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TRADE POLICY REVIEW

KENYA

Report by the Government

Pursuant to the Agreement Establishing the Trade Policy Review Mechanism (Annex 3 of the Marrakesh Agreement Establishing the World Trade Organization), the policy statement by the Government of Kenya is attached.

Note: This report is subject to restricted circulation and press embargo until the end of the meeting of the Trade Policy Review Body on Kenya.

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I. INTRODUCTION

1. Since the last Trade Policy Review in 1993 the Government has intensified and continued to implement far reaching structural reforms within the economy including price decontrols, removal of all import licensing and foreign exchange controls, reforms of investment incentives, rationalization and privatization of public enterprises and reforming the financial sector and other key sectors of the economy.

2. The focus of the structural adjustment programmes initiated by the Government and funded by World Bank and other key donors is to remove the bottlenecks to economic growth by, maintaining macroeconomic stability, improving efficiency of the public service, enhancing external and domestic competitiveness of the economy and addressing the social dimensions of development. The government encourages the active participation of the private sector in economic development and market forces in determination of prices, interest rates, exchange rate etc as witnessed by liberalization measures including divestiture even in key and strategic sectors of the economy where the Government had absolute control previously.

3. The Government recognizes the need to accelerate economic growth and structural transformation through various sessional papers and development plans. The theme adopted for the current 8th national development plan (1997-2000) is "Rapid Industrialization for Sustained Development" with emphasis on putting in place measures that would enable Kenya to attain the status of Newly Industrialized country (NIC) by the year 2020. These include deliberate efforts to promote linkages among industries and sectors to enhance the spread effects of industrial growth and to facilitate the transfer of technology, skills and growth to small-scale enterprises.

4. While the Government has continued to embrace the policy of liberalization there has been a slowdown in economic performance affecting all major sectors and this can be attributed mainly due to structural constraints that discourage investment. These include dilapidated infrastructure, inadequate provision of public services, insecurity and increased costs of manufacturing and reduced donor funding. However, the Government has implemented various reforms aimed at reversing the current downturn in economic growth.

5. The slowdown in economic activity is expected to continue up to early 2000 and thereafter recovery is expected and will be underpinned by the ongoing reform measures particularly rehabilitation of infrastructure, improved fiscal discipline and the speedy implementation of the remaining economic reforms in the public sector.

II. ECONOMIC OUTLOOK

(1) GROSS DOMESTIC PRODUCT

6. Over the period 1995 to 1998 the trend in real Gross Domestic Product indicates that the Kenyan economy has been slowing down in recent years. The growth of GDP of 4.3% and 4.6% achieved in 1995 and 1996 respectively dropped to 2% in 1997 and was only 1% in 1998, which was slower than growth in population.

7. The lead sectors in terms of GDP contribution in 1997 were Agriculture (24.7%), manufacturing (13.3%) and real estate and Business Services (10.2%). Agriculture and manufacturing sectors have been growing at rates below that of GDP.

(2) INVESTMENT AND SAVING¹

8. There has been steady decline in investment, which fell to 17.1% of GDP in 1998 from 20.4% in 1996 and 18.5% in 1997. Both public and private investment declined due to tight fiscal policy and reduced local and foreign investor confidence. A larger proportion of investment continues to be financed using private domestic savings, which also declined to 17.5% of GDP in 1998 from 25.6% in 1995. Foreign financing of investment has remained almost static at around 3.5% in both 1997 and 1998. A large share of this support is from bilateral donors and international agencies such as World Bank and IMF. Grants from abroad only grew by 5.1% in 1998 compared to 20.5% in 1997. Lack of sufficient domestic credit, poor international publicity worsened by withholding of Enhanced Structural Adjustment Facility (ESAF) support since 1997 have played a significant role in deterioration of the investment climate in the country. Other factors include poor infrastructural services and insufficient access to export finance.

