ANNEX 2

KENYA

CONTENTS

CHARTS

TABLES

APPENDIX TABLES

I. ECONOMIC ENVIRONMENT

(1) MAJOR FEATURES OF THE ECONOMY

1. The Republic of Kenya encompasses a landmass of 586,650 square kilometers (8.1% arable) on Africa's eastern coast. Its population was estimated at 43 million in 2012, with an annual expansion rate of 2.4%. Nairobi (3.1 million people) is the capital and is situated in the most densely populated region; it is also Kenya's main center of commercial activity. According to the most recent census, Kenya's population is relatively young: 42.2% in the 0-14 range, 51.1% in the 15-64 range and 2.7% were 65 or older.

2. Kenya is a low income country with a GDP per capita at US$862 in 2011 (Table I.1), and Human Development Index (HDI) of 0.509 in 2011 (ranking it 143 out of 187 countries). More than 40% of Kenyans live below poverty line, on less than US$1.25 a day. The most vulnerable populations are families and children living in the urban slums, in the arid lands of northern Kenya, and in areas of the country worst affected by HIV. These are also areas with high child mortality and low school enrolment.

3. Services, including banking, tourism, transport, and communications, continue to be the largest contributor to GDP, with an estimated share of 49.1 % in 2011 (Table I.1). Agriculture is crucial to the overall socio-economic performance, in terms of its contribution to GDP (21% in 2011), foreign exchange earnings, and livelihood to rural populations (Chapter IV(1)). Mining activities remain marginal in the economy. The manufacturing sector, which accounts for about 10% of Kenya's GDP, faces challenges of inadequate raw materials and high costs of production; nevertheless it is the most developed in the EAC region.

4. Kenya is the finance, trade, and transport hub in East Africa. With 40% of the region's GDP, its economy is the largest among EAC countries. However, despite its standing among the East African countries, Kenya suffers from an important infrastructural deficit. As a result, transport costs amount to 40%-50% of total costs of production. These higher costs add to the difficulty for local products to compete on international markets.[1] Traditional agricultural techniques and over-reliance on weather conditions also hold Kenya's economy in a vulnerability trap. Furthermore, erratic agriculture production, together with governance issues in marketing institutions and infrastructure are the main factors undermining Kenya's export performance.[2]

5. Kenya accepted the obligations of Article VIII of the IMF Agreement in February 1994, and maintains no exchange rate restriction on current transactions. Kenya maintains a managed floating exchange rate regime with Central Bank of Kenya (CBK) interventions to smooth out unwarranted fluctuations of the Kenyan Shilling (K Sh). The objective of monetary policy in Kenya is to maintain internal price stability and to provide liquidity to a market-based financial system.

---

[1] Online information. Viewed at: www.africaneconomicoutlook.org.
[2] World Bank (2010).

Table I.1
Economic indicators 2005-11

	2005	2006	2007	2008	2009	2010	2011[a]
Nominal GDP (K Sh million)	1,415,724	1,622,434	1,833,511	2,111,173	2,365,453	2,551,167	3,024,782
Nominal GDP (US$ million)	18,739	22,503	27,236	30,517	30,581	32,200	34,059
Real GDP growth rate (%)	5.9	6.3	7.0	1.5	2.6	5.8	4.4
GDP per capita (current US$)	534	623	732	797	792	836	862
Gross national savings (% of GDP at market prices)	13.4	14.8	13.9	16.0	12.9	11.3	13.2
Gross domestic savings (% of GDP at market prices)	5.7	6.8	6.1	8.4	5.9	5.1	..
Gross domestic investments (% of GDP at market prices)	16.9	17.9	19.0	19.2	19.6	20.3	20.1
National accounts				**(% of GDP)**			
Government final consumption expenditure	..	17.6	17.9	16.5	15.8	16.6	17.8
Private final consumption expenditure	..	75.4	75.5	75.0	78.2	77.8	77.7
Gross fixed capital formation	..	19.1	19.4	19.4	19.1	19.9	20.1
Changes in inventories	..	-1.1	-0.3	-0.2	0.3	-0.6	-0.8
Gross domestic expenditure	..	110.9	112.4	110.7	113.4	113.8	114.8
Net exports	..	-10.7	-10.9	-14.1	-12.5	-10.3	-16.7
Exports of goods and services	..	27.1	26.8	27.6	24.2	27.5	28.7
Imports of goods and services	..	37.8	37.7	41.7	36.6	37.9	45.4
Discrepancy[b]	..	-0.1	-1.5	3.4	-0.9	-3.4	1.9
GDP by economic activities at constant 2001 prices				**(% of GDP)**			
Agriculture and forestry	25.5	25.0	24.0	22.6	21.5	21.7	21.0
Fishing	0.5	0.5	0.5	0.4	0.4	0.4	0.4
Mining and quarrying	0.5	0.4	0.5	0.5	0.4	0.5	0.5
Manufacturing	9.8	9.8	9.8	10.0	9.8	9.7	9.6
Electricity and water	2.4	2.2	2.2	2.3	2.2	2.3	2.1
Construction	3.0	3.0	3.0	3.2	3.5	3.5	3.5
Services	46.9	47.0	47.5	47.8	48.9	48.8	49.1
Wholesale and retail trade	9.0	9.5	9.9	10.2	10.3	10.5	10.8
Hotels and restaurants	1.3	1.4	1.6	1.0	1.4	1.3	1.4
Transport and communication	10.4	10.9	11.7	11.9	12.3	12.4	12.4
Financial intermediation	3.8	3.8	3.8	3.8	3.9	4.0	4.2
Real estate, renting, business services	5.6	5.5	5.3	5.4	5.4	5.3	5.3
Public administration	4.0	3.7	3.4	3.3	3.3	3.2	3.1
Education	6.2	5.9	5.7	6.0	6.0	5.9	5.9
Other services	6.6	6.4	6.2	6.3	6.3	6.1	6.1
FISIM	-1.0	-0.9	-0.9	-0.8	-0.9	-0.7	-0.8
All industries at basic prices	87.7	87.1	86.5	86.1	85.8	86.1	85.4
Taxes on products	12.3	12.9	13.5	13.9	14.2	13.9	14.6
Prices and interest rates							
Inflation (CPI, % change)	10.3	14.5	9.8	26.2	9.2	4.0	14.0
Deposit rate (% per annum)	5.1	5.1	5.2	5.3	6.0	4.6	5.6
Lending rate (% per annum)	12.9	13.6	13.3	14.0	14.8	14.4	15.0
Exchange rate							
Exchange rate (K Sh/US$, period average)	75.6	72.1	67.3	69.2	77.4	79.2	88.8
Real effective exchange rate (Annual average; index, 2000=100)[c]	115.0	124.0	127.0	133.0	133.0	129.0	116.0
Nominal effective exchange rate (Annual average; index, 2000=100)[c]	91	96	98	94	89	87	77.0

Table I.1 (cont'd)

	2005	2006	2007	2008	2009	2010	2011[a]
Fiscal policy				(% of GDP)			
Revenue excl. grants	20.2	19.1	20.3	20.9	20.7	22.6	21.5
Tax revenue	18.7	17.8	18.9	19.3	19.8	21.1	20.8
Total expenditure and net lending	21.1	21.9	22.6	31.5	29.3	31.6	33.0
Fiscal balance including grants	0.4	-1.6	-1.5	-9.3	-6.9	-6.3	-7.5
Fiscal balance excluding grants	-0.9	-2.8	-2.4	-10.6	-8.7	-9.0	-11.5
Memorandum							
Public debt (US$ billion; end period)[d]	9.8	10.7	12.0	13.5	13.7	15.0	..
Domestic (% of GDP)	23.4	23.2	23.6	21.2	21.7	20.9	20.7
External (% of GDP)	32.2	27.9	23.1	21.6	21.5	20.7	23.1
External debt service as % of GDP	1.1	1.0	1.0	1.1	1.0	1.3	1.1
External debt service as % of exports of goods and services	3.9	4.0	3.8	4.2	4.2	3.4	3.8
Inward FDI stock (% of GDP)	5.9	5.2	7.0	6.6	7.2	7.0	..
Outward FDI stock (% of GDP)	0.7	0.7	0.7	0.8	1.0	1.0	..
Terms of trade (1982=100)	71.8	72.0	69.6	76.9	82.0	85.0	84.1

.. Not available.

a Provisional.
b Adjustments including difference between GDP production approach and GDP expenditure approach.
c An increase indicates appreciation.
d Fiscal year to 30 June.

Source: Kenya National Bureau of Statistics online information. Viewed at: http://www.knbs.or.ke; *KNBS Quarterly GDP Reports,* 1st quarter 2011. Viewed at: http://www.knbs.or.ke/gdpreports.php; Central Bank (2011) *Monthly Economic Review,* September ; Information provided by the Kenyan authorities; *African Statistical Yearbook 2012*; IMF IFS database. Viewed at: http://elibrary-data.imf.org/; UNCTAD statistics database. Viewed at: http://unctadstat.unctad.org/; and IMF (2012) *Regional Economic Outlook: Sub-Saharan Africa,* April for REER and NEER.

(2) RECENT ECONOMIC DEVELOPMENTS

6. In 2008, Kenya adopted its long-term development blueprint, Vision 2030, covering the period 2008 to 2030. According to the authorities, the Vision aims to transform Kenya into a middle-income country by 2030. It is being implemented in successive five-year Medium-Term Plans. The first, covering 2008-12, focuses on creating economic growth and employment as the key to poverty reduction. It also prescribes specific measures to address income disparities among households and regions in Kenya, while special consideration is given to good governance and capacity building.

7. The performance of Kenya's overall economy was mixed during the review period. The growth momentum was strong in 2005 through 2007, but a range of external and internal shocks interrupted its positive pace in 2008. However, since 2010, its main economic indicators have improved.

8. Kenya's real GDP growth rate was 7% in 2007, up from 6.3% in 2006. This was attributed to broad-based growth in many economic sectors, spurred by the Economic Recovery Strategy for Wealth and Employment Creation (ERS). The ERS was adopted in 2003 with a view to reversing, through improved macroeconomic management, the poor performance of Kenya's main socio-economic indicators, including high unemployment, low GDP growth, and high inflation.

9. Overall GDP growth was supported by agriculture, manufacturing, and wholesale and retail trade, as well as by an increase in investment in, *inter alia*, road construction, maintenance, and rehabilitation activities. The tourism subsector also expanded sharply, due to improved marketing

strategies and campaigns to tap eastern Europe and Asian countries' potential. Growth in transport and communication services was led by increasing tourist arrivals and the buoyancy of communication services.

10. In 2008, Kenya's economy underperformed, following three adverse shocks. First, the global economic downturn depressed demand for Kenya's main exports. Second, the poor rainfalls and subsequent drought had a negative impact on the agricultural and power sectors, given that 50% of national-grid connected power is generated through hydroelectric sources. Third, the post-election unrest adversely affected the economy. As a result, the GDP growth rate decreased dramatically, to 1.5% and 2.6% in 2008 and 2009, respectively.

11. The Government undertook several economic measures to mitigate the impact of these shocks. It implemented an economic stimulus programme, by funding public projects in agriculture, services, infrastructure, health, and education. It continues to support the economic activity by facilitating the private sector's access to affordable credit. The CBK gradually adjusted the Central Bank Rate (CBR) from 8.5% in January 2009 to 6% in July 2010. In addition, it reduced the Cash Reserve Ratio from 5.0% to 4.5% in the first half of 2009. These macroeconomic measures, together with a recovery in international markets and improved rainfall, have helped the economy to recover, with a GDP growth rate of 5.8 % in 2010. However, high international oil and food prices have affected this new growth momentum, with GDP growth down to 4.4% in 2011.

12. Under the ERS, the Government pursues prudent fiscal policy. As a result of sustained tax collection, through the modernization of tax administration and the broadening of the tax base, which was planned to include the informal sector, tax revenue has increased steadily increased since 2006 (Table I.1). Tax revenues averaged about 20% of GDP over the review period. This explains to some extent Kenya's relatively low dependence on foreign development aid, which is below 6% of the total budget. Government borrowing from the domestic banking system has been limited in order to avoid its crowding-out effect. A VAT Bill, which is in the adoption process, is to remove a number of ad hoc tax exemptions and zero-rated goods, which have undermined revenue collection and complicated VAT administration (Chapter III(1)(iv)).

13. Efforts have been made to contain the expansion of total government expenditures, while progressively shifting resources from recurrent expenditures to capital expenditures. These include measures to reduce allocations on non-priority activities, and formulation of the Public Financial Management Bill, which is aimed at improving efficiency in spending and enhancing expenditure control. However, recurrent expenditures have continued to make up a large part of government expenditures, with an annual average of 70%. In the medium-term, the Government is committed to reducing the wages bill to 6% of GDP. In this regard, the Salaries and Remuneration Commission has been established to regulate salary increases and for the adoption of a contributory based pension system for public servants.

14. The Monetary Policy Committee (MPC) is the CBK organ responsible for formulating monetary policy. The Minister in charge of Finance, by notice in writing to the Bank, sets the price stability targets for the Government. The CBK aims to maintain inflation rates at around 5% over the medium-term, through control of money supply, in line with the targeted growth in real GDP. Open-market operations and cash reserve requirements (CRR) are the main monetary policy instruments.

15. Over the review period, the Kenyan shilling fluctuated *vis-à-vis* the main currencies, with a strong appreciation trend between 2007 and 2011 *vis-à-vis* the U.S. dollar.

16. The ratio to GDP of total Central Government debt decreased steadily between 2005 (55.6%) and 2008 (42.8%); the same ratio for external debt also decreased over the same period (from 32.2% to 21.6%). However, these ratios increased in 2010 to 48.1% and 22.2%, respectively. The external debt service as a percentage of exports of goods and services averaged 4% during the review period. Kenya has a well-structured public debt managing system, which seeks to minimize the cost and risk of Kenya's existing public debt portfolio and new borrowings. Its strategy also envisions building a vibrant domestic market for public borrowing.

17. In May 2009, the IMF Board approved disbursement of approximately US$200 million under its Exogenous Shock Facility (ESF), to help Kenya recover from the negative impact of higher food and international fuel and fertilizer costs, and the slowdown in external demand associated with the global financial crisis. In January 2011, the IMF approved a three-year US$508.7 million arrangement for Kenya under the Fund's Extended Credit Facility.[3]

18. In general, Kenya's balance of payment (BOP) surplus continued to improve at a steady pace during the review period. This performance resulted from the expanding surplus in the capital and financial account, fuelled by increased investment inflows, and the privatization of a number of public enterprises. An exceptional deficit was observed in 2008, in the wake of the global economic and financial crisis, due to an increased deficit of the current account (from K Sh 69,476 million in 2007 to 137,148 million in 2008), and a significant reduction of the surplus of the capital and financial account due to low investment inflows (Table I.2). The good performance of Kenya's exports in 2009, together with a rebound in investments helped move the BOP into surplus.

Table I.2
Balance of payments, 2005-11
(Million shillings)

	2005	2006	2007	2008	2009	2010	2011[a]
Current account	**-19,063**	**-34,524**	**-69,476**	**-137,148**	**-129,240**	**-199,232**	**-296,024**
Goods	**-161,651**	**-234,562**	**-286,506**	**-390,784**	**-383,860**	**-499,404**	**-746,052**
Debit	423,229	488,086	564,680	739,412	734,145	913,376	1,261,738
Credit	261,578	253,524	278,174	348,629	350,285	413,972	515,686
Services	**56,135**	**76,398**	**84,805**	**95,498**	**82,844**	**131,509**	**173,913**
Debit	85,915	101,053	112,476	129,374	140,149	159,709	190,188
Credit	142,050	177,451	197,281	224,872	222,993	291,218	364,100
Transportation	23,439	25,321	23,762	29,404	18,683	49,884	60,478
Debit	32,206	48,336	52,294	59,478	65,036	73,922	94,086
Credit	55,645	73,657	76,056	88,882	83,719	123,806	154,564
Foreign travel	34,397	36,749	43,901	33,657	35,830	46,595	64,723
Debit	9,359	12,820	17,808	18,375	17,536	16,787	17,507
Credit	43,756	49,569	61,709	52,032	53,366	63,382	82,230
Other services - private	-14,910	-6,106	-5,100	-3,787	-10,904	-9,076	-5,080
Debit	30,558	27,869	29,479	37,183	43,044	53,210	62,311
Credit	15,648	21,763	24,379	33,396	32,140	44,134	57,231
Government services, n.e.s.	13,209	20,434	22,242	36,224	39,235	44,106	53,791
Debit	13,792	12,028	12,895	14,338	14,533	15,790	16,284
Credit	27,001	32,462	35,137	50,562	53,768	59,896	70,075
Income	**-8,194**	**-5,053**	**-9,706**	**-3,127**	**-2,926**	**-12,493**	**619**
Debit	13,730	12,221	20,518	15,317	16,426	23,121	25,091
Credit	5,536	7,168	10,812	12,190	13,500	10,628	25,710

Table I.2 (cont'd)

[3] IMF (2011).

	2005	2006	2007	2008	2009	2010	2011[a]
Current transfers	**94,647**	**128,693**	**141,931**	**161,265**	**174,702**	**181,156**	**275,496**
Debit	5,028	3,452	2,722	6,092	6,405	6,496	4,121
Credit	99,675	132,145	144,653	167,356	181,107	187,652	279,617
Capital & financial account	57,863	63,780	150,090	83,197	200,031	187,406	**289,640**
Capital account	7,807	12,142	10,558	6,535	20,178	19,030	20,861
Debit	0	0	0	0	0	0	0
Credit	7,807	12,142	10,558	6,535	20,178	19,030	20,861
Direct investment	871	1,927	46,652	3,585	5,436	14,596	28,936
Debit	732	1,727	2,426	3,028	3,557	125	838
Credit	1,603	3,654	49,078	6,612	8,993	14,721	29,774
Portfolio investment	-2,301	-1,488	-1,664	-1,805	-1,615	-1,397	-5,094
Debit	3,466	1,702	1,717	2,486	1,831	4,054	7,210
Credit	1,165	214	53	681	216	2,657	2,116
Other investment (net)	51,486	51,199	94,544	74,882	176,032	155,177	244,937
Long term	555	1,035	44,270	49,127	88,902	59,815	87,782
Debit	22,298	18,713	26,743	34,349	26,744	34,971	49,929
Credit	22,853	19,748	71,013	83,476	115,646	94,786	137,711
Short term	50,931	50,164	50,274	25,755	87,130	95,362	157,156
Debit	8,839	13,034	19,262	38,960	-42,442	-7,590	60,061
Credit	59,770	63,198	69,536	64,714	44,688	87,772	217,217
Errors and omissions	**-17,637**	**15,190**	**-17,364**	**20,788**	**4,389**	**24,051**	**28,225**
Overall balance	**21,163**	**44,446**	**63,250**	**-33,163**	**75,180**	**12,225**	**12,841**
Reserve assets	**-21,162**	**-44,447**	**-63,250**	**33,162**	**-75,180**	**-12,225**	**-12,841**
Special drawing rights (net)	0	0	0	0	0	0	0
Reserve position in the fund (net)	115	-73	-68	32	-34	20	5
Foreign exchange (net)	-21,257	-44,368	-63,161	33,127	-75,122	-12,302	-21,826
Other claims (net)	-20	-6	-21	3	-24	57	-20
Indicators (%)							
Balance of goods/GDP	-11.4	-14.5	-15.6	-18.5	-16.2	-19.6	-24.7
Current account balance/GDP	-1.3	-2.1	-3.8	-6.5	-5.5	-7.8	-9.8
Overall balance/GDP	1.5	2.7	3.4	-1.6	3.2	0.5	0.4

a Provisional.

Source: Central Bank of Kenya Balance of Payments Statistics. Viewed at: http://www.centralbank.go.ke/Publications/default.aspx; and information provided by the Kenyan authorities.

(3) TRADE PERFORMANCE

19. Kenya's current account deficit, as a share of GDP, deteriorated considerably between 2006 and 2011 (from 2.1% to 9.8%) The rise in the import bill was largely on account of increased imports of oil, machinery, and transport and telecommunication equipment, reflecting increased infrastructure development (Table I.2).

20. Trade in goods and services averaged 64% of the GDP between 2006 and 2010, of which the larger part was attributed to imports (over 37% on average). Kenya's share in total world trade remained low, at an average of 0.05% over the same period.

21. The value of imports grew markedly between 2005 and 2010, from US$5.8 billion to US$12 billion, with a large share attributed to manufactures (over 60% of import value on average). The broad composition of imports also remained mainly unchanged. However, the share of agricultural products increased from 11.2% to 13.6%, influenced by increasing food products, and share of manufactured products declined, from 64.3% to 62.7% (Chart I.1 and Table AI.1).

22. Kenya's main exports are agricultural products, whose share in total exports expanded significantly between 2005 and 2010 (Chart I.1 and Table AI.2). Tea, coffee, and horticultural products are the main agricultural exports. Fuel exports, which represented some 18.3% of total exports in 2005, dropped markedly during the period to 4.2%.

23. Asia provides some 42% of Kenya's total imports, and remains the main source of Kenya's imports, with China and India leading the way. Europe is also a significant source of imports, with 20.6% of total imports (18.6% for EU countries) (Chart I.2 and Table AI.3). Kenya's imports from Africa remain low, and South Africa is its main supplier on the continent. The share of the U.S. in Kenya's imports decreased significantly over the review period.

24. Africa remains the main export market for Kenya. The leading African markets include Uganda, Tanzania, Sudan and Egypt (Chart I.2 and Table AI.4). EU accounts for 24.8% of Kenya's export markets. In general, Kenya's principal export markets are those to which it has preferential access: Uganda and Tanzania under the EAC, EU in the framework of the Interim Economic Partnership Agreement, and Egypt under COMESA.

25. Kenya's trade in services has been growing since 2006, and continued to register a net surplus over the review period. Tourism remains the cornerstone in services trade, by fuelling performance in transportation and foreign travel. However, the services surplus dropped in 2009 (K Sh 82,844 million) relative to 2008 (K Sh 95,498 million) as a consequence of internal and external shocks (Table I.2).

(4) INVESTMENT PERFORMANCE

26. Kenya's foreign direct investment (FDI) performance remains weak in comparison with its neighbouring countries. Poor infrastructure and complex administrative procedures remain the main challenges. According to the World Bank, Kenya ranks 109th (106th in 2011) out of 183 economies for ease of doing business. Starting a business in Kenya requires an average of 33 days and 11 different administrative procedures.[4]

27. During the review period, due to privatization processes and new investment in mobile phone companies, Kenya received significant FDI flows. The 2007 upsurge, which amounted to US$729 million (Table I.3), was attributed to the entry of a new mobile telephone operator and the privatization of Telkom Kenya.

28. Australia, China, Germany, India, and the United Kingdom are the main sources of FDI.

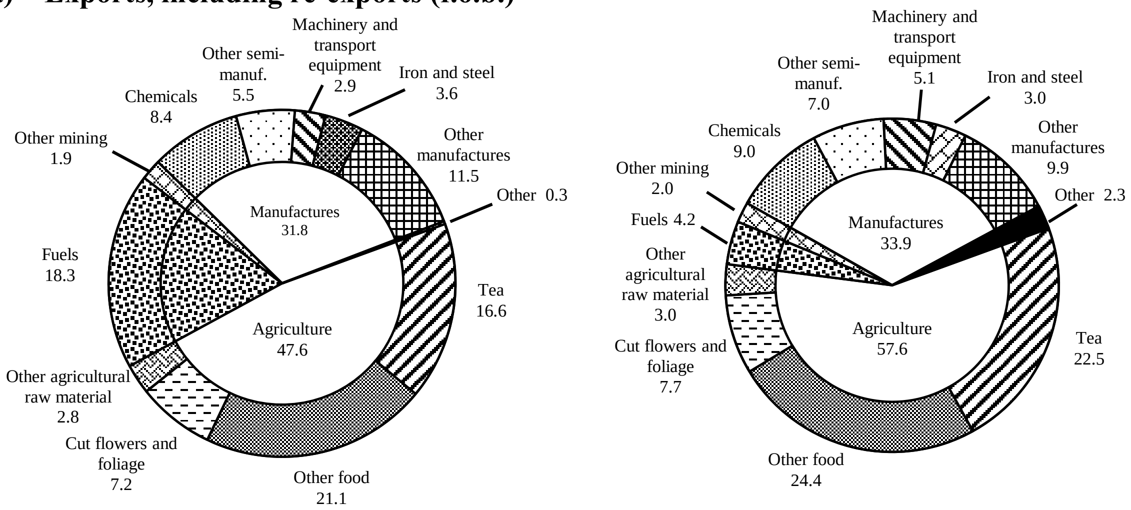
[4] World Bank (2012).

Chart I.1
Composition of merchandise trade, 2005 and 2010

Per cent

2005 **2010**

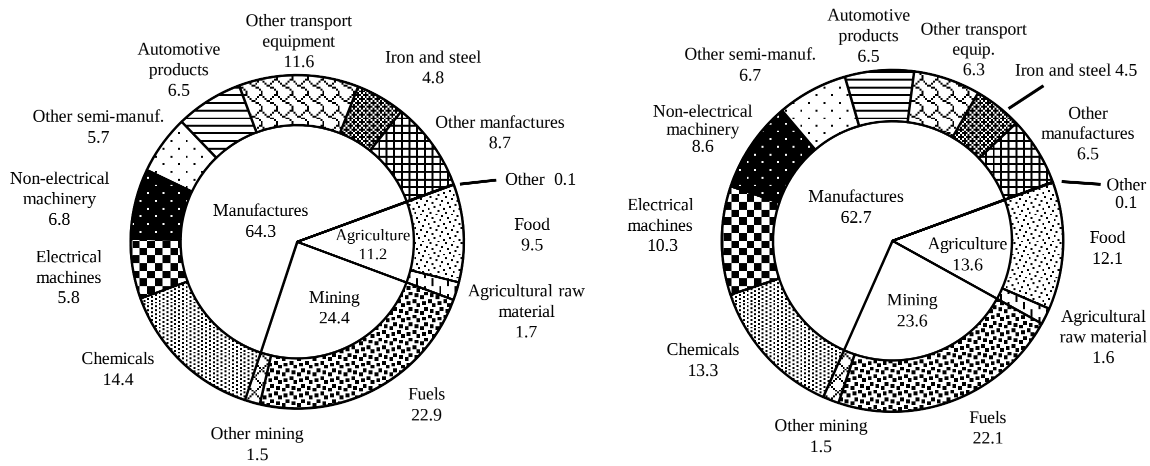
(a) Exports, including re-exports (f.o.b.)



Total: US$3.4 billion

Total: US$5.2 billion

(b) Imports (c.i.f.)



Total: US$5.8 billion

Total: US$12.1 billion

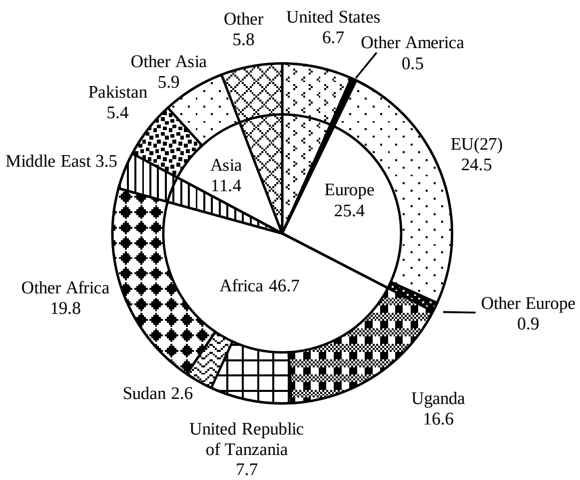
***Source*: UNSD, Comtrade database (SITC Rev.3).**

Chart I.2
Direction of merchandise trade, 2005 and 2010

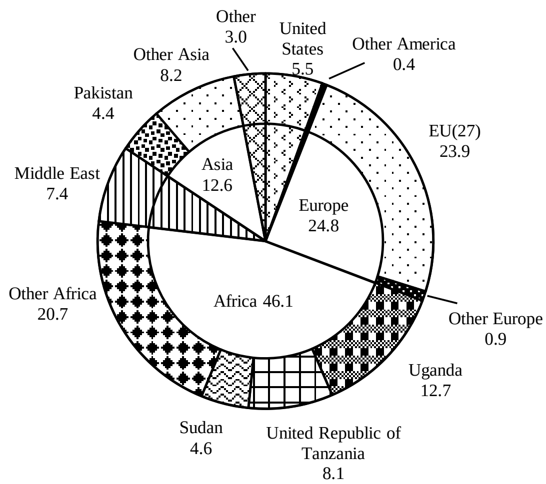
Per cent

2005 | **2010**

(a) Exports, including re-exports (f.o.b.)

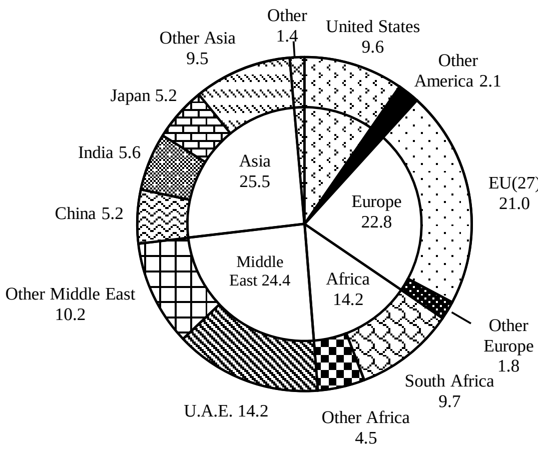


Total: US$3.4 billion

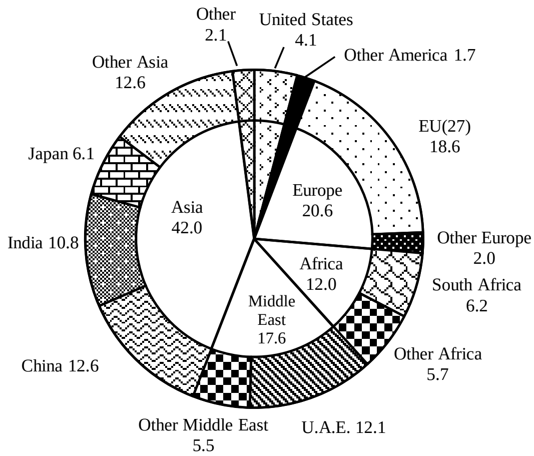


Total: US$5.2 billion

(b) Imports (c.i.f.)



