

THE IMPACT OF AGRICULTURE- RELATED WTO AGREEMENTS ON THE DOMESTIC LEGAL FRAMEWORK IN TANZANIA

BY

A.P. RUTABANZIBWA

**FAO
LEGAL PAPERS
ONLINE #62**
December 2006

FAO Legal Papers Online is a series of articles and reports on legal issues of contemporary interest in the areas of food policy, agriculture, rural development, biodiversity, environment and natural resource management.

Legal Papers Online are available at www.fao.org/legal/prs-ol/paper-e.htm, or by navigation to the FAO Legal Office website from the FAO homepage at www.fao.org. For those without web access, email or paper copies of Legal Papers Online may be requested from the FAO Legal Office, FAO, Viale delle Terme di Caracalla 00153, Rome, Italy, devlaw@fao.org. Readers are encouraged to send any comments or reactions they may have regarding a Legal Paper Online to the same address.

The designations employed and the presentation of the material in this document do not imply the expression of any opinion whatsoever on the part of the United Nations or the Food and Agriculture Organization of the United Nations concerning the legal status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries.

The positions and opinions presented do not necessarily represent the views of the Food and Agriculture Organization of the United Nations.

TABLE OF CONTENTS

TABLE OF CONTENTS	ii
LIST OF ABBREVIATIONS	iv
CHAPTER ONE: GENERAL STUDY BACKGROUND	1
1.1 Background and Study Objectives	1
1.2 Study Objectives	1
1.3 Methodology	2
CHAPTER TWO:	3
GENERAL OVERVIEW OF TANZANIAN TRADE IN AGRICULTURAL PRODUCTS	3
2.1 Introduction.....	3
2.2 Contribution of Agriculture to the Economy	3
2.3 Sectoral Policies, Legal and Regulatory Frameworks	2
CHAPTER THREE: THE TANZANIAN AGRICULTURAL LEGAL AND REGULATORY FRAMEWORKS.....	3
3.1 The Context.....	3
3.2 Agricultural Trade Regulation Laws as they comply to the Tariff (AoA) and Technical Barriers to Trade (TBT) Agreements of WTO	4
3.3 Agricultural Tax Laws	6
(i) The Income Tax Act, 2004	6
(ii) The Customs Tariff Act, 1976	6
(iii) The Value Added Tax Act, 1997	6
(iv) The Stamp Duty Ordinance (CAP 332)	6
(v) Local Government Finances Act, 1982	7
(vi) The Customs and Excise Tariff Act	7
(vii) The Vocational Education and Training Act, 1994 (VETA).....	7
(viii) Crop Industry Acts.....	7
3.4 Export and Import Promotion Laws.....	8
(ii) <i>The Export Control Act</i>	8
(v) <i>Anti-Dumping and Countervailing Measures Act, 2004</i>	10
3.5 Recent Crop Board Legislation Reforms	15
3.6 Livestock Legislation	17
3.7 Implementation of Agricultural Laws at the Local Government Level.....	19
3.8 Agricultural Trade (Restriction) Laws	20
3.9 Level of Compliance of Tanzanian Agricultural Trade Laws to the WTO SPS Agreement	20
3.10 Crop Sector Laws and SPS	21
3.11 Review of the IPPC related Legislation.....	28
3.12 Livestock Sector Laws and SPS	32
3.13 Review of the OIE related legislation	2
3.14 Food Hygiene Laws and SPS	4
3.15 Agricultural Trade Facilitation Laws	10
3.16 Compliance to the Trade Related Intellectual Property Rights Agreement (TRIPS) of WTO	12
3.17 Geographical Indications.....	15
3.18 Implementation of the International Convention on Biodiversity and the Related Legislation	17
CHAPTER FOUR:	18
THE INSTITUTIONAL ASPECTS OF THE AGRICULTURAL TRADE LAW	18
4.1 Introduction.....	18

4.2 Institutional Context for Compliance with WTO	18
4.3 Institutional Co-ordination	19
<i>Public Sector Institutions</i>	19
4.4 General Observations on Public Regulatory Institutions.....	28
4.5 Private Sector Institutions	30
4.6 Private sector and agricultural development in the districts.....	34
Capacity Building in Agricultural Sector Institutions	34
CHAPTER FIVE:.....	36
THE REGIONAL ASPECTS OF THE IMPLEMENTATION OF THE WTO AGREEMENTS	36
5.1 Introduction.....	36
5.2 Southern African Development Community (SADC)	36
5.3 East African Community.....	37
5.4 East African Community (EAC) Customs Union	38
5.5 Harmonization of Seed Regulations and Policies.....	39
5.6 Intellectual Property Protection (PVP) Regulation	40
5.7 EPA Negotiations and the Tanzania Dilemma.....	41
5.8 Available Options for Tanzania	42
CHAPTER SIX:.....	42
STUDY IMPLICATIONS AND WAY FORWARD	42
6.1 Conclusion.....	42
6.2 Implications for the Study Findings	43
6.2 Way forward/Recommendations	44
REFERENCES	2
APPENDIX.....	4
List of Legislation and Legal Instruments referred to	4

LIST OF ABBREVIATIONS

ABSAC	Agricultural Biosafety Advisory Committee
AoA	Agreement on Agriculture
ASARECA	Association for the Strengthening Agricultural Research in Eastern and Central Africa
ASDP	Agricultural Sector Development Programme
ASDS	Agricultural Sector Development Strategy
AU	African Union
CBD	Convention on Biological Diversity
CBT	Cashewnut Board of Tanzania
DANIDA	Danish International Development Agency
DNA	Designated National Authority
DTIS	Diagnostic Trade Integration Study
EAC	East African Community
EMA	Environment Management Act
EPA	Economic Partnership Agreements
EU	European Union
FAO	Food and Agricultural Organization
GDP	Growth Domestic Product
GOT	Government of Tanzania
IFOAM	International Federation of Organic Agriculture Movements
IPM	Integrated Pest Management
IPPC	International Plant Protection Convention
IT-PGRFA	International Treaty for the Plant Genetic Resources for Food and Agriculture
LGA	Local Government Authority
MAFC	Ministry of Agriculture, Food Security and Cooperatives
MDG	Millennium Development Goal
MSTHE	Ministry of Science, Technology and Higher Education
NBAC	National Biotechnology Advisory Committee
NBC	National Biosafety Committee
NEMC	National Environment Management Council
NGO	Non-Government Organization
NPPAC	National Plant Protection Advisory Committee
NTB	Non-Tariff Barriers
NTP	National Trade Policy
OECD	Organization for Economic Cooperation
PBR	Plant Breeders' Rights
PEPQS	Post Entry Plant Quarantine Services
PIC	Prior Informed Consent
PVP	Plant Varieties Protection
R.E	Revised Edition of the Laws of Tanzania of 2002
RTA	Regional Trade Arrangements/Agreements
SADC	Southern Africa Development Community
SADC	Southern Africa Development Community
SANAS	South African National Accreditation System
SPS	Sanitary Phytosanitary Agreement
TACRI	Tanzania Coffee Research Institute
TASCA	Tanzania Official Seed Certification Agency
TASHTDA	Tanzania Small Holders Tea Development Agency
TBS	Tanzania Bureau of Standards
TBT	Technical Barriers to Trade
TCLSB	Tanzania Cotton Lint and Seed Board

TFDA	Tanzania Food, Drugs and Cosmetics Authority
TIC	Tanzania Investment Centre
TOSCI	Tanzania Official Seed Certification Institute
TOSCI	Tanzania Official Seed Certification Institute
TPRI	Tanzania Pesticides Research Institute
TRIPS	Trade Related Intellectual Property Rights
TTB	Tanzania Tobacco Board
UK	United Kingdom
UNIDO	United Nations International Development Organization
UPOV	Union for Protection of Plant Varieties
URT	United Republic of Tanzania
USA	United States of America
VAT	Value Added Tax
VETA	Vocational Education and Training Authority
VPO	Vice President's Office
WTO	World Trade Organization

CHAPTER ONE: GENERAL STUDY BACKGROUND

1.1 Background and Study Objectives

The importance of this assignment arises from the fact that a significant part of the Tanzania trade is basically agricultural and there is currently a growing demand of her agricultural exports¹. Thus, understanding a legal and institutional environment under which the agricultural trade is operated is an important strategy for maximizing the benefits of the country's good land and climatic attributes to lower production costs and thereby become competitive, both at regional and international markets. Currently Tanzania has a relatively small export volume, although the recent trend has been upwards, with opportunities emerging in certain areas such as horticulture and traditional cash crops². Other commodities such as fish products already represent a significant source of income from exports to the EU and are successfully meeting the stringent EC regulatory requirements. However, another potentially important sector, meat products, has yet to overcome these regulatory barriers.

While compliance with standards and technical specifications is fundamental to accessing international markets, the rules-based system of the World Trade Organization (WTO) aims to ensure that these standards and regulations are not used to prevent the import or export of competitive products. WTO has developed a multilateral Agreement on Agriculture to limit border controls, the TBT Agreement to minimize unnecessary barriers to trade and the Agreement on the Application of Sanitary and Phytosanitary measures (the SPS Agreement)³ to provide a framework for protecting human, animal and plant health and to encouraging the international harmonization of products standards. The SPS and Technical Barriers to Trade (TBT) agreements aim at ensuring that regulations, standards, testing and certification

procedures do not create unnecessary obstacles to trade. The SPS sets out a code of good practice for the preparation, adoption and application of standards to be enforced by central government bodies. The aim of the SPS Agreement is to maintain the sovereign right of any government to provide the level of health protection it deems appropriate, but to ensure that these sovereign rights are not misused for protectionist purposes so as to result in unnecessary barriers to international trade.

Although national coherence with international agreements such as SPS and TBT is still difficult to attain for most developing countries, major trading blocks such as the EU, Japan and the USA some times impose even stricter regulatory requirements, which have to be considered as well. Further, exporters may also have to comply with private sector protocols and standards in these markets (e.g. EUREPGAP).

Therefore, one of the key challenges facing Tanzania is the capacity to develop and implement standards, technical regulations and conformity assessment, with the necessary institutional capacity for recognized inspection and certification systems. A further requirement is to strengthen the research capacity of key organizations responsible for contributing data for risk analysis and the setting of standards for commercially important products. On the other hand farmers and processors face problems of availability of market information and other specialized services such as those provided by internationally accredited public bodies and other companies able to undertake conformity assessment and certification. Such certifications are required to ensure that producers conform to required standards and technical regulations.

1.2 Study Objectives

The objective of this study is to establish legal and institutional frameworks existing in Tanzania that enable it to meet the required international standards on a number of issues, including technical barriers to trade contained in the country's legislation, food hygiene and safety of agricultural and natural resources products so as to attain both internationally accepted standards, and to enhance local and international market access and share. The

¹ For example, in horticultural products, organic /specialty coffee and tea

² Coffee, cotton, cashew nuts, tea, tobacco and sisal

³ The Agreement on the application of Sanitary and Phytosanitary Measures (the "SPS Agreement") entered into force with the establishment of the World Trade Organization on 1 January 1995.

study will also assess the adequacy of existing legal and institutional frameworks for ownership and sustainable management of agricultural resources (plant genetic resources).

The basis for the study is the need for Tanzanian government and its competent authorities to understand international agricultural legal trade requirements so that they can utilize them in putting in place appropriate local and regional legal and institutional frameworks in order to enhance the country's competitiveness at local, regional and international markets.

Based on the general objective, the tasks preformed include:

1. A review of the existing legislation on agriculture and allied sectors and recommending areas of improvement so as to comply to international conventions and requirements on TBT in relation to agricultural and natural resources products in order to contribute to market access and share, and to national economic growth.
2. A review of the existing legislation on intellectual property rights over plant genetic resources;
3. A review of the existing legislation on SPS, food hygiene and safety in relation to agricultural and natural resources products, pointing out areas of improvement in order to contribute to market access and share, and to national economic growth.
4. An audit of some institutions carrying out activities related to TBT, intellectual property rights over plant genetic resources, SPS, agricultural and natural resources products safety and hygiene has been conducted in order to identify deficiencies and opportunities in the systems.
5. Modalities of co-ordination among existing institutions having mandates and responsibilities relevant to TBT, SPS, and agricultural and natural resources products safety have been

suggested. Also, areas of harmonizing and integrating institutional activities such as enforcement, monitoring and verification systems to reflect the best institutional framework for overseeing sanitary and phytosanitary, hygiene and safety management have been recommended.

6. Recommendations for effective methods for dissemination of knowledge and information to the public, especially to the agricultural stakeholders on SPS, hygiene and safety issues, and codes of Good Practice have been made.

1.3 Methodology

In order to assess Tanzania's capacity in the implementation of WTO agricultural trade related agreements, a diagnostic evaluation of Tanzania's current legislative and institutional framework was undertaken involving some stakeholders, particularly key implementers of the agricultural legislation, namely the crop boards, local government authorities, some farmers and relevant focal points in each Ministry⁴. The study also has benefited from the existing rich information on the areas under study.

The study encountered a number of limitations which may affect the quality of the produced information. These include:

- Inadequate field work due to shortage of time and resources;
- Some of the data used in the report may look outdated. This is true especially as far as the crop boards are concerned, mainly because as the consultant was carrying out the study, crop board reforms were also going on. Thus, by the time this study is out more reforms measures will have already taken place.

⁴ The Consultant benefited from some crop industries' consultative meetings (coffee, sugar, tobacco, cashewnuts and pyrethrum) that were taking place at the same time the assignment was being carried out.

In the second chapter of this report, we analyse the general trend of the Tanzanian agricultural commodities development to underscore the importance of the study in terms of contribution of agriculture to the overall national economy. The third chapter analyses the existing agricultural legislation as they comply to the WTO agreements, particularly the TBT, SPS and TRIPS agreements and the extent the Tanzanian legislation facilitates agricultural trade, especially of small-holders farmers in rural areas. The fourth chapter discusses the institutional aspects of the agricultural legislation enforcement. The fifth chapter deals with regional arrangements aimed at introducing mitigation measures to agricultural trade (WTO) compliance problems. The last chapter analyses possible implications of the study findings and suggests the way forward.

CHAPTER TWO: GENERAL OVERVIEW OF TANZANIAN TRADE IN AGRICULTURAL PRODUCTS

2.1 Introduction

The objective of this section is to provide a brief overview of past, current and possible future trends in Tanzanian agriculture trade. In addition, the relative importance of various agricultural export and import sectors in Tanzanian trade is discussed along with details of the major export markets for a selection of important commodities.

Since 1990, poverty in Tanzania started declining but it remains widespread, particularly in rural areas. About 17 million people – half the population – live below the poverty line. Approximately 80 percent of the poor live in rural areas where about 70 percent of the population lives (URT, 2001). From 1991/92 to 2000/01 overall food poverty declined from 22 to 19 percent while basic needs poverty declined from 39 to 36 percent. Poverty declines were most rapid in major urban centres such as Dar es Salaam (from 28 to 18 percent) and least rapid in rural areas (from 41 to 39 percent). Despite these improvements,

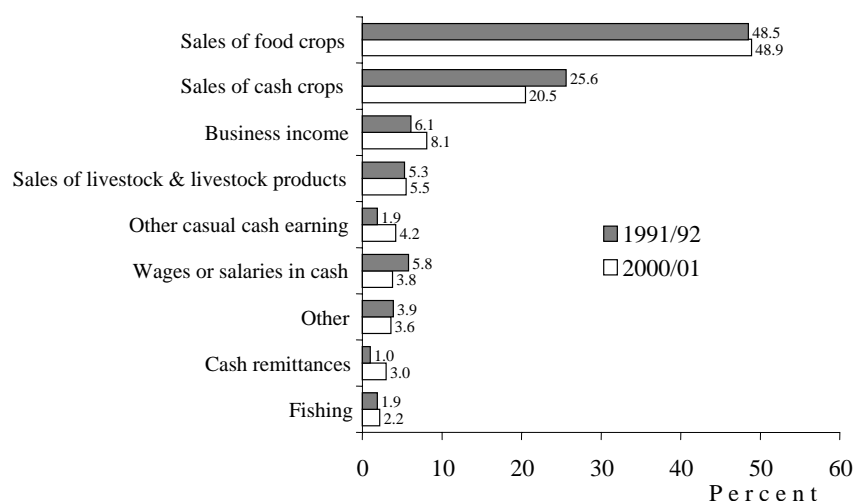
Tanzania is still struggling to match the targeted progress towards poverty and food insecurity reduction and Millennium Development Goal (MDG) target of halving poverty by 2015⁵.

2.2 Contribution of Agriculture to the Economy

Agriculture remains the largest sector in the economy and hence its performance has a significant effect on output and corresponding income and poverty levels. The sector accounts for about half of GDP and exports, and its importance is amplified through backward and forward linkage effects. Sale of agricultural products accounts for about 70 percent of rural household incomes (Figure 1).

⁵ Sourced from the ASDP document.

Figure 1: Rural Household Income Sources

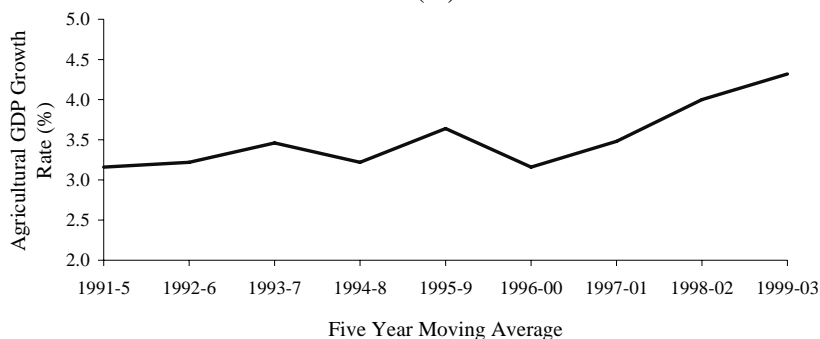


Source: Household Budget Survey 2001/2002

Over the 1990s, average agricultural growth was 3.6 percent, which was higher than in the 1970s and 1980s when annual agricultural growth averaged 2.9 and 2.1 percent respectively. It grew by 6.0 percent in 2004. Over the 1990s, agricultural exports grew at an annual rate of over 7 percent per year, although this rate has slowed in recent years due to declining world market prices. Food crop production has grown at about the rate of population growth and accounts for about 65 percent of agricultural GDP, with cash crops accounting for only about 10 percent. National data show significant progress towards the objective of a sustained 5 percent growth rate with an increase of the five year moving average agricultural GDP growth rates from about 3.3 percent from 1991 to 2000 to 4.3 percent over the 1999-2003 periods (Figure 2).

Increasing growth, reducing food insecurity, and accelerating poverty reduction, particularly in rural areas, requires an increase in agricultural productivity, higher added value, and improved producer price incentives. These increases also require a consolidation and continuation of long-term reforms, particularly with respect to markets, institutions and investments. Greater emphasis is needed on improved institutional functioning and service delivery, technology adoption, infrastructure development and greater commercialisation among smallholders.

Figure 2: Five Year Moving Average - Agricultural GDP Growth Rates (%)



Source: National Accounts

2.3 Sectoral Policies, Legal and Regulatory Frameworks

At the sectoral level, all the above development trends have been shaped by external as well as internal agricultural commodity trade policies, laws and institutional frameworks. From mid-1990s to the present, the government has been implementing the second generation of policies, legal and institutional reforms which have mainly focused on poverty reduction strategies (PRS). Some of the early agricultural sector reforms included the adoption of National Investment Policy (1990's), formulation of National Land Policy, 1995, formulation of the Agriculture and Livestock Policy of 1997, the enactment of the Plant Protection Act in 1997 and the review of Crop Boards Acts. These agricultural sector reforms had three main objectives. Firstly, to enhance growth and investment in the agricultural sector through increased private sector participation in production, marketing, value addition and provision of support services among others. Secondly, to re-define the role and increase efficiency in public institutions responsible for the provision of regulatory and associated regulatory public services including research, extension and manpower development. Thirdly, to develop sustainable capacity and empower the private sector to play the leading role in commercial supply of inputs and services as well as production, marketing and processing of agricultural commodities.

The strategies for implementing the reforms were comprehensively articulated in the Agricultural Sector Development Strategy (ASDS), which was prepared in 2001. Its implementation programme-the Agricultural Sector Development Program (ASDP) was subsequently formulated and adopted in 2006 and is the basis of GOT's budgetary allocations and negotiations with international development partners on their future support to the sector. The main components of ASDS include strengthening of the institutional framework, reforms in agricultural research and extension services,

facilitation of investments, development of market and linkages, irrigation and water management, rural infrastructure and fiscal reforms.

The vision of the ASDS is to have by the 2025 an agricultural sector that is modernized, commercial, and highly productive and which utilizes natural resources in a sustainable manner. Under the auspices of the ASDS, reforms have focused on two main areas:

- Regulatory reforms-focusing on review and amendments of Legislation (Principal and Subsidiary legislation). However, some laws have not been translated into workable strategies especially at the local government levels where the bulk of implementers or beneficiaries of the reforms are based.
- Institutional reforms - focusing on institutionalization and operationalization of reforms including redefinition of roles for relevant government institutions to focus on policy formulation, implementation procedures and enforcement. Some of the interventions undertaken include disengaging agricultural commodity marketing boards from carrying out the role of marketing and confining their role to regulatory and promotional responsibilities. There were also actions in right-sizing and restructuring of relevant institutions, hiving-off non-core staff and redeployment of such staff to local government institutions.

Needless to mention here that although most of the above regulatory reforms took place at the time when international trade legal and institutional regimes had already concluded the World Trade Organization package of agreements, specific considerations were not paid to ensuring that the said reforms comply with international trade requirements, as spelt out under the WTO. There may be many factors to this, some of which include:

- Although Tanzania was one of the signatories of the Final Act and the WTO Agreement at Marakesh in 1994, there was not a well coordinated agenda for preparation for the implementation of WTO. As a result, up to now there has not been an Agricultural Trade Policy in Place. The Agricultural Marketing Policy is still on the drawing board⁶. Further, although we have a Trade Policy in place since 2003, lack of coordination in its implementation has made it less enforceable to agricultural trade;
- There is not much exposure to most Tanzanians, especially those dealing with agricultural production, on what the WTO package of agreements means to them. That is, in terms of influencing what they produce, what they sell and what they are paid in return.
- When WTO was officiated Tanzanians were still coming to terms with the shift of trade development paradigm - from planned economy to free market economy, coupled with trade globalization⁷. This might have had a great contribution to the slow start in exploiting opportunities under the WTO or other trade arrangement such as those found under the AGOA and EU-EBA arrangements;

In 2003 the National Trade Policy (NTP) came out. It recognizes the importance of trade openness in raising efficiency and productivity in the economy, while at the same time envisioning the role of the government in selective interventions. This strategy tries to compromise the anticipated benefits of trade liberalization on one hand and effects of trade globalization on the other. Apart from addressing the traditional trade policy areas, namely reduction of tariff and non-tariff barriers, it also brings on board supply side constraints that have hampered a positive supply response so far. Specifically the NTP identifies the following

supply side constraints: an enabling business environment; soft and hard infrastructure; market support institutions and capacity to participate in and influence changes in the world trading system⁸.

An extract from the NTP on Regulatory Reform

4.1.3 Legal and Regulatory Framework

Constraints and Challenges

The establishment of a business enabling environment entails a process of continuous adjustment of the legal and regulatory framework impacting on the performance of the business sector. Despite economic reforms sustained since the mid-eighties, there are still residual impediments that lead to high transaction costs. This discourages the inflow of foreign and domestic investment and hinders efficient trade sector performance. The envisaged legal and regulatory reforms seek to lower transaction costs, enhance business compliance and improve efficiency and competitiveness. The ultimate objective of legal and regulatory reforms is to protect the interests of the consumers through enhancing the capacity of the government institutions to perform their regulatory functions efficiently and maintaining regulations only where they are necessary for this objective.

Strategy

The government is expediting measures to stimulate international competitiveness through:

- (a) Reduction of unnecessary bureaucratic procedures that lead to high transaction costs for the business sector;
- (b) Facilitating and encouraging the development of private sector capacity to participate more effectively in the process of better regulation through public-private sector partnerships and improved advocacy;
- (c) Expediting the establishment of market support institutions in the area of better regulation to ensure coordinated legal and regulatory reforms and improvement of commercial justice delivery".

Source: URT; The National Trade Policy, 2003 pp. 21 - 22

⁶ It is now three years since initiatives to have the policy in place started.

⁷ Ten years grace period was not fully exploited in preparation for implementation.

⁸ See the NTP, 2003 Ch. 4 pp. 19 - 35.

The recent trade survey, namely, the Diagnostic Trade Integration Study (DITS) records some success in implementing the NTP. There are however, some deficiencies in addressing some important issues such as Regional Trade Agreements or Arrangements (RTAs), which now greatly affect Tanzania's trade policies. Further, the supply-side constraints still constitute a major obstacle to stronger export performance. The most important ones include: transport, taxes, crops trade restrictions (crop boards), lack of adequate skills; lack of adequate management capacity with respect to sanitary and phytosanitary standards, customs and inadequate private sector involvement in providing feedback on issues and policies that affect them.

In the next Chapter we analyse Tanzanian legal, regulatory frameworks with a view of highlighting shortcomings that lead to inadequate compliance to the WTO agreements, particularly the Agreement on Agriculture, Technical Barrier to Trade, the SPS and TRIPS Agreements.

CHAPTER THREE: THE TANZANIAN AGRICULTURAL LEGAL AND REGULATORY FRAMEWORKS

3.1 The Context

This chapter aims at three different but linked objectives. Firstly, it aims at emphasizing the almost common mistake committed especially in our countries, of changing or reviewing policies, without paying due consideration to the importance of changing the corresponding legal and institutional frameworks. Secondly, it attempts to show law as part of a larger regulatory system and therefore inseparable from the political and economic aspects of

the societies that give rise to it⁹. In this sense, the enforcement of a particular law requires an appropriate institutional framework to become effectively implemented. Thirdly, it will underscore the importance of stakeholders' participation in the process of law making and the corresponding enforcement¹⁰. The Tanzanian agricultural trade laws can be generally grouped under three main categories, as follows:

- (a) *Agricultural trade regulation laws*. These seek to guide the operations of agricultural trade, with particular emphasis on enhancing the competitiveness of the country's agricultural produce through adherence to product quality standards, appropriate taxes and uniformity of weights and measures. This category of laws relate to the Agreement on Agriculture (AoA) and the TBT Agreement of the WTO.
- (b) The second category of laws refers to *agricultural trade restriction laws*. These are designed to assist avoidance or minimization of socially undesirable consequences such as environmental or health hazards to plants, animals, humans and the environment at large. This category of laws relate to the SPS Agreement of WTO.
- (c) The third category may refer to laws that provide essential legal frameworks for effective operation of agricultural trade systems. These can be referred to as "*agricultural trade facilitation laws*". Examples of these laws include laws on agricultural resource property rights such as agricultural land laws, access to plant genetic resource and warehouse receipts laws. Another example of laws under this category may include intellectual property rights laws such as plant breeder's rights and geographical indications, etc. This category of laws relate to the TRIPS Agreement of WTO.

⁹ See FAO, Law and Markets: Improving the Legal Environment for Agricultural Marketing

¹⁰ For the purpose of this study the term "law" is construed in the general sense to include Acts of Parliament, Regulations, Rules and Orders and By-laws.

It is important to note that the above categorization is only for the convenience of this study. A particular law may belong in two or all categories. A list of the Tanzania agricultural and related laws that are referred to in this chapter appears in Appendix 1.

3.2 Agricultural Trade Regulation Laws as they comply to the Tariff (AoA) and Technical Barriers to Trade (TBT) Agreements of WTO

The Agreement on Agriculture (AoA)

The Agreement on Agriculture (AoA) aims at eliminating Non-Tariff Barriers to Trade (NTB) and reducing tariff barriers to the necessary minimum. The primary objective of the Agreement on Agriculture is to reform the principles of, and disciplines on, agricultural policy as well as to reduce the distortions in agricultural trade caused by agricultural protectionism and domestic support. These forces have become very strong in recent decades, as developed countries; in particular, have sought means of protecting their agricultural sectors from the implications of unfettered markets.

The purpose of the AoA, then, is to curb the policies that have, on a global level, created distortions in agricultural production and trade. These policies can be divided into the following three categories: *market access restrictions, domestic support and export subsidies*. Each of these categories of policy making are dealt with in turn by different articles and Annexes within the Agreement¹¹.

Although Tanzania being one of the Least Developed Countries, will comparatively be less affected¹², the Agreement on

Agriculture is likely to affect agricultural policies in Tanzania in a number of ways. In the first instance, some areas of domestic agricultural policy and trade policy in Tanzania will need to be modified in order to comply with the Agreement's provisions. The Agreement will also influence the agricultural policies of developing countries in a number of indirect ways: firstly, as a result of the Uruguay Round's impact upon the policies of the 'rest of the world', particularly, those of the developed countries; and, secondly, as a result of the impact on world markets and world prices, that reforms in the policies of the rest of the world will have. In the long term, changes in world markets and prices will provide new opportunities, as well as certain costs, that agricultural policies of developing countries will have to respond to. Changes in world market prices will, for example, influence the profitability of different commodity sectors, which may in turn, affect public sector investment policies. Analysis of these wider implications is, however, not covered. This study only analyses laws that are in place, which still impose non-tariff barriers to trade.

The TBT Agreement

The TBT agreement seeks to ensure that technical negotiations and standards, as well as testing and certification procedures, do not create unnecessary obstacles to trade, which may be non tariff barriers to trade. It recognizes that countries have the right to establish protection, at levels they consider appropriate, for example for human, animal or plant life or health or the environment, and should not be prevented from taking measures necessary to ensure those levels of protection are met¹³. The agreement therefore encourages countries to use international standards where appropriate, but it does not require them to change their levels of protection as a result of standardization.