(3) EMPLOYMENT

9. The growth in employment creation has continued to be slow due to economic recession and the ongoing reforms in the public sector through retrenchment and recruitment embargoes. In 1998 the economy generated 384,000 jobs² outside small-scale farming and pastoral activities as employment rose from 4.7 million persons in 1997 to 5.1 million people in 1998. The slight increase of 1.1% in 1998 in wage employment in the modern sector was confined to the private sector, while most of the jobs were created by the expanding informal sector.

10. Wage employment in the manufacturing activity rose by only 2.1% due to reduced performance of the sector. The employment in the financial sector decelerated from 4.5% in 1997 to 2.1% in 1998 occasioned by structural changes and continued automation. Decline in employment has also been recorded in transport, communications activities and the public sector.

III. PUBLIC FINANCE

11. The major goals of the Government's fiscal policy which continue to be outlined in the national budget are to reduce interest rates and government borrowing in order to spur economic growth, boost fight against poverty, unemployment and help restore investors confidence. The objective of balanced budget is to be achieved through a more disciplined expenditure policy and stepped up revenue collection.

(1) PUBLIC EXPENDITURE

12. The expenditure and net lending in absolute terms increased from Kshs 195 billion in 1997/98 to 197.3 billion in 1998/99, falling from 30.6% to 26.7% of GDP. Recurrent expenditure increased from Kshs 160.3 billion in 1997/98 to 165.3 billion in 1998/99 mainly due to the following:

- (i) Domestic and foreign interest repayments rose from 30.4 billion and 7.6 billion to Kshs 31.7 billion and Kshs 8.3 billion respectively.
- (ii) The Civil Service wage bill rose by 1.2 billion to Kshs 63.3 billion in 1998/99.

¹ Central Bank Annual Report, 1999

² Government of Kenya (Economic Survey, 1999)

- (iii) Government expenditure on operations and maintenance rose by 3% from Kshs 60.2 billion in 1997/98 to 62.0 billion in 1998/99.

13. Development expenditure, which was 4.3% of GDP compared with 5.5% in 1997/98, amounted to Kshs 32.0 billion, which was 2.7 billion below the level in the previous year.

(2) PUBLIC REVENUE

- (i) The Kenya Revenue Authority (KRA) stepped up revenue collection in 1998/99 amounting to Kshs 196.3 billion which was 9.3% higher than that collected in 1997/98 financial year. Higher tax revenue of Kshs 151.6 billion in 1998/99 was collected as a result of the following:
- (ii) Due to intensified crackdown on diversion of transit goods into the local market, import duty rose from Kshs 25.0 billion to 28.4 billion.
- (iii) Revenue from Value Added Tax (VAT) increased by 12% from Kshs 34.8 billion to Kshs 39.2 billion mainly due to broadening of VAT base and enhanced compliance which counteracted the effect of lowering the VAT by 1% during the year.
- (iv) Income from tax receipts declined from Kshs 56.0 billion to Kshs 55.2 billion as most companies declared less profit.
- (v) Excise duty collections remained almost unchanged at Ksh 28.7 billion in 1998/99.

(3) PUBLIC DEBT

14. The stock of domestic debt stood at Kshs 150.3 billion as at 1998/99, an increase of Kshs 4.8 billion. This arose from increased budgetary financing requirements as well as net repayments of external debt. Most of the domestic debt is held in form of Government securities comprising Treasury bills, Treasury bonds and long term stocks. Treasury bills accounted for 76.3% of the outstanding government securities while Treasury bonds and stocks accounted for 21.2% and 2.5% respectively.

IV. SECTORAL PERFORMANCE

(1) AGRICULTURE

15. Agriculture which contributes about 24.7% of Gross Domestic products (GDP) is estimated to have expanded by 1.4% in the twelve months to August 1999 compared to 1.5% in 1998 and 1.0% in 1997.³ Overall output growth at current prices in agriculture increased by 7.6% from Kenya pound 7,580.7 million in 1997 to Kenya pound 8,154.3 million in 1998. In 1998 total output, inputs and value added at current prices rose by 7.6% 10.7% and 7.3% respectively. The depressed output in agriculture is mainly due to dilapidated infrastructure that continue to increase marketing and production costs, unfavourable weather conditions and weak management in key agriculture marketing organizations.