Total: US$5.8 billion



Total: US$12.1 billion

Source: UNSD, Comtrade database (SITC Rev.3).

Table I.3
FDI, 2006-10
(US$ million)

Type	2006	2007	2008	2009	2010
Stocks					
Inward	1,164	1,893	1,989	2,129	2,262
Outward	163	199	243	289	306
Flows					
Inflows	51	729	96	141	133
Outflows	24	36	44	46	18

Source: UNCTADSTAT.

29. Kenya is actively involved in making cross-border investment, mainly in Africa. Kenya's main investments have been in the banking sector, retail stores, cement industry, and marketing. EAC countries are the main destinations for Kenyan investments, but Kenya also invests in Ethiopia, Zambia, Democratic Republic of Congo, Mozambique, and South Africa For example.

30. A Kenyan oil marketing company, Kenol Kobil has established presence in the Democratic Republic of Congo, Zambia, and Mozambique, and Kenyan wholesale and retail supermarket chains (Nakumatt and Uchumi) have established presence in East Africa. In banking, two of its leading commercial banks, Equity Bank and Kenya Commercial Bank (KCB), have established presence in Eastern Africa, including EAC countries.

(5) OUTLOOK

31. The prospects for Kenya's economic performance remain promising. A combination of certain designated factors could help to consolidate the positive outlook in the short- to medium-term. Reforms undertaken by the Government in all economic sectors since the adoption of a new constitution are expected to strengthen investor confidence and create a more conducive business environment. Continued government investment in infrastructure is to reduce costs of doing business. Efforts to deepen regional integration at EAC level, by harmonizing trade and investment policies and practices, as well as removing all trade barriers will create a larger market for the private sector. In addition, business-friendly macroeconomic management will keep inflation and interest rates low, to expand production activities. In a favourable scenario, Kenya's economy is forecast to grow by an average of nearly 6% between 2012 and 2014.[5]

32. Kenya's economic performance may be undermined by its high reliance on rain-fed agricultural outputs. This vulnerability to climatic conditions may be addressed by diversifying its economy and undertaking massive investments in reliable irrigation systems. Another risk facing Kenya's positive economic prospects lies in the 2012 elections; any socio-political unrest would certainly undermine the performance of Kenya's most dynamic sectors, including tourism and agriculture.

33. According to the authorities, annual GDP growth is expected to be 5.5 % in 2013; and the positive trend to continue in 2014 and 2015 (with expected annual GDP growth of 5.9% and 6.3%). This performance is to be bolstered by continued expansion in agriculture, tourism, construction, transport and communication, and ICT, while exports will continue to benefit from the relatively strong growth in the subregion

[5] IMF (2012).

II. TRADE AND INVESTMENT REGIMES

(1) GENERAL FRAMEWORK[6]

34. Since Kenya's last Trade Policy Review, the structure of its legal framework has changed significantly.[7] On 27 August 2010, the Republic of Kenya passed its new Constitution replacing the Constitution in force since Independence in 1963.[8] The Constitution is the supreme law of the land and binds all persons and all State organs. Therefore, any law, including customary law, that is inconsistent with the Constitution, is void, to the extent of such inconsistency, and any act or omission in contravention of the Constitution is invalid.

35. The Constitution introduces a two-tier level of legal and administrative frameworks, the national and county levels. These two levels are distinct but inter-dependant, and must conduct their mutual relations on the basis of consultation and cooperation. The functional and institutional integrity, as well as the Constitutional status, and institutions, of each level, must be respected. This new approach to government, i.e. devolution, aims at promoting democratic and accountable exercise of power; giving power of self-governance to the people; recognizing the right of communities to manage their own affairs; furthering their development; and ensuring equitable sharing of national and local resources throughout Kenya.[9]

36. According to Article 6 (1) of the Constitution, the territory of Kenya is divided into various counties as specified in the First Schedule.[10] County governments are set up in Article 176 to consist of a county assembly and a county executive. Every county government shall decentralize its functions and the provision of its services to the extent that is efficient and practicable to do so.[11]

37. The Executive is set up in Chapter Nine (Article 130) of the Constitution. Its composition shall reflect the regional and ethnic diversity of the people of Kenya and its Cabinet shall consist of the President, Deputy President, Attorney General, and not fewer than 14 and not more than 22 Cabinet Secretaries. The President is Head of State and Government, and Commander-in-Chief of the Kenya Defence Forces. According to Article 142 (2), a person shall not hold office as President for more than two terms.[12]

38. Legislative power is vested in Parliament, which is established under Article 93(1). It consists of the National Assembly and the Senate. The National Assembly is representative of Kenya's constituencies and special interests, and deliberates on, and resolves, issues of concern to the people. The Senate represents the counties and serves to protect their interests. It participates in the law-making function of Parliament, by considering, debating and approving Bills concerning counties. It also determines allocation of national revenues among counties, etc.

[6] Section based on the Constitution of Kenya 2010. Viewed at: http://www.parliament.go.ke/index.php?option=com_content&view=article&id=83&Itemid=79.

[7] See WT/TPR/S/171/Rev.1 (2006).

[8] *Kenya Gazette*, Special Issue.

[9] See Chapter 11, Article 174, of the Constitution.

[10] These include Mombasa, Kwale, Kilifi, Tana River, Lamu, Taita/Taveta, Garissa, Wajir, Mandera, Marsabit, Isiolo, Meru, Tharaka-Nithi, Embu, Kitui, Machakos, Makueni, Nyadarua, Nyeri, Kirinyaga, Murang'a, Kiambu, Turkana, West Pokot, Samburu, Trans Nzoia, Uasin Gishu, Elgeyo/Marakwet, Nandi, Baringo, Laikipia,, Nakuru, Narok, Kajiado, Kericho, Bomet, Kakamega,Vihiga, Bungoma, Busia, Siaya, Kisumu, Homa Bay, Migori, Kisii, Nyamira, Nairobi city.

[11] See Article 176 (2), Constitution of Kenya, 2010.

[12] According to information provided by the Kenyan authorities, a President is electable once for a maximum of ten years.

39. Chapter 10 of the Kenyan Constitution deals with the establishment and the hierarchy of the Judiciary. It is headed by the Chief Justice, who is appointed by the President on recommendation from the Judicial Service Commission, subject to approval by the National Assembly. The Chief Justice is assisted by a Deputy Chief Justice and other judges. Judicial authority is to be exercised by the courts and tribunals established by or under the Constitution. The Judiciary has Superior courts such as the Supreme court, Court of Appeal, High Court, and subordinate courts, such as magistrates courts, Kadhis courts, Courts Martial and any other courts and local tribunals as may be established as per Article 162(2).[13] The Judiciary also has a commercial court section.

40. The Constitution incorporates the general rules of international law as forming part of the law of Kenya. Similarly, Article 2(6) of the Constitution incorporates into law any treaty or convention ratified by Kenya. According to Article 132 (5) the President is obligated to ensure that Kenya's international obligations are fulfilled through the actions of the relevant Cabinet Secretaries. Treaties and international agreements have to be adopted through domestic laws and in the event of conflict, the national law prevails over the treaty/international agreement. The hierarchy of the laws in Kenya is: the Constitution; acts of Kenyan Parliament; specific Acts of Parliament of the United Kingdom cited in Part I of the Schedule to the Judicature Act; subsidiary/delegated/subordinate legislation; English statutes of general application, in force in England on the 12 August 1897; the substance of common law in force on the 12 August 1897; judicial precedents; the doctrine of equity in force in England on the 12 August 1897; procedures and Practices observed by courts of Justice in England on 12 August 1897; African customary law; and other recognized sources of law including Hindu Law and Islamic Law.

41. The Government executes its functions through ministries, which are charged with sector portfolios, and formulate policies in their areas of responsibility. The Ministry of Trade (MOT) remains the main body in the formulation, implementation, and coordination of Kenya's trade policies. According to Presidential Circular No. 1/2008 of 30 May 2008, on organization of the Government of the Republic of Kenya, the Ministry has been mandated to execute the following functions: trade policy development, promotion of retail and wholesale markets, development of micro and small business, fair trade practices and consumer protection, private-sector development and international trade affairs (such as EAC, COMESA, and WTO).[14]

42. The Ministry executes some of its mandate through: Kenya Institute of Business Training (KIBT), Business Premises Rent Tribunal (BPRT), Export Processing Zones Authority (EPZA), Export Promotion Council (EPC), Kenya National Trading Corporation (KNTC), Kenya Wine Agencies Limited (KWAL) and Industrial and Commercial Development Corporation (ICDC). In execution of its mandate, the MOT collaborates with other line ministries such as agriculture, planning, finance, environment and mineral resources, energy.

43. In general, policies are formulated and implemented by means of laws. As a result of the 2010 Constitution, Kenya is undergoing a major law reform and amendment process.[15]

[13] Other variations of the High Court hear disputes related to employment and labour relations, environment, use and occupation of and title to land. See Article 162 (2), Constitution of Kenya.

[14] See Ministry of Trade online information. Viewed at: http://www.trade.go.ke/.

[15] Kenya Law Reform Commission, "Constitution Implementation Status, 27th August 2010 to 27th August 2011". Viewed at: http://www.klrc.go.ke/.images/stories/klrc-report-on-status-of-implementation-18th-august-2011.pdf; Implementation status according to the Kenya Law Reform Commission. Viewed at: http://www.klrc.go.ke/.images/stories/klrc-report-on-status-of-implementation-18th-august-2011.pdf; and additional information provided by the Kenyan authorities.

Table II.1
Selected trade-related laws, June 2012

Area	Law
Trade in services	EAC Common Market Protocol, 2010
Customs	EAC Customs Union Protocol, 2005
	EAC Customs Management Act, 2004, revised 2009
	Customs and Excise Act (Cap. 472), revised edition 2010
Import/Export control	The Stamp Duty Act (Cap. 480) as amended by the Statute Law (Miscellaneous Amendments) Act of 2009
	Sale of Goods Act, (Cap 31), 2003
	Trade Disputes Act (Cap. 234), 1991
	Price Control (Essential Goods) 2011
	Trading in prohibited goods (Cap 519) 1967
	Weights and Measures Act, (Cap 513) 1993
	Trade Descriptions Act, (Cap 505) 1980
Licensing of businesses	Registration of Business Names (Cap. 499)
	Licensing Laws (Repeals and Amendments) Act, 2006
	Transfer of Businesses (Cap 500)
	Business Premises Rent Tribunal Act (Cap 301)
	Aliens Restriction Act, Repealed by 12 of 2011
	Companies Act (Cap. 486), 2009
	Factories Act and other places of work (Cap. 514), Repealed by A 15 of 2007 Act
	Bankruptcy Act (Cap. 53), 1982
Taxation	Income Tax Act (Cap. 470), 1993, 2010
	Value Added Tax Act (Cap. 476), 2004
	Stamp Duty Act, 1982
Exchange rate	Exchange Control (Repealed) Act, 1994
Sanitary and phytosanitary measures	Pest Control Products Act, 1985
	Meat Control Act, (Cap 356)
	Fertilizers and Animal Foodstuffs Act, (Cap 345)
	Animal Disease Act (Cap 364)
	Plant Protection Act (Cap 324)
	Public Health Act (Cap. 242)
	Food, Drugs, and Chemical Substances Act (Cap. 254) 1992
	Pharmacy and Poisons Act, (Cap 244)
	Veterinary Surgeons and Veterinary Paraprofessionals Act, Number 29 of 2011
	Biosafety Act, Number 9 of 2009
	Fisheries Act, (Cap 378)
Standards	Standards Act (Cap. 496) 1981
Foreign investment	Investment Promotion Act (Cap 485B) 2005
	Foreign Investments Protection (Cap. 518), 2010
	Housing Act, 1990; revised 2010
	Land Acquisition Act, 1983; revised 2010
	Investment Disputes Convention, 1967
	Partnership Act (Cap. 29) revised 2010
	Arbitration (Amendment) Act No.11 of 2009
Privatization	Privatization Act, 2005: revised 2009
Export processing zones	Export Processing Zone's Act (Amendment) (Cap. 517), 1993
Government procurement	Local Government Act, 1998 revised 2010
	Sale of Goods Act, 2003
	Government Contracts Act, 1979 revised 2010
	Architects and Quantity Surveyors Act, 1978
	Public Procurement and Disposal of Public Assets Act, 2005

Table II.1 (cont'd)

Area	Law
Intellectual property rights	Industrial Property Act, 2001 Anti-Counterfeit Act, 2008 Seeds and Plant Varieties Act (Cap. 326), 1991 Trade Marks Act, (Cap. 506) 2002 Science and Technology Act (Cap. 250), 1977 Trade Description Act (Cap. 505), 1980 revised 2010 Copyright Act, 2001 revised 2009
Competition	Competition Act Cap 12 of 2010 (Cap. 504) Arbitration (Amendment) Act No.11 of 2009 Act, 1985
Agriculture and related activities	The Agriculture Act, (Cap. 318) Agricultural Produce (Export) Act (Cap. 319) Agricultural Produce Marketing (Cap. 320) Tea Act (Cap. 343) 1991 Sugar Act, (Cap 342) Fisheries Act, (Cap 278) 1988 revised 1991 Pyrethrum Amendment Act 2011 Sisal Industry Act (Cap 341) 1991 Coffee Act,(Cap 333) Forests Act, Number 7 of 2005 The Tobacco Control Act,No.8 of 2007 as amended by the Statute Law (Miscellaneous Amendments) Act of 2009 Coconut Industry (Cap. 331) 1983 Coconut Preservation Act (Cap 332) 1983 The Pest Control Products Act (Cap.346) as amended by the Statute Law (Miscellaneous Amendments) Act of 2009 The Animal Diseases Act (Cap. 364) 1989 Kenya Meat Commission Act (Cap 363) 1990 The Hide Skin and Leather Trade Act (Cap 359) Crop Production and Livestock Act, (Cap 321) Dairy Industry Act, (Cap 336)
Financial services	Banking Act (Cap. 488), 2002 revised 2010 The Insurance Reinsurance Act (Cap 487A) 1997 Finance Act, 2012 Insurance Act, 1984 revised 2010 Central Bank of Kenya Act (Cap 491),1984 2010 Retirement and Benefit Authority Act, No. 3 of 1997 revised 2009 Capital Markets Act (2000) Central Depositories Act (2000)
Energy	The Energy Act, 2006 (No.12 of 2006), as amended by the Statute Law (Miscellaneous Amendments) Act of 2009 Electric Power Act, No. 11 of 1997
Mining	Mining Act (Cap 306), 1940 Petroleum (Exploration and Production) (Cap. 308) Trading in Unwrought Precious Metals (Cap 309) 1988 revised 2008 Diamond Industry Protection Cap 310 1991 Gold Mines Development Loans (Cap 311) 1986 Continental Shelf (Cap 312) 1977 repealed A6/89
Water	Water Act 2002
Transport	Merchant Shipping Act (Cap. 389), 2009 Kenya Roads Board Act, 2000 Kenya Airport Authority Act (Cap 395), 1992 Civil Aviation (Amendment) Act, 2002 Kenya Ports Authority Act (Cap 391)
Postal, information, and communication services	Kenya Information and Communications Act, (Cap 411A)

Table II.1 (cont'd)

Area	Law
Tourism	The Tourism Act 2011 Wildlife Conservation and Management Act, 1989
Environment	The Environmental Management and Co-ordination Act, 1999 (No.8 of 1999) as amended by the Statute Law (Miscellaneous Amendments) Act of 2009
Other important laws	Local Government Act, (Cap 265) (and its By-laws)

Source: Kenya Law Reports. Viewed at: http://www.kenyalaw.org/klr/index.php.

(2) TRADE POLICY OBJECTIVES

44. Kenya's Vision 2030 is the new development blueprint covering the period 2008 to 2030. It aims at making Kenya a newly industrializing, "middle income country providing high-quality life for all its citizens by the year 2030". The Vision was developed through an all-inclusive stakeholder consultative process, including with the National Committee on WTO (NCWTO).[16] The economic pillar of the Vision aims to maintain sustained economic growth of 10% over the 10 years from 2008.[17] This Vision's programme followed after the successful implementation of the Economic Recovery Strategy for Wealth and Employment Creation (ERS), under which the country's economy moved back into growth from 2002, when GDP grew at 0.6%; this is expected to rise to 5.4% in 2012.[18]

45. As an element of Kenya's overall economic policy, its 2011 National Trade Policy (NTP)[19] is to play a key role by contributing to the development of a competitive and globally efficient economy. To this end, the NTP set forth two broad objectives: to pursue more open, competitive, and export-oriented policies that are compatible with the country's national development objectives; and to create an enabling environment for trade and investment to thrive. The NTP aims to use a comprehensive, coherent, and integrated approach to achieving these objectives by: setting and re-defining government policy relating to international and domestic trade; designing appropriate complementary measures to improve the business regulatory and macroeconomic environment; increasing investment in infrastructure to support trade development; improving trade facilitation in order to enhance efficiency and delivery of goods and services in both domestic and international markets; improving coordination of institutions responsible for promoting and regulating trade; and ensuring effective participation of key stakeholders (members of Parliament, government ministries, private sector, civil society, and development partners, among others).

46. The MOT's priorities, through the NTP, include expanding and diversifying domestic and export trade, enhancing support for trade facilitation, promotion of e-trade, expanding and strengthening public-private partnerships, establishing a trade and investment information-sharing system, providing entrepreneurial skills for micro, small, and medium-size enterprises (MSMEs), supporting the improvement of the business and investment climate, formulating an appropriate trade-remedy regime, developing an appropriate negotiating structure and an integrated database on trade in goods and services, and aggressively promoting trade in services.[20]

---

[16] This Committee meets periodically to review issues pertaining to the multilateral trading system.

[17] http://www.planning.go.ke.

[18] Economist Intelligence Unit, March 2012. Viewed at: http://www.eiu.com/report_dl.asp?issue_id=218848406&mode=pdf.

[19] NTP bill 2011 is finalized and awaiting Cabinet and Parliament approval.

[20] Kenya National Trade Policy 2009. Online information. Viewed at: http://www.eac.int/trade/index.php?option=com_docman&task=cat_view&gid=43&Itemid=124.

47. The sectors identified as offering export opportunities to Kenya are: tea, coffee, horticulture, livestock and livestock products, fish and fish products, food and beverages, textiles and clothing, and commercial crafts. The challenge is for the Government to create an enabling environment for investment in the manufacturing sector, to undertake value-addition of these primary products as well as production of other manufactures, so as to tap international markets. Tourism and other services sectors such as transport, ICT, and the promotion of e-enabled services are also considered important for export. In this context, the importance of developing domestic regulatory frameworks as well as an enabling legislation, especially for e-commerce and other back-office operations, is seen as critical in allowing Kenya to diversify into higher value services.

(3) TRADE AGREEMENTS

48. Kenya is an active Member in the WTO DDA negotiations as well as in the organization's regular work; Kenya submitted several notifications to the WTO during the review period (Table AII.1). Kenya aligns its DDA negotiation positions with those taken by the African and ACP groups, as well as other groups depending on the issues at hand. In 2011, Kenya coordinated the African group, and was (and remains) focal point for Africa on negotiations on non-agricultural market access, and for the ACP on services and agriculture.

49. Kenya is a founding member of the EAC, the Inter-Governmental Authority on Development (IGAD), the Indian Ocean Rim-Association for Regional Cooperation (IOR-ARC), and the Common Market for Eastern and Southern Africa (COMESA). Kenya has also initialled an Economic Partnership Agreement (EPA) with the EU and continues to engage in these negotiations. As part of the EAC it is currently negotiating the EAC-COMESA-SADC Tripartite FTA. Kenya benefits from the U.S. AGOA and the GSP schemes of some developed partners, notably Canada, EU, Japan, Norway, Switzerland, and the United States. It also participates in the U.S-EAC Trade and Investment Framework Agreement.

(4) INVESTMENT FRAMEWORK

50. The Kenyan Constitution provides for a guarantee against expropriation of private property. Expropriation may only occur for security reasons or public interest, upon which fair and prompt compensation is guaranteed.[21]

51. Kenya's institutional and legislative framework governing investment is set out in the Investment Promotion Act (IPA) of 2004.[22] Its aims are to promote and facilitate investment by assisting investors in obtaining the licences necessary to invest, and providing other assistance and incentives for related purposes. A foreign investor is defined as a natural person that is not a Kenyan citizen; a partnership in which the controlling interest is owned by persons that are non-Kenyan citizens; or a company or other body-corporate incorporated under the laws of a country other than Kenya.[23] Part 11(3.2) of the IPA requires that a foreign investor intending to invest in Kenya applies for an investment certificate. Foreign investors are required to have an amount of at least US$500,000, or the equivalent in any transactable currency. In practice, foreign investors with US$100,000 are also welcomed.

[21] See Article 40 (2) and (3), Constitution.

[22] The IPA was passed by Parliament and assented to by the President in December 2004. It was published in the *Kenya Gazette* on 3 January 2005.

[23] See Article 2, IPA.

52. Investments are only allowed if they are beneficial to Kenya. In order to determine the latter, the Kenya Investment Authority (KenInvest) considers the extent to which such investment or activity will contribute to employment creation, acquisition of new skills or technology, and to tax revenues or other government revenues.[24] There are procedures in the event of dissatisfaction with a decision related to an application for an investment certificate. A review Panel is appointed by the Minister of Finance and may confirm, vary, or set-aside a decision, direct that KenInvest reconsider its decision, or make an order as to payment of costs.

53. An investment certificate allows the holder a legal entitlement to certain licences.[25] A certificate holder is also entitled to three entry work permits for management and technical staff as well as three others for owners, shareholders, partners, and dependants. Both are for an initial, but renewable, two-year period. Capital repatriation and remittance of dividends and interests are guaranteed to foreign investors under the IPA.

54. Areas under state monopoly or exclusive rights are not open to private investment (Chapter IV). Investments that may adversely affect security, health, or the environment require approval from the competent authorities, such as the National Environmental Management Authority, and the Public Health Authorities, before approvals are granted.[26] Investments are highly regulated in, *inter alia* forest products, mining, energy, and petroleum products.

55. The Ministry of Finance oversees investment policy in Kenya. KenInvest, under the auspices of the Ministry of Finance, was established in October 2005 with a mandate to promote and facilitate investment by, *inter alia*: issuing investment certificates; assisting investors in obtaining licences, permits, incentives, and exemptions; providing information on investment opportunities and sources of capital; and advising the authorities on improving the investment environment. KenInvest has a digital one-stop shop for processing investment applications.

56. According to KenInvest, there are 12 easy steps to investing in Kenya: obtaining approval for the company name from the Registrar of Companies; stamping the Memorandum and Articles and a statement of the nominal capital; paying stamp duty at a bank; Declaration of compliance (Form 208), which is signed before a Commissioner of Oaths or Notary Public; filing of deed and details with the Registrar of Companies at the Attorney General's Chambers in Nairobi; registering with the Tax Department for a personal identification number (PIN); registering with the VAT office; applying for a business permit; registering with the National Social Security Fund (NSSF); registering with the National Hospital Insurance Fund (NHIF); registering for PAYE; and making a company seal after a certificate of incorporation has been issued.[27]

57. Other important economic institutions on investment in Kenya are: the Central Bank of Kenya (CBK), which, *inter alia*, provides opportunities for investment in treasury bills[28]; and the Export Processing Zones Authority (EPZA), which provides investors with tax incentives, a

[24] Other conditions that may be considered include whether such investment contributes to technology transfer, increases foreign exchange; either through exports or import substitution, uses domestic raw materials, supplies, and services; will adopt value-addition in the processing of local, natural and agricultural resources; and will utilize, promote, develop, and implement ICT and any other factors the Authority considers beneficial to Kenya.

[25] General licences to which a holder of an investment certificate may be entitled are listed in the Second Schedule to the IPA.

[26] Information provided by the Kenyan authorities.

[27] Viewed at: http://www.investmentkenya.com/.

[28] Viewed at: http://www.centralbank.go.ke/securities/bills/introduction.aspx.

facilitating operating environment, good physical infrastructure, and day-to-day support by EPZA staff.[29] Incentives are provided to investors under various schemes such as the SEZ, EPZ, manufacturing under bond, etc. (see Chapter III(2), (3) and (4)). The Capital Markets Authority (CMA) provides an important alternative source of long-term finance for long-term productive investments[30], and the Nairobi Securities Exchange (NSE) lists investment markets for public purchase in several sectors, including in agriculture, commercial, services, industrial, allied, finance, and investment.[31]

58. Kenya is a member of the Multilateral Investment Guarantee Agency (MIGA); the Africa Trade Insurance Agency (ATIA), which insures investors against non-commercial risks; and the International Centre for Settlement of Investment Disputes (ICSID).

59. Kenya has signed bilateral treaties for the promotion and protection of FDI with China, France, Finland, Germany, Iran, Italy, Libya, Mauritius, the Netherlands, Switzerland, and the United Kingdom. It has concluded bilateral double taxation treaties with: Austria, Bangladesh, Belgium, Canada, China, Denmark, France, Germany, Greece, India, Indonesia, Iran, Ireland, Japan, Mauritius, the Netherlands, Norway, South Africa, Sweden, Thailand, the United Kingdom, and Zambia.

[29] Viewed at: http://www.epzakenya.com/.
[30] Viewed at: http://www.cma.or.ke/.
[31] Viewed at: http://www.nse.co.ke/.

III. TRADE POLICIES AND PRACTICES BY MEASURE

(1) MEASURES DIRECTLY AFFECTING IMPORTS

(i) Registration and preshipment inspection

60. Trade activities, including imports, are open to both Kenyans and foreigners. The repeal of the Imports, Exports and Essential Supplies Act and the Trade Licensing Act have simplified registration procedures.[32] The documents required for importation of goods include a personal identification number (PIN), from the Domestic Taxes Department of the Kenya Revenue Authority (KRA); and an import declaration form (IDF), which costs 2.25% of c.i.f. value or K Sh 5000, whichever is higher.

61. Since 2005, the Kenyan Bureau of Standards (KEBS) has established a system of pre-export verification of conformity (PVoC) to Kenyan technical regulations or approved equivalents (section ix).[33] The conformity assessment programme is carried out by verification bodies appointed through tendering. As of 18 January 2012, Bureau Veritas, Intertek International, and Société Générale de Surveillance (SGS) were appointed to carry out PVoC procedures on a list of 2,463 tariff lines, including textile, chemical, food, and electrical products imported to Kenya market (section (iii)). KEBS may undertake a surveillance audit to check the effectiveness of the appointed bodies.

(ii) Customs procedures

62. Kenya Revenue Authority (KRA) is responsible for customs procedures, as well as collection, accounting, and administration of all government taxes, including customs and excise duties and VAT on imports.

63. Since its last Review, Kenya has embarked on a wide range of trade facilitation reforms, geared towards improving its global competitiveness. In this respect, in 2005, KRA brought into operation the Simba electronic system, to process customs declarations. In general, the documents required for customs declaration are: the supplier's invoice, the packing list, the bill of lading, the PVoC certificate of conformity, the import declaration form (IDF), the single entry document (C17B), the insurance debit note, and the declaration of customs value form (C36). The customs authority may request the importer to provide additional supporting documents. According to the World Bank, Kenya ranks 141st out of 183 economies in term of ease of trade across border; and an average of 24 days are necessary for overall import procedures (11 days for documents preparation, three days for customs clearance and technical control, six days for port and terminal handling, and four days for inland transportation).[34]

64. According to the authorities the mean clearance time (time difference between arrival and release of imported goods) improved from 10 days in 2007 to 8 days and nine hours in 2011. However, the customs clearance system in Kenya does not provide for information exchange among all border control agencies, and this continues to pose challenges to the timely release of imported goods.

[32] The Licensing Laws (Repeals and Amendments) Act, 2006.
[33] Legal Notice No. 78 of 15th July 2005.
[34] World Bank (2010a).

65. Kenya participates in the RADDEX project, a system for electronic exchange of documents and information among EAC customs authorities (Common Report III(1)(i)).

66. Import procedures are regulated through the EAC Customs Management Act and the Customs and Excise Act CAP 472 (2011 Amendment). Importers clear their own goods through an appointed agent. An application fee of US$10 is required for a customs broker licence. Once licensed, the agent is required, *inter alia,* to execute a security bond of US$5,000, pay an annual licence fee of US$400, and have a computer system capable of connecting to the Simba system.

67. A risk management system is built into the Simba system: goods may be routed through a red channel (high risk), requiring a physical inspection of the documents and goods before clearance; a yellow channel (medium risk), requiring inspection of the documents; or a green channel (low risk), for clearance without the need for inspection. During the review period, an average of 37% of goods were cleared through the green channel, 42% through the yellow, and 21% through the red. The blue channel is used for clearance of authorized economic operators (AEO), which was adopted in 2008. It grants special status to importers and their clearing agents who have proven to be reliable and compliant KRA partners. To be considered as an AEO, international trade operators are required to have, *inter alia*, a satisfactory system for management of commercial records, proven financial and safety capacities, and good knowledge of customs procedures in Kenya. An application form is available on the KRA website, for importers and clearing agents.

68. Kenya has notified its legislation on customs valuation to the WTO.[35] According to the authorities, customs valuation in Kenya is based on the Fourth Schedule of the EAC Customs Management Act, which is aligned on the WTO Customs Valuation Agreement. The transaction value method has applied to some 66% of imported goods. A database of reference values (previously accepted transaction values) is provided through the electronic Kenya Revenue Authority Valuation System (KRAVS). Transport and insurance costs from entry points in Burundi, Rwanda, Tanzania, and Uganda to the Kenyan border are no longer dutiable. Challenges in the area of customs valuation include capacity gaps in detecting undervaluation, and mis-declaration of certain products, mainly newly developed goods whose value is unknown.

69. Aggrieved importers or any other authorized person may appeal to the Customs and Excise Appeals Tribunal, within 30 days from notification of a decision. Since the members of the Tribunal were gazetted in 2008, 20 appeals have been filed, of which 8 were related to customs valuation, 5 to tariff classification, and the remainder to other customs issues. If unsatisfied by the decision of the Appeals Tribunal, a person may appeal to the High Court within 40 days; however, no such case occurred during the review period.

