ANNEX 2 KENYA

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1 ECONOMIC ENVIRONMENT

1.1 Main Features of the Economy

1.1. With a land area of 580,367 km^2 and a population of 46.6 million in 2017, Kenya is one of the largest economies in Africa in terms of output and market size. It is the leading economy in the EAC, with about 40% of the regional GDP (Common Report, Section 1.1). It has 536 km of coastline on the Indian Ocean. Nairobi and Mombasa are Kenya's main centres of commercial activities. The Port of Mombasa is vital not only for the Kenyan economy but also for transit to neighbouring countries.

1.2. The strong economic performance recorded since 2012 (Section 1.2) propelled Kenya into the lower-middle-income country group in 2014, according to World Bank's country classification by income level. The GDP per capita increased steadily to USD 1,701 in 2017. The services sector, mainly transport and storage, real estate, wholesale and retail trade, financial and insurance, accounted for almost half of the output over the review period. Agriculture accounted for 37.7% of GDP in 2017. The contribution of the relatively diversified manufacturing sector declined from 13.1% in 2011 to 8.6% in 2017. The informal sector dominates the Kenyan economy, with 83% of total employment in 2017.

Table 1.1 Selected macroeconomic indicators, 2011-17

	2011	2012	2013	2014	2015	2016	2017
Nominal GDP (KES billion)	3,727.4	4,261.4	4,745.1	5,402.6	6,284.2	7,194.1	8,196.7
Nominal GDP (USD billion)	42.0	50.4	55.1	61.4	64.0	70.9	75.0
Real GDP (%change at 2009 prices)	6.1	4.5	5.9	5.4	5.7	5.9	4.9
Inflation (CPI, % change)	14.0	9.4	5.7	6.9	6.6	6.3	8.0
Population (million)	39.5	40.7	41.8	43.0	44.2	45.4	46.6
Per capita GDP (nominal USD)	1,062.5	1,238.6	1,318.1	1,429.0	1,448.1	1,561.1	1,701.5
Per capita GDP (at constant 2009 prices USD)	1,076.9	1,095.3	1,128.1	1,156.1	1,189.2	1,225.4	1,251.4
GNI per capita (constant 2010 USD)	999.1	1,013.8	1,037.0	1,060.9	1,096.3	1,132.3	1,156.7
GDP by type of expenditure (% of current GDP)[a]							
Government final consumption expenditure	14.0	13.9	14.1	13.9	14.1	13.3	13.5
Private final consumption expenditure	78.8	78.7	80.7	79.9	78.8	79.1	81.6
Gross fixed capital formation	20.2	21.2	20.6	22.9	21.6	17.2	17.8
Changes in inventories	1.3	0.3	-0.5	-0.4	-0.1	0.1	0.4
Net exports of goods and services	-15.9	-13.3	-13.3	-14.7	-11.0	-8.8	-10.9
Exports	22.9	22.2	19.9	18.3	16.6	14.0	13.2
Imports	38.8	35.5	33.2	33.0	27.6	22.8	24.1
Discrepancy	1.7	-0.8	-1.7	-1.5	-3.4	-0.9	-2.5
GDP by economic activity (% of GDP at current basic prices)[a]							
Agriculture, forestry and fishing	29.3	29.1	29.4	30.4	33.1	35.1	37.7
Mining and quarrying	1.0	1.2	1.0	0.9	1.0	0.9	0.8
Manufacturing	13.1	12.2	11.9	11.0	10.3	9.9	8.6
Electricity and water supply	2.1	2.2	2.2	2.0	2.4	2.8	2.6
Construction	4.9	5.0	5.0	5.4	5.4	5.5	6.0
Services	52.4	53.1	53.4	53.1	50.7	48.9	47.5
Wholesale and retail trade, repairs	9.0	8.7	8.9	8.8	8.3	8.0	8.2
Accommodation and food service activities	1.5	1.5	1.4	1.0	0.9	0.8	0.8
Transport and storage	7.9	8.9	8.9	9.5	8.9	8.5	8.0
Information communication technology	1.8	1.8	1.6	1.3	1.6	1.6	1.5
Financial and insurance activities	6.3	6.6	7.3	7.5	7.4	7.7	8.1
Public administration and defence	4.7	4.8	4.9	5.0	4.7	4.5	4.4
Professional, scientific and technical activities	1.1	1.1	1.1	1.1	1.0	0.9	0.9
Real estate	9.0	9.0	8.8	8.6	8.3	8.1	7.6
Education	5.9	6.0	5.9	5.7	5.4	4.7	4.3
Human health and social work activities	2.0	1.8	1.8	1.9	1.9	1.8	1.7
Other	3.0	2.9	2.8	2.7	2.5	2.3	2.2
Financial intermediation services indirectly measured (FISIM)	-2.7	-2.9	-2.9	-2.8	-2.9	-3.0	-3.3
Public finance (% of GDP) (fiscal year basis)[b]							
Total revenue	18.7	19.2	19.2	19.0	18.7	18.6	..
Ordinary revenue, of which:	17.1	17.2	18.1	17.7	17.7	17.1	..

