United Nations Conference on Trade and Development
Japan Bank for International Cooperation

Blue Book on Best Practice in Investment Promotion and Facilitation

Kenya

UNCTAD

JBIC

PREFACE

The Blue Book for Kenya comprises nine measures, actionable over a period of twelve months, that are intended to move the country towards best practice in investment promotion and facilitation.

The project was carried out jointly by the United Nations Conference on Trade and Development (UNCTAD) and the Japan Bank for International Cooperation (JBIC). The contents of this Blue Book were initially developed through consultations with a number of existing foreign investors in Kenya, professional advisors to foreign investors in Kenya, industry associations whose members include foreign investors in Kenya, and relevant Government of Kenya bodies, including in particular the Investment Promotion Centre (IPC). An initial draft of the Blue Book was discussed by a group of foreign and domestic investors and government representatives at a stakeholder workshop on 9 May 2005 in Nairobi, Kenya. The workshop was jointly hosted by UNCTAD, JBIC and the IPC.

The Blue Book project in Kenya was a collaborative effort by Ken Ezuka, Vishwas P. Govitrikar, Khalil Hamdani, Lucy Nkuranga, Luka Obbanda, Mayank Patel, Rohan Patel, Hideyuki Satsuma, Eibu Suzuki, Katia Vieu and Yukata Yamada.

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ABBREVIATIONS

EAA	Eastern Africa Association
EABC	East African Business Council
EAC	East African Community
EACDTT	East African Community Double Taxation Treaty
BDS	Business Development Services
DTT	Double Taxation Treaty
FDI	foreign direct investment
FIC	Foreign Investments Committee, Prime Minister's Department, Malaysia
KIA	Kenya Investment Authority
IPA	Investment Promotion Agency
IPC	Investment Promotion Centre (Kenya)
IPR	Investment Policy Review
JBIC	Japan Bank for International Cooperation
KAM	Kenya Association of Manufacturers
KEPSA	Kenya Private Sector Alliance
KRA	Kenya Revenue Authority
PSDP	Private Sector Development Programme
SME	Small and Medium-sized Enterprises
TIC	Tanzania Investment Centre
TNC	Transnational Corporation
UIA	Uganda Investment Authority
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme

NINE-POINT ACTION PLAN

Measure 1. Introduce flexibility in the FDI entry provisions in the Investment Promotion Act (2004).

Measure 2. Review the process of awarding work permits.

Measure 3. Introduce deadlines and penalties for late payment of VAT refunds by the Kenya Revenue Authority.

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INTRODUCTION

Objectives

The Blue Book for Kenya is intended to guide Kenya in the process of improving its investment climate. It is intended that these measures, if implemented, will contribute towards a business-public dialogue about investment impediments, the elimination of identified impediments to foreign direct investment and ultimately an increase in foreign direct investment in Kenya.

Background

The East African Blue Books for Kenya, Tanzania and Uganda are a part of the efforts of the United Nations Conference on Trade and Development (UNCTAD) and the Japan Bank for International Cooperation (JBIC) to enhance the appeal of Africa as a location for investment. UNCTAD has carried out a number of activities in the region (e.g., investment policy reviews and investment guides), while the Government of Japan has recently announced its effort to promote Japanese investment in Africa (among other things through the facilities of JBIC). The first Blue Books, also a joint UNCTAD-JBIC initiative, were prepared for Cambodia and Lao PDR in 2004, to assist these new members of ASEAN to strengthen their investment climate.

Process

The Blue Book on Best Practice in Investment Promotion and Facilitation for Kenya contains concrete and measurable initiatives for government to achieve best practice. The following criteria were employed in determining the suitability of initiatives: (1) cause of significant concern to existing foreign investors and therefore, if ameliorated, potential for high impact; (2) ability to implement the measure within a 12-month timeframe; (3) practicality of implementation of the measure; and (4) limited cost of implementation.

The measures presented in the Blue Book reflect the views of a number of stakeholders including the Investment Promotion Centre, several existing foreign investors, several advisers to foreign investors in Kenya and industry associations whose members include existing local and foreign investors. The measures included in the Blue Book were initially developed through a series of in-depth consultations with representatives from all these groups. The measures were subsequently discussed at a stakeholder workshop attended by foreign and domestic investors and Government of Kenya representatives that was held in Nairobi, Kenya on the 9th of May 2005.