(iii) Tariffs and other charges on imports

(a) MFN applied tariff structure

70. Since January 2005, Kenya has based its tariff structure on the EAC Common External Tariff (Common Report, Chapter III(1)(iv)). It continues to apply higher tariffs on a list of 58 sensitive items.

[35] WTO document G/VAL/N/1/KEN/1, 21 January 2002.

(b) Other duties and charges

71. In addition to tariffs, an import declaration fee of 2.25% is payable on the c.i.f. value of all imports (at a minimum of K Sh 5,000). A 7% levy applies on the value of imported sugar. The EAC Secretariat has listed other duties and charges collected within the region, with the view to harmonizing them (Common Report, Chapter III(iv)(d)).

(c) Tariff binding

72. Kenya's bound tariffs (15% of all its tariff lines) have not changed since its last TPR. Tariffs for all agricultural products are bound at a ceiling rate of 100%. For non-agricultural products, Kenya has bound six tariff lines (at the HS four-digit level), equivalent to 1.6% of non-agricultural tariff lines fresh, chilled, or frozen fish (HS 03.02 and 03.03), excluding fish fillets and other minced fish meat at 62%; medicaments (HS 30.03) at 35%; pharmaceutical goods (HS 30.06) at 18%; mineral or chemical fertilizers (HS 31.05) containing two or three of the fertilizing elements, potassium, phosphorus, and nitrogen at 62%; and polymers of ethylene in primary form (HS 39.01) at 31%. The tariff on "other tractors" (HS 87.01.90) was bound at 62%.

73. Kenya has bound other duties and charges at zero.

(d) Tariff preferences

74. Kenya grants tariff preferences at the zero rate to all products originating from EAC countries, under the Protocol on the Establishment of the EAC Customs Union. It also grants full tariff preferences (on a reciprocal basis) to all products, except sugar, to members of the Common Market for Eastern and Southern Africa (COMESA).[36] The customs duty on sugar originating from COMESA countries was reduced from 100% in 2008 to 40% in 2010, and to 10% from 2011; it is expected to be reduced to zero in March 2014 (Chapter IV(1)(iii)).

(iv) Internal taxes

(a) Value-Added-Tax (VAT)

75. VAT in Kenya is governed by the Value Added Tax Act (CAP. 476) and the Subsidiary Legislations (as revised up to 2004). There were been no major changes to the legislation during the review period. However, a VAT Bill is awaiting adoption; it seeks to improve the tax administration and to minimize revenue losses linked to VAT exemptions.

76. VAT is applied to all imported or locally produced goods and services. The standard rate of 16% applies to most goods and services; a reduced rate of 14% applies to certain services, in particular hotels and restaurants; in 2008, the VAT rate on electricity was reduced to 12%. Under the fifth Schedule (Section 8) of the Value Added Tax Act, zero-rated supplies include exports of goods and services, imports and purchases by designated persons or organizations (e.g. the President, armed forces, Commonwealth and other Governments, diplomatic and aid agencies), all goods and taxable services destined for the export processing zones. The section also provides for a long list of zero-rated items, including essential goods such as some milk products, sugar, maize, and medicines.

---

[36] Angola, Burundi, Comoros, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Namibia, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia, Zimbabwe.

77. Exemptions are regulated in the second and third schedules of the VAT Act. They comprise, notably, unprocessed agricultural products, including fishery, forestry, livestock, and processed foodstuffs. Exempted services include financial and insurance services, education and training, health and sanitary, agricultural services, social welfare, burial services, transportation, renting and leasing of land and residential buildings, postal services, tour operations and travel agencies, entertainment, accommodation and restaurant, conference, car park services, and tourist transportation.

78. VAT is based on the sale price for local supplies. For imports, the taxable value is the customs value plus customs duties, whether or not a remission of the duty has been granted.

79. As part of the ongoing reform efforts, the KRA has embarked on an extensive audit procedure on VAT payers.

(b) Excise duties

80. Excise taxes in Kenya are regulated by the Customs and Excises Act, CAP 472. Excise duties apply to imports and locally produced goods, including foodstuffs, alcoholic beverages, tobacco products, fuels, and cosmetics (Table AIII.1). These duties are charged on the ex-factory price of domestic goods and the import value (inclusive of customs duties) of imported items. Excise duties on imports are collected at the time of import, along with import duties and VAT.

81. In 2009, an Excise Bill was submitted for parliamentary consultation. It aims to further modernize Kenya's excise duties collection. However, the Bill is yet to be adopted.

(v) Duty and tax concessions and exemptions

82. The second and fifth schedules of the East Africa Custom Management Act provide the list of goods exempted from duties (Common Report, Chapter III(1)(iv)(c)).

83. In 2011, the Government suspended import duties, including VAT, on maize and wheat to deal with the severe shortage that hit the country. In addition, the EAC granted a one-year exemption to Kenya to apply a tariff rate of 35% to milled rice, instead of the "sensitive items" rate (75% or US$200/MT, whichever is higher). Import duties have also been eliminated on battery-powered vehicles for use in hotels, hospitals, and airports. Other exemptions apply to gloves for laboratory and medical use, tsetse fly traps, and security equipment. Most of these exemptions have led to significant losses in government revenue. Some K Sh 6 billion were forgone due to exemptions on maize and wheat for the financial year 2010/11.

84. Goods in transit are exempt from customs duties. However, a transit fee (the Transit Toll on trucks) is collected for road maintenance. Its rates are: US$5 per km for buses, US$6 per km for up to 3-axle trucks, US$10 per km for trucks of more than 3-axles.

(vi) Rules of origin

85. Kenya has notified, to the WTO Committee on Rules of Origin, that it does not apply non-preferential rules of origin.[37] Its preferential rules of origin, in the EAC framework, have yet to be notified. The EAC Protocol on the establishment of the customs union provides origin criteria for products from the EAC region (Common Report, Chapter III(1)(iii)).

---

[37] WTO document G/RO/N/9, 19 April 1996.

86. Under COMESA rules of origin, a product qualifies for preferential treatment if it is wholly produced by a member state or has undergone substantial transformation in that member state (i.e. import content of no more than 60% of total cost of all materials, or value-added of 35% or change of tariff heading, or 25% value added for goods of economic importance). Criteria for goods of economic importance include potential for poverty reduction, foreign exchange earnings, and potential to attract FDI. Cumulation of origin is allowed between COMESA countries. Goods that have been accepted as meeting all the rules of origin requirements should be issued with a COMESA Certificate of Origin by the relevant authority.

87. The KRA is in charge of issuing certificates of origin for exports to enjoy preferential treatment into relevant export markets.

(vii) Prohibitions, controls and licensing

88. Kenya's import prohibition and licensing regime is governed by the second and the third schedules of the EAC Customs Management Act, 2004. Goods are categorized into prohibited goods and restricted goods, which require approval from relevant authorities (Common Report, Chapter III(1)(vii)). The Minister in charge of Trade may, by order in the *Gazette*, amend the list of goods subject to import prohibition or licensing. However, no such measures were taken by the Minister of Trade over the review period. Kenya does not maintain a licensing system to administer quantitative restrictions.

89. The Imports, Exports and Essential Supplies Act, which regulated import licensing, was repealed in 2006.[38]

(viii) Contingency measures

90. There have been no major changes to Kenya's regime on contingency measures since its last TPR. Kenya has never applied anti-dumping, countervailing or safeguard measures under the WTO. The legal basis for the imposition of such measures is contained in the Protocol on Establishment of the EAC Customs Union, and Sections 125 and 126 of the Customs and Excise Act.

91. According to the authorities, Kenya is developing a new trade remedy regime. Draft legislation on anti-dumping, countervailing, and safeguard measures and investigating authority is under consideration.

(ix) Standards, technical regulations, and other requirements

(a) Standardization, conformity assessment, and certification

92. Standardization, testing, and certification in Kenya are regulated by the Standards Acts (CAP 496). Kenya is a member of the International Organization for Standardization (ISO), the International Electrotechnical Commission (IEC), and the African Regional Organization for Standardization (ARSO).

(b) Standardization

93. The institutional framework for standards development has not fundamentally changed since Kenya's last Review.[39] Under the Ministry in charge of Industry, the Kenya Bureau of Standards

[38] The Licensing Laws (Repeals and Amendment) Act, 2006.

(KEBS) continues to coordinate: the preparation of standards relating to products, measurements, and processes; the certification of industrial products; assistance in quality controls; and the dissemination of information relating to standards. KEBS is Kenya's national enquiry point under the TBT Agreement, while the Ministry in charge of Trade is the national notification Authority.[40]

94. Any interested party (manufacturers/service providers, consumers, Government Ministry, corporate body or NGO) may submit proposals for setting a standard, or for revising, amending, or cancelling an established standard. The standards formulation process is undertaken when the relevant technical committee is satisfied, following its own investigation and consultations with concerned stakeholders, of the need for standardization.[41] According to the authorities, ex-ante impact assessment analyses are undertaken to ensure that standards meet the need of market-place and contribute to promoting smoother trade. Notices concerning the development or adoption of standards and technical regulations by KEBS are published in the *Gazette* or legal notices. All draft standards are published in the *KEBS Standards Work Programme Bulletin*. Interested persons are given the opportunity to make written comments on draft standards within 60 days.[42] Compulsory standards (technical regulations) apply equally to imports and locally produced goods. Such technical regulations become effective upon declaration through a legal notice by the relevant Ministry, which also includes the date it will take effect. Exemption from compliance with a technical regulation may be granted by the Minister in charge of Industry on a case-by-case basis.[43] Standards are reviewed after three years for the first time and every five years thereafter or as needs arise.

95. At the time of the last TPR of Kenya, concerns were raised regarding the factual confusion between voluntary standards and technical regulation (compulsory standards). The authorities have undertaken to make formal separation between the two concepts, through the ongoing revision process of the Standards Act. Between January 2006 and December 2010, Kenya notified some 190 technical regulations to the WTO. The notifications concern notably, food products, chemicals, textiles, water and waste management, cosmetics, and electric equipment (Table AII.1). Some 6,600 technical regulations are in force in Kenya, covering food products, chemicals , mechanical and electrical products, textile and consumer products, and building and related products.

(c) Conformity assessment and certification

96. A PVoC programme is carried out to ensure quality of products, health, and safety, and environmental protection for consumers. It includes physical inspection, product testing in approved laboratories, quality audit of production process (where applicable), and documentary review. The programme was notified to the WTO Committee on Technical Barriers to Trade in 2005.[44]

97. Any product subject to PVoC must be accompanied by a certificate of conformity (CoC), which is compulsory for clearance in Kenya. Where goods do not meet the requirements, a non-conformity report (NCR) is issued to an exporter, and the goods are not allowed to be imported to Kenya.

---

[39] See WT/TPR/S/171/KEN/Rev.1

[40] WTO document G/TBT/2/Add.86, 28 April 2005.

[41] The technical committees (TCs) cover several sectors, including food and agriculture, chemical, engineering (mechanical, civil, electro-technical, ICT, textiles, and metrology.

[42] WTO document G/TBT/2/Add.86, 28 April 2005.

[43] Section 9 (iii) of the Standards Act Cap 496, as revised.

[44] WTO document G/TBT/N/KEN/14, 7 July 2005.

98. Physical inspection and documentary review fees are paid by the exporter (Table III.1). Sampling and testing fees are determined by PVoC agents on a case-by-case basis. Any good that is subject to PVoC, and arrives at the port of entry without a CoC, is subject to a destination inspection fee equivalent to 15% of the c.i.f. value of the goods. The importer will be further required to execute a redeemable bond of a similar amount pending quality verification. Non-compliance may lead to destruction or reshipment back to source at the importer's costs.

99. Kenya's PVoC certification process consists of three lanes based on: risk to health, safety, and the environment, and the profile of the trader.[45] Under the Route A, goods must be tested and physically inspected to demonstrate their conformity. Route B is a fast track lane: exporters wishing to use this lane must register for one year, and pay a specified fee; registered products are exempt from mandatory testing, but random testing is still required; sugar, cereals and pulses, fertilizer, animal, fishery, and dairy products, fresh horticultural products, and used goods are not eligible for Route B. Route C is open to manufacturers who can demonstrate the existence of a quality management system in their manufacturing process. A licence, valid for one year, is granted to manufacturers, after a successful audit of their production processes. During the review period, the annual average percentage of products per lane was 60% for Route A, 30% for B, and 10% for C.

Table III.1
Official fees for PVoC

	Physical inspection, documentary review	**Product registration fee (Route B)**	**Manufacturing licensing (Route C)**
Route A	*Ad valorem* fee of 0.500% of the f.o.b. value of the goods		
Route B	*Ad valorem* fee of 0.450% of the f.o.b. value of the goods	US$375 for the first 15 products/line items. Every additional product/line item above 15 products/items is charged an additional US$20 per product/product category	
Route C	*Ad valorem* fee of 0.275% of the f.o.b. value of the goods		To be determined by PVoC agents on a case-by-case basis

Note: The above fees are subject to a minimum of US$220, for routes A, B, and C. The maximum fee is US$2,375. The fees do not include: sampling and testing.

Source: Kenya Bureau of Standards. Viewed at: www.KEBS.org.

100. PVoC is also required for used road vehicles, before they are shipped to Kenya. Auto Terminal Japan Ltd (ATJ), Japan Export Vehicle Inspection Center Co. Ltd (JEVIC) and Quality Inspection Services Inc. Japan (QISJ) are mandated by KEBS to provide inspection services for used vehicles originating from Japan, the United Arab Emirates, United Kingdom, Singapore, and South Africa. Vehicles originating elsewhere are subject to destination inspection by the Ministry in charge of roads. An inspection report is transmitted to KEBS to allow the issuance of a Certificate of Road Worthiness, which is needed for registration of the vehicle. The Ministry's inspection fee is 0.5% of the c.i.f. value or US$220, whichever is higher.

101. KEBS is ISO 9001:2008 certified, for its activities of standard development, inspection, and quality assurance. These activities relate notably to imported products, which are eligible for destination inspection, and locally produced goods monitored regularly through visits to factories

[45] Viewed at: www.kebs.org.

according to annual, quarterly, and monthly plans based on product risk and previous records of inspections and tests.[46]

102. KEBS issues quality marks, which are a legal marking requirement for all goods manufactured in Kenya, under the Standards Act. Manufacturers must apply for a "Standardization Mark", using the *STA/1* form available on KEBS website. KEBS also issues the "Diamond Mark", on a voluntary basis. In addition to the required products specification, the "Diamond Mark" takes into consideration the production process.

103. Persons who are denied a quality mark, or who wish to challenge any condition attached to a mark, may appeal to the Standards Tribunal, within 14 days of receipt of notification. The Tribunal was established by the Standards Act (2004) and constituted in 2011; it has not handled any cases to date.

104. KEBS testing laboratories provide services for chemistry, food, microbiology, engineering, and textiles. KEBS Quality Inspectors for Kenya Standards are among their main customers. The laboratories hold accreditation from the United Kingdom Accreditation Service (UKAS).

105. KEBS operates 13 metrology laboratories, 5 of which are accredited by the German accrediting body "DKD". In January 2010, Kenya became a full member of the General Conference of Weights and Measures (CGPM) of the Metre Convention, and a signatory to the Committee on Weights and Measures Mutual Recognition Arrangement (CIPM-MRA).

106. Kenya has concluded mutual recognition agreements (MRAs) with the other EAC countries, creating a regional recognition for quality marks issued by member states. In addition Kenya has concluded memorandums of understanding (MoUs) with several countries, including Egypt and Sudan, on harmonization of standards, and technical cooperation.

(d) Accreditation

107. The Kenya Accreditation Service (KENAS) was established under Legal Notice No. 55 of May 2009. It provides accreditation services to certification bodies, inspection bodies (IBs), and testing laboratories (testing and calibration). KENAS is an associate member of the International Laboratory Accreditation Cooperation (ILAC). Full membership of ILAC will enhance the acceptance of KENAS products and services across national borders.

(e) Marking, labelling, and packaging

108. All matters related to marking, labelling, and packaging are governed by the Food, Drugs, and Chemicals Substances Act; the Food Labelling, Additives, and Standard Regulations; and the Weights and Measures Act. Implementation is under the responsibility of: the Ministry of Public Health and Sanitation, Kenya Bureau of Standards, and the Department of Weights and Measures. The institutional setting seeks to prevent the consumer or purchaser from being misled about the quality, quantity, character, value, composition, and the effect of products in Kenya. All items traded in Kenya should be labelled with metric measurements, and packaged.

109. All foodstuffs must be labelled in English or Kiswahili; manufacturers must indicate on the labels of all consumables the date of manufacture and of expiry. Except for paints packed in tubes or boxes, commonly sold as artists' or children's paints, imports of pre-packaged paints and allied

[46] WTO document G/TBT/2/Add.86/Suppl.1, 2 June 2005.

products must be sold by metric weight or metric fluid measure. Labelling on pharmaceuticals should include: therapeutically active substances, inactive ingredients, name and percentage of any bactericidal or bacteriostatic agent, manufacture and expiry dates, batch number, any warnings or precautions, name and business address of manufacturer, and product registration number. Banana leaves, maize, rice, sorghum or wheat straw, and bags containing or having contained malt, soil or leaf mould must not be used as packing material.

110. Inadequate capacity to inspect marking, labelling, and packaging, compounded by imposition of penalties that are too lenient, has led to widespread inadequate labelling, use of "foreign languages", and proliferation of expired food on Kenya's market.

(x) Health, sanitary, phytosanitary, and environmental protection measures

111. The main agencies involved in Kenya's SPS institutional framework are the Kenya Plant Health Inspectorate Service (KEPHIS), under the Ministry in charge of Agriculture; the Department of Fisheries (DFR), in the Ministry in charge of Fisheries Development; the Department of Veterinary Services (DVS), under the Ministry in charge of Livestock Development; and the Department of Food Safety and Quality, under the Ministry in charge of Public Health.

112. Kenya's national enquiry points, under the WTO SPS Agreement, are: KEPHIS for plant health issues, the Department of Veterinary Services (DVS) for animal health, and the Department of Public health for food safety. The Department of External Trade in the Ministry in charge of Trade has been designated as the SPS national notification authority.[47] Kenya is a member of Codex Alimentarius, the World Organization for Animal Health (OIE), and the International Plant Protection Convention. It is also a party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

113. The Ministry in charge of Health is responsible for coordination of the institutions involved in food safety management, including the Ministry in charge of Agriculture, the public commodity boards (for dairy, sugar, meat, and cereals), and KEBS. According to the authorities, about 32 laws contain provisions dealing with food safety in Kenya. The Food, Drugs and Chemical Substances Act; the Public Health Act; the Meat Control Act; the Dairy Industry Act; and the Pharmacy and Poisons Act comprise the main regulations for food safety.

114. Plant health issues are regulated through the Plant Protection Act (Cap 324), the Suppression of Noxious Weeds Act (Cap 325), the Agricultural Produce (Export) Act (Cap 319), and the Seeds and Plant Varieties Act (Cap 326). KEPHIS is responsible for coordinating all matters relating to plant health, and quality control of agricultural inputs and products in Kenya. Its export and import control activities are supported by a relatively well-equipped laboratory facility in Nairobi. It also has a growing number of staff, including over 102 scientists, 100 technical officers, and 150 support staff, and an annual budget of around US$2 million in 2010-11. In 2007, the EU granted EUR3.2 million to Kenya, for capacity building in the areas of analytical services for contaminants in food and feed, plant health diagnostics, and expansion of laboratories.[48] According to the authorities, the project has helped in the expansion of the scope of accreditation and the introduction of new analytical work in mycotoxin analysis; the setting up of systems for reporting pest outbreaks, improved risk assessment; and pest surveillance.

[47] WTO documents G/SPS/ENQ/17, 20 October 2004; and G/SPS/NNA/8, 20 December 2004.
[48] WTO document G/SPS/GEN/1020.

115. Imports of plants, seeds, and fruit other than canned or bottled fruit must be inspected. Plants imported for planting purposes, under a quarantine permit may, if necessary, be detained in quarantine or in special nurseries for observation before commercialization. The quarantine facility inspection fee is K Sh 5,000. All imported seeds should be accompanied by an Orange ISTA (International Seed Testing Association) certificate or equivalent, confirming that it has been produced under internationally accepted standards for seeds. In addition, seeds must meet phytosanitary standards relating to control of quarantine diseases. Plant materials arriving in Kenya without authorization and accompanying documents are intercepted and either destroyed or held until the correct documentation is produced, or shipped back at the owners' cost.[49]

116. With support from the Government of the Netherlands, under the World Summit on Sustainable Development (WSSD) initiative, and FAO, KEPHIS has established an early warning system for detection of pests. To this end, electronic pest (e-pest) surveillance software has been installed at KEPHIS, and e-pest surveillance hand-held gadgets issued to horticultural growers to collect pest data. The objectives of the system are to monitor pest outbreaks and pest dynamics for the purpose of developing pest management systems. In addition, KEPHIS has implemented e-certification of horticultural products at the pilot level, in collaboration with the Netherlands Government.[50]

117. The main laws on animal health in Kenya are: the Animal Diseases Act Cap 364; the Meat Control Act Cap 356; the Fertilizers and Animal Foodstuffs Act, Cap 345; the Veterinary Surgeons and Veterinary Paraprofessionals Act, No 29 of 2011; the Prevention of Cruelty to Animals Act, Chapter 360; the Dairy Industry Act, Chapter 336; Cattle Cleansing Act, Cap 358; the Rabies Act, Chapter 365; the Branding of Stock Act, Chapter 357; the Kenya Meat Commission Act Cap 363; and the Hide Skin and Leather Trade Act, Cap 359.

118. The Meat Control Act regulates the hygiene, storage, and transportation of meat, and the manufacture of meat products; it also covers live animals intended for slaughter. Under the Animal Diseases Act, the DVS is in charge of identifying and declaring infected zones, applying animal health and animal food safety measures, including surveillance, testing, inspection, and certification, as well as detaining (if necessary). The DVS may prohibit or regulate the importation or the exportation of any specified kinds of animals, or of carcasses, meat, hides, skins, hair, wool, litter, dung, live viruses capable of setting up infections in animals, sera, vaccines, and other biological or chemical products intended to be used for the control of animal disease or fodder, from any specified country, port or territory.

119. Imports of animals and animal products require licences issued by the DVS, and sanitary certificates delivered by the corresponding foreign authority, prior to shipment from the country of origin. Depending on an assessment of risk, animals may be held in approved quarantine facilities with regular veterinary inspection, followed by a health clearance certificate affirming the tests, clinical examinations and, where applicable, treatment undertaken during quarantine. The importer bears the associated costs. The main quarantine facilities are the Animal Isolation Facility at the Jomo Kenyatta International Airport, and the pet quarantine at the University of Nairobi Veterinary School, for animals entering Kenya for surgery. For exports, Kenya has a quarantine facility at Ol Pejeta Ranch in Laikipia, which is officially approved for collection of bovine embryos for local and export markets.

[49] For application forms for seeds or phytosanitary requirements see KEPHIS online information. Viewed at: http://www.kephis.org.

[50] WTO document G/SPS/GEN/1019, 15 June 2010.

120. The Department of Fisheries enforces the hygiene standards for the handling and processing of fish and fishery products in Kenya. According to the authorities, the Fish Quality Assurance (FQA) Regulations have been harmonized with those of the EU (Chapter IV(1)(iii)).

121. Kenya signed the Cartagena Protocol on Biosafety in 2000; and fulfilled the ratification requirements in 2003. In 2006, the Government adopted the Policy on Biotechnology, which stresses the role of biotechnology as a lever for poverty reduction, food security, and conservation of the environment. The policy identifies industry and trade as key areas for using biotechnology.

122. A National Biotechnology Awareness Strategy was developed in 2008 by the Ministry in charge of Science and Technology to promote public awareness, education, and participation. The Biosafety Act was adopted in 2009, and a National Biosafety Authority (NBA) was established in 2010. The roles of the NBA include receiving, reviewing, and making decisions on applications to introduce or develop biotechnology products for research or commercial purposes in Kenya. Supplementary regulations, the Biosafety (Contained Use) Regulations, 2011, the Biosafety (Import, Export and Transit) Regulations, 2011, and the Biosafety (Environmental Release) Regulations, 2011, were published in 2011 to fully allow trade and transportation, and deal with environmental issues regarding biosafety products. However, to date no genetically modified crops have been commercialized in Kenya.

123. Over the period 2005-06, due to outbreaks of Avian Flu, Kenya notified 26 emergency SPS measures to the WTO Committee on Sanitary and Phytosanitary Measures, restricting imports of domestic and wild birds, eggs, and bird-meat products, from affected countries listed in the OIE World Animal Health Information database. Kenya also notified, the prohibition, as from April 2010, of the importation of live sheep and goats from countries reporting scrapie, caprine arthritis/encephalitis (CAE), and bovine spongiform encephalopathy (BSE).[51] In 2010, an alert was issued on probable contamination of milk and eggs originating in China, following the detection of contamination with melamine. This required for full verification of the sanitary status of those commodities at the border inspection points.

124. In July 2010, Kenya notified to the WTO its requirements for importation of plants and plant products. These requirements include the need for a plant import permit (PIP), phytosanitary certificate, physical inspections, and adherence to IPPC ISPM No. 15 wood packaging standards for containerized cargo.[52]

(2) MEASURES DIRECTLY AFFECTING EXPORTS

(i) Procedures

125. The registration formalities for imports of goods for commercial purposes also apply to exports (see section (1)(i)). Export consignments of animals and animal products require an international veterinary certificate issued by the Director of Veterinary Services, at a fee averaging K Sh 500. For health-related products, certification is required on the premises where the product is processed, manufactured or stored prior to exportation. This certification is issued by the health authorities, for a fee of K Sh 1000. KEPHIS issues export permits, depending on requirements of the trading partner.

[51] WTO document G/SPS/N/KEN/29, 21 December 2009.
[52] WTO document G/SPS/N/KEN/30, 29 July 2010; and IPPC (2002).

(ii) Export taxes

126. In 2006, with a view to increasing value addition in the leather subsector, the Government increased the export taxes on hides and skins from 20% to 40%. According to the authorities, this policy has been successful in boosting Kenya's leather export; and almost all skins produced are semi-processed to wet blue or finished leather. The number of cottage industries and tanneries has also risen, resulting in noticeable jobs creation. Kenya also applies an export tax of 20% to scrap metal, to support local demand for metals.

(iii) Export prohibitions, restrictions, and licensing

127. The Third Schedule of the EAC Customs Management Act is the main legal basis for export prohibitions and restrictions (Common Report, Chapter III(2)(i)). The Minister in charge of Trade may amend the lists, by order in the *Gazette*. In October 2008, the Government placed a ban on the export of maize to prevent a further shortfall in its supply to the local market.

128. In 2010, through a G*azette* notice, the EAC Council of Ministers restricted the export of used automobile batteries, lead scrap, crude and refined lead, and all other forms of scrap metals, to support the region's demand for metals.

(iv) Export subsidies and incentives

129. According to the authorities, Kenya does not grant any export subsidy; and there has not been substantial change to export incentives over the review period.[53] However, three incentives schemes are available to Kenyan companies to encourage export-oriented activities: the Export Processing Zones (EPZ) Scheme, the Manufacturing Under Bond Scheme, and the Duty Remission Scheme.

130. The Export Processing Zones Authority (EPZA) administers the implementation of the Export Processing Zones (EPZ) Act, Cap 517 of the Laws of Kenya. The EPZA appraises applicants for EPZ developer/operator licences. It also reviews applications for business service permits on the basis of: the eligibility of the activity, the applicant's professional qualification and adequate experience to undertake the proposed business activity, and its financial and ethical standings. The main eligible activities are: export-oriented manufacturing or processing; export-oriented commercial activities, including bulk breaking, trading, relabeling, grading, and repacking; and export services including brokerage, repair, consultancy, and information.

131. The criteria against which the EPZ enterprises are evaluated include: job creation, technology transfer and skills training, development of new export products and new export markets, and backward linkages with the Kenyan economy. EPZ enterprises benefit from exemptions from all taxes and duties payable under the Customs and Excise Act and the Value Added Act on all imports for use in the eligible business activities, subject to the limitations on goods specified in the Second Schedule of the EPZ Act, and the conditions specified in the Customs and Excise Act and the Value Added Tax Act.

132. Over 40 gazetted zones in Kenya provide employment to some 32,000 persons, and contribute to 7.6 % of Kenya's exports (Table III.2). Some 50% of EPZ output is exported to the United States under AGOA.

[53] WTO document WT/TPR/S/171/KEN/Rev.1.

Table III.2
Performance of EPZ key indicators: 2006-11

Indicator	2006	2007	2008	2009	2010	2011
Gazetted zones (No.)	39	41	38	41	42	44
Enterprises operating (No.)	71	72	77	83	75	79
Employment – (Kenyans)	36,767	34,446	30,187	30,115	31,026	32,043
Employment – (expatriates)	649	511	471	508	476	421
Total employment	37,416	34,957	30,658	30,623	31,502	32,464
Total sales (K Sh million)	25,352	29,400	31,262	26,798	32,348	42,442
EPA exports to EAC countries (K Sh million)	882	1,013	1,527	768	1,425	1,895
Exports (K Sh million)	22,893	27,400	28,094	23,948	28,998	39,067
Domestic sales (K Sh. million)	1,403	1,421	2,536	2,214	2,389	2,553
Imports (K Sh million)	12,674	17,287	16,348	12,672	16,518	21,443
Investment K Sh million	20,320	19,027	21,701	21,507	23,563	26,468
Total domestic expenditure (K Sh million)	9,173	9,110	11,365	11,032	13,287	14,921

Source: Information provided by the Kenyan authorities.

133. According to the authorities, EPZs in Kenya are being transformed into special economic zones (SEZs). The SEZ programme will widen the scope of incentives to various eligible activities.

(v) Export finance, insurance, and guarantees

134. Kenya does not maintain a public export finance, insurance or guarantee scheme. Export finance and insurance is provided by private companies whose prices are market-determined. The Africa Trade Insurance Agency provides export credit guarantees to cover political risks.

(vi) Export promotion and marketing assistance

135. The Export Promotion Council (EPC) is the main institution in charge of the development and promotion of Kenya's exports. It has the mandate of coordinating and harmonizing export development programmes in Kenya. In collaboration with the Ministry in charge of Trade, the EPC develops annual export market development programmes to guide the participation of Kenya’s exporters in trade fairs and exhibitions in prioritized markets.

