

USDA Foreign Agricultural Service

GAIN Report

Global Agricultural Information Network

THIS REPORT CONTAINS ASSESSMENTS OF COMMODITY AND TRADE ISSUES MADE BY
USDA STAFF AND NOT NECESSARILY STATEMENTS OF OFFICIAL U.S. GOVERNMENT
POLICY

Required Report - public distribution

Date: 12/3/2010

GAIN Report Number:

Kenya

Food and Agricultural Import Regulations and Standards - Narrative

FAIRS Country Report

Approved By:

Stephen Hammond

Prepared By:

Souleymane Diaby

Report Highlights:

Exporting U.S. commodities and food products to Kenya can be quite straight forward, because of a 2005 Kenyan initiative called the Pre-Export Verification of Conformity (PVoC). Once certified by a Kenyan-contracted agent, the exports may enter the Kenyan market with great certainty and at minimal risk of rejection or unanticipated import requirements.

Sections Updated: I. Food Laws; VIII. Copyright and/or Trademark Laws; and Appendices I and II.

Section I. Food Laws

The Government of Kenya (GOK) encourages export certification of almost all foods before they are exported to Kenya for human and animal consumption. Exporters and consolidators of U.S. food products may obtain a certificate of conformity (COC) through the GOK's PVoC. The GOK maintains inspection contracts with Société Générale De Surveillance S.A. (SGS) and Intertek International Ltd to operate its PVoC program in North America.

Exporters and consolidators can ship products covered under the PVoC to Kenya without receiving a COC, but these exports will be subject to inspection at the port of entry. The cost of the inspection will be approximately 15 percent of the CIF value of the product/s. The GOK will also require that the exporter post a bond equal to 15 percent of the CIF value.

The GOK excludes some products like fresh fruits, seeds, nuts and vegetables from the PVoC (check http://www.kenyaPVoC.com/Product_Inquiry/ for the full list). The PVoC-excluded products/goods must meet all relevant Kenyan standards at the port of entry. However, for these foods that do not require a COC, exporters and consolidators may still request a COC from the PVoC agent, as a means of minimizing potential port of entry problems.

FAS Nairobi has identified 19 major Acts of Parliament governing food safety that are administered principally by the Kenya Plant Health Inspectorate Service (KEPHIS), the Kenya Bureau of Standards (KEBS), the Department of Veterinary Services (DVS), Pest Control and Product Board (PCPB), and the Ministry of Public Health and Sanitation (MOH). The PVoC agent evaluates U.S. exports to Kenya vis-à-vis the following Acts:

Major Food Laws

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 Act Cap 318²
5. The Agriculture Produce (Export) Act Cap.319²
6. Plant Protection Act Cap.324 (In case of Fruits & Vegetables)²
7. The Seed and Plant Variety (NPT) Regulations, 2009²
8. Suppression of Noxious Weeds Act 325²
9. The Seeds & Plant Varieties Act Cap. 326 (Imported seeds or seed crops with potential to grow when planted)²
10. Dairy Industry Act Cap. 336³
11. Meat Control Act Cap. 356⁴
12. Animal Diseases Act Cap. 364⁵
13. Customs & Excise Act Cap. 472⁶
14. The Standards Act Cap 496⁷
15. Weights and measures Acts Cap.513⁸
16. The Industrial Property Act Cap. 509⁸
17. Trademarks Act Cap. 506⁸
18. Pest Control Products Act Cap. 346⁹
19. Fisheries Act Cap. 378¹⁰

- [1] Implemented by Ministry of Public Health and Sanitation at the ports of entry
- [2] Implemented by KEPHIS (Ministry of Agriculture) at the ports of entry
- [3] Implemented by the Kenya Dairy Board (Ministry of Agriculture) at the ports of entry
- [4] Implemented by DVS and KEBS (Ministries of Livestock and Industrialization, respectively) at the ports of entry
- [5] Implemented by DVS and Department of Public Health at the ports of entry
- [6] Implemented by the Kenya Revenue Authority (Ministry of Finance) at the ports of entry
- [7 and 8] Implemented by KEBS at the ports of entry
- [9] Implemented by the PCPB (Ministry of Agriculture)
- [10] Implemented by the Ministry of Fisheries Development

Section II. Labeling Requirements

A. General Requirements

The GOK requires an English label on all consumer-ready foods, which should include metric weights and measurements in even numbers, a brand/trade name, common name, list of ingredients, date of manufacture, expiry date/sell by, storage instructions (as shown by the below product photo), name and address of manufacturer, country of origin and grade designation where applicable.



Here below please find frequently asked questions and responses that will help the reader 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 free-of-charge once the product qualifies for a COC.

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 photograph.

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 thereon 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 may be exceptions, but we are not aware of a formal process whereby an exporter might ask for an exception.

B. Requirements for 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 has not insisted 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 fibre, 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 so designated on the food container.

Section III. 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.