Monitoring and implementation

It was the sense of the workshop that monitoring of the implementation of the measures is best undertaken on a quarterly basis by the Ministry of Trade and Industry, with the assistance of the IPC (or the KIA once it becomes effective under the Investment Promotion Act (2004)).

It is further recommended that the measures be incorporated into the Investment Climate Action Plan that is currently being finalised as part of a wider Private Sector Development Strategy by the Ministry of Trade and Industry. In addition, the measures should be placed on the agenda of the National Economic and Social Council (NESC), which is chaired by the President and meets every three months. The NESC is perhaps best placed to ensure their implementation, which would involve a number of ministries and agencies.

There was also a suggestion from the private sector at the workshop on 9 May 2005, which was chaired by H. E. Mr Petkay Miriti, Assistant Minister of Trade and Industry, that another workshop be held in six months at which progress could be reported on the Blue Book measures by the various agencies responsible for implementing them. This suggestion should be taken up by the Government, UNCTAD and JBIC.

N.B. *Most of what is proposed in this Blue Book is also discussed more thoroughly in the investment policy review (IPR) of Kenya that UNCTAD has undertaken over the past year or so. The IPR has a longer-term perspective and will be available later this year. The two documents should be seen as parts of a single process, intended to end in an improved investment climate in Kenya.*

Measure 1. Introduce flexibility into the FDI entry provisions in the Investment Promotion Act (2004).

(a) Rationale and country context

Kenya has traditionally had one of the most open regimes for FDI in Africa. The only formal restrictions on foreign ownership of business were in the insurance sector (foreign ownership restricted to 77% of a business), telecommunications sector (foreign ownership restricted to 70% of a business) and in companies listed on the Nairobi Stock Exchange (foreign ownership restricted to 75% of a business). FDI did not have to be screened on entry.

The enactment of the Investment Promotion Act (2004)[1] ('the Act') marks the introduction of a new FDI entry regime that will reverse the previous approach to FDI. The Act, which was ratified by the President of Kenya on 31 December 2004, introduces a mandatory threshold *and* a screening procedure for *all* foreign investment in the country. The Act, which differentiates between local and foreign investment, makes it mandatory for foreign investors to invest a minimum of US$500,000 (or the equivalent in another currency) and to undergo a screening process by the new Kenya Investment Authority (KIA)[2]. The investment must be deemed by the KIA to be of benefit to Kenya and must *at a minimum involve* (1) the creation of employment for Kenyans; (2) the acquisition of new skills and technology; and (3) the contribution to tax revenues or other government revenues. Should the application be successful, the KIA will issue the business an Investment Certificate that entitles the successful applicant to 6 work permits and a series of business licences (subject to the applicant meeting specified conditions and paying the necessary fees).

The mandatory minimum capital requirement for foreign investors and the requirement that all such investment must be screened by the KIA are highly restrictive impediments to foreign investment in Kenya. The Act goes against the Government's own objective to promote and facilitate domestic and foreign investment. The minimum capital requirement for foreign investments will turn away valuable small foreign investments, particularly those in non-capital intensive businesses in the services sector. It is also likely to lead to a situation where foreign investors with less than the minimum capital will engage Kenyan citizens to 'front' for them. Further, in its current form, the Act offers no protection to small Kenyan investors engaged in sensitive areas.

(b) Examples of best practice

Currently, many countries in Africa and elsewhere in the world are adopting more liberal entry regimes for FDI. This situation is evident throughout the East Africa region. The government of Ethiopia, for example, has recently lowered its minimum capital requirement for FDI from $500,000 to $100,000 ($50,000 in some service sectors). The government of Tanzania does not impose minimum capital requirements for FDI entry in general, but makes special incentives conditional upon holding an investment licence and investing a minimum of US$300,000. The government of Uganda does not require foreign investors to invest minimum amounts but offers the facilitation support of its Investment Authority when investment exceeds $100,000 (soon to be revised to $25,000 for both national and foreign investors).

