments, over and above ensuring that adequate financial assistance is made available for their missions to undertake this perceived additional role, must also ensure that technical assistance is provided to maintain permanent missions in Geneva in the context of the multilateral trading system, and to secure trade experts at the missions in order to cope with concurrent bilateral, regional and multilateral trade negotiations and secure monitoring of the implementation of trade capacity building programmes.

5.2.7 Addressing Human & Institutional Capacity Needs through Regional Cooperation& Integration

Undoubtedly, human and institutional capacity challenges are commonplace in Africa, generally, and in Sub Saharan Africa, in particular. In this vein, it is the recommendation of this Study that the lack of human and institutional capacity in individual countries in Sub Saharan Africa can be addressed through regional cooperation.

Thus, small economies like Zambia must establish a process of consultation with like-minded countries in so far as their common interests in the WTO can be collectively pursued. In such a scenario, it is hoped and believed that SADC and COMESA can play an important role in enhancing the trade capacity of the member states to effectively participate in the WTO through pooling of resources, cooperation in information gathering, joint policy analysis and participation in WTO committees among other activities.

Joint actions could ensure that issues of importance are studied and understood, brought to the attention of individual countries concerned and appropriate action taken. SADC and COMESA could be platforms where harmonisation and coordination of negotiating strategies and agenda take place. This will not only enhance the status and bargaining position of small economies, but will provide an efficient way of building the human and institutional capacity of their member countries.

The EU and the Central European Free Trade Area (CEFTA) Group are two examples of successful cooperation in the GATT/WTO[582] whose countries share the responsibility for coordinating and covering various activities that are of common concern and they speak with

[582] See Blackhurst, opcit, at 501.

one voice. Further examples in terms of success stories in respect of regional cooperation initiatives and approaches are the Nordic and ASEAN Groups.

In order for such initiatives and approaches to bear meaningful results, big African economies like South Africa, Nigeria, Kenya, Mauritius, Botswana and Namibia, need to genuinely unite and provide leadership to ensure that African countries, irrespective of the size of their economies, support one another. Further, this study recommends that more support ought to be provided for LDCs to ensure that they benefit from trade opportunities and begin to favourably, effectively and efficiently participate in the multilateral trading system.

Regional economic bodies such as SADC, COMESA, EAC, among others, need to encourage member countries to invest more in enhancing their production capabilities and to take issues of governance more seriously. This is where entities like the APRM come in. The APRM, however, would be more effective in addressing governance issues if it had the necessary institutional legal capacity, and not just operating as a mechanism without teeth. In addition, the APRM Secretariat needs to be independent of both the general NEPAD Secretariat and other institutions by virtue of the potentially sensitive assessment work it carries out. It must in this case have a separate staff and budget if its credibility and efficiency is to be established and maintained.[583]

For regional integration to effectively contribute to trade capacity building there is need to harmonise national policies and establish effective transnational implementation tools. In addition, the private sector needs to be encouraged to be more proactive in the integration process.

Further, in the case of Zambia, there is also need to train state advocates, in the Ministry of Justice, Ministry of Commerce Trade and Industry, Ministry of Finance, among others, in issues of international trade and investment. In this regard, the government must sponsor or secure scholarships for state advocates to attend courses and programmes in trade and investment as part of continuous professional development.

In addition, there is need to encourage research in government institutions. In this regard, research units on trade and investment issues, must be established within government line ministries, where they do not exist, and where they exist, there is need to improve them to

[583]Ibid, at 172.

ensure they are in tandem with the rest of the world. For example, at the core of the reform of existing research units should be computerisation and ensuring that they are equipped with reliable internet facilities. Further, it is recommended that the units must be adequately stocked with information materials, guaranteed with regular updates.

Further, the Kenyan and Zambian governments need to encourage their universities, government departments and Ministries to have regular exchange programmes for lawyers, economists, and other professionals, with developing countries such as South Africa, China, India, Argentina, among others, as a way of sharing experiences in trade and investment related and other development activities. In this connection, owing to fact that the above named countries have accumulated considerable trade-negotiating experience dating back to the Uruguay Round, Kenya and Zambia stand to benefit from the said vast experience. For example, China, India and Argentina have high-profile permanent representatives to the GATT/WTO and well-staffed Geneva missions. They are active in GATT/WTO-committee work, negotiations and dispute settlement. In short, they are reasonably well-integrated into the GATT/WTO,[584] and can hold their own negotiations in current and future trade negotiations so that they provide a perfect example for Zambia in terms of best practices.