¹¹ Market Access (article 4); domestic Support Commitments (article 6); and export Subsidy Commitments (article 9).

¹² "it has been recognised that the ability to meet these new obligations varies considerably from one country to another, and that while full participation in the new commitments may be appropriate for the more developed countries, it may not be so for less developed countries" (See FAO, "The implications of the Uruguay Round Agreement on Agriculture for developing countries")

¹³ However, see Sabiano Cassese (2004), "Shrimps, Turtles and Procedure: Global Standards for National Administrations", IILJ Working Paper 2004/4 Global Administrative Law Series, who emphasizes that states have to respect the principle of due process.

The scope of the agreement covers processing and production methods related to the characteristics of the product itself. The coverage of conformity assessment procedures is enlarged and the disciplines made more precise. Notification provisions applying to local government and non-governmental bodies are elaborated in more detail. A Code of Good Practice for the Preparation, Adoption and Application of Standards by standardizing bodies, which is open to acceptance by private sector bodies as well as the public sector, is included as an annex to the agreement.

In a way the Technical Barriers to Trade Agreement (TBT) strikes a delicate balance between the policy goals of trade facilitation and national autonomy in technical regulations. The agreement attempts to extricate the trade-facilitating aspects of standards from their trade-distorting potential by obligating countries to ensure that technical regulations and product standards do not unnecessarily restrict international trade. The TBT Agreement works toward this end in three ways.

- The agreement encourages 'standard equivalence' between countries. In other words, it encourages the formal acceptance of the standards of other countries through explicit agreements.
- It also promotes the use of international standards in trades, which are internationally recognized and/or notified to member countries.
- Lastly, it mandates that countries should establish enquiry points and national notification authorities (the two may be the same body) in order to answer questions about SPS regulations and notify other nations of new regulations respectively. Enquiry points compile all available information in the country on product standards and trade regulations and provide it to other members upon request. Further, the national notification authorities report changes in trade policy to the WTO and receive and take comments on these measures.

Below, we analyse the extent to which the Tanzanian agricultural legislation deviate from both the AoA and TBT Agreements. Because of the complexity nature of the legislation, in terms of addressing both the AoA and TBT agreements, we will analyse both agreements together. However, the extent to which some legislation address the two agreements differ. For example, legislation such as the Anti-dumping and Countervailing Measures Act, 2002 and a number of Tax legislation address mostly the AoA than crop or livestock industry legislation.

Specific Legislation Related with the AoA

The general trend is that Tanzania is steadily responding to international as well as regional trade demands in line with the WTO Agreement on Agriculture. It could be said that in general terms Tanzania grants most-favoured-nation (MFN) treatment with its trading partners. Since 2001 it adopted new four tier system of tariff rates: zero percent for agricultural inputs, animal husbandry and fishing; 10 percent for semi-processed inputs and spare parts; 15 for fully processed inputs and 25 percent for final consumer goods. The aim is to translate all import requirements into tariff measures¹⁴. However, much is to be done in a number of areas:

- Revising existing legislation to accommodate the changing trade policies;
- Relating different sectoral laws being passed in Parliament with existing trade policies or laws. This also includes numerous by-laws being passed by local government authorities;
- Considering including agricultural related goods such as packaging materials, transportation of agricultural goods facilities and " agricultural fuel" under the zero tariff bands.

¹⁴ See the Tanzanian Trade Policy, 2003.

3.3 Agricultural Tax Laws

Agricultural taxation is another potential area of barriers to trade, if not well planned. To promote agriculture the government starting from 2000 the government has been attempting a number of tax incentive that aim at creating conducive investment environment in the agricultural sector and thereby enhancing productivity of smallholder farmers. In 2002 the government abolished development levy.

The tax regime which was put in place between 2003 and 2005 aimed also at implementing the Poverty Reduction Strategy. It includes the following:

(i) The Income Tax Act, 2004¹⁵

The Act¹⁶ allows full deduction in the first year of income of costs incurred in course of:-

- Clearing of farming land, excavation of irrigation canals, cultivation of perennial crops and planting trees for farming land to prevent soil erosion.
- Costs incurred in the course of environmental conservation for farming land, animal husbandry, fish farming or restoration of the land to normalcy after use are immediately deductible in assessing taxable income.
- Research and farming land development expenditures are also immediately deductible for income tax purposes¹⁷.
- Irrigation tools and machinery are categorized class II of assets to qualify for a high depreciation rate of 25 percent.
- Tractors and other plants and machinery used for agricultural purposes are subject to high depreciation rates of 50 percent in

the first year and 25 percent for subsequent years.

- Businesses producing agricultural produce are not subject to equal quarterly instalments payment requirement for income tax purposes but are required to pay their taxes during the third quarter after harvest.

(ii) The Customs Tariff Act, 1976

Under this Act agricultural inputs and implements are subject to zero import duty.

(iii) The Value Added Tax Act, 1997¹⁸

Under this Act the following measures support agricultural development:

- Unprocessed agriculture and livestock, including unprocessed meat, unprocessed fish and all unprocessed agricultural produce are VAT zero rated;
- Inputs to agriculture and fishing, such as pesticide and fertilizers, as well as agricultural implements are VAT zero rated;
- VAT zero rating is granted also to crop farmers under co-operatives and producer associations registered for VAT for agricultural produce intended for export.

(iv) The Stamp Duty Ordinance (CAP 332)

- Agriculture, livestock and fishery produce are exempt from Stamp Duty on receipt. In addition, Stamp Duty on markets for agricultural produce is remitted.
- Reduce the stamp duty rate on conveyance of agricultural land to a nominal amount of T.shs 500, in order to reduce cost in conveying land ownership.

¹⁵ Act No. 12 of 2004

¹⁶ Section 15

¹⁸ Act No. 24 of 1997

- Stamp Duty on receipts has been abolished for all receipts including on sale of agriculture produce.

(v) Local Government Finances Act, 1982

Under this Act, multiple charges on agricultural and livestock produce had been rationalized and reduced. This also included the requirements to limit Produce Cess to five percent of farm gate price in the 2003 amendments.

Further, through amendments made on 2004, though Finance Act, 2004 (Section 43), the levied cess in the Local governments, were restricted only to the Districts which the product originated and not in the Districts where it passes through or where it is sold in the markets.

Also voluntary contributions collected on agricultural produce by local authorities are allowed only if introduced by the village community for specific projects implemented by the village or villages, not otherwise.

(vi) The Customs and Excise Tariff Act

According to this Act agricultural inputs and implements are subject to zero import duty. There is also no Excise Duty on wine and brandy manufacture from locally produced grapes. The measure is aimed at expanding the market for wine and hence expand wine production.

(vii) The Vocational Education and Training Act, 1994 (VETA)

This Act exempts employees in agricultural farms from Skills Development Levy.

(viii) Crop Industry Acts

Different Crop Industry Acts, used to provide for charging of levies and cess to finance the operations of the Crop Boards, which were considered as nuisance by many stakeholders in the respective crop industries. However, it will be noted below that due to the on-going Crop Boards reforms, cesses and levies charged by the

Crop Boards were abolished with effect from first July 2006 by the Government Circular issued on 10 March 2006 by the Ministry of Agriculture, Food Security and Cooperatives.

Problems Associated with Enforcement of Agricultural Tax Laws

The implementation of the above discussed tax incentives to smallholder farmers has been difficult to some areas. For example, some district councils do impose levy or produce cess contrary to what is provided by the law and no punitive measures are taken against them. Apparently this is complicated by the fact that according to the on-going local government reforms, districts have to have a level of dependence on their own sources. Ironically increased levies or cesses are endorsed by the central government, since all the by-laws, including those imposing additional levies are approved by the Minister responsible for local governments.

Some of implied levy are charged through a number of involuntary contributions, normally imposed through school boards or village councils¹⁹.

Some districts have entered into agreements with regulatory boards to deduct produce cess after auction or marketing of the crops, as is the case of coffee. This is against the Local Government Finance Act, which provides that produce cess has to be charged on the farm-gate price, not after crops have been processed.

There is also a general lack of accountability to farmers/producers on how the collected taxes are used by local governments. This is mainly due to lack of awareness on the side of the farmers²⁰.

¹⁹ Contributions for pupils desks or a number of constructions at schools are common. Also village councils impose rural roads construction contributions, etc.

²⁰ See the Agricultural Sector Survey Report, 2001.

3. 4 Export and Import Promotion Laws

Apart from tax regime there are other legislation that aim at promoting agricultural goods exports and imports. These laws are tailor made to enhance the competitiveness of Tanzania in, among other areas, agricultural trade, within the allowable international trade frameworks. These include:

(i) Export Processing Zones Act, 2002

In furtherance of investment objectives, in 2002, the Government of Tanzania enacted a new law titled the Export Processing Zones Act No. 11 of 2002. The main objectives of the law are: to attract and promote investment for export – led industrialisation with a view to diversifying and facilitating Tanzania's exports, promoting international competitiveness, attract and encourage transfer of new technology, foster linkages between local economy with international market, and promote processing of local raw materials before export. Under the law, an investor operating in an EPZ is required to sell at least 70 percent of its produce outside Tanzania. Any produce sold in the "Customs Territory" of Tanzania will be treated as an import into Tanzania for tax purposes. This means that if the intended export product is sold in Tanzania import duty, VAT and excise duty on imports as applicable will be levied.

An investor in the EPZ enjoys the following fiscal incentives²¹:

- (i) Exemption from corporate income tax for ten years and thereafter a rate of corporate income tax no higher than 25 percent
- (ii) Exemption from withholding tax on interest and dividends
- (iii) Exemption from stamp duty on documents relating to activities in the EPZ
- (iv) Exemption from all taxes and levies imposed by local government

authorities (except for goods sold in customs territory)

- (v) Exemption from 50 percent of the training levy for investors who train local employees

In addition there are special provisions for companies in the EPZ as regards purchasing of inputs, compared to a normal exporter. The advantages for EPZ exporter include:

- (i) Exemption for customs duty, VAT and other tax on imports.
- (ii) Does not pay VAT or excise on local purchases²²
- (iii) Exempt from Pre-Shipment Inspection
- (iv) On-site inspection of imports in the EPZ.

One expected that with the EPZ Act in place, laws that restrict exportation of goods would be reviewed. Thus, there is a need for a review of relevant legislation in order to exploit fully the benefits of the EPZ Act. One of the legislation which needs to be reviewed is the Export Control Act, which was enacted before independence and is still in force²³.

(ii) The Export Control Act

Under the Export Control Act²⁴ the President is empowered by the order published in the *Gazette* to declare any goods to be export – controlled good²⁵. Once goods are declared as export-controlled under the Act, it is an offence for a person to export such goods unless he is in the possession of a valid export licence issued by Export Controller.

²² Provision applies to goods purchased for use as raw materials, equipment, machinery including all good and services directly related to the manufacture in the EPZ but shall not include motor vehicles, spare parts and consumables

²³ At least in theory. This is because since the adoption of trade liberalization policies it has never been invoked.

²⁴ Act No. 381 of 1950 (Cap. 276 of the Revised Edition 2002)

²⁵ Section 4

²¹ Section 15 (1).

The Act empowers the Controller to authorize export of any class of controlled goods through an open general licence published in the *Gazette* which shall come into operation on the date of its publication²⁶

In issuing export permits, the Controller may impose such terms or condition for export of controlled goods, such conditions may include limitation as to the value of goods based on export license and exportation of consignment through designation indicated in the licence.

The Act gives further powers to the President by the order published in the *Gazette* to prohibit absolutely or restrict by any means or conditions as may be specified in the order the exportation from Tanzania of any goods or class of goods therein set forth either generally or to any specified country or place or by any person or class of persons.

It is argued that the above legislation is not in spirit of the current agricultural trade laws and policies, both aimed at stimulating foreign investment in the country and those that aim at encouraging expanding the country's foreign trade and therefore it should be repealed.

(iii) The Tanzania Investment Act, 1997

In order to stimulate investment flows in the country, including investment in agriculture, in 1997 there was an enactment of the Tanzania Investment Act, whose main objective is to make provisions for favourable conditions for investors in Tanzania. According to sub-section (2) of section 2 of the Act, businesses which if wholly owned by a foreign investor or if a joint venture with minimum investment capital which is not less than three hundred thousand US dollars and if locally owned its minimum investment capital is not less than one hundred thousand, can benefit from the incentives offered under the Act.

Under section 19 of the Act benefits that are being enjoyed under the Income Tax Act,

the Customs Tariff Act and the VAT Act or any other written law, shall not be amended or modified to the detriment of the investor who is registered under the Act. Further, section 21 of the Act guarantees to the investors an un-conditional transfer and in freely convertible currencies:

- (a) net profit of dividends attributable to the investment;
- (b) payments in respect of loan servicing, where a foreign loan has been obtained;
- (c) royalties, fees and charges in respect of any technology transfer agreement;
- (d) remittance of proceeds in the event of sale or liquidation of the business enterprise or any interest attributable to the investment;
- (e) payments of emoluments and other benefits to foreign personnel employed in Tanzania.

Further, section 22 guarantees, in case the state decides to acquire the investor's business, and after undergoing a due process of law, payment of fair, adequate and prompt compensation and the right of access to the Court or a right to arbitration for the determination of the investor's interest or right and the amount of compensation to which the investor is entitled.

Many investors have enjoyed the benefits under the Investment Act. However, as far as investment in agriculture is concerned, there are concerns that the Land Act of 1999 does not provide enough protection to foreign investors, despite efforts made in 2004 to amend the Land Act, 1999, which resulted in making land tradable.

Secondly, despite the good intention by the government, there is still much to be done as far as allowing internal free movement of agricultural goods is concerned. The current situation is that at the policy level it is already pronounced that there should not be any hindrance or barriers to free movement

²⁶ Section 5

of agricultural produce²⁷. However, experience has shown that at times free movements of agricultural produce are prohibited by regional political leaders. Further, the decisions to allow free movement of goods are not backed with legislation. There is still in operation the Agricultural Products (Control of Movement) Act of 1996 as discussed below.

(iv) Agricultural Products (Control of Movement) Act

In 1996 the government enacted the Agricultural products (Control of Movement) Act²⁸ with an objective of controlling movement of agricultural and livestock products, except meat, hides or skins, bones or horns in certain areas so declared by the Minister responsible for commerce, upon consultation with the Minister responsible for LGAs.

The Act provides that where the Minister has reason to believe that a shortage of any agricultural product exists or is likely to occur in any district or part thereof, he may after consultation with the Minister responsible for regional administration, by order published in the Gazette, prohibit, restrict or regulate the removal of such agricultural product from the district or part thereof for any particular period of time²⁹. The law provides for the penalty of fine not exceeding two thousand shillings or imprisonment for a term not exceeding six months or for both such fine and imprisonment for any person who contravenes the Act³⁰.

(v) Anti-Dumping and Countervailing Measures Act, 2004

In order to balance the effects of allowing importation of goods in the country and safeguarding domestic industries from injury

caused by dumping³¹ or subsidies, in 2004 the Government of Tanzania enacted the Anti- Dumping and Countervailing Measures Act No.1 of 2004. The Act defines the word "dumping" in relation to goods to mean the situation where the export price of goods imported or intended to be imported into Mainland Tanzania is less than the normal value of such goods in the market (country) of origin as determined in accordance with the provisions of the Act. Also the terms "countervailing measures" are defined to mean remedies used by the Committee to offset the impact of injurious subsidies;

Section 4 of the Act establishes a committee to be known as the Anti-Dumping and Countervailing Measures Advisory Committee, consisting of ten members from both public and private sector institutions.

The Act empowers the committee, upon investigation conducted in accordance with relevant provisions of the Act and when finds out that the investigated product is introduced into mainland Tanzania market at a price below its normal value, to conclude that such product is dumped into the country market. In case the committee finds out that the product is dumped in the country and is likely to cause injury to the domestically produced products, it may, after notification to the public, decide to impose anti-dumping or countervailing duties necessary for safeguarding domestic product(s).

The Tanzania Crop Sector Legislation

Crop industries legislation provides an opportunity where compliance to both the Agreement on Agriculture and the Technical Barriers to Trade agreement of the WTO can be assessed. However, after discussing legislation that addresses the AoA, more

²⁷ Refer to the Statement issued by both the Ministers responsible for agriculture and local government in Parliament, when tabling their respective budget estimates in 2003.

²⁸ Act No. 3 of 1996

²⁹ Section 3 and 4 of the Act.

³⁰ Section 5

³¹ Pursuant to the definition under Section2, "domestic industries are considered as the domestic producers of like products, or those producers whose collective output of the products constitutes a major proportion of the total domestic production of those producers except that where producers are related to the exporters or importers or are themselves importers of the allegedly dumped product, the term "domestic industry" may be interpreted as referring to the rest of the producers.

attention will now be paid to the TBT agreement.

Since 1993 there has been a noticeable attempt to review this legislation to respond to trade liberalization policies, while at the same time compromising with local demands. Thus, since 1993 we witness increased government efforts towards compliance with international trade standards under liberalized trade policies. Below, we assess the level of compliance to the TBT agreement by some agricultural crop laws.

In Tanzania most trade regulation laws are commodity specific and most of them are results of history. They have been amended from time to time to reflect the agricultural trade policy of the day. For example, all what are referred to as "cash crops"³² have specific legislation because they were commodities that were exported by private foreign traders to Europe as raw materials to the European (colonial) industries. During the colonial times (from 1930s to 1960s), each "cash crop" had an independent legislation, mainly providing for crop husbandry, primary processing, marketing and export. There were also requirements for payment of cess by crop traders. Questions have been asked as to whether there is a need of putting in place legal and institutional frameworks for what are referred to as "non-traditional crops"³³.

Crop boards operations are currently regarded as containing some "barriers to trade" as they are not operating in the interests of the producers, although the cess

is (was being) paid by producers³⁴. A number of studies have recommended that crop boards need to be reformed, and re-defined into producer-supported organizations, responsible for representing the industry³⁵. Recently, the government started to address the raised concerns through on-going crop board reforms within the main objective of poverty reduction to the producers³⁶.

The Tea Industry Legislation

The Tea Industry Act was enacted to respond to agricultural trade liberalization policies. The Act established the Tanzania Tea Board and the Tanzania Small Holders Tea Development Agency (TASHTDA). The Board took over regulatory functions of the Tea Authority, while the TASHTDA mandates were on promotion and development of tea production amongst the smallholders and support tea research and extension services. Commercial functions of the Authority, which included tea estates and tea processing factories, were hived off to the private sector when tea estates were privatized. The Tea Board now registers tea farmers and licenses processors and exporters of tea as part of its functions. The main problems highlighted by traders in the tea industry legislation include the following:

- Abolish a statutory requirement to traders to pay cess on made tea whose use will eventually not be accounted to them;
- Abolish numerous statutory licence fees;
- Repeal a requirement by the Act to establish a Tea Development Fund;

³² They included: coffee, cotton, sisal, tobacco, cashewnut, pyrethrum, coconuts, wheat and hides and skins

³³ For example, demands for the establishment of an organization to regulate the horticultural industry have been presented by stakeholders to the Ministry of Agriculture, Food Security and Cooperatives. The demands however, come with a condition that the organization to be established should be a private based organization and that the Government should be involved. These demands send the Government into policy dilemma because currently there is no clear policy for the Government to have stakes in a private organization, probably under a PPP arrangement.

³⁴ According to the Government Circular of Crop Boards Reform issued by the Government on 10th March 2006, from 1st July 2006 crop board levy was abolished. Thus, the relevance of this observation may be questioned. On the other hand, it is not expected that the abolishment of levy denies stakeholders involvement in crop boards monitoring.

³⁵ DTIS, 2005, at pg.

³⁶ On 10th March 2006, the Government Issued a Circular on the Rationalization of Roles, Functions and Financing of Crop Boards, whereby all crop levy/cess and licence fees were abolished,

- Limit excessive powers of the Minister, especially as far as appointment of members to the board of directors is concerned;
- Abolish local government taxes, since most of them discourage tea production.

It has to be mentioned here that the above mentioned complaints are mainly being aired by traders and manufacturers. Tea small-holder farmers on the other hand have had their own complaints, which may not be in the legislation but are being encountered in the course of production. These include:

- Low prices for the tea sold to the manufacturers;
- Tea estate owners' deliberate efforts to control the country's tea production and marketing, which sometimes result in trying to frustrate small-holder tea growers' efforts to process and market their tea;
- Limited access to production inputs, extension and research services.
- Some provisions in the Act, which allow the Board, subject to approval by the Minister, to perform some commercial functions should be repealed, the Board should remain a regulatory body.

The Cotton Industry Legislation

In order to implement trade liberalization policy reforms in 1993, the functions of the Cotton Board were redefined under the Cotton Boards (Miscellaneous Amendments) Act No. 11 of 1993. The Board's main functions were limited to provision of regulatory and promotional services. Further, the name of the Tanzania Cotton Marketing Board was changed to "Tanzania Cotton Lint and Seed Board" (TCLSB). In 2001 the need to enhance competition, control cotton quality and involve stakeholders in the management of the Board, resulted in passing the Cotton Industry Act, No. 2 of 2001. From 1993 to June 2006, the Board was being financed

out of levy collections and rental charges of its immovable assets.

There has been a number of concerns that the cotton industry legislation imposes barriers to trade that are unnecessary. These include the following:

- The requirement to register all the cotton growers is cumbersome and costly;
- The setting and announcement of cotton indicative prices disrupts the market forces;
- The requirement to conduct quality inspection at both buying post as well as at the ginnery level is unnecessary;
- Forced savings to finance the Crop Development Fund, reduces farmers' producer margins;
- There are a number of unnecessary licences, which need to be eliminated, for example, licence for ginnery construction, which aims at limiting the number of ginneries in a particular cotton growing area is not necessary;
- There are too many buying posts;
- Cotton levy as well as district crop cess, which is charged on cotton alone discourages cotton production;
- The board's involvement in the multiplication and distribution of seeds compromises with its regulatory responsibilities;
- The Act allows the board to get involved in cotton buying under certain circumstances; this is not necessary and conflicts with the board's regulatory roles.

The Coffee Industry Legislation

The 1993 amendments to the Coffee Marketing Board Act of 1984, divested from the Board all commercial oriented functions and empowered the Board to perform regulatory and promotional functions. In 2001 the need to enhance competition, control coffee quality and involve stakeholders in the management of the

Board, resulted in passing the Coffee Industry Act, No. 23 of 2001.

Stakeholders' concerns on the coffee industry Act and Regulations include the following:

- Exporters cannot buy from producers (one licence rule). This should be reviewed;
- Auction is blind. The requirement not to disclose ownership of coffee before the fall of the hammer should be removed to facilitate traceability;
- The costs and infrastructure required to inspect all growers and all parchment buying posts will end up an excessive burden to the Board. The Board should restrict itself to the monitoring of quality of coffee presented at the auction and assuring that all the coffees sold are easily identifiable and traceable;
- Monitoring and recording should be traceable back to origin. This will have the benefit of enhancing collection and distribution of statistics and information;
- Abolishment of provisions dealing with collection of levies should also include the collection of levies for the third parties, for example, for the District Councils;
- The establishment of the " Coffee Industry Development Fund" is not in the interests of stakeholders, it should be abolished;
- Some provisions in the Act, which allow the board, subject to approval by the Minister, to perform some commercial functions should be repealed, the Board should remain a regulatory body;
- The legislation should specify the time limit when the Board is supposed to have completed registration of growers and assistance promised to the farmers in the regulations, should be provided.
- Coffee Regulations, 2003³⁷ give powers to the Director of Crop Development, for

the purpose of preventing spread of diseases or pest of coffee to prohibit, regulate or quarantine sowing any coffee seeds or any other crop. This provision is inconsistent with Section 3 the Plant Protection Act No. 13 of 1997 vesting similar powers to the Minister.

- Regulation 15 which empowers the Director of Crop Development to prescribe types of coffee varieties which shall be grown in different parts of Tanzania is inconsistent with the regulatory powers of the Board as overseer of the sector.
- Although the Act requires appointment of the coffee inspectors to supervise the arrangements for the cultivation, purchase, export and import of coffee, coffee inspectors have never been appointed³⁸.
- Regulations 15 to 21, require the approval and supervision by the Board or authorised officer on raising coffee in the nurseries, maintaining land under which coffee is grown, maintaining trees other than coffee trees, picking and primary processing of coffee and to be approved in writing and inspected. However, under both the Act and Regulations, there is no laid down procedure to be followed by the coffee producers or farmers to get the approval of the Board or authorised officer over the nursery, picking or primary processing of coffee.

³⁷ Regulation 14

³⁸ under the Coffee Regulations "the coffee inspectors" have similar functions as of "the authorised officers". The definition of the terms has been used interchangeably. The term "Authorised Officer" has been defined to mean "an officer appointed by the Director to act on behalf of the Director or the Board and who is charged with duties of inspection" and further "Inspecting officer" has been defined to mean "an officer of the Board or an authorized officer" and the word 'Director' has been defined to mean the Director of Crop Development within the Ministry of Agriculture. It is therefore that one who is responsible to appoint 'Authorized officer' under the legislation is not the Board but the Ministry though the Director of Crop Development

The Tobacco Industry Legislation

The Crop Board (Miscellaneous) Amendment Act of 1993 changed the name of the Board from TTPMB to Tanzania Tobacco Board (TTB). The Act also entrusted the TTB with regulatory and promotional functions. The 1993 amendments were consolidated in the Tanzania Tobacco Industry Act of 2001, which also established the Tanzania Tobacco Board.

Some stakeholders' concerns in the legislation, which they propose for amendment include:

- Price negotiations between tobacco farmers and buyers should be based on US dollars;
- Tobacco producers should be free to take agricultural inputs on loan or decide to pay cash. The current tendency of compelling farmers to pay cash exploits them in terms of paying high interest rates at the time of selling their crops;
- There should be introduced stricter sanctions to producers who add foreign materials in tobacco so that they can increase weight;
- The buyers' agency for inputs distribution to farmers and collection of loans works as a cartel of buyers, it should be abolished. Each buyer should operate on its own;
- The form of contract farming practiced in the tobacco industry should be reviewed, it does not benefit the growers;
- Targets for growing tobacco being introduced by the government should take cognisance of tobacco demand worldwide;

The Tanzania Cashewnut Industry Legislation

In 1993, under the Crop Boards (Miscellaneous Amendments) Act of 1993, the Board's name was changed from TCMB to the Cashewnut Board of Tanzania (CBT).

Further, the board's functions were revised to include:

- (i) regulate and promote quality, marketing and export of raw and processed cashewnuts;
- (ii) advise the government on all matters affecting cashewnut production and marketing;
- (iii) issue license to cashewnut buyers and exporters;
- (iv) establish cashewnut quality standards; and,
- (v) represent cashewnut producers and the government in appropriate international fora.

Compared with other crop legislation the cashewnut industry's legislation is still outdated. Apart from amendments made in 1993 and 1996, the legislation is still basically of 1984. However, its regulations were passed in 2005. Stakeholders have proposed a number of revisions of the Act, which include:

- The requirement for the board to announce indicative prices a day before the buying season should be abolished. Buyers should be allowed to negotiate prices with farmers³⁹.
- The board should provide market information as frequently as possible so as to guide the buying and selling of cashewnuts;
- Processing in the country should be promoted;
- Buying posts should be rationalized. Currently there are too many buying posts;
- There should be a system of ensuring that district councils do not charge produce cess above five percent, which is allowed by law;
- The board should improve quality assurance services, especially on the processed cashewnuts;

³⁹ This recommendation is however, not shared by farmers, they still prefer the Government (Board) to still declare indicative prices.

- Cashewnut farmers should be supported by the government as far as provision of agro-chemicals⁴⁰ is concerned;
- Cooperative societies should be revived to assist farmers in price negotiations;
- The board has to be restructured. Currently it is not accountable to the farmers.

3.5 Recent Crop Board Legislation Reforms

The above historical account of crop board legislation development manifests the complicated nature of agricultural trade regulation laws. Crop board legislation seems to change in response to the domestic as well as international trade policies. For example, although in 1993 crop boards were divested from performing commercial functions, whereby crop marketing was left almost unregulated, between 1997 to 2001 crop boards' legislation were reviewed to incorporate fair competition, value adding and quality assurance due to complaints, especially from the small-holder farming communities of unfairness and continued quality deterioration of crops. However, from 2003 there were already complaints, especially from the traders that the 2001 crop board legislation had the following shortcomings:

- There was over-regulation brought about because of a need to enhance **competition, fair trade and value adding**, which resulted in allowing crop boards to apply restrictive buying rules, introduction of 'one license rule' in coffee marketing in order to maintain integrity of coffee auction by restricting coffee exporters to buy coffee at farm gate level, announce "indicative" prices in all crops (except coffee), and require that growers be registered. These were seen by traders as unnecessary barriers to trade.
- Interventions on quality control, which included: enforcing grading at buying

posts for all crops except tea, training of cashew producers in grading practices, and monitoring of quality of seed cotton processed at ginneries, all of which involved considerable enforcement, were seen as dictated outside market forces and as potentially increasing transaction costs.

- Interventions geared towards improving **credit and input supply** on the part of boards which include: provisions in the Acts to establish funds and input schemes; cotton input pass-books and input voucher schemes in coffee were considered as not necessary and ineffective. They were regarded as some sort of "forced savings", which may reduce producer margins against their will.
- It was also observed that more than 75 percent of board revenues came from export levies and license fees. And that most of the revenue was being spent largely on administration and board of directors' expenses. Further, the boards continue to have upward accountability to the Ministry rather than to the respective industries stakeholders.