[1] As an 'effective date' for the Act has not been established, the Act has not come into force.
[2] As the act is not yet in force, the Investment Promotion Centre (IPC) has not yet been transformed into the KIA.

(c) Action plan

The Investment Promotion Act (2004) should, therefore be amended to introduce a degree of flexibility in the entry provisions for FDI, as follows:

- The Act should be amended to remove the current entry requirement for *all* foreign investment to be subject to a minimum capital requirement of $500,000 and to a mandatory screening by the KIA to determine eligibility to entry.
- The Act should be amended to make the Investment Certificate *optional* for all investors (Kenyan or foreign). The Investment Certificate could still remain a means for a prospective investor to gain access to certain incentives. The Act could make it mandatory for applicants for an Investment Certificate to invest a minimum capital amount of US$500,000. All applicants for Investment Certificates would be subject to appraisals by the KIA to determine eligibility for an Investment Certificate, and thus for the prescribed incentives. The evaluation criteria could include any of those listed in the current Act under Article 4(2) (a) to (i).

(d) Key performance indicators

	Milestone/Activity	**Expected completion date**
1	Draft an Amendment to the Investment Promotion Act (2004) to be contained in the Finance Bill (2005).	31 May 2005
2	Tabling of the Finance Bill (2005) in parliament.	13 June 2005
3	Debate and passing of Finance Bill (2005) in parliament.	31 July 2005

(e) Financial implications

No costs are anticipated for the Government of Kenya over and above the costs of the regular legislative process.

Measure 2. Review the process of awarding work permits.

(a) Rationale and country context

A key feature of some FDI businesses is that they have the potential to introduce specialist managerial and technical skills to host countries, therefore necessitating work and entry permits for their key staff. Additionally, owners of FDI businesses often expect to have the ability to acquire work and entry permits.

Under the Immigration Act (1967, with subsequent amendments), two types of permits that consolidate work and entry permits can be issued:

- Class A or D permits can be granted to an individual who is offered specific employment by a specific employer;
- Class F to J permits serve as 'investor permits' and are granted to individuals who propose to invest in different types of activities. The Immigration Act does not prescribe any minimum amount of investment for such permits.

Applications for permits must demonstrate a) the need for hiring an expatriate for a position and b) the merit of the individual proposed for the position. The petitioner must describe steps taken to fill the position with a Kenyan citizen and explain why these have not been successful. In most cases, this process involves an extensive labour market test, which is both lengthy and expensive. Further, it fails to acknowledge that foreign investors will have key positions that they would wish to fill with foreign staff and that, in certain cases of clear skills gaps in the local economy, the labour market test is not relevant.

Applications for permits are currently assessed by a Committee that is chaired by the Department of Immigration and includes representatives from the Ministries of Foreign Affairs, Labour, Tourism, Trade and Industry and the current Investment Promotion Centre. The Immigration Act states that permits will be granted to foreigners on the condition that "employment will be to the benefit of Kenya". However, 'benefit of Kenya' is not defined by law, nor are there any published guidelines as to how it is to be interpreted. The result of the current situation is that there is a high degree of discretion granted to the Committee in the allocation of permits.

The process of reviewing applications for permits can be extremely lengthy. The Immigration Department does not provide any clear guidelines about the timeframe in which it will commit to reviewing an application for a permit.

(b) Examples of best practice

Many countries have adopted an approach that eliminates the labour market test for employers in areas that show a clear skills shortage in the economy. Australia, for instance, publishes a comprehensive list of skilled occupations open for foreign recruitment. The list is based on nation-wide research of needs and shortages, and is regularly reviewed. Employers seeking to hire abroad for skills on this list do not need to prove that there are no suitable local applicants.

Other countries adopt a more selective approach. Canada publishes lists of positions open for foreign hire in areas that it considers strategic sectors, designated by "National Confirmation Letters" issued by the Human Resources and Skills Development Agency of the

Government. Malaysia has streamlined requirements for foreign hire in the Multimedia Super Corridor. Mauritius publishes a selective scarce skills list.

