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REPUBLIC OF KENYA

TWELFTH PARLIAMENT – SIXTH SESSION

THE NATIONAL ASSEMBLY

PARLIAMENTARY CAUCUS ON BUSINESS AND ECONOMY

EXIT REPORT OF THE PARLIAMENTARY CAUCUS ON BUSINESS AND ECONOMY

JUNE 2022

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REPUBLIC OF KENYA
PARLIAMENT

Parliamentary Caucus on Business and Economy

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1. FORWARD

The Parliamentary Caucus on Economy and Business was established in 2019, pursuant to the Standing Orders 200A to, *"among other matters, propose policy and legislative interventions to the ailing economy and business environment; and complement the Departmental Committee on Finance and Planning and the Budget and Appropriations Committees' mandates in a bipartisan manner in executing their core mandates.*

The **Parliamentary Caucus on Economy and Business** has envisaged to engage and deliberate on various issues in regard to economy and ways of doing business in the country.

The Caucus held its first meeting on 5th December 2019 to set out an agenda and terms of engagement on the protracted economic challenges on matters affecting the country. These included -

a) Conducting post legislation scrutiny of laws (legislations) to gauge their impact in the economy and the business environment;
b) Conducting and audit on the Unclaimed Financial Assets Authority and the enabling law with a view of proposing amendments to place it at the center of economy recovery;
c) Fully participating in the F/Y 2020/2021 and subsequent Budget making processes with a view to promote rationalization of the National budget to ensure a realistic budget (no or less deficits) with realistic expenditures;
d) Pushing for the National Treasury to give KRA realistic revenues targets to enable a realistic annual budget;

e) Promoting regional issues in the country's economy to bring out the best;
f) Delink the Caucus roles and mandate from those of departmental committees to ensure an overall outlook of the issues affecting the economy and business;
g) Conducting an assessment on the Hon. Charles Njagua's Motion on the review of mandatory retirement age in the public service and advise on its impact on the economy;
h) Capacitating the Caucus well enough to make the hard decisions and offer solutions to the economy to complement what is expected of the National Treasury and the Executive;
i) Seeking advice and advocate for privatization of entities where the government has interests;
j) Recommending for merging of social security funds such as *Uwezo, WEF, Youth fund etc* as they do not have a big impact on the economy while fragmented;
k) Interrogating the Big Four Agenda Plan with view of gauging whether the approach and budgetary support is adequate to boost the economy;
l) Engaging all interested parties, that is the promoters and critics of government agenda;
m) Developing a Monitoring and Evaluation Framework in Parliament supported by a strong secretariat to ensure the caucus succeeds in its promise; and,
n) Seeking support and funding from the National Assembly and other relevant stakeholders for the achievement of the work plan;

MEMBERSHIP OF THE CAUCUS

The following members of the Caucus have served and participated actively, (and whose membership was open to all members of the National Assembly) and supported by the Caucus' Secretariat –

1. The Hon. Jude Njomo, MP - Founder and Chairperson, Parliamentary Caucus on Economy and Business and Member for Kiambu Constituency
2. The Hon. John Kiarie Waweru, MP
3. The Hon. Vincent Tuwei, MP
4. The Hon. Moitalel Ole Kenta, MP
5. The Hon. Dr. James W. Nyikal, MP
6. The Hon. Dr. John K. Mutunga, MP
7. The Hon. Prof. Jacqueline Oduol, MP
8. The Hon. Sakwa J. Bunyasi, MP

9. The Hon. Peter Kimari, MP
10. The Hon. Janet Ongéra, MP
11. The Hon. Thuku kwenya, MP
12. The Hon. Jonah Mburu, MP
13. The Hon. James Wamacukuru, MP
14. The Hon. Shakeel Shakir, MP
15. The Hon. Eve Obara, MP
16. The Hon. Beatrice Adagala, MP
17. The Hon. Florence Bore, MP
18. The Hon. Rahab Mukami, MP
19. The Hon. David Mwalika Mboni, MP
20. The Hon. Esther Passaris, MP
21. The Hon. Atandi Samuel, MP
22. The Hon. Jessicah Mbalu, MP
23. The Hon. Ruth Mwaniki, MP
24. The Hon. Dr. Makali Mulu, MP
25. The Hon. Mercy Gakuya, MP
26. The Hon. Njagagua Muriuki, MP
27. The Hon. John Munene Wambugu, MP

SECRETARIAT

1.	Mr. Noah Arap Too	-	Principal Clerk Assistant
2.	Ms. Ann Musandu	-	Senior Clerk Assistant
3.	Mr. Ronald Walala	–	Legal Counsel
4.	Mr. Joash Kosiba	-	Principal Fiscal Analyst
5.	Mr. Donald K. Manyala	-	Research Officer

The Caucus has been active over the last two years as it set out to take stock of the state of the economy and gauge the impact of the annual national budget, whether its rationalized and sustainable; restore the National Assembly's place in budget making process and oversight so as Parliament can offer solutions instead of lamenting also like ordinary citizens; and interrogate the Trade policy and how it's affecting the economy.

During its activities, the Caucus was able to engaged stakeholders who include *Econews Africa, Tesmoh International and Tax Justice Network Africa* among others. It held over 25 meetings and 6 retreats and workshops with the stakeholders including Departmental Committees.

This saw the Caucus stamp its authority during the consideration of the EPA between Kenya and the UK. Further, it actively participated during the review of the Standing Orders in creation of a Select Committee on Economic Treaties Ratification to deal with treaties that have economic implications for the country and related matters; introduction of an amendment bill in regard to Treaty Making and Ratification Act, 2012 and treaty making and ratification process in Kenya; parliamentary questions on matters of economy and statements.

On my own behalf, I wish to commend and appreciate the Members of the Parliamentary Caucus on Economy and Business for their patience, endurance, resilience and hard work during the workings of the Caucus, which enabled members to complete the tasks within the stipulated period. The Caucus is deeply indebted with outmost gratitude for the assistance and facilitation received from the Speaker of the National Assembly, *Hon. Justin Muturi, EGH, MP, and the out-going Clerk of the National Assembly, Mr. Michael Sialai, CBS, The Deputy Clerks, Ms. Serah Kioko and Jeremiah Ndombi.* Further, the support from the *Directors, Ms. Phylis Makau, Mr. Samuel Njoroge, Ms. Vane Akama and Mr. Paul Ngetich* was invaluable through for availing the secretariat team led by *Mr. Noah Too* who were up to the task even during times of short notices as demanded by the Caucus' assignments and work.

Finally, it is my pleasant duty, on behalf of the Parliamentary Caucus on Economy and Business, to present this report in accordance with the Speakers Communication of Thursday, 26th May 2022 in regard to exit reports during the end term of the 12th Parliament pursuant to the Standing Order 200A and I have no doubt that the activities and recommendations herein, will be picked and undertaken by the national Assembly of the 13th Parliament.

THE HON. JUDE NJOMO, MP
FOUNDER AND CHAIRPERSON, PARLIAMENTARY CAUCUS ON ECONOMY AND BUSINESS; AND;
MEMBER FOR KIAMBU CONSTITUENCY

Date....31.05.2022....

2. SPURRING KENYA'S ECONOMIC GROWTH TRHOUGH LEGISLATIVE AWARENESS AND INTERVENTIONS

In spurring Kenya's economic growth, the caucus identified the following strategic key points to be undertaken -

a) To come up with solution to the ailing economy and business environment in the wake of challenges faced by the public;
b) To play bipartisan roles and complement the Parliamentary Departmental Committees in regard to matters on Finance, Planning, Budget and Appropriations; and,
c) To engage all relevant stakeholders with the aim of considering propose policies and legislative interventions that enhances growth of the economy and improve ways of doing business in the country.

Others include, but not limited to -

a) Interrogation of the Big Four Agenda Plans with view of gauging whether the approach and budgetary support is adequate to boost the economy;
b) Conduct post legislation scrutiny of laws (legislations) to gauge their impact in the economy and the business environment;
c) Conduct and audit on the Unclaimed Financial Assets Authority and the enabling law with a view of proposing amendments to place it at the centre of economy recovery;
d) Fully participate in the Budget making process with a view to promote rationalization of the National budget to ensure a realistic budget (no or less deficits) with realistic expenditures;
e) Promote regional and international issues in the country's economy to bring out the best;
f) Capacitate the Caucus well enough to make the hard decisions and offer solutions to the economy to complement what is expected of the National Treasury and the Executive; and,
g) Develop a Monitoring and Evaluation Framework in Parliament

The caucus therefore proposed the following agenda to be undertaken on the short and long term:

- To come up with solution to the ailing economy and business environment in the wake of cries from the public;
- To complement the Departmental Committee on Finance and Planning and the Budget and Appropriations Committees' mandates in a bipartisan manner in executing their core mandates;
- Engage all relevant stakeholders and propose policy and legislative interventions to kick start the economy and improve the business environment; and
- Overall, how should Parliament assist with the fixing of the economy and business environment?

3. ASPECTS IDENTIFIED BY THE CAUCUS FOR REDRESS

The Caucus identified the following aspects to be undertaken:-

a) The Caucus should take stock of the state of the economy and gauge the impact of the annual national budget, whether its rationalized and sustainable;
b) Restore the National Assembly's place in budget making process and oversight so as Parliament can offer solutions instead of lamenting also like ordinary citizens;
c) Interrogate the Trade policy and how it's affecting the economy;
d) Conduct post legislation scrutiny of laws (legislations) to gauge their impact in the economy and the business environment;
e) Conduct and audit on the Unclaimed Financial Assets Authority and the enabling law with a view of proposing amendments to place it at the center of economy recovery;
f) Fully participate in the 2020/2021 Budget making process with a view to promote rationalization of the National budget to ensure a realistic budget (no or less deficits) with realistic expenditures;
g) Push for the National Treasury to give KRA realistic revenue targets to enable a realistic annual budget;
h) Promote regional issues in the country's economy to bring out the best;
i) Delink the Caucus roles and mandate from those of departmental committees to ensure an overall outlook of the issues affecting the economy and business;
j) Conduct an assessment on the Hon. Charles Njagagua's Motion on the review of mandatory retirement age in the public service and advise on its impact on the economy;
k) Capacitate the Caucus well enough to make the hard decisions and offer solutions to the economy to complement what is expected of the National Treasury and the Executive;

l) Seek advice and advocate for privatization of entities where the government has interests;
m) Recommend for merging of social security funds such as *Uwezo, WEF, Youth fund etc* as they do not have a big impact on the economy while fragmented;
n) Interrogate the Big Four Agenda Plan with view of gauging whether the approach and budgetary support is adequate to boost the economy;
o) Engage all interested parties, that is the promoters and critics of government agenda;
p) Develop a Monitoring and Evaluation Framework in Parliament supported by a strong secretariat to ensure the caucus succeeds in its promise; and
q) Seek support and funding from the National Assembly and other relevant stakeholders for the achievement of the work plan.