Some positive results of the 2001 reforms were observed. They include:

- Provisions in the coffee legislation for the direct export of higher quality coffees have encouraged increased production of higher quality coffee, which has resulted in restoring the reputation of Tanzanian coffees at the international markets.
- Due to the restriction of crop buying at the farm gate level producer organizations have emerged, including farmer groups and cooperative societies that market coffee independent of cooperative society unions⁴¹, cashew

⁴⁰ Recommendation by growers

⁴¹ For the past decade or so cooperative societies have been having a bad reputation due to theft, mis-allocation of funds and exploitation of farmers by cooperative management. However, recently the Government has developed a new Policy for

groups and tea associations have also emerged. Most important, among the newly emerging groups are coffee farmer groups, which were initiated by private companies and NGOs to bring together producers of good coffee. These groups have increased competition and empowered producers; however, they continue to need technical and organizational support.

- Direct coffee sales to the auction by farmer groups yield higher returns than any other marketing channel. But the analysis also indicates that some farmers prefer selling their products to cooperative societies and unions, largely because they provide second payment, which comes at a critical point of the year for farmers.
- Despite some few managerial shortcomings, the cotton development fund has done a tremendous job in assuring farmers with cotton inputs.

Although the aim of crop boards' reforms was to re-define them into producer-supported organizations, the above referred study⁴² was not conclusive to that effect in its recommendations. The only crop industry which seemed to be ready for supporting the board as producer-led organization was tea. However, it was later observed that this recommendation did ignore the group of small-holder producers in the tea industry, who are the majority. Tea smallholder farmers may not be in agreement with estate producers, especially as far as green tea marketing and ownership of tea processing factories are concerned. It is therefore not envisaged that all tea private sector stakeholders may get organized on their own to enforce regulatory as well as promotional functions, independent of the government involvement. In short, although

crop boards' role was acknowledged, it was observed that producers could not take over full responsibilities of running the boards. Instead, a joint mechanism, whereby the government would finance and supervise the boards' regulatory functions and stakeholders contribute to financing developmental or promotional oriented functions, was seen plausible. Therefore, other stakeholders were requested to agree on how they would supervise and manage crop industry shared functions, such as research, training, extension services and supply of inputs⁴³.

In addressing these and other issues, the government issued a Circular on 10th March 2006, for rationalization of roles, functions and the financing of crop boards. The Circular abolishes crop levies/cess, licence fees and forced contributions to finance research, training and inputs through crop development funds. It however, allows stakeholders to agree on the financing and appropriate organization and management of performance of non-regulatory functions, which were formally executed by crop boards. According to the circular, boards will execute regulatory and information collection and distribution functions on behalf of the government. They will also be fully financed by the government to perform such functions. Further, crop board legislation is expected to be reviewed to remove all provisions regarded by stakeholders as unnecessary barriers to trade⁴⁴. Stakeholder consultations have revealed that they are in agreement with the proposed reforms. For example, in coffee, stakeholders agreed with the idea of removing blind auction⁴⁵, increasing liquoring turn-rounds, allowing cherry buying to all coffee buyers, abolishing licence fees and putting in place a mechanism for enabling stakeholders to finance research. Coffee farmers and exporters also agreed

Cooperative Development (2002), a new Cooperative Societies Act, 2003 and now it is implementing a Cooperative Reform and Modernization Programme, aimed at restoration of trust and confidence in the cooperative society as a form of organization for increasing small-holder farmers' competitiveness.

⁴² URT and World Bank Study on the Tanzania Crop Board Study, 2004

⁴³ A Government Circular of 10th March, 2006 spelt out the procedures to be adopted.

⁴⁴ As this report was being prepared crop industry stakeholder consultations were going on. Stakeholders for cotton, coffee, sugar, tobacco, pyrethrum and cashewnut have already given their views on the proposed reforms.

⁴⁵ Removed with effect from 1st July 2006.

that the current arrangement of marketing coffee through auction as well as through direct sales should continue. This somehow contradicts the reform recommendation that exporters should be allowed to buy coffee at the farm gate level, which would have had the effect of removing one licence rule⁴⁶.

It is expected that after stakeholders' consultations the revision of crop board legislation will take place, taking into consideration stakeholders recommendations. In that endeavour, the need for the stakeholders to comply to international trade legislation, especially in this respect, the Technical Barriers to Trade Agreement of the WTO, will be taken into consideration.

3.6 Livestock Legislation

Compared to the crop sector the livestock sector is still raging behind in terms of legislation reforms to adhere to the TBT agreement. The main reason has been that Tanzania came late in livestock products trade⁴⁷. However, since 2001 the government has been reviewing and putting in place legislation with an aim of making livestock products trade possible.

Veterinary services

In order to regulate the veterinary professional in 2003 the government enacted the Veterinary Surgeons Act.⁴⁸ The Act provides for the registration of veterinaries, enrolment or enlistment of the paraprofessional and paraprofessional assistant veterinarians. It also establishes the Veterinary Council as a body cooperate to control and regulate the discipline and business of veterinary⁴⁹. The Act repeals

the Veterinary Surgeons Ordinance, 1958⁵⁰. The Council is charged with determining the minimum standard for veterinary and promotion of the veterinary profession⁵¹. Part V of the Act provides for registration of veterinary facilities. It requires every person owning veterinary facility to register the facility with the Council before its operation. Veterinary facility is described under Section 2 of the Act to include 'any established premises, structure, or ambulatory service where any animal is attended'. According to Section 38 (1), upon being registered, the registrant shall be issued with registration certificate. However, it seems from the interpretation of Subsection (2) of Section 38 that even after registration the holder shall not use the facility until he has obtained a valid operating permit issued by the same Council. The law is silent on the procedure to be followed in order to obtain operating permit for veterinary facility. The procedure is only on the application for registration as Veterinary and Veterinary Specialist and registration of veterinary facility. Further, in each application, the applicant is required to pay an application fee. But it is not stated in the law if there will be a fee for a permit for operating veterinary facility.

The Veterinary Surgeons Act is somehow similar to the pre-reform crop industry legislation, whereby there were payment for licence or permit fees and levies to finance the running of the legislation enforcing bodies. This, apart from encouraging rent seeking behaviours may act as barriers to doing veterinary surgeons services. The legislation therefore needs to be reviewed in terms of compliance to the TBT, WTO agreement.

The Dairy industry Act

The Dairy Industry Act⁵² was enacted in 2004. It provides for regulation of dairy production and promotion. It also

representatives from both public and private sector to included a representative of the private registered veterinary and a member from Tanzania Veterinary Association

⁵⁰ Cap. 376

⁵¹ Section 5

⁵² Act No. 8 of 2004

⁴⁶ Private coffee buyers later on expressed disagreement with this proposal. The Government is still seeking buyers' position.

⁴⁷ Tanzania is still in the list of countries with most important animal diseases, which under OIE and Codex Alimentarius rules could not be allowed to export animal products. However, with the Animal Diseases Act of 2003, the Government now could establish disease free zones, which can enable exports of animal products.

⁴⁸ Act No.16 of 2003

⁴⁹ According to Section 4 read together with the Schedule, the Council is composed with

establishes the Tanzania Dairy Industry Board. The Act repeals the Dairy Industry Act of 1965

The Act also establishes a council under section 4. The council is composed of the chairman who is appointed by the minister and other members from the government and non-governmental organizations as provided under section 5 of the Act.

The functions of the council are provided under section 7 of the Act that is,

- to promote the development of the sustainable dairy industry in Tanzania,
- to propose members of the board for the appointment by the Minister,
- to receive and scrutinize various reports from the board on issues concerning the dairy industry and matters arising from implementation and operation of the Act and,
- to carry out other functions as may be necessary.

The Act also establishes the Tanzania Dairy Board under section 8, which is composed of the Chairman who shall be appointed by the Minister, three members representing milk producers and other members from public and private sectors as provided under section 9.

Section 10 of the Act provides for the functions of the board which include:

- collaborating with the Tanzania Food, Drugs and Cosmetics Authority (TFDA) in inspection of Dairy facilities such as dairy farms, Plants, Kiosks and other similar facilities,
- liaise with Tanzania Food Drugs and Cosmetics Authority (TFDA) on licensing,
- register reproducers and processors of Dairy and Dairy products.

The Act provides for registration requirement under section 17 whereby the following dealers are required to be registered annually:

- (a) milk producer processor or marketing agents;
- (b) milk or milk products importers or exporters;
- (c) dairy inputs suppliers, manufacturers or importers; and
- (d) milk retailers.

Like the Veterinary Surgeons Act, the Dairy Act imposes licence or permit fees and levies to finance the running of the legislation enforcement, which may encourage rent seeking behaviours and also act as barriers to dairy business. Furthermore, apart from establishing the Council, Dairy Board and Registrar of milk and milk dealers, the law does not provide any institutional framework for ensuring effective compliance to standards and hygiene matters by the registered dealers. As opposed to the Animal Disease Act which provides for appointment of inspectors, the Dairy Industry Act is silent on the need for compliance. The Act only empowers the Minister to make regulations⁵³ which among other things, will provide for the inspection, sampling, grading of milk and duties of the inspectors, graders, sampling officers and analysts. The Act therefore needs to be reviewed in terms of compliance to the TBT, WTO agreement.

Hides and Skin Trade Act of No. 68 1963⁵⁴

The Act restricts preparation, grading or storing any hides or skins in any premises for purposes of trade or export except with a valid license issued by the Director of Development Division of the Ministry of Agriculture in case of export business or licensing authority in case of non-export trade⁵⁵.

The Act imposes the following types of licences which have to be issued separately after appropriate fees being paid:

- Hides premises licences;
- Hides and skin dresser's licence
- Hides and skin grader's licence

⁵³ Section 32

⁵⁴ CAP. 120 of the Revised Edition of the law of Tanzania

⁵⁵ Sections 3 to 6 of the Act.

Although the restrictions imposed by law do not apply to a farmer or graziers or butcher who prepare hide or skin of an animal or carcass acquired by him in the course of his occupation, the requirements for paying fees hinders hides and skins trade. It needs to be reviewed in the light of the review which is taking place in the crop sector legislation..

3.7 Implementation of Agricultural Laws at the Local Government Level

Local governments do perform an important role in the governance structure. The performance of the local government activities has great impacts on the agricultural development. There are basic pieces of legislation govern local government activities, namely the Local government (District Authorities) Act, 1982;⁵⁶ Local Government (Urban Authorities) Act, 1982;⁵⁷ and Local Government Finances Act, 1982⁵⁸. These legislation was revised in 1999 to incorporate local government reforms⁵⁹.

The Local Government (District Authorities) Act, 1982

According to this legislation, the basic functions of a local government authority⁶⁰ include the promotion of social welfare and economic well being of all persons within its area of jurisdiction and furtherance of social and economic development subject to national policy and plans.⁶¹ So as to better execute its functions, a local government has legal powers to "take all such measures as in its opinion are necessary, desirable, conducive or expedient" for, among other things, the control and improvement of agriculture, trade, commerce and industry.⁶² The Act empowers the Minister to make regulations for the purposes of ensuring the better performance of the general functions

of the local government authorities⁶³ and such authorities shall be duty-bound to exercise the powers and discharge the duties conferred or imposed by the regulations to the "best of (their) ability and resources".⁶⁴

The functions which a district council may perform are set out in the First Schedule vide Section 118(4) and they include provision of services for the improvement of agriculture;⁶⁵ establishment, provision, maintenance and control of public water supplies and imposition of water rates;⁶⁶ and prevention of water pollution in any river, stream, watercourse, well or other water supply and to this end to prohibit, regulate or control the use of such water supply.⁶⁷

Functions to be performed by township authorities are provided for in the Second Schedule by virtue of Section 139(1). These include taking measures for the conservation of natural resources and the prevention of soil erosion, including the prohibition and control of cultivation.⁶⁸ The functions also extend to provision and maintenance of supplies of water and for the purpose to establish and maintain waterworks and water mains⁶⁹ and the taking and requiring to be taken measures for the conservation and the prevention of the pollution of the supplies of water.⁷⁰

Among the powers which have been conferred upon the district councils and which is of interest to this project is the power to prescribe steps to be taken by an occupier "of any agricultural and for the purposes of maintaining and improving its productivity and preserving the fertility of the soil"⁷¹ and the power to charge fees for any service or facility provided by the council under the Act.⁷² A township authority also

⁵⁶ Act No. 7 of 1982

⁵⁷ Act No. 8 of 1982

⁵⁸ Act No. 9 of 1982

⁵⁹ See the Local Government Reform Paper of 1998.

⁶⁰ "Local government authority" is defined as "a district authority or an urban authority" under Section 3(1) of the Act.

⁶¹ Section 111(1)(a) and (c)

⁶² Section 111(2)(b)

⁶³ Section 112(1)

⁶⁴ Section 112(3)

⁶⁵ Clause 1

⁶⁶ Clause 90

⁶⁷ Clause 91

⁶⁸ Clause 6

⁶⁹ Clause 42

⁷⁰ Clause 43

⁷¹ Section 118(2)(e)

⁷² Section 118(2)(cc)

has powers to charge fees for like reasons as stipulated in Section 138(1). The general legislative powers of the local governments are provided for in Part VI of the Act. Covered under the party are the powers of the district, township and village councils to legislate.

Local Government (Urban Authorities) Act, 1982⁷³

This Act was enacted to make better provision for the establishment of urban authorities for the purposes of local government and the provision of the functions of the authorities and other matters related thereto. Under the Act, local government authority is defined as " a district authority or an urban authority" .⁷⁴ An urban authority means a town council, a municipal council or a city council.⁷⁵

The basic functions of the local government authorities as provided for under the Act⁷⁶ do not differ from those provided for in the Local Government (District Authorities) Act, 1982.

As for duties, the urban authorities are duty-bound by the law, among other things, " to take and require the taking of measures for conservation of natural resources, the prevention of soil erosion and the prohibition and control of agriculture" .⁷⁷ Other duties as specified in the Schedule by virtue of Section 55(2) include establishment, provision, maintenance and control of public water supplies and imposition of water rates;⁷⁸ prevention of water in any river, stream, watercourse, well or other water supply in the area, and to this end, to prohibit, regulate or control the use of such water supply;⁷⁹ and the regulation or prohibition of sinking wells and provision for the closing of wells.⁸⁰ The authorities are also empowered to charge fees for services

or facilities provided by them or for any licence or permit issued.⁸¹

Legislative powers of the authorities fall under Part VI of the Act. The legislative authority on " all matters and things" within the jurisdiction of the urban authority are delegated to such authority and will have to be exercised in accordance with Part VI and subject to the provisions of any written law relevant to the matter or thing.⁸²

Local governments on their part also have legal powers to control construction of waterworks and prevention of water waste, etc. They are also responsible for improvement of agriculture; establishment, provision and control of public water supplies and imposition of water rates as far as water use is concerned. Furthermore, the law empowers the local authorities to control cultivation.

3.8 Agricultural Trade (Restriction) Laws

As described above we use 'Agricultural Trade Restriction Laws' to refer to laws that are designed to assist avoidance or minimization of socially undesirable consequences, when dealing in or practicing agricultural trade, such as environmental or health hazards to plants, animals, humans and the environment at large. These kinds of legislation include laws relating to Plant Protection, Animal Diseases Control, Seeds and other inputs and Humans and Animal Drugs.

3.9 Level of Compliance of Tanzanian Agricultural Trade Laws to the WTO SPS Agreement

The Sanitary and Phytosanitary Agreement (SPS) allows members to take scientifically based measures to protect public health. The agreement commits members to base these measures on internationally established guidelines and risk assessment procedures. In the case of particularly stringent measures, countries must present scientific justification. When existing

⁷³ Act No. 8 of 1982

⁷⁴ Section 3(1)

⁷⁵ Ibid.

⁷⁶ Section 54(1)

⁷⁷ Section 55(1)(b)

⁷⁸ Clause 90

⁷⁹ Clause 91

⁸⁰ Clause 92

⁸¹ Section 66(1)

⁸² Section 79.

scientific evidence is insufficient to determine risk, members may adopt measures on the basis of available information, but must obtain additional information to objectively ground their assessment of risk within a reasonable period of time. Generally speaking, the SPS Agreement is a compromise that permits countries to take measures to protect public health within their borders so long as they do so in a manner that restricts trade as little as possible.

The SPS agreement adopts the International Plant Protection Convention (IPPC), the Codex Alimentarius (the Codex) and OIE guidelines and standards as the internationally acceptable requirements or standards for purposes of enforcing the SPS agreement on plant, human and animal health respectively. This implies that if countries have to take part in setting standards, which they will be compelled to apply through the SPS agreement, they must be members of the subsequent organizations or conventions monitoring the implementation of the IPPC, Codex and OIE.

Developing countries, and especially the least-developed countries, face important challenges in the implementation of such a technical agreement as the SPS Agreement. At the same time, since agricultural exports are of critical importance for many of these countries, the SPS Agreement can be a useful tool they can use against trade barriers imposed by their trading partners. It is thus necessary that developing countries be able to implement this Agreement, not only to be in compliance with their obligations, but also to take advantage of their rights.

Furthermore, the SPS Agreement contains provisions on technical assistance and special and differential treatment to help developing and least-developed countries implement and take advantage of the Agreement.

3.10 Crop Sector Laws and SPS

The Plant Protection Act, 1997 (PPA)

Because of being an agricultural based country, Tanzania exports substantial amount of agricultural products, which it has an obligation of assuring their safety. It also imports a good amount of agricultural based products. Such importations are associated with high risks of introduction of exotic pests including weeds, insects, mites, bacteria, fungi, nematodes and viruses that can threaten the country's agriculture and biodiversity. The risk of pest introduction in Tanzania has increased dramatically with the current initiatives of trade liberalization and globalization, which has resulted into increased movement of people and goods.

To implement the new policy of trade liberalizations as well as preventing introduction of new plant pests the Plant Protection Act was enacted in 1997. The Act repeals the outdated Plant Protection Ordinance (Cap. 133, of 1937) and Locust Ordinance, which had remained in the same form and content since it was passed in 1937 and some parts in the Tropical Pesticides Research Institute Act of 1979 were also repealed to harmonize the two legislation and implementation frameworks so as to bring the implementation of plant protection services under one command (Ministry), which would have eventually led to the establishment of the National Plant Protection Organization. The objective of the Act was to consolidate the Plant Protection Act into one effect legislation capable of preventing introduction and spread of harmful organisms, to ensure sustainable plant and environmental protection, to control the importation and use of plant protection substances, to regulate export and imports of plants and plant products and ensure the fulfillment of international commitments. Thus, the Act provides legal responsibility to institutions and persons implementing duties related with plant protection in the country. Further, in order to comply with international requirements in 2004 Tanzania acceded to the International Plant Protection Convention.

The implementation of the Plant Protection Act is under the Ministry of Agriculture through the Plant Health Inspectorate Services Section. The Minister of Agriculture is empowered under the Act to appoint and designate Inspectors for the enforcement of the Act and the research institution, which is responsible for conduction laboratory and field tests of what are termed as plant protection substances. The institution also is mandated with operating a post entry plant quarantine station and advising the Plant Health Services Section on all technical matters. Through powers entrusted to the Minister a number of inspectors have been appointed. They are responsible with conducting inspections at points of entry in the countryside. Some Officers responsible for agriculture in District authorities also have been appointed as plant protection inspectors.

The Act combines the control of pest and diseases and means of their control (pesticides and biological control agents⁸³) under one piece of legislation. Although there is a growing relationship between plant diseases and substances used to control them, this kind of integration has been one of the areas under criticism, especially by those who believe in the traditional approach of having separate legislation on pesticides and plant quarantine. However, with the growing use of biological control methods, plant health improvers and genetic engineering on one side and growing concerns on use of pesticides⁸⁴, a comprehensive approach of looking at plant protection legislation for purposes of facilitating agricultural trade cannot be avoided.

According to the Plant Protection Regulations of 1999 the legislation is implemented through Plant Health Services Section of the Ministry of Agriculture, Food Security and Cooperatives, which is a secretariat of the National Plant Protection

Advisory Committee (NPPAC). The NPPAC is standing committee established under the Act, with members drawn from relevant public as well as private institutions dealing with plant protection issues. The NPPAC is assisted by different sub-committees which are assigned with different technical disciplines or parts of the Act such as: pesticides, biological control agents, outbreak pests and plant quarantine. The sub-committees are supposed to work closely with the research institute (the Tropical Pesticides Research Institute – TPRI) in dealing with technical matters before advising the NPPAC to make final decision.

The Tropical Pesticides Research Institute Act, 1979 (TPRI Act)

The TPRI Act⁸⁵ was enacted in 1979 at the wake of the break up of the East African Community to take over the responsibilities of tropical pesticides research and control, which were previously responsibilities under the defunct EAC. The functions of the institute as stipulated under section 4 of the Act included the following:

- (a) to carry out, and promote the carrying out, or research, and to evaluate and disseminate the findings on the fundamental aspects of pesticides application and behaviour in relation to the control of tropical pests by both ground and aerial spraying techniques in the field of agricultural entomology, plant pathology, bird pests, rodents, tsetse entomology, mosquito entomology, malacology, ticks, pesticides toxicology, chemistry, physics, engineering, botany, environmental pollution and photographic services;
- (b) to establish and maintain a National Herbarium to render services to other institutions in the United Republic of Tanzania and to carry out taxonomic research;

⁸³ Termed as “plant protection substances” in the legislation

⁸⁴ Consider for example, growing standard requirements for determining maximum residues levels, traceability, etc.

⁸⁵ Act No. 18 of 1979

- (c) to establish a plant quarantine station to handle all phytosanitary matters in the United Republic⁸⁶;
- (d) to carry out the functions within its jurisdiction as may be conferred upon it under this Act or any other written law.

The Tropical Pesticides Research Institute (TPRI) became operational in the mid-1940s working on the application of synthetic insecticides that were being introduced into the market. TPRI has served under the colonial government, the East Africa Common Services Organisation, the East African Community and the Government of the United Republic of Tanzania. TPRI's research and services activities cut across all sectors. Thus over the years the Institute has developed and introduced a number of interventions for control of crop pests and vectors of human and livestock diseases. Also the Institute has addressed pesticide-related problems as they emerged, particularly in areas of the effects of pesticides on the environment including water and soil, health (toxicology), food and feeds. The Institute has expanded its activities to include pest biology and ecology, biological diversity, plants and insect taxonomy, inventory and conservation of plant genetic resources, and genetically modified plants.

TPRI undertakes pesticides testing and certification services which lead to registration of pesticides. The view is that TPRI alone has the expertise for all aspects of pesticide work and it has been suggested that a new law should give TPRI the mandate for pesticide management and regulation. At the moment, a number of organisations have some degree of interest and responsibility in this area. For example, at the moment, The National Environment Council, as an apex organisation, sets policy on pesticides monitoring, and in the

Environmental Management Act, 2004 no one organisation is identified as having the sole mandate for pesticides. Further, TFDA has a responsibility to ensure that food is free from contaminants, including pesticides and likewise for the Fisheries Department.

The purpose of pesticides testing and certification services is to provide for the proper, safe and efficient use of pesticides that are needed for the control of crop pests and vectors of human and animal diseases. These include quality assurance of pesticide products and an inspectorate to ensure compliance with pesticide laws and regulations. The Registrar of Pesticides⁸⁷ is the Designated National Authority (DNA) for Prior Informed Consent (PIC) on pesticides and a member of the FAO Experts Committee on Pesticide Management. The Registrar uses scientific research and testing results provided by TPR to decide whether to register or to reject the application. The process of registration follows a number of steps:

1. A registrant has to bring material for registration (in three samples of the same size) accompanied by a dossier containing information about the manufacture, properties (chemical and physical), how it behaves in the environment, and affects humans and other organisms to the Registrar. The Registrar then sends one sample of material to TPRI for testing and analysis. The analysis by TPRI includes the following:

- (a) Testing of the product in the field to determine efficacy.
- (b) Verification of the formulation through laboratory analysis.
- (c) Production of a report of the results from (a) and (b) above and sent to the Registrar.

2. The Registrar then sends the report to the Pesticides Approval and Registration Technical Committee, which is established under the Plant Protection Regulations as a Sub-committee of the National Plant Protection Committee for consideration.

⁸⁶ This function is the one that connects TPRI with the provision of plant quarantine services. However, this provision was amended through the PPA, 1997, in which case the station is to be construed as "the post entry quarantine station" that performs plant quarantine, investigation, research and coordination pursuant to section 32(2)(b) of the PPA.

⁸⁷ Who is appointed under the PPA.

The Committee then recommends the product for full or provisional registration.

3. The Documents are then presented before the NPPAC for final approval.

The PARTC committee is supposed to meet every three months but *ad hoc* meetings can be called. The committee contains members with specialist expertise who have to read and understand the dossiers. The cost of registration is US \$ 1,000 and lasts for 5 years. Provisional registration (given if dossier of information is not complete) lasts for 2 years and costs \$ US 1,500. In addition, the product formulation has to be confirmed by analysis which TPRI also undertakes for a fee of \$ US 150⁸⁸.

The registration is gazetted and should be put on the MAFC website. Information, in an electronic format, is available from the Registrar. Farmers can also ask TPRI for the list of registered chemicals. However, a list of banned chemicals does not exist. TPRI monitors the imports of pesticides, issuing the permits for importation of every consignment. They register, and keep a list of, the importers and retailers of agrochemicals.

Collection of residue data is not part of the registration process at the moment, but should be and this will be done when the new analytical equipment is commissioned in the Pesticide Residue Laboratory, which will contain a residue unit for food and crops, an environmental pollution unit for soil, water and sediment, and a toxicological unit. As part of the upgrading and investment in laboratory services, TPRI is part of the accreditation programme being undertaken by SANAS – documents have been prepared and funding made available for equipment and a task force for accreditation convened.

A number of candidate alternative and relatively safe pesticides (bio-pesticides) are increasingly being evaluated and used. Research and regulatory efforts are directed to include such products in the registration scheme. Data from other countries could be used for the off-label registration process involving the same family of crops instead of undertaking full field trials and only monitoring for one season would be required. However, no pesticides have been registered to-date in this way despite requests from the industry.

Importation of non-registered pesticides is allowed for use on specific and minor crops e.g. flowers, from Kenya where the pesticides are already used. However, approvals have to be sought under the PPA institutional framework.

Although pesticide monitoring does not yet take place, TPRI has a plan to do this for coffee and tea. There is need to develop Tanzania's own national MRLs, using CODEX as a starting point. Although suggestions have been made that this could be undertaken through a regional approach, there is a perception that this would not work since it would take too long. Currently, among harmonised documents that are prepared by EAC includes those related to MRL which is coordinated by TPRI. Within the East African Region, it has been agreed that TPRI shall be among accredited laboratories for implementation of various documents for the EAC on harmonised standards for food and agricultural products including those relating to SPS.

In general, pesticide management practices in Tanzania are constrained by inadequate legislation, training and funds. Pesticide use is monitored by TPRI, but only on large farms cultivating produce for export. However, there is a growing public awareness of the health implications of pesticides. This provides an opportunity to strengthen legislation and educate the public on safe use and handling of pesticides for attaining self regulation.

⁸⁸ There have been complaints that the registration cost is very high as compared to the one applied by neighbouring countries. It is therefore under review together with revision of the PPA and TPRI Act. See for example, the DTIS, (2005) at pg. 87

Post Entry Plant Quarantine Services (PEPQS)

TPRI provides Post entry Plant Quarantine Services on behalf of the Government of Tanzania to prevent movement of quarantine pests in and outside the country. This requirement conforms to the International Plant Protection Conventions (IPPC), and PEPQS has been instrumental in facilitating export of crops and import of agricultural produce and germplasm.

The PEPQS enforces safe movements of plant and plant products to prevent introduction and spread of quarantine pests globally through import and export control.

The importation of plants and plant products is conducted according to the Plant Protection Regulations 1999 and Pest Risk Analysis processes. The import control procedures therefore include:

- Issuance of a Plant Import Permit which states import conditions;
- Screening of high risk plants and plant products for quarantine pests in the laboratory, greenhouse and open quarantine;
- Release or destruction of commodities depending on the results obtained.

The agro-export commodities are certified in accordance with the requirements of the importing country as obligated by International export control procedures which includes:-

- Issuance of a Phytosanitary certificate international model or its equivalent which complies with the importing country's requirements.
- Inspection of commodities prior shipment.
- Field inspections as monitoring processes.
- Laboratory and green house screening for detection of quarantine pests.

TPRI, as an Agency of MAFC, is the post-entry quarantine station and undertakes all phytosanitary activities as specified in the

Plant Protection Act 1997 which came into force in 2001.

Under section 32 of the PPA TPRI has the mandate to screen plant materials, for export and import, before export and import, respectively. There are three categories:

1. Low risk materials which are inspected and given a phytosanitary certificate and permit for exit or entry.
2. High risk materials, e.g. banana and tea planting material, which must be screened at TPRI before release to the importers. When notification of import of these materials is received by PHS, they call for a TPRI inspector who inspects, collects and screens the material at TPRI and then approves the release if phytosanitary criteria are satisfied.
3. Prohibited material which must be returned or destroyed.

All trained and gazetted plant inspectors (both TPRI and PHS) can issue phytosanitary certificates but only Head, PEPQS at TPRI and PHS can issue import permits after conducting PRA.

TPRI also undertake PRAs and conduct closed or open quarantine trials for high risk plants for the importers. The services are charged according to the PPA Regulations. although this needs regular review to keep pace with increasing costs.

In support of their inspection and other activities there is a need for improved data electronic systems for data collection and management; only two PCs are available which are used mostly for administrative purposes. There is a need to procure two PCs for PRA only. In addition to the need for IT equipment and supporting infrastructure, staff require training support to upgrade their skills in line with new international SPS requirements.