16. However, marketed production rose by 19.2% from Kenya pound 3,556.7 million in 1997 to Kenya pound 4,240.1 million in 1998 mainly due to better prices for coffee, tea, pyrethrum, sisal, sugarcane and milk. Fresh horticultural export volume decreased from 84,190 tones in 1997 to

³ Central Bank Monthly Economic Review, November, 1999

78,373 tones in 1998 but the overall value increased by 11% from Kenya pound 450 million to Kenya pound 499.5 million.

(2) MANUFACTURING

17. Manufacturing whose contribution to GDP declined to 13.3% in 1998 from 13.8% in 1993 expanded by 1.2% in 1998/99 fiscal year compared with 1.3% in 1997/98 and 1.9% in 1997. The sector remained subdued as a result of the sector's inability to compete with low priced imports in the local market, poor infrastructure especially roads, electric power supply, operational inefficiency in the main sea ports and railway transport which reduced competitiveness by pushing production costs upwards. Sales of manufactured goods amounted to Kenya pound 13,357.7 million in 1998, an increase of 120.1% compared with 1997 while stocks held by the manufacturing firms by end of 1998 was Kenya pound 2,783.6 million compared to stocks worth Kenya pound 2,314 million in 1997.

18. Exports of manufactured goods are mainly to COMESA countries and especially Uganda and Tanzania. Continued demand for Kenya's manufactured goods within COMESA and opening up of trade in the East African community will contribute to substantial recovery to this sector though this will depend on decline in the general costs of manufacturing and doing business in Kenya.

(3) SERVICES

19. Activity in most services sector remained depressed in the fiscal year 1998/99. Growth in output from trade, restaurants and hotel is estimated to have stagnated at 2.6% in the twelve months to June 1999 compared with 2.5% in 1998 and 3.8% in 1997. The poor performance can be attributed to reduced tourism caused by competition from alternative tourist destinations in the sub region, incidences of insecurity and negative publicity.

20. Government services equally stagnated at 0.7% in 1998/99 compared with 0.8% in 1998 and 1.1% in 1997 mainly due to privatization and retrenchment in the public sector aimed at improving efficiency in the sector.

21. Services by finance, insurance and real estate expanded by 2.9% in 1998/99 compared with 3.2% in 1998 and 5.3% in 1997. The banking crisis and high interest rates affected output of the sector and profitability of most commercial banks. The monetary authorities pursued tight monetary policy in 1998 with the aim of stabilizing prices and banking system and this led to slower expansion in money supply (M3) by 3.3% while total domestic credit increased by 8.1% and credit to the public sector increased by 10.2%.

22. Transport storage and communication services expanded by 1.2% in the twelve months to June 1999 from 1.3% in 1998 and 2.0% in 1997. Building and construction grew by 1.3% in 1998/99, the same rate as in 1998. The reduced activity was mainly due to reduced public construction activities following the tight fiscal policy pursued in 1998/99. This is also reflected in decline in cement production of 1,044,423 tones in 1998/99 from 1,124,727 tones in 1997/1998 and fewer residential and non-residential building plans approved by several urban centres.

V. KENYA'S TRADE POLICY

23. Kenya's general trade policy objectives are articulated in the sessional paper No 1 of 1986 on economic management for renewed growth.

24. Trade policies in Kenya have evolved over time, changing from an inward looking import substitution policy regime to the existing one whose primary objective is the promotion of exports of consumer and intermediate goods, while at the same time laying the base for eventual production of capital goods for both domestic and export markets. This is expected to lead to higher earnings of foreign exchange, which in turn will help to reduce the balance of payments deficit and the unemployment problems.

