

USDA Foreign Agricultural Service

GAIN Report

Global Agricultural Information Network

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Kenya

Food and Agricultural Import Regulations and Standards - Narrative

FAIRS Country Report

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Report Highlights:

This report updates technical import requirements and regulations for food and agricultural products currently required by the Government of Kenya (GOK). The report incorporates the new requirement for pre-export verification of conformity of all imported products, the centralization of issuance of the new Import Standardization Mark (ISM) by Kenya Bureau of Standards (KEBS), and updates contact details of key agencies.

Section I. Food Laws:

Kenya's regulatory system for food and agricultural imports is multi-sectorial and embodied in various statutes that are implemented by several government departments and regulatory agencies. The food regulatory system is generally consistent with the sanitary and phytosanitary (SPS) agreement of the World Trade Organization (WTO) and other international treaties including CODEX, World organization for Animal Health (OIE), and International Plant Protection Convention (IPPC).

Exporters and consolidators of US food products should obtain a certificate of conformity (CoC) through the GOK's Pre-Export Verification of Conformity (PVoC). The GOK maintains inspection contracts with Société Générale De Surveillance S.A. (SGS), Intertek International Ltd, and Bureau Veritas to operate its PVoC program for the North America region.

The following laws are applicable to U.S. food and agricultural exports to Kenya:

1. Public Health Act Cap.242¹
2. Radiation Protection Act Cap.243 (In the case of irradiated Foods)¹
3. Food, Drugs and Chemical Substances Act Cap. 254¹
4. The Agriculture, Fisheries and Food Authority Act (No. 13 of 2013)²- *Repealed Agriculture Act – Cap. 318, and Suppression of Noxious Weeds Act Cap. 325*
5. The Crops Act (No. 16 of 2013)² - *Repealed Agriculture (Export) Act – Cap. 319,*
6. Plant Protection Act Cap.324 (In case of Fruits & Vegetables)²
7. The Seed and Plant Variety (NPT) Regulations, 2009²
8. The Seeds & Plant Varieties (Amendment) Act, No. 53 of 201² – regulates imported seeds or seed crops with potential to grow when planted)²
9. Dairy Industry Act Cap. 336³
10. Meat Control Act Cap. 356⁴
11. Animal Diseases Act Cap. 364⁵
12. Customs & Excise Act Cap. 472⁶
13. The Standards Act Cap 496⁷
14. Weights and measures Acts Cap.513⁸
15. The Industrial Property Act Cap. 509⁸
16. Trademarks Act Cap. 5068
17. Pest Control Products Act Cap. 346⁹
18. Fisheries Act Cap. 37810
19. Biosafety Act 2009¹¹
20. Alcoholic Drinks Control Act, 2010¹²
21. Fertilizers and Animal Foodstuffs Act Cap 345¹³

¹Implemented by Department of Public Health (DPH) at the ports of entry

²Implemented by Kenya Plant Health Inspection Service (KEPHIS) at the ports of entry

³Implemented by the Kenya Dairy Board (KDB) at the ports of entry

⁴Implemented by Director of Veterinary Services (DVS) and Kenya Bureau of Standards (KEBS) at the ports of entry

⁵Implemented by DVS and DPH at the ports of entry

⁶Implemented by the Kenya Revenue Authority (KRA) at the ports of entry

^{7, 8}Implemented by KEBS at the ports of entry

⁹Implemented by the Pests Control Products Board

¹⁰Implemented by the Department of Fisheries

¹¹Implemented by National Biosafety Authority (NBA) and KEBS at the ports of entry

¹²Implemented by the National Authority for the Campaign against Alcohol and Drugs Abuse (NACADA)

¹³Implemented by DVS

Section II. Food Additives Regulations:

Food additives and the regulation thereof remain an important variable when considering a country's openness to trade within the context of protecting the health of its population. Recent protein-adulteration cases have highlighted the importance of understanding the role and disclosure of additives. But not all developing countries have the capability to regulate and monitor additives in food.