4. ACTIVITIES AND OUTPUTS UNDERTAKEN BY THE CAUCUS

The Caucus raised and deliberated on matters before debate on Motion for Adoption Regarding the United Kingdom-Kenya Free Trade Agreement in the Order Paper of Thursday, February 25, 2021 at 2.30 P.M.

10*. MOTION - APPROVAL OF THE ECONOMIC PARTNERSHIP AGREEMENT BETWEEN KENYA AND THE UNITED KINGDOM

(The Chairperson, Departmental Committee on Trade, Industry and Cooperatives)

THAT, this House **adopts** the Report of the Departmental Committee on Trade, Industry and Cooperatives on its consideration of the Economic Partnership Agreement (EPA) between the Republic of Kenya, a member of the East African Community of the one part and the United Kingdom of Great Britain and Northern Ireland of the other part, *laid on the Table of the House on Thursday, February 18, 2021,* and pursuant to the provisions of section 8(4) of the Treaty Making and Ratification Act, 2012, **approves** the Economic Partnership Agreement (EPA) between the Republic of Kenya, a member of the East African Community of the one part and the United Kingdom of Great Britain and Northern Ireland of the other part.

Key issues raised

On 23rd January 2020, the United Kingdom (UK) officially began the process of leaving the European Union (EU) after the Withdrawal Agreement Bill was assented to by the Queen. The official date for leaving the EU was 31st January 2020. In the interim period, it was understood that the UK would continue to apply EU regulations until January 2021. This includes Free Trade Agreements (FTAs) that have been concluded by the EU with other countries and regions. This is the basis upon which an FTA was proposed with Kenya.

The agreement was signed on 8th December 2020 and tabled in Parliament on 22nd December 2020. The committee on trade called for submission of Memoranda from the public and the agreement has been tabled for ratification on 25th of February 2021. We the undersigned members have a number of concerns that have not been addressed. We feel that going into ratification without having addressed them will negatively impact the country. These issues are as follows:

1. **Trade Liberalization**
   The agreement is far-reaching as it proposes to open up 82.6% of trade. Since the agreement is based on the EU-EAC EPA, there are some tariff lines that will be opened from the start of the agreement. This is a far-reaching commitment as it means that the local industries will be open to competition from more efficient British producers. Furthermore, Article 37.3 of the UK EPA on Sanitary and Phytosanitary Standards does not contain any specific measures to facilitate exports to the UK. This basically means that we are opening up the Kenyan market without an assurance that our producers will be able to access the UK market.

2. **Export Duties and Taxes**
   The agreement does not permit new export duties or taxes. In the event that Kenya wants to introduce new export duties and taxes, the conditions require that it notifies the UK and the measures are only temporary and need to be reviewed by the EPA council after 48 months. We feel that this constrains local industries especially given that Kenya levies an export tax on raw hides and skins to promote the domestic leather processing industries. An export tax is also levied on raw macadamia nuts. If this is allowed to stand, it means that Kenya cannot protect its infant industries that may have potential of creating significant employment.

3. **More Negotiations**
   The UK-Kenya EPA contains a commitment to conclude negotiations by of before 2026 with the UK on trade in services, trade related issues including competition, investment, sustainable development (labor/environment), intellectual property rights and transparency in public procurement. We feel that this goes beyond the scope of what should be committed as these are issues that the UK, EU and other developed countries have failed to push for at the multilateral level. They are now being introduced through the backdoor and will have significant implications on Kenya's ability to negotiate a favorable agreement at the multilateral level.

4. **Ratification Process.**
   The Parliament is being rushed to ratify the agreement without a full appreciation of its implications. First, the reduction or elimination of duties on products imported from the UK will have a negative impact on local industries who may not be able to compete with more efficient producers in the UK who have access to cheaper power and other factors of production. Furthermore, Section 5 (2) (i) of the Treaty Making and Ratification Act requires that when deciding whether to initiate the treaty-making process, the national executive should consider whether extensive scientific studies or research have been carried out to determine the parameters of the problems and the lines of potential solutions. The Cabinet Secretary is further required by Section 7 (c) to outline any national interests that may be affected by the ratification of the treaty, the policy and legal considerations, the financial implications, implications on matters relating to counties and the views of the public on the ratification of the treaty. The negotiations were hurriedly done from August to December and did not entail extensive public participation.
   In the memorandum submitted by the Cabinet Secretary, none of these issues have been highlighted. We have not seen an extensive study on the UK-Kenya FTA. We have not seen a listing of which national interest may be affected by the

THE FOLLOWING SIX SALIENT POINTS EMERGED AS POINTED OUT BY CAUCUS ON THE KENYA UK EPA AGREEMENTS BEFORE DEBATE ON MOTION FOR ADOPTION REGARDING THE UNITED KINGDOM-KENYA FREE TRADE AGREEMENT.

A. <u>THE UK KENYA EPA IS A COPY PASTE FROM THE EAC – EU EPA</u>:

The so called UK Kenya Agreement is a copy paste of the agreement between the European Union and the East African Community. Therefore –

a. The **agreement (EAC EU EPA) is not in force despite Kenya signing onto it** because Uganda, Tanzania, Rwanda and Burundi refused to sign to a negative agreement.

b. There is a **letter that was written by the EAC Ambassadors to the WTO** that raised a number of key issues about the EAC EU EPA. Those issues are still valid today, ***as indicated by the attached letter.*** On Agriculture, they said:

   i. **The FEPA proposal of bringing to zero some agricultural tariff lines in the context of continued EU subsidies will aggravate the situation further with, with serious consequences to the rural sector**.............................. THIS IS INTENDED TO PROTECT FOOD SECURITY, RURAL LIVELIHOODS ABD RURAL EMPLOYMENT.

B. THE FIGURES USED BY GOVERNMENT ARE BASED ON OLD TRADE DATA:

The **data that been used by the government as the basis of negotiating the agreement is old data** dating back to 2005.

a. Further, it was based on the EU as a whole and not now when the UK has left the EU.

b. For a proper negotiation, the CABINET SECRETARY IS REQUIRED TO CONDUCT AN ECONOMIC IMPACT ASSESSMENT OF A TREATY BEFORE BRINGING IT TO THE CABINET as provided for by the Treaty-Making and Ratification Act.

c. Key Questions: why are we using old EU data to conclude a far-reaching agreement with the UK when Brexit comes with new issues?

C. SOME PRODUCTS WOULD HAVE TO HAVE ZERO TARRIFS FROM DAY ONE:

While the Cabinet Secretary insists that there would be gradual opening of tariffs on products, some products will actually cut taxes immediately due to the EAC Common External Tariff. While these products enjoy high tariffs under the EAC CET, they would have to lower tariffs (taxes) immediately the agreement starts.

D. THE UK EPA ALLOWS GOVERNMENT TO CONDUCT FURTHER NEGOTIATIONS WITHOUT PARLIAMENTARY OVERSIGHT:

The rendez-vous clause in the UK EPA includes a COMMITMENT TO CONCLUDE NEGOTIATIONS BY OR BEFORE 2026 WITH UK on trade in services, trade-related issues (competition, investment, sustainable development (labour/environment), Intellectual Property Rights, transparency in public procurement.

a. The UK, US and the EU have been unable to get rules on these issues and are now pushing for them through the backdoor.

b. There can be NO IMPLIED CONSENT BY PARLIAMENT for GOVERNMENT TO NEGOTIATE THE RENDEZ-VOUS CLAUSE ISSUES OR FISHERIES AGREEMENT WITHOUT EXPRESS APPROVAL OF PARLIAMENT

E. KEY QUESTION FOR PARLIAMENT: CAN THE KENYAN GOVERNMENT JUST GO AHEAD AND NEGOTIATE TRADE DEALS THAT ARE FAR-REACHING AND GO BEYOND TRADE PROPER AND TOUCH ON MANY OTHER POLICY AREAS and then just bring them to Parliament at the last minute for ratification? (RUBBERSTAMPING????)

F. COMPARATIVE ANALYSIS ON HOW TRADE NEGOTIATIONS ARE CARRIED OUT IN OTHER COUNTRIES:

a. UNITED STATES - they have a TRADE PROMOTION AUTHORITY that deals with what is negotiated between congress and government.

b. EUROPEAN UNION: The EU Commission has exclusive competence in trade BUT that mandate is limited by parliament and does not include investment and fisheries. Furthermore, the European `Parliament has received additional power a few years ago to be able to provide oversight on the actions of the EU Commission.

For the above reasons, the caucus noted and recommended that it was premature to table the motion for discussion on the floor of the House. The Caucus therefore urged the House to put aside the agreement until Parliament is better informed of the issues at play.

5. REVIEW OF THE NATIONAL ASSEMBLY STANDING ORDERS TO CREATE A SELECT COMMITTEE ON ECONOMIC TREATIES RATIFICATION

The Caucus proposed for creation of a **Select Committee on Economic Treaties Ratification** to deal with treaties that have economic implications for the country and related matters.

The laws Governing Treaty Making in Kenya are the Constitution of Kenya, 2010; Treaty Making and Ratification Act, 2012; The Statutory Instruments Act, 2013; and the Vienna Convention on the Law of Treaties. The Treaty Making and Ratification Processes include -

1. Negotiations - Executive sets ups the negotiations team and proceeds to commence negotiations with the other State Party(ies)
2. Execution - Upon agreement by the State Parties involved, the Treaty is signed. This is done by the Executive
3. Ratification – This is process of making the Treaty have a binding effect. It is where Parliament comes in after the Cabinet Secretary submits the Treaty and an Explanatory Memorandum to Parliament for consideration and approval.

The Treaty Making and Ratification Act is the applicable Act that gives effect to the provisions of Article 2(6) of the Constitution. Section 6 of the Treaty-Making and ratification Act requires the State to take into account the regulatory impact of any proposed treaty. Section 7 requires the Cabinet Secretary to submit to the Cabinet the Treaty, and memorandum outlining:

a) The national interests which may be affected by the ratification of the Treaty;
b) Policy and legislative considerations;
c) Financial implications;
d) Implications on matters relating to counties; and,
e) The views of the public on the ratification of the Treaty; (this process is largely ignored).

When Parliament is ratifying the Treaties, the following shortcomings have been observed –

a) The Cabinet Secretary does not from the onset conduct research to establish the national interests which may be affected by the Treaty before negotiation of the Treaty commences.

b) Parliament is not involved in the initiation of the processes to determine relevance and need of the Treaty for Kenya. Furthermore, Parliament which is charged with promoting public participation on negotiation of Treaties can only do so after the Treaty has been submitted to Parliament; a process that limits stakeholder participation until major decisions have been made already.
c) Parliament is not involved in the negotiation processes. While this may seem like interfering with the role of the Executive, best practices from across many jurisdictions we have studied have shown that it is important at the very least to agree on the agenda of what should go into the Treaty and what should not.
d) Parliament only comes in after a Treaty has been signed by the Cabinet Secretary or when it is about to be signed and further Parliament debates the Treaty but has no powers to amend it or propose amendments.