25. The Government has put into place various incentives such as:

- the duty and VAT remission;
- manufacturing under bond scheme;
- export processing zones;
- the pursuance of a flexible and realistic exchange rate that promotes exports. Currently, the export compensation scheme has been abolished since 1993.

(1) AGRICULTURE

26. Self-sufficiency and expansion of exports are main objectives of the Government in the agricultural sector. With these objectives, the Government has evolved a comprehensive policy framework to meet its stated priorities covering production, pricing and marketing (i.e. domestic and export trade). For staple foodstuffs, the Government has embarked on creating an enabling environment through gradual liberalization of the marketing system.

(2) MANUFACTURING INDUSTRY

27. After independence, Kenya relied on the import substitution of consumer goods, but due to lack of incentives to foster the production of capital and intermediate goods, a greater demand for foreign exchange for import substitution was needed compared to other sectors. The import substitution policy was biased towards protection of domestic industries at the expense of their competitiveness, which in turn enabled manufacturers to make profits even in cases of under utilized capacities. Kenyan manufacturers thus became inward oriented and failed to venture into international markets. The Government then had to change from this policy of import substitution to export promotion in order to acquire more foreign exchange resources, and increase employment and productivity.

28. To encourage investment, the Government of Kenya has resorted to price liberalization. The Government published the Restrictive Trade Policies, Monopolies and Price Control Act (1988) to guard against exploitation of smaller firms by larger enterprises. Import licensing has now been scrapped except for few items that form the negative list. This list was enacted under the Import, Export and Essential Supplies Act, for reasons of public health, wildlife and environment protection, state and public security, or to meet required sanitary, phytosanitary and environmental standards.

(3) TRADE POLICY IMPLEMENTATION

29. Trade policy implementation in Kenya is carried out mainly by the Ministry of Tourism, Trade and Industry, the Customs and Excise Department of Kenya Revenue Authority, as well as Central Bank of Kenya. There are also a number of government departments or agencies, which play a role in the implementation of trade laws in Kenya. The Government, in its revitalization programme, is committed to a policy of broad-based liberalization, as well as price liberalization to encourage investment

(4) MULTILATERAL, REGIONAL OR PREFERENTIAL TRADING AGREEMENTS

30. Kenya's external trade policies are designed to create an environment conducive to promoting its products in international markets, especially those of the developed countries of Europe, America and Japan without prejudice to the promotion of intra-African trade. Trade policies are formulated with the view to speeding up Kenya's industrialization process, and in such way to make access to foreign markets easier for Kenyan products. In pursuing these objectives, Kenya has entered into Multilateral, regional, bilateral and preferential trade arrangements as detailed below. Kenya is a signatory to the Lomé convention, and a member of the African Economic Community, Common Market for Eastern and Southern Africa (COMESA), East African Community (EAC) and Inter-governmental authority on Development (IGAD).

(5) BILATERAL TRADE AGREEMENTS

31. Kenya has bilateral trade agreements with the following countries: Argentina, Bangladesh, Bulgaria, China, the former Czech and Slovak Republic, Djibouti, Egypt, Ethiopia, India, Iran, Lesotho, Nigeria, Pakistan, Poland, Romania, Rwanda, Republic of Korea, Sudan, Tanzania, Thailand, the former USSR, the former Yugoslavia, Zambia and Zimbabwe.

32. Under these agreements, Kenya and its contracting partners accord each other the MFN treatment in all matters with respect to their mutual trade relations. These agreements have been used as instruments for promoting trade and improving economic relations between Kenya and these countries.

VI. KENYA'S EXTERNAL TRADE RELATIONS

33. External trade plays a vital role in the Kenya's economic development. Key indicators of international trade and balance of payments show a poor performance in 1998 compared to the previous year. The balance of trade worsened owing to a marginal growth in imports while exports almost stagnated.

34. The volume of trade grew by only 2.5 per cent in 1998 to stand at Kenya pound 15,948.5 million compared to 13.5 per cent and 8.5 per cent growth registered in 1996 and 1997 respectively. The slackened growth of exports and imports volume reflects the slow growth of the economy.