EUREPGAP and Organic Certification

High quality products are an important element in international market access. The

TPRI has identified the demand for undertaking Quality and Standard Assurance of agricultural produce e.g. EUREPGAP as a way to help farmers export their products.

One of the areas that they have begun with is in accreditation and certification of organic agriculture as an alternative to the excessive use of agri-inputs, and the introduction of modern biotechnology. There is a tremendous interest in and demand for knowledge and technical support by the producers and exporters in Tanzania in order for the farmers to meet the emerging TRIPS, GAP issues, and international requirements. TPRI has therefore embarked in:

- certification of organic products for both domestic and export markets;
- accreditation of organic farms;
- promotion and marketing of organo-products.

TPRI is planning to perform the certification process in collaboration with several International Certifiers e.g. ECOCERT, LACON, BIOLAND, Soil Association, etc. PEPQS will develop the certification standards using the international procedures for International Federation of Organic Agriculture Movements (IFOAM). The International Standards for Organic Agriculture are approved by International and legal authorities such as Codex Alimentarius Commission.

It should be noted that there are also a number of foreign companies that have started inspection and certification activities in Tanzania with their own inspectors from abroad and with the costs being borne by farmers. Currently there are five foreign certification bodies in the country: IMO of Switzerland, Naturland of Germany, SACert of UK, EcoCert of France/Germany and Bio inspecta. TanCert, the first local organic certification body, was established in 2004 (Anon., 2006).

TBS has developed a national standard, in the absence of legislation, to provide a

national framework to serve as guidelines on standards for the production, processing, marketing, and labelling of organically produced foods.

National Herbarium of Tanzania

TPRI's programme on plant biological diversity includes research and services on taxonomy, preservation, and conservation of herbarium materials. Work undertaken includes collection and inventory of plant specimens and related data on vegetation from various natural eco-systems. In the process, training of taxonomists and para-taxonomists has been undertaken so as to increase capacity for taxonomy and inventory keeping.

Pest Biology and Ecology

TPRI undertakes studies of pest biology and ecology to generate the necessary information that enables formulation of packages for sustainable pest and vector management. Understanding of pest biology and ecology has been useful in:

- i. developing selective methods of application of pesticides resulting in improving effectiveness, safety, efficiency and reducing adverse effects to the environment;
- ii. developing alternative control methods including biological control, bio-pesticides, traps for pest control, improved cultural practices and development of integrated pest management (IPM) packages.

The Environmental Management Act, 2004 (EMA)

The Environmental Management Act was passed in 2004. It is an Act generally aimed at putting in place a regulatory mechanism for all environmental matters, including the agricultural related matters. According to the Act the term "environment" includes the "*physical factors of the surroundings of human beings, including air, land, water, climate, sound, light, odour, taste, micro-organism, the biological factors of animals and plants, cultural resources and the social*

economic factor of aesthetics and includes both natural and the built environment and the way they interact". Section 6 of the Act creates a duty to every person living in Tanzania to safeguard and enhance the environment and to inform the relevant authority of any activity and phenomenon that may affect the environment significantly. The Act, under section 9 requires all persons exercising powers under "any other written law having bearing on the management of the environment" to strive to promote and have regard to the Environmental Management Policy.

The Act is enforced through the National Environmental Advisory Committee, which is chaired by the Permanent Secretary of the Ministry responsible for Environment, with members drawn from all government ministries and departments, which in one way or another deal with environmental matters⁸⁹.

The Act also established a regulatory authority, namely the National Environment Management Council, mandated, *inter alia* carry out environmental audit, review and approve environmental assessment, undertake research and ensure compliance with national environmental quality standards⁹⁰.

Under section 69 the EMA provides for a general provision on Genetically Modified Organisms as follows:

*"Without prejudice to any law governing biosafety and biotechnology, any person who develops, handles, uses, imports or exports genetically modified organisms (GMO) and, or their products, shall be under the general obligation to ensure that such organisms do not harm, cause injury or loss to the environment and human health including socio-economic, cultural and ethical concerns"*⁹¹.

Section 67 of the Environmental Management Act (No 20 of 2004) provides powers to regulate for conservation and protection of biodiversity. Items (g) and (h) cover the risks of genetically modified organisms (GMOs) and alien species respectively. The guiding principle in s.69 is that these organisms should not cause harm.

Most GMOs being considered for risks of environmental effects at the moment are plants and a plant that could cause harm to other plants, habitats or biodiversity is a pest. Alien plant species which are potentially invasive or 'weeds' in the agricultural sense are also pests. By agreement between the Secretariats of the IPPC and the Convention on Biological Diversity, risk analysis for these plants has been incorporated into the international framework or guidelines for pest risk analysis (International Standards for Phytosanitary Measures, ISPMs). The principle behind this cooperation is to provide a single framework for risk analysis of pests of plants and 'environmental pests'. This is designed among other things to avoid duplication of efforts.

Importantly, it should only be necessary for Import Permits to be applied for once for a plant, whether it be a crop variety (under PPA 1997), a forest species/ornamental (under EMA 2004) and risk analysis should only be done once. If the Environmental Management Agency (EMA) is agreed to be the authority for risk analysis of GMOs and alien species, then provision in a new PPA should concede authority to the EMA and not duplicate risk analysis. This is not to say that experts on 'agricultural pests' and 'environmental pests' cannot collaborate on a given risk analysis. It means that regulations on risk assessment under the EMA 2004 (the responsibility of the National Environmental Management Council) should be based on the ISPMs where appropriate.

⁸⁹ The Director Crop Development is the Ministry of Agriculture representative in the Committee.

⁹⁰ See section 18 of the Act.

⁹¹ Critics have may question whether cultural and ethical concerns are part of the definition of "environment" and how one may prove harm or injury, especially after paying due regard to sub section (2) of

the section, which defines "harm, injury or loss" to "include personal injury, damage to property, financial loss, and damage to environment or to biological diversity".

Institutional Framework with regard to enforcement of EMA by Sector Ministries

Section 30(1) of the EMA requires every sector ministry to establish what is referred to as "sector environmental section", which among other things shall ensure compliance by the sector Ministry with the requirements of the EMA. Subsection (2) of the section allows "every sector Ministry [to] carry out its functions and duties in connection with the environment as prescribed in any other law, provided that such law does not conflict with the provisions of this Act [EMA]"

The current institutional framework for GMO matters at the National level is that as far as general biotechnology development is concerned, a National Biotechnology Advisory Committee (NBAC) which is under the Ministry of Science, Technology and Higher Education (MSTHE) was established in 2003 to deal with general biotechnology issues. As far as Biosafety matters are concerned the National Biosafety Committee (NBC), was established under the VPO to implement EMA. The committee consists of representatives from relevant ministries and stakeholders. The NBAC has developed a draft National Biotechnology Policy which is in the approval processes.

In order to link with the above mentioned National Committees, the Ministry of Agriculture and Food Security (MAFC) has established a Ministerial Agricultural Biosafety Advisory Committee (ABSAC) which processes applications for introduction and development of GM plants and agricultural products in Tanzania. The focal point for agricultural Biosafety and the secretariat of ABSAC is at TPRI. The ABSAC makes recommendations to the NBAC and NBC for approval of products intended to be released for commercial purposes.

The Plant Biosafety Inspectors at TPRI are regularly trained and are provided with the Inspection manual document together with the Confined Field Trial Directive (CFTD-Schedule 18) and Standard Operating Procedures (SOPs) for use routinely when conducting a confined field trial. The Plant

Biosafety Inspectors are also phytosanitary inspectors.

However, although, TPRI is responsible for management of plant GMOs, at the moment there is no laboratory or equipment for GMO analysis work. Contained greenhouses and laboratories are being sought but resources are limited for this necessary infrastructure. Moreover, its mandates have to be regularized with the amendment of the PPA and TPRI Act as noted above.

3.11 Review of the IPPC related Legislation

After five years of its operation a number of reviews have been conducted on the legislation implementation and its effectiveness, particularly with a view of making it SPS agreement and IPPC compliant.

In summary the following areas have been recommended to be addressed in the forthcoming PPA legislation amendments as a priority:

WEAKNESSES	ACTIONS
<ul style="list-style-type: none"> Limited capital investment in training, human resource, and operational funds 	<ul style="list-style-type: none"> To develop a legal mechanism whereby PHS retains 100 percent of the revenue. Identify other means of generating revenue. To propose the creation of an autonomous or semi-autonomous agency (TAPHIS) for phytosanitary matters.
<ul style="list-style-type: none"> Lack of policy direction and coordination between the Regulatory Authority and the stakeholders. 	<ul style="list-style-type: none"> To conduct a sensitization and awareness meeting with stakeholders and policy makers to chart out a strategy for improvement of the PHS
<ul style="list-style-type: none"> There is duplication of key Phytosanitary functions (e.g. issuance of import permits) between TPRI and PHS. 	<ul style="list-style-type: none"> To clarify roles and functions of each institution and develop operational guidelines
<ul style="list-style-type: none"> The national plant protection organization is not clearly stipulated in the national legislation. 	<ul style="list-style-type: none"> To amend or review the Act to specify the PHS as the NPPO for Tanzania in accordance with the IPPC
<ul style="list-style-type: none"> Lack of an international, regional, and national coordination and liaison mechanism within the PHS. 	<ul style="list-style-type: none"> To designate a focal point within the PHS for Phytosanitary matters.
<ul style="list-style-type: none"> Enacted before Tanzania was a member of the IPPC 	<ul style="list-style-type: none"> Update legislation to fully comply with the IPPC
<ul style="list-style-type: none"> Lacking provisions for key areas in particular: <ul style="list-style-type: none"> 1. monitoring and surveillance 2. Pest risk analysis 3. Pest free areas and areas of low pest prevalence 4. Powers of inspectors with regard to Phytosanitary certification 	<ul style="list-style-type: none"> Update the Act according.
<ul style="list-style-type: none"> Cost recovery mechanism not enforced in practice. 	<ul style="list-style-type: none"> To develop a legal mechanism whereby PHS retains 100 percent of the revenue.
<ul style="list-style-type: none"> The national plant protection organization is not clearly stipulated in the national legislation. 	<ul style="list-style-type: none"> To amend or review the Act to specify the PHS as the NPPO for Tanzania in accordance with the IPPC.
<ul style="list-style-type: none"> Lack of harmonized legal instruments for IPPC compliance between Zanzibar and the mainland 	<ul style="list-style-type: none"> To conduct a joint revision of legal instruments to update for compliance with IPPC and WTO-SPS.
<ul style="list-style-type: none"> There is a lack of inventory of staff capacity with respect to pest eradication procedures 	<ul style="list-style-type: none"> Develop an inventory of staff capacity for eradication procedures
<ul style="list-style-type: none"> Lack of national standards and procedures for pest eradication 	<ul style="list-style-type: none"> To develop national standards and procedures.
<ul style="list-style-type: none"> No fixed emergency funds for eradication programmes 	<ul style="list-style-type: none"> To provide a legal obligation for the establishment of a Plant Pest Eradication Fund. To explore other mechanisms with stakeholders for generating funds for emergency pest management
<ul style="list-style-type: none"> Lack of a formal eradication Programme for quarantine pests 	<ul style="list-style-type: none"> To analyze and review the institutional arrangement of the PHS to address this need
<ul style="list-style-type: none"> Pest eradication is not clearly specified in the Act – focus is made on management of pests 	<ul style="list-style-type: none"> Update legislation accordingly
<ul style="list-style-type: none"> Inadequate resources: Technical Expertise and means of transport to adequately establish and maintain PFAs 	<ul style="list-style-type: none"> To build capacity in the development and management of Pest Free areas. Training in the administration of processes

WEAKNESSES	ACTIONS
	relating to the establishment and maintenance of PFAs. To explore ways to finance or generate funds for these activities.
<ul style="list-style-type: none"> • Lack of legal framework for declaring and maintaining PFAs. 	<ul style="list-style-type: none"> • Review and amend current legislation to allow for establishment and declaration of PFAs.
<ul style="list-style-type: none"> • Lack of operational manuals and other documented procedures. 	<ul style="list-style-type: none"> • To develop manuals as appropriate.
<ul style="list-style-type: none"> • Inconsistent documentation processes 	<ul style="list-style-type: none"> • Develop capacity for information management with respect to the establishment and maintenance of PFAs
<ul style="list-style-type: none"> • There is a lack of a coherent diagnostic service for plant pest diagnosis for stakeholders within the PHS 	<ul style="list-style-type: none"> • Develop an inventory of laboratory diagnostic services nationwide that also includes an inventory of national capacity. • Develop and propose for implementation a plan for Plant Pest Diagnostic services to address the needs of the stakeholders. Identify a national coordinator/manager for PHS Plant Pest Diagnostics service.
<ul style="list-style-type: none"> • Most experts are generalists in pest diagnosis. 	<ul style="list-style-type: none"> • Provide specialized training.
<ul style="list-style-type: none"> • Lack of standards and documented procedures for laboratories. 	<ul style="list-style-type: none"> • To develop appropriate standards as required.
<ul style="list-style-type: none"> • Existing reporting system is informal 	<ul style="list-style-type: none"> • Strengthen the reporting structure by adopting appropriate reporting formats in line with international standards. • Computerize as much as possible the reporting formats and processes including more efficient use of the PHS website for information exchange with stakeholders.
<ul style="list-style-type: none"> • Lack of designated liaison unit within PHS for information exchange and trade inquiries with trading partners and multilateral organizations such as the WTO and IPPC 	<ul style="list-style-type: none"> • To establish a liaison unit within the PHS with a coordinator. • Obtain training for coordinator and supporting staff.
<ul style="list-style-type: none"> • The legal framework is inadequate in reporting requirements. 	<ul style="list-style-type: none"> • Update legislation accordingly – establishment of data management unit, reporting obligations etc.
<ul style="list-style-type: none"> • Poor coordination and inadequate communication between PHS and stakeholders coupled with lack of appropriate reporting procedures resulting in a weakened PHS Pest Surveillance system. 	<ul style="list-style-type: none"> • To review (in collaboration with stakeholders) the institutional arrangements of the PHS to allow for the establishment of a Pest surveillance system, including a regular reporting mechanism and develop appropriate documented procedures for surveillance data management.
<ul style="list-style-type: none"> • Non existent document repository and data management unit for pest records and other surveillance data. 	<ul style="list-style-type: none"> • Establishment of a computerized reporting and information management system. • Establish a central repository unit for information management.
<ul style="list-style-type: none"> • No regular training program in place thereby field staff are not specifically trained in pest surveillance 	<ul style="list-style-type: none"> • Conduct tailor made courses to staff
<ul style="list-style-type: none"> • Lack of harmonized guidelines for pest surveillance among stakeholder institutions. 	<ul style="list-style-type: none"> • Review the existing collaborative Forum (NPPAC) with respect to its mandates for collaboration at the national level with the objective to direct and harmonize surveillance activities among stakeholder research institutions.

WEAKNESSES	ACTIONS
	<ul style="list-style-type: none"> Establish the relevant guidelines for harmonized surveillance and research including evaluation of collaborative activities.
<ul style="list-style-type: none"> Legislation does not specify PRA as a means of justifying Phytosanitary requirements 	<ul style="list-style-type: none"> Update legislation accordingly
<ul style="list-style-type: none"> A consolidated and updated pest list is not available for use by the informal PRA group 	<ul style="list-style-type: none"> Conduct an exercise to compile relevant information from every source in a format that meets compliance with international standards
<ul style="list-style-type: none"> PRAs are conducted but not fully documented because the PRA informal group members are multitasked and there is limited facilitation in terms of funding and logistical support. 	<ul style="list-style-type: none"> Revision of job descriptions to allow for enough time for team members to undertake PRA according to international standards. Source or solicit funds for facilitation and logistical support. (in addition to retention funds)
<ul style="list-style-type: none"> PHS not informed of the capacities and potential by research or educational institutions for conducting PRAs to international standards both quantitatively or qualitatively. PHS has inadequate tools available for carrying out PRAs. 	<ul style="list-style-type: none"> Conducting a needs assessment for determination of necessary tools for conducting PRA and identify the areas of cooperation/collaboration with research and educational institutions for facilitating PRA according to international standards
<ul style="list-style-type: none"> Inaction on the part of PHS to provide direction or guidance with respect to research on Phytosanitary measures by collaborating institutions 	<ul style="list-style-type: none"> Through the NPPAC forum, PHS, as the secretariat, should develop agendas on Phytosanitary measures that need to be addressed
<ul style="list-style-type: none"> Inadequate facilities and lack the resources for conducting inspections at points of entry. 	<ul style="list-style-type: none"> There are 5 importation points that should be reinforced with the necessary facilities and resources for inspection.
<ul style="list-style-type: none"> Lack of an accreditation scheme and quality control system for inspectors. 	<ul style="list-style-type: none"> To establish an accreditation scheme for inspectors. Establishment of an internal auditing scheme for inspectors. Provide "train the trainers" courses for inspectors.
<ul style="list-style-type: none"> Inadequate data collection and management system for inspection and general reporting including cases of non compliance. 	<ul style="list-style-type: none"> Establish a system of reporting and data management incorporating a computerized data collection and management information system. Provide training on data collection and management for inspection services. Establish procedures for reporting of non compliance through the International Liaison office of the PHS.
<ul style="list-style-type: none"> No official information exchange system (includes within and without – NPPO and stakeholders – and International stakeholders) within the NPPO 	<ul style="list-style-type: none"> The NPPO shall convene a meeting of stakeholders on a regular basis to discuss the issues they face on Phytosanitary matters. Updating of the KILIMO website with pertinent information for stakeholders. Establishment of an International Liaison on Phytosanitary matters.
<ul style="list-style-type: none"> Legislation is not fully compliant with the International trade agreements signed. 	<ul style="list-style-type: none"> To review the legislation to include quarantine seal and non liability from issuance of PHYTO and other aspects as required.
<ul style="list-style-type: none"> Documented procedures are not formal/ institutionalized. There is no system for traceability of consignments 	<ul style="list-style-type: none"> To prepare and institutionalize manuals and guidelines for all aspects of export certification and provide the relevant training.

WEAKNESSES	ACTIONS
through the production to commercialization chain.	
<ul style="list-style-type: none"> No computerized data management and retrieval system for export certification. No system for investigating cases of non-conformity of consignments 	<ul style="list-style-type: none"> Develop and institute a computerized data collection and management information system To build capacity in this area and to develop the relevant protocols and procedures associate thereto. Publication of quarantine pests; Clear provisions for dealing with internal pest problems and surveillance; Provision of clarity on authorised powers of inspectors; Regulatory items and requirements, including import permits, are based on accepted PRA procedures; Provision to create a framework for PRA as a basis for making decisions on phytosanitary requirements for imports; Publication of quarantine pest list; Recognition of the role of the EMA in dealing with GMOs; Updating of pesticide approval and registration procedures. Greater clarity on properly authorised/contracted duties for pest identification and analytical services with <i>exclusivity</i> and <i>control of information</i>;

3.12 Livestock Sector Laws and SPS

The Animal Diseases Control Act, 2003

In 2003 the government enacted the Animal Diseases Act⁹² the Act provides for prevention and control of animal diseases, monitoring production of animals, disposal of animal carcasses and other related matters. The Act repeals the Animal Diseases Ordinance.⁹³ It empowers the minister responsible for livestock, by a written instrument, to appoint for specific period veterinarians and paraprofessionals in the public service or in private practice to be inspectors for specific areas and for purposes of enforcing the Act⁹⁴. Powers of the inspectors under the Act include;

- to regulate the disposal of carcasses, animal produce, feed, litter, animal

waste and any other things associated with disease within the infected area⁹⁵.

- provide the manner in which the carcasses of animals dying from the disease shall forthwith be buried or disposed off;
- declare a buffer zone between an infected and uninfected areas;
- seize, destroy, bury or otherwise deal with any animal, animal product and waste.
- prohibit the use of the animal for the production or preparation of any milk product for the sale for a period as may be determined⁹⁶;
- order in writing measures to eliminate any risk associated with a notifiable disease;
- give directions with reference to the burial, destruction or disposal of the

⁹² Act No. 17 of 2003

⁹³ Cap. 156 of 1940

⁹⁴ Section 4

⁹⁵ Section 7 (2)

⁹⁶ Section 51(1)

- carcase, animal products and animal wastes associated with the animal;
• prohibit in any place the holding of any exhibition or movement of animals or animal products or animal wastes or the sale of any such products in open markets or in private yard or stile slaughter of livestock for food and the sale of meat or carcasses; etc

Section 15 (1) of the Act requires the owners of the animal who is affected or suspected of being affected or died of a disease or from any cause, other than disease, which is not apparent, to report the matter within twenty four hours, to the nearest veterinarian or paraprofessional. Where it is not reasonably possible for the report of the death of an animal to be received by an Inspector within twelve hours of such death, the owner shall:

(a) report the matter in writing to the local government authority in the area prior to burying or burning of the carcase⁹⁷;

(b) cause the intact carcass to be wholly burnt or buried within twenty four hours after its death at a depth of not less than two metres below the surface of the ground located at least 100 metres from wells or water sources and at least 100 metres from any residence or any animal facilities;

(c) report the matter to a veterinarian or paraprofessional after the burning or burying of the carcase⁹⁸.

Section 38(2) prevents any person, group of persons or company to keep or use premises for hatching an egg for sale of a chicken unless the person, group of persons or company holds a licence issued by the minister, while Section 43 restricts movement of an animal, animal products or animal wastes on foot or by use of a vehicle outside the inspectors' area of jurisdiction without a permit.

Section 46 (2) requires the director for veterinary for purposes of identification, to design register and regulate the manufacture, use and distribution of animal identification devices. Accordingly Section 46 (3) restricts any person intending to manufacture livestock identification devices not to make or sell or offer or expose for sale such devices unless the person receives a written permit from the director.

Section 50 (1) provides that no person shall test, register or use animal pesticides or animal chemicals for disease control in the country without a written permission of the director in respect of that particular animal pesticide or animal chemical. The law also restricts distribution, sale or offer or expose for sale any pesticide or chemicals which are not registered or which do not conform to requirements of the Act⁹⁹.

Furthermore the law restricts carrying out research or activities related to research on notifiable diseases without a permit from the director.

In addition, according to Section 59, no person shall import, export honey, bee and hive products or run, keep or maintain a bee keeping farm or enterprise for purposes of selling to other farmers without a permit from the director.

3.13 Review of the OIE related legislation

The Animal Diseases Act contains a number of restrictive provisions. For example, according to section 59 bee keeping would require a director's permit. This is in conflict with the Wildlife Act, 2002. The inspector also has been given wider powers which are not subject to question. Further, the Act is in conflict with the TPRI Act, with mandates TPRI to conduct research and analysis of all pesticides and chemicals, without necessarily asking to do so

The administration of the law is not stakeholders involving. The only implementers of the legislation are the minister, director, inspector and district

⁹⁷ Section 15(5) (a)

⁹⁸ Section 15(5)(b)

⁹⁹ Section 50(4)

veterinary officers. Though there are some provisions that require owners of animals to participate in implementing the law by reporting notifiable diseases or death of animals, there is no provision that provide an incentive which will make such owners aware of the diseases and may be assisted in control at their own level. By requiring the owners to report to the inspector or veterinary officer any disease or death of animal, the law has not considered the level of knowledge of most livestock keepers.

Section 50 (1) which restricts test, register or use animal pesticides or animal chemicals for disease control in the country without a written permission of the director for veterinary contradicts with the Tropical Pesticides Research Institute Act which provides powers to TPRI to undertake research of all kind of pesticides¹⁰⁰.

The capacity of the inspectors to conduct the inspection as required under the Act is highly doubted. Further, there is a need to consider empowerment of the livestock keepers in terms of knowledge on animal diseases control.

The Produce Export Act

The Produce Export Act¹⁰¹ of 1930 provides for the grading, inspection, regulation and preparation of produce to be exported from mainland Tanzania. The law defines produce or product to mean any article whatever produced or derived from farming or agricultural operation or stock- keeping which the minister for agriculture may from time to time declare to be produce for the purpose of the Act.

The Act restricts any importation of the produce or product regulated under the Act¹⁰² except through a port prescribed

under the rules made under the Act and unless such produce have been inspected or graded in the manner provided under the inspection rules¹⁰³.

The Act restricts also exportation of the product such as meat, milk and milk product that are not fit for human consumption or from premises. The Act empowers the commissioner for the time being responsible for agriculture or veterinary services to appoint inspectors for examining and grading produces.

Section 10 of the Act empowers the minister to make rules to provide, amongst other things:

- (a) designation of export;
- (b) the percentage of impurity and maximum amount of moisture contents for each produce;
- (c) the standard of composition and maximum percentage of moisture, salt, preservatives, or other substances in the milk or milk product;
- (d) inspection of animal and other products; etc

However, as it can be noted in the discussion above, there is inconsistent between the Produce Export Act and other law regulating products covered under the Act particularly, TFDA's Act, Dairy Industry Act, Coffee Industry Act etc.

The Kariakoo Market Corporation Act 1974

Kariakoo Markets is within the city of Dar es Salaam and it acts as central market for agricultural produces from various parts of Tanzania. It is unfortunate that establishment and operation of this market was sanctioned by the Act of Parliament titled " The Kariakoo Market Cooperation Act No. 36 of 1974"¹⁰⁴

The Act establishes a corporation as a legal entity to manage the market while guided by

¹⁰⁰ Pursuant to Section 4 (1) (a) - (c) .

¹⁰¹ Cap 137 of the Revised Edition of the Law of Tanzania.

¹⁰² The products mentioned in the Act include, agricultural produces, meat, milk and milk products. There are also about 41 products added through Orders made under Section 2 of the Act, include coffee, and coffee by- products, beeswax, bone meal, cashew nuts, cassava flours, rice, sunflowers maize etc.

¹⁰³ Sections 3,4 and 6

¹⁰⁴ The administrator of the Act is the Minister for the time being responsible for Local Government

the Board of Directors. Among powers provided to the corporation under the Act¹⁰⁵ is to make by-laws to regulate various functions including, providing for inspection of any produce or articles of food to be sold in the specified market.

The corporation made by-laws in 1976 to regulate its functions¹⁰⁶. However, some of the provisions in the by-laws are too restrictive and conflict with existing trade rules. For example, Section 4 of the by-laws requires every wholesale business in food crops within the Dar es Salaam region to be conducted in the specified market¹⁰⁷. The by-laws also empowers the corporation to issue permits and licenses to traders for conducting business and impose levy and other charges.

3.14 Food Hygiene Laws and SPS

Tanzania Food, Drugs and Cosmetics Act No.1 of 2003

This Act was enacted for the purposes of regulating food and other manufactured and or imported product products. The Act repeals the Food (Control of Quality) Act No. 10 of 1978 and the Pharmaceutical and Poisons Act No. 9 of 1978 (which established the Pharmacy Board) and establishes Tanzania Food and Drugs Authority as an executive agency for controlling the quality and safety of food, drugs, poisons and cosmetics, and regulating importation, manufacturing, labelling, marking storage, promotion and general distribution of the aforementioned products or commodities.

For example, sections 22, 31 and 36 of the Act restrict any dealing with the food or any product referred in the Act without permit or license of the Authority. It therefore follows that any person who intends to deal with

food products needs to have a permit from TFDA.

The institutional framework for the implementation of the Act does provide for the implementation at the local level.

The Institutional Framework for the enforcement of the Tanzania Food, Drugs and Cosmetics Act

The Tanzania Food and Drugs Authority (TFDA), is the regulatory body responsible for controlling the quality, safety and effectiveness of food, drugs, herbal drugs, cosmetics and medical devices. Prior to that there were two organisations the National Food Control Commission (responsible for food) and the Pharmacy Board (responsible for drugs).

TFDA, a semi-autonomous body under the Ministry of Health, became operational on 1st July 2003. The minister has an advisory board, chaired by the permanent secretary, with representatives from Ministries of Livestock, Agriculture and Food Security, and Fisheries and Natural Resources, TBS, GCL, Zanzibar representative, Ministry for Local Government, Attorney Chambers, and Tanzania Food and Nutrition Centre, which meets every twice a year.

TFDA's main functions are to:

- register drugs, herbal drugs, cosmetic, herbal drug, food, food supplements and medical devices, applicable to both locally manufactured and imported products; once the Authority is satisfied with the safety, quality and effectiveness or performance of the product; it approves the product by giving a certificate of registration or marketing authorization;
- verify compliance to standard requirements and Good Manufacturing Practices (GMP) or Hazard Analysis Critical Control Point (HACCP) principles for manufacturing premises and register premises;
- inspect food, drugs, herbal drugs, cosmetics and medical devices at the manufacturing site, distribution channels and ports of entry including collection of samples

¹⁰⁵ Section 15

¹⁰⁶ GN No. 148

¹⁰⁷ According to Section 2 of the By-law, Specified market is defined to mean Kariakoo Market or any other Market under the control of the Corporation. Whereby scheduled product means agricultural products specified in the Schedule which are; Staple food, all vegetable fruits and dried fish.

for laboratory quality checks to ensure products which are or to be introduced into the market meet the standards of quality, safety and effectiveness. TFDA undertakes inspection at National, Zonal, Regional and District levels of the following:

- ports of entries (import control);
 - pharmacies;
 - medical stores department warehouse;
 - drug manufacturing premises (local and abroad);
 - medical stores;
 - hospitals, health centres and dispensaries;
 - cosmetics manufacturing premises;
 - cosmetic wholesaler and retailers;
 - all food manufacturing and processing premises;
 - all food packers;
 - all bakeries;
 - all milling machines that process and package food);
 - slaughter houses;
 - supermarkets that process and package food;
 - hotels and restaurants that process and sell food.
- for high risk foods it requires certain premises e.g. handling fish, meat and dairy to demonstrate HACCP plans and certifies compliance;
 - control import and export of food, drugs, herbal drugs, cosmetics and medical devices in order ensure to ensure their safety, quality and effectiveness;
 - undertake directly (or sub-contract) the analysis of food and/or food products to ensure safety for human consumption as part of the post marketing product risk assessment programme;
 - monitor and collect information related to food-borne diseases;
 - regulate the promotion of food, drugs, herbal drugs, cosmetics, and medical devices though scrutiny of publicity materials in whatever form developed by the private sector e.g. posters, TV commercials, advertisements;

- prescribe minimum quality standards for imported and locally manufactured food;
- enforce the regulations and apply penalties for non-compliance;
- publicise the activities of TFDA and generate and distribute informational material through various media, and
- address consumer complaints.