(c) Action plan

The Immigration Department should, therefore, undertake the following activities:

- Draft clear guidelines about the specific criteria that applicants for permits will have to meet in order to qualify for them.
- Draw up a list of skills shortages and revise it annually. Applicants for jobs that require skills on this pre-determined list should have the labour market test waived.
- Identify a timeframe in which the Department of Immigration will commit to making a decision about the outcome of an application for a permit.

(d) Key performance indicators

	Milestone/Activity	Expected completion date
1	Establish process for developing pre-determined list of skill shortages and integrating it into the current process.	31 October 2005
2	Develop timeframes for Immigration Department to make decisions.	30 November 2005
3	Draft and approve guidelines about criteria for applicants.	31 January 2006

(e) Financial implications

The following costs, which are over and above regular government costs, are anticipated.

	Milestone/Activity	Estimated cost (US$)
1	Establish process for developing pre-determined list of skill shortages and integrating it into current process.	25,000 for technical assistance
2	Develop timeframes for Immigration Department to make decisions.	10,000 for technical assistance
3	Draft and approve criteria for applicants.	20,000 for technical assistance

Measure 3. Introduce deadlines and penalties for late payment of VAT refunds by the Kenya Revenue Authority.

(a) Rationale and country context

The Value Added Tax (VAT) was introduced in Kenya in 1990 under the Value Added Tax Act (1990, with subsequent amendments) to replace the sales tax. VAT is levied on both goods and services, whether produced domestically or imported, while exports are zero-rated.

The administration of the VAT system follows standard international practice, which requires businesses to charge VAT to their customers and allows them to deduct input taxes from output taxes in calculating their monthly returns. Refunds are granted only to businesses that supply zero-rated products or those that have incurred physical capital investment whose input tax exceeds Kshs 1,000,000. This includes exporters that are the major claimants of VAT refunds. Other businesses recoup the excess payment from their subsequent returns.

Many businesses are subject to delays in the repayment of VAT by the Kenya Revenue Authority (KRA), reflecting both inadequate funds allocated to VAT refunds and administrative delays at the KRA. Further, the KRA does not incur any financial penalties for the late repayment of funds. This situation gives rise to difficulties for businesses that are unable to plan their cash flows and offers these businesses no compensation for the opportunity cost of their capital that is held by the KRA for long periods of time.

(b) Examples of best practice

The practice of enforcing time limits and interest on the VAT refunds for revenue authorities is well established in several countries.

In Uganda, VAT refunds are paid within 30 days from the due date of return. Refunds that are not paid within this specified period attract interest at 2% per month compounded on the amount of refund for the period.

In South Africa, if the South African Revenue Service does not make payments in VAT refunds within 21 business days after the date on which the vendor's return is submitted, interest is payable on this amount at a prescribed rate.

In the United Kingdom, a ‘repayment supplement’ exists, whereby taxpayers earn interest on any outstanding refunds from the Inland Revenue.

(c) Action plan

The KRA needs to undertake the following activities to reverse the current situation:

- Introduce a time limit of 30 days from the time of application within which the KRA will commit to paying VAT refunds.

- Introduce a 2% 'late payment' charge to KRA, compounded monthly in the case that KRA is not able to settle VAT refunds within the prescribed time limit.

(d) Key performance indicators

	Milestone/Activity	Expected completion date
1	Undertake an internal evaluation of inefficiencies that lead to delays in the VAT refund process.	30 November 2005
2	Commit to a timeframe within which VAT refunds will be made.	31 January 2006
3	Establish a system to track penalties and process the payment of penalties incurred by the KRA.	31 March 2006
4	Draft an Amendment to the VAT Act (1990, with subsequent amendments) to contain these provisions.	31 May 2006

(e) Financial implications

The following costs, which are over and above regular government costs, are anticipated.

	Milestone/Activity	Estimated cost (US$)
1	Undertake an internal evaluation of inefficiencies that lead to delays in the VAT refund process.	20,000 for technical assistance
2	Commit to a timeframe within which VAT refunds will be made.	None
3	Establish a system to track penalties and process the payment of penalties incurred by the KRA	100,000 for technical assistance
4	Draft an Amendment to the VAT Act (1990, with subsequent amendments) to contain these provisions	None

Measure 4. Introduce guidelines for foreign investors' applications for transactions in agricultural land.