Q: Has the GOK established specific regulations to regulate additives in food?

A: KEBS regulates food additives through the Food, Drugs and Chemicals Substances Act http://www.kenyalaw.org/kenyalaw/klr_home/ and KS 660 series (Guidelines to the safe use of food additives) found at http://www.kebs.org/catalog_results.php. Where there are no specific GOK guidelines, KEBS follows the CODEX approved food additives as references to regulate food additives.

Q: Does Kenya maintain a positive and/or negative list of food additives?

A: Kenya has both positive and negative lists for food additives. The lists are not yet available "on line," but may be purchased from any regional or national KEBS office.

Q: Are there any special use requirements or restrictions for additives on the positive list?

A: The GOK restricts on the use of all food additives in baby food. Food additives used as oxidants, sweeteners, colorants, curing agents, flavor enhancers, flavorings or preservatives; in a given food stuff must appear on the label. The common chemical name of the product should be used on the label.

Q: Will the GOK accept the list of CODEX-approved food additives for imported consumer-ready food products?

A: Where an additive isn't listed in GOK regulations, KEBS relies, and requires that the PVoC agent rely on the CODEX list.

Section III. Pesticides and Other Contaminants:

The Pest Products Control Act mandates Pest Control Products Board (PCPB) to regulate importation, exportation, manufacture, distribution and use of pesticides in Kenya. PCPB is also in charge of pesticide registration and maintains a list of registered products, restricted and banned pesticides. One can access the list online at an annual subscription fee of US\$ 12 (Kshs. 1,000). PCPB refers to CODEX standards for tolerance levels.

In addition to PCPB, other government institutions that enforce pesticide/contaminant regulations include:

- KEPHIS monitors and analyzes pesticide residues in their accredited analytical chemistry laboratory;
- KEBS sets the standards and monitors compliance;
- DVS checks on pesticide residues in animal products, feed and animal health drugs;
- Department of Public Health and KEBS examines for microbial and chemical contamination of food as guided by the Food, Drugs, and Chemical Substances Act, Cap 254.

Pesticide and contaminant regulation in food varies from continent-to-continent and from country-to-country, even when those countries form part of a bigger trade block. Many developing countries lack the technical expertise and appropriate technology to regulate and/or test for pesticides and

contaminants in food.

Q: Has the GOK formulated pesticide contaminant regulations for food?

A: The GOK promulgated pesticides and contaminants regulations for consumer-ready foods and commissioned KEBS and/or KEPHIS to oversee this aspect of Kenya's food safety.

Q: Does the GOK use both positive and negative lists as with the case for food additives?

A: Kenya does regulate on the basis of both positive and negative lists that are available at regional and national KEBS and KEPHIS offices, but not yet available "on line."

Q: For the pesticides appearing on the positive list, does the GOK establish maximum residue levels (MRLs)?

A: Where the GOK does not list pesticides and contaminants MRLs, KEBS and KEPHIS use CODEX MRLs.

Section IV. Packaging and Container Regulations:

The following section treats potential technical barriers to trade associated with Kenya's packaging and container size or material requirements and the recycling thereof.

Kenya has no special packaging or container size requirements. Due to purchasing power constraints, most consumers prefer small pack sizes at the retail level. However, wholesale outlets offer foodservice size packaging.

Q: Many U.S. consumer-ready foods are marketed in containers specific to the U.S. market based on a certain number of ounces, pounds, for fluid ounces. Can Kenyan importers of these products market them in the same containers, or must a specific container be used to comply with GOK container/packaging requirements?

A: Kenyan importers may market U.S. consumer-ready product in its original packaging/container without alteration regardless of the container or package size.

Q: Are there any special municipal waste disposal laws or product-packaging recycling regulations that U.S. exporters need to be aware of, or prepared for, in the Kenyan marketplace?

A: Neither the GOK nor the county Governments currently require consumer-product package recycling.