In addressing the above stated shortcomings, the Caucus proposed for a creation of the said Select Committee to address and oversight the executive in carrying out the following issues, *inter alia*, policy coherence for development; the sovereign right to regulate in the public interest; inclusivity (including broad public consultation); transparency; sustainable development and sustainability; economic impact assessment; social and environmental impact assessment; respect for regional integration goals and strategies; and, respect for the Kenyan Constitution and all international and regional agreements and instruments (including soft law) that Kenya has either ratified or signaled its support; and other related matters.

6. DRAFTING OF A BILL OR AMENDMENT TO EXISTING LAWS IN REGARD TO THE TREATY MAKING AND RATIFICATION ACT, 2012 AND TREATY MAKING AND RATIFICATION PROCESS IN KENYA

Pursuant to the Standing Order 114(1), the Caucus to introduce a bill or amendment on behalf of the Parliamentary Caucus on Business and Economy to the existing laws in regard to Treaty Making and Ratification Act, 2012 and treaty making and ratification process in Kenya. Laws Governing Treaty Making in Kenya are the Constitution of Kenya, 2010; Treaty Making and Ratification Act, 2012; Statutory Instruments Act, 2013; and, Vienna Convention on Law of Treaties.

Treaty Making and Ratification Processes include

a) Negotiations - Executive sets ups the negotiations team.

b) Execution - upon agreement by the state parties involved, the Treaty is signed. This is done by the Executive.
c) Ratification - the process of making the Treaty have a binding effect - this is where Parliament comes in Cabinet Secretary submits the Treaty and explanatory memorandum to Parliament for consideration and approval.

The Treaty Making and Ratification Act is the applicable Act that provides for gives effect to the provisions of Article 2(6) of the Constitution. Section 6 of the Treaty-Making and ratification Act requires the state to take into account the regulatory impact of any proposed treaty. Section 7 requires the Cabinet Secretary to submit to the Cabinet the treaty, and memorandum outlining:

a) the national interests which may be affected by the ratification of the treaty;
b) policy and legislative considerations;
c) financial implications;
d) implications on matters relating to counties; and,
e) the views of the public on the ratification of the treaty; (this process is largely ignored).

When Parliament is ratifying the treaties, the following shortcomings are observed -

a) Parliament is not involved in the initiation of the processes to determine relevance and need of the Treaty for Kenya
b) Parliament is not involved in the negotiation processes
c) Parliament only comes in after a Treaty has been signed by Kenya or when it is about to be signed.
d) Parliament debates the Treaty but has no powers to amend it or propose amendments.

7. PENDING ACTIVITIES

a. **Draft Legislation on** amendment bill in regard to Treaty Making and Ratification Act, 2012 and treaty making and ratification process in Kenya (see attached as annexed)

b. **Parliamentary Question**

/2022 **The Member for Lari (Hon. Jonah Mburu, MP) to ask the Cabinet Secretary for Ministry of Trade and Industry: -**

(i) Could the Cabinet Secretary provide the implementation status of the Treaty Making and Ratification Act, 2012 and outline the gains made so far with regard to its operationalization?
(ii) Could the Cabinet Secretary explain status on the on-going government's negotiation on a a Treaty with the United States and in particular the country's benefits in regard to Agriculture, SMEs, Health Sector and Investments

(To be replied before the Departmental Committee on Trade and Industry)

8. RECCOMMENDATIONS

The Parliamentary Caucus on Economy and Business recommended the following:-

(i) The subsequent committee, as requested to be created in the Standing Orders for the 13th Parliament of the National Assembly or a Member of the Caucus to cause and to partake publish the drafted of Treaty Making and Ratification (Amendment) Bill, 2022; and,

(ii) The subsequent House of the 13th Parliament of the National Assembly, Committees, and Members of Parliamentary Caucus on Economy and Business to note and partake the findings, pending activities and recommendations of this report among other matters, propose policy and legislative interventions to the ailing economy and business environment; and including the Departmental Committees.

THE HON. JUDE NJOMO, MP
FOUNDER AND CHAIRPERSON, PARLIAMENTARY CAUCUS ON ECONOMY AND BUSINESS; AND;
MEMBER FOR KIAMBU CONSTITUENCY

Date…………………………..

9. ANNEXES

I. **Reservation clauses to the Economic Partnership Agreement between the United Kingdom and the Republic of Ireland on the one hand and the Republic Of Kenya on the other hand.**

II. **The Treaty Making and Ratification (Amendment) Bill, 2022.**

III. **The Report of the Kenya – Iran Business Workshop on 28th January, 2022 at Lake Naivasha Resort.**

ANNEX

I. Reservation clauses to the Economic Partnership Agreement between the United Kingdom and the Republic of Ireland on the one hand and the Republic Of Kenya on the other hand.

RESERVATION CLAUSES TO THE ECONOMIC PARTNERSHIP AGREEMENT BETWEEN THE UNITED KINGDOM AND THE REPUBLIC OF IRELAND ON THE ONE HAND AND THE REPUBLIC OF KENYA ON THE OTHER HAND

ARTICLE 3: THE 'RENDEZ-VOUS' CLAUSE – This clause should be deleted altogether or there should be an amendment to the effect that further negotiations shall be done with the express consent of Parliament on the nature and extent of commitments

ARTICLE 6: CUSTOMS DUTIES AND FREE MOVEMENT OF GOODS – Currently, Kenya applies at least two surcharges in the imports of goods i.e. the Railway Development Levy (RDL), generally at 2% of import value, and the Import Declaration Fee (IDF), generally at 3.5% of import value. Under this EPA, Kenya must eliminate such duties. In 2019, Kenya imported goods valued USD 327 million from the UK. Therefore, elimination of RDL and IDF would amount to an annual loss of nearly USD 18 million. And in 25 years such a loss could run up to USD 450 million.

ARTICLE 9: RULES OF ORIGIN – This clause should seek to promote cumulation beyond the EAC member countries and include countries that have not signed an agreement with the UK

ARTICLE 12: STANDSTILL – This clause should be deleted because it impairs the policy space of the Kenyan government to increase duties for the protection of local industry.

ARTICLE 14: EXPORT DUTIES AND TAXES – Similar to Article 12, this clause should be omitted so as to maintain Kenya's policy space to foster the development of local industry.

ARTICLE 37.3: NOTIFICATION, ENQUIRY AND TRANSPARENCY - There is need to develop stronger language to the sentence that reads "The Parties also undertake to establish mechanisms for the exchange of such information." As it stands, it is a best-endeavor statement.

ARTICLE 50.4(b): BILATERAL SAFEGUARDS – This provision on infant industry where the period is limited to 15 years should be deleted or remove the time limits on the application of the infant industry clause. This will also maintain Kenya's policy space to foster the development of local industry.

ARTICLE 51 & 52: ON FISHERIES – This agreement should in no way introduce any obligations aimed at concluding a binding fisheries agreement between Kenya and UK.

ARTICLE 57: ON AGRICULTURE – Provisions of agriculture should not extend to areas where Kenyan producers have interest.

ARTICLE 68: DOMESTIC POLICY MEASURE – Provisions under this Article should be interpreted to include green box subsidies provided by the UK to its farmers

ARTICLE 75: ECONOMIC AND DEVELOPMENT COOPERATION – This chapter should have more binding language in terms of the support provided by UK to Kenya. We propose the inclusion of a development matrix with specific budgets for projects

ARTICLE 99: EPA ADJUSTMENT MEASURES – The EPA adjustment measures should include specific financial commitments to cater for the disruptions/trade adjustments to stakeholders as a result of the EPA.

ARTICLE 142: AMENDMENT CLAUSE – The amendment clause should avoid best-endeavor language and introduce stronger language for flexibility if Kenya wants to amend the agreement. Additionally, for products whose EAC Common External Tariff (CET) is higher than the applicable rate in the EPA starting from Day 1 of the implementation of the Agreement, the CET rate should apply.

ANNEX

II The Treaty Making and Ratification (Amendment) Bill, 2022.

THE TREATY MAKING AND RATIFICATION (AMENDMENT) BILL, 2022

A Bill for

AN ACT of Parliament to amend the Treaty Making and Ratification Act and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

Short title.

1. This Act may be cited as the Treaty Making and Ratification (Amendment) Act, 2022.

Amendment of section 2 of No. 45 of 2012.

2. Section 2 of the Treaty Making and Ratification Act, 2012, in this Act referred to as the "principal Act", is amended by inserting the following new definition in proper alphabetical sequence——

"economic treaty" means a treaty relating to taxation, trade or investment;

Amendment of section 3 of No. 45 of 2012.

3. Section 3(2)(b) of the principal Act is amended by inserting the following new subparagraph immediately after subparagraph (iii)—

(iiia) taxation, trade or investment;

Insertion of new section 5A in No. 45 of 2012.

4. The principal Act is amended by inserting the following new section immediately after section 5—

Notification to the National Assembly.

5A. (1) Within fourteen days of commencing negotiations for a treaty, the Cabinet Secretary responsible for matters relating to the treaty shall notify the National Assembly of—

(a) the negotiation objectives;

(b) the proposed heads of agreement;

(c) the need for the treaty;

(d) the potential benefits of the agreement to Kenya;

(e) implications of the agreement on—

(i) the economy;

(ii) existing agreements;

(iii) laws; and

(iv) taxes.

(2) The responsible Cabinet Secretary shall notify the National Assembly of any changes to information relating to the negotiation of a treaty within seven days of such change.

(3) The relevant Committee of the National Assembly may, in so far as is practically possible, confer with the responsible Cabinet Secretary on areas that may attract reservations by the National Assembly.

(4) The responsible Cabinet Secretary shall table an annual report to the National Assembly on the status of on-going negotiation of treaties.

Amendment of section 6 of No. 45 of 2012.

5. Section 6 of the principal Act is amended by inserting the following new subsection immediately after subsection (1)—

(1A) In negotiating an economic treaty, the national executive or the relevant State department shall ensure that the terms of the treaty do not adversely affect—

(a) the ability of the country to mobilise domestic revenue;

(b) the food security of the country;

(c) the establishment and growth of local industries; and

(d) the ability of the government to regulate an industry in the public interest.

Insertion of new section 6A and 6B and in No. 45 of 2012.

6. The principal Act is amended by inserting the following new sections immediately after section 6—

Regulatory impact statement.

6A. (1) The national executive shall, prior to signing an economic treaty, prepare a regulatory impact statement.

(2) A regulatory impact statement shall include the following information about the proposed economic treaty in clear and precise language—

(a) a statement of the objectives of the proposed treaty and the reasons for it;
(b) a statement explaining the effect of the proposed treaty on the Kenyan economy;
(c) a statement of other practicable means of achieving the objectives of the proposed treaty;
(d) an assessment of the costs and benefits of the proposed treaty and of any other practicable means of achieving the same objectives; and
(e) the reasons why the other means are not appropriate.

(3) The assessment of the costs and benefits shall include an assessment of the economic, environmental and social impact and the likely administration and compliance costs including resource allocation costs.