(a) Rationale and country context

Transactions in agricultural land are regulated by the Land Control Act (1967, with subsequent amendments). All areas of agricultural land are administered by a Land Control Board, which must give its consent to all transactions, including sales, transfers, leases, mortgages and partitions. Land Control Boards are specifically required by the Land Control Act to refuse their consent to any transactions that involve either a non-citizen or a private company or co-operative any of whose members is a non-citizen. However, the Act gives full discretionary powers to the President to grant an exemption for a proposed transaction without being required to provide any justification for such a decision. The Presidential exemption is thus the main channel through which foreigners can acquire agricultural land. There are, however, no procedures or published guidelines that investors can follow to prepare a case for an exemption nor do guidelines exist to describe the process of applying for an exemption. The result of the current situation is a long and unpredictable process for foreigners seeking to access agricultural land.

(b) An example of best practice

In Malaysia, the Foreign Investment Committee (FIC) of the Prime Minister's Department has set out general foreign investment guidelines (‘FIC Guidelines’). In addition, there are specific laws, rules and regulations which deal with foreign investment in particular businesses or sectors. The FIC has clear procedures that exist for foreign businesses seeking to obtain agricultural land. Whilst foreigners are not allowed to purchase agricultural land for traditional agricultural purposes such as rubber tree and oil palm planting, they are able to purchase agricultural land if they wish to (1) operate commercially with high technologies; (2) operate agriculture-based industrial activities; or (3) operate tourism projects. A foreign interest is allowed to acquire agricultural land valued at more than RM250,000 or at least five acres in area, whichever is higher. Clear procedures for making applications for the acquisition of foreign land are provided.

(c) Action plan

An appropriate method of resolving the current situation is as follows:

- A set of criteria and conditions under which foreigners can undertake transactions in the agricultural sector should be established and published. These criteria should permit transactions in agricultural land involving key agricultural sectors.

- Well-defined procedures under which foreigners seeking agricultural land can apply for exemption to the Land Control Board should be defined and published. The Land Control Board should commit to responding to applications within a defined period.

(d) Key performance indicators

	Milestone/Activity	**Expected completion date**
1	Publish criteria and guidelines for foreign investors seeking to undertake transactions in agricultural land.	30 November 2005
2	Publish procedures for foreign investors seeking to undertake transactions for agricultural land.	31 March 2006

(e) Financial implications

The following costs, which are over and above regular government costs, are anticipated.

	Milestone/Activity	**Estimated cost (US$)**
1	Publish criteria and guidelines for foreign investors seeking to undertake transactions in agricultural land.	20,000 for technical assistance
2	Publish procedures for foreign investors seeking to undertake transactions for agricultural land.	None

Measure 5. Develop investor tracking and aftercare capacities of the IPC/KIA.

(a) Rationale and country context

Investment promotion at best results in a potential investor deciding to explore the location in person. Landing the initial investment, keeping it in the location, and possibly expanding the investment later on, however, depend in great part on the quality of services provided to the investor throughout the investment cycle. Facilitation through the site visit and investment registration process, along with continued support and troubleshooting assistance during a company's operations, helps to develop satisfied investors who will stay in the location. Aftercare services are a crucial incentive for existing investors, who are among the main sources of new investment in any location, as well as bearing ongoing witness to the attractiveness of the location. The IPC does not currently provide extensive aftercare services.

Strong IPAs tend to possess:

- Well-developed facilitation and aftercare services identified and prioritized explicitly in their investment promotion strategy;
- A clear target of working for second-generation investment;
- Post-location problem-solving services for investors; and
- Facilitation and aftercare services geared to 'anchoring' the investment to the location.

In order to acquire these features, many IPAs and other agencies have set up investment service centres or a specially trained team to consolidate and facilitate the services offered to investors.

A proactive and service-friendly IPA will maintain periodic contact with firms after they commence operations, to keep abreast of developments and address problems before they get more complicated. Some of the support activities that an IPA should offer investors in the implementation phase include ongoing troubleshooting with agencies such as customs and immigration (since the company might encounter new problems after the project is operating); fostering networking opportunities among investors and with business associations; and providing value-added services such as identifying new suppliers and potential business partners.