Thus TFDA's mandate covers a wide area of commodities and regulatory activities which centres on protecting domestic consumers from nationally produced and imported foods.

As a recently formed body it is in the process of developing its human resource base. The Authority's staff have the necessary understanding and skills and have used these to support not only their own work but also that of other authorities e.g. fisheries. They want to develop HACCP based codes.

In support of this work there are laboratories for chemical and microbiological analyses. Where necessary, samples are analysed by other bodies e.g. government chemist, under contract. New analytical equipment e.g. GC is being installed. There is a contract with a company in Nairobi for maintenance and repair. A programme of expansion is underway to increase laboratory and office space which is nearing completion and should provide enhanced analytical capacity.

The Authority also has a strategic plan for ISO 17025 accreditation through SANAS by 2008 at the latest. Support is being received through DANIDA and there is a plan to hire a consultant to improve the progress towards accreditation. There is a National Task force for accreditation with TBS, GLC, TILDO, etc. co-ordinated by TBS. As part of the accreditation of services, TFDA is also planning to become ISO9001:2000 compliant.

The Standards Act, 1975¹⁰⁸

The Standards Act was enacted to provide for the promotion of the standardization of specifications of commodities. Section 3 of the Act established the Tanzania Bureau of Standards and section 4 provides for its functions, which include the following:

- quality control (assurance);
- calibration;
- examination and testing;
- use of standards marks.
- issuing licences to use;
- assistance to industry to set up and enforce quality control procedures;
- education;
- setting and keeping standards (part iv of standards act);
- consultation and cooperation with any body established by or under any written and having functions similar to those of the bureau.

Key activities and measures defined in the Standards Act 1975 are:

- testing commodities in relation to licence to bear standards mark (s.19);
- inspector may be any public officer or an officer of tbs appointed by minister (s.20);
- powers of entry, seizure, etc. (s.21);
- offences (s.22, s.29, etc.).

Compulsory product standards

The Standards Act 1975 has provisions for declaration of *compulsory standards* under sections 17. The Act does not state the scope of these standards but the policy is to use this provision where there is a need for:

- protecting the health and safety of consumers;
- protecting the environment;
- securing export markets (coffee, tea, etc.).

At the moment s.4 (1) (a) of the Standards Act reads:

4.-(1) Subject to any direction of general nature which the Minister may give under section 26, the functions of [TBS] shall be –
(a) to undertake measures for quality control of commodities of all descriptions and to promote standardisation in industry and commerce.

Under amendments proposed through a very extensive consultation process, the words 'environment and services' would be added after 'commodities'. A possible conflict with the Environmental Management Act 2004 should be investigated because under the latter Act (Part X), the minister responsible for environment has the power to issue environmental standards recommended by the NEMC. Although the National Environment Committee of TBS is responsible for submitting proposals on these standards to the Minister for Environment, NEMC is responsible for their enforcement according to the EMA 2004.

Moreover, at the moment, because of limited resources for domestic enforcement and because of ill-defined relationships with TFDA, most of the emphasis of these compulsory standards is on exported commodities and imported goods (apart from some high profile cases like bottled drinking water). Making standards compulsory for export commodities may not necessarily be helping to secure export markets because it is not clear whether the adopted standards (e.g. for groundnuts, honey, etc.) bear any relation to importing countries food controls and they may indeed give rise to complacency about market access. For example, most of the exports of horticultural products to Europe meet EU requirements through testing arranged through the buyers (e.g. for pesticide residues) or by EUREPGAP certification schemes. To support the sector in achieving compliance, there has been assistance directly to the industry through the Pesticide Initiative Programme (PIP). This is an

¹⁰⁸ No 3 of 1975

example of where national standards are irrelevant to export success.

It has been observed elsewhere that having the quality mark for a commodity is no guarantee of acceptance by the importing country¹⁰⁹.

National Enquiry Point (NEP) for WTO-TBT/SPS

The Tanzania Bureau of Standards (TBS) is the National Enquiry Point for WTO-TBT/SPS Agreements in Tanzania. The TBS National Enquiry Point became operational in January 2000 with the assistance of UNCTAD/ITC/WTO under the Joint Integrated Technical Assistance Programme (JITAP).

NEP handles information on technical regulations, standards adopted or proposed to be adopted, conformity assessment procedures adopted or proposed to be adopted and sanitary and phytosanitary measures adopted or proposed to be adopted. The NEP maintains a collection of national, foreign and international standards and trade related information on technical regulations and conformity assessment procedures.

Currently, standards which are in the custody of the NEP are:

- (i) Tanzania National Standards, technical regulation and conformity assessment procedures;
- (ii) International standards - International Organization for Standardisation (ISO), Codex Alimentarius Commission (CAC) of the Food and Agriculture Organization (FAO) and World Health Organization (WHO), etc;

- (iii) Foreign/Regional Standards - South African Bureau of Standards (SABS), British Standards Institution (BSI), Bureau of Indian Standards (BIS), Sri-Lanka Standards, Malaysia Standards, Japanese Standards, German Standards (DIN), Kenya Standards, Zimbabwe Standards, Mauritius Standards, East African Standards, etc.

From the lists of standards that are kept and regulated by TBS, it may be observed that concentration of TBS is on the industrial and some of the agricultural and products standards. This may be attributed to the fact that TBS also regulates the standards of products under those areas. As far as agricultural inputs are concerned, though TBS is responsible for setting standards for some of the agricultural inputs such as fertilizer, it is not responsible for regulating standards of agricultural inputs such as seeds, which are controlled by the Tanzania Official Seeds Certification Institute (TOSCI)

In relation to SPS matters, TBS inspects and certifies packaged foods from national and imported sources in order to comply with compulsory national standards. In order to undertake these tasks it maintains its own team of 15 inspectors at ports of entry and in market places. Hence, for certain imported foods, both the TFDA and the TBS may take samples for testing and clearance against quality/safety standards. In support of product testing TBS has other staff specifically qualified within food including – quality assurance approx. four, standards development approx. six, testing approx. four, plus around seven technicians and other support staff (not trained to degree level). At the moment the chemical contaminant analyses do not include pesticides although this capability is being developed through purchase of equipment. Also TBS is looking to develop capabilities in virology, GMO analysis.

In addition to inspecting and registering products, it undertakes an inspection and registration service for premises and processes. The registration, inspection, sampling and reporting programme is

¹⁰⁹ According to the DTIS (2205) "There are some indications that Tanzania's largest non-traditional 'export', namely tourism, may be vulnerable to the risks associated with poor food hygiene and inadequate monitoring and inspection. For a broad array of traditional and non-traditional export(able) commodities, variable or sub-par quality has resulted in price discounts in international markets.'

organised through the Department of Quality Management.

Registration of food products is compulsory although this is difficult to enforce. This process is undertaken for export, import and national markets. Processed products for import have to be registered and inspected. The products are analysed for quality and safety attributes by TBS laboratories against national standards but if these are available make use of codes, international (ISO), Kenyan, Indian or trade standards. The registration period for the product lasts for three years and the company can use the TBS kite mark.

Inspection of premises and processes is undertaken annually for a fee. A TBS licence will only be issued if the processor has already been issued, and is compliant with, a TFDA licence. Compliance with the Code of Hygiene is a condition under TFDA licences. Public health officers undertake enforcement on behalf of both TBS and the TFDA, under an informal arrangement. However, TBS officers check only for compliance with TBS licences. In addition to inspection of premises, TBS take samples at random for surveillance purposes (no fee for this). It is not clear to what extent results from surveillance and inspection are passed to other organisations and how they used for other purposes e.g. for food safety control/prevention.

At the moment TFDA and TBS operate an informal process of information exchange. In addition, TFDA has wide representation and involvement within TBS through the TBS technical committees. TBS had felt in the past that NFCC were encroaching on TBS territory by enforcing TBS standards under food safety licences but there is now a greater consensus on the need to work together in light of limited resources. However, the current informal arrangements may still result in some duplication of effort in having standards adopted under two licensing systems and having enforcement carried out twice. Some end-users complain about this level of regulation and enforcement as being too confusing and bureaucratic.

However, some processors see the value of the standards mark licensing scheme but do not gain value from participation because other similar non-registered products but inferior in quality are allowed on the market. The poor quality of these products is not apparent from the labelling information.

TBS implements its own QMS systems but to achieve wider recognition and acceptance of its services it is undergoing accreditation to ISO17025 through SANAS with support from DANIDA.

Food inspection laboratories

With major support from UNIDO (through Swiss government funding) TBS laboratories for food microbiology and food chemistry/contaminants have reached a high level of capacity and are close to achieving accreditation. Capacity will be enhanced by a new UNIDO project that will provide an equipment maintenance and repair facility (available to outside bodies as well).

The legal/regulatory issue is the authority on which they are operating, whether as a back-up to enforcement action under the Standards Act or other legislation. There are other laboratories able to offer a high level of analytical and diagnostic services (e.g. laboratory of government chemist).

As part of this process TBS and others have initiated a laboratory proficiency testing process. TBS has prepared a stock of microbiological certified reference materials to send to other materials. Support is required to expand manufacture of these materials in the area of sample preparation (freeze dryer required), packaging and low temperature storage - TBS has a -80 °C, but required further expertise on how to manage low temperature storage of microbiological materials.

In addition to their own laboratory facilities, both TFDA and TBS make use of the analytical facilities provided by the government chemist laboratory. There should be a concerted strategy for resourcing and using food control

laboratories and their upgrading/capacity building. This should involve appropriate delegated authority (e.g. appointment of an 'analyst' under pesticides legislation) and Memoranda of Understanding to administer the exchange of expertise and facilities.

The Fisheries Act, 2003

The principal legislation is the Fisheries Act 2003 which has an appropriate approach to the safety and quality management of fish and fish products. The 2003 Act reflects the response taken to the crisis affecting exports to the EU, in particular the control exerted by the European Commission on inspections of exported fish. The Fisheries (Amendment) Regulations 2000 and the Fish (Quality Control and Standards) Regulations 2000 under the old Fisheries Act 1970 anticipate the statutory response in the 2003 Act. These Regulations are enforced through the Savings provisions of the Fisheries Act 2003 (s.59) and there is no immediate need to bring in new regulations. Regulations will eventually be needed under the 2003 Act but these should be produced when there are major technical changes to make. In relation to regulatory authority, the Act states:

s60 - The minister shall after consultation with the minister responsible for fisheries, make regulations for - prevention and control of fish diseases (a) assessment of fish health status in the production sites through inspections and standardized procedures; (b) eradication of fish diseases by slaughtering of infected stocks, and restocking with fish from approved disease free resources; (c) regulating and monitoring the introduction and transportation of fish.

It would appear clear that notwithstanding this provision, the legal authority for fish diseases is the Fisheries Act 2003 and that the Fisheries Department is the sole competent authority.

The Fisheries Act 2003 has provision for authorised officers (continuing from Fisheries Act 1970):

"authorized officer" means the Director or any fisheries officer or a member of beach management unit or other person authorized in writing by the Director to exercise any power or to discharge any duty under this Act or any subsidiary legislation made under this Act;

It is useful to draw a distinction between inspection duties as set in the legislation and activities such as issuing certificates where specific officers should be authorised. This distinction is useful and referred to elsewhere (see section on plant health services). However, the virtues of this distinction are not fully exploited in the existing legislation. First, the Fish (Quality Control and Standards) Regulations 2000 refer to "fish inspector" as an authorised officer under the Fisheries Act of 1970. Second, the duties and responsibilities of the "inspector in charge" and the ordinary inspectors as described by the fisheries department (see above) are not specified in the legislation in any detail. It is assumed that these for the moment are administrative provisions; the legal powers of the Inspectors may need to be clarified in updated regulations.

Environmental protection and pollution control

The Marine and Coastal Environmental Management Project is referred to above. Section 9(2) of the Fisheries Act 2003 (Part III) states:

(2) The director shall, based on the best scientific evidence available, adopt such appropriate measures to maintain or restore stocks at levels capable of producing maximum sustainable yield pursuant to relevant environmental and economic factors including:...

(d) conservation and protection of biodiversity of aquatic habitats, ecosystems and endangered species;...

Section 52 states:

52. No person shall undertake any development activities in this Act, without undertaking environmental impact assessment in accordance with any other written laws of Tanzania.

Although there is implied reference to the Environmental Management Act, there is no apparent collaboration with the NEMC for environmental projects.

As stated above, the Fisheries Department is implementing a programme to monitor pesticide residues in fish, water and sediments. However, the legislation only refers to chemical contamination generally and there is no reference to other legislation on pesticides¹¹⁰.

The recurring costs of compliance with the EU's hygiene standards for fish and fishery products has imposed a considerable burden on certain of the industrial fish processors, in particular those that entered the sector relatively late and have struggled to secure a reliable supply of fish to maintain their operations at a certain minimum level of capacity the recognition of the need for industry cooperation has already led to the establishment of the two industry organizations, TFPA and LVFPAT towards the end of the 1990s. Both these organizations have played an important role in establishing codes of practice that aid in the implementation of enhanced hygiene controls and promoting best practice, providing updates on legislative changes, etc. LVFAP also has close ties with sister organizations in Kenya and Uganda, aiming to address issues that are of common interest to Nile perch processors across the three countries.

Furthermore, although there is greater cooperation both within the processing sector and between the processing sector and the Fisheries Department and efforts are being made to address issues as and when they arise, the mentality remains oriented towards 'problem-solving' rather than 'pro-activity'.

3.15 Agricultural Trade Facilitation Laws

As noted above agricultural trade facilitation laws are laws that provide essential legal frameworks for effective operation of agricultural trade systems. Examples of these laws include laws on agricultural resource property rights such as agricultural land laws, access to plant genetic resource and warehouse receipts laws. Another example of laws under this category may include intellectual property rights laws such as plant breeder's rights and geographical indications, etc. This category of laws relate to the TRIPS Agreement of WTO. However, it has to be noted further that Tanzania is a party to the Convention on Biological Diversity (CBD) and has ratified the Cartagena protocol on Biosafety on 16 March, 2003. Tanzania is also a member to the International Treaty on Plant Genetic Resource for Food and Agriculture. All these international documents require a national level legal framework for their implementation. These also will be covered under this part.

Land Legislation and Land Reforms in Tanzania

Basically all agricultural resources are land based. Thus, if we have to go by the old maxim of "*quick quid plantatur solo solo cedit*" we have to start with the land resource as the basis of our investigation of compliance to international agreements.

As part of its commitments to ensure reforms in land tenure, administration and dispute resolution over land, in 1999, the government enacted two pieces of legislation (Land Act¹¹¹ and Village Land

¹¹⁰ See for example, Regulation 19 of the 2000 Regulations

¹¹¹ Act No. 4 of 1999 which deals with national or general land other than village or reserved lands.

Act¹¹²) in order to implement the National Land Policy¹¹³. The two land Acts repealed the Colonial land law enacted in 1921¹¹⁴. The main objectives of enactment of Land legislation were twofold. One was to provide for more secure tenure for all. The second was to facilitate the operation of a market in land rights. Under the Village Land Act, the village authorities are given the responsibility, right and power to manage land, including establishing and administering local registers of communal land rights. They are empowered to issue certificates of customary title within its area. Both Acts explicitly include the principle of non-discrimination in allocation and administration of land¹¹⁵.

For effective implementation of the land Acts, in 2002 the government also enacted the Courts (Land Dispute Settlements) Act 2002 in order to assist in the land dispute settlement.

Another land reform took place in 2004, by amendment to the Land Act 1999 through Land (Amendment) Act, 2004, which became operational in July 2004. One of the objects and reasons for the amendments was to create a legislative framework "allowing for and regulation of sale of bare land" so as to allow for mortgaging of property as a means of encouraging domestic and foreign investment.

The Land Act, 1999¹¹⁶ provides for, among other things, management of land and dispute settlements. The scope of the Act leaves out the management and administration of land in villages, which is covered by the Village Land Act, 1999.¹¹⁷

Under the two pieces of legislation, land is generally defined to include "the surface of

the earth and the earth below the surface and all substances other than minerals and petroleum forming part of or below the surface, things naturally growing on the land, buildings and other structures permanently affixed to land".¹¹⁸ The Land Act further defines "general land" as "all public land, which is not reserved land or village land and includes un-occupied or unused village land."¹¹⁹ While "village land" means land declared to be village land under Section 4 of the Land Act and Section 7 of the Village Land Act, including any transfer or land transferred to the village¹²⁰. "Reserved land" means land reserved, designated or set aside under the provisions of a string of statutes¹²¹ and includes land parcel within a natural drainage system from which the water resource of the concerned drainage basin originates;¹²² land reserved for public utilities;¹²³ and land declared by order of the Minister to be hazardous land in accordance with the Land Act, 1999.¹²⁴

Under the Land Acts, all land in Tanzania is public land and is vested in the President of the United Republic as trustee for and on behalf of all the citizens of Tanzania.¹²⁵ The Land Act provides for rights and incidents of land occupation holders of rights may enjoy¹²⁶ under the Act a granted right of occupancy¹²⁷ and a derivative right¹²⁸ save

¹¹⁸ Section 2 of Act No. 4 of 1999. Same is the definition in Act No. 5 of 1999.

¹¹⁹ Ibid.

¹²⁰ According to Section 2 of the Village Land Act, 1999, the term "village" means a village so registered under the Local Government (District Authorities), 1982, Act No. 7 of 1982 Act

¹²¹ As referred under S. 6 of the Act include land for forest reserve, High way reserve, Town Planning, Natural Resources and Wildlife, Public Recreation Ground, Marine Reserve and other land that are acquired by the President under the Land Acquisition Act No. 47 of 1967.

¹²² Ibid. ss. (1)(b)

¹²³ Ibid.

¹²⁴ Ibid.

¹²⁵ Section 4(1) of Act No. 4 of 1999

¹²⁶ Section 19(1)

¹²⁷ A "right of occupancy" is defined under Section 2 as "a title to the use and occupation of land and includes the title of a Tanzanian citizens (sic!) of African descent using or occupying land in accordance with customary law".

¹¹² Act No. 5 of 1999 which deals with Village land and sets out community-based system for land ownership and management.

¹¹³ The National Land Policy (NLP) was passed in 1995

¹¹⁴ Cap 133

¹¹⁵ For example rights of vulnerable classes (Children, Women and persons with disabilities) are guaranteed under Section 20 of the Village Land Act.

for the conditions set in respect of non-citizens in prescribed form¹²⁹ and also having regard to the provisions of the Tanzania Investment Act, 1997.¹³⁰

Review of the Land Legislation

Generally the land reform in the country has concentrated in ensuring (i) security of tenure over land; (ii) equal right over land ownership and management; (iii) effective system for land allocation and dispute settlement through decentralization; and (iv) markets of land. However, the law is clearly not providing consideration, addressed in the National Land Policy, with regard to the allocation of land on the basis of priority for economic development. Both the Land Act and Village Land Act are silent on the need to consider priorities of land utilization while allocating land. This has important implications for the agricultural land of Tanzania.

Despite the fact that agriculture is considered as the backbone of the country's economy, agricultural land is not given a priority as one of reserved land in any piece of legislation as opposed to forests (the Forest Act 2002), wildlife (the Wildlife Act Conservation Act 1974) mining (the Mining Act, 1998) and other Natural Resources legislation. Through these legislation lands for forest reserve, mining, wildlife and natural resources are identified through powers of the respective president and/or responsible minister and effectively protected from encroachment. As a result of these types of protection there have been less or no conflicts on land ownership in the areas of forestry reserve or wildlife as opposed to what is happening in the areas of agricultural activities (crop husbandry, livestock keeping and urban development all compete for the same agricultural land).

Another complication lies in the kind of protection that is being undertaken within the protected lands, for example, in the protected forests, wildlife conservation or mining areas; due regard is not given to "agricultural protection". As a result, plant genetic resources existing in situ are equally threatened both in "protected lands" as well as in un-protected lands. It will be argued in this study that in order to sustain agricultural development, the land which is of agricultural importance, in terms of being a natural resource for maintenance of plant genetic resources for our current and future plant breeders, should be well conserved and protected. A multi-dimensional strategic approach that will add value to the agricultural and therefore earn the protection it deserves could be devised through utilization of international property rights and natural resources laws such as the TRIPS agreement on Plant breeders' Rights and Geographical Indications, the Convention of Biodiversity and the International Treaty on Plant Genetic Resource for Food and Agriculture.

3.16 Compliance to the Trade Related Intellectual Property Rights Agreement (TRIPS) of WTO

The TRIPS Agreement is a comprehensive multilateral agreement on intellectual property. The Agreement sets minimum standards for national protection of intellectual property rights, and procedures and "remedies" for their enforcement. Its enforcement measures - including the potential for trade sanctions against non-complying WTO members as other agreements. Developing countries and countries with economies in transition (from centrally-planned to free market) have had a general transition period of five years, lasting until January 1, 1999. Countries that are on the United Nations list of least-developed countries have a transitional period of eleven years, until January 1, 2006, but may apply for extensions to this period.

The TRIPS Agreement has been subject to major international contention due to its stipulation that biological organisms be

¹²⁸ Section 2 of the Land Act defines the term "derivative right" to mean a right to occupy and use land created out of a right of occupancy and includes a lease, a sublease, a license, a usufructuary right and any interest and any interest analogous to those interests".

¹²⁹ Section 19(2)

¹³⁰ Act. No. 26 of 1997.

subject to intellectual property protection. This stipulation constitutes a substantial increase in the scope of intellectual property protection of biologicals. Currently, 44 nations consider it appropriate to treat plant varieties as intellectual property. These nations are party to either of three conventions of the Union for Protection of Plant Varieties (UPOV), the last of which - the 1991 convention - provides intellectual property protection similar to patenting.³ The two prior UPOV conventions mandated intellectual property protection less stringent than patenting. In contrast to UPOV, the WTO has 134 member nations, most of which are not party to UPOV and do not consider plant varieties as intellectual property. As is the case with plant varieties, most WTO member nations do not treat other biological organisms - microbiological organisms for example - as intellectual property.

Article 27.3 (b) reads:

Members may also exclude from patentability: . . . plants and animals other than micro-organisms and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective *sui generis*¹³¹ system or by any combination thereof. The provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO agreement.

What article 27.3 (b) means is that members cannot exclude micro-organisms and non-biological and microbiological processes from patent protection. They must also provide patent or an otherwise (*i.e. sui generis*) form of intellectual property protection for plant varieties.

Sui generis is Latin for "of its own kind" has been interpreted by many countries as an

¹³¹ Latin words which mean "of its own kind or genera"

option to provide protection for indigenous and relatively non-commercial knowledge. The U.S. is instead pushing for compliance to the 1991 UPOV convention to be the only *sui generis* option¹³². The 1991 UPOV convention provides no protection for indigenous and/or relatively non-commercial knowledge.

Being concerned with what Section 27.3(b) provides in terms of excluding protection for indigenous and/or relatively non-commercial knowledge and a threat that strict adherence to the provision may lead to the protection of life forms, a number of *Sui generis* models have emerged that aim at combining elements of plant breeders rights, community rights and farmers' rights, while at the same time recognizing some elements of the Convention on Biodiversity¹³³.

The Protection of New Plant Varieties (Plant Breeders Rights) Act¹³⁴

The Protection of New Plant Varieties (Plant Breeders Rights) Act, which was enacted in 2002, governs the Tanzanian *sui generis* system on the protection of breeder's rights. A recent study has indicated that the Tanzania *sui generis* system is about 95 percent 1991 UPOV compliant¹³⁵. Its main Objectives include: to establish Registry of Plant Breeders' Rights, to promote plant breeding in the country, to facilitate agricultural development and to provide for the regulation of grant of plant breeders' rights.

According to Part III of the Act, a plant variety cannot be granted a Plant Breeders' Right (PBR) unless it is:

- new;
- distinct;
- uniform;
- stable.

¹³² See Sam Donohoe "Intellectual Property Rights (TRIPS) Agreement of the WTO" E-mail: sdonohoe@u.washington.edu

¹³³ See for example the India Plant Breeders Rights legislation, The OAU Model

¹³⁴ No. 22 of 2002

¹³⁵ See Patrick Ngwediagi et al.

Part IV of the Act deals with what an applicant for a PBR has to fulfil for consideration of his or application, which is implemented under Part V of the Act. These include: denomination, description of variety characteristics and properties, samples and areas of location.

Section 35 provides for time for protection, which shall be for trees and vines – 25 years and for other plant varieties 20 years. Any type of PBR infringement is prohibited. PBR holders have the right under Section 36 to lodge claims for damages for infringement of PBR; The PBR may be nullified by the Registrar upon advice of the PBRAC, on ground of:

- incorrect information on application;
- receiving information that invalidates the right;
- applicant's lack of any entitlement to the right.

The PBR may be cancelled¹³⁶, surrendered¹³⁷ or the holder of PBR may grant a licence to any person mainly for commercialization of the variety¹³⁸. Further, the law provides for compulsory licence if is unreasonably denied¹³⁹. The law also allows assignments of PBR, provided that in case of *inter-vivos* persons the assignment must be in writing, signed by both parties and recorded with the Registrar's office.

Section 51 establishes Offences that may be committed under the Act and corresponding sanctions.

Institutional Aspects of the PBR Legislation

Section 3 of the Act establishes a Plant Breeders' Rights Registry within the Ministry responsible for agriculture. Its functions as provided under section 5 include the following:

- grant PBR;

- establish documentation centre on pbr for public scrutiny and access;
- maintain the register;
- facilitate transfer of pbr;
- collaboration with national and international bodies on pbr.

The Registrar of Plant Breeders' Rights is appointed by the Minister responsible for agriculture by virtue of the powers provided under section 4.

The office of the Registrar operates under the Plant Breeders' Rights Advisory Committee, which is established under section 10. It is composed of nine members, each representing:

- ministry responsible for agriculture, who shall be the chairperson;
- plant breeders' association;
- seed traders association;
- seed growers;
- farmers;
- university or training institute dealing with plant breeding;
- institute dealing with ipr;
- attorney general's office; and
- the registrar of plant breeders' rights who is the secretary to the committee.

The main functions of the committee include provision of advice to the minister on the enforcement of the Act, advising the registrar on the grant of PBR and operating as a committee for the Plant Breeder's Development Fund established under Part X (section 48) of the Act.

A three member Appeal Board to be appointed by the Minister is established under section 45 and given powers to entertain all appeals against the decision of the Registrar.

The Seed Act, 2003¹⁴⁰

In 2003, the new legislation governing the seed sector " Seed Act"¹⁴¹. It repeals the

¹³⁶ Section 39(2);

¹³⁷ Section 40

¹³⁸ Section 41

¹³⁹ Section 42

¹⁴⁰ Act No... of 2003

¹⁴¹ Act No. 18 of 2003

Seed (Regulation of Standards) Act¹⁴². The Act aims at ensuring that all agricultural seeds produced or imported in the country for the use by farmers are of the required standards. The law protects the interests of both the seed buyer and producer. It protects the buyer by requiring that seed is properly labelled and, in some cases, that the seed meets minimum standards of quality. It protects seed producers by establishing clear regulations and procedures that create levelled playing ground among the seed producers or traders and remove counterfeit seeds from the market.

The Seed Act establishes National Seed Committee as an advisory body to the government in all matters pertaining to the agricultural seeds¹⁴³. The seed committee is a stakeholders' forum comprising both public and private sector representatives¹⁴⁴. The Act also establishes the Tanzania Official Seed Certification Institute (TOSCI)¹⁴⁵ as a sole seed certification agency in the country. It is to be operated under the Management Committee¹⁴⁶. TOSCI replaces the former Tanzania Official Seed Certification Agency (TOSCA). The new TOSCI is established as a regulatory organ to ensure all seeds that reach the farmers are of the prescribed and approved quality standard.

The Act also intends to promote on-farm seed production and multiplication by smallholder farmers through establishment of formal procedures for certifying seeds produced by smallholder farmers. The certification is referred to as "Quality Declared Seed" (QDS)¹⁴⁷.

¹⁴² Act No. 29 of 1973

¹⁴³ Section 3

¹⁴⁴ On Private sector there are representative from the Tanzania Seed Trade Association and representative from seed consumers' association to be appointed by the Minister for Agriculture

¹⁴⁵ Established under Section 10 (1) of the Act

¹⁴⁶ Established in Clause 1 of the Schedule

¹⁴⁷ The system is legalized under Section 19 (2) of the Act which read as follows:-

"nothing in this Act shall, be construed as preventing the sale of quality declared seeds as such to a neighbour farmer, whereby such seeds are grown by a smallholder farmer for use as seeds in his own farm".

3.17 Geographical Indications¹⁴⁸

TRIPS is based largely on two prior international conventions: (1) *the Paris Convention for the Protection of Industrial Property* (Paris Convention) and (2) *the Berne Convention for the Protection of Literary and Artistic Works* (Berne Convention). Paris Convention article 1(3) defines industrial property to include "all manufactured or natural products, for example, wines, grain, tobacco leaf, fruit, cattle, minerals, mineral waters, beer, flowers, and flour." Paris Convention article 1(2) provides that the protection provided for industrial property includes "indications of source or appellations of origin." Thus, TRIPS continues a standing tradition of protecting food geographic indications.