(1) EXPORTS

35. Kenya's export earnings, continues to be generated mainly from exports of primary agricultural products including coffee, tea and horticulture. Food and beverages contributed 57.4 per cent of the total export earnings, while non-food industrial supplies made up 18.3 per cent in 1998 compared to 22.4 per cent in 1997. Exports of fuel and lubricants contributed 9.1 per cent of total export earnings. Export earnings from food and beverages slightly increased by 6.8% from Kenya pound 3,072.9 million in 1997 to Kenya pound 3,283.3 million in 1998, mainly due to substantial increase in exports of primary food and beverages for household consumption, especially tea, beans and mussels frozen.

(2) IMPORTS

36. In 1998, there was a general increase in the values of most import categories, although imports of non-food industrial supplies fell by 11.7% in 1998, compared to a 22.9% increase in 1997.

This was mainly due to the liberalization of trade, through the removal of import licensing, quantitative import restrictions and foreign exchange controls.

(3) BALANCE OF TRADE

37. One effect of the aforementioned measures has been that the increase in the value of imports has not been matched by a corresponding increase in export earnings, and the balance of trade has deteriorated.

38. It should, however, be noted that even though liberalization has increased the volume of imports, exports have also grown but at a lower rate than imports.

(4) DIRECTION OF TRADE

39. African Countries continued to be the major destination of Kenya's exports followed by the European Union (EU). In 1998, the market share of total exports to African countries and European Union (EU) stood at 47.3% and 30.0%, respectively.

40. The share of total exports to the European Union (EU) reduced by 2.6% points while of that African countries increased by 1.3% points. Exports to the Far East and Middle East accounted for 12.8% and 4.0% of total exports, respectively.

41. Exports to all European Union countries except United Kingdom decreased by 7.5% in 1998, while exports to Middle East, and Far East and Australia increased by 24.3% and 26.9% respectively. Exports to Uganda and Tanzania jointly stood at Kenya pound 1,779.1 million, equivalent to 29.4% of total exports.

VII. INVESTMENT POLICY

42. The government investment policy is outlined in various sessional papers and national development plans, the most notable ones being sessional paper 1 of 1986 on economic management for renewed growth and sessional paper no. 1 of 1994 on recovery and sustainable development which emphasizes on the increased role of the private sector in economic growth. The Government has undertaken key economic reforms with a view to promote both domestic and foreign investment. These include abolishing export and import licensing, rationalizing and reducing import tariffs, liberalization of foreign exchange and price controls and partial liberalization of the capital markets among other measures.

(1) INVESTMENT PROMOTION CENTRE (IPC)

43. Investment Promotion Centre is a public funded institution, which was established in 1992 as a one-stop shop geared to promote investment in the country. IPC processes all applications for new investments and forwards recommendations to the Ministry of Finance and Planning for approval by the Minister. A General Authority license is issued within one month with prior approval from the relevant authority in charge of issuing the license.

44. The Foreign Investments Protection Act (FIPA) (Cap518) guarantees repatriation of capital, after tax profits and remittance of dividends and interests accruing from investing in the country. The constitution also provides guarantee against expropriation of private property unless for security or public interest and when this happens fair and prompt compensation is paid.

(2) MAJOR INVESTMENT INCENTIVES

45. While the Government policy is to formulate and implement measures in favour of private sector investment, the following represent a summary of current incentive⁴:

- investment allowance - is provided as an incentive for investment in the manufacturing and hotel sectors the rate of 60% countrywide;
- depreciation - liberal rates are allowed for depreciation of assets based on value as follows:
 - buildings and hotels
 - machinery e.g. tractors and aircrafts;
- loss carried forward - business enterprises that suffer losses can carry forward such losses to be offset against future taxable profits;
- duty remission facility - material imported for use in manufacture for export or for the production of raw materials for use in export oriented manufacture or for the production of duty free items for sale domestically are eligible for duty remissions. Applications for this facility may be made to the Export Promotion Programme Office in the Ministry of Finance and Planning.