	2011	2012	2013	2014	2015	2016	2017
Import duty	1.3	1.3	1.3	1.3	1.2	1.2	..
Excise duty	2.0	1.9	2.0	2.0	2.1	2.2	..
VAT	4.4	4.1	4.6	4.5	4.4	4.4	..
Income tax	7.8	8.3	8.9	8.7	8.6	8.2	..
Total expenditure	23.7	25.1	25.6	28.1	27.2	27.6	..
Deficit excluding grants	-4.9	-5.9	-6.4	-9.1	-8.4	-8.9	..
Public debt (% of GDP) (fiscal year basis)[b]	41.7	42.1	47.5	48.8	55.2	41.9	43.5
External debt	20.2	18.7	22.2	24.4	27.4	20.9	21.5
Domestic debt	21.5	23.3	25.3	24.4	27.9	21.1	21.9
Memorandum							
KES per USD, period average	88.8	84.5	86.1	87.9	98.2	101.5	103.4
Real effective exchange rate (% change - = depreciation)	-4.3	13.7	3.6	3.6	4.5	3.8	3.2
Nominal effective exchange rate (% change - = depreciation)	-11.0	8.7	0.9	-0.4	0.5	-0.4	-1.8
Total reserves (including gold, USD billion)	4.3	5.7	6.6	7.9	7.5	7.6	7.4
in months of imports	3.0	3.7	4.1	4.5	4.9	5.4	4.4
Commodity price:							
Coffee, Arabica (USD/kg)	5.98	4.11	3.08	4.42	3.53	3.61	3.32
Tea (USD/kg)	2.92	2.90	2.86	2.72	2.71	2.64	3.10

.. Not available.

a Provisional for 2017.
b Fiscal year runs from July to June, i.e. 2011 is FY2011/12 ending June 2012.

Source: Kenya National Bureau of Statistics (KNBS) online information. Viewed at: https://www.knbs.or.ke/; Central Bank of Kenya. Viewed at: https://www.centralbank.go.ke/; Kenya's National Treasury *Statistical Annex to the Budget Statement for the Fiscal Year 2018/2019*; IMF online information. Viewed at: http://elibrary-data.imf.org/DataExplorer.aspx; and World Bank's data bank. Viewed at: http://databank.worldbank.org/data/home.aspx.

1.3. Launched in 2008, Kenya Vision 2030 aims to transform Kenya into an industrialized middle-income country.[1] Kenya has a young and relatively well-educated labour force. The reforms under way (Section 4.4.2) are likely to make Kenya into a major regional financial centre. However, country still faces several socio-economic challenges, including high levels of poverty and income inequality. Progress on the human development side was relatively slow, and contrasts with the strong economic performance: in 2017, Kenya had a Human Development Index (HDI) of 0.590 (compared to 0.555 in 2015), and ranked 142nd out of 188 countries. It is classified in the medium human development category, according to the UNDP's HDI.[2]

1.4. Based on the international poverty line value of USD 1.90 a day, 42.8% of the population lives in poverty.[3] In Nairobi (the capital city), the expenditure level of the top income quintile is about 691 times that of the bottom quintile.[4] Poverty is even more prevalent in north-eastern counties, with eight out of ten people living below the poverty line. Unemployment is prevalent and affects about 12% of the active population. Net enrolment rates in primary school improved over the years, to 91% in 2017, but remains weak at 51% in secondary schools. The 2010 Constitution, through its decentralization scheme, aims to improve the country's governance and the delivery of social services.