Section 3 of TRIPS contains the specific provisions that govern food geographic indications. Under article 22(1), geographic indications are defined as those names "*which identify a good as originating in the territory of a member, or a region or locality in that territory, where a given quality, reputation, or other characteristic of the good is essentially attributable to its geographic indication.*" Thus, the determinant of whether a product name is a geographic indication under TRIPS is whether the product has a *specific quality, reputation, or other characteristic of the product that derives from the particular location in which the product originates*. Examples of food geographic indications therefore include "Scotch" whisky.

The TRIPS agreement contains two basic protection standards for geographic indications. First, article 22(2) requires countries to provide a legal means to prevent the use of a geographic indication that "suggests that the good in question originates in a geographic area other than the true place of origin." Second, article 22(3) requires countries to provide a legal

¹⁴⁸ For more information on Geographical indications see Judson O. Berkey "Implications of the WTO Protections for Food Geographic Indications"; See also www.asil.org

means to invalidate the registration of a trademark "which contains or consists of a geographic indication with respect to goods not originating in the territory indicated." These provisions are applicable only if use of the geographic indication is of such a nature as to "mislead the public as to the true place of origin" of the product.

The TRIPS agreement provides an even stronger level of protection for geographic indications for wines and spirits. Under article 23, countries must provide a legal means to prohibit the inaccurate use of a geographic indication for wines and spirits regardless of whether the use of the indication on a similar product would be misleading. This provision applies even in the case where the geographic indication is "used in translation or accompanied by expressions such as 'kind', 'type', 'style' or 'imitation' or the like." Thus, this provision would prohibit the use of "Scotch-type whisky".

TRIPS article 24 contains some exceptions to these protection requirements. For instance, a geographic indication does not have to be protected when it is a generic term for a product or is identical to the customary name of a grape variety. Thus, a dairy farmer in the U.S. can label a product as "Cheddar cheese" despite the historical origination of this product in Cheddar, England. A geographic indication also does not have to be protected if it has not been protected in its country of origin.

In addition, a trademark that includes a geographic indication does not have to be protected if it has been obtained in good faith in one country either prior to the implementation of TRIPS in that country or prior to the protection of the trademark in the country of origin. Finally, a geographic indication for wines and spirits does not have to be protected if it has been used in a country continuously and in good faith for at least 10 years prior to 15 April 1994.

Geographical Indications in Developing Countries

Most developing countries like Tanzania are primarily agricultural in their trade. The market friendly regime of developing countries is still in the hands of the farmers. Some countries such as India¹⁴⁹, Trinidad and Tobago¹⁵⁰, and the Philippines already have geographical indication legislation in place. Already there are complaints among developing countries on the infringement of geographical indication.¹⁵¹

As far as Africa is concerned, there has been a feeling that the GI provisions as they appear in the TRIPS agreement should be extended to include agricultural crops produced in these countries, such as coffee¹⁵². On the other hand many African countries are still hesitant to enact laws on geographical indication.

As far as Tanzania is concerned, although it has been consistently observed that Tanzania has crops such as the Kyela rice and Kilimanjaro coffee with distinctive appellation and qualities, there are only initial efforts, which will lead to a government policy and later to a National legislation on Geographical Indication¹⁵³. The Office of the Registrar of Plant Breeders' Rights of the Ministry of Agriculture and Cooperatives is the one charged with agricultural geographical indication. However, its current human and material resource constraints, it may not be easy to indicate when the issue

¹⁴⁹ The Geographical Indications of Goods (Registration and Protection) Act was passed in 1999 and became operational in 2003

¹⁵⁰ Act passed in 1996

¹⁵¹ For example it is argued that tea from Kenya, Sri Lanka, have often been passed off around the world as 'Darjeeling tea', which originally denotes the fine aromatic produce of the high-altitude areas of North-Bengal, from where it derives the name, see Jasper Vikas George (2005), "Geographical Indications and India"

¹⁵² See for example, Nyanga, A (2004) "The Geographical Indication Protection: Africa Perspectives. Paper presented at the WTO Round Table on Geographical Indications (available at www.wto.org)

¹⁵³ It is expected that this will be made possible under the current initiatives initiated by BRELA and the Ministry of Industry, Trade and Marketing for having a comprehensive IPR legislation along TRIPS lines.

of Geographical Indication will start being given adequate consideration.

3.18 Implementation of the International Convention on Biodiversity and the Related Legislation

Tanzania is a member to the Convention on Biological Diversity (CBD)¹⁵⁴ and has ratified the Cartagena protocol on Biosafety in March, 2003. Also Tanzania ratified the International Treaty on Plant Genetic Resource for Food and Agriculture in April 2004. It is therefore important to discuss how the country prepares itself to implement these international legislation, while at the same time it implements the TRIPS agreement. Much debate is still going on whether the TRIPS -WTO agreement can be implemented alongside the CBD and the related international legislation, at times fuelling attempts to enact national legislation that try to accommodate both the CBD and TRIPS,¹⁵⁵ this study will only consider the direction of Tanzania towards enactment of domestic legislation aimed at enforcing the respective international legislation.

The implementation of the Convention on Biological Diversity is partially embedded in the Environmental Management Act, 2004¹⁵⁶. Moreover Part XV of the Act gives general provisions on the enforcement of international agreements on environment to which Tanzania is a member. According to section 179 of the Act, where Tanzania is a member to an international or regional agreement concerning the management of the environment, the Minister responsible for environment in consultation with sector Minister, shall:

" (a) initiate and prepare legislative proposals for consideration by the relevant Ministry for the purposes of implementing those agreements; and

(b) identify appropriate measures necessary for the implementation of those agreements" .

It is therefore implied that all relevant international agreements, treaties or conventions on environmental management to which Tanzania is a party will be domesticated through the enforcement of the EMA.

Implementation of the International Treaty on Plant Genetic Resource for Food and Agriculture of 2001

As indicated above Tanzania ratified the IT-PGR in April 2004. The Treaty was adopted in November 2001 with main objective of regulating the use of plant genetic resources for food and agriculture and is legally binding. The treaty sets out to ensure access to plant genetic resources, especially farmers' access to seeds. The treaty also seeks to ensure fair and equitable sharing of the benefits arising from the commercial use of resources. At the centre of the treaty is the 'multilateral system'. The multilateral system seeks to ensure that contracting parties have easier access to germplasm stocks for a list which, initially, comprises 35 food crops and 29 forage crops. The Treaty became in force on 29 June 2004, ninety days after forty governments had ratified it and the meeting of its governing body was held in Madrid, Hispania in June 2006, where substantial steps were made towards adoption of the multilateral system¹⁵⁷.

The challenge now is to translate this legislation into specific action at national and local level in order to help farmers conserve and use their resources.

As far as Tanzania is concerned initial steps for the enactment of a national legislation on IT-PGR have already been taken. The cabinet paper seeking government approval to begin preparing the relevant legislation is already being discussed by different government approval bodies/committees. There are also preparations for conducting

¹⁵⁴ It became member in 1996.

¹⁵⁵ For example, the Indian Plant Variety Protection and Farmers' Rights Act, 2001, See also the African Model law by AU. Uganda was also debating on establishing the PBR legislation along similar lines.

¹⁵⁶ Sections 4 to 10 deal with general environmental principles, which draw much from the CBD

¹⁵⁷ For more information visit www.fao.org

legal studies that will lead to initial drafts of the legislation.

Also a number of training workshops have already been conducted for stakeholders', with the objective of sensitizing them to the importance of this legislation. More sensitization is still required, especially to members of the community, including farmers and also to policy makers and Members of Parliament. The legislation bill is expected to be ready during the 2007/2008 financial year.

As far as the institutional review is concerned, Tanzania established a National Plant Genetic Resource Centre in Arusha in 1990. The main function of the centre is to collect and maintain the Tanzania plant genetic resources. Initially the centre was benefiting from a regional project financed by the Finish government, which assisted in the collection of plant genetic resource some of which are maintained *in-situ* and some *ex-situ*.

Generally the centre does not fulfill its functions adequately due to a number of constraints, which include the following:

- (a) Inadequate human as well as material resources due to being under funded;
- (b) Lack of legal recognition due to non-existence of the law that regulates the exploitation and conservation of plant genetic resource;

CHAPTER FOUR: THE INSTITUTIONAL ASPECTS OF THE AGRICULTURAL TRADE LAW

4.1 Introduction

Institutions play the role of co-ordinating the implementation of policies and legislation in agricultural trade. Policy and legislation reviews, which have been discussed in the foregoing chapters, necessitate institutional reviews as well. This is important to ensure

that institutions are aligned to the new policies and legislation. As seen in chapter three, the agricultural sector legislation of Tanzania is undergoing fundamental review as part of the national plan to comply with WTO agreements. Reviews is, however, at different stages of implementation and in some areas has not started. It is, therefore, necessary to assess the extent to which sector institutions are supporting the legal reform process and recommend for necessary interventions to fill in the gaps. The starting point is to understand the policy environment in which these institutions are expected to operate.

4.2 Institutional Context for Compliance with WTO

Fundamental reforms have taken place in Tanzania over the last twenty years. The goal of these reforms is to improve the quality of life of the people through a transformed and globally competitive economy. To achieve these national aspirations, both public and private sector institutions must play their rightful role. In the process it was observed that the government could not play both governance and business roles. The thrust of reforms, therefore, has been on re-defining the roles of government and the private sector; which resulted in the privatization of formerly public owned commercial oriented parastatals and rationalizing public sector institutions for cost effective services delivery.

Private sector institutions and enterprises have been encouraged to take up production and marketing roles previously performed by government and public agencies. Production, processing and marketing activities have been entrusted to the private sector. It is expected, therefore, that the private sector will take advantage of the incentives provided by government to invest in productive sectors; enhance productivity in the use of resources; and improve competitiveness in domestic, regional and global markets. To effect the privatization process, in 1993 a presidential commission responsible for privatization of commercial publicly owned companies was established. As far as agricultural sector is

concerned 95 firms were specified for divestiture. Out of these 80 have been privatized and 15 are in the process of being privatized.

In the new dispensation, the public sector plays a catalytic role for the private sector, creating the enabling environment for private sector success. This entails policy formulation, co-ordination of policy implementation; legal and regulatory reforms to create a level playing field in economic activities and reduce cost of doing business; and, monitoring and evaluation of policy implementation at both central government and local government level.

Decentralization of Service Delivery

The Local Government Reform Programme which started in 1996 and became operational in 1999, has been instrumental in implementing the policy of decentralization by devolution. Co-ordinated, originally, from the Office of President (PO-RALG) and now from the Prime Minister's Office (PMO-RALG), the purpose of the programme is to enhance local participation in policy implementation. The district is the focus of development co-ordination. District Development Plans (DDPs) are the basis of resource allocation at local level. The Regional Administration is responsible for development co-ordination within the region and provides technical support to local government authorities within the particular region. It should be noted that the local government authorities are responsible for development co-ordination of all sectors within the districts. These include: agriculture, health, education, natural resources and environment. They do this, among other mechanisms, through enactment of by-laws¹⁵⁸. This calls for technical, financial and competence resources far in excess of what is available at the district level. The interface in responsibility between key institutional players, especially, Sector Ministries, the Co-ordinating Department (PMO-RALG), the Regional Administration and the Local

Authorities, presents a management challenge.

4.3 Institutional Co-ordination

Public Sector Institutions

The co-ordination of the agricultural sector is the responsibility of the Agricultural Sector Lead Ministries (ASLMs). These are: The Ministry of Agriculture, Food and Co-operatives (MAFC); Ministry of Livestock Development (MLD); Ministry of Industry, Trade and Marketing (MITM); Ministry of Natural Resources and Tourism and the Ministry of Water (MW) and the Prime Ministers Office – Regional Administration (PMO-RALG)¹⁵⁹. Under these ministries there are a number of regulatory public organizations, which deal with day to day legislation and regulations enforcement. They include Crop Boards, standards certification institutions such as TPRI, TOSCI, TDFA, TBS, and relevant government departments. All these are semi-autonomous, but are answerable to the respective ministries. At the local government level there are Local Government Authorities (LGAs). According to the Local Government Authorities Amendment Act of 1999, LGAs are supposed to implement policies and legislation issued by sector ministries.

Problems Facing Public Sector Institutions

In chapter three, specific problems facing public sector institutions were discussed, including: overlap of roles and responsibilities among institutions, inadequate capacity and inadequate coordination. They are discussed below in terms of their impact on the overall efficiency in the implementation of the WTO agreements.

¹⁵⁸ See Local Government (District and Urban Authorities) Acts cited supra.

¹⁵⁹ For the purpose of this study, we shall include the Ministry of Health

***Institutional Framework for the
Implementation of the Plant Protection
Act***

(a) Delivery of Services

A review of the implementation of the PPA has revealed a weak institutional framework for the enforcement of the Act. Some of the problems have been occasioned by lack of clarity in the Act itself. For example, the Act does not properly provide who should be a Competent Authority (CA) as envisaged under the SPS agreement framework (or IPPC). The National Plant Protection Organization, though envisaged to be established by PHS and TPRI working relationships, is inadequately enforced because the relationships between the institutions need to be well defined. There is therefore a need for a revision of the PPA to provide for:

- A properly constituted competent authority with the legally recognised authority delegated by the minister to the Chief Inspector/Director of Plant Health and appropriately appointed supporting/advisory committees;
- Restructuring of the institutions primarily involved in administering plant health legislation to ensure that the competent authority can fulfill its mandate effectively. The restructuring could be achieved in different ways according to which administrative model is chosen. The options to be explained and discussed at the stakeholders' workshop should include the consideration to have an improved implementation institutional framework, whereby PHS as properly constituted Competent Authority with TPRI having delegated authority as provider of specified regulatory functions and specialist services. Further, appropriate arrangements would be made for contracting advice and services from outside.

***(b) Field inspection capacity, training,
equipment for inspection, internal
auditing***

Both PHS and TPRI have a cadre of dedicated and well trained plant health inspectors capable of undertaking the tasks required to maintain plant health. However, it is important to understand that this level of activity is only possible through considerable investment in infrastructure, particularly IT information systems such as the electronic import declaration system. In addition, inspectors should have access to an up-to-date database recording all pests and diseases found upon inspection and threat alerts from other countries.

Therefore it is important to provide the necessary level of infrastructure (computers, internet access, etc) to support inspection and other regulatory activities of PHS and TPRI. Support must also be given to maintain the professional skill levels of the staff through training and purchase of resource materials such as manuals, pest guides, etc.

TPRI undertakes a range of more fundamental research and activities to support an agriculture sector that is expanding and in need of greater regulatory oversight and support. In order to maintain and expand these activities TPRI requires the following additional resources: diagnostic laboratory, test kits and equipment for identifying viral, bacterial and mycological contaminants, tissue culture laboratory and greenhouses (particularly for GMO studies) and maintenance funds. However, the request for these resources should be accompanied by the necessary analysis of the needs that are being met.

***(c) Development of pest surveillance,
pest risk analysis and reporting/data
management systems***

An inspection programme is based on the number of inspections required to arrive at a statistically valid assessment of the presence of pest and diseases within a consignment and across the total number of consignments entering the country, taking

into account the likely level of detection. For instance, all imports of planting material/seeds should be viewed as high risk and must be inspected to comply with international agreements. This can be done when decisions are based on sound analysis of the risks. The level of other inspections should be based on the level of risk as scientifically determined through pest risk analysis (PRA) and supporting diagnostic tools.

Pest risk analysis requires a range of scientific skills. It is therefore important for both PHS and TPRI staff to be appropriately skilled (recognising that inspection staff must not also perform PRA tasks) and the resources for PRA activities to be undertaken.

Also it is important for plant health services to work closely with pesticide approval bodies to discuss the needs for quarantine, especially the gaps that occur, the need for specific off-label approvals for special needs. PRA and cost/benefit analysis is needed to ensure effective transition of pests from quarantine status. In support of this work there is also a need for continual update of skills for pest diagnosis and advice for both quarantine and non-quarantine pests. Further, additional systems should be considered for information transfer to ensure that inspectors are using the technical development and are up to date with legal requirements. Management of information to undertake changes in pest status is very important and investment in IT to enhance data management and communication is required.

(d) Development of internal quality management system

Managing the range of complex activities necessary to deliver a modern regulatory and advisory service requires working practices that demonstrate clear procedural process, accountability and demonstration of due diligence. The development of an externally certifiable quality management system such as ISO 9001:2000 for all the

regulatory bodies would greatly assist both the staff and their end-users.

(e) Linkage at the Local Government Level

The Plant Protection Act has no provisions that would link it with enforcers at local government level. District agricultural officers have to be gazetted by the minister in order to have power to enforce the law. Before gazettement they have to undergo training in the relevant fields, including the plant protection legislation and regulations. Due to the inadequate number of gazetted inspectors, one inspector may operate in more than one district.

(f) Raise private sector/farmer awareness and capabilities

The first line of responsibility for ensuring plant health and safeguarding the environment must lie with those who directly manage plants and plant products from farm through to retail. The most cost effective approach to delivering plant health goals is for PHS and TPRI to be given more resources in order to deliver an enhanced service for offering advice to end users, in addition to undertaking inspection and surveillance activities. Particular areas for development must include the safe use and management of agro-chemicals, good agriculture practice, development of pest scouting procedures and integrated pest management.

(h) Communication

In its workings with end-users, government and its statutory bodies and agencies must develop an effective communications strategy to provide appropriate types of services and information on plant health requirements, pest and diseases status, codes of practice for GAP, and plant health risks. There is a need to increase public awareness in relation to domestic food safety, including pesticides control.

Publicity is required for to assist in the dissemination of key documents e.g. pest guides, import/export manuals, GAP, pest

control etc., from information providers (mostly statutory bodies and agencies) and use should be made of leaflets, newspapers and radio for this process. Increasing importance is seen in the need to create and support sector stakeholder organisations e.g. TAHA, that can interact with the appropriate government bodies and create a two-way transfer of information.

Institutional Framework for the Enforcement of the Animal Diseases Act

(a) Service Delivery

The administration of the Animal Diseases Act is not stakeholders involving. The only implementers of the legislation are the Minister, Director, Inspector and District Veterinary Officers. Though there are some provisions that require owners of animals to participate in implementing the law by reporting notifiable diseases or death of animals, there is no provision that provide for incentive which will make such owners aware of the diseases and may be assisted in control at their own level. By requiring the owners to report to the inspector or veterinary officer any disease or death of animal, the law has not considered level of knowledge of most of livestock keepers.

(b) Capacity of inspectors and other enforcers

The capacity of the inspectors to conduct the inspection as required under the Act is highly doubted. Further, there is a need to consider empowerment of the livestock keepers in terms of knowledge on animal diseases control and also improve communication framework between the livestock keepers and the Ministry.

(c) Linkage at the Local Government Level

The Animal Diseases Act has no provisions that would link it with enforcers at local government level. However, the main enforcers of the legislation (inspectors) are the district veterinary officers.

The Institutional Framework for the enforcement of the Tanzania Food, Drugs and Cosmetics Act

(a) Delivery of Services

Despite its significant and far-reaching mandate TDFA does not have the requisite resources to implement the required actions, particularly for one of TFDA principal functions of inspection and surveillance. Although fees have to be paid for inspection and registration of food processing premises and products, this may not represent a significant supplement to their budget.

Given the small size of inspectorate staff, it has to liaise with other bodies and a significant amount of inspection is undertaken by those local health inspectors who have the responsibility for inspection within their jurisdiction. The frequency of product examination depends on the level of risk. TFDA is preparing a risk-based inspection guideline for these variable products. TFDA inspectors will audit the capability of the inspectors to undertake these inspections and these inspectors are gazetted.

There is also the issue of jurisdiction of control of certain products. Fish and fish products come under the control of the Fisheries Department. Meat and milk products and their inspection come under the control of Ministry of Livestock. Tanzanian Bureau of Standards also undertakes the examination and registration of imported and exported food products and products that wish to use the TBS mark and are in compliance with the TBS or other standards. There is an issue over the voluntary or mandatory status of these standards and therefore the need for businesses to register and pay for these services. In addition, the Tanzanian Energy Commission is developing laws to become the delegated authority to inspect all food for radiation contamination. They will issue certificates of inspection for export and import consignments.

Although these Ministries or institutions may seek advice from TFDA there is no

obligation to do so in the development of their regulatory and inspection procedures.

(b) Linkage at the Local Government Level

TFDA feels that there are few problems in their interactions with local institutional bodies e.g. local health inspectors. Through one of its strategic studies on *the chain of responsibility and communication*, TFDA found that each district has health and veterinary officers but there is a need to improve skills and accountability to more central authorities such as TFDA. Health inspectors have to submit quarterly reports to the local authority, monthly to TFDA, weekly to Ministry of Health or as when emergency problems/outbreaks occur. To guide this process, TFDA are developing a guideline for the investigation of food borne diseases and the need for greater capability of inspectors to report food borne diseases. However, there is recognition of the need for more resources and research in this area. To support this, committees with appropriate research bodies have been set up for food, food safety and drugs. These committees will assess needs and make recommendation for new research although the need for adequate budgetary allocation is an issue.

TFDA have also developed an inspection/enforcement policy to standardize the inspection process and activities of the range of inspectors within their programme, particularly for the local health inspectors.

(c) Dissemination and communication

TFDA has established a web page which comprehensively describes the functions and services it performs. This information includes access to appropriate legislation and forms e.g. for registration of premises. It also includes a section on 'Safety Alerts' to highlight concerns, although there are currently only two notifications from the World Health Organisation listed and no archive of past alerts. In addition to the web page, TFDA issues guidelines for the registration of imported and national pre-packaged food products. In support of its

duties, TFDA are developing Zonal offices supported where possible with portable laboratories

As part of the development of TFDA's responsibilities, they have undertaken a two and half-year programme of sensitization with the full range of stakeholders – importers, food manufactures, retailers, farmers, etc. TFDA have a Public Education Section to disseminate information through a range of media including radio, television press, and the web, which contains information on guidelines for registration of products and businesses, SOPs, HACCP, GAP, importation and exportation requirements, etc. These guidelines have been developed in consultation with stakeholder representatives. From July 2006 onwards, TFDA will be developing a range of SOPs

Strategic plans are in place to improve the use of electronic data management and information transfer. TFDA have an IT/communication specialist and are currently planning the process of collecting information into an interactive database. At the moment inspection reports, etc. are submitted on paper and these are transferred to electronic records. As part of improvements in communication they are setting up radio calls, faxes and internet connects with the four main entry points.

TFDA attend CODEX meetings in their areas of specialization but liaise with TBS who are the enquiry point for CODEX. They have identified key committees including pesticides, food additives and contaminants, milk and milk products, food hygiene, labelling and sampling and methods of analysis.

TFDA runs a two-week annual training programme for health and meat inspectors funded through their own funds. There is need to expand the training programme and the necessary funds.

The Institutional Framework for the enforcement of the Tanzania Standards Act

(a) Service Delivery

One of TBS' main concerns is conformity assurance with Quality Management Standards under ISO - processes and establishments. ISO 9000 (QMS), ISO 14000 (Environmental), and ISO 22000 (HACCP) are the principal mandates for voluntary certification. TBS needs to be accredited to provide certification. A major programme of support from UNIDO is continuing to build TBS' capacity.

Adding 'services' to the TBS mandate as proposed in draft amendments to the Standards Act will pave the way for a commercially-oriented offshoot of TBS to provide certification services. This will avoid a possible conflict of interest between standard setting and providing certification to these standards.

The Tanzanian Bureau of Standards (TBS) has four main areas of activity, namely:

- *Preparation of national standards:* The TBS co-ordinates an elaborate system of technical committees which draft national standards in the following areas: food and agriculture, textiles, chemicals, environment, engineering, construction and general techniques. There are some 29 technical committees involved, each consisting of representatives from different government ministries/agencies, academia and industry. In practice, most Tanzanian standards are adapted or adopted from those of Codex or the International Standards Organization (ISO).
- *Product and systems certification:* The TBS may issue a 'Mark of Quality', certify a product for which a national standard does not exist, undertake compulsory inspection/clearance for imported or exported goods which could affect health, safety, or the environment, or certify a company's compliance with

ISO quality assurance (ISO 9000) or environmental management (ISO 14000) systems.

- *Provide testing services:* The TBS has seven laboratories that are able to undertake tests in relation to legal metrology, engineering, chemicals, textiles and food products. It is also developing a laboratory for packaging. However, at the current time none of these are internationally accredited, although there is an on-going programme, supported by DANIDA that will facilitate the accreditation of priority laboratories by the South African National Accreditation System (SANAS).
- *Training for industry in quality management and other areas:* The TBS has been undertaking a limited programme to train company managers and staff in ISO 9000 and ISO 14000 systems. As this represents a conflict of interest with its certification function, a decision has been made to establish an independent subsidiary to focus on consultancies and training. If there is sufficient demand, then this training would be extended to HACCP systems.

The Tanzania Bureau of Standards (TBS) is the National Enquiry Point for WTO-TBT/SPS Agreements in Tanzania. The TBS National Enquiry Point became operational in January 2000 with the assistance of UNCTAD/ITC/WTO under the Joint Integrated Technical Assistance Programme (JITAP).

In relation to SPS matters, TBS inspects and certifies packaged foods from national and imported sources in order to comply with compulsory national standards. In order to undertake these tasks it maintains its own team of 15 inspectors at ports of entry and in market places. Hence, for certain imported foods, both the TFDA and the TBS may take samples for testing and clearance against quality/safety standards. In support of product testing TBS has other staff specifically qualified within food including – quality assurance approx. 4, standards development approx. 6, testing approx. 4,

plus around 7 technicians and other support staff (not trained to degree level). At the moment the chemical contaminant analyses do not include pesticides although this capability is being developed through purchase of equipment. Also TBS is looking to develop capabilities in virology, GMO analysis.

In addition to inspecting and registering products, TBS undertakes an inspection and registration service for premises and processes. The registration, inspection, sampling and reporting programme is organised through the Department of Quality Management.

TBS implements its own QMS systems but to achieve wider recognition and acceptance of its services it is undergoing accreditation to ISO17025 through SANAS with support from DANIDA. The accreditation process is being co-ordinated by a National Accreditation Task Force, chaired by TBS, constituted by the various analytical/regulatory bodies such as TBS, TFDA, Livestock, government chemist, TPRI, Fisheries. Each organisation has to develop a strategic and business plan to submit to DANIDA to receive budgetary support. At the moment five laboratories are at an advanced stage of preparation. TBS documentation has been submitted and reviewed by SANAS and amendments made. Pre-qualification processes should begin in June 2006 with accreditation planned within three to four months.

(b) Food inspection laboratories

With major support from UNIDO (through Swiss government funding) TBS laboratories for food microbiology and food chemistry/contaminants have reached a high level of capacity and are close to achieving accreditation. Capacity will be enhanced by a new UNIDO project that will provide an equipment maintenance and repair facility (available to outside bodies as well).

The legal/regulatory issue is the authority on which they are operating, whether as a back-up to enforcement action under the

Standards Act or other legislation. There are other laboratories able to offer a high level of analytical and diagnostic services (e.g. laboratory of government chemist).

As part of this process TBS and others have initiated a laboratory proficiency testing process. TBS has prepared a stock of microbiological certified reference materials to send to other materials. Support is required to expand manufacture of these materials in the area of sample preparation (freeze dryer required), packaging and low temperature storage - TBS has a -80 °C, but required further expertise on how to manage low temperature storage of microbiological materials.

In addition to their own laboratory facilities, both TFDA and TBS make use of the analytical facilities provided by the government chemist laboratory. There should be a concerted strategy for resourcing and using food control laboratories and their upgrading/capacity building. This should involve appropriate delegated authority (e.g. appointment of 'Analyst' under pesticides legislation) and Memoranda of Understanding to administer the exchange of expertise and facilities.

(c) Government Chemist Laboratory Agency

The Government Chemist Laboratory Agency (GCLA) has a long distinguished and varied institutional history dating back to 1895. It has had an institutional base in a number of Ministries on account of its cross-cutting and strategic role in providing research and analytical services. In 1999, the Laboratory was transformed into an Executive Agency with semi-autonomous powers but still reporting to the Ministry of Health. As such it receives budgetary support from the government, but is able to charge clients (public and private sector) for its services.

GCLA have a mandate to regulate the management of industrial and consumer chemicals (except pesticides) to ensure the

safety and protection of health and the environment.

In relation to SPS matters, GLCA has the capability and currently undertakes analysis of a range of analytes as well for microbiological. Its laboratories are well equipped with modern instruments although there is always the need to update and add to this capability. In addition to new analytical equipment, there is a need to increase IT and information management capacity through upgrading and enhancing IT equipment and intra- and internet provision. As part of a modernisation programme, GLCA has a new 4-storey complex for new offices and laboratories.

It also has a new laboratory for the Lake Zone located at Mwanza which will a range of services particularly for the fisheries and horticulture sector. This is part of a strategic plan to provide services at five regional centres.

The Institutional Framework for the Fish Industry Regulation

(a) Service Delivery

The legal authority for fish diseases is the Fisheries Act 2003 and that the Fisheries Department is the sole Competent Authority, which certifies fish exportation through the Nyegezi Laboratory, in Mwanza region.

One of the challenges facing the Nyegezi laboratory is staff training. Personnel involved with laboratory analysis need continuous training in new techniques and exposure to the methods and procedures applied in comparable laboratories in other countries and to the EU requirements.