(4) The responsible Cabinet Secretary shall ensure that independent advice as to the adequacy of the regulatory impact statement and of the assessment included in the regulatory impact statement is obtained and considered.

(5) The responsible Cabinet Secretary shall before an economic treaty is signed, give a certificate in writing specifying that—

(a) the requirements relating to regulatory impact statements in this Act have been complied with; and

(b) in the Cabinet Secretary's opinion, the regulatory impact statement adequately assesses the likely impact of the proposed treaty.

(6) The responsible Cabinet Secretary shall ensure that a copy of the regulatory impact statement and the certificate is tabled in the National Assembly with the economic treaty.

Notification of regulatory impact statements.

6B. (1) Preparation of a regulatory impact statement for an economic treaty shall be notified in the *Gazette* and in a newspaper likely to be read by people particularly affected by the proposed treaty.

(2) If the proposed treaty is likely to have a significant impact on a particular group of people, the notice shall be published in a way likely to ensure members of the group understand the purpose and content of the notice.

(3) The notice shall—

(a) include a brief statement of the policy objectives sought to be achieved by the proposed treaty;

(b) state where copies of the regulatory impact statement may be obtained or inspected;

(c) state that anyone may comment on the proposed treaty;

(d) state how and when comments may be made; and

(e) state how consultation about the proposed treaty will take place.

(4) The notice shall allow at least fourteen days from publication of the notice for the making of comments.

(5) A copy of the regulatory impact statement may be available free, or on payment of a reasonable price, at the place, or each of the places, stated in the notice.

(6) The responsible Cabinet Secretary shall ensure that—

(a) all comments and submissions are considered before an economic treaty is made; and
(b) a copy of all comments and submissions is given to the National Assembly as soon as practicable after the economic treaty is tabled or when requested by the Committee.

Amendment of section 8 of No. 45 of 2012.

7. section 8 of the principal Act is amended by deleting subsection (5) and substituting therefor the following new subsections—

"(5) The National Assembly may introduce a reservation as a provision into a treaty.

(5A) The National Assembly shall, in writing, indicate to the national executive the specific clause or clauses of a treaty for which it proposes to make a reservation and the reason for which the reservation is made.

(5B) The national executive shall not conclude a treaty without effecting a reservation made by the National Assembly."

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons for the Bill

The principal object of this Bill is to amend the Treaty Making and Ratification Act, 2012 to incorporate a special enactment procedure for economic treaties, strengthen the participation of the National Assembly in the treaty making process and to generally enhance efficiency in the treaty making process.

Clause 2 of the Bill seeks to amend section 2 of the Act to define the term "economic treaty".

Clause 3 of the Bill proposes to amend section 3 of the Act to include economic treaties in the list set out under the section. This will extend the application of the Act to treaties relating to taxation, trade and investment matters. A special enactment procedure for this type of treaties is required due to their significant economic and social impacts on various sectors of the economy. The additional procedures and mechanisms for scrutinizing economic treaties is aimed at complying with the principles and values of the Constitution on public consultation, sustainable development, robust representation and promotion of social and economic rights.

Clause 4 of the Bill seeks to amend the Act to introduce a new section 5A requiring the Executive to engage the National Assembly upon commencing negotiations of a treaty. This is aimed at eliminating the existing problem where the National Assembly only becomes seized of treaty matters at the tail end of the treaty making process. The active participation of the National Assembly in the Treaty Making process will not only enhance transparency and accountability in the process but it will also mitigate against risks attendant to the structure of treaties that regulate the flow of investment.

Clause 5 of the Bill seeks to amend section 6 of the Act to ensure that the country does not enter into treaties which jeopardize the ability of the country to mobilize tax resources domestically. It is further intended that no agreement which has the effect of undermining national food security should be concluded by the Executive. The amendment is also intended to ensure that treaties concluded by government do not undermine the establishment and growth of local industries or the ability of government to regulate any particular industry in public interest by limiting the ability to pass laws or regulations for matters such as protection of the environment.

Clause 6 of the Bill seeks to amend the Act to insert a new section 6A and 6B. The new sections require the Executive to have undertaken a regulatory impact assessment prior to the initiation of the treaty making process. This will ensure that a proper cost–benefit analysis is carried out before the government enters into negotiations for a treaty. It will also foster stakeholder participation in the treaty-making process as a copy of the regulatory impact statement, is supposed to be made available to the general population, who may then make relevant comments on the documents. A proposal has also been made in the amendment that the public comments are supposed to be submitted to the National Assembly by the Cabinet Secretary for consideration The amendment further seeks to solve the existing problem in Section 6(1) of the Act which does not provide the specific procedure for public participation. The section leaves room for error as it is unclear what quantum of public participation is sufficient. The amendment therefore seeks to create a greater sense of accountability in the treaty making process.

Clause 7 of the Bill seeks to amend section seeks amend section 8 of the Act outline a procedure for making reservations to a treaty. The amendment requires the National Assembly to indicate to the national executive the specific clause or clauses of a treaty for which it proposes to make a reservation and the reason for which the reservation is made. The amendment further precludes the national executive from concluding any treaty without effecting a reservation made by the National Assembly.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

This Bill does not delegate any legislative powers or limit any fundamental rights or freedoms.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the.., 2022.

JUDE NJOMO,
Member of Parliament.

ANNEX

III The Report of the Kenya – Iran Business Workshop on 28th January, 2022 at Lake Naivasha Resort.

REPORT OF THE RAPPORTEUR

Abstract

Iran has the potential of meeting Kenya's needs in the fields of oil derivatives and bitumen, petrochemical products, health tourism, medicine, and food. Kenya, on the other hand, can meet the needs of the Iranian market in the field of cocoa, coffee, tea, grains, as well as food and livestock products. To actualize this, there is need for putting in place a broad framework of engagement in realms of mutual interest. It is for this reason that the Forum provided a platform for exchange of ideas and a possible reservoir of solutions to the challenges that bestraddle bilateral trade between the two countries. There is potential for the development and deepening of relations between the two countries in various political, economic, scientific and technological fields. The two countries have good grounds for cooperation and development of bilateral relations, and these capacities should be used more.

Welcome Remarks and Introductions

HE Amb. Joshua I. Gatimu, EBS, Ambassador of the Republic of Kenya to the Islamic Republic of Iran, and H.E Mr. Jafar Barmaki, Ambassador of the Islamic Republic of Iran to Kenya welcomed the participants to the Forum.

Honourable Jude Njomo informed the Forum that the Speaker of the National Assembly had recognized the meeting as a parliamentary session and led the prayers with the standard Parliamentary Prayer.

Caroline Gichuki, CEO, Tesmoh International

She explained the role that Tesmoh International has played in forging trade linkages with investors in the Islamic Republic of Iran. The Company, domiciled in Kenya, is an international business, trade and investment consulting firm, focused on helping growing firms accelerate their international sales and business development objectives.

They also assist Trade/Investment Promotion agencies broaden their trade development and investment attraction footprint by providing business matchmaking, trade promotion and lead generation services. It is this preoccupation with exploring new vistas of trade and realization of the potential opportunities that led them into approaching Parliament and the Government of Kenya for their intervention in initiating discussions on how the investors in Kenya could benefit from expanded markets across borders, and specifically in Iran. Reception to the ideas was encouraging, and since then there have been mutual trade delegations to their respective countries.

Across time, Tesmoh had built strategic partnerships with financial institutions, airlines, hospitality outfits, service providers and embassies, with interest spanning across agriculture, healthcare, real estate, manufacturing in Africa, Europe, USA and the Middle East.

Tesmoh has arranged and facilitate trade missions , 8 delegations to Iran (now 8 in number), high level meetings and networking opportunities.

HE Amb. Joshua I. Gatimu, EBS, Ambassador of the Republic of Kenya

The Ambassador, in office since April 2021, thanked his Iranian counterpart for marshaling the courage to request a caucus on the possibility of investment on Iran, a topic he characterised as one that has historically been treated with a degree of shyness.

He observed that the demand for Kenya products has been on the rise in Iran, and many opportunities abound. The greatest obstacle, he said, was the trend of skewed information or, in some instances, very little information in levering this potential for mutual benefit.

He stated that the shift in focus from the EU and US presents a perfect opportunity to do business with Iran and sample their high quality products and accommodative prices.

Hon Jude Njomo, Chairman, Parliamentary Caucus (Business and Economy)

The legislator decried the fact that a lot of information, and therefore opportunities are lost owing to their tight schedule in the National Assembly. That most of their work is undertaken through committees, and thereafter their reports are subject to very involving plenary discussions. This informed the need for establishing a caucus of members with common interest, and in accordance with the National Assembly Standing Orders No. 259A. (1) which provides as follows:

> *The Speaker may, upon the written request of at least ten Members, recognize a parliamentary caucus formed for the purpose of advancing a common legislative objective.*

He informed the Forum that the Clerk of the National Assembly recognized it as a parliamentary session from which a report would be submitted to the relevant committee(s).

He recalled that a significant portion of legislators were uncomfortable with the Economic and Partnership Agreement between the United Kingdom and Kenya that was executed on 8th December 2020. When the same was table before the Departmental Committee on Trade, Industry and Cooperatives, it was dismissed on account of lack of sufficient consultation on its content. Several amendments were proposed and reservations against certain of its clauses set out.

There are now proposals to include active participation by the National Assembly in treaty-making procedures, right from the preliminary stages to eventual execution.

He urged that opportunities be taken up to establish trade ties with Iran and find ways of bypassing hurdles posed by Iranian banks in money transfers, advocate for visa-free travels between the two countries and, enhance knowledge base relating to mutual investments.

Prof Hillary Barchok, Governor, Bomet County

The Governor confirmed the great potential for investments that Iran portends, on account of his having twice visited the country. He informed the Forum that as a county, they are already forging business ties, and attempting to harness the available opportunities to mutual benefit.

Dr. Reza Khan (Via Zoom link)

Dr. Khan noted that there was mutual expectation between the two countries for a closer relationship in political, economic social and cultural spheres. This would be enhanced through development cooperation and visits.

He observed that Tehran had targeted Africa for expanded influence and East Africa presented viable opportunities. In this regard, there were plans to establish a technology centre in Kenya, which would foster trade relations in the realms of pharmaceuticals, bio-technology, nanotechnology, *etc.*

He also noted that the values of exports to Kenya had risen. From Iran came oil derivatives and bitumen, medicine and food. From Kenya, tea, coffee and avocado were the main imports.

There was mutual interest in investments in agriculture, petroleum and pharmaceuticals, through which competitive advantage through trade could be leveraged. Establishment of a pharmaceutical plant in Kenya, on the pipeline, would be a good step towards realization of those ideals.

Trade Agreements between the Republic of Kenya and the Islamic Republic of Iran - *Ambassador Dr. Jafar Barmaki, Iranian Ambassador to Kenya*

The envoy noted that this year was the 50th anniversary of diplomatic relations between Kenya and Iran, a journey which started with a joint declaration back in 1971, to the latest when Iran supported Kenya's bid for a seat at the United Nations Security Council. Kenya has also reciprocated in many other ways.