1.2 Recent Economic Developments

1.5. Supported by Vision 2030, Kenya's economic performance was strong during the review period. Its real GDP growth rate averaged 5.5% per year (outperforming the 2008-12 average of 4.7%). With favourable weather conditions, the GDP share of agriculture reached a peak of 37.7% in 2017 (up from 29.1% in 2012), largely supported by tea and horticulture production. The share of

[1] Online information. Viewed at: http://vision2030.go.ke/ [20.08.2018].
[2] UNDP (2015), *Human Development Index 2015.* Online information. Viewed at: http://hdr.undp.org/en/countries/profiles/KEN [24.07.2018].
[3] World Development Indicators, The World Bank. Viewed at: https://data.worldbank.org/indicator/SI.POV.DDAY [27.08.2018].
[4] KNBS and Society for International Development (SID) (2013), *Exploring Kenya's inequality. Pulling apart or pooling together?* National Report, Nairobi.

manufacturing is on a declining trend, reflecting the low availability of raw materials, high costs of production, and stronger competition from imported goods.[5] Major public projects were implemented to improve the country's infrastructure. These include: the USD 3.6 billion railway network connecting Mombasa to Nairobi (the Standard Gauge Railway Project); the USD 4.5 billion transport project to connect South Sudan and Ethiopia to the port of Lamu (LAPSSET Northern Corridor Project); two geothermal plants, raising the country's power generation capacity by 16% (Okaria I and Okaria IV projects); and expansion works at the port of Mombasa and the Jomo Kenyatta International Airport.

1.6. The review period was also characterized by the speedy roll-out of the decentralization plan, which resulted in, *inter alia*, large transfers from the national Government to the 47 county governments.[6] However, revenue mobilization efforts did not yield significant gains, with total tax revenues fluctuating around 16% of GDP (well below the target of 25% set by the EAC macroeconomic convergence framework). Consequently, public finances deteriorated, with the deficit (including grants) as a share of GDP doubling to 8.9% during fiscal year (FY) 2016-17 (against a ceiling of 3.0% under the EAC framework).

1.7. The Government regularly resorts to foreign and domestic borrowing to finance its spending and investments. In 2014 alone, Kenya issued USD 2 billion of sovereign bonds to finance infrastructure projects, and signed loans for USD 3.6 billion to finance the Standard Gauge Railway Project.[7] As a result, public debt increased from 41.7% of GDP in 2011 to 55.2% in 2015, before declining to 43.5% in 2017. The relatively higher reliance on domestic financing (Table 1.1) likely contributed to the crowding-out of private investment. According to the IMF, Kenya faces a low risk of external debt distress.[8]

1.8. The consumer price index (CPI) inflation rate flirted with double-digit levels in 2011 and 2012, under the pressure of high food and energy prices. However, it eased in subsequent years, and remained broadly under control, thanks to the prudent monetary policy of the Central Bank of Kenya (CBK), which targets price stability (with the inflation rate target set at 5%, with a margin of 2.5 percentage points on either side).[9] Over the review period, the CBK has regularly adjusted its policy rate to keep the inflation rate within the margin. In 2017, however, inflationary pressures re-emerged because of drought. Despite the implementation of the Government's food subsidy programmes, inflation reached 8%.

1.9. Over the period, domestic credit to the private sector increased gradually, to a peak of 34.2% of GDP in 2015, before declining to 31% in 2017 as non-performing loans (NPLs) hit a 10-year high.[10] The ratio of NPLs to total gross loans increased from 4.4% in 2011 to 6% in 2015, and then to 10.1% in 2017. The credit slowdown was further exacerbated by the enactment of an interest rate cap law in 2016. In an attempt to reduce the cost of borrowing, the authorities capped commercial lending rates at 4 percentage points above the CBK's policy rate, and set a floor for deposit rates. This resulted in less credit to the economy, as banks, which were already struggling with NPLs, became reluctant to extend lending to riskier businesses.

1.10. Kenya operates a floating exchange rate regime, with CBK interventions limited to preventing excessive volatility in exchange rates. During the review period, the Kenyan Shilling (KES) remained broadly stable against the currencies of the country's major trading partners, thanks to robust export earnings from, *inter alia*, tea, horticulture, tourism, and strong diaspora remittances. The real

[5] KNBS (2018), *Kenya Economic Survey 2018.* Viewed at: https://www.knbs.or.ke/download/economic-survey-2018/ [20.08.2018].