Another major challenge facing the Fisheries Department in responding to the restrictions on fish exports due to concerns about pesticide residues was the implementation and maintenance of a programme of monitoring of fish, water and sediment samples. Alongside the implementation of more effective inspection and monitoring regimes, the Competent Authority has made efforts to be proactive in identifying potential

problems and working with the industrial processing sector as and when problems arise.

Within the industrial processing sector, major improvements have been made in both the infrastructure and operating procedures. These include upgrading of the general fabric of processing facilities, rearrangement and segregation of processing operations, installation of flake ice, water treatment and effluent treatment plants, construction of changing rooms and toilet facilities, purchase of new tables and utensils, etc. Laboratories had to be installed or upgraded. Staff had to be trained and quality control personnel employed or enhanced in order to implement HACCP.

The recurring costs of compliance with the EU's hygiene standards for fish and fishery products has imposed a considerable burden on certain of the industrial fish processors, in particular those that entered the sector relatively late and have struggled to secure a reliable supply of fish to maintain their operations at a certain minimum level of capacity the recognition of the need for industry cooperation has already led to the establishment of the two industry organizations, TFPA and LVFPAT towards the end of the 1990s. Both these organizations have played an important role in establishing codes of practice that aid in the implementation of enhanced hygiene controls and promoting best practice, providing updates on legislative changes, etc. LVFAP also has close ties with sister organizations in Kenya and Uganda, aiming to address issues that are of common interest to Nile perch processors across the three countries.

Furthermore, although there is greater cooperation both within the processing sector and between the processing sector and the Fisheries Department and efforts are being made to address issues as and when they arise, the mentality remains oriented towards 'problem-solving' rather than 'pro-activity'.

The Institutional Framework for the Seed Industry Regulation

(a) Service Delivery

Both the Seed Act, 2003 and the Plant Breeder's Rights Act, 2003 were recently passed. They both depend on the infrastructure, which was developed under the Seed (Regulation of Standards) Act, of 1973.

The process of seed certification, which involves the determination of their novelty, distinctness, uniformity and stability, serves both the purposes of Seed Act and the PBR Act. However, the Tanzania Official Seed Certification Institute (TOSCI) is both ill equipped in terms of staff (both laboratory and field seed analysts) and working tools.

(b) Further, Institutional Performance in the Enforcement of the PBR Legislation

Although the PBR Act became operational in February 2004, the Officer of the Registrar of started to function in 2005. The Plant Breeders' Rights Advisory Committee was also appointed in the same year. So far 17 applications for PBR have been received by the officer of the Registrar. All the applications are still under consideration. This means that no grant of PBR has already been made so far.

Effective implementation of the PBR legislation is hampered by a number of factors:

(i) Inadequate human resources

For proper functioning of the Officer of PBR, at least 4 technical officers and three support staff have to be in place. So far apart from the Registrar, there is no officer assisting him. This will delay supervision of field trials before full registration of the plant breeders' rights application already received.

Field trials are supposed to be conducted by the Tanzania Official Seed Certification Institute (TOSCI), which also deals with certification of seed under the Seed Act,

2003. However, the institute itself is operated under low capacity, due to inadequate staff and support equipment.

(ii) Small Number of Applicants for PBR

One of the purposes for enacting the PBR legislation was to attract local and international breeders to invest in plant variety development in the country. Although the PBR Act was passed in 2002 and became operational two years later, only 17 applications have been received. Almost all application received belong to public agricultural research institutions. 9 applications have been made by a private coffee research institution (Tanzania Coffee Research Institution – TACRI). TACRI is also a quasi-public institution as it still uses public finances to conduct its research. Moreover, there is still a contention as to who owns the varieties. It is argued that development of most of the varieties for which TACRI has applied PBR started before TACRI was formed¹⁶⁰.

So far there has not been any foreign company or individual application for PBR. Although new varieties from outside the country are required, especially in the horticultural industry, there is still a high level of hesitation to foreign seed companies to bring in those varieties under the PBR Act protection. Most seed multinational companies require that Tanzania should be member of UPOV in order to ensure them adequate protection of their varieties¹⁶¹.

(iii) Weak Plant Breeders Organization

The Tanzania Plant Breeders' Association was established in 2004 with the sponsorship of the government. Most of its members are public research officers¹⁶².

¹⁶⁰ TACRI was established in 1998 as an attempt by the Government to involve the private sector in coffee research. However, all the research infrastructures used by the institute still belong to the Government.

¹⁶¹ This will assure them enforcement of their rights using international mechanism, for example through the WTO mechanism under TRIPS (there has been an argument that the UPOV system should be recognized as "the" *sui generis*) or through the UPOV mechanism itself.

¹⁶² Out of 75 members public researchers are 66.

Thus, without government support, the organization cannot operate on its own.

(iv) Low level use of certified varieties

Although about 45 percent of the Tanzanian economy depends on agriculture, there has been a low rate of using certified seed. Currently, the use of certified seed is 12 percent of all the seed used in agriculture. This is mainly because the Tanzanian agriculture is mainly small-holder based, most of whom cannot afford improved varieties. This implies that there is a small market for new plant varieties, the phenomenon which discourages investment in plant breeding.

(c) Further Institutional Issues in the enforcement of the Seed Act

Though the law intends to facilitate smallholder farmers' access to seed of the required standards, it is highly doubted if the majority of the targeted groups are aware of the importance of using quality seed. This is due to the inadequate nature of extension services provided to farmers. Local government authorities which are supposed to employ extension staff do not have enough resources to employ competent extension officers¹⁶³.

Though the Act was declared operational from 1st February 2005, the new regulatory body i.e. TOSCI is not yet well equipped in terms of human resources and working tools. On the other part, the Management Committee of the TOSCI has not been put in place. Moreover there have been concerns that its composition as provided by the law is not fully representing the stakeholders. It is supposed to have only one representative from the private sector that is from the Tanzania Seed Traders Association¹⁶⁴.

As noted above the level of private sector participation in the seed industry is still very

low. So far there are 18 private companies, which are registered under the Seed Act to conduct seed distribution. Out of these 13 are local companies and 5 are foreign companies. Most of the foreign companies do not produce seeds within the country, partially because of scepticism on the adequacy of protection by the existing PBR legal framework.

Enforcement of the Seed Act is hampered because there is no an adequate number of inspectors¹⁶⁵.

4.4 General Observations on Public Regulatory Institutions

The above analysis reveals that efficient enforcement of legislation related with WTO agreements, especially the SPS agreement is affected by the following factors:

(a) Overlapping of roles and functions

The government through TFDA, Ministry of Industry and Trade and Ministry of Livestock is in the process of analysing the potential areas of regulatory overlap with other organisations. For instance, the TFDA to adopt TBS standards as TFDA regulations: TFDA licence conditions include compliance with these standards. On the other hand there is discussion in relation to inspection and registration of fisheries, meat and dairy products and businesses, as well as the issue of food inspection and registration with the TBS¹⁶⁶. Collaborative discussions have

¹⁶⁵ Currently there are 15 inspectors all over the country. However, recognizing the importance of seed inspectors in the enforcement of the new Seed Act, the Government is currently training 67 seed inspectors to be relocated at the district level.

¹⁶⁶ For example, a Meat Bill which was being prepared by the Ministry of Livestock has been stalled until harmony between the Ministry and TFDA is developed. A Task Force, which was established to deal with this issue recommended strengthened collaboration between TFDA and Ministry of Livestock, so that one ministry may carry out regulatory functions on behalf of the other at some stages along the food chain to achieve human and animal health protection and promotion of the relevant industry. In order to achieve this it was necessary to define clearly their respective areas of delegated authority such that TFDA delegate its functions of safety and quality control at meat slaughter and raw milk collection and distribution stages to the MoL.

¹⁶³ An intervention proposed by the Government under the Agricultural Development Programme, which started to be implemented in 2006/2007 is to start a mass training programme for new extension staff at the district and ward levels.

¹⁶⁴ Section 2(2) of the Schedule.

to take place with the various Ministries to review existing and draft laws and regulations, and who has the delegated authority and responsibility in the various food chains. These discussions have to include the Boards and their various mandates in relation to food/product management and food safety and hygiene.

At the moment TFDA and TBS operate an informal process of information exchange. In addition, TFDA has wide representation and involvement within TBS through the TBS technical committees. TBS had felt in the past that NFCC were encroaching on TBS territory by enforcing TBS standards under food safety licences but there is now a greater consensus on the need to work together in light of limited resources. However, the current informal arrangements may still result in some duplication of effort in having standards adopted under two licensing systems and having enforcement carried out twice. Some end-users complain about this level of regulation and enforcement as being too confusing and bureaucratic.

(b) Lack of Accredited Laboratories

The overlapping of roles and mandates has resulted in spreading resources thinly, especially as far as establishment of testing laboratories is concerned. As a result, the process of having laboratories has taken time because of lack of resources. Coordinated initiatives that have been initiated under the auspices of the Ministry of Industry, Trade and Marketing are welcome. However, the objective should be to fast track the accreditation process of few laboratories, which have potential for providing services to more than one crop of food industry.

(c) Weak inspectorate and Surveillance Systems

Weak inspectorate and surveillance system has been observed in the enforcement of some legislation. Apart from inadequate resources, lack of coordination and linkage with local government contribute to this deficiency. This is because, while it is

expected that the main enforcers of the legislation will be based at the local government level, to some legislation enforcement responsibilities are coordinated up to the local government level.

(d) Lack of Legal Enforcement Mechanism at the Local Government Level

Although from their respective Acts the Local Government Authorities (LGAs) are empowered to spearhead development activities in their areas of jurisdiction, it is observed that as far as agriculture is concerned, the implementation of most agricultural legislation such as the Crop Industry legislation, Plant Protection Act, Food Security Act¹⁶⁷, Seed Act¹⁶⁸ etc, have been more centralized to such extent that the contents of these laws do not have provisions on the implementation at local government level. In other words they do not have an institutional framework that involves local government authorities in their implementation. Moreover, agricultural sector Ministries are not involved in the process of local government by-laws making on areas that concern agriculture. This can result in the following:

- There is virtually two parallel law making process as far as agricultural legislation is concerned. The first one is through by-laws, which are made by local government Councils and approved by the Minister responsible for local government and enforced by local government. The second one is through the parliament and enforced by central government departments and crop boards. In some cases these laws may not be in harmony as evidenced in agricultural taxation laws below.
- Smallholders farmers in rural areas may not be aware of the international legislation requirements, which apparently they are supposed to adhere to, if they have to produce according to international standards requirements.

¹⁶⁷ Act No. 10 of 1991

¹⁶⁸ Act No 18 Of 2003

This certainly affects local compliance to WTO requirements;

- Because of relatively less exposure of District Councils on international requirements, there is a likelihood that their locally formulated by-laws will be counter international markets requirements;
- While market forces would have operated from the bottom, that is, from rural areas, they are cut off through non-trickling down of agricultural legislation to the bottom.

(e) Insufficient Public awareness mechanisms

The public needs to be constantly informed of the relevance and importance of enforcing the SPS legislation and the benefits they will get if they observe such legislation so as to enhance compliance. Due inadequate number of public awareness campaigns enforcement requirements may seem as unnecessary burdens to the public.

(f) Insufficient Communication frameworks and other infrastructure

Enforcement of SPS legislation requires a constant feedback of information from the ground to the national, regional and international level. While at other levels there may be efforts leading to establishing such links, at the local government level there may no networks for information exchange. Further, although almost all SPS legislation have provisions that require reporting, only the Ministry of Health has managed to put in place a communication mechanism that would make prompt reporting possible.

4.5 Private Sector Institutions

The agricultural private sector in Tanzania is predominantly small scale. The exception is the large-scale tea, sisal and sugar plantations that have been privatized as part of economic reforms. The traditional cash crops, specifically, cotton, tobacco, cashew, pyrethrum and coffee are in the hands of

small scale farmers mostly organized in cooperative societies or groups of farmers. Non-traditional agriculture, especially horticulture, is also smallholder driven. The exception is export-oriented horticultural produce (fruits and vegetables), mainly in the northern parts of the country (Arusha and Moshi). Horticultural farming in this part of the country is highly developed in agronomic and technology intensity. While primarily large scale, it is also effectively linked to small scale out-grower schemes. The question arises as to whether the private sector has the capacity to influence policy formulation and implementation. Institutional challenges within the private sector associations include overlaps in roles of agricultural related sector associations and weak capacity in policy advocacy. Capacity limitations also inhibit private sector participation in monitoring and implementation of development policies. A few business associations are discussed below to illustrate this capacity challenge.

(a) Tanzania National Business Council

Tanzania National Business Council (TNBC) was established by Presidential Order in September 2001, and became operational in 2002. The Council is a forum for public-private sector dialogue mechanism aimed at creating a better environment for private sector led economic growth. It is the focal point for addressing cross-cutting concerns of the private sector. Membership of Council is drawn from representatives of sector and umbrella associations. TNBC has been successful in addressing cross-cutting concern of the private sector. The Private sector players believe that government response to the concerns of the sector has been positive. They point to the changes in taxation laws to remove "nuisance taxes"; the establishment of the Export Credit Guarantee Scheme; and the establishment of TNBC as a mutual dialogue mechanism. Challenges, however, remain: These include: macro-economic imbalances, especially high taxation levels, high interest rates and limited access to financial

resources, especially credit; competitive barriers, in particular, poor infrastructure (roads, railways, energy and communication); inadequate investment incentives, especially cumbersome land allocation procedures; and weak institutional co-ordination in policy implementation. TNBC is optimistic that the dialogue mechanism that it provides will stimulate private investments and, hence, economic growth. TNBC lacks technical and financial resources to carry out its mandate. It is wholly funded by government, notwithstanding that it is a public and private partnership dialogue mechanism. The private sector has not played its rightful role in resources mobilization. This needs to change if the private sector is to be a credible partner to government in policy dialogue. TNBC will have to put in place strategies for resource mobilization to effectively research on policy issues; and present viable options to government on policy development and implementation.

**(b) Tanzania Private
Sector Foundation**

Tanzania Private Sector Foundation (TPSF) was established in 1998 as the umbrella body of sector-based private sector associations. Members include: Tanzania Chamber of Commerce, Industry and Agriculture (TCCIA), Confederation of Tanzania Industries (CTI), and Chamber of Agriculture and Livestock. In all, thirteen sector associations are represented in TPSF. The motivation for the establishment of TPSF is to advocate, in a holistic manner, the concerns of the private sector. Traditionally, sector associations have advocated on their sector interests. Thus, CTI would champion the interests of manufacturers. The manufacturers' interests can be at variance with those of traders, for example. The need to harmonize the advocacy needs of the private sector on the basis of national interest, led to the establishment of TPSF. The current advocacy agenda of TPSF include: reforms in land policy to ensure easy availability of land for investment; financial sector reforms to enhance financial resources access to the private sector;

empowerment of local entrepreneurs through special provisions in procurement procedures; and institutional reforms to ensure effective participation of the private sector policy processes. TPSF is funded through membership subscriptions. This is inadequate to support the technical and institutional capacity needed for effective policy advocacy. Information generation and dissemination is a key role of an advocacy association. In absence of adequate funding, this is not possible. Policy advocacy is effective when informed by research and policy analysis. While TPSF is not expected to be a research and policy analysis institute, it nevertheless should have the capacity to mobilize research evidence from different sources for the purpose of evidence-based advocacy. TPSF has not developed capacity to mobilize resources for policy advocacy. Weak institutional capacity, including technical and financial limitations, is a major challenge to the advocacy role of TPSF.

**(c) Tanzania Chamber of Commerce,
Industry and Agriculture**

Tanzania Chamber of Commerce, Industry and Agriculture (TCCIA) is a membership organization with local network in all regions and districts. The Management Structure, which is replicated in all regions and districts include the President and Vice-President for each of the three standing committees: Commerce (trade), Industry and Agriculture collaboration is maintained with other associations. The President of TCCIA is the current chair of TPSF. Membership services include: information dissemination through newsletters, and websites; facilitation of business missions, trade fairs and exhibitions; and entrepreneurship training. In collaboration with IFAD, TCCIA is implementing the Agricultural Marketing System Development Programme which targets market access challenges, including production systems and standards, value addition in agriculture, and improvement in rural infrastructure. TCCIA is well established as an advocacy association in the country. It has wide outreach in all parts of the country. It sources funds from membership subscriptions, services

provision (issuance of certificates of origin) and donor support (SIDA). Agriculture specific advocacy concerns on the agenda include: limited access to inputs by farmers, largely due to unavailability of support credit; weak research and extension services in the sector; poor rural infrastructure, especially access roads, marketing facilities and market information; unsustainable agronomic practices, especially rain fed small scale agriculture. TCCIA is concerned that despite the introduction of the Single Business Permit, traders and farmers are still subjected to multiple taxes and levies, mainly to offset revenue shortfall by local authorities arising from the introduction of this Permit. TCCIA is also challenged by weak capacity in policy advocacy. Limited financial resources adversely affect the ability of TCCIA to provide technical back-up in policy advocacy. The engagement of the association in ASDP co-ordination structures is also negatively affected by shortage of technical personnel. Capacity limitations also hinder the participation of TCCIA in trade negotiations and foreign trade promotion missions. These challenges can explain the formation of other associations that tend to duplicate the role of TCCIA. Tanzania Chamber of Agriculture and Livestock (TCAL) for example, were established on the basis that TCCIA was unable to fully represent the interests of the agricultural sector. It will be noted that TCI represents industrialists some of whom are also members of TCCIA. TCCIA has standing committee on industry. This duplication in advocacy role of private sector associations further erodes their already weak capacity. The outcome is weak representation by private sector in policy formulation and implementation.

(d) Confederation of Tanzania Industries

Confederation of Tanzania Industries (CTI) was established in 1991 to promote and champion the interests of the manufacturing sector and related support industries. Important objectives of CTI are to advocate for an investor friendly environment in Tanzania; and to promote public and private sector partnerships in policy dialogue. Current advocacy agenda by CTI include:

lobbying GOT for reduced tax levels and simplify the tax regime to reduce cost of business; urging GOT to address critical challenges of poor infrastructure, especially poor state of roads and high cost and unreliable energy sector; and improving access to financial services, especially credit to the manufacturing sector.

CTI has been closely involved in the formulation of both ASDS and ASDP and has attended many consultations fora. It will be noted that most members of CTI are in agro-processing and agricultural marketing. The linkage between agriculture and agro-business is strong. CTI would therefore like to see a vibrant agricultural sector which will have a positive impact on the manufacturing sector.

GOT has been responsive to advocacy by CTI. Positive response noted include: abolition of "nuisance" taxes; the introduction of Common External Tariff through EAC Customs Union; and the reforms in tax administration. Current taxation levels, especially VAT at 20 per cent, are considered too high in relation to the levels in competing countries (VAT levels in Kenya and Uganda are at 16 percent).

CTI is challenged by weak technical capacity, thus constraining evidence-based policy advocacy. Limited funding is also a challenge. Membership contribution accounts for 70 per cent of CTI budget. The balance (30 per cent) is sourced from donors. Funding arrangements with Danida ceased in December 2005, and CTI is seeking new funding sources. Needless to say, CTI is hard pressed to implement advocacy programmes and provide effective services to members.

(e) Agricultural Council of Tanzania

Agricultural Council of Tanzania (ACT), previously Tanzania Chamber of Agriculture and Livestock, was established in 1999 and inaugurated on December 12, 2000. The Mission of ACT is to promote, protect and co-ordinate agricultural sector interests; and to advocate for policy and regulatory reforms

that will stimulate the development of the agricultural sector. The primary reason for the formation of ACT was the need to have an association that is primarily focussed on the agricultural sector. There was a realization that the mandate of TCCIA was too broad to adequately cater to the interests of the sector. Membership is drawn from primary producers, processors, input suppliers and agricultural marketers.

Issues concerning agriculture and on which ACT advocates, include: limited access to credit by primary producers; inadequate information on the reforms in the land tenure system; and policy, legal and regulatory reforms in the agricultural sector. Reforms in the sector are needed to enhance agricultural productivity and improve marketing opportunities through investment in agricultural marketing infrastructure.

ACT participates in ASDP activities on invitation. The Ministry of Agriculture, Food and Co-operatives has also been supportive of the association. But capacity constraints limit the participation of ACT in ASDP policy processes. The association is constrained by both technical and financial resources. It is in the process of setting up the Secretariat. ACT is engaged in the study of agricultural sector actors (with support from BEST) as the basis for membership recruitment and effective policy advocacy.

(f) Farmer Organisations

The co-operatives societies: with the onset of economic liberalization, the co-operative societies and unions have been under intense pressure to compete in the new business environment. Challenges in the co-operative sector include: high cost organisational structures; weak leadership and management; inadequate financial base; and weak co-operatives support institutions, especially training providers. These problems were identified in the Presidential Special Committee of 2000 (Revival, Strengthening and development of Co-operatives in Tanzania) and led to the formulation of the Co-operative Development Policy of 2002. This policy addressed reform issues in the co-operative

sector and led to the enactment of the new Co-operative societies Act of 2003. To further deepen the reforms in the Co-operative sector, and in particular, to effectively implement the Co-operative Development Policy, GOT has developed the Co-operative Reform and Modernization Programme (CRMP). This programme seeks to resolve the challenges identified in the Co-operative Reform Policy through structured interventions. The outcome is expected to be a competitive co-operative sector underpinned by a culture of good governance and prudent management.

Other Farmer Organizations: due to weakness in the co-operative sector, farmers have resorted to forming groups and associations to support their farming activities. Tanzania Horticultural Association (TAHA) is a unique case of a viable farmer organization. TAHA has a corporate membership of 18, mainly large scale farmers in the horticultural sub-sector. Plans are advanced to include small scale farmers in the membership of the association. Small scale farmers are linked to large scale farmers through out grower schemes. This system allows these farmers to access inputs, technology and markets. TAHA is currently advocating on limited and high cost credit; fiscal challenges, especially lengthy VAT refund procedures; cumbersome pesticide registration procedures; inadequate support from research institutions; and high freight charges on horticultural exports (40-60 percent of CIF-EU prices). According to TAHA, productivity in the horticulture sub-sector can be improved through intensive training of the workforce, intensified technical support by research and extension services and a favourable financial services sector. At the processing level, associations of small scale entrepreneurs are emerging. An example is Tanzania Milk Processors Association.

Measures to promote emerging organizations should be put in place. These include capacity building in institutional management, technology transfer through appropriate extension services and support in development of market linkages between

small scale producers and large scale processing enterprises. These interventions could be embedded in ASDP strategies at LGAs level.

(g) Financial Institutions

The critical challenge of agriculture in Tanzania is inadequate access to financial resources by farmers and agro-processors. While the establishment of the Agricultural Bank has been proposed, this has not been actualized. There are also reservations about the viability of a sector specific bank. The financial system, with its over reliance on collateral for lending, has not pro-acted to the needs of the agricultural sector. Most small scale farmers lack title to their holdings and cannot therefore access credit from commercial banks. While the emergence of micro-finance institutions and SACCOS has provided limited support in the sector, the challenge still remains. Innovative strategies should therefore be developed to finance agricultural development. Options to consider include asset leasing for agro-processing; warehousing and factoring for inputs supply; and out grower linkages to larger enterprises. In this connection it should be noted that the option of warehousing receipt system as a funding mechanism in the sector has been implemented and is operational. It is also necessary to note that in out grower schemes that are linked to processing and marketing value chains, the small scale farmer benefit from inputs supply and technical support services. Government, through the ALMS is challenged to address the acute problem of limited access to financial services, especially credit, in the agricultural sector.

4.6 Private sector and agricultural development in the districts

It is estimated that over 99 per cent of agriculture in Tanzania is small scale. It is characterized by low productivity and limited value addition. Small-scale farmers have limited access to inputs, mainly due to lack of credit. Agricultural practices have not improved due to inadequate training and extension service. Physical infrastructure

and scant market information denies the farmer access to a larger market. In the circumstances, small-scale agriculture trend to be subsistence based:

- Value addition through processing requires improved entrepreneurial and business management skills. It also requires investment capital. Venture capital is limited due to weak support to agriculture by commercial banks. A viable option in promotion of agro-processing is to attract foreign investment into the sector. Many stakeholders have indicated that promotion of joint ventures between foreign and domestic capital could stimulate investment in agro-processing. The example of foreign investment in the sugar sector is an indicator of the potential in this approach
- Private sector support institutions are weak. Co-operatives have traditionally supported farmers in accessing inputs and markets. With the onset of liberalization this role has been eroded. In the event, the bargaining power of small scale farmers is weak.
- A viable strategy in linking small holders to the markets is contract farming. This has been successful with respect to tea, sugar and horticultural out growers. In this system, small scale farmers have access to inputs, agricultural technology and markets. The contracts require them to produce according to international market requirements. However, for this system to be effective, it is necessary to promote large scale agriculture. Structured incentives to promote these linkages should be put in place.

Capacity Building in Agricultural Sector Institutions

From the assessment of institutions in the agricultural sector, capacity limitations are evident at all levels. This applies to both public and private sector institutions and capacity building is needed as summarized hereunder:

(i) Capacity building in public institutions

Agricultural Sector Lead Ministries: The reform of the Public Service has been on-going for more than a decade. Cross-cutting public reforms have been implemented through the following sector programmes: Legal; Local Government; Public Service; and National Anti-Corruption Strategy and Action-Plan. These reforms have identified the restructuring and capacity building needs in ministries, public agencies and local authorities. The "State of Public Service Report", for 2004, presents the progress made under the following components: restructuring; human capital management and pay reform; leadership, management and staff development; integrity and diversity; management information systems; and programme management and co-ordination. With respect to ASLMs and in relation to the implementation of ASDP; and having regard to the ASDP objectives of promoting private sector investments in the agricultural sector, the following needs are indicated:

- Weak co-ordination between ASLMs and other agriculture collaborating ministries in the implementation of ASDP. In particular, it is necessary to resolve the overlaps in the implementation of ASDP, RDS and other sector specific development programmes calls for a study of the co-ordination mechanism within the agricultural sector; and a re-formulation of an inclusive mechanism for the implementation of all agricultural sector related programmes. This approach may have to include rationalization of all sector implementation structures especially those related to RDS. The bias of this rationalization is the Strategic Plan of each ASLM. The development and implementation of these Plans should take account of sector development priorities as articulated in ASDP. Planned objectives, strategies and activities should therefore be aligned to ASDP objectives. In all cases, the involvement of the private sector in policy co-

ordination should be provided. If necessary, the private sector should be facilitated to engage in policy dialogue, especially at the national level.

- Inadequate technical and networking skills in ASLMs. The reformed public service requires highly developed planning, policy analysis and networking skills. The management of the interface between the public and private sectors requires a shift in "mindset, from control to facilitation. These skills can be developed through training. These needs have been identified in various training needs assessment report under each line Ministries. At national co-ordination level, specific training is required in strategic planning; policy analysis; project management; results based management; financial mobilization and management; networking and facilitation skills; and monitoring and evaluation. At local government level, skills that should be enhanced include: participatory planning methods; project management; financial management; community mobilization; and monitoring and evaluation.

(ii) Capacity building in private sector institutions

The private sector is an integral part of agricultural sector development. The engagement of the private sector at policy level is through business associations. This involvement has been weak, partly due to the weak co-ordination mechanism and also due to the weak capacity of private sector associations. As discussed in previous sections, private sector associations lack technical and financial resources to be capable partners with government in policy dialogue. This is historical. Under the socialist model of development, the role of private capital was marginalized. The result was weak private enterprises and associations. The private sector in Tanzania is still evolving. In agriculture, in particular, the off-take of the commercial role previously played by government is still incomplete. To engage in policy debate, therefore, private sector association must

enhance their advocacy competence. Specific competence needs include: research and policy analysis; advocacy communication; fund raising skills; networking skills; and monitoring and evaluation capabilities. To be effective players in policy arena, business associations must improve their leadership and governance capacity; enhance internal management capacity; and cultivate a positive image through issues-based advocacy. It is unlikely that, without substantial support, private sector associations can build the essential capacity for policy advocacy. Government should regard a strong private sector as an effective partner in development. Government can support the private sector, through the associations, to play its advocacy role. On the basis of clearly defined governance principles, government and development partners could mobilize funds for capacity building in business associations.

At local level, the LGAs, NGOs and Community Based Organizations should be enlisted in building capacity of farmer associations. A few NGOs are already involved in this exercise. But a capacity building programme could be more viable. The recommendation is that a private sector capacity building programme should be an integral part of agricultural sector development.

(iii) Capacity building in agricultural support institutions

The need to restructure crop boards has been discussed. The traditional role of crop boards, including processing and marketing, has been overtaken by economic liberalization. The cost of maintaining crop boards undermines the returns to the farmer. While previous reforms have substantially addressed the concerns of agricultural sector players, a view persists that crop boards are to be reformed to be small focused only on regulatory functions to create a level playing field in the sector. This system need not be crop-based. A case exists for a regulatory agency covering the whole spectrum of agricultural crops.

CHAPTER FIVE: THE REGIONAL ASPECTS OF THE IMPLEMENTATION OF THE WTO AGREEMENTS

5.1 Introduction

The objective of this chapter is to assess regional initiatives that aim at creating opportunities for agricultural trade within the region so as to harmonize member countries' agricultural trade laws. Regional arrangements have a big potential for creating regional markets with less stringent standards, assisting member states to have harmonized and WTO compliant legislation and increasing efficiency in quality assurance and certification systems. Moreover, they assist countries to negotiate as a group and thereby enhance their negotiation power.

This part will mainly address itself to the regional arrangements that Tanzania is involved in, particularly the SADC and the EAC. However, some attention will also be paid to the dilemma, caused by not being a member to COMESA, especially from the point of view of the on-going negotiations under the Economic Partnership Agreements with the European Union.