136. Among the other agencies involved are the Export Processing Zones Authority (EPZA), the Kenya National Chamber of Commerce and Industry (KNCCI), and sectoral producer and exporter associations, such as the Kenya Association of Manufacturers. Sectoral parastatals, such as the Horticultural Crops Development Authority, are also involved in export promotion activities.

137. A National Export Strategy (NES) was issued in 2003, for the period 2003-07. According to the authorities, the NES assisted in deepening markets for manufacturers in traditional markets, and expansion into new markets.

(3) MEASURES AFFECTING PRODUCTION AND TRADE

(i) Incentives

138. Kenya has not introduced noticeable changes to its investment incentives since 2006. These continue to include manufacturing under bond, export processing zones (section (2)(iv)), and investment allowances.

139. A number of government agencies provide agricultural extension services, e.g. promoting the use of certain species, veterinary services, plant, and tractor-hire services to small-scale farmers (Chapter IV(1)(ii)).

140. Various development institutions have provided long-term loans with soft conditions to industrial and commercial activities, including the Industrial Development Bank, Development Bank of Kenya, Industrial and Commercial Development Corporation, Kenya Tourism Development Corporation, and Kenya Industrial Estates.

141. Kenya has a number of agricultural research institutes, many of them focusing on specific produce (coffee, tea, sugar, etc.) (Chapter IV(1)). During the review period, the annual government funding to agricultural research institutes averaged some K Sh 2.1 billion. The Kenya Industrial Research Development Institute is the key agency for industrial R&D, and the main beneficiary of public funding (90% of total public funds).

(ii) Competition policy and price controls

(a) Competition policy

142. Until August 2011, competitive practices were regulated through the Restrictive Trade Practices, Monopolies and Price Control Act (Cap 504) (the RTPA). The Act provided for the control of restrictive trade practices, collusive tendering, monopolies and concentrations of economic power, and mergers and takeovers. In addition, it contained price-control measures, which, according to the authorities, were never used. Investigation of any infringement of the Act was the responsibility of the Monopolies and Prices Commission, which operated under the Ministry in charge of Finance. The Restrictive Trade Practice Tribunal, and the High Court, as last resort, served as appeal bodies. Between 2006 and 2011 the Monopolies and Prices Commission dealt with 51 cases of restrictive practices and 98 mergers and acquisitions cases.

143. The RTPA did not provide scope for avoiding conflicting jurisdiction with the numerous sector-specific regulators, in dealing with competition issues. In addition, an unclear definition of restrictive trade practices, and mergers, compounded by limited investigation powers vested in the Monopolies and Prices Commission, limited the effective enforcement of the RTPA. Among other weaknesses, the RTPA did not cover consumer welfare issues.

144. Kenya's Competition Act 2009, Cap 504, Laws of Kenya, was operationalized in August 2011, through a legal notice issued by the Minister in charge of Finance, which is responsible for competition policy formulation in Kenya.[54] The new legislation clearly fits within Kenya's Economic Recovery Strategy document, and its Medium-term Plan (2008-2012), which encourages the modernization of Kenya's competition policy institutional framework.

145. The Act provides for the establishment of an autonomous competition authority, the Competition Authority of Kenya (CAK), no longer under the Ministry in charge of Finance. The members are selected using competitive criteria; they are then vetted and approved by the Parliament. The primary jurisdiction of the Competition Authority is enforcement of the Competition Act. It will also study government policies and practices on competition and consumer welfare. The CAK comprises 19 professionals, and according to the authorities, more are to be hired in the near future.

[54] *Kenya Gazette* Supplement Notice No. 59, Legal Notice No. 73.

146. The Act also established a Competition Tribunal with the mandate of adjudicating appeals resulting from determinations of the Competition Authority.

147. Under Part IV of the Act, any merger or acquisition requires prior approval from the CAK. Approval is required irrespective of the relevant market share and similarities in the business of the parties to the merger. In order to promote transparency and predictability, the Authority published a Market Definition Guideline, to help estimate the relevant market share of parties.[55] Each of the parties involved in a merger is required by the Act to notify the CAK of the proposal, using the prescribed application form. The merger evaluation process by the Authority is time bound.[56] CAK makes a decision regarding a proposed merger within 60 days after receipt of the notification. Where CAK requires further information or deems it necessary to convene a hearing, it is required by the Act to make a decision within 30 days after receipt of the required information or conclusion of the hearing.

148. Under Part III of the Act, the CAK is responsible for regulating market conduct, i.e. restrictive trade practices, including abuse of market dominance. This is aimed at, *inter alia*, ensuring that prices are market-determined, and that there is no barrier to new entrants. A dominant position is where a single firm controls not less than half of the relevant market in Kenya; dominance is not considered at a lower share. However, refusal to grant IPRs is considered as an abuse if its object or effect is to limit competition by preventing, hindering or deterring entry or raising the costs of supply for other competitors. It is envisaged that regulations to enforce these provisions will be developed. Acts considered as abuse, when applied by dominant firms include: directly or indirectly imposing unfair purchase or selling prices; limiting production, market access, investment, distribution, or technological development; and applying dissimilar conditions to equivalent transactions with other trading parties. Consumer protection is also dealt with in the Competition Act, which requires, for example, prior notice to consumers in relation to any imposition of charges and fees by financial institutions. Consumers are protected against misleading advertisements and products that fall below prescribed safety standards. To facilitate the implementation of the provisions of the Act, consumer organizations are allocated various roles, such as receiving and investigating complaints, representing consumers before the Authority, providing consumer information, and notifying the Authority of infringements of the Act.

149. Exemptions are granted for certain restrictive practices aimed at, *inter alia,* promoting Kenya's exports, enhancing efficiency in production, and maintaining quality in services. CAK has developed guidelines to ensure clear enforcement of the exemption measures.

150. The Act mandates the Authority to negotiate agreements with any regulatory body (authorities in charge of sectoral regulation) in order to identify and establish procedures for management of concurrent jurisdiction and ensure consistent application of the principles of the Act. However, in case of conflict, disharmony or inconsistency, the determinations, directives, regulation, rules, orders, and decision of the Authority prevail.

151. In dealing with infringements and with notified mergers, the Authority may investigate on its own initiative or upon receipt of information or complaint from any person or government agency. Investigative tools rely on documentary review. The Act grants the Authority the power of entry and search of premises of firms suspected of infringement. The Competition Authority gives written notice of its proposed decision to each of the parties that may be affected. The parties may request an

[55] For the merger application and withdrawal forms see Competition Authority online information. Viewed at: http://www.cak.go.ke, February 2012.

[56] Competition Authority online information. Viewed at: http://www.cak.go.ke, February 2012.

oral representation to defend their position. The Authority may, to protect public interest, suspend any practice that is under investigation. In general, the Authority's final decision is published in the *Gazette*.

152. A person aggrieved by a decision of the Competition Authority may appeal in writing to the Competition Tribunal; if dissatisfied with the Tribunal's decision s/he may appeal to the High Court, within 30 days of notice of that decision being served. The decision of the High Court is final. Infringers of the Competition Act are liable to imprisonment for a maximum of five years, or a fine not exceeding K Sh 10 million, or both.

(b) Price controls

153. In general, prices in Kenya are market-determined (since the 1990s). Although the repealed Restrictive Trade Practices, Monopolies, and Price Control Act (CAP 504) had provisions regarding price controls, they were never applied. However due to persistent increases in prices of basic commodities, the Price Control (Essentials Goods) Act Cap 26, was enacted in 2011. The Minister charged with the implementation of the Act, may from time to time, by order in the *Gazette*, declare any goods to be essential commodities and determine the maximum prices of the commodities in consultation with the relevant industry.[57] The Act does not provide the criteria for identifying essential goods. The new Price Control Act is not yet in force.

154. Since 2010, Kenya has introduced a system of monthly fuel price controls. Maximum prices are determined on the 15th day of every month, and remain in force until the 14th day of the following month. The maximum wholesale prices and the retail pump prices of petroleum products are determined in accordance with the formula set out by the Energy Regulatory Commission (ERC). Water provision, electricity, reserved postal services, and interconnection services are also regulated in Kenya.

(iii) State-trading enterprises, state ownership, and privatization

(a) State trading

155. Kenya has notified to the WTO that it does not have any state-trading enterprises within the meaning of Article XVII of GATT 1994.[58]

156. The Agricultural Produce Marketing Act, Cap 320, which regulates the marketing of agricultural products, empowers the various marketing boards to market the goods under their responsibility. For instance, in the past, the Pyrethrum Board of Kenya (PBK), was actively involved in commercial activities. The Government has initiated a legal reform that seeks to restructure PBK by creating a separate regulatory arm, and an independent marketing agency.

157. Prior to the enactment of the Competition Act 2009, Kenya's Restrictive Trade Practices Act specifically exempted from its scope, commercial activities associated with exclusive trading privileges recognized by law, such as parastatals. Under the new competition framework, state corporations are governed by the Competition Act 2009, insofar as they engage in trade. According to the authorities, about 167 state corporations operate in Kenya, in: manufacturing; regulatory issues; services, including finance, education, research; and regional development. Some of these

[57] The Price Control (Essential Goods) Act No. 26 of 2011.
[58] WTO document G/STR/N/11//KEN, 27 March 2006.

corporations are 100% state owned (Table III.3). In addition, a number of companies operate under monopoly or exclusive rights.

Table III.3
List of selected state-owned companies

Enterprise name	Remarks/State of privatization as of May 2006
State-owned companies in which the State holds all the capital	
Kenya Pipeline Company	100%
Kenya Meat Commission	100%
New KICC	100%
Kenya Airports Authority	100%
Kenya Ports Authority	100%
Nyayo Tea Zones	100%
Pyrethrum Board of Kenya	100%
National Oil Corporation	100%
Kenya Railways Corporation	100%
Kenya Ferry Services	100%
Kenya Pyrethrum Board	100%
Semi-public companies in which the State holds a blocking minority	
Kenya Electricity Generating Company	50%
Kenya Petroleum Refineries	40%
Kenya Power and lighting company	48%
Kenya Reinsurance Corporation	60%
Telkom Kenya	49%
Semi-public companies in which the State holds less than a blocking minority	
Kenya Wine Agency	..
Mumias Sugar Company	20%
East African Portland Cement Company	27%
Pan African Paper Mills	34%
Telkom Kenya	49%

.. Not available.

Source: Information provided by the Kenyan authorities.

(b) Privatization

158. Until 2008, the regulatory framework for the privatization of public enterprises (PEs) was based on the Policy Paper on Public Enterprises Reform and Privatization, issued in 1992. This had identified 240 commercial PEs with public-sector equity participation: 207 were to be privatized; and 33 were to be restructured, due to their "strategic" standing. Strategic criteria for exclusion from privatization included national security, health, and environment protection. According to the authorities, 164 of the non-strategic PEs were privatized during the first phase of the programme (ending in 2002), and the number of strategic PEs was reduced to 14.

159. Five major state corporations were privatized during the second phase 2003-07: Kenya Electricity Generating Company; Kenya Reinsurance; Telkom Kenya; Kenya Railways; and Mumias Sugar Company, which was partially privatized. Safaricom Kenya Limited was privatized in 2008. Kenya's privatization process faced vibrant criticism during its second phase, due to its perceived lack of transparency. To address these difficulties, a new Privatization Act, enacted in 2005, entered into operation in 2008.

160. The Privatization Act, establishes a Commission responsible for *inter alia*, formulating, managing, and implementing privatization programmes. It is in charge of making a specific proposal for each privatization included in the privatization programme. The privatization proposal must be approved by the Cabinet, and presented to the Parliamentary Departmental Committee on Finance, Planning and Trade.

161. The Privatization Appeals Tribunal, to review complaints against Privatization Commission decisions, is yet to be established.

162. Privatization methods used in Kenya include: public offering of shares; concessions, leases, management contracts and other forms of public-private partnerships; negotiated sales resulting from the exercise of pre-emptive rights; sale of assets, including liquidation; and any other method approved by Cabinet.

163. In general, privatizations are open to Kenyans and non-Kenyans. However, the Minister in charge of Finance may direct the Commission to limit participation to Kenyans; a minimum level of participation by Kenyans may also be specified.

(iv) Public procurement

164. The Public Procurement and Disposal Act (PPDA), 2005, governs public procurement in Kenya. It entered into operation in January 2007, through the Public Procurement and Disposal Regulations, 2006. The Act has been amended to provide for the Public Procurement and Disposal (Public Private Partnership) Regulation, 2009 and the Public Procurement and Disposal (Preference and Reservations) Regulations, 2011.

165. The Public Procurement Oversight Authority (PPOA) was established in September 2007 to ensure that procurement procedures comply with the law; monitor the public procurement system and recommend improvements; assist in the implementation and operation of the procurement system; and initiate public procurement policy and amendments to the PPDA. The Public Procurement Oversight Advisory Board (PPAB) advises the PPOA on the exercise of its powers and the performance of its function; it is also in charge of approving the PPOA's revenue and expenditures estimates. The Public Procurement Administrative Review Board (PPARB) is an appeals mechanism; it is the continuation of the Public Procurement Complaints, Review, and Appeal Board, which used to operate under Kenya's previous Exchequer and Audit Act (Public Procurement Regulations, 2001).

166. Under Kenya's procurement legislation open tendering is the preferred procurement procedure. Alternative procedures comprise: restricted tendering, direct procurement, request for proposals, request for quotations, procedures for low-value procurements, and special procedures. The procedure to be followed depends on the class of the procuring entity (Table III.4) and the thresholds outlined in the Public Procurement and Disposal Regulations, 2006 (Tables AIII.2, AIII.3 and AIII.4). International tendering is used where the participation of foreign entities is necessary for an effective competitive process.

167. In open tendering, the tender must be advertised at least twice in a newspaper of nationwide circulation, as well as in other relevant publications. This should include one or more English-language newspapers or other publications that have sufficient circulation outside Kenya, for international tendering.

168. The splitting of a procurement contract is prohibited. The Regulations provide for preferential margins of up to 15%, depending on the level of national participation in the capital of the bidder. However, Kenyan citizens receive exclusive preferences for procurement of goods and services of up to K Sh 50 million (approximately US$74,700), and of works up to K Sh 200 million (approximately US$2,983,000), and road work up to K Sh 500 million.[59]

Table III.4
Classification of public entities for procurement procedures

Class A	Class B	Class C
State corporations	City councils (Nairobi, Mombasa, Kisumu)	Other local authorities (municipal, county, town councils)
Ministries	Cooperative societies	Schools
	Universities	District hospitals, sub-district hospitals
	Colleges	Health centres/dispensaries
	Districts	Polytechnics
	Provincial hospitals	Constituency development fund committees
	Semi-autonomous government agencies	
	Commissions	

Source: Public Procurement Regulations, 2006.

169. In 2007, the main findings of the OECD-DAC Methodology for Assessment of National Procurement Systems (version 4) revealed that integrity and transparency in Kenya's public procurement system had improved somewhat. This followed the establishment of an internal audit mechanism, which allows the Internal Auditor General (IAG) to undertake internal control of public entities. In addition, a review and appeals mechanism, with clear enforcement systems is in place in Kenya. The PPARB deals with complaints related to public procurements. Its decisions may be appealed to the High Court within 14 days.

170. Despite the noticeable progress no entity has been given a clear mandate to control procurement. Although the IAG bridges this gap, its work remains too broad to address the specific public procurement issue effectively, and auditors tend to lack proficiency in procurement-related matters.

171. Figures regarding the volume of purchase are not available.

172. Kenya is neither a signatory nor an observer to the WTO Plurilateral Agreement on Government Procurement.

(v) Intellectual property rights (IPRs)

173. Kenya is a contracting party to the main regional and international treaties and agreements on IPRs, including some of those administered by the World Intellectual Property Organization (WIPO), the African Regional Intellectual Property Organization (ARIPO), and the International Union for the Protection of New Varieties of Plants (UPOV).[60] In January 2008, Kenya became a signatory to the Convention for the Safeguarding of Intangible Cultural Heritage; and, in June 2008, it became a signatory to the Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

[59] PPOA (2006).
[60] WTO document WT/TPR/S/171/KEN/Rev.1.

174. The Kenya Industrial Property Institute (KIPI) is the contact point for matters regarding industrial property; the Kenya Copyright Board (KECOBO), is responsible for copyright issues and related rights; and KEPHIS is in charge of plant breeders' rights.[61]

175. Over the review period, the main change in Kenya's IP framework was the enactment of the Anti-Counterfeit Act (No. 13) 2008. However, its full implementation was restricted by the Constitutional Court, which ruled that some provisions of the Act limit access to affordable and essential drugs including generic medicines for HIV/AIDS. As a consequence, the Court has urged Kenya's Parliament to review the Act in order to remove ambiguities that could result in arbitrary seizures of generic medicines under the pretext of fighting counterfeit drugs. The Anti-counterfeit Agency has filed an appeal against this ruling.

176. The other IP-related issues have changed significantly changed since 2006 (Table III.5).

Table III.5
Overview of IPR protection, 2012

Subject and main legislation	**Coverage**	**Duration**	**Selected exclusions and limitations**
Industrial designs Industrial Property Act, 2001	Any composition of lines or colours or any three-dimensional form that gives a special appearance to and serves as a pattern for a product of industry or handicraft	5 years from filing date; renewable up to 2 consecutive periods of 5 years	Anything in an industrial design serving solely to obtain technical result; industrial designs that are contrary to public order or morality are not registrable
Patents and utility models Industrial Property Act, 2001	Patents: any product or process that is new, involves an inventive step, and is industrially applicable Utility models: any product or process that is new and industrially applicable	20 years from filing date 10 years from the granting date, not renewable	The following are not considered inventions: discoveries, scientific theories, and mathematical methods; schemes, rules or methods for doing business, performing purely mental acts or playing games; methods for treatments of the human or animal by surgery or therapy, as well as diagnostic methods practised in relation thereto; mere presentation of information; and public health related methods of use of any molecule or other substance used for the prevention or treatment of diseases designated by the Health Minister The following are non-patentable: plant varieties as provided for in the Seeds and Plant Varieties Act; and inventions contrary to public order, morality, public health and safety, principles of humanity, and environmental conservation Rights are limited by the terms of the patent; provisions on compulsory licensing or state exploitation of patented inventions; and extend only to acts done for industrial or commercial purposes (e.g. not to scientific research)
Trade marks Trade Mark Act, 2002	Goods and services: mark includes a distinguishing guise, slogan, device, brand, heading, label, ticket, name, signature, word, letter or numeral or any combination thereof whether in 2- or 3- dimensional form	10 years, renewable indefinitely in 10-year intervals	

Table III.5

[61] WTO document IP/N/3/Rev.11, 4 February 2010.

Subject and main legislation	**Coverage**	**Duration**	**Selected exclusions and limitations**
Copyrights and related rights Copyright Act No. 12, 2001	Literary works, musical works, artistic works, audio-visual works, sound recordings, and broadcasts	Moral rights: non-transmissible during the author's life Economic rights: the author's life plus 50 years Related rights: 50 years from the date of making, recording, or broadcasting	Rights exclude control over, *inter alia*: fair dealing for the purpose of scientific research, private use, criticism or review, or the reporting of current events subject to acknowledgement; incidental inclusion in a film or broadcast; inclusion in a collection of literary or musical works of not more than two short passages with an acknowledgement, for use in a school or university; broadcasting if intended for purposes of systematic instructional activities; and reading or recitation in public or in a broadcast by one person of any reasonable extract if accompanied by a sufficient acknowledgement
Geographical indications Trade Mark Act, 2002	A description or a representation used to indicate the geographical origin as (in relation to goods or services), in the territory of a country or a region or locality in the territory, where a given quality, reputation or other characteristics of goods or services are exclusively or essentially attributable to geographical environment including natural factors, human factors or both	Indefinite	Indications are not protected: that do not correspond to their definition; that are contrary to public order or morality; and that are not or cease to be protected in their country of origin, or that have fallen into disuse in that country
Plant varieties The Seeds and Plant Varieties Act, Cap 326, 1972	Plant varieties that are sufficiently distinguishable, sufficiently varietal, pure, sufficiently uniform or homogenous, and stable in their essential characteristics	25 years	Scientific or research purpose, and use outside Kenya (seeds)

Source: Information provided by the Kenyan authorities.

(a) Industrial property

177. The Industrial Property Act, 2001 provides for granting and registration of patents, utility models, technovations, and industrial designs in Kenya. The KIPI's mandate includes: considering applications for and granting industrial property rights, screening technology-transfer agreements and licences, providing industrial property information for technological and economic development to the public, promoting local inventiveness and innovativeness, and offering training in industrial property to the public. It is also responsible for implementation of the Industrial Property Act, 2001 and the Trade Mark Act Cap 506 of the laws of Kenya. A draft amendment, to the Industrial Property Act, 2001, is in progress to, *inter alia*, avail Kenya of the flexibilities enshrined in the TRIPS Agreement, and to enhance local manufacturing capacity in patent application.

178. In 2007, the KIPI issued guidelines on the practices and procedures to be followed in examining and processing industrial property applications for the grant of patents, and registration of utility models and industrial designs. In general, applications for industrial property rights have shown a mixed trend during the review period (Table III.6).

179. The Act allows for compulsory licensing and parallel imports. In 2007, a proposal to limit provisions on parallel imports was rejected by the Kenyan Parliament. The main reason given by the authorities was the need to facilitate access to affordable generic medicines by Kenyans, without seeking permission from drug patent rights holders. Meanwhile, the Pharmacy and Poisons Board

(PPB), under the Ministry in charge of Health, has developed guidelines for parallel importation of patented medicines. A person or company that wishes to undertake parallel imports must apply to the PPB to be registered as a parallel importer; an import permit is also required.

Table III.6
Applications and registrations of patents, industrial designs and utility models, 2006-10

	Applications (number)					Registrations (number)				
Year	**2006**	**2007**	**2008**	**2009**	**2010**	**2006**	**2007**	**2008**	**2009**	**2010**
National and international patents										
By residents	41	41	63	48	77	5	4	5	6	4
By non-residents	2	6	0	6	2	6	1	4	5	3
By non-residents (PCT)	39	85	89	117	118	18	12	33	76	47
Total	**82**	**132**	**97**	**171**	**197**	**29**	**17**	**42**	**87**	**54**
Industrial designs										
By residents	54	42	39	76	69	34	16	33	90	39
By non-residents	18	32	10	14	7	13	19	15	13	11
Total	**72**	**74**	**49**	**90**	**76**	**47**	**35**	**48**	**103**	**50**
Utility models										
By residents	19	16	18	29	28	4	2	3	2	5
By non-residents	0	0	1	1	0	0	0	0	0	0
Total	**19**	**16**	**19**	**30**	**28**	**4**	**2**	**3**	**2**	**5**

*Source:*Kenya Industrial Property Institute (2011).

180. Under the Trade Mark Act, any mark (including names, signatures or words) may be registered with KIPI. Trade mark protection may be obtained through registration or use. However, the authorities encourage registration to avoid conflict with identical or confusingly similar trade marks.

181. Well-known trade marks are protected under the Act. However, no specific interpretation of well-known is provided. Trade mark registrations are possible nationally or internationally (Madrid System) (Table III.7).

Table III.7
Registration of trade marks

	Applications (number)					Registrations (number)				
Year	**2006**	**2007**	**2008**	**2009**	**2010**	**2006**	**2007**	**2008**	**2009**	**2010**
By residents	1,228	1,428	1,372	1,675	2,031	1,305	1,073	1,211	1,159	1,360
By non-residents	691	752	753	778	895	1,410	829	901	840	992
Total	**1,919**	**2,180**	**2,125**	**2,453**	**2,926**	**2,715**	**1,902**	**2,112**	**1,999**	**2,352**
Madrid designations	1,637	1,445	1,719	1,440	1,376	1,637	1,445	1,719	1,440	1,376

*Source:*Kenya Industrial Property Institute.

182. Currently, geographical indications (GIs) may be protected as collective marks under the Trade Mark Act. Kenya is considering a law to improve its system for the registration of GIs. A collective mark, "ECHUCHUKA", was registered in 2006 for aloe-vera cosmetic products by the agricultural community living around Lake Turkana. Geographical indications (GIs) from other countries may also be protected as collective marks under the Trade Mark Act.

(b) Copyrights

183. Under the Copyright Act 2001 (recently renamed Cap 130, Laws of Kenya), KECOBO is in charge of administering and enforcing copyright and related rights in Kenya. KECOBO is an autonomous government agency reporting to the State Law office. KECOBO is responsible for, *inter alia*, investigations, enforcement, and prosecution of copyright cases; voluntary registration of copyright works, and licensing and overseeing collective management organizations (CMOs) in Kenya; and training and advising the Government and law-enforcement officers and right-holders. Copyright protection in Kenya is not dependent on registration. However, KECOBO maintains a databank of authors that apply for voluntary registration of copyright works. The databank has over 4,000 registrations.

184. Collective management organizations (CMOs), established under the Copyright Act, are corporate agents of copyright owners of musical productions and performances, audiovisual performances, and book reprography. The CMO's principal obligations are: to monitor the use of copyright works; to negotiate the terms of such usage; to collect royalties and distribute them to copyright owners; and to take legal action in cases of non-payment of royalties. With some 5,000 members, the Music Copyright Society of Kenya (MCSK) is the main CMO for authors, composers, publishers of music, and musicians in Kenya. Other CMOs in Kenya include: Kenya Association of Music Producers, representing music performers; and the reprographic Society of Kenya (KOPIKEN) representing publishers and book authors.

185. Under the Copyright Act, importation of copyright-protected works without the permission of the right holder is not allowed. However, the Government or any public library (only not-for-profit documentation centers), and scientific institutions may, in order to serve the public interest, order the reproduction of a copyright work.

(c) Plant variety protection

186. The Seeds and Plant Varieties Act, Cap 326 of the Laws of Kenya, 1972, governs the protection of new plant varieties in Kenya. Under the Ministry of Agriculture, KEPHIS is in charge of administering all issues related to the protection of new plant varieties.

187. Plant breeder’s rights do not apply to all plant species in Kenya. They are granted, in respect of species or groups specified by the Minister in charge of Agriculture, after consulting with all interested stakeholders. Under the Act, the breeder’s right covers the protected variety itself; varieties that are not clearly distinguishable from the protected variety; and varieties whose production requires repeated use of the protected variety. However, varieties resulting from modern technology are not protected.

(d) Enforcement

188. Prior to the enactment of the Anti-Counterfeit Act, in 2008, various government agencies, including KECOBO, the KIPI, the KEPHIS, the Attorney General's Office, the police, Customs, and the judiciary, were involved in the enforcement of IPRs, with limited coordination. The fight against IPRs infringing products was regulated by various laws, and IPR infringement cases could be brought before the Industrial Property Tribunal and/or the courts.

189. Since the previous Review of Kenya, however, the authorities and relevant stakeholders have undertaken efforts to eradicate counterfeit and piracy. Microsoft and Kenya Copyright Board made

joint raids on several businesses, suspected of using unlicensed software. A number of IPR-infringing products were confiscated and appropriate action taken against offenders.

190. The 2008 Anti-counterfeit Act establishes the Anti-counterfeit Agency. The Act prohibits counterfeiting, trade and all other dealings in counterfeit goods, and has provisions for higher penalties for counterfeits and piracy. The agency was formally established in June 2010, and it started operations within the Ministry of Industrialization. The agency is in charge of coordinating organizations involved in combating counterfeiting. Anti-counterfeit regulations were also issued in 2010 to deal with the operational aspect of combating counterfeits.

191. Any administrative or judicial action undertaken to terminate the production of counterfeit goods, or to prevent infringement, where it is imminent, may be initiated by the owner of an IPR, his successor, his licensee, or his agent; or by the Executive Director of the Anti-Counterfeit Agency. In the case of imports of counterfeit goods, the right-owner may apply to the Commissioner of Customs, who may decide to seize or detain the goods.

192. Any infringement of an IPR constitutes a punishable offence. For a first offender, there is a fine of at least 3-times the value of the prevailing retail price of the goods and/or imprisonment for a term not exceeding 5 years. A repeat offender is subject to a fine of at least 5-times the value of the prevailing retail price of the goods and/or imprisonment for a term not exceeding 15 years.

193. Pirated and counterfeited products in Kenya are mostly imported. They include pharmaceuticals, textile products, cosmetics, electrical and electronic goods, and computer programs.

IV. TRADE POLICIES BY SECTOR

(1) AGRICULTURE

(i) Main features

194. Agriculture (including livestock, forestry, and fisheries) is the backbone of Kenya's economy. It provides livelihood for over 80% of the rural population, and accounts for more than 50% of export earnings, led by coffee, tea, tobacco, cotton, sisal, pyrethrum, horticulture, and cashew nuts. Exports of fruits, flowers, and vegetables are also increasing in importance. Beans, cassava, potatoes, maize, sorghum, and fruit are harvested mainly as subsistence crops. As a consequence of volatile production, agriculture's contribution to overall GDP has been unstable in recent years. About 84% of land in Kenya is arid or semi-arid, and not suitable for rain-fed farming, due to low and erratic rainfall. However, this land serves for livestock farming, including meat and milk production.

195. While agriculture registered remarkable growth performance in 2005 (6.9 %), output dropped dramatically in 2008 (-5.0 %) and 2009 (-1.4 %). Post-election unrest, together with high input prices and low demand for cash crops in the context of the global economic crisis were the main factors behind the poor performance. In 2010, the sector expanded significantly, with real growth of 6.3%. This was a consequence of favourable weather conditions, and improved prices for some key agricultural exports, such as tea and coffee. Furthermore, government intervention, through its National Accelerated Agricultural Inputs Access Programme (NAAIAP), played a significant part, by providing free maize seeds (10 kg) and fertilizers (50 kg) to some 100,000 poor farmers. The Government has also provided drought resistant seeds, through the "orphan" crops programme, to farmers in the arid and semi-arid areas in order to enhance crop production in these areas. These crops include sorghum, millet, cowpeas, green gram, dry land maize hybrids, and katumani maize seeds.

196. Kenya's agriculture sector directly influences its overall economic performance through its contribution to GDP. Periods of increased agricultural growth have been associated with high economic growth rates. In addition, given that most of the vulnerable groups depend on agriculture as their main source of livelihood, agricultural performance is a key to poverty reduction.