He said that Kenya has had long and productive trade connections in the past and there is potential for expansion of portfolio of commodities and to develop its industrial capacity. There is also a Memorandum of Understanding signed between the two countries during the WTO in 2020.

Other than the foregoing, exchanges and cooperation in politics, economy, culture, science and technology and other areas are expanding in an all-round way. Across time, the two countries have signed agreements aimed at fostering closer relations.

Historically, the two countries executed the following agreements:

a) an Agreement on Strengthening & Development of Trade Relations (1998);

b) Maritime and Shipping Agreement (2008);

c) Aviation Agreement;

d) Mutual Investment Encouragement & Support Agreement (2008);

e) Bilateral Agreement on Mutual Administrative Assistance in Custom Matters (2008);

f) Cooperation Agreement in the Field of Veterinary Medicine & Animal Health;

g) Agreement to avoid Double Taxation & Prevent Tax Evasion (2014);

h) Agreement on Cultural, Educational & Scientific Cooperation (1990);

The envoy recalled that there were plans to facilitate implementation and so, it was contemplated that a Joint Committee comprised of nationals from both countries would be established. The Committee would convene at least once a year and provide strategic direction and to:

a) Review implementation;

b) Examine problems relating to implementation of the agreement and make appropriate recommendations ;

c) Consider proposals made by either contracting parties within the framework of each agreement;

He stated that there are efforts trained at its establishment. Admittedly, a lot remains to be done, hence the concerted efforts that have been employed to advance the mutually beneficial economic cooperation and trade.

Other than the above, there have been a number of memoranda of understanding, the most significant of which are:

a) International Transit of Goods between Iran and Kenya and Turkmenistan;

b) Planning, Design & Construction Management and Involvement of Public-Private Partnerships in Housing Projects (2011);

c) Bilateral Cooperation on Fisheries (2009);

d) Financing between Export Development Bank of Iran and Ministry of Finance in Kenya (2009)

e) Health Cooperation (2009), among many others

As it is, the trade balance between the two nations is heavily in favour of Iran and there is need to bridge the gap, first by increasing the volumes of Iranian imports from Kenya as well as Iranian investments in Kenya.

At a political level, there have been state visits of the Iranian President, followed by those by the Prime Minister and other line ministers. In 2009, the then President Ahmadinejad visited Kenya with a 100-strong Iranian trade delegation and numerous deals were signed, including a deal to export 4 million tonnes of oil to Kenya annually, direct flights between Tehran and Nairobi, scholarships for Kenyans to pursue higher education in Iran and a $16 billion line of credit to Kenya for housing, dam construction, healthcare and humanitarian assistance. Under the deal, Iran would supply Kenya with 80,000 barrels of oil a day.

By comparison, in 2019, Iran ranked 70 in the Economic Complexity Index (ECI 0.0091), and 69 in total exports ($25B). That same year, Kenya ranked 87 in the Economic Complexity Index (ECI -0.43), and 107 in total exports ($6.25B). In 2019, countries that imported more from Iran than Kenya were China ($12.1B), India ($3.03B), and South Korea ($1.89B). In 2019, countries that imported more from Kenya than Iran were Uganda ($619M), United States ($546M), and Netherlands ($487M).

In 2019, Iran had a large net trade with Kenya in the exports of Mineral Products ($51.1M), Foodstuffs ($1.06M), and Chemical Products ($800k). In the same year, Kenya had a large net trade with Iran in the exports of Vegetable Products ($20.8M), Machines ($19.8k), and Metals ($18.9k).

The two countries have seen more frequent high-level exchanges, including bilateral visits as well as interactions on multilateral fora. There have been bilateral visits by delegations from the respective countries in a bid to facilitate the actualization of these ideas (1996, 2005, 2008 in Nairobi, and 1998, 2006, 2014 in Tehran). The meetings have been very fruitful, with the suggestions made being pursued as immediate action points to their mutual benefit.

Summary of presentations

Various companies and entities made brief presentations. These were Kenya Tea Development Agency, Afri-Bridge, Makueni County Fruit Development & Marketing Authority, and Kenya National Chamber of Commerce & Industry.

The dominant issues emerging from the presentations were as follows:

a) The difficulty in moving fund across the border, owing to the economic sanctions in place;

b) Access to foreign exchange and inflation;

c) Finding market-specific date;

d) Finding appropriate local partner;

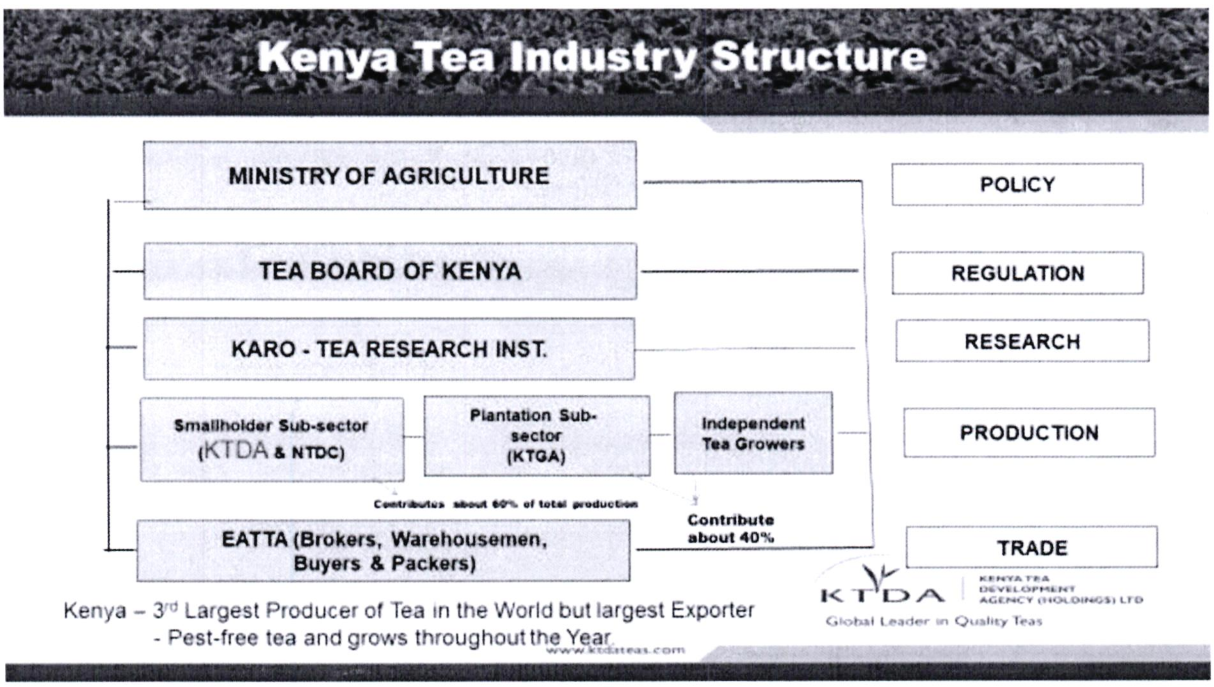
e) Regulatory compliance, especially GMP (for both product and health safety), trade certifications, MRLs. RA, FTs etc.

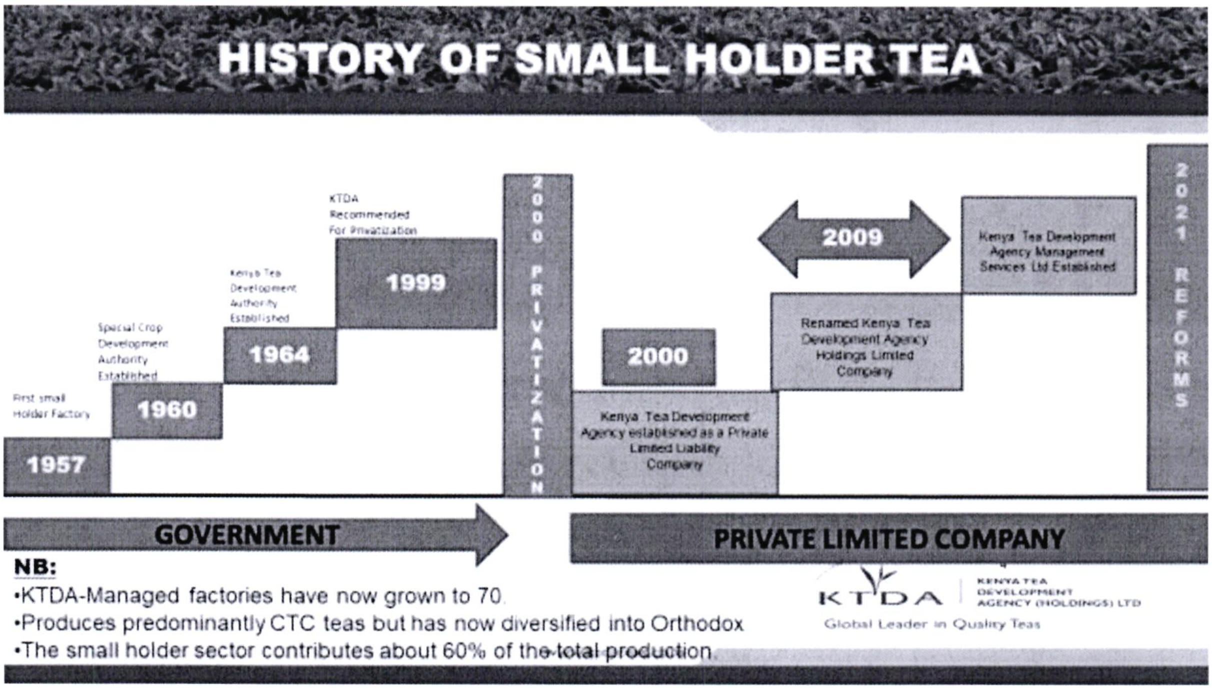
f) Logistical challenges posed by shortage of vessels and food-grade containers to ship commodities to Iran.