Q: Does the GOK restrict or limit any packaging materials for consumer-ready products?

A: The GOK regulates the wood pallets often-times used to ship food products, but not the materials in which the food are packaged.

GOK requires solid wood packaging material be treated and marked in line with International Sanitary and Phytosanitary Measure (ISPM) No. 15.

Section V. Labeling Requirements:

A. General Requirements

The GOK requires an English and/or Kiswahili label on all consumer-ready foods, which should include metric measurements and packaged in even numbers, a brand/trade name, common name, list of ingredients, date of manufacture, expiry date/sell by, net content, storage instructions, name and address of manufacturer, country of origin and grade designation where applicable.

Frequently asked questions and responses that will help an exporter understand Kenyan import requirements as applied by the PVoC agent:

Q: What languages(s) are required and/or permitted on the product label?

A: The GOK requires English on the label, but permits any other language, or a combination of languages. In Kenya it is common to see imported food products with English and Arabic or Chinese Language labeling.

Q: Can U.S. consumer-ready products enter the Kenyan market without altering the U.S. label under

which the product would normally be marketed in the United States?

A: In addition to all of the information provided by the U.S. label, the GOK requires the products to carry an Import Standardization Mark (ISM) that KEBS provides at a fee once the product qualifies for a COC. Beginning September 1, 2015, the Kenya Bureau of Standards (KEBS) requires that all imported finished products for retail have a new import standardization mark (ISM) sticker; goods with KEBS Diamond Standard Mark are exempt. More information can be found at: <http://www.kebs.org/index.php?opt=qai&view=marks>. Importers have up to June 30, 2016 to clear all stocks without the new ISM mark in the market

Q: Can the ISM or any other additionally-required labeling be affixed, or must it be incorporated into the original label for the product?

A: The GOK permits stick-on labels as noted in the above.

Q: Must stick-on labels be applied before product export or may they be applied at the port of import or at the point of sale?

A: The stick-on labels may be applied at any point prior to retail sale.

Q: Are there instances where standard U.S. labels or claims might be considered false or misleading?

A: To this date, there has not been a single reported incident of a standard U.S. food-product label having been deemed false or misleading.

Q: U.S. food product labels will carry a “best before date” (shelf life) but does the GOK require that the product enter Kenya with a predetermined percent of that shelf life remaining for marketing to Kenyan consumers?

A: All imported food products must have a minimum remaining shelf life of 75 percent of the shelf life indicated on the label upon arrival in Kenya.

Q: Does the GOK grant exceptions to their labeling regulations?

A: There are a great variety of different labels, label content, and style on imported food product in Kenya, but all seem to carry the standard Kenyan labeling requirements. There are occasional exceptions, but there is no formal process through which an exporter may ask for an exception.

B. Other Specific Labeling Requirements

For this section, “Other Specific Labeling Requirements” will include nutritional labeling, health claims made on labels, and any requirement to notify a specific process used to produce the consumer-ready food product.

Q: U.S. consumer-ready food products meet at least specific minimal nutritional-labeling requirements. Are the U.S. minimal nutritional labels sufficient for the Kenyan market?

A: The GOK requires nutritional labeling based on a uniform 100 grams of product. U.S. consumer-ready food product producers label nutrition based on portion size. However, the GOK does not insist that U.S. nutritional labels be changed to reflect the nutritional content per 100 grams.

Q: Are subjective nutrient content claims (i.e. low in saturated fat) or absolute descriptors (i.e. high fiber, low fat) permitted in GOK labeling regulations?

A: The GOK requires that, where a consumer-ready food product carries a subjective or descriptive claim, it must be supported by a nutritional breakdown of the specific attribute being described i.e. “this product is low in saturated fat, containing only three grams of saturated fat per 100 grams of total fat.”

Q: Does the GOK permit health claims on labels, i.e. “heart healthy?”

A: At this time, the GOK does not preclude any such health claims on consumer-ready labels.