The other challenge that this Study identified relates to overlapping membership and duplication of initiatives by African countries. It is the submission of this Study that this problem must be resolved. In this regard, it is recommended that initiatives such as the Tripartite Alliance involving COMESA, SADC and EAC aimed at resolving the challenges arising from overlapping memberships, must be adequately supported and encouraged to ensure compatibility among regional bodies. This will in turn contribute towards resolving the problem of duplication of efforts by these regional bodies. Thus, the mushrooming of sporadic and uncoordinated capacity building initiatives in Africa must be curbed as this only serves to encourage duplicity of efforts, which seriously undermines the proper utilisation of the little resources available. There is a need to strengthen the already existing initiatives. Existing initiatives such as ACBF, the Lagos Plan of Action and NEPAD, must harmonise and coordinate their efforts towards adequately addressing supply-side constraints, such as infrastructure, which is one of the biggest stumbling blocks to capacity building.

[584] Michalopoulos C, Developing Countries and the WTO, at 171.

NEPAD must present a discernable vision of development with an integrated agenda for its realisation, as in the case of the Lagos Plan of Action.[585]NEPAD can only achieve the mandate originally envisaged for it if it is extricated from the AU and has the independent institutional and legal capacity to formulate decisions, identify priorities and implement them, without the unnecessary strictures of cumbersome institution such as the AU, which currently suffers from inefficiencies in decision-making.[586]

In so far as the AGOA initiative is at issue, the study has observed that African countries such as Kenya and Zambia have not derived tangible benefits from it. This seems to be on account of African governments' rushed decisions into embracing the initiative without meaningful national consensus. It is therefore recommended that African governments adopt a more cautious approach when signing trade agreements of this nature, in particular, and any form, in general.

Thus, African governments must of necessity work closely with the private sector and the civil society before signing and committing their respective countries to such and other trade agreements.

Furthermore, and in the context of harmonisation of national policies, African countries like Kenya and Zambia must make experiences and best practice examples from other countries a precursor for the development of their own national policies.

Zambia, for example, needs to review its Ministerial and Parliamentarian Code of Conduct Act[587] in order to ensure that it is consistent with positive trends prevailing elsewhere and thereby address issues hampering capacity building and development in the country. For instance, the current Act does not provide for the training of Ministers in issues of trade, investment as well as governance issues. In this regard, one channel that Zambia can immediately prioritise and mainstream is the provision of relevant training through intensive short courses to all new parliamentarians on governance issues.

It is worthy of note that the print and broadcasting media are very important partners in this whole process. Accordingly, the media, both electronic and print need to be engaged or

[585] See Onimode B et al, African Development and Governance Strategies in the 21st Century, (2003), at 240.
[586] See Mosoti V, The New Partnership for Africa's Development: Institutional and Legal Challenges of Investment Promotion, opcit, at 149.
[587] This piece of legislation is basically a Code of Ethics and Procedural Guidance for Ministers and Parliamentarians

involved in creating awareness of the trade capacity building initiatives to the general population and the need thereof. This may be through conducting media campaigns on specific thematic trade related issues during national celebrations such as Independence celebrations, Youth Day, Media Day, among others. These may be disseminated both through electronic and print media.

In this regard, there is need to build capacity among the media professionals. Trade and investment tailored short courses may be conducted for journalists to enhance their reporting skills and expertise. This will not only secure populace participation, but will increase the credibility and efficiency of the trade capacity building initiatives.

It will be noted that the above recommendations are wide, comprehensive and/or long term in nature. Be that as it may, it is absolutely crucial that they are implemented to the letter if the vision and crusade to enhance the trade capacity of developing countries and LDCs is to be realised and achieved in order to ensure the effective participation of these countries in the multilateral trading system for the purposes of attaining maximum economic benefits.

BIBLIOGRAPHY

BOOKS:

Ake C, (1996): *A political economy of Africa*, Longman Publishing Group, England.

Akokpari J et al (2008): *The African Union and its Institutions,* Centre for Conflict Resolution, Cape Town, South Africa.

Bilal S and Szepesi S, Managing the Challenges of WTO Participation: Case Study 27-How Regional Economic Communities Can Facilitate Participation in the WTO: The Experience of Mauritius and Zambia, in Gallaghern P. [et al] Eds. (2005): *Managing the challenges of WTO participation: 45 case studies;* Cambridge University Press.