The IPA can expect certain kinds of after-care issues for its clients. With industries changing rapidly these days, firms might need assistance in locating specialized labor or identifying advanced technology suppliers. Some firms may eventually look for new partners to help them expand their operations or raise additional capital. Firms occasionally encounter problems with suppliers or customers that require finding replacements quickly, and the IPA's database of firms can often be a good source of this information. Also, the IPA can and should play an active advocacy role on behalf of investors to improve the local business environment, such as streamlining local procedures and paperwork, reducing the number of inspections, removing economic distortions or unfair competition rules, conducting counter-corruption campaigns, and more generally involving the business sector in the policy-making process.

(b) An example of best practice

The important contribution that high-quality aftercare can make is shown by the experience of some European countries, most notably Ireland and Scotland, where incremental investment by existing investors accounts for 60 percent of the annual flow of FDI. The Industrial Development Agency of Ireland (IDA) has specific responsibilities both for securing new investment from overseas investors in manufacturing and international service sectors, and for encouraging foreign enterprises already in Ireland to expand their businesses.

(c) Action plan

In its strategic plan, three primary client-facing departments/functions have been identified by the IPC: (1) Marketing; (2) Research, Policy and Advocacy, and (3) Investor Services. It is important that a substantive after-care function be built into the KIA, either into another department or as a stand-alone department. A key feature of this department will be to engage existing investors.

(d) Key performance indicators

	Milestone/Activity	Expected completion date
1	Review current internal arrangements to determine their suitability for an aftercare department. Output should be an implementation plan.	31 October 2005
2	Establish an 'aftercare/tracking' department at the KIA.	31 March 2006

(e) Financial implications

The following costs, which are over and above regular government costs, are anticipated.

	Milestone/Activity	Estimated cost (US$)
1	Review current internal arrangements to determine their suitability for an aftercare department. Output should be an implementation plan.	25,000 for technical assistance
2	Establish an 'aftercare/tracking' department at the KIA.	50,000 for additional annual (recurring) staff costs; 20,000 for training costs (one off).

Measure 6. Establish a business linkages project comprising at least 10 major TNCs.

(a) Rationale and country context

The rationale for developing a business linkages programmes in Kenya is persuasive. The benefits would include: (a) a more dynamic and competitive private sector (especially SMEs); (b) more quality jobs created and preserved; (c) improved competitiveness of local SMEs through technology, know-how and management skills transfer and capital injection; (d) TNCs more deeply rooted in the local economy; (e) increased capacity to attract FDI; and (f) a broader and more diversified tax base for government.

A business linkage programme would open up the opportunity for domestic firms to be better informed about the demands of foreign firms. Such a programme would also benefit foreign firms by providing them with local suppliers and decrease their costs. Such a programme does not currently exist in the country, although one is currently being planned for specific agricultural sectors under the Micro, Small and Medium Enterprises Project.

(b) An example of best practice

A relatively recent initiative that brings large (mainly foreign-owned) companies together with local SMEs offers a good example. The Private Sector Initiative Tanzania, known as Psi Tanzania, began when BP Tanzania approached SBP, a research and private-sector development organization based in South Africa, to help create an enterprise development programme. Psi Tanzania was formally launched in mid-2002. This is a business-linkages programme that helps both large companies – who can carry less stock, reduce import hassles and minimize transaction costs – and local SMEs – who develop their capacities and find new business. It thus addresses the problem of the 'missing middle' in the business environment of many developing countries, which have a few large (often foreign) corporations on the one hand and a very large informal sector with limited capacities on the other.

Psi has a database of local SMEs which its members use for import substitution. The concerted efforts in local SME development are tracked quarterly. There is no formal secretariat. Psi members select one of the corporate members to chair the Initiative for a year and this company in effect acts as a secretariat. Psi has been a significant success, with $51 million being spent by its members on local sourcing from SMEs in the first two years of its operations. The initiative was launched by eight charter members: BP Tanzania, Kahama Mining, Kilombero Sugar, National Microfinance Bank, Sumaria Group, Tanga Cement, Tanzania Breweries and Tanzania Cigarette Company. By 2005, the membership had grown to 17 with the following additional members: Celtel, Coca-Cola Kwanza, CRDB Bank, Geita Gold, Mac Group, Mobitel, Placer Dome, Resolute Tanzania and Standard Chartered Bank.