Q: Does the GOK require that foods produced using novel processes be labeled to reflect the process?

A: Irradiated foods must be designated on the food container.

C. Genetically Modified Organisms (GMOs) Labeling Regulations

This section addresses the GOK's mandatory labeling requirements for GMOs. These requirements and precise labeling language are found in the Biosafety (Labeling) Regulations, 2012:

<http://www.biosafetykenya.go.ke/Docs/labelling.pdf> and the Kenya Standard KS 2225:2010 on labeling of food and feed.

Q: Which products are covered under these regulations?

A: These regulations apply to food, feed or ingredients containing GMOs or products derived from Live Modified Organisms (LMOs).

Q: What are the labeling requirements for processed products containing GMOs?

A: In the list of ingredients the words "genetically modified" must follow each of the ingredients that have been derived from LMOs or combined with GMOs. The following is an example:

Product Ingredients

Maize Meal (genetically modified)

Soybean Meal (genetically modified)

Salt

Sugar

Q: Does the GOK require any additional labeling for GMOs.

A: Please see Appendix III for information related to possible other labeling requirements for foods containing GMOs. Kenya's National Biosafety Authority (NBA) has a notice on the following internet link clarifying on importation of GMO products into Kenya.

[http://www.biosafetykenya.go.ke/Docs/The%20Biosafety%20\(Import,%20Export%20and%20Transit\)%20Regulations,%202011\(1\).pdf](http://www.biosafetykenya.go.ke/Docs/The%20Biosafety%20(Import,%20Export%20and%20Transit)%20Regulations,%202011(1).pdf)

Section VI. Other Specific Standards:

Non-tariff barriers are often imposed through specific and unique standards. This section treats "Specific Standards" that might impede trade in agricultural products.

Q: Are there any special standards, legislation, or ordinances that might impede or increase the cost of importing food?

A: The GOK requires non-scientifically based import permits that are issued by the Director of Veterinary Services (DVS) for meat, dairy, poultry and their products.

Section VII. Facility and Product Registration

A. Facility Registration: GOK does not require individual facilities to be registered with either foreign authorities or with U.S authorities prior to importation of food products. However, importers of meat and products, eggs and egg products, and milk and milk products, must satisfy the requirement that the facility (slaughter house or processing plant) has been approved and designated by the "highest veterinary authorities of the country of origin" in their application for the "no objection to import permit" from the Kenya's Director of Veterinary Service (DVS)

B. Product Registration: GOK does not require each product to be registered with foreign authorities

Section VIII. Other Certification and Testing Requirements:

This section identifies "other" regulations that might have potential to impede trade in agricultural products.

Q: What are the GOK's inspection requirements at the point imported food reaches Kenyan borders?

A: The level of inspection required by the GOK at the port of entry is to establish whether the imported food product has a CoC. To obtain a CoC, an imported product must satisfy Kenyan import requirements, as evaluated by the pre-export verification of conformity (PVoC) agents appointed by GOK. Once PVoC agent has issued a CoC, the importer may present the CoC to KEBS for clearance of the goods and apply for the Import Standardization Mark (ISM), a stick-on-label to be affixed to each retail container. Recent directions on PVoC can be obtained at:
<http://www.kebs.org/?opt=aboutkebs&view=news#OF CERTIFICATES OF CONFORMITY>

There are three routes for certification namely:

Route A: This route is open to all products being exported by either traders or manufacturers and mainly for first time exporters. Products shipped under this route must be tested and physically inspected to demonstrate conformity to relevant standards.