Blackhurst R et al. (2000): *Options for improving Africa's Participation in WTO,* Blackwell Publishers Ltd, UK.

Bonaglia F. And Fukasaku K (2002): *Trading competitively: A study of trade capacity building in sub-Saharan Africa,* Development Centre of the Organisation for the Economic Co-operation and Development, Paris.

Brown R. and Cummings R (1984): *The Lagos Plan of Action Vs the Berg Report; contemporary issues in African economic development*, Howard University, Washington, D.C.

Buthelezi S. (2006) Vol 1: *Regional Integration in Africa: Prospects & Challenges for the 21st Century*, Ikhwezi Afrika Publishing, East London, South Africa.

Collier P (1997): *Globalization: What should be the African Policy Response?* Mimeo Centre for the Study of African Economies, University of Oxford.

Dieter H (ed), (1999): *The Regionalization of the World Economy and Consequences for Southern Africa,* Marburg, Metropolis-Verlag, Germany

Dowlah C. (2004): Backwaters of Global Prosperity: *How forces of globalisation and GATT/WTO trade regimes contribute to the marginalisation of the world's poorest nations,* London: Preager Press.

Dunning J H, (1999): Governments, Globalization, and International Business, Oxford University Press, New York.

Evenett S J and Hoekman B M (eds) (2006): *Economic Development and Multilateral Trade Cooperation,* Macmillan Publishers Limited, Hampshire, England.

Finger J.M and Schuler P. (1999): *Implementation of the Uruguay Round Commitments: Development Challenge;* Policy Research Working Paper NO.2215, World Bank, Washington D.C

Gallaghern P. [et al] Eds. (2005): *Managing the challenges of WTO participation: 45 case studies;* Cambridge University Press.

Grynberg R. et al (2002): *Paying the price for joining the WTO: A comparative assessment of services sector commitments by WTO Members and acceding countries*, Commonwealth Secretariat.

Hansohm D et al (eds), (2003): *Monitoring Regional Integration in Southern Africa,* Gamsberg Macmillan, Windhoek.

Lester S et al, (2008): *World Trade Law: Text, Materials and Commentary,* Oxford Portland/Hart Publishing, UK.

Luke D.F: *Trade related capacity building for enhanced African participation in the global economy;* in B.M. Hoekman [et al] (2007): Development, Trade and the WTO Handbook; World Bank, Washington.

Michalopoulos C (2001): *Developing Countries and the WTO;* Palgrave, London

Venter D and Neuland E (2007): *Regional Integration- Economic Partnership Agreements for Eastern and Southern Africa*, Institute of Business Innovation, South Africa.

Schiff M. and Winters A (2003): *Regional Integration and Development,* World Bank and Oxford University Press, Washington D.C.

ARTICLES:

International Organization for Migration (IOM),'Return of Qualified Africans National Programme' (1999): *International Organisation for Migration Fact Sheet,* July.

Kalenga and Chipeta C, (2002): The SADC Protocol: What are the SADC Countries Looking for? In Hartzenberg et al. and McCarthy C, Trade Policy

Prerequsites for Regional Trade Gains, at 35, Namibian Economic Policy Research Unit, Windhoek.

Mills G, (2004) Vol 11/2: Economic Integration, *South African Journal of International Affairs, 11*

Mosoti V, (2004) Vol 5: The New Partnership for Africa's Development: Institutional and Legal Challenges of Investment Promotion. *San Diego International Law Journal 145.*

Mwenda K, (2005) Vol 1: 'Can Corruption and Good Governance be defined in Legal terms?)', Journal *of Global Change and Governance 4*

Odhiambo W et al (2004): *managing the challenges of WTO participation: case study 20: Kenya's Participation in the WTO: Lessons Learned*

Prows S. 'The role of international and national agencies in trade-related capacity building' (2002) 25 *The World Economy* 9

Sako S. and Kararach G 'Capacity building for the promotion of trade and investment in Africa: challenges and strategies' (2007), The African Capacity Building Foundation.

Wang Z.K and Winters L.A. '*Africa's role in multilateral trade negotiations; past and future'* (1998) 7 *Journal of African Economies* 37-69

REPORTS:

Land T. and Ndorukwigira A. (2001): Proceedings of the Workshop on *operational approaches to institutional and capacity development*, ACBF Workshop Report, Harare.

Organization for Economic Cooperation and Development (OECD) (2003): *Trade capacity building: Critical for development*, Policy Brief, August, Paris

Page S. (2003): *Towards a Global Programme on Market Access: Opportunities and options,* IFAD Project Report.