(c) Action plan

A pilot business linkages project should be established within the planned Government of Kenya Private Sector Development Programme (PSDP) and in collaboration with UNDP and UNCTAD.

- A Business Linkages Task Force comprising a coalition of key stakeholders (Government of Kenya, TNCs in the respective sectors, SME representatives in the respective sectors, BDS providers, and potential donors) should be established to design the project within the context of the PSDP and other UNDP and UNCTAD programmes.

- The task force should then agree on the basic parameters for the pilot business linkage development programme, including: objectives, outputs, organizational framework, roles and responsibilities (based on a draft project document prepared by UNCTAD).
- Then a formal project document can be issued and funds raised to implement the project.

(d) Key performance indicators

	Milestone/Activity	**Expected completion date**
1	Set up Task Force.	31 October 2005
2	Design project.	31 January 2006
3	Secure project funding.	31 May 2006

(e) Financial implications

The following costs, which are over and above regular government costs, are anticipated.

	Milestone/Activity	**Estimated cost (US$)**
1	Set up Task Force.	None
2	Design project.	50,000 for technical assistance
3	Secure project funding.	None

Measure 7. Establish a performance benchmarking project for domestic manufacturing businesses.

(a) Rationale and country context

In general, Kenyan firms have a small competitive edge over firms operating in Uganda and Tanzania but a significant competitive disadvantage vis-à-vis strategic competitors such as India and China[3]. Indeed, productivity in Kenya declined by 0.5 per cent between 1991 and 1998 whilst that of strategic competitors increased substantially. Newer data suggest that no substantial improvements have occurred in Kenyan productivity since then. Amongst the various industrial sectors, agro-industry, chemicals and metals firms appear to have a relatively higher level of firm productivity than does the textile industry. Evidence suggests that only a small number of large firms are productive enough to compete internationally and that it is these firms that drive Kenyan exports. One key challenge, therefore, is improving the productivity of small and medium-sized enterprises (SMEs).

Among the first steps towards improving firm productivity is the provision of performance benchmark data to SMEs. Typically, the process of gathering data and benchmarking performance is prohibitively expensive, excessively time-consuming and technically challenging for SMEs, which do not have the critical mass to justify undertaking the process. However, the data from such a process would allow firms to continuously assess their performance against national and international competitors.

(b) An example of best practice

At the turn of the 1990s, the South African automotive industry began a restructuring process that led to the rejuvenation of the sector. The government of South Africa's Motor Industry Development Programme proved to be a particularly important factor in the revival of the sector. Additionally, 'benchmarking clubs' ('the Clubs') played a significant role. These Clubs were part of a Sector Partnership Fund ('the Fund') that provided subsidies to groups of firms to join together to achieve collective efficiency. The Fund provided two-thirds of the funding for starting and running these learning networks. The Clubs have been credited with significant improvements in the performance of participants.

(c) Action plan

A pilot project should be developed within a manufacturing sub-sector in the form of a benchmarking club. The process would entail providing a free or subsidised performance benchmarking service that would be undertaken by an outsourced performance benchmarking firm and managed by a programme management unit. The contracted benchmarking firm would initially provide participating firms (club members) with training on performance benchmarking and would undertake diagnostic studies of each member to develop an understanding of its operations. The contracted firm would then design a methodology to develop performance benchmarks that would cover: (1) economic performance; (2) cost control; (3) product quality; (4) value chain flexibility; (5) value chain reliability; (6) human resource development; and (7) innovation capacity. Of particular importance would be the inclusion of industry-specific parameters that would allow the benchmarking of firms competing in the same industry and market segment.

[3] Investment Climate Assessment - Enhancing the Competitiveness of Kenya's Manufacturing Sector: The Role of the Investment Climate, Africa Private Sector Group, November, 2004.

Twice a year, each participating club member would be required to submit a series of performance data that would be analysed and returned to it in the form of a detailed report outlining its comparative performance over key measures.