197. The sector is dominated by small-scale farming, which contributes about 75% of the total value of agricultural output, and about 85% of total agricultural employment. There are an estimated 3 million smallholder farms in the country.[62]

198. The agriculture sector faces several challenges. Its reliance on rain-fed agriculture, compounded by poor irrigation systems (with less than 7% crop land irrigated), has led to increasing episodes of food insecurity in the country. In addition, the use of inappropriate technology, due to weak linkages between agricultural research bodies and farmers, lack of information on suitable quality of inputs and their high cost, and poor infrastructure, negatively affects productivity and competitiveness.

(ii) Policy developments

199. Public resource allocations to agriculture remain low, at approximately 4.5% of the government budget. Investments and budget allocations to the sector are spelt out in the Strategy for Revitalizing Agriculture (SRA 2004-2014), Agricultural Development Strategy (ASDS, 2009-2020),

[62] KIPPRA (2004).

and the first Medium-term Plan for Vision 2030, which identifies agriculture as a key sector, and provides for seven flagship projects: land use master plan, irrigation plan, livestock disease-free zones, fertilizer cost-reduction project, legal reform, branding of Kenya farming products, and improved land governance. These projects are further elaborated under the ASDS. The Vision 2030 Plan and the ASDS were developed to tackle issues raised when the SRA was reviewed. According to the authorities, all interested stakeholders are fully involved in strategy formulation processes, and all programmes incorporate a monitoring and evaluation mechanism. The primary objective of the strategies is to provide a policy and institutional environment that is conducive to increasing agricultural productivity, promoting investment, and encouraging private-sector involvement in agricultural enterprises and agri-business.

200. The multiplicity of taxes and levies constitutes one of the main constraints to Kenya's agriculture. Since 2006 the various taxation laws and regulations in the key agriculture subsectors have been under review. In addition, the issue of taxation was addressed in chapter V of the SRA document, which proposed major reforms that would encourage investment in agriculture. Reforms have yet to address the numerous and fragmented pieces of legislation, including on many supporting institutions. The authorities estimate that some 130 acts govern the agriculture sector; and the Agricultural Sector Coordination Unit (ASCU), together with the Parliamentary Committee on Agriculture, Livestock, and Fisheries envision condensing these into fewer than 10, without undermining their completeness.

201. Access to credit is expected to improve in some aspects regards, following aggressive reforms in Kenya's financial sector, notably the adoption of legislation on microfinance and a credit information-sharing mechanism (section (4)(i)). However, the limited use of land as collateral and the high risk associated with agricultural activities in Kenya remain challenges to accessing credit in agriculture.

202. The Agricultural Finance Corporation (AFC), a government-owned financial institution, provides short and long-term financing to a variety of agricultural operations, mainly dairy, maize, wheat farming, and mechanization development. Estimates indicate that only 15% of the funding has been used on small-scale farms. In addition Kenya Livestock Finance Trust is supporting livestock enterprises with credit.

203. The average MFN tariff in agriculture (ISIC Rev.2 definition) is 17.7%, with rates ranging from zero to 100%. On average, the CET rates are particularly high on dairy products (45.4%), and sugar products (39.5%). During the Uruguay Round, Kenya bound its tariffs on agricultural products (WTO definition) at a ceiling rate of 100%.

204. Kenya did not grant any export subsidies to agricultural products during the review period.

205. Kenya's new Constitution provides for the revision, consolidation, and rationalization of the large number of land laws that have made the land regime more complex than necessary. In May 2012, the National Land Commission Act, the Land Act, and the Land Registration Act were signed into law. The Land Act is expected to streamline the registration of land titles.

(iii) Selected products

(a) Crops

206. In its initial stage, the SRA emphasized reviving six crops (i.e. coffee, cotton, pyrethrum, cashew nuts, bixa[63], and sugar cane); improving performance of maize, tea, horticulture, wheat, potatoes, dairy and beef products, and oilseeds; and introducing other high-value crops such as palm oil, vanilla, and aloe vera.[64] Reforms in this regard include the revision of policies and laws for these priority crops. The related activities are coordinated through the High Value Crops Division in the Ministry in charge of Agriculture.

Food crops

207. Food crops consist of cereals (maize, wheat, sorghum, rice, millet); pulses (beans, pigeon pea, cowpea, chickpea, green gram); and roots and tubers (sweet potato, Irish potato, cassava, arrow root and yam). Food crops account for 32% of agricultural GDP, but provide only 0.5 % of export earnings.

208. In general, food crop production (mainly maize and potatoes) deteriorated between 2007 and 2010, but improved in 2010, following the overall pattern in agriculture. However, production of other food crops, particularly legumes and root crops, has not performed well, due to the combination of heavy rains, pests, and diseases, and lack of quality planting material.

209. The work of the National Cereal and Produce Board (NCPB) includes running commercial activities, through marketing of grain and agricultural inputs; maintaining a strategic grain reserve (SGR) stock, of up to four million bags, on behalf of the Government to be used for food security; and maintaining famine relief food stocks in deficit areas.

210. The Kenya Agricultural Commodity Exchange (KACE), which is a private company, supplies information on the availability and prices of a wide range of commodities, and links buyers and sellers in domestic and global markets. The main activities of KACE include linking farmers and mainstreaming buyers. Modern information communication technology has facilitated this, through short message service (SMS), interactive voice response (IVR) service, daily radio bulletins, a live radio auction service and online computer services. Trading activities are through competitive bids and offers, with KACE acting as a clearing house and arranging the financial and logistical aspects of the sale.

211. Imports of maize, wheat, sorghum, and millet are subject to CET rates of 25%; and rice imports to 75%.

Cash crops

212. Kenya's main cash crops are tea, horticulture products, pyrethrum, coffee, and sugar cane. Kenya accounts for 10% of total global tea production and 21% of global tea exports. The tea industry contributes to about 14% of the agricultural GDP, which is equivalent to 4% of Kenya’s GDP. An estimated 3 million Kenyans derive their livelihood from the tea industry. Currently, tea ranks second as a foreign exchange earner after tourism accounting for 26% of total foreign exchange earnings.

[63] Bixa contains some bixin, which is used as a natural food colour.
[64] Ministry of Agriculture (2004).

213. Over 80% of Kenya tea is sold through dollar-based auctions in Mombasa. The auctions are conducted under the auspices of the East African Tea Trade Association (EATTA), whose membership includes brokers, buyers, producers, warehousemen, and packers. The remaining tea production is sold directly through private arrangements with international tea importers.

214. The tea industry consists of: estate plantations, with production units larger than 20 ha; and smallholders, with units averaging only 0.25 ha per farmer. Smallholders continue to dominate tea production, with 65% of area and about 62% of production, although average productivity is higher in large estates, due to better use of technology, inputs, and economies of scale.[65]

215. The main laws governing the tea industry are the Tea Act, Cap 343, and the Kenya Tea Development Authority Order. The Tea Board of Kenya (TBK) regulates all aspects of tea growing, research, manufacture, trade, promotion, and dissemination of information. It also advises the Government on policy matters, through the Ministry in charge of Agriculture. The Kenya Tea Development Authority (KTDA) manages 62 tea factories on behalf of farmers, charging a management fee fixed at 2.5 % of the proceeds of total sales. The Kenya Tea Growers Association (KTGA) was established as a trade union to lobby for better prices for tea farmers. Other organizations involved are: the Nyayo Tea Zones Development Corporation, a parastatal established to manage the tea belts around the forest zones; the Tea Research Foundation of Kenya (TRFK), the technical arm of TBK; and the Kenya Tea Packers (KETEPA), a leading packer in the country.

216. The TBK collects duties on processed tea deliveries by all registered tea factories, at K Sh 0.46 cents per kg of processed tea. The revenue is used to finance TBK and the TRFK on a 50/50 basis. The TBK is mandated to collect an agricultural produce cess on green leaf production on behalf of the local authorities where tea is produced, disbursing it to the District Tea Road Committees for road infrastructure maintenance. In addition, several other levies and charges continue to apply to tea producers in Kenya (Table IV.1).

Table IV.1
Taxes and levies directly or indirectly affecting tea growers

Levy	Collecting agent	Level
Agricultural produce cess	Local government	1% of the value of green leaf
Value-added tax (VAT)	Government	16% of sales value
Corporate tax	Government	30% of net profit
Directorate of Industrial Training levy	Directorate of Industrial Training	K sh 300 per employee
Standards levy	Kenya Bureau of Standards	0.2% of value of processed tea ≤ K sh 400,000
Environmental impact assessment levy	National Environmental Management Agency	0.1% of investment
Inspection fee	Kenya Plant Health Inspectorate Service	3,000 per consignment
Import duty on packaging material	Government	25% of the c.i.f. value
Import declaration fee	Government	2.75% of import value
Furnace oil taxes	Government	Excise duty of K sh 0.6 per litre and 16% VAT
Brokerage fee	Tea broker	0.75% of growers proceeds of processed tea
KTDA management agency fee	KTDA	2.5% of net sales
Land rates and rents	Local government	0.3-0.75% of undeveloped value
Ad valorem levy	Tea Board	1% of custom value of imports and exports

Source: Information provided by the Kenyan authorities.

[65] NZuma (2010).

217. Incentives are available for tea processing and packaging for export under the manufacturing under bond and export processing zones programmes (Chapter III(2)(v)). The import tariff on tea and tea products is 25% (up from 15% in 1999), the maximum rate of the CET.

Coffee

218. Coffee production declined in 2009 and 2010 as a consequence of bad weather conditions (cold conditions). Small-scale farmers, organized into cooperatives, continue to account for the majority of coffee production (70% of the total). Coffee is marketed through computerized auctions at the Nairobi Coffee Exchange, and through direct sales. Almost 99% of Kenyan coffee is exported, mainly to Europe, particularly Germany and Sweden. The import tariff on coffee and coffee products is 25%, the maximum rate of the CET.

219. The 2001 Coffee Act provides the legal framework for the subsector. The Coffee Board of Kenya (CBK) is the regulatory body and issues licences to marketing agents, which are legally allowed to participate in the coffee auction. The Kenya Planters Cooperative Union (KPCU) is the main coffee miller in the country. However, its dominance has decreased recently, after the Coffee Board licensed nine additional millers (Central Kenya, Nyambene, Thika Coffee, Kofinaf, CMS, NKG, Sasini, Gusii, and Kenya Co-operative Coffee Millers Ltd). Other organizations involved in the industry are: the Coffee Research Foundation (CRF), financed by CBK through a levy on coffee proceeds; and the Mild Coffee Trade Association of East Africa (MCTA), a regional association of coffee dealers. The Government has recently established a Coffee Development Fund (CoDF) as a source of credit to assist coffee growers to improve their production activities. According to the authorities, CoDF funds are loaned to farmers at an interest rate of 10%. Funding is mainly provided for farm operations geared toward increasing coffee production and quality, coffee rehabilitation, and for coffee processing.

220. Horticulture is among the leading contributors to agricultural GDP (at 33%), and continues to be the fastest growing subsector.[66] It is the third-largest foreign exchange earner, after tourism and tea. Its export performance increased from K Sh 56.7 billion to K Sh 72.09 billion in 2007 and 2010 respectively.[67] Compared with other agriculture subsectors, horticulture has minimal state intervention.

221. Flower production and its marketing chain are dominated by medium-size and large companies, which account for some 70% of total exported volume. Smallholders (with an average of 2-20 ha) face many constraints related to post-harvest handling, marketing, and access to capital. Around 80% of vegetables and fruit production is by small-holders.

222. The Horticultural Crops Development Authority (HCDA) is the Government's regulatory agency for the horticultural subsector. It collects a registration fee of K Sh 5,000 from dealers engaged in horticulture. In addition, it imposes various levies and charges on horticulture-related activities and products: an export levy of K Sh 0.30 per kg; an import levy of K Sh 1 per kg; and a nursery registration fee of K Sh 500 for those engaged in tissue culture propagation. The Fresh Produce Exporters Association of Kenya (FPEAK) and the Kenya Flower Council (KFC) are in charge of, *inter alia*, organizing export promotion activities; providing market information on export products and their destinations; and helping their members to meet the quality standards of the importing countries.

[66] Ministry of Agriculture, National Horticulture Policy, Nairobi (2010).
[67] KNBS (2011).

Sugar

223. Kenya's sugar sector is dominated by small-scale farmers, who supply over 85 % of the cane milled by the sugar companies. It provides jobs for an estimated 12,500 Kenyans in sugar plantations and sugar factories. Some six million Kenyans derive their livelihood directly or indirectly from the sugar industry.

224. Domestic demand for sugar consumption has steadily increased in recent years, while exports have continued to shrink markedly (Table IV.2).

Table IV.2
Production and consumption of sugar, 2006-10
('000 tonnes)

	2006	2007	2008	2009	2010[a]
Production	475.7	520.4	517.7	548.2	523.7
Consumption	718.4	741.2	751.5	762.0	772.7
Imports	166.3	230.0	218.6	184.5	258.6
Exports	13.5	20.8	44.3	2.0	0.1
Sugar cane production	4,932,839	5,204,214	5,112,040	5,610,702	5,709,586
Average yield (tonnes/ha)	70.89	70.87	72.94	65.21	63.55

a Provisional.

Source: Kenya Sugar Board.

225. The sugar industry has several difficulties including lack of regular factory maintenance, poor transport infrastructure, and weak corporate governance. This has led to high costs of production in the industry, making it unable to compete at regional level. During the 2008/09 season, the average cost of production per tonne of sugar was US$428 in Kenya, compared with an estimated US$263 for its competitors in the region.[68] As a result, following the expiration of the 2008 deadline, Kenya was allowed to continue to apply non-preferential tariffs on sugar from other COMESA members until March 2014, to protect the local sugar production.

226. The 2001 Sugar Act provides the legal framework for licensing and registration of sugar mills, importers, and exporters; funding; the role of stakeholders; revenue sharing between growers and millers; and dispute resolution. Under the Act, the Kenya Sugar Board is the regulatory body; the Act also established the Kenya Sugar Research Foundation (KESREF). Other organizations involved in the industry are: the Kenya Sugar Manufacturers Association (KESMA), through which millers negotiate sugar-cane prices with growers; the Kenya Sugarcane Growers Association (KESGA), through which growers negotiate prices with millers; the Kenya Society of Sugarcane Technologists (KSSCT); and the Kenya National Sugarcane Growers and Employers Association (KNSGEA).

227. In July 2005, Kenya unveiled its strategy for revitalizing the sugar industry. Some of the key measures envisaged are: review of the 2001 Sugar Act to facilitate the smooth operation of the subsector; appointment of the KSB as the agent of the Kenya Roads Board for development of infrastructure in the sugar zones; financial restructuring and privatization of all state-owned sugar companies; and appropriate tax incentives at all levels to attract new investment. The Kenya Sugar Industry Strategic Plan (2010-2014) aims to give the industry a strategic direction over the Plan's

[68] Kenya Sugar Industry Strategic Plan (2010-2014), 2009.

period with the view to increasing the effectiveness and efficiency of operations in the sugar industry through privatization of operations.

228. The Sugar Development Fund (SDF) is financed through a 7% levy on the value of locally produced sugar and imports. The levy is used for: factory rehabilitation (3%); cane development (2%); infrastructure (1%); grants to research (0.5%); and KSB administration (0.5%). It also provides grants for KSB and KESREF operations, and development of infrastructure. The Kenya Revenue Authority (KRA) collects the levy on behalf of the KSB.

(b) Livestock

229. The livestock subsector accounts for 40% of agricultural GDP (10% of the overall GDP). It provides substantial foreign exchange through exports of live animals, hides and skins, dairy products, and some processed pork products.[69] It also employs 50% of the overall agricultural labour force.

230. Around 30% of Kenyans live in the arid and semi-arid lands, where animal industry provides employment for 90% of the labour-force, and livelihoods are livestock-based. Processing of livestock products remains marginal, making it difficult for farmers to improve their incomes, and limiting employment opportunities.

231. According to a livestock census, carried out in 2009 alongside the human census, Kenya's livestock comprises 29 million birds; 17.4 million cattle; 17.1 million sheep; 27.1 million goats; 2.9 million camels; 1.8 million donkeys; 334,689 pigs; and 1.8 million occupied bee hives. Emerging livestock farming in recent years includes the rearing of crocodiles, ostriches, quails, snakes, and frogs, to supply the tourist industry and for export.

232. The main trade in the subsector comprises live animals of various species, meat, dairy products, honey, hides, skins, and leather.

233. Most of the meat is consumed locally. Annual exports during the review period averaged 785 tonnes of beef, 1,500 tonnes of pork, 14 tonnes poultry meat, 26 tonnes of mutton, and 11 tonnes of goat meat. The main meat export markets are Qatar, United Arab Emirates, and Egypt.

234. Milk factories are registered with the Kenya Dairy Board (KDB), the regulatory body. The 6 major dairy processing plants operate under a licence from the Kenya Dairy Board are: Kenya Cooperative Creameries, Brookside Dairy, Githunguri Dairy Farmers Cooperative Society, Meru Central Dairy, Raka Milk Processors, Limuru Milk Processors; there are also other smaller plants.

235. Milk production increased significantly in 2009 (406.5 million litres) and 2010 (515.7 million litres), following the high rainfall in milk-producing areas (Table IV.3). Kenya exports dairy products to Europe, the Middle East, and Africa; long-life (UHT) milk is the leading export. Most milk is consumed in the domestic market: exports averaged one million litres per year during the review period. According to the authorities, the National Livestock Policy aims at improving and enforcing compliance with international health and safety measures, strengthening extension services, and promoting value addition and marketing.

236. Hides and skins are subject to export taxes (Chapter III(2)(ii)).

[69] KIPPRA (2010).

Table IV.3
Production and sale of livestock and dairy products, 2006-10

	2006	2007	2008	2009	2010[a]
Recorded milk production (million litres)	360.1	423.1	398.5	406.5	515.7
Processed milk					
Whole-milk and cream (million litres)	225.0	282.0	262.2	323.1	358.2
Butter and ghee (tonnes)	1,549.0	1,752.1	1,217.7	1,079.6	1,967.4
Cheese (tonnes)	243.0	215.0	154.7	187.7	262.2
Livestock slaughtered ('000 head)					
Cattle and calves	1,911.0	1,719.9	1,891.9	2,057.0	1,923.5
Sheep and goats	4,774.9	5,013.7	5,424.8	5,716.0	6,162.8
Pigs	176.0	166.7	197.5	221.0	217.2

a Provisional.

Source: Information provided by the Kenyan authorities.

(c) Fisheries

237. The fisheries subsector has an important role in Kenya's economy despite its low contribution to GDP (0.4% in 2011). Over 500,000 people are directly or indirectly employed by the subsector, with the freshwater fisheries supporting about 35,000 fishers, and marine fisheries over 8,000 fishers. It also provides foreign exchange earnings of over K Sh 4 billion (approximately US$50 million).

238. The subsector also supports other auxiliary industries, such as net making, packaging material industries, boat building, etc. Fishing activities remain largely artisanal, and on unmechanized fishing vessels. Aquaculture is at a very early stage of development, but there is potential for growth. Fish production from freshwater decreased steadily during the review period, from 151,711 tonnes in 2006 to 135,784 tonnes in 2010, while marine fish production rose from 6,023 tonnes to 7,600 tonnes during the period (Table IV.4)

239. The Fisheries Act of 1989, and its subsequent 1991 revision, governs all fisheries activities in Kenya. A person in possession of a fishing vessel must have a valid fishing license. The vessel must also meet local fishing vessel requirements.

240. Freshwater fishing (which accounts for some 90% of Kenya's annual fish production) and marine fishing supply the domestic and international markets. The local market, which has a strong preference for tilapia, is served through artisanal fisheries. Fish enters the market in various forms including frozen, chilled, dried, smoked, and deep-fried. Nile perch, mainly from Lake Victoria, is the dominant species for export, accounting for about 90% in volume and value of Kenya’s total fish exports. Some marine fish products, such as crustaceans (lobsters, prawns, crabs, and fresh-water crayfish) and molluscs (octopus and squid) are also exported.

241. The EU is the main export market, and to facilitate access to this market, Kenya has taken steps to meet EU standards. The last EU inspectors' mission to Kenya noted, among other issues, the need to improve the conditions of artisanal fishing and the fish landing sites; update the Kenyan food standards to take into consideration EU standards on heavy metal contaminants; and undertake regular inspection of fish-processing establishments, fish landing sites, and fish markets.

242. Kenya has diversified its fish export markets, which now include Israel, Japan, Australia, China, U.S. Canada, and some African countries (Table IV.5).

Table IV.4
Fish production, 2006-10

	2006	2007	2008	2009	2010[a]
Quantity			**(Tonnes)**		
Freshwater fish					
Lake Victoria	143,908	117,231	111,369	108,934	113,041
Lake Turkana	4,559	5,122	8,070	9,445	8,123
Lake Naivasha	189	203	225	688	693
Lake Baringo	68	173	262	191	198
Lake Jipe	109	96	109	109	111
Tana river dams	1,024	1,112	1,302	584	596
Fish farming	1,012	4,245	4,452	4,895	12,153
Other areas	842	706	883	828	869
Total	**151,711**	**128,888**	**126,672**	**125,674**	**135,784**
Marine fish	6,023	6,355	7,561	7,024	7,600
Crustaceans	436	618	578	407	549
Other marine products	500	494	597	495	572
Total	**158,670**	**136,355**	**135,408**	**133,600**	**144,505**
Value			**(K Sh'000)**		
Freshwater fish	8,071	8,029	10,718	12,274	16,905
Marine fish	335	422	541	557	614
Crustaceans	123	145	147	127	173
Other marine products	38	43	49	44	50
Total	**8,567**	**8,640**	**11,455**	**13,002**	**17,742**

a Provisional.

Source: Information provided by the Kenyan authorities.

243. The Kenya Fish Processors and Exporters Association (AFIPEK) deals with Government and international bodies on fish quality matters, enforcement of international code of practice for processing of fish and promotion of fish and fishery products in the export markets.

Table IV.5
Exports of fresh and frozen fish
(K Sh '000)

Country	2006	2007	2008	2009	2010	2011
EU	1,724,098	1,941,762	1,508,721	1,299,617	1,579,409	1,457,730
Israel	770,831	879,461	1,220,342	1,459,681	1,379,164	1,292,512
U.A.E	107,784	153,188	142,194	127,034	153,131	121,758
Australia	224,279	131,284	164,647	125,733	115,788	110,793
United States	194,345	157,391	121,727	25,163	40,083	22,156
Others	371,929	253,261	208,625	111,080	301,511	188,200
Total	**3,393,266**	**3,516,347**	**3,366,256**	**3,148,308**	**3,529,003**	**3,193,149**

Source: Information provided by the Kenyan authorities.

244. In general, imports of fish and fish products are subject to a tariff rate of 25%.

245. The Government's support measures for fishing activities aim to ensure food security. During 2009/10, the Government provided assistance to small-scale fish farming through the Economic Stimulus Programme (ESP). Other support programmes include the Fish Farming Enterprise and Productivity Programme (FFE& PP), and government programmes to improve fish landing sites and fish auction centers.

(d) Forestry

246. 6.1% of Kenya's land surface (3,467,000 ha) is forested; 18.9% (654,000 ha) is classified as primary forest. Kenya's deforestation rate is 0.32% per year. Between 1990 and 2010, Kenya lost 6.5% of its forest cover (around 241,000 ha). The key drivers of deforestation and forest degradation include poor and uncoordinated policies; agricultural expansion; and logging and energy needs.

247. Forest plantation stocking increased marginally between 2006 and 2010, from 110.5 hectares to 111.8 (Table IV.6). This is attributed to additional funding received through the Kazi Kwa Vijana programme, a government initiative aimed at providing jobs for young people in forest plantation activities.

Table IV.6
Forest products, 2006-10

	2006	2007	2008	2009	2010[a]
Forest plantation area ('000 hectares)	**110.5**	**112.3**	**114.0**	**112.7**	**111.8**
Recorded sales					
Timber ('000 true m^3)					
Softwood	448.2	423.4	503.7	347.0	401.2
Hardwood	..	..	..	12.7	19.3
Stacked ('000 m^3)					
Fuelwood/charcoal	44.0	27.7	28.8	0.9	60.3
Power and telegraph poles	0.5	3.3	0.0	2.0	9.6

.. Not available.

a Provisional.

Source: Information provided by the Kenyan authorities.

248. The Ministry of Forestry and Wildlife is responsible for forestry policy formulation and implementation. The Kenya Forest Service is the public institution in charge of developing sustainable management of forest resources through, *inter alia*, strengthening the institutional, regulatory, and governance framework; enhancing the integrated rehabilitation and conservation of degraded natural resources; mainstreaming community and stakeholders participation in protecting, conserving and managing of forestry; strengthening research in the forestry sector; improving the productivity, and sustainable use of forestry resources; and contributing to the livelihoods of local communities.

249. MFN tariffs on forestry products average 4.4%, with rates ranging up to 10%. As regards protection measures, exports of timber from indigenous tree species is prohibited.

(2) MANUFACTURING

250. Kenya's manufacturing sector is the main contributor to national industrial production, with 66 % of industrial GDP in 2010, surpassing by far building and construction (30%), and mining and quarrying (4%).

251. Growth performance in manufacturing was mixed during the review period. While growth was at rate of 6.2 % in 2007, it fell to 3.6% in 2008, and to 2% in 2009. Inadequate raw materials and high production costs are the main causes of the sector's poor performance[70], and competition from

[70] KIPPRA (2010).

cheap imports and counterfeited goods remains a serious challenge. In 2010, manufacturing rebounded, with growth of 7%, due to a strong expansion in food processing, beverages and tobacco, as well as cement production. Manufacturing output (captured through the Index of Manufacturing Production) increased by 2%, from 375.7 in 2009 to 383.4 in 2010 (Table IV.7). According to the authorities, a slight decline in manufacturing GDP growth was observed in 2011(3.3%) due to a depreciating Kenya shilling, which increased the cost of imported intermediate inputs, and unfavourable weather conditions, which led to reduced availability of raw materials for agri-based industries.

Table IV.7
Manufacturing production index, 2006-10

Industry	2006	2007	2008[a]	2009[a]	2010[b]
Meat and dairy products	125.3	154.8	142.9	178.2	198.8
Canned vegetables, fish, oils, and fats	556.0	680.5	649.7	680.1	690.7
Grain mills products	253.6	246.9	244.9	257.5	301.5
Bakery products	212.8	204.6	194.6	207.0	225.2
Sugar and confectionery	232.4	251.3	248.6	264.8	253.3
Miscellaneous foods	257.6	295.4	277.2	254.6	317.7
Food manufacturing	239.0	269.2	258.8	269.7	293.0
Beverages	259.5	314.7	335.1	322.2	329.3
Tobacco	273.5	324.8	323.9	293.1	323.9
Beverages and tobacco	263.8	319.0	337.0	321.5	332.9
Textiles	102.3	104.1	97.9	78.6	81.4
Clothing	379.1	396.6	428.4	328.5	350.1
Leather and footwear	124.4	124.1	126.3	210.9	225.1
Wood and cork products	39.2	39.5	44.2	37.8	44.2
Furniture and fixtures	58.1	58.7	64.0	66.2	68.0
Paper and paper products	414.2	403.4	522.6	247.9	156.3
Printing and publishing	286.8	295.1	240.7	123.8	64.3
Basic industrial chemicals	108.8	78.2	52.2	50.7	52.3
Petroleum and other chemicals	1,027.0	1237.3	1323.2	1440.7	1496.7
Rubber products	816.5	725.8	558.3	640.5	611.2
Plastic products	1,656.3	1,674.8	1,513.9	2,063.4	2,108.6
Clay and glass products	1,836.1	1,791.9	1,751.6	1,748.2	1,707.0
Non-metallic mineral products	222.2	237.0	347.6	394.1	428.0
Metallic products	282.1	314.5	320.6	345.8	378.8
Non-electrical machinery	90.0	83.0	74.1	77.3	78.3
Electrical equipment	245.5	180.2	140.5	134.9	132.1
Transport equipment	1,281.7	1,309.9	1,106.7	1,047.4	1,079.0
Miscellaneous manufactures	1,442.6	1,412.7	1,811.1	3,094.0	5,160.4
Total manufacturing	**353.3**	**378.4**	**376.5**	**375.7**	**383.4**

a Revised.
b Provisional.

Source: Information provided by the Kenyan authorities.

252. The food-processing subsector has the highest value-addition (approximately 25%). However, in terms of FDI, the subsector attracts less than petroleum and chemicals, clothing, and electrical machinery.

253. The leather subsector has performed well since 2006, partly as a result of the export tax on hide and skins (Chapter III(2)(ii)). Estimates indicate that 13 tanneries were in operation in 2009, up from 9 in 2005, and operating capacity improved from about 30% in 2003/04 to around 70% in 2007/08. The number of small-scale cottage industries, which provide employment for thousands of

small-scale workers, and produce leather goods or footwear, also increased, from 17 in 2005 to 24 in 2008. The leather subsector employs 1,000 workers directly and 6,000 others indirectly.[71]

254. The electrical and electronics industry remains narrow. Production includes mechanical appliances; electrical machinery, equipment and parts; and television, image, and sound recorders and reproducers.

255. An expanding informal sector is heavily involved in small-scale manufacturing of household goods, motor-vehicle parts, and farm tools.

256. Incentive schemes available for manufacturing industries include: the export processing zones, the manufacturing-under-bond programme, and the duty remission scheme (Chapter III(3)(i)). The Export Promotion Council (EPC) promotes Kenya's manufactures, including textiles and clothing and commercial crafts (Chapter III(2)(v)).

257. In 2007, a study was commissioned jointly by the governments of Kenya and Japan, to establish a masterplan for Kenya's industrial development. The masterplan highlighted weak coordination of ministries involved in industrial development; poor infrastructure (shortfalls in power and water supplies, telecommunication, roads and rail, and port facilities); high interest rates, and barely accessible financial services for SMEs; inadequate managerial, technical, and entrepreneurial skills; and unfair competition due to counterfeiters. In addition, the plan called for the creation of the Kenya Industrial Development Platform (KIDEP), which would promote internal innovation, through effective networking for supporting institutions and manufacturers. KIDEP has not yet been established. However, the one village one product (OVOP) concept articulated in the masterplan has been rolled-out in 11 pilot regions (Nyeri North, Laikipia West, Yatta, Garissa, Isiolo, Nandi East, Vihiga, West Pokot, Bomet, Kwale, and Kisii).