(3) MANUFACTURING UNDER BOND (MUB)

46. To encourage manufacturing in Kenya for world markets, the Government has established an in-bond programme open to both local and foreign investors. IPC and Ministry of Finance and Planning (Department of Customs and Excise) administer the program. Enterprises operating under the programme are offered the following incentives:

- exemption from duty and VAT on imported plant, machinery and equipment, raw material and other imported inputs; and
- 100% investment allowance on plant machinery equipment and buildings.

(4) EXPORT PROCESSING ZONES AUTHORITY (EPZA)

47. Export Processing Zones are coordinated by the Export Processing Zones Authority (EPZA). A number of EPZs have already been established. Enterprises operating in export processing zones in Kenya enjoy the following benefits:

- 10 years tax holiday and a float 25% tax for the next 10 years;
- exemption from all withholding taxes on dividends and other payments to non-residents during the first 10 years;
- exemption from import duties on machinery raw materials and intermediate inputs;
- no restriction on management or technical arrangement;
- exemption from stamp duty; and
- exemption from VAT and operate on one license only.

⁴ Kenya-A Guide for Investors by IPC

VIII. KENYA AND THE MULTILATERAL TRADING SYSTEM

48. Since its accession to GATT in 1964, Kenya has participated in the Multilateral Trading System, with the objective of achieving concrete results in terms of effective access to markets, and broader and more highly developed Multilateral rules than those applied under GATT. Kenya supports the role of WTO in strengthening the Multilateral Trading System by its commitment to implement the obligations and responsibilities arising from the Uruguay Round. Towards this, Kenya is in the process of changing her trade-related laws to be in conformity with the WTO rules and regulations.

49. In order to effectively implement Kenya's obligations under the WTO, a National Committee on World Trade Organization was formed in 1995 to assist the government in adopting its economic and trade policy to the requirements of all the agreements administered by the WTO. In addition, the NCWTO is expected to assist the country to take maximum advantage of the trading opportunities created by the Uruguay Round.

50. Members of the NCWTO are drawn from government ministries, and concerned parastatals, private sector organizations, including Manufacturers Association, Chambers of Commerce and Industry, Bankers Association, Universities and Association of Insurers etc.

(1) IMPLEMENTATION OF THE WTO AGREEMENTS AND CHALLENGES FACED

51. Since 1995, Kenya has made substantial progress in implementing several of the requirements of the WTO.

(i) Schedule of commitments

52. During the Uruguay Round negotiations Kenya submitted her offers in Trade in Goods and Services, which include tariff concessions on a number of products including a wide range of agricultural products. Kenya also offered bound tariffs on a few selected items, which included fresh chilled/frozen fish, medicaments, minerals/chemical fertilizers, tropical products etc. The tariff bindings range from 18% to 100%. Kenya's specific commitments on trade in services, included offers in communication services, financial services, travel related services and transport services.

53. Kenya also participated in the recently concluded financial services negotiations. Her participation in these negotiations involved reviewing of the offers made in the 1995 schedule of commitments and bringing more areas into the schedule .

(ii) Notifications

54. Despite the stringent notification procedures some of which include providing justification, making reference to the relevant articles, Kenya has been able to submit most of the required notifications in line with conforming to various agreements.

(iii) Change in legislation

55. Kenya has made some progress towards adopting legislation and administration arrangements to meet the requirements of the WTO. These include:

(a) Anti-dumping and countervailing duties

56. Kenya's anti-dumping law which is contained in section 125 and 126 of the Custom and Excise act was enacted in 1984 long before the WTO Agreement came into force. It was not however possible for Kenya to continue using this legislation in its present form since some of its provisions did not conform to the WTO provisions. Therefore, an amended anti-dumping and countervailing duty law has now been passed in Parliament during the budget of 1998/99 financial year. Regulations have now been prepared.