United Nations Economic Commission for Africa (UNECA), (2004). Economic Report on Africa, Addis Ababa: UNECA.

World Bank, (2007): Doing Business Report 2007 - *Africa among top three reforming regions,* Washington DC: World Bank.

World Bank, (1995): Private Sector Development in Low-Income Countries, World Bank, Washington D.C.

World Trade Organisation (2000): Report of the Review of the Integrated Framework; WT/LDC/SWG/IF/I, 29 June 2000, Geneva.

OTHER WORKS AND PUBLICATIONS:

Blackhurst R.B. [et al] (1999): *Improving African Participation in the WTO* paper commissioned by the World Bank for a conference at WTO, held 20-21 September 1999.

DAC (2001): *Guidelines on strengthening trade Capacity for development,* OECD Development Cooperation Directorate, Paris

De silva L. and Weston A. (2002): *Report of the summative evaluation of the joint integrated technical assistance programme*-Mimeo Centre for the Study of African Economies, University of Oxford.

Dupasquier C. and Osakwe P.N. (2004): *Economic and statistical analyses of trade capacity building in sub-Saharan Africa*;Africa Trade Policy Centre, Work-in-Progress No. 9, Addis Ababa.

Fukasaku K. (2000): *Special and Differential Treatment for developing countries: Does it help those who help themselves?* Working paper number 197, UNU/WIDER. Helsmiki.

InterAction, (2007): *What is Trade capacity building?* Issue Brief No. 1, Washington DC.

Lecomte H.B. (2001): *Building capacity to trade; A road map for development partners;* Discussion paper No. 33, European Centre for Development Policy Management Maastricht.

Oyejide A, *'Low- income developing countries in the GATT/WTO Framework: The first fifty years and beyond'* (paper presented at Symposium on the World Trading System. Geneva 30 April 1998).

Sako S. and Ogiogio G. (2002): Africa: *Major development challenges and their capacity building* dimensions ACBF Occasional Paper No. 1, Harare**.**

Umurungi F, (2005): A Critical Overview of Regional Trade Integration: Lessons for COMESA, Dissertation, University of the Western Cape.

LEGISLATION:

General Agreement on Tariffs and Trade (1947)

General Agreement on Tariffs and Trade (1994)

The Agreement on Trade-Related Aspects of Intellectual Property Rights

SADC Treaty

COMESA Treaty

CASE LAW

The Hormones Case: WT/DS26R/USA

India - Patent Protection for Pharmaceutical and Agricultural Chemical Products: WT/DS50/R

The Upland Cotton Case: WT/DS 267/R 8 September 2004 and WT/DS 267/AB/R 3 March 2005

WEBSITES:

http://www.oneworld.org/ecdpm

http://www.wto.org/

http://www.imf.org/external/pubs/ft/fandd

http://www.oecd.org/dac/trade/

http://www.acbf-pact.org/

http://www.allafrica.com/stories/

http://www.fanrpan.org/

http://www.givengain.com/

http://www.cup.cam.ac.uk/

http://www.globalpolicy.org/

http://www.rtfp.org/

http://www.actionaid.org.ulc/

http://www.unctad.org/

http://www.worldbank.org/

http://www.worldtradelaw.net/articles/shafferdc

http://www.nationsencyyclopedia.com/economies/africa/zambia/

http://www.ias.unu.edu/.

http://www.newnt.org/features

http://www.odi.org.uk/resources/.

http://www.undp.org/

http://www.sadc.org/

http://www.comesa.org/

http://www.ideascentre.ch/trade_policy_advice.htmlhttp://docsonline.wto.org/gen_home.asp?language=1&

http://www.tradeandindustry.go.ke/.

http://www.fco.gov.co.uk/

http://www.integratedframework.org/

http://www.minesandcommunities.org/

http://www.roundtableafrica.net/media

http://www.sarpn.org.za/documents/

http://www.essa.org.za/

http:www.uneca.org/.

http://en.wikipedia.org/wiki/economyofkenya/

http://www.changedesigns.co.za/

http://www.medguide.org.zm/

http://www.cup.cam.ac.uk/

http://www.twnside.org.sg

http://thehindubusinessline.com/

http://www.meti.go.jp

http://www.cuts-international.org/

http://www.mladvocates.com

http://www.tips.org.za/files

http://www.nepru.org.na/

http://www.saiia.org.za/

http://www.globalcompetitionforum.org/regions

http://www.usaid.gov/zm