[6] Under the revenue sharing rule, the Government is required to transfer at least 15% of resources collected at the national level to the counties.

[7] IMF (2014), *Kenya 2014 article IV consultation.* Viewed at: http://www.imf.org/external/pubs/ft/scr/2014/cr14302.pdf [20.08.2018].

[8] IMF (2017), *Kenya: First Review Under the Twenty-Four Month Stand-By Arrangement and the Arrangement Under the Standby Credit Facility and Requests for Waivers of Applicability, Rephasing of Disbursements, and Modification of Performance Criterion*. Staff Report; and Statement by the Executive Director for Kenya. Viewed at: http://www.imf.org/en/Countries/KEN [20.08.2018].

[9] Under the Central Bank of Kenya Act, the inflation target is set at least once every 12 months by the Cabinet Secretary responsible for finance.

[10] World Bank Group, World Development Indicators.

effective exchange rate has appreciated since 2012, pointing to a possible drop in the country's competitiveness, in relation to its relatively high inflation target.

1.11. Kenya's current account is structurally in deficit (Table 1.2). The deficit reached a peak of KES 560.8 billion in 2014 (10.4% of GDP), due to, *inter alia*, increased imports of capital goods in connection with infrastructure projects. Kenya's financial account continues to be in deficit over the review period, although inflows in portfolio investments have been in surplus since 2015. Kenya's foreign exchange reserves amounted to USD 7.3 billion in 2017, equivalent to 4.9 months of imports.

Table 1.2 Balance of payments, 2011-17

(KES billion)

	2011	2012	2013	2014	2015	2016	2017[a]
Current account	-339.2	-356.4	-417.0	-560.8	-421.1	-375.3	-518.9
Balance on goods and services	-564.9	-567.2	-630.3	-794.4	-692.9	-633.7	-894.1
Goods: exports f.o.b.	518.1	525.1	503.5	546.8	587.3	583.4	599.0
Goods: imports f.o.b.	1,260.1	1,312.5	1,385.7	1,488.4	1,409.6	1,361.5	1,653.9
Services: credit	367.2	422.1	442.0	441.7	455.4	421.7	480.6
Services: debit	190.0	201.9	190.1	294.5	326.0	277.4	319.7
Primary income	-11.6	-26.7	-51.7	-76.3	-67.2	-69.4	-84.8
Credit	24.3	29.3	28.7	43.6	48.3	44.0	41.2
Debit	35.9	56.0	80.4	120.0	115.5	113.4	126.0
Secondary income	237.2	237.5	264.9	310.0	339.0	327.8	460.0
Credit	241.3	240.9	268.9	327.9	345.2	333.0	465.8
Debit	4.1	3.4	4.0	17.9	6.2	5.2	5.8
Capital account	20.9	19.9	13.6	24.2	25.7	20.9	19.0
Financial account	-304.1	-471.9	-448.1	-650.4	-383.7	-420.0	-476.1
Direct investment: net	-121.2	-96.5	-79.3	-65.6	-37.1	-23.9	-42.9
Portfolio investment: net	0.2	-18.4	-23.3	-326.8	15.2	38.9	80.2
Other investment: net	-183.1	-357.0	-345.5	-258.0	-361.9	-435.0	-513.4
Net errors and omissions	-65.4	-32.0	-13.0	14.0	-13.3	-52.5	6.9
Overall balance	79.6	-103.4	-31.8	-127.8	24.9	-13.1	16.9
Reserves and related items	-79.6	103.4	31.8	127.8	-24.9	13.1	-16.9
Reserve assets	21.8	122.9	73.9	117.4	-35.4	3.9	-24.9
Credit and loans from the IMF	25.2	16.3	15.3	-10.5	-10.5	-9.2	-8.0
Exceptional financing	76.2	3.2	26.9	0.0	0.0	0.0	0.0
Indicators (%)							
Current account balance/GDP	-9.1	-8.4	-8.8	-10.4	-6.7	-5.2	-6.3
Overall balance/GDP	2.1	-2.4	-0.7	-2.4	0.4	-0.2	0.2

a Provisional.

Source: KNBS online information. Viewed at: https://www.knbs.or.ke/.