258. Development strategies, targeting subsectors with high potential, in terms of strengthening industrial linkages and competitiveness, were considered in Kenya's industrial master plan: agri-processing, agri-machinery, and electrics, electronics, and ICT subsector were selected for specific policy interventions.

259. A substantial share of Kenya's manufactured exports goes to the regional EAC market. The U.S. market is the destination for textiles and garments exports under the AGOA.

260. A National Industrialization Policy (NIP) was formulated but not yet officially adopted, recognizes the role of an emerging regional market and the need to harmonize policy interventions at the regional level. In all, some 22 subsectors were identified for priority interventions including the steel and iron industries, construction, mining, pharmaceutical industries, leather, packaging, and newer areas such as nanotechnology and green energy.

[71] Online information. Viewed at: www.kam.co.ke. (Update based on the *Economic Survey, 2012*.)

(3) MINING, QUARRYING, AND ENERGY

(i) Mining and quarrying

261. Kenya's mining industry is relatively small, accounting for less than 1% of GDP (Chapter I(1)). Soda ash, fluorspar, kaolin, and gypsum constitute the main industrial minerals.

262. The value of exports of the main mineral products fell in 2009, but rebounded in 2010 and 2011 (Table IV.8), boosted by increasing export prices.

263. Recently initiated mining projects include the Kwale Hill heavy mineral sands project, gold mining at Kilimapesa in Trans-mara; Cortec mining company intends to mine rare earth elements at murima hills in Kwale County. In addition, the Bumbo base-metal project has identified, through prospection, significant potential reserves of gold, as well as copper, lead, and zinc.

Table IV.8
Quantity and value of mineral exports, 2006-11
(K Sh million)

Mineral	2006	2007	2008	2009	2010	2011
Soda ash	4,026	3,937	7,214	5,086	6,215	6,673
Gold	583	3,922	592	2,283	6,216	5,650
Fluorspar	1,155	995	1,949	122	789	3,984
Diatomite	7	8	3	13	8	14
Crushed refined soda	35	430	321	140	98	26
Salt (Magadi)	6	15	12	6	4	30
Carbon dioxide	118	127	117	120	32	..
Gemstones	240	199	178	141	226	230
Iron ore	..	..	..	..	..	649
Other minerals	90	409	63	40	55	216
TOTAL	**6,265**	**10,047**	**10,453**	**7,956**	**13,647**	**17,477**

..Not available.

Source: Information provided by the Kenyan authorities.

264. Mining activities are regulated through the Mining Act, Cap 306 of 1940; mineral oils are not covered by the Act. The Mines and Geological Department in the Ministry in charge of Environment and Mineral Resources is responsible for regulating the industry.

265. All mineral resources in Kenya are owned by the State. Mining licences are issued by the Commissioner of Mines and Geology against the payment of fees (Table IV.9). Licences are valid for one year, and are renewable.

266. A new Bill, the Mining and Mineral Bill 2011, is under consideration. Under the Bill, prospective licences will have an initial duration of four years, renewable for up to seven years. The Government is developing a new mining and mineral policy, but no information is available regarding the policy's objectives.

Table IV.9
Mining licences, 2011

Licence name and rights conferred	Statute	Period issued	Annual fee (K Sh)
Prospecting Right: to identify potential mineralized areas	Mining Act (Cap 306)	One year	250
Protection Notice: to prospect within 500 m radius of the production area	Mining Act (Cap 306)	30 days, renewable up to a maximum of 180 days	10 to 50
Certificate of Registration of lode location: to prospect for mineral deposits within a specified area; limited mining also allowed	Mining Act (Cap 306)	One year, renewable	100 to 1,000 depending on the number of claims (size)
Certificate of Registration of an alluvial location: to prospect for alluvial mineral deposits; limited mining allowed	Mining Act (Cap 306)	One year	100 to 1,000 depending on the number of claims (size)
Exclusive Prospecting Licence: to carry out detailed geological investigations to quantify mineral deposits within a specified licensed area	Mining Act (Cap 306)	One year, renewable up to a maximum of five years	205/km^2, subject to a minimum of 10,000
Special Licence: to carry out detailed geological investigations to quantify mineral deposits under difficult areas/conditions that require special treatment (conditions) in a specific licence area	Mining Act (Cap 306)	A minimum of two years, renewable	205/km^2, subject to a minimum of 10,000
Mining Lease: to mine the mineral deposits established under preceding exploration licences over a specific area	Mining Act (Cap 306)	Five to 21 years, renewable	150/hectare
Special Mining Lease: to mine the established mineral deposits under special conditions in consideration of foreseen mining difficulties	Mining Act (Cap 306)	Five to 21 years, renewable	150/hectare or special rent
Mineral Dealers Licence: to trade in minerals; buy and sell locally or export	Mining Act (Cap 306)	One calendar year (expires on 31 December)	20,000
Minerals Export Permit: to export a particular mineral consignment	Mining Act (Cap 306)	Per consignment valid for 14 days	Free
Dealers Licence for Unwrought Precious Metal: for local dealing in gold, silver, and platinum group of metals	Trading in Unwrought Precious Metal Act (Cap 309)	Calendar year	20,000
Special Dealers/Exporters Licence for Unwrought Precious Metals: for local dealing and export of precious metals (gold, silver, and platinum group)	Trading in Unwrought Precious Metals Act (Cap 309)	Calendar year	350,000
Export Permit (certificate) for Unwrought Precious Metals: to export a particular consignment of precious metals	Trade in Unwrought Precious Metal Act (Cap 309)	Per consignment	Free
Dealers Licence for Diamonds: for local dealing in diamonds	Diamond Industry Protection Act (Cap 310)	Calendar year	20,000
Import Permit (declaration certificate) for Unwrought Precious Metals: authority to import unwrought precious metals	Trading in Unwrought Precious Metal Act (Cap 309)	Per consignment	Free
Special Dealers/Exporters Licence for Diamonds: for local dealing in diamonds	Diamond Industry Protection Act (Cap 310)	Calendar year	250,000
Export Permits for Diamonds: export of particular diamond consignment	Diamond Industry Protection Act (Cap 310)	Per consignment	Free
Import Permits for Diamonds: import of diamond consignment	Diamond Industry Protection Act (Cap 310)	Per consignment	Free

Source: Information provided by the Kenyan authorities.

(ii) Energy

267. Since 2006, total energy consumption has increased steadily in Kenya (Table IV.10). Higher demand for coke and coal, along with increased generation of hydropower, and high consumption of petroleum products were the main drivers.

Table IV.10
Production, trade, and consumption of energy, 2006-10
('000 tonnes of oil equivalent)

	2006	2007	2008	2009	2010[a]
Coal and coke consumption	119.7	109.5	108.8	94.6	165.2
Imports of crude oil	1,643.2	1,598.7	1,773.3	1,627.9	1,551.5
Net exports of petroleum	1,264.7	1,836.0	1,902.8	2,565.6	2,662.8
Stock changes and balancing items	130.3	-312.9	-543.0	-582-7	-492.2
Total consumption of liquid fuels	**3,038.2**	**3,121.8**	**3,133.1**	**3,610.8**	**3,722.1**
Hydro and geothermal energy					
Local production of hydropower	260.1	308.8	280.9	182.4	269.9
Local production of geothermal power	89.9	85.0	89.3	111.2	90.9
Imports of hydropower	0.9	1.9	2.1	3.3	2.6
Total consumption of hydro and geothermal energy	350.9	395.7	372.3	296.9	363.4
Total local energy production	350.0	393.8	370.2	293.6	357.4
Total net imports	499.1	-125.9	-18.6	-839.8	-943.5
Total energy consumption	**3,508.8**	**3,627.0**	**3,614.2**	**4,002.3**	**4,250.7**
Local production as percentage of total	10.0	10.9	10.2	7.3	8.4
Per capita consumption in kg of oil equivalent[b]	97.2	97.5	97.5	94.4	107.3

a Provisional.
b Revised series.

Source: Kenya National Bureau of Statistics.

268. The energy sector is regulated through the Sessional Paper No.4 of 2004, and the Energy Act No.12 of 2006. The Ministry in charge of Energy is responsible for the overall coordination of the sector, as well as formulation and coordination of energy policies. The Energy Regulatory Commission (ERC) is an independent sector regulatory agency established under the Energy Act, 2006, with responsibility for economic and technical regulation of electrical power, renewable energy, and the down-stream petroleum subsector, including tariff setting and review, licensing, enforcement, dispute settlement, and approval of power-purchase and network-service contracts. The Energy Tribunal, which began operating in July 2007, arbitrates disputes within the sector**.**

269. Kenya's aim for energy development is a reliable and self-sufficient energy system that can provide equitable access to quality energy services throughout Kenya by, *inter alia*, exploiting the country's hydropower potential, enhancing the transmission and distribution systems, attracting private investors, lowering costs of production, and increasing exploitation of indigenous energy resources, while protecting the environment. According to the authorities, a draft energy policy is at the stakeholders discussion stage.

(a) Electricity

270. Kenya's main sources of electricity generation are hydro, diesel thermal plants, and geothermal plants. In addition, there is generation from biomass, wind, and small hydro plants (Table IV.11).

Table IV.11
Main sources of electricity generation

Category	Capacity installed (MW)	%	Effective	%
Large hydro	749.2	48.5	732.2	51.2
Small hydro	15.3	1.0	12.8	0.9
Geothermal	198	12.9	189	13.2
Co-generation (biomass)	26	1.7	26	1.8
Wind	5.1	0.3	5.1	0.4
Thermal (fossil)	525	34.3	448	31.4
Off grid (fossil)	18.0	1.2	15.6	1.1
Total	**1,531**	**100**	**1,429**	**100**

Source: Information provided by the Kenyan authorities.

271. Kenya Electricity Generating Company (KenGen) provides over 80% of the effective national electricity generation; the balance is provided by six private independent power producers (IPPs). KenGen is 70% government owned.

272. Transmission of electrical power is through Kenya Electricity Transmission Company Limited (KETRACO), government-owned company responsible for development of the national transmission grid network. It is also responsible for facilitating regional power trade through its transmission network. Kenya Power and Lighting Company (KPLC), a state corporation, is responsible for electricity distribution. It purchases power in bulk from KenGen and the six IPPs, through bilateral contracts or power purchase agreements (PPAs) approved by the ERC. While electricity generation is open to competition, its transmission and distribution functions are under monopoly.

273. The Rural Electrification Authority (REA) is mandated to implement the rural electrification programme, with a special focus on promoting renewable energy sources. The Geothermal Development Company (GDC) is in charge of exploiting the geothermal energy potential. The Kenya Electricity Transmission Company (Ketraco) deals with the development of new transmission lines.

274. Companies, such as James Finlay, Sotik Tea Company, Sotik Highlands Tea Estate, Oserian Development Company, Pan African Paper Mills, Unilever Tea Kenya Ltd and Tiomin, are licensed to generate electrical energy for their own use.

275. Electricity costs in Kenya remain relatively high, due to the high operating costs of inadequate generation and distribution facilities. Frequent droughts also affect hydro-electric power output, and cause severe shortfalls in electricity, resulting in widespread rationing across the country. The base rate per kWh for domestic electricity is K Sh 2 for electricity consumption up to 50kWh; K Sh 8.10 for 50 to 1,500 kWh; and K Sh 18.57 for usage above 1,500 kWh (Table IV.12). Commercial electricity tariffs are remarkably high in Kenya; high electricity consumers subsidize the low consumers.

276. The tariffs, for domestic and commercial electricity consumptions, were last adjusted in July 2008. In general, each tariff consists of a fixed charge equivalent to meter rent, and for industrial customers, a demand charge based on average power requirement; a fuel cost charge (based on the cost of fuel purchased by KenGen during the month of billing); foreign exchange rate fluctuation adjustment applied per kWh of consumption; inflation adjustment applied per kWh of consumption; Energy Regulatory Commission levy (fixed at K Sh 0.3 kWh); Rural Electrification Programme levy (fixed at 5% of the base rate); and 12% VAT applied on the base rate, including all previous surcharges.

Table IV.12
Electricity tariff structure in Kenya

Type of customer/voltage		Fixed charge (K Sh/month)	Consumption (kWh/month)	Energy charge (K Sh/kWh)	Demand charge (K Sh/kVA/month
Domestic (240 or 415)		120.00	0-50 51-1,500 > 1,500	2.00 8.10 18.57	n.a
Small commercial (240 or 415)		120.00	≤ 15,000	8.96	n.a
(415-3 phase)		800.00		5.75	600.00
Commercial/industrial	11,000	2,500.00	> 15,000 no limit	4.73	400.00
	33,000/40,000	2,900.00		4.49	200.00
	66,000	4,200.00		4.25	170.00
	132,000	11,000.00		4.10	170.00
Interruptible off-peak supplies	240 or 415	240.00 when used with DC or SC	≤ 15,000	4.85	n.a
Street lighting	240	120.00	-	7.50	n.a

n.a. Not applicable.

Note: DC = domestic consumers. SC = Small commercial.

Source: Energy Regulating Commission.

277. Electric power consumption per capita decreased from 149 kWh in 2007, to 147kWh in 2009, far below that in middle-income and sub-Saharan Africa economies. National access to electricity is 12%.

(b) Petroleum and gas

278. Kenya imports all its petroleum requirements, as crude oil or refined fuel products. Consumption of petroleum products increased from 3.13 million tonnes in 2006 to 3.95 million tonnes in 2010 (Table IV.13).

279. Kenya's only petroleum refinery is working with obsolete technology. As a consequence, while its initial capacity was set at 4 million tonnes of crude oil, current throughput is only 1.6 million tonnes.

280. About 90% of Kenya's crude oil imports are Murban crude oil from Abu Dhabi. Its landed cost consists of the f.o.b. and freight costs; 0.105% of the f.o.b. cost for marine and war insurances; 2.75% of the f.o.b. cost for the import declaration form (IDF) fee; 0.85% of the f.o.b. cost for letter of credit charges; 0.5% of the f.o.b. cost for ocean loss allowance (for losses not covered by insurance); US$1.50 /MT port handling fee; and a K Sh 1.50 /MT VAT discharge Inspection fee.

281. The Petroleum Energy Department under the Ministry in charge of Energy is involved in upstream and downstream activities of the oil and gas industry.

282. Petroleum industry operations are concentrated in the downstream segment, as the upstream industry, which includes exploration and production of oil, is almost non-existent. Despite aggressive reform measures, during the last decade, the Government maintains significant interventions in the industry.

Table IV.13
Petroleum supply and demand, 2006-10
('000 tonnes)

	2006	2007	2008	2009	2010[a]
Demand					
Liquefied petroleum gas	64.6	77.4	84.4	74.6	87.8
Motor spirit (premium and regular)	358.2	367.1	381.3	461.7	597.2
Aviation spirit	2.0	2.2	2.5	1.4	2.5
Jet/turbo fuel	593.3	638.5	559.2	570.9	539.6
Illuminating kerosene	279.2	265.2	244.7	332.8	316.0
Light diesel oil	1,035.8	1,116.5	1,141.1	1,416.6	1,517.3
Heavy diesel oil	40.7	40.1	30.0	23.9	25.0
Fuel oil	664.6	614.8	690.0	729.4	680.3
Total	3,038.2	3,121.8	3,133.2	3,610.8	3,765.7
Refinery usage	93.3	96.5	149.9	171.5	183.9
Total domestic demand	3,131.5	3,218.3	3,283.1	3,782.3	3,949.6
Export of petroleum fuels	44.7	67.4	19.2	20.7	29.4
Total demand[b]	3,176.2	3,285.7	3,302.3	3,803.0	3,979.0
Supply					
Imports					
Crude oil	1,643.2	1,598.7	1,733.3	1,627.9	1,551.5
Petroleum fuels	1,402.7	1,999.9	1,704.5	2,259.0	2,071.9
Total	3,045.9	3,598.6	3,477.8	3,886.9	3,623.4
Adjustment[b]	130.3	-312.9	-175.5	-83.9	355.7
Total supply	**3,176.2**	**3,285.7**	**3,302.3**	**3,803.0**	**3,979.1**

a Provisional.
b Adjustment for inventory changes and losses in production.

Source: Information provided by the Kenyan authorities.

283. Following reforms in the petroleum sector numerous oil marketing companies (OMCs) are involved in importation, exportation, wholesale, distribution, and retail activities. Currently 53 licensed companies are allowed to import and 167 companies are licensed to market petroleum products in Kenya. The Ministry in charge of Energy invites separate tenders from licensed importers for the importation of crude oil and refined products. The licensing requirements for importers, exporters, wholesalers, and distributors depend on the nature and value of businesses, areas of operations, estimated volume of throughput, and proof of product sources.

284. The Kenya Petroleum Refineries Ltd (KPRL) is co-owned by the Government and Essar Kenya Ltd, a private company. Under the Ministry in charge of Energy, the Kenya Pipeline Company, which is wholly owned by the Government, is responsible for the transportation, storage, and loading of some 90% of refined petroleum products. The National Oil Corporation of Kenya, also wholly owned by the Government, participates in all aspects of the petroleum industry. Its roles range from exploration to marketing of imported petroleum products.

285. In 2008, the Energy Regulatory Commission (ERC) developed the petroleum pricing regulations in order to stabilize petroleum prices in the retail market, and contain inflationary pressures. The Petroleum Pricing Regulations were published in the *Gazette* in December 2010, (Chapter III(3)(ii)).

286. The aim of the petroleum market deregulation was to reduce petroleum prices for end-users through a competitive market environment. According to the authorities, this has not happened due to the global increase in oil prices.

287. The final landed cost of refined petroleum products consists of the f.o.b. and freight costs; 0.105% of the f.o.b. cost for marine and war insurances; 2.75% of the f.o.b. cost for the import declaration form (IDF) fee; 1.2% of the f.o.b. cost for letter of credit charges; 0.5% of the f.o.b. cost for ocean loss allowance; and a US$2.50/MT port handling fee.

288. In order to ensure short-term supply of petroleum products in case of disruption of supply, a minimum operational stock must be maintained by all importers of petroleum products intended for use in Kenya. The minimum operational stock ranges from 25 days of consumption for heavy fuel oil to 15 days for liquefied petroleum gas.[72] A petroleum strategic stock, with an optimal level equivalent to 90 days' consumption, is set to be procured by the National Oil Corporation of Kenya, and stored by the Kenyan Pipeline Company Limited.[73] This is intended to, *inter alia*, ensure continuity of supply in case of disruption of supply, and stabilize domestic prices of petroleum.

(4) SERVICES

289. The services sector continues to be the backbone of the Kenyan economy (Chapter I(1)). Tourism, transport, and communication are the main industries. Four of the six priority sectors identified as crucial in attaining Kenya's Vision 2030 objectives are service subsectors (tourism, wholesale and retail trade, business process outsourcing, and financial services).

290. Kenya has a positive balance in services trade, and its surplus has been increasing since 2006. However, local sales through foreign affiliates remain the main source of international transactions. Substantial constraints continue to impede a full and inclusive expansion of international trade in services. These include limited services supply capacity; inadequate regulatory framework; the absence of a national trade in services policy; international trade barriers; and an inability to translate regulatory frameworks into GATS language.[74]

291. Kenya has potential to increase its services exports within East Africa, mainly through its relatively well-developed financial system, and transportation services. In addition, its geographical location provides it with a unique opportunity to provide maritime services to its landlocked neighbours. The EAC Common Market Protocol identifies financial services, tourism, education, communication, transport, distribution, and business services as sectors to be liberalized by 2015.

292. Kenya's commitments under the GATS did not change over the review period. It maintains specific commitments in five services sectors: communication, financial services, tourism and travel-related services, transport services, and other services (meteorological data information). It also has horizontal commitments in commercial presence and movement of natural person, with limitations covering market access for commercial presence, requiring foreign service providers to incorporate or establish the business locally. Horizontal limitations also cover the entry and temporary stay of natural persons employed in management and expert jobs. The employment of foreign natural persons must be agreed upon by the contracting parties and approved by the Government.[75]

[72] The Energy (Minimum Operational Stock) Regulations, 2008, Nairobi.
[73] The Energy (Petroleum Strategic Stock) Regulations, 2008, Nairobi.
[74] East African Business Council, Trade in Services negotiations, and the Private Sector, 2009, Arusha, Tanzania.
[75] GATS/SC/47, 15 April 1994.

(i) Financial services

293. The financial sector in Kenya comprises a capital market; banking and microfinance services, including microfinance institutions (MFIs), and saving and credit cooperatives (SACCOs); pensions; and insurance services. Regulation and supervision are by independent regulators: the Capital Markets Authority (CMA), the Central Bank of Kenya (CBK), the SACCO Societies Regulatory Authority (SASRA), the Retirement Benefits Authority (RBA), and the Insurance Regulatory Authority (IRA). Informal financial services also play a significant part in meeting financial need in rural areas, although the proportion of the population that had access only to informal financial services decreased from about 32.4% in 2006 to 26.8% in 2009 and the proportion of financially excluded decreased from about 38.4% to 32.7% in 2009.[76]

294. The Kenyan financial sector is the most sophisticated and dynamic within the EAC, and the third-largest in sub-Saharan Africa. There has been significant improvement in financial intermediation in Kenya. In 2009, 40.5% of the adult population was using the services of financial intermediaries, up from 26.4% in 2006. The progress is attributed to the Government's efforts to address deficiencies in the legal and institutional framework, together with a number of innovative steps to facilitate access to affordable financial services.

(a) Banking and other credit institutions

295. The business of banking (including other related financial institutions) regulated through the Banking Act, the Microfinance Act, and the Building Societies Act, together with the regulations and prudential guidelines.

296. The minimum capital requirement for banks and mortgage finance companies is K Sh 1 billion, and K Sh 200 million for other financial institutions. In general, commercial banks concentrate on short- to medium-term lending, while mortgage finance companies focus on medium- to long-term property finance.

297. Kenya's overall banking system, as at December 2011, comprised 44 licensed commercial banks, 1 mortgage finance company, 4 representative offices of foreign banks, 6 deposit-taking microfinance institutions (DTMs), 118 foreign exchange bureaus, and two credit reference bureaus (CRBs). Of the commercial banks, 31 are locally owned and 13 are foreign owned. The Government and state corporations have significant shareholdings in three of the locally owned banks (70% in National Bank of Kenya, 77.8% in Consolidated Bank of Kenya, and 100% of Development Bank of Kenya). The foreign-owned financial institutions consist of nine locally incorporated foreign banks and four branches of foreign incorporated banks.

298. Kenya's banking system has several structural weaknesses, including high interest rate spreads and a high ratio of non-performing loans to total loans. Collateralization process is cumbersome and costly, and enforcement is weak.

299. In 2007, Kenya launched its Credit Information Sharing Mechanism (CISM), which obliges institutions licensed under the Banking Act to share information on non-performing loans through credit reference bureaus, which are licensed by the Central Bank of Kenya. Credit information sharing is expected to significantly reduce information search costs, and lower credit risk, reducing the cost of credit in the short- and medium-term. As a result of these reforms, several indicators

[76] FSD Kenya (2011).

improved during the review period: the ratio of non-performing loans to total loans declined from 10.9% in 2007 to 7.8% in 2010.[77]

300. Kenya has a network of other financial service providers: microfinance institutions, which are members of the Association of Micro Finance Institutions (AMFI), savings and credit cooperative organizations (SACCOs), Kenya Post Office Savings Bank (KPOSB), and four development finance institutions. The National Social Security Fund (NSSF) is a statutory pension fund for all employees. The Microfinance Act, 2006 and Microfinance Regulations, 2008 empower the Central Bank to license, regulate, and supervise deposit-taking microfinance institutions. The minimum capital requirement is K Sh 60 million to operate at the national level. Smaller microfinance institutions operating within a district or a town require a minimum capital of at least K Sh 20 million.

301. During the review period, the main innovation in the financial sector in Kenya was the emergence of mobile banking transfer services, allowing mobile phone users to make financial transactions at low cost. M-PESA, a mobile-phone-based banking transfer system, was launched by Safaricom in 2007. Since then, other operators (including Airtel, Essar Telecom, Telkom Kenya, Mobile Pay, and Mobikash) have launched mobile-phone-based money transfer services.

302. Mobile money-transfer services serve over 18.9 million customers across the country. M-KESHO, a mobile-based deposit account system, was launched in 2010 by Safaricom in partnership with Equity Bank. Kenya Commercial Bank and Family Bank have also introduced mobile banking products that enable account holders to access their deposit account via mobile phones. Mobile banking has improved the potential of resource mobilization. The National Payments Systems Act of 2011 aims to bring all payment service providers, including mobile phone service providers offering money-transfer services, under the CBK regulatory framework.

303. The Crime and Anti-Money Laundering Act, 2009, passed in December 2009, entered into force in June 2010. It establishes a Financial Reporting Centre, an Anti-Money-Laundering Advisory Board, and an Assets Recovery Agency. Financial institutions and designated non-financial businesses such as casinos, real estate agencies, dealers of precious stones and metals, non-governmental organizations, and accountants are required to report any suspected money-laundering activity to the Financial Reporting Centre.[78]

304. Penalties for convicted individuals and corporate bodies range from 2 years' imprisonment for individuals and fines of K Sh 1 million (about US$12,500), to 14 years' imprisonment and fines of K Sh 25 million (about US$312,500).

(b) Insurance

305. The Kenyan Insurance Market is governed by the Insurance Act, Cap 487 Laws of Kenya. The Insurance Regulatory Authority (IRA) is a statutory government agency established under the Insurance Act (Amendment), 2006, which was operationalized in 2007 to regulate, supervise, and develop the insurance industry.

306. Kenya has 44 licensed insurance companies (of which 20 write general insurance business only, 10 are long-term business insurers, and 14 are composite insurers). The insurance industry also

---

[77] World Bank World Development Indicators, 2011. Viewed at: http://data.worldbank.org/news/WDI-2011-database-and.publication-available.

[78] Central Bank of Kenya (2010a) and (2010b).

includes: 170 insurance brokers, 25 medical insurance providers, 3,600 insurance agents, and other service providers.

307. A long-term business insurer may be registered to transact any or all classes of long-term insurance business: bond investment, industrial life, ordinary life, and superannuation. A general insurance business may be registered to transact any or all classes of general insurance business: aviation, engineering, fire-domestic, fire-industrial, liability, marine, motor-private, motor-commercial, personal accident, theft, workmen's compensation, medical, and miscellaneous. Any insurance company may be licensed to transact either long-term insurance business, general insurance business, or both.

308. There are two reinsurance companies: the state-owned Kenya Reinsurance Corporation (Kenya Re), and the East Africa Reinsurance Company Limited, a private company. Both are registered to transact long-term and general reinsurance business. Two regional reinsurance companies, PTA Reinsurance Company (PTA Re), and Africa Reinsurance Corporation (Africa Re) also operate in Kenya, but are not locally incorporated and therefore not registered under the Insurance Act. Every insurer must cede 33% of their reinsurance business to: Kenya Re (18%), PTA Re (10%), and Africa Re (5%). The remaining 67% may be placed with foreign reinsurance companies subject to a reinsurance premium levy of 5%. The compulsory18% to Kenya Re was set to expire on 1 January 2011 or upon privatization whichever comes earlier, but this deadline was extended to 2015.

309. The maximum foreign equity allowed in insurance and reinsurance companies is 66%. The maximum for insurance brokers is 40%. Insurance agents must be Kenyans, but there are no restrictions on insurance service providers. Insurance professionals must be licensed by the Insurance Regulatory Authority; licences must be renewed annually. The licence fees for registration and renewal are for: K Sh 250,000 for reinsurers; K Sh 150,000 for insurers; K Sh 10,000 for insurance brokers and for medical insurance providers; K Sh 3,000 for risk managers, loss adjusters, loss assessors, insurance surveyors, and claims settling agents; and K Sh 1,000 for insurance agents.[79]

310. Insurance companies must be locally incorporated with minimum paid-up capital as follows: general insurance business, K Sh 300 million; long-term insurance business, K Sh 150 million; both general and long-term business, K Sh 450 million; and reinsurance business, K Sh 500 million. For both long-term and short-term insurers not less than one third of the paid-up capital must be owned by Kenyan citizens or by the Government. This requirement also applies to re-insurance companies. In addition, admitted assets in Kenya should not be less than K Sh 20 million for insurers and K Sh 200 million for reinsurers. At least one third of the members of the board of directors or management board must be citizen of Kenya.

311. Any insurer carrying on long-term insurance business is required to maintain a solvency margin of K Sh 10 million, or 5% of admitted assets, whichever is higher. For general insurance business, the solvency requirement is: not less than the aggregate of the admitted liabilities and K Sh 10 million, or 15% of its net premium income during its last preceding financial year, whichever is the greater. Insurers carrying out both long-term and general insurance business are required to maintain separate solvency margins.

312. A 1% levy is payable by all insurers on their premiums. In addition, medical insurance providers are required to pay insurance premium levies of 0.1% on business placed outside the country. A 0.2% insurance training levy is charged on policyholders and collected by the insurers on

[79] The same amounts apply as penalties for late submission of licence renewal applications.

behalf of Insurance Training and Education Trust, which is responsible for training personnel for the insurance industry in Kenya. A 0.5% policyholders compensation levy is also charged (insurance companies pay 0.25% and policyholders contribute 0.25%), the levy was established to provide compensation to policyholders of a collapsed insurance company.

313. In principle, risks located in Kenya must to be covered by companies incorporated and located in Kenya. However, a policy holder may apply to the IRA for exemption to place risk overseas. There are no restrictions on insurance companies in Kenya underwriting risks from outside the country provided that all policies are issued in Kenyan shillings. Insurance for imports is compulsory and must be taken with companies licensed in Kenya.

314. The insurance penetration rate is very low in Kenya (approximately 2.63%) due to unfavourable public perception of the sector, and lack of innovative tools to deal with the poorest segment of the population. Efforts are under way to develop micro insurance, in order to provide insurance services to the poor; a taskforce, composed of the IRA and stakeholders is working on a policypaper in that respect.

315. Premium rates for life insurance are set by individual companies (actuaries) subject to approval by the IRA. Premium rates for general business are set based on the claims experience of a company.

316. Motor-vehicle third-party insurance is a compulsory insurance in Kenya.

(c) Capital markets

317. The capital markets in Kenya are regulated, by the Capital Market Authority (CMA), pursuant to the Capital Markets Act, the Central Depositories Act (2000), and the regulations, rules, and guidelines issued under each. The Capital Markets Authority (CMA) is responsible for the licensing, approval, regulation, and supervision of all intermediaries and publicly issued products in the capital markets. The CMA is also mandated to facilitate development of the securities markets in the country and is primary advisor to the Government of Kenya on all aspects of the development and operation of capital markets.