(b) Customs valuation

57. Currently, the Kenyan Customs and Excise Department applies the Brussels Definition of Value system. Under WTO system of Customs valuation, this method of valuation is disallowed. The Kenya customs department has undertaken to change the valuation system to the new prescribed system. Kenya submitted a notification for delayed application of the WTO customs valuation system, until the year 2000. Assistance has been sought and received from the World Customs Organization to provide training and to work out logistics of changing the valuation system. The new valuation method is expected to be in force by January 2000.

(c) Trade-related aspects of intellectual property rights

58. Kenya is a member of the World Intellectual Property Organization (WIPO), The African Regional Industrial Property Organization (ARIPO), the Paris Convention, the Berne Convention and the Universal Copyright Convention. Kenya as a developing country benefits from a transition period up to 1st January 2000 to bring its legislation into conformity with the TRIPS Agreement. Kenya is in the process of amending its Intellectual property legislation with a view to conforming to the TRIPS Agreement and to other international agreements or conventions to which it is a signatory. The industrial property amendment bill has been presented to parliament for debate and approval⁵.

59. The Copyright Act has also been amended. The copyright rights and neighbouring rights bill which is compliant with the TRIPS Agreement has also been drafted and will soon be presented in Parliament⁶. Kenya's intellectual property legislation does not provide protection for geographical indications, layout designs and integrated circuits and undisclosed information.

(iv) Kenya's concerns in WTO Agreements

(a) Agreement on Agriculture

60. As regards implementation of the provisions of the Agreement on Agriculture, Kenya concerns are as follow⁷:

- Market access for our agricultural products continues to be adversely affected mainly because of trade distorting measures of which export subsidies is perhaps the most prominent example that continue to prevent our products from competing on a level

⁵ The Industrial Property Bill 1999

⁶ The Copyright Bill 1999

⁷ Kenya's Position paper to the 3rd Ministerial Conference in Seattle

playing ground. This problem has been aggravated by the circumvention of existing rules by some developed countries leading to further distortion in the market.

- The tariffication in the Agricultural sector at the end of the negotiations during the Uruguay Round resulted in very high tariff levels particularly for products of interest to developing countries like Kenya. The recommended percentage reduction levels have not substantially lowered the tariff levels as expected by the developing countries.
- While non-trade concerns such as food security have been mentioned in the preamble to the Agreement very little has been done to address this issue. The Agricultural liberalization advocated for by the Agreement cannot by itself be able to overcome the problems of food security for Kenya, which has a sizeable rural population.
- Initial assessment shows that Kenya would have benefited more if the reduction of tariffs on goods of export interest to her were either the same or higher than those of the goods of export interest to developed countries. For example, goods of export interest to Kenya such as leather coffee, tea and tropical fruits had their tariffs reduced by an average of 30% against 56% reduction in average tariffs at every stage of production, the degree of escalation remains high for products of export interest to Kenya. For example, some major countries still retain relatively high degree of tariff escalation on hides and skins, leather products and tobacco.

(b) Agreement on Sanitary and Phytosanitary Measures

61. Market access for agricultural products from Kenya has been hindered by the use of sanitary and phytosanitary measures as non-tariff barriers by the developed countries. For example, our fish exports have faced a ban to the EU market on the ground that they are infected with cholera without any scientific evidence. As the EU is one of our largest markets for this product, the ban has adversely affected our fish industry.

(c) Agreement on Textiles and Clothing

62. Kenya has noted with concern that the integration of textiles and clothing products into GATT 94 has not been in favour of products originating from developing countries. In the textile sector, the major importing developing countries have not implemented the phase-out of the Multi-Fibre Arrangement (MFA) restrictions as was expected under the Textile and Clothing Agreement. As a result products of interest to Kenya are still excluded from the liberalization schedules.

(d) Agreement on Trade-Related Investment Measures (TRIMs)

63. Kenya does not maintain any of the prohibited TRIMs as defined in the illustrative list annexed to the TRIMs Agreement. These measures have been faced out in the course of the economic reforms that the country has so far undertaken outside the WTO framework in order to liberalize trade and create an enabling environment for domestic as well as foreign investment. The removal of these measures however has not attracted investment into the country as expected.