Route B: This route is mainly used by frequent exporters of homogenous products. Products shipped under this route must be registered with an authorized PVoC agent. The product registration is valid for a period of one year. Shipments of registered products are exempted from mandatory testing, and certification may be based on physical inspection only. However, random testing of registered product is still required to ensure product conformity throughout the registration period. The following products are however not eligible for registration under Route B (i.e. are subject to certification under Route A only);

- Sugar
- Cereals and pulses such as rice, wheat, beans, and maize.
- Animal and Fishery products (fresh and frozen- not further processed)
- Dairy Products
- Fresh horticultural products

Route C: Allowed only to manufacturers with a quality management system in their production process. It involves auditing of such production processes and licensing of products manufactured thereof by authorized PVoC agent(s) in line with ISO Guide 28: 2004. If successful, the manufacturer will be presented with a license for the relevant products valid for a period of one year. Licensed products shall be subject to random physical inspection by authorized PVoC agent(s) prior issuance of CoC and subsequent shipping of the same. However, the PVoC agent(s) shall carry out limited testing during the license valid period.

The PVoC agent(s) reviews the Request for Certification (RFC) received from the exporter before determining the most appropriate certification route and the applicable standard to be used in the certification process. Additional information can be found at:

<http://www.kebs.org/?opt=qai&view=pvoc>

Q: Does the GOK require that consumer-ready food products be registered before being sold in the domestic market?

A: The GOK provides that a food product with homogeneous production methods be registered annually with the PVoC agent, so that shipments within that year need only be inspected randomly by the PVoC agent, but otherwise does not provide for or require product registration.

Q: Do all consumer-ready food products and food commodities require laboratory testing to ensure conformity with Kenya import standards?

A: The PVoC agent makes the determination in accordance with the contract with the GOK. The GOK requires that a food product meet all Kenyan standards before qualifying for a CoC, and, therefore, product testing by the PVoC agent should be expected.

Q: Are product samples shipped via express mail or parcel post subject to import regulations?

A: Product samples (except live plants or seeds) shipped via express mail or parcel post are not subject to import regulations but are subject to custom handling charges that are based on the value of product.

Q: Does the GOK monitor food products at wholesale or retail distribution points?

A: Reportedly KEBS conducts random surveillance and requires non-conforming products to be recalled by the producer.

Specific documentation and certification Requirements

Pre-Shipment Documents

- Plant Import Permit (PIP) for bulk commodities issued by the Kenya Plant Health Inspectorate Service (KEPHIS). The PIP form can be found at <http://www.kephis.org/online-forms-mainmenu-38.html>

- Import Declaration Form (IDF) issued by the Kenya Revenue Authority (KRA) found at http://www.revenue.go.ke/customs/pdf/Import_Declaration_Fee_%20FORM.pdf

Post-Shipment Documents

- Certificate of Conformity (CoC)
- Phytosanitary Certificate (PC) containing the required Additional Declarations for bulk commodities (corn, wheat, pulses, rice, sorghum, barley, etc.).
- Non-Genetically Modified Organisms (GMO) Certificate
- Bill of Lading (three original B/L plus non-negotiable copies)
- Commercial Invoice
- Packing List
- Customs Entry Form
- Certificate of Origin
- Health Certificates (Cleanliness, Weight, and Quality)
- Insurance Certificate

Other Documents requested depending on the agricultural commodity or food product:

- Fumigation Certificate
- Radiation Certificate
- Noxious Weed Certificate
- Free from Karnal Bunt Certificate

Section IX. Import Procedures:

Kenya's import procedures have progressively been simplified, and GOK of Kenya is currently implementing the Kenya National Electronic Single Window System (KNESWS), a single international trade platform, under a new agency, the Kenya Trade Network Agency (KENTRADE). The system integrates all the import/export certification agencies, customs authorities and the banks. See <http://www.kentrade.go.ke/>

The following is a description import procedures after a CoC has been acquired:

- The importer will notify a clearing agent (CA) of arrival date of cargo;
- The CA notifies the Kenya Revenue Authority (KRA) via its on-line clearing system (Simba). The importer must use a KRA registered CA;
- The CA obtains the arrival date and manifest number and enters into the Simba;

- The CA sends the manifest number to KRA, who posts number to the specified Kenyan bank;
- The CA pays the relevant taxes using HS Codes and VAT rates where applicable;
- The KRA agent clears and confirms entry of the cargo to the CA;
- The CA uses KRA confirmation to pay the various port charges at the Kenya Ports Authority (KPA);
- The CA uses the KPA documents and any related import permits to request clearance from KEPHIS, KEBS, Port Health and the local police; and,
- The KPA conducts a final physical verification of the cargo before releasing it into the domestic market.