(d) Key performance indicators

	Milestone/Activity	Expected completion date
1	Design project.	31 August 2005
2	Secure project funding.	31 October 2005
3	Contract project management unit and technical team (possibly Kenya Association of Manufacturers).	31 January 2006
4	Commence project.	28 February 2006

(e) Financial implications

The following costs, which are over and above regular government costs, are anticipated.

	Milestone/Activity	Estimated cost (US$)
1	Design project.	20,000 for technical assistance
2	Secure project funding.	NA
3	Contract project management unit and technical team.	50,000 annual recurring costs – most likely self-funded
4	Commence project.	NA

Measure 8. Bring into force the East African Community double taxation treaty.

(a) Rationale and country context

Kenya has signed eight double taxation treaties (DTT). The treaties allow for the taxation of dividends, royalties, interest and management fees in both contracting states but set limits on the withholding tax rate allowed in the country where the income arises. These limits are typically higher than what Kenya applies in its general regimes, except in the case of management fees. All DDTs allow for tax credits for tax paid in the partner country.

A trilateral tax treaty with Uganda and Tanzania to avoid double taxation was signed on 28 April 1997, but has not yet entered into force, as only Kenya and Tanzania have ratified it. The absence of an effective East African Community (EAC) trilateral DTT (EACDTT or 'the Treaty') is a major impediment to the development of Kenya as a regional hub for services and manufacturing, as well as an impediment to cross-border businesses in the region generally. Investors based in Kenya, with subsidiaries or sources of income in either Uganda or Tanzania, face double taxation on their foreign-source income, which can raise the effective tax rate up to over 50% (30% in either Uganda or Tanzania and 30% in Kenya).

(b) Action plan

Domestic ratification of the EACDTT in Uganda is required in order to resolve the concern of double taxation in the EAC. Ratification of the Treaty by Uganda would make the EACDTT immediately effective once all three relevant Ministries of Finance have operationalised it with necessary changes in the tax legislation.

(c) Key performance indicators

	Milestone/Activity	Expected completion date
1	EACDTT ratified by Uganda.	31 August 2005
2	EACDTT regulations and procedures drafted by the EAC Secretariat.	31 December 2005
3	Agreement by the three countries on effective date for the EACDTT.	31 January 2006
4	Ministry of Finance in Kenya to operationalise the EACDTT through legal notice.	31 March 2006

(d) Financial implications

No extraordinary costs are anticipated for the Government of Kenya.

Measure 9. Jointly issue East African Community member state business visas

(a) Rationale and country context

Each country in the EAC currently operates its own visa regime. This substantially increases the costs for businesses, in both time and money.

The following single-entry business visa costs currently apply:

- Kenya – US$50 for a single-entry business visa valid for 3 months.
- Uganda – US$30 for a single-entry business visa valid for 3 months.
- Tanzania – US$50 for a single-entry business visa valid for 3 months.

The Committee on Fast Tracking the East African Federation ('the Committee') has recommended the development of appropriate legislation that would allow for the issuing of a joint East African visa, propose modalities for the sharing of visa fees, compile lists of countries whose citizens are subject to visa referral arrangements, computerise visa issuance mechanisms, establish a common reciprocal East African Visa against the rest of the world and agree on joint fee charges.

(b) Action plan

It is proposed that the Committee's proposals on the joint issuance of EAC visas, particularly those related to business visas, be given high priority in implementation.

(c) Key performance indicators

	Milestone/Activity	**Expected completion date**
1	Agreement by three governments on fast-tracking the issuance of joint business visas for single entry in each country.	31 October 2005
2	Design of the EAC joint business visa completed.	31 January 2006
3	Roll out of EAC joint issuance of business visas completed. (This includes agreeing on modalities to share fees and training the relevant Government employees.)	31 May 2006

(d) Financial implications

The following costs, which are over and above regular government costs, are anticipated.

	Milestone/Activity	**Estimated cost (US$)**
1	Agreement by the three governments on fast tracking the issuance of joint business visas for single entry in each country.	Nil
2	Design of the EAC joint business visa completed.	10,000 for technical assistance
3	Roll out of EAC joint issuance of business visas completed. (This includes agreeing on modalities to share fees and training the relevant Government employees.)	40,000 for technical assistance