1.12. According to African Development Bank (ADB) estimations, Kenya's economic growth is forecasted to remain strong, at 5.6% in 2018 and 6.2% in 2019.[11] The economic outlook over the medium term is to be marked by the Government's Big Four agenda, which targets the following: building affordable housing; raising the contribution of the manufacturing sector to 15% of GDP; achieving food and nutrition security; and providing universal healthcare coverage. This outlook is mired by challenges related to, *inter alia*, governance issues, high costs of energy, and infrastructure constraints. High reliance on rainfall will continue to impede the performance of the agriculture sector.

1.3 Developments in Trade and Investment

1.3.1 Trends and patterns in merchandise and services trade

1.13. Kenya is a small open economy with international trade in goods and services equivalent to 37.3% of GDP in 2017 (down from 61.7% in 2011, Table 1.1). According to WTO estimates, Kenya accounted for 0.03% of the world's total exports of goods, and 0.09% of its imports in 2017.[12]

1.14. Kenya's total exports fluctuated around USD 6 billion annually over the review period (Table A1.1). Agriculture remains the largest contributor to Kenya's exports, accounting for 60.4%

[11] ADB (2018), *African Economic Outlook, 2018*. Abidjan – Cote d'Ivoire.
[12] WTO (2018), *Trade Profiles 2018*. Viewed at: https://www.wto.org/english/res_e/booksp_e/trade_profiles17_e.pdf.

of the total in 2017 (Chart 1.1). Tea, the top export commodity, accounted for 24.8% of total exports. Other major agricultural exports are cut flowers and foliage (9.4%) and coffee (3.9%). Kenya's exports of manufactured products declined to 28.4% of the total in 2017 (compared to 36.9% in 2011). Exports of chemicals and other semi-manufactures also continued to decline.[13] At the same time, exports of fuels, ores and other minerals increased substantially to 10.8% of total exports in 2017 (against 6.1% in 2011), as the country started exporting new ores in 2014 (Table A1.1) Re-exports accounted for 12.4% of total exports, and consisted mainly of fuels, industrial inputs, motor vehicles and equipment.

1.15. The market structure of Kenya's exports remained broadly unchanged over the review period. The bulk of exports is still destined to Africa: 37.7% of total exports in 2017 compared to 48.3% in 2011. There is, however, a shift from African partners towards Asian countries (Table A1.3). Pakistan is currently the top market, accounting for 10.8% of Kenya's exports in 2017, followed by Uganda and the United States (Chart 1.2). Exports to EAC partners declined from 26.8% in 2011 to 19.3% in 2016.

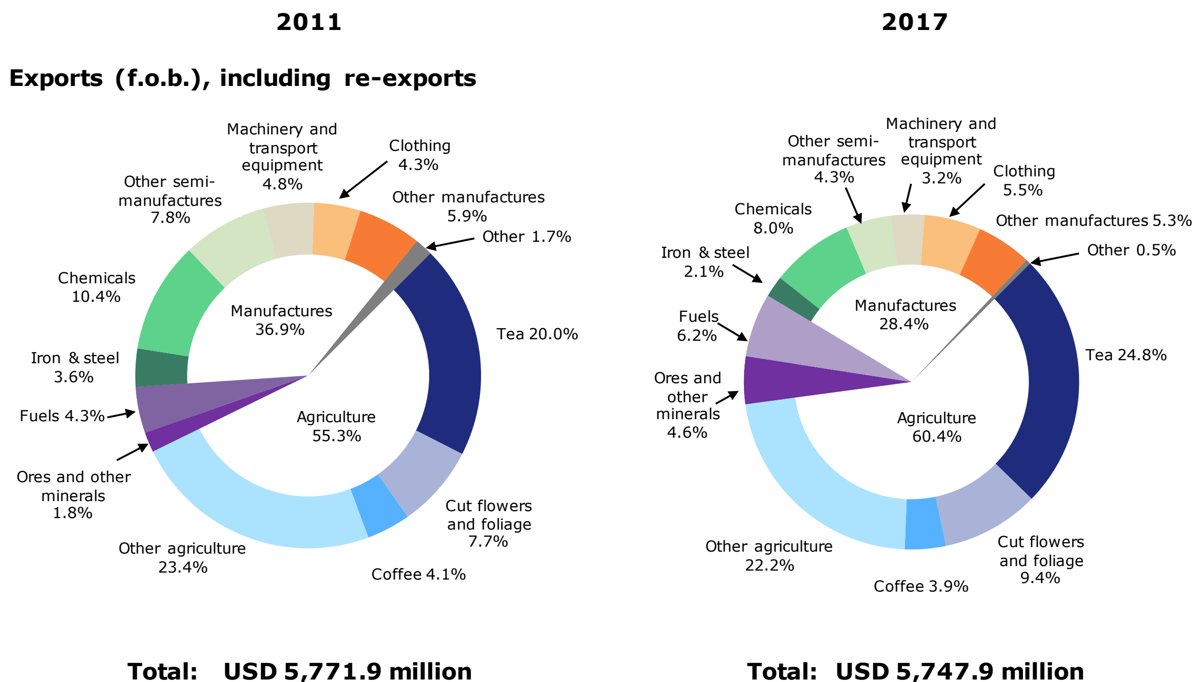
1.16. Kenya's imports increased from USD 14.6 billion in 2011 to a peak of USD 18.4 billion in 2014, before declining to USD 16.7 billion in 2017 (Table A1.2). Kenya's imports of manufactured goods increased steadily to 61.8% of total imports in 2017, reflecting large imports of machinery and transport equipment related to infrastructure projects. The fuels imports bill declined to 16.3% of total imports, owing to lower oil prices. Imports of agricultural products, largely food products, increased to reach 20.2% of the total.