318. There are 59 companies listed on the Nairobi Securities Exchange, on main investment market segment, and the alternative segment.

319. The CMA has undertaken a number of reforms to modernize, *inter alia*, the trading process at Nairobi Securities Exchange (NSE). An automated trading system (ATS) was introduced in 2006, and a wide area network (WAN) platform was implemented in 2007; trading is now conducted mainly from brokers' offices through the network. In addition, since 2009, bond trading activities have been taking place through the automated trading system (ATS) of the NSE. Following Automation bond turnover increased, from K Sh 93 billion in 2008 to K Sh 467 billion in 2011.

320. The Central Depository and Settlement Corporation (CDSC) is licensed under the Central Depositories Act, provides central depository services for equity and corporate bonds, while the Central Bank of Kenya provides depository services for Treasury bonds. The Central Depositories Act was amended in 2011 to strengthen the regulatory structures to ensure the robustness of the settlement system and reduce settlement risk. In addition, an explicit insolvency set-off provision was introduced for securities transactions to allow for settlement finality in line with international best practise standards.

321. In 2010, the Capital Market Act was amended to pave the way for the demutualization of the Nairobi Securities Exchange (NSE). This is being pursued through the separation of ownership from management, separation of ownership and trading rights, and conversion of the entity from a company limited by guarantee to one limited by shares, thereby allowing it to operate as a profit-making entity.

322. The Government of Kenya in conjunction with the CMA Investor Compensation Fund, is expected to take up 20% of NSE ownership. Existing members of the exchange are expected to reduce their cumulative shareholding in the exchange to no more than 40% within three years of the demutualization. According to the authorities, the NSE is also in the process of rolling out an action plan for operating as a self-regulatory organization, thereby taking on greater responsibility for the supervision of its members and oversight of market operations. Demutualization is expected to boost the activities of the NSB and increase business confidence.

(ii) Transport

323. The contribution of the transport subsector to GDP averaged around 7.5% during the review period. The subsector comprises a wide range of service providers, covering all modes of transport (air, road, rail, sea). Road transport accounts for over 80% of Kenya’s total passenger and freight transportation, and value of output (Table IV.14). An efficient transport infrastructure is one of the foundations of the Vision 2030.

Table IV.14
Transport output, 2006-10
(K Sh million)

	2006	2007	2008	2009	2010
Road transport	205,305	233,224	273,047	285,250	331,948
Railway transport	4,553	4,550	4,449	4,356	2,208
Water transport	21,408	23,233	21,868	21,039	21,488
Air transport	71,301	80,254	83,010	80,519	80,935
Services incidental to transport	29,194	33,971	38,823	40,016	49,348
Pipeline transport	8,846	8,736	9,222	11,481	6,463
TOTAL	**340,607**	**383,968**	**430,419**	**442,661**	**492,390**

Source: Information provided by the Kenyan authorities.

324. Kenya's potential in transport services is constrained by high transport costs, mainly due to poor infrastructure and institutional framework, soaring oil prices, and underfunding.

(a) Road transport

325. Kenya's most important mode of transport suffers the same structural constraints as the subsector in general. In addition, overloading of vehicles is a serious concern for road maintenance. Kenya has a road network of about 177,500km. Roads are classified in six categories: Class A: international trunk roads (crossing international boundaries); Class B: national trunk roads (connecting provincial headquarters to each other or to class A roads); Class C: primary roads (linking district headquarters to each other or to higher class roads); Class D: secondary roads (linking locally important centres to each other or to higher class roads); Class E: minor roads (linking minor centres); Class F: special purpose roads (including roads for tourist, township, agriculture, and strategic purposes).

326. The classified road network, an estimated 63,000 km, is under the Roads Department of the Ministry in charge of Roads and Public Works, while unclassified roads (114,500km) are under county councils, the Ministry in charge of Environment and Natural Resources, the Ministry in charge of Tourism, and other bodies. The Ministry in charge of Roads and Public Works is responsible for policy formulation, regulation, and development and enforcement of technical standards for road transport.

327. According to the authorities, some 70% of classified roads are in good condition, while the remaining 30% requires rehabilitation or reconstruction. Only 14% of the classified road network is paved.

328. A plan for roads was put in place to coordinate the various strategies in force in Kenya for the period 2008-12. In accordance with the Kenya Roads Act, 2007, three agencies were established under the Ministry in charge of Roads: the Kenya National Highway Authority, in charge of managing and maintaining all road works in classes A, B, and C; the Kenya Urban Roads Authority, responsible for managing and maintaining all roads in all major towns, including Nairobi City and municipalities; and the Kenyan Rural Roads Authority, responsible for all rural and small town roads, classes D, E, and F, and unclassified roads. The Road Act also raised the penalties for infringement of axle-load regulations.

329. In order to mitigate inadequate public funding, the Kenya Roads Act allows for private-sector participation in financing and managing road infrastructures, through concessions. The private-sector may build, manage, and transfer designated roads during an agreed period. Pilot projects are under way on a number of road sections. Among the road development strategies, the Roads 2000 Programme is a rehabilitation and maintenance strategy for the classified road network, using local resources and labour-based methods wherever these are cost effective.

330. The main transnational projects under way are: the Northern Corridor Transport Improvement Plan (NCTIP), which seeks to connect Mombasa port to Kenya's neighbours; and the East African Road Network Project (EARNP), which is critical to EAC regional integration.

(b) Railway transport

331. Railway transport is the second most important mode of transport in Kenya (2,778 km of lines), and is critical for long-distance freight along the main transport corridors. It connects the Mombasa port to Nairobi, and to Malaba at the Kenya-Uganda border. The network carries 2 million tonnes of freight per year, well below its initial capacity of 6 million tonnes. However, it plays a critical role in the transport of international goods trade through Mombasa port.

332. Following a concession agreement in 2006, the railway network was run solely by the Rift Valley Railways (RVR), a South African company. However, low demand, coupled with aging infrastructure and equipment, hinders effective management of railway transport in Kenya. The concession agreement was amended in 2010, and Egyptian Citadel Capital acquired 49% of RVR.

(c) Air transport

333. The main policy guidelines for air transport are contained in the Kenya Civil Aviation (Amendment) Act 2002, the Civil Aviation Act, Cap 398, 1978, and the Kenya Airports Authority Act 1990.

334. The Yamoussoukro Decision is the basis for air-traffic rights allocation for African countries. For all other countries, allocation is based on reciprocity. Cabotage is not allowed for freight companies. Kenya is also a signatory to the Chicago Convention of 1944.

335. The Kenya Civil Aviation Authority (KCAA) is responsible for developing, regulating, and operating a safe, economically sustainable, and efficient civil aviation system; and the Kenya Airport Authority is in charge of airport infrastructure development and management. The KCAA is in charge of granting licences for international and domestic non-scheduled air service operations into and within Kenya. The Ministry in charge of Transport is responsible for bilateral air services agreements and scheduled air services.

336. Scheduled air transport services are subject to bilateral air services agreements (BASAs). Kenya Airways the designated national carrier, operates scheduled services into and out of Kenya, in accordance with BASAs. However, other Kenyan companies are allowed to operate international and domestic charter airlines. Air traffic is allocated under Kenya's BASAs. Handling services are provided by Kenya Air Handling, a subsidiary of Kenya Airways.

337. Air transport is critical to the viability of Kenya's tourism sector. Passenger traffic grew continuously during the review period. This was attributed to the global economic recovery and the take-off, after the political turmoil in 2008. Passenger traffic grew by 9.1 % in 2010, to 7.5 million passengers, up from 6.8 million in 2009.

338. Kenya has three international airports: Nairobi's Jomo Kenyatta International Airport, Moi International Airport, and Eldoret. In total, Kenya has 488 aerodromes of varying sizes and facilities, of which 61 have paved runways. In order to improve air traffic management, the KCAA has developed a 15-year Kenya Air Space Master Plan (2005-2020). The main programmes aimed at expanding airport capacities are rehabilitation of facilities at Moi International Airport, expansion of passenger terminal facilities at Jomo Kenyatta International Airport, and upgrading of facilities at Kisumu Airport which has been completed.

(d) Maritime transport

339. Since 2011, maritime transport has been regulated by the Merchant Shipping Act 2009 and its regulations.

340. Kenya's maritime transport industry includes provides port facilities in Mombasa, shipping and inland water transport, and inland container depots at Nairobi, Kisumu, and Eldoret. Mombasa, the only commercial seaport is the leading port and a major distribution centre. It serves as a trade gateway for, *inter alia,* Burundi, the eastern portion of the Democratic Republic of Congo, Rwanda, Tanzania, and Uganda.

341. Inland ports are currently owned and managed by Kenya Ports Authority (KPA), which still has a monopoly on cargo handling at the port of Mombasa and manages the various container depots. Since 2006, growth in container traffic at the port of Mombasa has increased, while the number of docking ships, and the volume of transhipment, have decreased. This may be a threat to the port's standing as a regional hub.

342. The expected growth of imports and exports, due to the discovery of oil resources in Uganda and in western DRC, and the economic development of EAC countries are likely to worsen the capacity problems at Mombasa port, if the physical infrastructure and the management structure is not

addressed.[80] While the facility's nominal capacity is 250,000 TEUs, the overall volume handled in Mombasa was 695,600 TEUs in 2010 (Table IV.14). As a consequence, relatively long dwell times (5.7 days on average), due to dockside congestion, and slow cargo clearance procedures, continue to provoke frequent cargo delays. This leads to high costs of international trade, and constitutes a genuine challenge to the competitiveness of Kenya's economy.

343. As part of the solutions to inefficient port operations, KPA is in the process of introducing a Port Community-Based System (PCBS), a unified platform for stakeholders to exchange timely and accurate information on each transaction. According to the authorities, the Kenya Trade Network Agency (Kentrade), a state corporation, was established in January 2011 to implement the national single window system. Kentrade is in the process of building its institutional capacity and it is procuring software for the system.

Table IV.15
Traffic handled at Mombasa port, 2006-10

	2006	2007	2008	2009	2010[a]
Container traffic (TEUs)	479,355	585,367	615,733	618,816	695,600
Ships docking (number)	1,857	1,811	1,686	1,748	1,579
Imports			**(DWT '000)**		
Dry general	4,099	4,866	4,979	5,435	5,987
Dry bulk	2,344	2,722	2,891	4,641	3,871
Bulk liquids	5,403	5,474	5,441	6,432	6,386
Total imports	**11,846**	**13,062**	**13,311**	**16,508**	**16,244**
Exports					
Dry general	1,810	2,102	2,295	2.220	2,410
Dry bulk	313	205	200	62	70
Bulk liquids	132	167	190	167	95
Total imports	**2,255**	**2,474**	**2,685**	**2,449**	**2,575**
Total imports and exports	**14,101**	**15,536**	**15,996**	**18,957**	**18,819**
Transhipment	318	426	419	105	158
Grand total	**14,419**	**15,962**	**16,415**	**19,062**	**18,977**

a Provisional.

Note: DWT = Deadweight tonnes.

Source: Information provided by the Kenyan authorities.

344. In early 2012, Kenya launched the construction of an important port facility in Lamu, which is expected to become the main gateway to eastern and central African regions. At the same time, a transport project, interconnecting Lamu Port-South Sudan-Ethiopia (Lapsset), was inaugurated, with a view to streamlining port operations.

(iii) Telecommunications and postal services

(a) Telecoms

345. Kenya's telecommunications market is benefiting from simultaneous technological improvements and institutional adaptation efforts. The mobile sector grew rapidly over the review period. Four operators offer mobile services: Safaricom (with 68% of the market share) and Airtel Kenya, together with Essar Telecoms (YU) and Telkom Kenya Limited (Orange), which were licensed in 2008.

[80] World Bank (2010).

346. A new structure for interconnection fees was adopted in 2007, through regulations issued by the Communications Commission of Kenya (CCK). This reduced the maximum interconnection tariff from K Sh 6.28 in 2007 to K Sh 2.21in 2010. However, telephone operators are allowed to negotiate lower interconnection tariffs. While the decrease in interconnection tariffs was welcomed by smaller telephone operators and new entrants, as it created conditions for competing with the bigger, established operators, the dominant market operators, such as Safaricom, expressed concern that the regulations will limit their revenue and jeopardize future investment plans.

347. Increased competition in the mobile market has led to a significant reduction in the cost of mobile services; international charges have also dropped, due to the legalization of the voice over internet protocol (VOIP) in 2006. In 2011, there were 25 million mobile subscribers, (67.2% mobile penetration), up from 9 million in 2006. Over the same period, mobile network capacity grew from 18 million to 51 million.

348. The introduction of money transfer services using cellular phones has further boosted the growth of the subsector. Since Safaricom launched its M-Pesa mobile money transfer services in 2007, the use of mobile technology to provide money transfer services has continued to expand. All the mobile operators now provide money transfer services, although M-Pesa is by far the largest system, accounting for 80.1% of mobile money transfer service subscriptions.

349. Due to increased competition from mobile phone providers and high maintenance costs attributed to repeated vandalism, fixed-line services continue to decrease. The fixed network capacity shrank further during the review period, from 512,281 connections in 2007 to 400,764 in 2011; while the number of wire line subscribers fell from 263,122 in 2006, to 187,716 in 2011. However, wireless fixed phone figures grew significantly over the same period, from 84,104 to 191,585 subscribers. Telkom Kenya, which was partially privatized in 2007, and Flashcom Kenya are the only players in the fixed network voice services market, with the former holding 99% of the market share.

350. The number of internet users in Kenya more than quadrupled between 2006 and 2011 from 2.5 million to some 12.5 million, and the number of internet subscriptions grew, from 1.8 million in 2008 to 4.5 million in 2011. This growth is attributed to the launch of 3G services by mobile operators. Mobile data/internet subscriptions through GPRS/EDGE and 3G continued to dominate internet subscriptions, accounting for 98.4 % of the total.

351. Currently, Kenya has four sub marine fibre-optic cables: the East African Marine System (TEAMS), East African Sub-marine Cable System (EASSy), Sea Submarine Communications (SEACOM), and Lower Indian Ocean Network2 (LION2). The cables have increased internet speeds and the amount of broadband available for users; the cost of broadband is expected to fall.

352. Kenya has established a Universal Service Fund (USF) with a view to facilitating access to postal, information, and communications services, and to promoting innovation and capacity-building in the ICT industry. The fund is yet to be operationalized as the Universal Service Advisory Council (USAC), which will advise the CCK and provide strategic policy guidance for the implementation of the USF has not been constituted. the USF will be funded through a universal service levy to be charged by the CCK on licensees. According to the authorities, following a stakeholders' consultation it was agreed that licensees under the Information and Communication Act will be charged a universal service levy of 0.5% of annual gross revenue.

353. The current framework for regulating communications services is provided by the Kenya Information and Communications Act Cap 411A. Under the Act, the Ministry in charge of

Information and Communications is responsible for national information and communication technology (ICT) policy formulation, while the CCK is the regulatory authority for postal, information, and communication services.

354. A national ICT policy entered into effect in 2006, and aims to "improve the livelihood of Kenyans by ensuring the availability of accessible, efficient, reliable, and affordable ICT services." According to the authorities, the policy is currently under review, in order to ensure its maximum developmental impact. The National Communication Secretariat advises the Government on ICT policy. The CCK deals with regulatory issues, including licensing communications operators. The CCK regulates telecommunications, and postal services. A 2009 amendment to the Communications Act increased the scope of CCK's jurisdiction to include broadcasting services. Disputes arising under the Act are referred to an Appeals Tribunal, whose members are appointed by the Ministry in charge of Information and Communications. Parties unsatisfied by a decision of the Appeals Tribunal may take their case to the Court of Appeals.

355. Since 2008, Kenya has dropped the multiple licensing regime, with a view to implementing a unified technology-neutral licensing model. This has resulted in simplified procedures, development of new applications, increased penetration of mobile internet, and increased infrastructure investment.[81] Under this new regime service providers are licensed as: network facilities providers (NFPs), to provide communications infrastructures; applications service providers (ASPs), to provide any forms of services using communications infrastructures; or contents services providers (CSPs), to provide services such as broadcast material, and other information services.

356. In 2010, the Kenyan authorities issued regulations to promote transparency, equity, and predictability in the communications sector. The regulations deal with fair competition and equality of treatment, dispute resolution, tariffs and tariff structures, interconnection, monitoring of installations, and maintenance of communications infrastructure.

(b) Postal services

357. The number of licensed operators, in the postal services, increased to 176 in 2011, from 134 in 2006. The intra-country market remains the largest segment, with 56.3% of the total number of licensed operators. The Kenya Information and Communications Act regulates tariffs for reserved postal services. The Postal Corporation of Kenya (PCK) is the main provider of postal services in Kenya. Its reserved, exclusive services include: delivery of letters, postcards, printed paper, and small packets weighing up to 350 grams; printing and issuance of postage stamps and philatelic materials; and provision of private letter-boxes and street posting boxes. The non-exclusive postal market consist of: courier services, electronic certification services, parcel services, direct mail marketing services, postal financial services, electronic and hybrid mail, distribution of publications, and agency services (e.g. telephone services, and third-party services).

358. Tariffs for basic letters are subject to approval by the regulator. The supplier is free to set prices of the other postal services, which are open to competition. Interconnection and termination services are not open to competition, and prices are subject to approval by the CCK.

(iv) Tourism

359. Tourism industry is vital to the Kenyan economy. It accounts for some 10% of GDP, and remains the leading source for foreign exchange earnings. The industry employed over 238,000

[81] Research ICT Africa (2010).

people in 2011, up from 185,000 in 2006. The highest number of employees are in hotels, restaurants, camps, and other lodging facilities.

360. Due to post-election turmoil, and the global economic and financial crisis, Kenya's tourism industry performed poorly in 2008. The volume of international arrivals, fell by 33.8%, from about 1.8 million in 2007, (with corresponding earnings of K Sh 65.2 billion), to 1.2 million in 2008 (with total earnings of K Sh 57.2 billion). Following an improvement in Kenya's socio-political situation, international arrivals increased significantly, with earnings peaking in 2010 (K Sh 73.7 billion in terms of revenue earnings); when performance, in term of arrivals and earnings, surpassed the 2007 record by 4.5 %.

361. Kenya's performance in the WEF Travel and Tourism Competitiveness Index (TTCI) has been mixed in recent years.[82] Difficulties have been mainly related to security, due to terrorist attacks along Kenya–Somali border regions, and piracy in the Indian Ocean, which has affected cruise tourism.

362. Kenya has made progress in improving the attractiveness of its tourism environment: a National Tourism Policy has been developed, and the Tourism Act 2011 consolidated all the legal instruments in the tourism industry. In addition, the new legislation provides for development, regulation management, and marketing of sustainable tourism in Kenya. It provides for incentive schemes for imported capital goods for investment in sustainable tourism activities. In addition, it proposes the establishment of various institutions under the supervision of the Ministry in charge of Tourism, which are expected to play a key role in the development and promotion of sustainable tourism.

363. Pursuant to the new legislation, the Directorate of Tourism, is responsible for formulating the National Tourism Strategy and coordinating the Tourism Protection Service, to deal with the safety and security of visitors and hosts; the Tourism Regulatory Authority will be responsible for all matters related to licensing, formulation of guidelines, and measures pertaining to sustainable tourism development, as well as standardization and classification of tourism facilities and services. The Kenya Tourism Board is responsible for marketing Kenya as a tourist destination.

364. The Act provides for resource mobilization to support tourism industry, through the Kenya Tourism Fund, which is responsible for: supporting the development of tourism products and services; financing marketing operations aimed at promoting tourism in Kenya; and mobilizing resources to support tourism-related activities. Financial assistance for development, expansion, and maintenance of tourism facilities, together with business advisory services to the tourism industry, are the responsibility of Kenya Tourism Finance Corporation. Additionally, mechanisms are to be developed to support small and medium-size enterprises (SMEs), as well as community-based tourist facilities.[83]

365. A sectoral dispute resolution mechanism, under the Tourism Tribunal, will handle all disputes.

[82] The TTCI measures the attractiveness of factors and policies (regulatory framework, infrastructure, human and cultural resources) that are important for the development of the travel and tourism industry. It was launched in 2007 by the World Economic Forum, in collaboration with a number of tourism-related bodies.

[83] Ministry in charge of Tourism online information. Viewed at: www.tourism.go.ke.

366. Kenya Tourism Research Institute undertakes and coordinates research and analysis in the sector. In order to provide adequate safety for tourists, and promote Kenya abroad, the Government has established a Tourist Police Unit, coupled with an aggressive marketing operation beyond the country's traditional tourism markets.

367. The quality of tourism infrastructure is lacking in terms of ICT and transport infrastructures. Improving roads, especially in rural areas, would have the advantage of opening up new sites, thus creating new employment opportunities. In addition, the relative low proportion of four/five-star hotels (some 18% of hotels in Kenya) continues to affect Kenya's competitiveness in the global tourism industry.[84]

[84] KIPPRA (2010).

REFERENCES

African Economic Outlook Organization. Viewed at: http://www.africaneconomicoutlook.org.

Central Bank of Kenya (2010a), *Bank Supervision Annual Report 2010*. Viewed at: http://www.centralbank.go.ke/downloads/bsd/annualreports/bsd2010.pdf.

Central Bank of Kenya (2010b), *Guidance Note No. 1 of 2010 - Anti-Money Laundering*. Viewed at: http://www.centralbank.go.ke/downloads/bsd/guidance/guidancenoteno1of2010.pdf.

FSD Kenya (2011), *Financial inclusion in Kenya: Survey results and analysis from FinAccess 2009*. Viewed at: www.fsdkenya.org/finaccess.

IMF (2011), *Kenya: Request for a Three-Year Arrangement Under the Extended Credit Facility—Staff Report; Press Release on the Executive Board Discussion; and Statement by the Executive Director for Kenya*. IMF Country Report No. 11/48. Viewed at: http://www.imf.org/external/pubs/ft/scr/2011/cr1148.pdf.

IMF (2012), *Kenya: Third Review Under the Three-Year Arrangement Under the Extended Credit Facility and Request for Modification of Performance Criteria—Staff Report; Press Release*, IMF Country Report No. 12/97. Viewed at: http://www.imf.org/external/pubs/ft/scr/2012/cr1297.pdf.

IPPC (2002), *International Standards tor Phytosanitary Measures ISPM No. 15: Guidelines For Regulating Wood Packaging Material in International Trade (2002).* Viewed at: ftp://ftp.fao.org/docrep/fao/009/a0450e/a0450e.pdf.

KIPPRA (2004), *Sources and Determinants of Agricultural Growth and Productivity in Kenya*, KIPPRA Discussion Paper No. 34, March. Viewed at: http://pdf.usaid.gov/pdf_docs/PNADS075.pdf.

KIPPRA (2010), *Kenya Economic Report, 2010*, Nairobi.

KNBS (2011), *Economic Survey*, Kenya National Bureau of Statistics, Nairobi.

Ministry of Agriculture (2004), *Strategy for Revitalizing Agriculture 2004-2014*, Nairobi.

Nzuma J.M. (2011), "Producer Funding of Agricultural Research: The Case of Kenya's Tea Industry". Background paper prepared for the ASTI–IFPRI/FARA Conference: Agricultural R&D: Investing in Africa's Future Analyzing Trends, Challenges, and Opportunities Accra, Ghana. Viewed at: http://www.asti.cgiar.org/pdf/conference/Theme1/CaseStudies/Nzuma.pdf.

OECD-DAC (2006), *Methodology for Assessment of National Procurement Systems, Version 4*. Viewed at: http://www.oecd.org/development/aideffectiveness/37390076.pdf.

PPOA (2007), *Assessment of the Procurement system in Kenya*. Viewed at: http://www.oecd.org/development/aideffectiveness/41583965.pdf.

Research ICT Africa (2010), *Kenya ICT Sector Performance Review 2009/2010: Towards Evidence-based ICT Policy and Regulation*, Volume Two, Policy Paper 10. Viewed at: http://www.research ictafrica.net/publications/Policy_Paper_Series_Towards_Evidence-based_ICT_Policy_and_

Regulation_Volume_2/Vol%202%20Paper%2010%20%20Kenya%20ICT%20Sector%20Performance%20Review%202010.pdf.

World Bank (2010), *Kenya Economic Update*. Viewed at: http://siteresources.worldbank.org/KENYAEXTN/Resources/Kenya-Economic-Update-June-2010.pdf.

World Bank (2011a), *Doing Business 2012*: *Doing Business in a More Transparent World.* Viewed at: http://www.doingbusiness.org/~/media/FPDKM/Doing%20Business/Documents/Annual-Reports/English/DB12-FullReport.pdf.

World Bank (2011b), *Doing Business in the East African Community*. Viewed at: http://www.doingbusiness.org/reports/~/media/FPDKM/Doing%20Business/Documents/Special-Reports/DB11-EAC.pdf.

APPENDIX TABLES

Table AI.1
Structure of imports, 2005-10
(US$ million and %)

	2005	2006	2007	2008	2009	2010
Total	**5,846**	**7,233**	**8,989**	**11,128**	**10,202**	**12,093**
			(%)			
Total primary products	35.6	37.3	36.4	41.9	39.8	37.2
Agriculture	11.2	11.1	12.9	13.0	16.8	13.6
Food	9.5	9.2	11.0	11.6	15.4	12.1
4222 Palm oil, fractions	2.9	3.0	3.5	4.1	3.3	3.7
0412 Other wheat (including spelt) and meslin, unmilled	1.8	1.5	1.6	1.8	1.7	1.8
0423 Rice, milled, semi-milled	0.9	0.9	0.8	0.8	0.9	0.8
0612 Other beet, cane and chemically pure sucrose, solid form	0.5	0.7	1.1	0.6	0.7	0.8
Agricultural raw material	1.7	1.9	1.9	1.3	1.4	1.6
2690 Worn clothing and other worn textile articles, rags	0.5	0.5	0.5	0.5	0.6	0.7
Mining	24.4	26.2	23.5	28.9	23.0	23.6
Ores and other minerals	0.3	0.3	0.4	0.5	0.5	0.4
Non-ferrous metals	1.2	1.7	1.8	1.2	1.1	1.1
Fuels	22.9	24.2	21.3	27.2	21.4	22.1
3330 Crude oils of petroleum and bituminous minerals	11.7	10.6	8.1	10.6	6.9	7.6
Manufactures	64.3	62.6	62.1	58.1	59.9	62.7
Iron and steel	4.8	4.1	4.4	4.6	4.3	4.5
Chemicals	14.4	13.9	12.8	13.1	13.0	13.3
5429 Medicaments, n.e.s.	1.3	1.6	1.5	1.6	1.9	1.8
5711 Polyethylene	1.5	1.5	1.5	1.4	1.2	1.3
5629 Fertilizers, nes	1.9	1.3	0.9	1.3	1.5	1.0
5751 Propylene polymers or of other olefins	0.8	0.7	0.7	0.7	0.6	0.7
Other semi-manufactures	5.7	5.8	6.9	6.4	6.5	6.7
Machinery and transport equipment	30.8	31.2	30.5	27.9	30.4	31.8
Power generating machines	0.5	0.7	0.9	2.1	2.2	1.5
7165 Generating sets	0.3	0.3	0.4	1.1	1.0	1.1
Other non-electrical machinery	6.3	5.9	6.5	6.6	6.4	7.1
7314 Unit head machines, etc. for drilling or boring	0.0	0.0	0.0	0.0	0.0	0.7
Agricultural machinery and tractors	0.5	0.4	0.5	0.4	0.5	0.4
Office machines & telecommunication equipment	4.1	4.9	5.2	5.7	6.4	7.4
7643 Radio or television transmission apparatus	0.5	0.9	1.9	1.1	1.4	1.8
7641 Electrical apparatus for line telephony/telegraphy	1.0	1.1	0.3	0.4	0.5	0.8
Other electrical machines	1.7	2.2	2.8	2.9	3.2	2.8
Automotive products	6.5	7.9	8.1	6.8	7.1	6.5
7812 Motor vehicles for the transport of persons, n.e.s.	2.7	3.0	3.3	2.8	2.9	2.9
7821 Goods vehicles	1.6	2.3	1.9	1.5	1.4	1.5
7832 Road tractors for semi-trailers	0.7	1.3	1.2	1.1	1.3	0.8
Other transport equipment	11.6	9.6	7.1	3.9	5.1	6.3
7924 Aeroplanes, etc. (excl. helicopters), >15,000 kg unladen	7.2	3.2	4.4	1.1	2.3	3.4
7131 Aircraft internal combustion piston engines and parts	0.4	0.5	0.4	0.9	0.7	0.8
Textiles	4.1	3.4	2.8	2.3	1.9	2.4
Clothing	0.4	0.6	0.7	0.5	0.5	0.6
Other consumer goods	4.1	3.7	3.9	3.4	3.3	3.6
Other	0.1	0.0	1.5	0.1	0.3	0.1

Source: WTO Secretariat estimates, based on UNSD, Comtrade database SITC Rev.3.