GOK, through the Finance Act 2013, introduced the Rail Development Levy (RDL) on all goods imported into Kenya for home use. The entire customs clearance process takes a minimum of three days. Should an exporter/importer be dissatisfied, KRA has an appeals system

<http://www.kra.go.ke/vat/vatassessments.html>

Section X. Copyright and/or Trademark Laws:

Intellectual property rights (IPR) laws and regulations are a rarity in developing countries, and where they exist, they are poorly enforced. Exporters must be aware that IPR protection can be difficult-to-impossible and that includes in Kenya.

Q: Does the GOK have laws that protect trademarks and brand names of foreign-produced food products?

A: The GOK provides for trademark and brand name registration in Kenya. Kenya Industrial Property Institute (KIPI) <http://www.kipi.go.ke/index.php/about-trademarks> registers product via an application.

Q: Is there a statute of limitations on trademarks and brand names?

A: Trademarks are registered for ten years initially and may be renewed indefinitely upon request.

Appendix I. Government Regulatory Agency Contacts:

Kenya Bureau of Standards (KEBS)

The Managing Director

P.O. Box 54974 Nairobi, Kenya

Tel: 254-20-6948000 or 69028201/401/410

Fax: 254-20-609660/6004031

Email: info@kebs.org

Website: www.kebs.org and www.kenyapvoc.com

Kenya Plant Health Inspectorate Service (KEPHIS)

The Managing Director

P.O. Box 49592 Nairobi, Kenya

Tel: 254-20-3536171/2 or 3597201/2/3

Mobile: 254-722516221, 254-733874274

Fax: 254-20-882265

Email: director@kephis.org

Website: www.kephis.org

Department of Veterinary Services (DVS)

The Director

P.O. Private Bag 00625 Kabete, Kenya

Tel: 254-20-8043441631383/2231/1287

Fax: 254-20-2026212

Cell: 254-722376237

Email: veterinarydepartment@yahoo.com

Ministry of Health

The Chief Public Health Officer

Department of Public Health

P.O. Box 30016-00100 Nairobi, Kenya

Tel: 254-20-2717077

Fax: 254-20-2710055

Website: www.publichealth.go.ke

Pest Control Products Board

The Managing Director

Waiyaki Way, Opposite ABC Place

P. O. Box 13794 - 00800 Nairobi, Kenya.

Tel. +254 - 020 - 8021846/7/8

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Email: md@pcpb.or.ke / pcpboard@todays.co.ke

Website: www.pcpb.or.ke

National Biosafety Authority

The Chief Executive Officer

Commission for Higher Education Campus

P.O. Box 28251-00100

Nairobi, Kenya

Tel. +254-20-2678667

Email: ceo@biosafetykenya.go.ke

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Kenya Industrial Property Institute

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P.O. Box 51648-00200

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Tel: (254-20) 6002210/11

Fax: (254-20)6006312

Website: <http://www.kipi.go.ke/>

Email: info@kipi.go.ke

Kenya Ports Authority

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Cell: (254-20) 720202424

Email: micd@kpa.co.ke

Website: <http://www.kpa.co.ke>

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Tel: (254-20) 310900/2810000

Fax: (254-20) 341342

Email: cic@kra.go.ke

Website: <http://www.kra.go.ke>

Appendix II. Other Import Specialist Contacts:

SGS North America Inc.

236 32nd Avenue

Brookings, SD 57006 USA

Tel: 605-692-7611

Fax: 605-692 -7617

Website: www.us.sgs.com/

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2nd Floor - North Wing, Victoria Towers,

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P.O. Box 72118, 00200

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