5.2 Southern African Development Community (SADC)

Tanzania is a member to the Southern African Development Community (SADC) which is successor of the Southern African Development Co-ordination Conference, (SADCC). SADC was established by the Declaration and Treaty dated 17th Day of August, 1992 signed in Windhoek by ten (10) Southern Africa states including Tanzania. Currently there are fourteen (14) African countries which are members to SADC¹⁶⁹.

¹⁶⁹ SADC members are Angola, Botswana, Democratic Republic of Congo, Lesotho, Madagascar, Mauritius,

The objectives of the SADC as stated in article 5 of the Treaty include: to achieve development and economic growth, alleviate poverty, enhancing the standards and quality of life of the peoples of the Southern African region and supporting the socially disadvantaged through regional integration. In order to achieve its objectives, the Treaty under article 22 empowers SADC member states to conclude such Protocols as may be necessary in each area of co-operation.

Pursuant to article 22 of the Treaty the SADC member states have concluded various Protocols including Protocols impacting on trade within the region. In Tanzania, the implementation of some areas of cooperation agreed upon within SADC region has been made possible through enactment or incorporation in the existing legislation the SADC legal instruments (Treaty, Protocol and Memoranda) that govern the cooperation. For example, Section 208 of the Customs (Management and Tariff) Act¹⁷⁰ recognises article 3 and 4 of the SADC Trade Protocol which provide for elimination of barriers to intra- SADC trade and elimination of import duties respectively on goods imported into Tanzania from SADC member states. Under this section, it is stated that the two articles in the SADC Trade Protocol shall apply in the United Republic of Tanzania and have a full force of law.

Tanzania has also been involved in the harmonization process for Seed Regulations within the SADC region in order to promote seed trade. The harmonization process was approved by member states at the meeting of the SADC Permanent Secretaries for Agriculture held in Maputo in December, 2005. It covers common Varieties Release Systems, common Seed Certification and Quality Assurance and common Quarantine and Phytosanitary Measures.

It is expected that after their approval, the implementation of the documents of the harmonized Seed Regulations will be

implemented through a signed a Memorandum of Understanding (MOU) or a Protocol.

The SADC Protocol on Trade

Being a member of SADC Tanzania is a signatory to the SADC Protocol on Trade of 1996. The SADC Trade Protocol, among other things, requires member states within the agreed modalities under the Protocol to reduce and eventually eliminate import and export duties (article 4 and 5). It also requires member states to adopt policies and implement measures to eliminate all forms of Non- Tariff Barriers (NTB) and refraining from imposing such NTBs.

The SADC Trade Protocol recognizes the WTO agreements, especially on the implementation of Sanitary and Phytosanitary measures and application of anti-dumping and safeguarding measures by the member states.

5.3 East African Community

The East African Community (EAC) was formerly re- established on 30th November 1999 when three East Africa states (Kenya, Uganda and Tanzania) signed the Treaty for its re- establishment, after it had collapsed in 1977. The EAC Treaty entered into force on 7 July 2000, following the conclusion of the process of its ratification and deposition of the Instruments of Ratification with the UN Secretary General by all the three partner states. In 2001, the Tanzanian government enacted an act of the Parliament titled " *Treaty for the Establishment of the East African Community No. 4 of 200*" the Act provides for giving effect to the provisions of the Treaty for the Establishment of the East African Community, 1999.

The objectives of the Treaty as stated under article 5 include developing policies and programmes aimed at widening and deepening co-operation among partner states in political, economic, social and cultural fields, including research and technology development. Further, under articles 75 and 76 the Treaty calls for the

Malawi, Mozambique, Namibia, South Africa, Swaziland
Tanzania, Zambia and , Zimbabwe.

¹⁷⁰ Cap. 403 R.E.2002

establishment of the Customs Union, a Common Market, and eventually a Monetary Union. It also sets the ultimate objective as being a political federation of East African states.

In the agricultural sector, the Treaty addresses the need to have a regional food security and rational agricultural production within the community. Articles 105 to 108 encourage harmonization of agricultural policies and legislation (seed, livestock multiplication and distribution, plant and animal and diseases control) in order to promote the agricultural sector and ease trade within the region.

Pursuant to article 105 of the Treaty, which refers to the cooperation in the field of agriculture, in July 2006, three states had decided to develop Agriculture and Rural Development Policy for the East African Community with its implementation document titled Agriculture and Rural Development Strategy for the East African Community (2005-2030).

5.4 East African Community (EAC) Customs Union

It is important to reiterate that the EAC members are also Members of the WTO and are thus committed to liberalizing their external trade. In addition, the EAC relies heavily on exporting its agricultural products¹⁷¹. Kenya, Tanzania, and Uganda have committed to regionalism while trying to retain some of the benefits of the multilateral trading system. Most imports in the region are of machinery, transport materials and equipment from industrial countries. None of the countries in the EAC has a comparative advantage to supply any of those products. Much of the trade creation and diversion of the EAC would be felt in the manufacturing sectors which are quite small in Uganda and Tanzania but are likely to see growth as the RTA encourages

them to become export oriented. Kenya will also increase exports, especially manufactured goods to Uganda and Tanzania. Except for foodstuffs, Tanzania and Uganda do not stand to gain export of industrial products in some years of the implementation of the EAC Custom Union Protocol.

Main features of a Customs Union for EAC

The main features of a Customs Union as embodied in Customs Union Protocol and its annexures, Common Customs Law (and regulations) and the Treaty include the following:

- (a) A common set of import duty rates applied on goods from third countries (Common External Tariff - CET)¹⁷²;
- (b) Duty-free and quota-free movement of tradable goods among its constituent customs territories;
- (c) Common safety measures for regulating the importation of goods from third parties such as phyto-sanitary requirements and food standards.
- (d) A common set of customs rules and procedures including documentation;
- (e) A common coding and description of tradable goods (common tariff nomenclature, CTN);
- (f) A common valuation method for tradable goods for tax (duty) purposes (common valuation system);
- (g) A structure for collective administration of the Customs Union.
- (h) A common trade policy that guides the trading relationships with third countries/trading blocs outside the Customs Union i.e. guidelines for entering into preferential trading arrangements such as Free Trade Area's etc with third parties.

The customs union is expected to promote cross-border investment and serve to attract investment into the region, as the enlarged market with minimal customs clearance formalities. Private sector operators based in

¹⁷¹ See Jeremy Everard John Stratified (2003): An examination of regional trade agreements: a case study of the EC and the East African community in www.tarac.com.

¹⁷² Common External Tariffs for EAC, are provide Annexure I to the Custom Union Protocol.

the region with cross-border business operations will be able to exploit the comparative and competitive advantages offered by regional business locations, without having to factor in the differences in tariff protection rates, and added business transaction costs arising from customs clearance formalities.

Adjustment of the national external tariffs to the common external tariff will result into major welfare gains for consumers, if the CET on finished goods will be lowered as a result of such adjustments.

Challenges of the Customs Union

While the Customs union is expected to generate major benefits to EAC partner states, it will also bring about greater competition among domestic firms¹⁷³. In the short run the firms that stand to gain most are those that are already competitive. It is with this consideration that the principle of asymmetry was adopted in the phasing out of internal tariffs, in order to provide firms located in Uganda and Tanzania with an adjustment period of five years. Nevertheless, it is said that such firms may in the medium term overcome lack of competitiveness, through:

- (i) additional investment in newer production technologies;
- (ii) specialization in activities where they have a competitive advantage;
- (iii) re-training of human resources; and
- (iv) forming strategic alliances with their competitors.

As far as the agricultural sector is concerned the implementation of the EACU also involves harmonization of policies and legal frameworks impacting on agricultural trade in the region which include taxation systems (import and export duties). Attempts also are under way to harmonize legislation that deal with SPS issues as indicated below.

5.5 Harmonization of Seed Regulations and Policies

Within the East African Community (EAC), Tanzania is part to the initiatives for the development of the harmonized quarantine policies, legislation and regulations, aimed at easing seed trade in the region pursuant to article 106(a) of the Treaty. The harmonization process started in 1999 under the initiatives of the Association for the Strengthening of Agricultural Research in Eastern and Central Africa (ASARECA). The developed procedures for harmonization are in process of being officially tabled for review and adaptation by the respective organs of the EAC. It is expected that the procedures will cover the following areas:

- (i) Common standards for compulsory certification of crops of major economic importance in the EAC. The standards will include laboratory and field standards;
- (ii) Common seed classes based on Organization for Economic Cooperation and Development (OECD)
- (iii) Incorporation of authorization private sectors in the process of seed certification (inspectors, samplers, analysts, laboratories) based on OECD and ISTA ;
- (iv) Common seed tag for movement of seed in EAC;
- (v) Establishment of inter- agency certification schemes; and
- (vi) Assisting the informal seed sector to graduate to formal seed businesses (recognition of Quality Declared Seeds).

Tanzania has also participated and endorsed the EAC documents for harmonization of Sanitary and Phytosanitary Standards measures and procedures (SPS) as prepared in accordance with article 108 of the Treaty for the Establishment of the East African Community and article 38 (1) (c) of the EACU Protocol, with an aim of controlling diseases and monitoring safety of the products in order to protect consumers and ensuring food security within the region. The developed documents provide for Phytosanitary Standards measures and

¹⁷³ See Implications and Benefits of the EAC Customs Union at www.eac.int

procedures for mammals, birds, bees, fish and fishery products are consistent with the WTO Agreement on SPS, the International Plant Protection Convention (IPPC), Office of International des Epizooties (OIE), Codex Alimentarius and other international agreements. They will be implemented through a Protocol to formulated and signed by the EAC member states.

Developed documents for Sanitary Standard Measures and Procedures¹⁷⁴ cover the following aspects:

- (a) Importation and exportation of plants, plant products;
- (b) Procedures for plant quarantine measures;
- (c) Procedures for importation and release of biological agents;
- (d) Requirements and procedures for importation of Living Modified Organisms (LMOs) and products of modern biotechnology.

The harmonised SPS procedures require establishment of National Plant Protection Organisation (NPPO) in each partner states to handle and regulate and importation and exportation of importation and exportation of plants, plant products. NPPO shall also act as National Enquiry Points of member countries (NEP).

The harmonised EAC Sanitary Standards Measures include inspection and certification procedures for mammals, birds and bees contain sanitary standards for cattle and poultry breeding, artificial insemination (AI), multiplication units and hatcheries, and measures and procedures for importation of ducks, slaughter cattle, sheep, goats, pigs, camels donkeys, horses bees, dogs and cats. Also developed are the Sanitary Standard Measures which include Sanitary Procedures for Fish and Fish Products. They will apply to live fish, fish feeds, seaweeds, fish and fishery products for human consumption. The documents provides for guidelines on traceability and hygiene requirements for handling, processing, transportation, and

storage of fish and fishery products and aquaculture.

Under development also are harmonised procedures for evaluation of efficacy of pests control products for plants and labelling of the pests control products within the East African Community.

5.6 Intellectual Property Protection (PVP) Regulation

At the regional level, apart from being a member to East African Community, Tanzania is a member to the Africa Organization (AU) or OAU as it was then known. OAU embarked on a process to assist African countries in fulfilling their obligations to the Convention on biological Diversity and TRIPs Agreement of the WTO by developing a Model Law known as "*Model Legislation on the Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources*". The Model Law which was endorsed by AU Heads of State, in July 1998, recommended that it become the basis of all national laws on the matter across Africa.

The OAU Model Law has four components; Access to biological resources, Community rights, farmers' rights and plant breeders' rights. It aims at ensuring conservation, evaluation and sustainable use of biological resources, including agricultural genetic resources, and knowledge and technologies in order to maintain and improve their diversity as a means of sustaining all life support systems. The Model Law is against patenting of life, or the exclusive appropriation of any life from.

However, there has not been much enthusiasm towards adoption of the AU Model Law. Most African countries with PVP legislation have adopted the *sui generis* approach, after the UPOV Model¹⁷⁵. Uganda is still in the process of developing PVP legislation. The earlier discussion for the

¹⁷⁵ These countries include Tanzania, South Africa, Kenya and Zimbabwe

development of the legislation indicated that it will follow the AU Model Law.

Also, being a member to SADC, Tanzania has been participating in the development of the draft SADC Protocol for the protection of plant breeders' rights within SADC Region. The Process to development SADC Protocol on PBR started in May 2006 and its basis is Article 24 of the SADC Protocol of Trade which requires the region to adopt policies and implement measures for the protection of the Intellectual Property Rights in accordance with WTO agreement.

The draft PBR protocol is based on *sui generis* system of IPR protection in which a variety once accorded protection under the Protocol, such protection is valid to all SADC countries. The Protocol will provide for the protection of all genera and species of plants that will meet criteria of Novelty, Distinctness, Stable and Uniformity. Under the draft, the member states are allowed to implement their own national systems of PVP and they may apply as nations for protection of their varieties at the regional level.

5.7 EPA Negotiations and the Tanzania Dilemma

The on-going negotiations between the ACP countries and the EU are attempts by the latter groups of countries to salvage long standing trade relationship between two blocks at wake of WTO. Cooperation between ACP countries and EU has been governed by Lome Conventions since 1975, which mainly aimed at assisting ACP countries through development aid. However, after the signing of the WTO Act in 1994, the 2000 Cotonou Agreement foresaw negotiations between ACP and EU countries to establish a new trade regime, baptized as the "Economic Partnership Agreements" (EPA) between the EU and regional groupings of ACP countries as inevitable. Since then EU has been negotiating with different ACP countries groupings for agreements that would "progressively remove trade barriers between the EU and ACP countries and thereby make the EU – ACP trade relations compatible with the

WTO. The waiver for continuation of preference regime under the Cotonou Agreement was given in Doha in 2001 and expects to expire in 2007. It is the intention of the EU that before the expiry date, trade agreements would have been concluded between the EU and ACP groupings.

Tanzania is negotiating within a larger group of SADC group while fellow EAC member states negotiate under COMESA. Membership to either of the groups is important because as these are legally established groups it is expected that specific agreements will be entered between the EU and these organizations. The fact that Tanzania is a member to the EAC and SADC, while other members of the EAC, namely Kenya and Uganda are members to COMESA has been widely debated¹⁷⁶.

Tanzania faces a number of challenges as it is a member various international and regional institutions. As negotiations by EU are taking place in different groups and will not be finalized and implemented at the same time. Some of the challenges include:

- Effectively participating in all these simultaneous negotiations from an informed perspective in order to achieve results that support the rapid economic development of the country; and
- Harmonizing or coordinating positions in the various negotiations, so that the instruments agreed or concluded equally reflect the same priorities and positions of Tanzania.
- Tanzania also will have to contend with the challenge of forum shifting by the EC. Issues may be introduced into EPA negotiations that have been rejected in other negotiating forums. It will be important that common positions are maintained across all trade negotiations,

¹⁷⁶ See for example, the recent World Bank DTIS report, see also Francis Mangeni, (2005), "The ESA-EU CPA Negotiations: Technical issues in the 6 negotiating clusters. A guide for ESA Countries" in seatini@infocom.co.ug.

where there are good reasons for adopting those positions.

- Tanzania also has inadequate human and technical resources/capacities to effectively engage in the EPA negotiations. The numerous number of trade negotiations going on at the same time at the multilateral (WTO), regional and bilateral levels adds further strain on these already constrained resources..

Also belonging into two different trading blocks with its trade partners under EAC has been reckoned to pose a real dilemma to Tanzania because of several reasons, which include the following:

- Implementation of agreements reached at the ESA – EU negotiations may jeopardize implementation of the EACU;
- There are also concerns that negotiations under SADC may take time to materialize because an influential member of SADC (South Africa) already has agreement with EU¹⁷⁷.

5.8 Available Options for Tanzania

It would seem Tanzania is still contemplating on the available options, namely continuing pushing for SADC to concretize its engagements with the EU or going back to COMESA. Whatever side it takes, Tanzania has realized the importance of establishing a national negotiation capacity. It has established a National EPA Technical Team (NETT) for purposes of EPA negotiations. It is composed of representatives from public, private, research and academic institutions. However, there is a need of making this committee a permanent one, that is giving it a national and legal recognition.

CHAPTER SIX: STUDY IMPLICATIONS AND WAY FORWARD

6.1 Conclusion

The objective of this study was to study legal and institutional frameworks existing in Tanzania that enable the country to meet required international standards on a number of issues, including non-tariff and technical barriers to trade, contained in the country's agricultural, food hygiene and safety legislation, so as to attain both internationally recognized standards, and to enhance local and international market access and share. The study also has conducted a thorough assessment on the adequacy of the existing legal and institutional frameworks of agricultural trade law enforcement for ownership and sustainable management of agricultural resources. A general impression one draws from the study is that although Tanzania has been a late comer in preparations towards complying with the WTO and other internationally recognized arrangements, significant strides are already made. However, coherence, co-ordination and institutionalization of "WTO compliant culture" is still lacking among and between public and private sector institutions. Further, the capacities of these institutions need to be strengthened if Tanzania has to catch up with other countries in the Eastern African and Southern region.

Given the economic strength of Tanzania, a regional approach towards compliance to WTO requirements is seen as an appropriate approach. Initiatives to establish EAC Common External Tariff (CET) and elimination of non-tariff and non-technical barriers to trade intra and inter-regions are a move to the right direction for Tanzania. However, Tanzania needs to strengthen its negotiation capacity and determine its future direction in selecting a regional grouping that will assist in meeting its national goals and objectives. A decision whether it should chose to belong to SADC or COMESA should be guided by this objective.

¹⁷⁷ See Jaindi Kisero, (2006) "**Tanzania: Country in precarious position over trade Pact**" The East African (Nairobi) 10th July 2006

However, the decision has to be made sooner than later, especially in light of the on-going ACP – EU EPA negotiations.

This demands a well planned and sustainable national action plan for streamlining the country's agricultural trade legal and institutional frameworks across sectors and institutions, private as well as public.

6.2 Implications for the Study Findings

1. Although Tanzania has made some achievement in removing non-tariff barriers to trade, such as legislating on a number of attractions to foreign investments, based on the MFN principles, there is need for a continuous and well planned action for phasing out of the remaining special tariffs, especially through EA-CET and ACP-EU EPA frameworks.

2. Non- technical barriers remain a major impediment to the Tanzania agricultural trade legislation. Some of the legislation is outdated to the extent that it contradicts the on-going reforms, especially as far as livestock legislation is concerned. This implies that there is still an urgency of putting in place measures that will:

- ensure that the agricultural legislation regulates only to the extent necessary to protect public health and safety or other legitimate objectives;
- encourage the keeping of technical regulations simple, wherever possible, setting basic requirements and allowing voluntary standards;
- achievement of greater recognition of international standards as distinct from conflicting national or regional standards (while at the same time encouraging the development of adequate international standards in those areas where they are currently non-existent);
- encourage greater participation of the producer organizations in basic standards setting and enforcement.

3. The current standards are detailed and mostly descriptive because of the following reasons:

- Information asymmetry between traders and farmers. Because farmers are weak negotiators, the government (board) has tended to "be on their side" by creating standards for them;
- Lack of an information mechanism that would enable sellers and buyers to justify their pricing;
- Cash requirements make farmers price takers;
- Farmers' organization initiatives that would have enhanced their negotiation power, namely cooperatives, are beset with abuse by few individuals and the government reluctance to put the culprits to book;
- Lack of linkage and co-ordination between central government and central government institutions has resulted in un-coordinated regulatory frameworks, almost working parallel to each other, sometimes without taking into consideration the fact that the crops being regulated need also to adhere to international standards.
- Inadequate certification capacity has made almost all the standards look superfluous and un-necessary.

4. Agricultural Trade Laws of Tanzania are not harmonized and there may be some duplication or conflicts. This is due to the fact that:

- A thorough legislation scrutiny is not conducted before enactment of new legislation;
- Stakeholders who propose for legislation amendments are ill equipped with what the markets (international markets) want;
- Policies do not lead the process of law making. Legislation lag behind the policy making process;
- Most of central government enforced laws have no a well laid

down legal and institutional framework for implementation at the local government level. The legal and institutional framework in the EMA, 2004 should be adopted by all agricultural trade laws. On the other hand, local government authorities pass by-laws, which do not necessarily comply with sector legislation. This results in two parallel legal regimes at the grassroots level.

5. Some agricultural trade related laws have not yet been subjected to WTO compliance tests. This is due to:

- Inadequate awareness on the side of policy makers on the costs and benefits for so doing;
- Limited or lack of private sector (including smallholder farmers) participation, caused by mainly constrained knowledge of the market requirements;
- The Tanzanian trade, especially on cashewnut, tobacco and cotton is still built on mutual suspicion between sellers and buyers, (lack of transparency);
- There is still lack of well thought out Central as well as local government interventions (taxes and other unnecessary barriers, e.g restrictions on the exportation of food produce, border controls, etc.)

6. Institutional frameworks for the implementation of the WTO based agreements are not yet well streamlined (at the national level, between the central government and local governments and at the local government level).

7. Although crop boards' roles are still not well defined, the on-going reforms promise a state, whereby crop boards will mainly provide regulatory services, including collection and provision of market information. However, the current capacity of the boards in providing these services is still not adequate and in some boards such

as the cashewnut, pyrethrum and sisal boards is non-existent.

8. Smallholder farmers are still weak especially in negotiating with private buyers. This is due to:

- Weak farmers' organizations;
- Government interventions aimed at assisting smallholder farmers, which are not well sought out (e.g, setting indicative prices, not reinforcing necessary regulations to some specific persons)
- Fair trade legislation is not well understood by smallholder farmers.

9. Regional initiatives that are taking place under the EAC and SADC regional organizations have potential for:

- Creating regional markets with less stringent standards and tariffs;
- Assisting member states to have harmonized and WTO compliant legislation;
- Increasing efficiency in quality assurance and certification systems.

10. However, Tanzania faces a problem of belonging in two different regional organizations one of which other two EAC members do not belong. Hence, corrective measures have to be improvised otherwise there is a likelihood of experiencing problems in implementation.

6.2 Way forward/Recommendations

- The ongoing crop boards legislation reform should address adequately the issue of non-technical barriers to trade and should be fast tracked in order to enhance compliance to WTO and regional requirements;
- Central and local government legislation should be harmonized by making sure that central level legislation have provisions that go down up to the local government level and ensure that all the by-laws passed by local government comply with central laws. This requires a

well planned programme for making thorough stock taking of all agricultural trade related laws and by-laws and suggesting corrective measures.

- Institutional conflicts, especially between institutions implementing the SPS legislation should be eliminated by looking for ways of enacting more comprehensive pieces of legislation and being clear on responsible organizations such as CA and NEPs.
- Regulatory Institutions Capacity enhancement Programme should be developed to ensure that all institutions that deal with SPS and

TBT certifications meet the required minimum international standards and are accredited. Also private sector institutions should be strengthened to take up some self regulatory and standard assurance responsibilities.

- Smallholder farmers' awareness creation programmes should be established to ensure that farmers are aware of international markets requirements and their practical application in agricultural production.

REFERENCES

- East African Community, (July 2006), *Annex1. Manual of Standards Operating Procedures Volume III, (Fish and Fishery Products)*, EAC Secretariat Arusha, 24-28 July 2006.
- East African Community, (July 2006), *Harmonised Sanitary and Phytosanitary Standards, Measures and Procedures for Mammals ,Birds and Bees. Volume II,(Sanitary)*, EAC Secretariat Arusha.
- East African Community (July 2006): *Harmonised Sanitary and Phytosanitary Standards, Measures and Procedures, Volume 1*, EAC Secretariat Arusha.
- East African Community: (July 2006) *Harmonised Sanitary and Phytosanitary Standards, Measures and Procedures, Volume III,(Fish and Fishery Products)*, EAC Secretariat Arusha.
- FAO,1999: *Law and Markets: Improving the Legal Environment for Agricultural Marketing*, FAO, Rome Italy
- FAO, (2001) *International Treaty for the Plant Genetic Resources for Food and Agriculture*, FAO Rome.
- Grant, Catherine (2005) "*Geographical Indications: Implications for Africa*" *TRALAC Trade Brief*, No. 6.
- Houck, James P. (1986), *Elements of Agricultural Trade Policies*, University of Minnesota,
- Jaindi Kisero, (2006) "*Tanzania: Country in precarious position over trade Pact*" The East African (Nairobi) 10th July 2006
- Kameri-Mbote, Patricia (2003), "*Community, Farmers' and Breeders' Rights in Africa: Towards a Legal Framework for Sui generis Legislation*" , *University of Nairobi Law Journal*, 2003.
- Kuleiye James S. (June 2006): *Experience of EAC on Intra Trade*, East African Community Secretariat,Arusha,Tanzania,www.uneca.org
- Nyanga, A (2004) "*The Geographical Indication Protection: Africa Perspectives. Paper presented at the WTO Round Table on Geographical Indications* (also available online: www.wto.org)
- Sabiano Cassese, (2004) "*Shrimps, Turtles and Procedure: Global Standards for National Administrations*" , University of Rome, IILJ, Working Paper 2004/4
- Stephen Mbuhi Mwikya (2006), "*Trade Issues and Policy Coherence in Fisheries: A Developing Country Perspective*" , *A Paper Presented at the Workshop on Policy Coherence in Fisheries*, COM/AGR/DCD/PCDF/ (2006);
- United Republic of Tanzania, (URT) (2001): *Agricultural Sector Survey Report*.
- United Republic of Tanzania (URT) (2003): *The National Trade Policy*
- United Republic of Tanzania (URT) and World Bank,(2004), *Study on the Tanzania Crop Board*
- United Republic of Tanzania (URT) (June 2006): *National Sample Census of Agriculture 2002/2003, Smaller holder Agriculture, Crop Sector – National Report, Volume II*.

United Republic of Tanzania (URT) (2001/2002), *Household Budget Survey*.

United Republic of Tanzania (URT) (2003), *Agricultural Sector Development Programme*.

United Republic of Tanzania (URT) (2001) *Agricultural Sector Development Strategy*.

United Republic of Tanzania (URT) (March, 2006) *National Sample Census of Agriculture 2002/2003, smaller holder Agriculture, Livestock Sector – National Report, Volume III*.

United Republic of Tanzania (URT) (March 2006). Ministry of Agriculture, Food Security and Cooperatives, *Government circular on the reform of the financing, structures, roles and functions of Crop Boards*

United Republic of Tanzania (URT) (1995). *National Land Policy*

United Republic of Tanzania (URT) (1990). *National Investment Policy*

United Republic of Tanzania (URT), 1997. *National Agriculture and Livestock Policy*

United Republic of Tanzania (URT) (1998): *Local Government Reform Paper*

World Bank (2005): *Tanzania Diagnostic Trade Integration Study*.

World Trade Organization (WTO). (1995). *Agreement on the Application of Sanitary and Phytosanitary Measures*. WTO, Geneva, Switzerland.

WTO *Understanding the Sanitary and Phytosanitary Measures Agreements*, <http://wto.org>

APPENDIX

List of Legislation and Legal Instruments referred to

1. The Anti- Dumping and Countervailing Measures Act No.1 of 2004
2. The East African Community, East African Community Custom Union Protocol.
3. East African Community, *Treaty for the Establishment of the East African Community*, 1999.
4. Environment Management Act, No. 20 of 2004
5. Hire and Skin Trade Act of No. 68 1963 CAP. 120 of R.E 2002
6. Local Government (Urban Authorities) Act No. 8 of 1982.
7. Local Government Finance Act No 9 of 1982
8. Treaty for the Establishment of the East African Community Act No. 4 of 2001
9. The Coffee Industry Act, No. 23 of 2001
10. The Agricultural products (Control of Movement) Act No. 3 of 1996
11. The Animal Diseases Act of No. 17 of 2003
12. The Cashewnut Industry Act No...of 1984
13. The Coffee Regulations of 2003.
14. The Cooperative Societies Act No. 20 of 2003
15. The Cotton Industry No. 2 of 2001
16. The Customs (Management and Tariff) Act Cap. 403 of R.E of 2002
17. The Customs and Excise Tariff Act No. ...
18. The Customs Tariff Act No. 12 of 1976
19. The Dairy Industry Act No. 8 of 2004
20. The Environment Management Act No. 20 of 2004
21. The Export Control Act No. 381 of 1950 (Cap. 276 of the R.E. 2002)
22. The Export Processing Zone No. 11 of 2002.
23. The Export Processing Zones Act No. 11 of 2002
24. The Import Control Act No. 33 of 1950(Cap. 276 of the Revised Edition 2002)
25. The Income Tax Act No. 12 of 2004
26. The Local Government (District Authorities) Act No. 7 of 1982
27. The Plant Breeders Act No 22 of 2002
28. The Plant Protection Act No. 13 of 1997
29. The Plant Protection Regulations of 1999
30. The Pyrethrum Act No 1 of 1997
31. The Seeds Act No. 18 of 2003
32. The Sisal Industry Act No. 2 of 1997
33. The Stamp Duty Act, CAP 332 of R.E of 2002
34. The Tanzania Food and Drugs and Cosmetics Act No. 1 of 2003
35. The Tea Industry Act No. 3 of 1997
36. The Tobacco Industry Act No. 23 of 2001
37. The Tropical Pesticides Research Institute Act No. 18 of 1979.
38. The Value Added Tax Act No. 24 of 1997
39. The Veterinary Surgeons Act No.16 of 2003
40. The Vocational Education and Training Act, 1994
41. The Standards Act No. 3 of 1975
42. The Fisheries Act 2003
43. Land Act No. 4 of 1999
44. Village Act No. 4 of 1999
45. The Courts (Land Dispute Settlements) Act 2002 as amended in 2004
46. The Tanzania Investment Act. No. 26 of 1997
47. The East African Community Customs Management Act, 2004,