Table AI.2
Structure of exports, including re-exports 2005-10
(US$ million and %)

	2005	2006	2007	2008	2009	2010
Total	**3,420**	**3,502**	**4,081**	**5,001**	**4,463**	**5,169**
			(%)			
Total primary products	67.9	64.3	61.8	61.7	63.0	63.8
Agriculture	47.6	54.6	54.7	54.8	56.8	57.6
Food	37.6	42.6	42.8	41.7	43.7	46.9
0741 Tea	16.6	18.9	17.1	18.6	20.0	22.5
0545 Other fresh or chilled vegetables	5.4	5.8	5.7	5.1	4.9	4.4
0711 Coffee, not roasted	3.5	3.6	3.8	3.0	4.4	4.0
1222 Cigarettes containing tobacco	1.5	2.4	2.3	1.8	1.9	1.8
4222 Palm oil, fractions	0.7	0.7	0.9	1.0	1.1	1.6
0589 Fruit, nuts, n.e.s., whether or not sweetened	1.4	1.2	1.4	1.5	0.9	1.1
0622 Sugar confectionery, not containing cocoa	1.0	1.1	1.1	1.0	0.9	1.0
1123 Beer made from malt (including ale, stout and porter)	0.0	0.4	0.7	0.6	0.7	0.7
0542 Leguminous vegetables, dried, shelled	0.1	0.1	0.5	0.3	0.1	0.7
Agricultural raw material	10.0	12.0	11.9	13.1	13.1	10.7
2927 Cut flowers and foliage	7.2	9.0	9.6	10.5	9.5	7.7
2929 Materials of vegetable origin, n.e.s.	0.5	0.5	0.1	0.6	1.7	1.2
2926 Bulbs, tubers, cuttings, slips, live plants, etc.	1.1	1.2	1.3	1.0	1.3	1.1
Mining	20.3	9.7	7.1	7.0	6.2	6.2
Ores and other minerals	1.4	1.6	1.8	2.1	1.1	1.0
Non-ferrous metals	0.6	0.9	1.0	0.9	0.9	1.0
Fuels	18.3	7.3	4.3	4.0	4.2	4.2
Manufactures	31.8	35.5	36.8	38.1	36.4	33.9
Iron and steel	3.6	3.6	3.1	3.2	2.6	3.0
6741 Flat-rolled products, iron/steel, zinc plated	1.2	1.3	0.7	0.8	0.9	0.7
Chemicals	8.4	7.2	8.7	11.5	10.2	9.0
5237 Carbonates, percarbonates	2.3	1.6	2.0	3.9	2.5	1.8
5541 Soap	1.3	0.6	0.7	0.8	1.1	1.2
5429 Medicaments, n.e.s.	0.8	0.9	1.2	1.1	1.0	1.0
Other semi-manufactures	5.5	6.9	7.6	8.0	7.7	7.0
6612 Portland cement and similar hydraulic cements	1.1	1.6	1.8	2.3	2.3	1.8
Machinery and transport equipment	2.9	3.9	4.5	4.3	5.2	5.1
Power generating machines	0.1	0.3	0.1	0.1	0.2	0.2
Other non-electrical machinery	0.8	1.2	0.9	0.8	1.1	1.1
Agricultural machinery and tractors	0.1	0.1	0.1	0.1	0.3	0.2
Office machines & telecommunication equipment	0.2	0.4	0.7	1.1	1.2	1.4
Other electrical machines	0.6	0.6	0.9	0.9	0.8	0.8
Automotive products	0.6	0.7	0.8	0.8	1.4	1.0
Other transport equipment	0.6	0.7	1.1	0.5	0.5	0.6
Textiles	1.4	1.5	1.4	1.0	1.0	1.2
Clothing	5.4	6.8	5.9	5.1	4.0	3.8
Other consumer goods	4.7	5.5	5.6	5.1	5.6	4.9
8931 Plastics containers, stoppers, lids, etc.	1.2	1.4	1.2	1.4	1.3	1.3
Other	0.3	0.2	1.5	0.2	0.6	2.3
Gold	0.2	0.2	1.3	0.2	0.6	2.2
9710 Gold, non-monetary (excl. gold ores and concentrates)	0.2	0.2	1.3	0.2	0.6	2.2

Source: WTO Secretariat estimates, based on UNSD, Comtrade database SITC Rev.3.

Table AI.3
Origin of imports, 2005-10
(US$ million and %)

	2005	2006	2007	2008	2009	2010
Total	**5,846**	**7,233**	**8,989**	**11,128**	**10,202**	**12,093**
			(%)			
America	11.7	6.2	9.2	5.7	8.2	5.8
United States	9.6	4.7	7.4	3.6	6.4	4.1
Other America	2.1	1.5	1.8	2.1	1.9	1.7
EU(27)	21.0	22.6	20.2	17.6	18.5	18.6
United Kingdom	5.6	5.2	4.9	3.6	4.6	5.2
Germany	3.6	3.6	3.7	3.5	2.9	2.8
France	3.2	2.0	2.7	2.1	2.0	1.9
The Netherlands	2.2	1.7	1.5	1.7	2.2	1.9
Finland	0.4	0.4	0.8	0.7	0.5	1.5
Italy	1.8	2.3	2.2	1.6	1.8	1.2
EFTA	1.5	1.4	1.0	1.0	0.9	1.4
Switzerland	1.1	1.3	0.8	0.7	0.7	1.2
Other Europe	0.3	0.7	0.6	0.8	0.4	0.5
Commonwealth of Independent States (CIS)	1.1	1.3	1.6	2.2	1.9	1.9
Russian Federation	0.7	0.6	1.1	1.5	0.6	1.0
Ukraine	0.4	0.7	0.5	0.7	1.3	0.9
Africa	14.2	12.2	11.9	11.2	13.3	12.0
South Africa	9.7	6.5	5.8	6.1	9.0	6.2
Egypt	1.4	1.6	1.8	1.4	1.2	1.9
United Republic of Tanzania	0.7	0.9	1.1	0.9	1.0	1.1
Uganda	0.3	0.2	1.0	0.7	0.6	1.0
Middle East	24.4	23.0	21.5	24.0	18.9	17.6
United Arab Emirates	14.2	14.9	14.8	14.9	11.4	12.1
Saudi Arabia	6.3	5.1	2.9	3.4	3.5	3.4
Asia	25.5	32.5	34.1	37.4	37.8	42.0
China	5.2	5.7	7.6	8.4	9.5	12.6
Japan	5.2	5.6	6.8	5.8	6.2	6.1
Six East Asian Traders	5.6	9.4	5.8	7.2	7.3	8.1
Singapore	1.7	4.9	1.5	3.2	3.4	3.3
Korea, Rep. of	0.8	1.8	1.4	1.1	1.4	2.1
Thailand	0.8	0.9	1.1	1.2	0.9	0.9
Other Asia	9.4	11.8	13.9	16.0	14.8	15.2
India	5.6	7.2	9.4	11.8	10.6	10.8
Indonesia	2.2	2.6	3.1	3.0	2.4	2.8
Other	0.3	0.1	0.1	0.0	0.0	0.1

Source: WTO Secretariat estimates, based on UNSD, Comtrade database SITC Rev.3.

Table AI.4
Destination of exports, including re-exports 2005-10
(US$ million and %)

	2005	2006	2007	2008	2009	2010
Total	**3,420**	**3,502**	**4,081**	**5,001**	**4,463**	**5,169**
			(%)			
America	7.2	8.8	7.5	6.4	5.5	5.9
United States	6.7	8.3	7.0	6.0	5.1	5.5
Other America	0.5	0.5	0.5	0.4	0.4	0.4
Europe	25.4	28.1	28.1	27.3	27.3	24.8
EU(27)	24.5	26.6	26.6	26.0	26.5	23.9
United Kingdom	9.2	10.9	10.5	11.0	11.2	9.8
The Netherlands	7.1	7.9	8.0	7.6	7.6	6.6
Germany	2.0	1.9	2.2	1.8	2.1	1.9
France	2.1	1.8	1.5	1.4	1.3	1.3
EFTA	0.8	1.4	1.2	1.0	0.6	0.7
Other Europe	0.1	0.2	0.3	0.2	0.2	0.2
Commonwealth of Independent States (CIS)	1.1	1.3	1.4	1.7	1.8	1.9
Russian Federation	0.5	0.6	0.7	1.0	1.0	1.1
Africa	46.7	42.7	45.1	47.3	47.2	46.1
Uganda	16.6	11.1	12.2	12.3	13.4	12.7
United Republic of Tanzania	7.7	7.2	8.1	8.5	8.7	8.1
Sudan	2.6	4.0	4.2	4.1	3.7	4.6
Egypt	3.4	3.9	3.3	4.5	3.4	4.4
Somalia	1.9	3.0	3.0	3.7	3.3	3.2
D.R. Congo	3.9	3.1	3.0	2.9	3.3	3.1
Rwanda	2.8	1.9	2.1	2.6	2.8	2.6
Burundi	1.4	0.9	0.9	1.0	1.3	1.3
Zambia	1.1	1.6	1.8	1.6	1.4	1.1
Ethiopia	1.0	1.5	1.3	1.3	1.3	1.1
Middle East	3.5	3.9	5.0	4.6	5.6	7.4
United Arab Emirates	1.6	2.0	3.1	2.2	3.1	4.6
Yemen	0.6	0.8	0.8	0.8	1.0	1.1
Asia	11.4	11.0	11.7	11.8	11.8	12.6
China	0.5	0.6	0.5	0.6	0.7	0.6
Japan	0.7	0.5	0.5	0.7	0.6	0.5
Six East Asian Traders	1.3	1.2	1.7	2.4	1.5	1.2
Other Asia	8.9	8.7	9.0	8.1	8.9	10.4
Pakistan	5.4	5.8	4.9	4.0	4.4	4.4
Afghanistan	0.6	0.6	0.9	1.3	2.2	2.9
India	1.6	1.5	2.1	2.0	1.5	2.1
Other	4.7	4.2	1.2	0.9	0.8	1.1

Source: WTO Secretariat estimates, based on UNSD, Comtrade database SITC Rev.3.

Table AII.1
Selected notifications to the WTO, 2006-12

WTO Agreement	Description of requirement	Periodicity	Most recent notification
Agreement on implementation of GATT Article VI			
Article 16.4	Semi-annual report	Semi-annual	G/ADP/N/139/Add.1, 21 April 2006
Article 18.5	Laws and regulations	Once, then changes	G/ADP/N/1/KEN/2, 29 July 2009
Agreement on implementation of GATT Article XVII			
	State trading enterprises		G/STR/N/11/KEN, 27 March 2006
Agreement on Technical Barriers to Trade			
Article 2.9	Laws and regulations	Ad hoc	G/TBT/N/KEN/248, 3 May 2011 G/TBT/N/KEN/284,21 March 2011 G/TBT/N/KEN/283, 21 March 2011 G/TBT/N/KEN/208, 8 February 2010 G/TBT/N/KEN/182, 1 October 2009 G/TBT/N/KEN/13, G/TBT/N/KEN/24 17 January 2006 2 March 2006 G/TBT/N/KEN/26 2 March 2006
Article 2.10	Laws and regulations	Ad hoc	G/TBT/N/KEN/282 1 March 2011 G/TBT/N/KEN/266 16 December 2010 G/TBT/N/KEN/258 16 December 2010 G/TBT/N/KEN/200 8 December 2009 G/TBT/N/KEN/175 1 October 2009 G/TBT/N/KEN/134 21 April 2009 G/TBT/N/KEN/133 21 April 2009 G/TBT/N/KEN/132 21 April 2009 G/TBT/N/KEN/129 30 October 2008 G/TBT/N/KEN/125/Add.1 12 November 2008 G/TBT/N/KEN/124 30 October 2008 G/TBT/N/KEN/97 19 January 2007 G/TBT/N/KEN/91 3 January 2007 G/TBT/N/KEN/80 12 December 2006 G/TBT/KEN/79 12 December 2006 G/TBT/KEN/68 22 September 2006
Article 5.6	Laws and regulations	Ad hoc	G/TBT/N/KEN/251 11 October 2010 G/TBT/N/KEN/14/Add.3 6 November 2008 G/TBT/N/KEN/123 25 September 2008 G/TBT/N/KEN/122 25 September 2008
Article 5.7	Laws and regulations	Ad hoc	G/TBT/N/KEN/285 4 April 2011 G/TBT/N/KEN/191 8 December 2009

Table AII.1 (cont'd)

WTO Agreement	Description of requirement	Periodicity	Most recent notification
Article 10.7	Laws and regulations	Ad hoc	G/TBT/10.7/N/28 10 November 1999
Agreement on Sanitary and Phytosanitary Measures			
Article 7, Annex B	Regular notification	Ad hoc	G/SPS/N/KEN/29 21 December 2009 G/SPS/KEN/N/30 29 July 2010
Article 7, Annex B	Emergency measures	Ad hoc	G/SPS/N/KEN/24 6 March 2006 G/SPS/N/KEN/16 13 February 2006 G/SPS/N/KEN/2-28 26 April 2001 - 1 May 2006
Agreement on Subsidies and Countervailing Measures			
Article 27.4	Semi-annual report		G/SCM/N/138/Add.1 20 April 2006
Article 32.6			
Agreement on Trade-Related Aspects of Intellectual Property Rights	Laws and regulations	Once, then changes	
Article 63.2	Contact point		IP/N/3/Rev.9/Add.2 19 May 2006

Source: WTO Secretariat.

Table AIII.1
Products subject to excise duties, 2011

HS code	Product description	Excise duty
Foodstuffs		
2009.11.00	Frozen orange juice, unfermented and not containing added spirit whether or not containing added sugar or other sweetening matter	10%
2009.12.00	Orange juice not frozen, unfermented and not containing added spirit whether or not containing added sugar or other sweetening matter, or a brix value not exceeding 20	10%
2009.19.00	Other orange juice, unfermented and not containing added sugar or other sweetening matter	10%
2009.21.00	Grapefruit juice, unfermented and not containing added spirit whether or not containing added sugar or other sweetening matter, of a brix value not exceeding 20	10%
2009.29.00	Other grapefruit juice, unfermented and not containing added spirit whether or not containing added sugar or other sweetening matter	10%
2009.31.00	Juice of any other single citrus fruit, unfermented and not containing added spirit whether or not containing added sugar or other sweetening matter, of a brix value not exceeding 20	10%
2009.39.00	Other juice of any other single citrus fruit, unfermented and not containing added spirit whether or not containing added sugar or other sweetening matter	10%
2009.41.00	Pineapple juice, unfermented and not containing added spirit whether or not containing added sugar or other sweetening matter, of a brix value not exceeding 20	10%
2009.49.00	Other pineapple juice, unfermented and not containing added spirit whether containing added sugar or other sweetening matter	10%
2009.50.00	Tomato juice, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter	10%
2009.61.00	Grape juice (including grape must), unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter, of a brix value not exceeding 20	10%
2009.69.00	Other grapefruit juice (including grape must), unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter	10%
2009.71.00	Apple juice, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter, of a brix value not exceeding 20	10%
2009.79.00	Other apple juice, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter	10%
2009.80.10	Passion fruit juice, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter	10%
2202.90.00	Other non-alcoholic beverages	10%
Alcohol		
2203.00.10	Stout and porter	K Sh 49/l
2203.00.20	Beer of an original gravity not exceeding 1,060 degrees	K Sh 38/l
2203.00.90	Other beer (including ale) of an original gravity exceeding 1,060 degrees	K Sh 38/l
2204.10.10	Champagne	45%
2204.10.90	Other sparkling wine	45%
2204.21.00	Other wine; grade must with fermentation prevented or arrested by the addition of alcohol in containers of 2 litres or less	45%
2205.10.00	Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances in containers of 2 litres or less	45%
2205.90.10	Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances in containers of more than 2 litres but not more than 5 litres	45%
2205.90.90	Vermouth or other wine of fresh grapes in containers of more than 5 litres	45%
2206.00.11	Beer not made from malt in containers holding 2 litres or less	K Sh 24/l
2206.00.19	Other beer not made from malt in containers holding more than 2 litres	K Sh 24/l
2206.00.30	Other fermented beverages (for example, chibuku)	K Sh 24/l
2206.00.90	Other fermented beverages; mixtures of fermented beverages and non-alcoholic beverages not elsewhere specified or included	K Sh 24/l
2207.10.00	Undenatured ethyl alcohol of an alcoholic strength by volume of 80% vol. or higher	K Sh 90 or 35%/l proof
2207.20.00	Ethyl alcohol and other spirits, denatured of any strength	K Sh 90 or 35%/l proof
2208.20.11	Brandy in containers holding 2 litres or less	K Sh 100 or 65%/l proof
2208.20.19	Brandy in containers holding more than 2 litres	K Sh 100 or 65%/l proof

Table AIII.1 (cont'd)

HS code	Product description	Excise duty
2208.20.91	Other spirits obtained by distilling grape wine or grape marc in containers holding 2 litres or less	K Sh 100 or 65%/l proof
2208.30.10	Whiskies in containers holding 2 litres or less	K Sh 100 or 65%/l proof
2208.30.90	Whiskies in containers holding more than 2 litres	K Sh 100 or 65%/l proof
2208.40.10	Rum and tafia in containers holding 2 litres or less	K Sh 100 or 65%/l proof
2208.40.90	Rum and tafia in containers holding more than 2 litres	K Sh 100 or 65%/l proof
2208.50.10	Gin and Geneva in containers holding 2 litres or less	K Sh 100 or 65%/l proof
2208.50.90	Gin and Geneva in containers holding more than 2 litres	K Sh 100 or 65%/l proof
2208.60.10	Vodka in containers holding 2 litres or less	K Sh 100 or 65%/l proof
2208.60.90	Vodka in containers holding more than 2 litres	K Sh 100 or 65%/l proof
2208.70.10	Liqueurs and cordials in containers holding 2 litres or less	K Sh 100 or 65%/l proof
2208.70.90	Liqueurs and cordials in containers holding more than 2 litres	K Sh 100 or 65%/l proof
2208.90.10	Fruit brandy not made from distilling grape wine or grape marc in containers holding 2 litres or less	K Sh 100 or 65%/l proof
2208.90.20	Fruit brandy not made from distilling grape wine or grape marc in containers holding more than 2 litres	K Sh 100 or 65%/l proof
2208.90.30	Other spirits and other spirituous beverages in containers holding 2 litres or less	60%
2208.90.90	Other spirits and other spirituous beverages in containers holding more than 2 litres	K Sh 100 or 65%/l proof
Tobacco		
2402.10.00	Cigars, cheroots and cigarillos, containing tobacco	30%
2403.10.00	Smoking tobacco, whether or not containing tobacco substitutes in any proportion	130%
2403.91.00	Homogenised or "reconstituted" tobacco	130%
2403.99.90	Other manufactured tobacco and manufactured tobacco substitutes	130%
Other-free		
2709.00.10	Condensates	K Sh 3,112.50/'000 l@20°C
Petroleum-free		
2710.11.11	Aviation spirit	K Sh 19,895/'000 l@20°C
2710.11.12	Motor Spirit (gasoline), premium	K Sh 19,895/'000 l@20°C
2710.11.13	Motor spirit (gasoline), regular	K Sh 19,505/'000 l@20°C
2710.11.14	Spirit type jet fuel	K Sh 19.895/'000 l@20°C
2710.11.15	Special boiling point spirit and white spirit	K Sh 8,500/'000 l@20°C
2710.11.19	Other light oils and preparations	K Sh 8,500/'000 l@20°C
2710.19.10	Partly refined (including topped crude)	K Sh 1,450/'000 l@20°C
2710.19.21	Kerosene type jet fuel	K Sh 5, 755/'000 l@20°C
2710.19.22	Other Kerosene	K Sh 7,205/'000 l@20°C
2710.19.29	Other medium petroleum oils and preparations	K Sh 5,300/'000 l@20°C
2710.19.31	Diesel oil (industrial heavy, black, for low speed marine and stationary engines)	K Sh 3,700/'000 l@20°C
2710.19.32	Gas oil (automotive, light, amber, for high speed engines)	K Sh 10,305/'000 l@20°C
2710.19.33	Other gas oils	K Sh 6,300/'000 l@20°C
2710.19.34	Residual fuel oils (marine, furnace and similar fuel oils) of a kinematics viscosity of 125 centistokes	K Sh 600/'000 l@20°C
2710.19.35	Residual fuel oils (marine, furnace and similar fuel oils) of a kinematics viscosity of 180 centistokes	K Sh 600/'000 l@20°C
2710.19.36	Residual fuel oils (marine, furnace and similar fuel oils) of a kinematics viscosity of 250 centistokes	K Sh 600/'000 l@20°C
2710.19.37	Other residual fuel oils	K Sh 600/'000 l@20°C
Petroleum		
2712.10.00	Petroleum jelly	10%
Cosmetics		
3304.10.00	Lip make-up preparations	10%
3304.20.00	Eye make-up preparations	10%
3304.30.00	Manicure or pedicure preparations	10%
3304.91.00	Beauty and skin care powders, including sunscreen or sun tan preparations whether or not compressed	10%

Table AIII.1 (cont'd)

HS code	Product description	Excise duty
3304.99.00	Other beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations	10%
3305.10.00	Shampoos	10%
3305.20.00	Preparations for permanent waving or straightening of hair	10%
3305.30.00	Hair lacquers	10%
3305.90.00	Other preparations for use on the hair	10%
3306.10.00	Dentifrices, in individual retail packages	10%
3307.10.00	Pre-shave, shaving or after-shave cream	10%
3307.20.00	Personal deodorants and antiperspirants	10%
3307.30.00	Perfumed salt and other bath preparations	10%
3307.49.00	Other preparations for perfuming or deodorizing rooms, including odoriferous preparations use during religious rites	10%
3307.90.20	Perfumed petroleum jelly	10%
3307.90.30	Perfumed papers and papers impregnated or coated with perfumes or cosmetics	10%
3307.90.40	Wadding, felt and non-woven impregnated, coated or covered with perfumes or cosmetics	10%
3307.90.90	Other depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included	10%

Source: Information provided by the Kenyan authorities.

Table AIII.2
Threshold matrix for class A procuring entities

Procurement method	Maximum or minimum expenditure per procurement method		
	Goods	Works	Services
International open tender (s71 of the Act)	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement There is no minimum level of expenditure under this method	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement There is no minimum level of expenditure under this method	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement There is no minimum level of expenditure under this method
National open tender (s54(2) of the Act)	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement When using this method the minimum expenditure that requires advertising is K Sh 6,000,000	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement When using this method the minimum expenditure that requires advertising is K Sh 6,000,000	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement When using this method the minimum expenditure that requires advertising is K Sh 3,000,000
Restricted tender under (s73(2)(a) of the Act)	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement Minimum level of expenditure is K Sh 20,000,000, below this threshold use open tender	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement Minimum level of expenditure is K Sh 20,000,000, below this threshold use open tender	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement Minimum level of expenditure is K Sh 20,000,000, below this threshold use open tender
Restricted tender under (s73(2)(b) of the Act)	Maximum level of expenditure shall be K Sh 20,000,000, above this threshold use open tender Minimum level of expenditure is K Sh 1,000,000, below this threshold use request for quotations	Maximum level of expenditure shall be K Sh 20,000,000, above this threshold use open tender Minimum level of expenditure is K Sh 2,000,000, below this threshold use request for quotations	Maximum level of expenditure shall be K Sh 20,000,000, above this threshold use open tender Minimum level of expenditure is K Sh 1,000,000, below this threshold use request for quotations
Restricted tender under (s73(2)(c) of the Act)	Maximum level of expenditure shall be K Sh 20,000,000, above this threshold use open tender Minimum level of expenditure is K Sh 1,000,000, below this threshold use request for quotations	Maximum level of expenditure shall be K Sh 20,000,000, above this threshold use open tender Minimum level of expenditure is K Sh 2,000,000, below this threshold use request for quotations	Maximum level of expenditure shall be K Sh 20,000,000, above this threshold use open tender Minimum level of expenditure is K Sh 1,000,000, below this threshold use request for quotations
Request for proposals (s76(1) of the Act)	This method is not applicable for procurement goods	This method is not applicable for procurement of works	No minimum or maximum expenditure under this method provided the conditions under this section are met
Direct procurement under (s74(2) and (3) of the Act)	No minimum or maximum expenditure under this method provided the conditions under this section are met	No minimum or maximum expenditure under this method provided the conditions under this section are met	No minimum or maximum expenditure under this method provided the conditions under this section are met
Request for quotations (s88 of the Act)	Maximum level of expenditure under this method is K Sh 1,000,000	Maximum level of expenditure under this method is K Sh 2,000,000	Maximum level of expenditure under this method is K Sh 1,000,000
Low value procurement (s90 of the Act)	Maximum level of expenditure under this method is K Sh 30,000 per procurement per item There is no minimum expenditure for the use of this method	Maximum level of expenditure under this method is K Sh 30,000 per procurement per item There is no minimum expenditure for the use of this method	Maximum level of expenditure under this method is K Sh 30,000 per procurement per item There is no minimum expenditure for the use of this method

Source: Public Procurement Regulations, 2006.

Table AIII.3
Threshold matrix for class B procuring entities

Procurement method	Maximum or minimum expenditure per procurement method		
	Goods	Works	Services
International open tender (s71 of the Act)	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement There is no minimum level of expenditure under this method	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement There is no minimum level of expenditure under this method	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement There is no minimum level of expenditure under this method
National open tender (s54(2) of the Act)	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement When using this method the minimum expenditure that requires advertising is K Sh 4,000,000	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement When using this method the minimum expenditure that requires advertising is K Sh 4,000,000	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement When using this method the minimum expenditure that requires advertising is K Sh 2,000,000
Restricted tender under (s73(2)(a) the Act)	The maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement The minimum level of expenditure is K Sh 5,000,000, above this threshold, use open tender	The maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement The minimum level of expenditure is K Sh 5,000,000, below this threshold, use open tender	The maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement The minimum level of expenditure is K Sh 5,000,000, below this threshold, use open tender
Restricted tender under (s73(2)(b))	The maximum level of expenditure shall be K Sh 4,000,000, above this threshold use open tender The minimum level of expenditure is K Sh 1,000,000, below this threshold, use request for quotations	The maximum level of expenditure shall be K Sh 4,000,000, above this threshold use open tender The minimum level of expenditure is K Sh 2,000,000. below this threshold, use request for quotations	The maximum level of expenditure shall be K Sh 4,000,000, above this threshold use open tender The minimum level of expenditure is K Sh 1,000,000, below this threshold, use request for quotations
Restricted tender under (s73(2)(c) of the Act)	The maximum level of expenditure shall be K Sh 4,000,000, above this threshold use open tender The minimum level of expenditure is K Sh 1,000,000, below this threshold, use request for quotations	The maximum level of expenditure shall be K Sh 4,000,000, above this threshold use open tender The minimum level of expenditure is K Sh 2,000,000, below this threshold, use request for quotations	The maximum level of expenditure shall be K Sh 4,000,000, above this threshold use open tender The minimum level of expenditure is K Sh 1,000,000, below this threshold, use request for quotations
Request for proposals (s76(1) of the Act)	This method is not applicable for goods	This method is not applicable for works	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement There is no minimum expenditure for the use of this method
Request for quotations (s88 of the Act)	Maximum level of expenditure under this method is K Sh 1,000,000	Maximum level of expenditure under this method is K Sh 2,000,000	Maximum level of expenditure under this method is K Sh 1,000,000

Table AIII.3 (cont'd)

Procurement method	**Maximum or minimum expenditure per procurement method**		
	Goods	**Works**	**Services**
Direct procurement under (s74(2) and (3) of the Act)	No minimum or maximum expenditure under this method provided the conditions under this section are met	No minimum or maximum expenditure under this method provided the conditions under this section are met	No minimum or maximum expenditure under this method provided the conditions under this section are met
Low value procurement (s90 of the Act)	Maximum level of expenditure under this method is K Sh 10,000 per procurement per item	Maximum level of expenditure under this method is K Sh 10,000 per procurement per item	Maximum level of expenditure under this method is K Sh 10,000 per procurement per item
	There is no minimum expenditure for the use of this method	There is no minimum expenditure for the use of this method	There is no minimum expenditure for the use of this method

Source: Public Procurement Regulations, 2006.

Table AIII.4
Threshold matrix for class C procuring entities

Procurement method	Maximum or minimum expenditure per procurement method		
	Goods	**Works**	**Services**
International open tender (s71 of the Act)	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement There is no minimum level of expenditure under this method	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement There is no minimum level of expenditure under this method	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement There is no minimum level of expenditure under this method
National open tender (s54(2) of the Act)	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement When using this method the minimum expenditure that requires advertising is K Sh 3,000,000	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement When using this method the minimum expenditure that requires advertising is K Sh 3,000,000	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement When using this method the minimum expenditure that requires advertising is K Sh 1,000,000
Restricted tender under (s73(2)(a) the Act)	The maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement The minimum level of expenditure is K Sh 500,000, above this threshold, use open tender	The maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement The minimum level of expenditure is K Sh 500,000, below this threshold, use open tender	The maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement The minimum level of expenditure is K Sh 500,000, below this threshold, use open tender
Restricted tender under (s73(2)(b))	The maximum level of expenditure shall be K Sh 3,000,000, above this threshold use open tender The minimum level of expenditure is K Sh 500,000, below this threshold, use request for quotations	The maximum level of expenditure shall be K Sh 3,000,000, above this threshold use open tender The minimum level of expenditure is K Sh 500,000. below this threshold, use request for quotations	The maximum level of expenditure shall be K Sh 3,000,000, above this threshold use open tender The minimum level of expenditure is K Sh 500,000, below this threshold, use request for quotations
Restricted tender under (s73(2)(c) of the Act)	The maximum level of expenditure shall be K Sh 3,000,000, above this threshold use open tender The minimum level of expenditure is K Sh 500,000, below this threshold, use request for quotations	The maximum level of expenditure shall be K Sh 3,000,000, above this threshold use open tender The minimum level of expenditure is K Sh 500,000, below this threshold, use request for quotations	The maximum level of expenditure shall be K Sh 3,000,000, above this threshold use open tender The minimum level of expenditure is K Sh 500,000, below this threshold, use request for quotations
Request for proposals (s76(1) of the Act)	This method is not applicable for goods	This method is not applicable for works	Maximum level of expenditure shall be determined by the funds allocated in the budget for the particular procurement There is no minimum expenditure for the use of this method
Request for quotations (s88 of the Act)	Maximum level of expenditure under this method is K Sh 500,000	Maximum level of expenditure under this method is K Sh 500,000	Maximum level of expenditure under this method is K Sh 500,000
Direct procurement under (s74(2) and (3) of the Act)	No minimum or maximum expenditure under this method provided the conditions under this section are met	No minimum or maximum expenditure under this method provided the conditions under this section are met	No minimum or maximum expenditure under this method provided the conditions under this section are met

Table AIII.4 (cont'd)

Procurement method	Maximum or minimum expenditure per procurement method		
	Goods	**Works**	**Services**
Low value procurement (s90 of the Act)	Maximum level of expenditure under this method is K Sh 5,000 per procurement per item There is no minimum expenditure for the use of this method	Maximum level of expenditure under this method is K Sh 5,000 per procurement per item There is no minimum expenditure for the use of this method	Maximum level of expenditure under this method is K Sh 5,000 per procurement per item There is no minimum expenditure for the use of this method

Source: Public Procurement Regulations, 2006.