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 regional local 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 or fumigated (International Standards for Phytosanitary Measures #15).

Section IV. 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 V. Pesticides and Other Contaminants

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 VI. Other Regulations and Requirements

Non-tariff barriers can be imposed at varying points along the farm-to-fork food chain and with great imagination. 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 depends on the food and whether the food product has received a COC Food products that enter with a COC do not require inspection, even though they may be inspected at random.

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: For products covered under the PVoC, 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 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.

Section VII. 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 for meat, dairy, poultry and their products.

Section VIII. 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.

Section IX. Import Procedures

While an exporter may comply with each and every regulation on the books of a given country, exporting may still be exceedingly difficult if the final port of entry import procedures are designed to make importing difficult or expensive.

Q: Once I have complied with all the testing and labeling requirements, and received my COC, what

should I expect at the Kenyan port of import?

A: Below, please find a description of the expected import procedures flow:

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 appointed 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.

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>

Appendix I. Government Regulatory Agency Contacts:

1. Kenya Plant Health Inspectorate Service (KEPHIS)

Office of the Managing Director

PO Box 49592-00100, Nairobi. Kenya

Tel: (254-20) 3597201/2/3, 3536171,3536172

Cell: (254) 722516221, 0723786779, 0733-874274, 0734874141

Fax: (254-20) 3536175

Email: kephisinfo@kephis.org , director@kephis.org

Website: <http://www.kephis.org>

Products regulated: planting material (seeds, cuttings, etc.) and agricultural produce

2. Kenya Bureau of Standards (KEBS)

The Managing Director

P.O. Box 54974 -00200 Nairobi, Kenya

Tel: (254-20) 6948000, 6005490, 6005610, 6005550,6005573,6005573,6005574

Cell: (254) 722202137/8, 0734600471/2

Fax: (254-20) 6004031,6009660

Email: info@kebs.org

Website: www.kebs.org

Products regulated: processed food products

3. Director of Veterinary Services

Private Bag 00625, Kabete

Nairobi, Kenya

Tel: (254-20) 8043441,2044363

Cell: (254) 733783746

Fax:(254-20) 631273

Email: veterinarydepartment@yahoo.com

Products regulated: meat and poultry products

4. Ministry of Public Health and Sanitation

Director of Public Health and Sanitation

P.O. Box 30016, Nairobi, Kenya

Tel: (254-20) 2717077

Fax: (254-20) 2713234

Website: www.health.go.ke

5. Pest Control Products Board

Chief Executive Secretary,

P.O. Box 13794-00800,

Nairobi, Kenya

Tel: (254-20) 4450242/4446115

Fax:(254-20) 4449072

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

6. Ministry of Industry

The Managing Director

Kenya Industrial Property Institute

P.O. Box 51648-00200

Nairobi, Kenya

Tel: (254-20) 6002210/11

Fax: (254-20)6006312

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

Email: info@kipi.go.ke

7. Kenya Revenue Authority

Office of the Commissioner General

Times Tower Building, 30th Floor

P.O. Box 48240 – 00100 GPO

Nairobi. Kenya

Tel: (254-20) 2817700/7800,343342

Fax: (254-20) 341342

Email: cic@kra.go.ke

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

8. Kenya Ports Authority

The Managing Director,

P.O Box 95009-80104,

Mombasa, Kenya

Tel: (254-41) 2112999/2113999

Cell: (254-20) 720202424
Email: micd@kpa.co.ke
Website: <http://www.kpa.co.ke>

Appendix II. Other Import Specialist Contacts:

SGS North America Inc.

Governments & Institutions Services
7769 NW 48th St., Suite 250
Doral, FL 33166
Tel: +1 305-592-0410 Ext. 1091 / 1207
Fax: 305-592-6925
Email: [Mrs. Claudia Martinez/Carmen Andrade](mailto:Mrs.ClaudiaMartinez/CarmenAndrade)

SGS Kenya Limited

Victoria Towers, 2nd floor, Kilimanjaro Ave Upper Hill
P.O. Box 72118-00200
Nairobi, Kenya
Tel: (254 -20) 273 3693-99
Fax: (254-20) 273 3664
Website: <http://www.ke.sgs.com/>

Intertek – North America

Tel: + 1 800 967 5352
Intertek PVoC contact address link- <http://www.intertek.com/contact/americas/unitedstates/>

Intertek - Government Services Kenya

House of Vanguard, Chiromo Road, Westlands
Nairobi, Kenya, 00621
Tel: (254-20) 4449 132
Fax: (254 -20) 4 49 212
Email: info.nairobi.gs@intertek.com

Government Chemist – Nairobi

The Director
P.O. Box 30014-00100
Nairobi, Kenya
Tel: (254-20) 2725806/7
Fax: (254-20) 2717567
Email: gchemist@wananchi.com

Government Chemist – Mombasa

Officer –in -charge
P.O. Box 819, Mombasa, Kenya
Tel: (254-20) 2080906