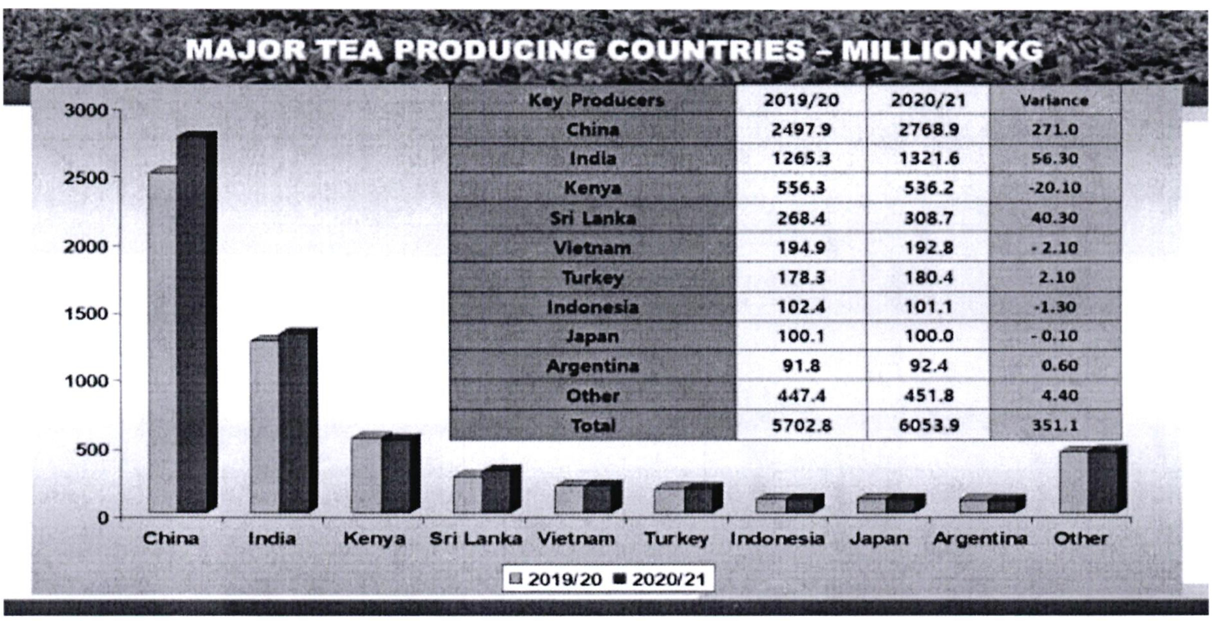
The above challenges could be ameliorated by fostering closer bilateral talks between Kenya and Iran, and enhanced partnerships to unlock market potential.

Francis Muthamia, General Manager, Sales & Marketing, Kenya Tea Development Agency

Kenya Tea Industry Structure



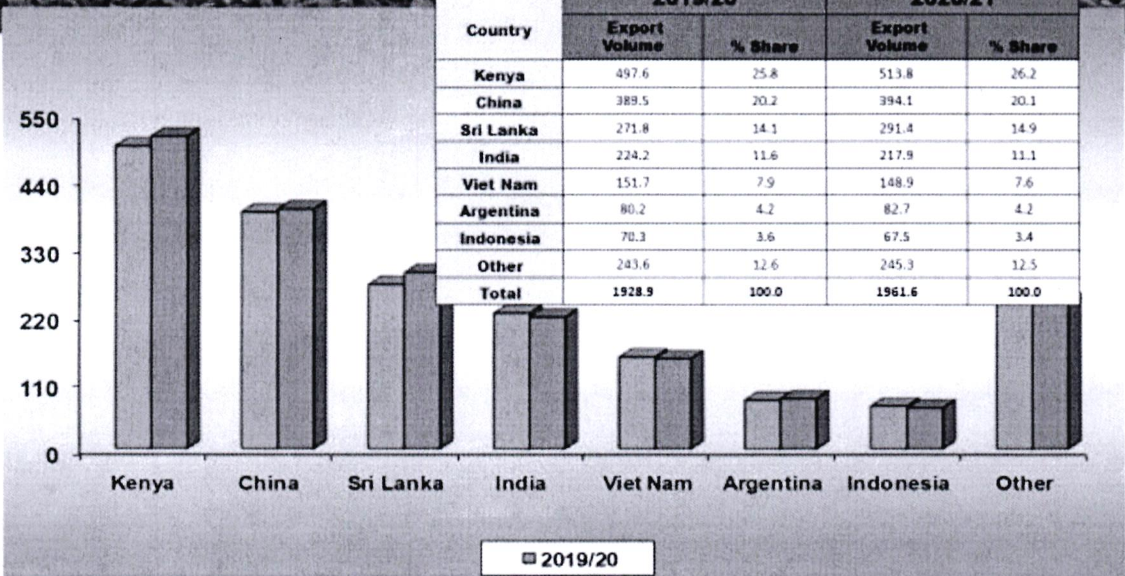




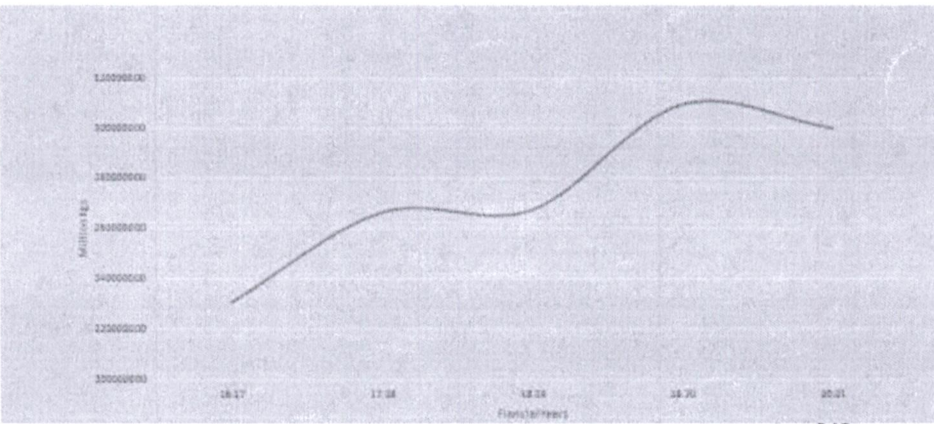
Key Producers	2019/20	2020/21	Variance
China	2497.9	2768.9	271.0
India	1265.3	1321.6	56.30
Kenya	556.3	536.2	-20.10
Sri Lanka	268.4	308.7	40.30
Vietnam	194.9	192.8	- 2.10
Turkey	178.3	180.4	2.10
Indonesia	102.4	101.1	-1.30
Japan	100.1	100.0	- 0.10
Argentina	91.8	92.4	0.60
Other	447.4	451.8	4.40
Total	5702.8	6053.9	351.1

MAJOR TEA EXPORTING COUNTRIES – MILLION KG

Country	2019/20		2020/21	
	Export Volume	% Share	Export Volume	% Share
Kenya	497.6	25.8	513.8	26.2
China	389.5	20.2	394.1	20.1
Sri Lanka	271.8	14.1	291.4	14.9
India	224.2	11.6	217.9	11.1
Viet Nam	151.7	7.9	148.9	7.6
Argentina	80.2	4.2	82.7	4.2
Indonesia	70.3	3.6	67.5	3.4
Other	243.6	12.6	245.3	12.5
Total	1928.9	100.0	1961.6	100.0



KTDA EXPORTS 2019/2020 Vs 2020/2021



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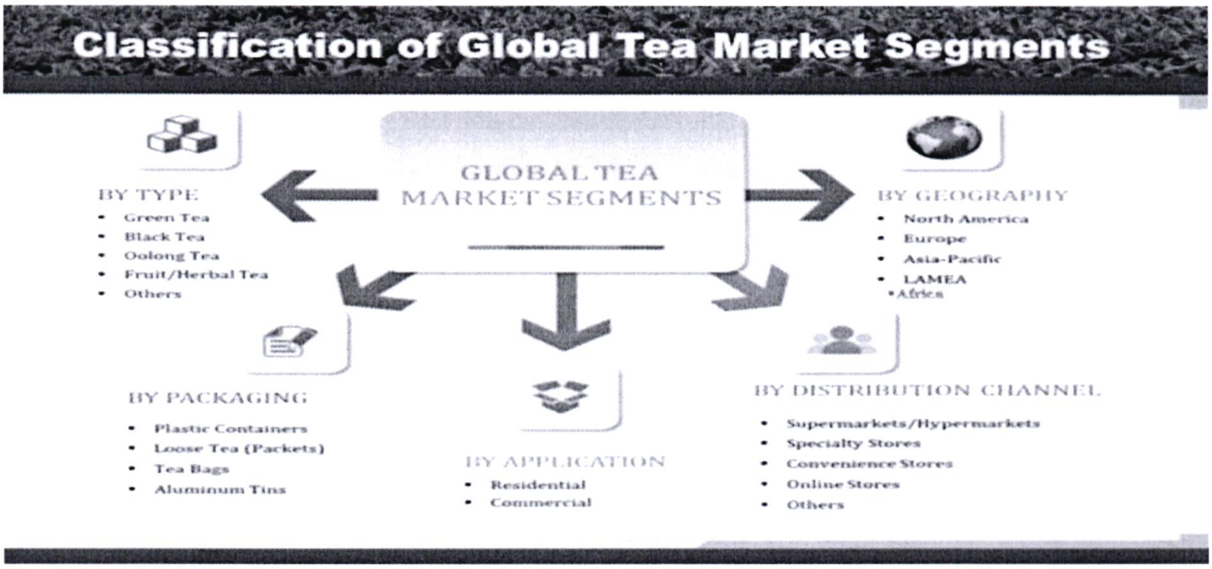

Iran Market

Imports versus Exports From and To Iran

YEAR	Export Value	Import Value	Balance of Trade
2011	1,954,940,962	3,675,773,455	-1,720,832,493
2012	1,310,349,175	3,685,706,911	-2,375,357,736
2013	2,798,436,877	2,434,328,449	364,108,428
2014	2,282,658,934	3,787,910,822	-1,505,251,888
2015	1,151,752,993	3,807,800,056	-2,656,047,064
2016	1,757,172,533	6,134,316,959	-4,377,144,425
2017	1,523,735,384	13,169,129,106	-11,645,393,722
2018	2,173,873,128	10,419,341,571	-8,245,468,443
2019	2,123,465,902	6,089,114,085	-3,965,648,182
2020	1,626,275,619	4,847,211,070	-3,220,935,451

NB: For the last 10 years, save for 2013, the Balance of trade has been skewed in favour of Iran.

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SELECTED MAJOR TEA IMPORTING COUNTRIES – M KG

RANK	Importing Countries	2019/20 Import Volume	2019/20 % Global	2020/21 Import Volume	2020/21 % Global
1	Pakistan	222	12.1	259	13.8
2	Russia	153	8.4	151	8.0
3	UK	120	6.6	126	6.7
4	USA	117	6.4	109	5.8
5	Egypt	98	5.4	95	5.1
6	Iran	75	4.1	77	4.1
7	Morocco	74	4.0	75	4.0
8	Germany	59	3.2	53	2.8
9	Iraq	43	2.3	46	2.5
10	Saudi Arabia	40	2.2	41	2.2
	Sub-Total	1001	54.7	1032	54.9
	Other	830	45.3	847	45.1
	TOTAL	1831	100.0	1879	100.0

KEY TEA SUPPLIERS OF TEA IN IRAN

- India and Sri Lanka supplies over 87% of the total imports. This is because of the good working relationship between these countries and Iran during the sanctions period.
- Kenya supplies only 6% of the total tea imports in Iran
- The key challenge for Kenya remains the trade sanctions which limit the US Dollars in the country.
- The Volumes have potential to grow exponentially if the payment challenges can be addressed between the two governments.