(e) Agreement on Rules of Origin

64. Kenya is concerned about the completion of the work programme to harmonize non-preferential rules of origin which was not achieved within the 3 years set forth in the agreement because of the complexity and amount of technical work involved. In addition, there is lack of

common understanding among WTO member as to the implications of the future discipline to "equally apply" the harmonized rules of origin for "all purposes". The Council for Trade in goods should therefore look into the above mentioned issues to enhance prospects for progress on the technical work.

(f) Agreement on Preshipment Inspection

65. Under this agreement, Kenya does not support the creation of a preshipment inspection committee for monitoring of the implementation of the preshipment inspection agreement. Kenya believes that the committee on customs valuation can adequately address the preshipment inspection issues as and when they arise. In fact, Kenya does not support the proliferation of WTO bodies as they tend to over burden developing countries whose missions are in most cases suffering from inadequate staffing, technical and financial resources.

(g) Agreement on Customs Valuation

66. As far as the implementation of the Agreement on Customs Valuation is concerned, Kenya has noted with concern the following:

- compliance with the provisions of the Agreement is difficult to administer in countries with high tariff rates;
- the provisions of the Agreement are inadequate to deal with cases of collusion between the importer and supplier with intends to defraud;
- agreement tends to allow for exclusion from the customs value of abnormal discounts which do not demonstrate evidence linking them to the quantities purchased.

67. Where reference prices can be demonstrated to be representative of the value the agreement should allow for it to be a basis for rejecting the transaction value and result to the alternative methods.

(h) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)

68. Kenya has noted that there are instances where the ambiguity of the text of the TRIPS Agreement allows for different and controversial interpretations, as exemplified in Article 27.3(b) of the Agreement.

(v) Kenya's position regarding future negotiations

69. Kenya hopes that the future WTO Ministerial Conference's results will take into consideration proposals from developing countries like Kenya to enable them integrate into the Multilateral trading System. More importantly, it should guarantee a multilateral trading system that is beneficial to both developed and developing countries. It is only after this that these countries will reap maximum benefits from the system. The work programme of the General Council should include the negotiations already covered in the Marrakesh mandate to ensure that they will begin at the stated time.

70. The forthcoming negotiations on Agriculture, established under Article 20 of the Agreement, are a priority for Kenya for entrenching the process of reform in international Agricultural trade. The main objective of this reform process should consist of subjecting Agricultural trade to the same rules

and disciplines as are applied to trade in other goods, in view of the fact that agriculture has not been prioritized in the multilateral trade negotiations.

71. New issues which have no direct relation to trade should not be introduced in the WTO agenda. Already trade and environment has been adopted for "study" in WTO work programme. Discussions on labour standards has also gained prominence in WTO debate since Singapore Ministerial Meeting. More new issues may be proposed for discussion in the future. The fear of Kenya is that these new issues may overburden her given that she is still grappling with implementing the already existing WTO agreements.

IX. CONCLUSION

72. Kenya attaches strong importance to liberalization and globalization and continues to participate effectively in formulating and implementing policies geared towards this objective. Kenya appreciates the role played by the WTO in advocating for a rule based, freer and predictable international trading environment through the removal of unnecessary obstacles to trade. Consequently, Kenya will continue to participate effectively in negotiations under the WTO with the aim to ensuring that her interests are taken into account. Kenya believes that her integration into the multilateral trading system will go a long way in assisting her realize her objective of becoming a newly industrialized country by the year 2020.

73. The Kenyan government will continue reviewing unnecessary barriers to trade with the intention of further liberalization for better allocation of productive resources and therefore for improved economic wellbeing. On the other hand, Kenya expects that its partners in WTO will rapidly and significantly dismantle distortions and limitations on trade in order to realize the objectives of the World Trade Organization.