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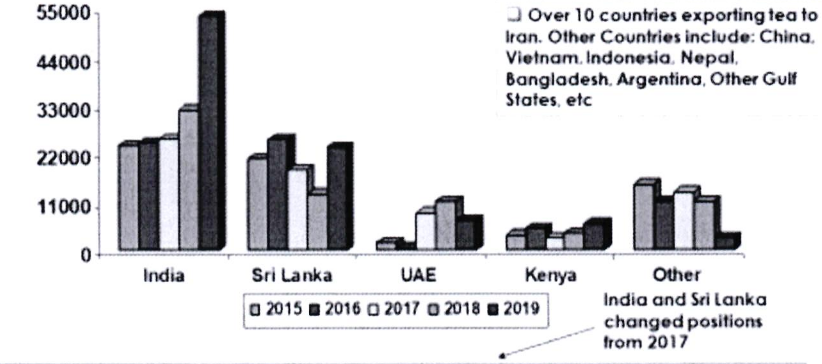
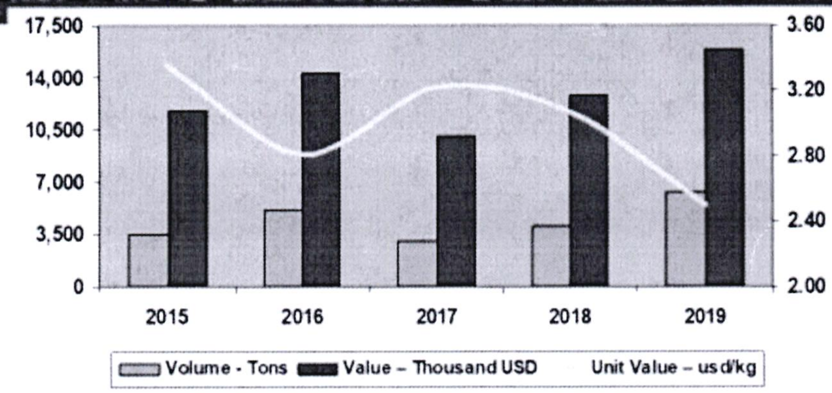
Iran Key Tea Suppliers 2015 - 2019 (Tons)



Key Suppliers	2015	2016	2017	2018	2019
India	24007	24780	25476	32266	53.457
Sri Lanka	21152	25621	18635	13020	23.781
UAE	1982	608	8636	11325	7012
Kenya	3.513	5.118	3110	4035	6334
Other	15.138	11.258	13.412	11.228	3104
Total	65.792	67.385	69.269	71.874	93.688

Kenya Tea Exports To Iran



Kenya Tea Exports to Iran	2015	2016	2017	2018	2019
Volume - Tons	3.513	5.118	3.110	4.035	6.334
Value – Thousand USD	11.804	14.382	10.014	12.778	15.835
Unit Value – usd/kg	3.36	2.81	3.22	3.07	2.50

CHALLENGES FACED IN THIS MARKET

- Payment challenge due to the US-led Economic Sanctions
- Devaluation of Iran Rial due to the sanctions.
- Unavailability of foreign currency in Iran. Clients have to get allocations from Central Bank which takes time.
- Shortage of vessels and food grade containers to ship tea to Iran
- Price cap on Kenya tea to USD 3.00 per kilo by Iran customs. A Delegation to Iran discussed with the Agriculture ministry and has resolved that Tea Board of Kenya will be the source of valuation of Kenyan Tea.

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What is the Future of Kenya-Iran Tea Trade?

- Closer bilateral talks between Kenya and Iran.
- Coming up with payment arrangements with tea machinery suppliers and Bitumen suppliers.
- Partnership with Iran customers/ Clients to unlock the market.

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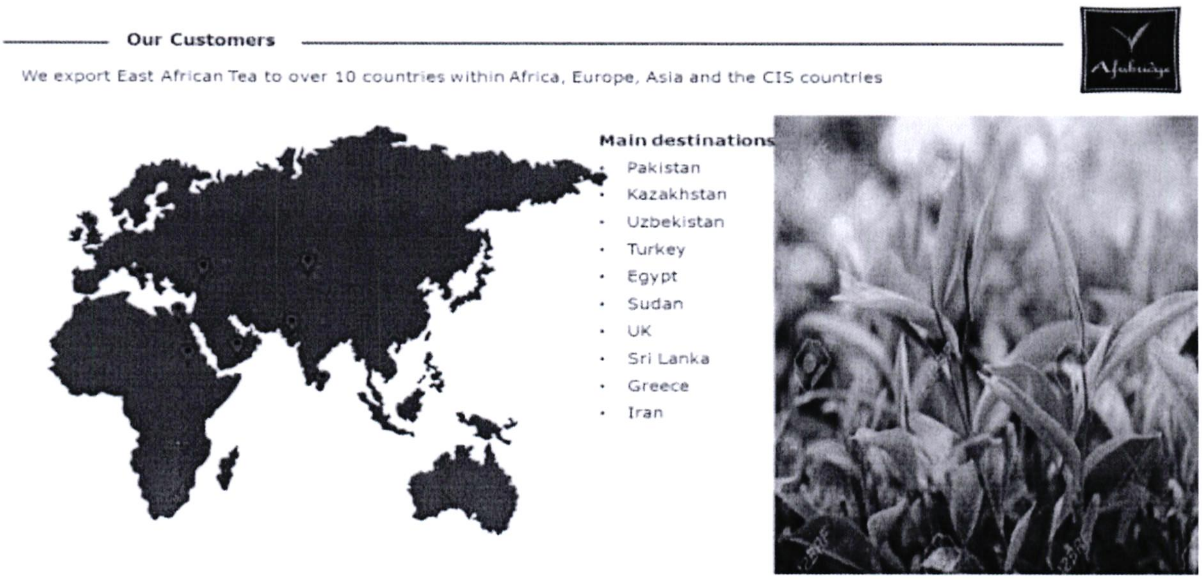
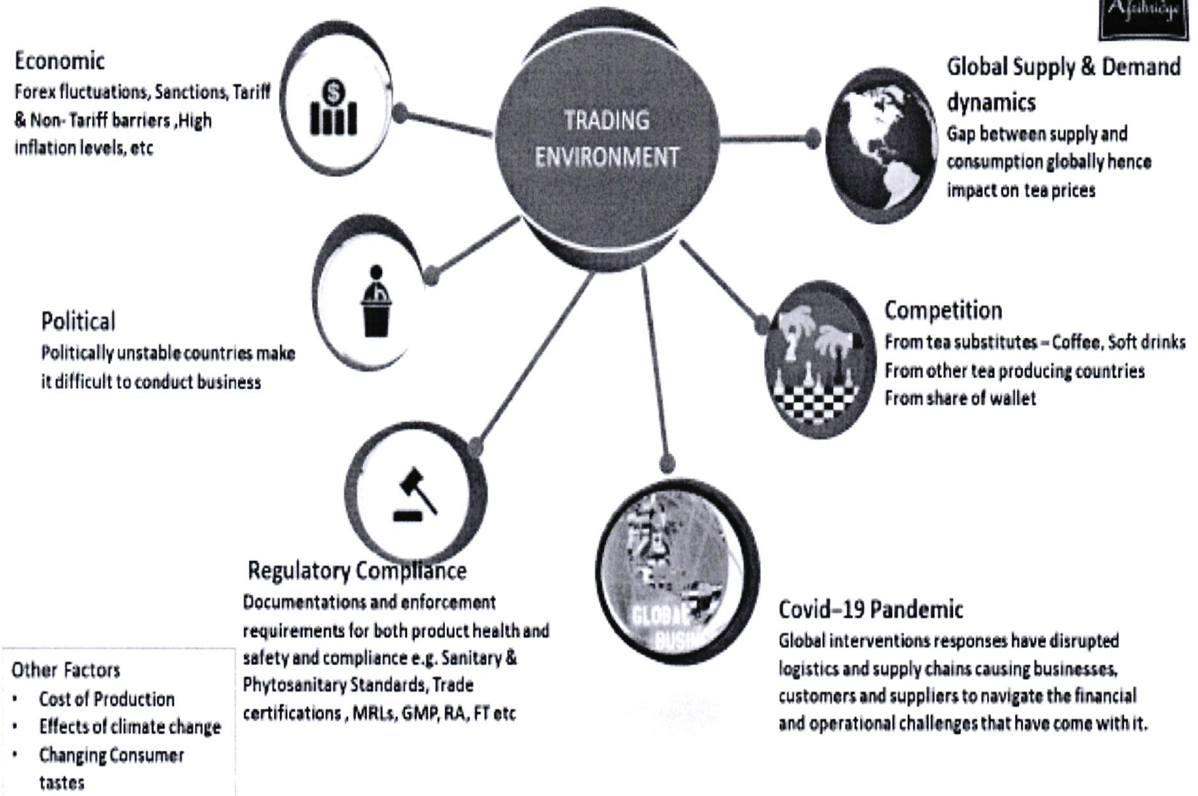
John Bett, Afribridge Trade Exporters Limited (AFTEL)

Afribridge Trade Exporters Limited (AFTEL) is a private Kenyan Company founded in the year 1998 as a Tea Trading Company within the Sovereign Group of Companies. It is registered as a Tea Trading and Exporting Company under the East African Tea Trade Association (EATTA) and Tea Board of Kenya (TBK) government regulatory body.

Afribridge specializes mainly in East African Black CTC, Orthodox and also other specialties tea including Green, White and Purple Teas, and has the capacity to export teas as straight lines, blends and/or value added form.



Challenges and Opportunities



Challenges

- Difficulty in moving funds across the boarder due to Economic Sanctions, this provides an opportunity for engagement between our two Member states, in building up a sound Financial/bilateral framework to enable structured Barter Trade.
- Access to foreign exchange and inflation
- Finding market specific data
- Finding the right local partners
- Regulatory compliance especially GMP.

NIFBIC

Challenges and Opportunities cont.

Rank (Position Globally)	Country	Import Share Globally	Dominant Imports
1.	Pakistan	10.18%	Black CTC
2.	Russia	7.84%	Black Orthodox
3.	United Kingdom	6.24%	Black CTC
4.	United States	5.89%	Black Orthodox
5.	Egypt	4.63%	Black CTC
6.	Iran	3.81%	Black Orthodox
7.	Morocco	3.64%	Green Orthodox
8.	Germany	2.50%	Black Orthodox
9.	Iraq	2.12%	Black Orthodox
10.	Poland	1.86%	Black Orthodox

Source: ITC

- **Huge opportunity to Kenya tea farmers in market and product diversification.**
- **Access to a Population of 84 million people in Iran. It's a gateway to almost one Billion population from 8 countries across the borders.**
- **Relatively rich population with spending power on quality Products**
- **Tea drinking culture**

Agnes Kitili, Makueni County Fruit Development & Marketing Authority

The Authority is a product of a fruit county legislation, established for vaue additioon through management of fruit production, processing and marketing.

Dr. Mohsen, Central Bank of Iran (via video link frim Vienna, Austria)

Dr. Mohsen urged for putting in place a binding relations as a way of balancing volumes of trade between Kenya and Iran.

He also advocated for a swift financial messaging system as well as the following:

a) Optimal utilization of a mutual trade system;
b) Encouragement of Kenyan banks and other financial institutions to join in in a system where it would unnecessary to be kinked to banks in Europe for purposes of funds transfer;
c) Direct banking and fiscal relations through the use of innovative remittance systems involving the transfer of money without physically moving it.

Plenary Session on the Presenation by Dr. Mohsen Karimi

The idea of direct relations without using international systems and the use of direct export and imirt payments elicited an interest in an indepth discourse.

There was a question as to whether the solution would lie in dedieicating a abnk for this purpose in the resoective countries, or an offshore one paired with a locab bank. Dr.

Mohsen, in resonse, noted that since imposition of sanctions by the United States of America, there has been a gradual move towards use of the Euro as opposed to the Dollar. There is already a messaging system in place, and dedecated babks would be connected and they would transact on the basis of a natonal currency. Already the system is being piloted in interactions between Iran and other countries, for examplem Russia and India.

A delegate from the Kenya National Chambe rof Commerce and Industry infirmed the Forum that there are a similar arramgement between Kena and China and they could assist with ideas where the same would be needed.

It was also suggested that the two countries could explore the use of other money transfer systems like *dahabshiil* and *hawalla*.

Dr. Eric Rutto, Kenya National Chamber of Commerce and Industry

The Kenya National Chamber of Commerce and Industry is registered as a not-for-profit private company limited by guarantee under the Companies Act Chapter 486 of the laws of Kenya. Before the promulgation of the Kenyan Constitution in August 2010, the KNCCI had its main operations at the head office in Nairobi with regional offices in the major towns in Kenya. However, after the promulgation of the constitution, the Chamber amended the legal instrument to establish a National Office and County Chamber's offices in all the 47 Counties.

Dr. Rutto informed the forum that they advocate for the creation of a favourable commercial, trade and investment environment that supports enterprise expansion, and that its membership of KNCCI constitutes of small, micro enterprises (MSEs), medium and large enterprises.

He observed that Kenya's export are approaching the value of KES. 600bn and there is need to up it. The Forum, he observed, was very fruitful, and that the MoUs entered in 2017 and 2021.

The hailed the opportunities for MSEs that the Embassy of Iran in Kenya has provided at its Dennis Pritt offices, which he said provided a platform for exchange of useful ideas.

Dr. Rutto proposed the established of a joint business council composed of investors from the two countries. This council would be instrumental in ironing out the hurdles in the way of doing business between the two countries. As an example, the KNCCI and the International Chamber of Commerce had set up a similar structure for entrepreneurship to facilitate exports across borders, and to help start-ups with information on cross-border trade. Already over 5000 companies had signed up to the idea and there is ongoing engagement with other stakeholders in this regard.

Leveraging the strength of ICC's global network, the Centre of Entrepreneurship pairs entrepreneurs with experts from around the world to provide global trainings, virtual mentoring and coaching. The Centre relies upon the expertise, knowledge, and support of chambers of commerce, businesses, academic institutions, intergovernmental organisations, and ICC's Knowledge Solutions Department.

As part of its core activities, the Centre of Entrepreneurship hosts a series of talks for entrepreneurs, chambers of commerce, businesses, banks, and governments, to address the structural challenges facing emerging and developing markets. This includes gender inclusion, youth employment, and educational opportunity. By bringing together thought leaders, businesses, and entrepreneurs, the Centre is home to a community of innovative professionals keen on challenging convention and transforming the future of business.

Mohamad- Reza Zahir-Emami, CEO, Farassan Group of Companies

Farassan Manufacturing & Industrial Company began its operation in 1985. During this journey, Farassan has grown from a small workshop with 5 employees which made composite blades for air cooling tower to one of largest GRP pipe and fitting manufacturing companies in the world. It now has more than 4000 employees.

GRP pipe manufacturing is leading by Farassan and its technology at Faratec™ in the region, Farassan has participated in variety of projects distinguishing its products and technology of Faratec™ as one of most well-known in GRP pipe industry around the globe.

Undertaken / participated projects include but not limited to oil & gas industry, petrochemical plants, power plants, sub – aqueous pipeline and any kind of water transmission lines both nationally and internationally.

Transmission of corrosive and abrasive fluid, have become one of their specialized sector of work in all industries such as mining and crude oil.
Today, thousands of kilometers of Faratec™ pipes have been installed around the globe.

Regarding to widespread applications of Faratec composite pipes, several examples on the applications are given as following:

- Water transmission and distribution (potable and raw water)
- Sanitary collection systems
- Storm sewers
- Sea water transmission systems
- Irrigation and drainage networks
- Cooling water systems
- Pipe jacking systems
- Pipelines transferring petroleum, industrial and chemical sewage
- Hydropower plant projects

If constructing new pipelines or replacing other pipe materials, Faratec pipes deliver long, effective service lifespan with low operating and maintenance costs.

Panel Discussions

Trade Opportunities and Challenges between Kenya and Iran

Question on how the idea of bilateral banking system could be actualized for the benefit of the two countries

Ambassador Gatimu: We have heard about the idea from my counterpart. There are places it has been operationalized, and we think it is a noble one. We shall continue to engage with the relevant authorities to explore the idea of its actualization to our mutual benefit.

Question on how the idea has been sold to other countries and their response

Ambassador Barmaki: The idea has largely been tried with countries with whom we have established bilateral/multilateral relations. It has not been easy, but it is gradually gaining root. Challenges abound. For instance, in relation to transfer of money, several investors still do not know how to bring funds into Kenya. As we push towards the lifting of the sanctions, there is need for finding innovative but legal and legitimate ways of bypassing the barriers in place. This is an opportune moment for such attempts.

Question on the role and responsibility of the State in protecting Kenyan citizens in trading with their counterparts in Iran, in view of the alternative banking system idea and the sanctions in place

Hon Jude Njomo: The enduring common interest between the two countries lies in the improvement of the economy of the respective countries. The framework of mutuality been developed between the countries presents an opportunity, which can be enhanced by concerted sensitization. Improving on doing business is a major revenue earner even for the government.

Question on whose responsibility it is to ensure that business flows in relation to banking systems

Sylvanus of Kenya National Chamber of Commerce and Industry: One of the core mandates of the KNCCI is to advocate and ensure that business is conducted in a conducive environment. To this end, it has in the past worked with the government, and it continues to foster trade within and outside Kenya. As a lobby group, it believes that expansion in its numbers presents a formidable bargaining chip in advancing its ideals. There is pure partnership in the Chamber.

A general query on the *dos and don'ts* in navigating these ventures, noting that culture and religion can be a barrier

Ambassador Barmaki: It is easy to discern, especially now that a significant number of delegations have been to Iran. There is freedom of worship in Iran, something that is protected in the Constitution. The moral expectation, like in any other country, demands common decency.

A question on whether the Kenyan investors could facilitated to obtain a GMP and other certifications from Iranian authorities to ease trade

Ambassador Barmaki: I understand there are challenges, but all countries have their fair share as well. As with any other country, there are regulatory compliance requirements. In the year 2021, there were 8 delegations to Iran. I met with officials regulating food and pharmaceuticals and raised concerns that had been submitted to me. They responded, but there was no follow up from the originators of the concerns. They need to follow up with me. The delegations went to Iran to seek solutions to the challenges that the exporters are facing. I am waiting.

Caroline Gichuki: in relation to Certification in compliance (COI/COC) with INSO (former ISIRI) standards; Pre-shipment inspections (PSI) in accordance to letter of credit; Good manufacturing practice (GMP) audit services; Visual free sales certificate (FSC) approval service ; and Price verification, we engaged the authorities in Iran and articulated those issues. We continue to do so and they are to report back to us. We hope to have a clear picture in a few months' time. As part of our propositions, it would be good to have an entity like the Tea Directorate be recognized as an evaluations body to ease licensing process in Iran.

Ambassador Barmaki: All these issues need to be discussed at an expert level, and we shall continue to engage. Also, in the spirit of cordiality, challenges relating to issuance of work permits shall be addressed.

A question on how feasible it is for Kenyan students to pursue learning in Iranian institutions of higher learning

Ambassador Gatimu: There are Kenyan students pursuing diverse courses in Iranian institutions of higher learning, not only in Tehran, but also in various cities across the country. There is a pending delegation from the Ministry of Education in Kenya, and when they come, we shall discuss the possibility of increasing the number of scholarships.

Ambassador Barmaki: There are several universities, both public and private in Iran that are ready to open branches in Kenya. There are those whose language of instruction is English, while others are in Persian. If a student elects to study in Iran, for those who use the Persian language, the first year is normally spent learning Persian, and thereafter the student is permitted to pursue the mainstream courses. We have world renowned universities, for example, Sharif University of Technology, a public research university in Tehran, Iran. It is widely considered as the nation's leading institution for science, technology, engineering, and mathematics (STEM) fields, and is reputable across the globe.

A question on what standards manufacturers in Kenya should follow to be able to export commodities to Iran

Sylvanus: The information is already out there. The process is well streamlined, and if one goes through embassies, he would be advised to go to Kenya Investment Authority and Kenya National Chamber of Commerce and Industry. The former currently has a moratorium for investors to enjoy tax holidays.

Countries general submit common standards to which importers are expected to adhere.

Ambassador Barmaki: All the threshold requirement are guided by the standards of the International Organization for Standardization and there are processes that they follow, including verifications.

A Question as to who is negotiating with the banks to provide alternative cash transfer system

Susan Kandugu: When approached, the first question is whether a bank in question is affected by sanctions. They then suggest that they would seek regulatory advice from Central Bank, without which they are unable to negotiate with their counterparts in Iran.

Sylvanus: The Chamber is currently engaging through Aga Khan with banks in the Middle East. We remain hopeful.

Parting Shots

Ambassador Barmaki: The potential and the opportunities that Iran present are enormous, considering that it could be a hub of access to the four neighbouring but landlocked countries. I urge Makueni County to send in their proposals. We shall convene a forum for Kenyan and Iranian investors.

Ambassador Gatimu: Change assails good relations. I encourage KNCCI to continue to be proactive in this regard. The exchange of ideas and information through a platform such as this is a welcome proposition.

Hon Jude Njomo: We hope to utilize the opportunities to create useful linkages. As legislators, we shall assist when called upon, and especially in contact-making. I urge that we make use of the opportunities and create business, and therefore wealth, for our people.

Valedictory Remarks- *Caroline Gichuki*

Ms Gichuki thanked those who had created time to attend to the Forum and wished them well. The Forum closed by a prayer by Hon Jude Njomo. The lively discourse at the end of the session and the promise of follow-up talks after the session between participants and panelists showed the need for convention of similar platforms.