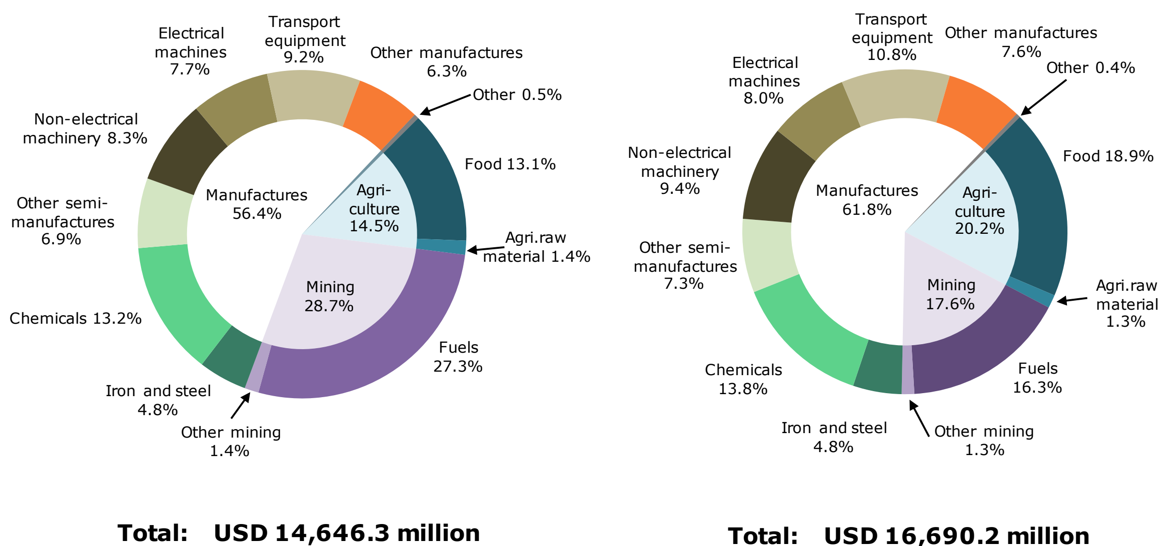
1.17. Asia remains the leading source of Kenya's imports (Chart 1.2). Its share in total imports rose from 39.4% in 2011 to 47.5% in 2017. China doubled its share, and outranked India to become the top source of Kenya's imports (22.6%). This dynamic reflects the growing presence of Chinese firms in various infrastructure-related projects in Kenya. Other major sources of imports are the EU-28 (12.0%) and India (9.9%). With lower oil prices, Kenya's imports from the Middle East declined to 13.6% of the total in 2016, but have rebounded to 17.0% in 2017. The share of imports from Europe and the United States remained constant (Table A1.4). Imports from EAC countries, although low, increased to about 3.5% in 2017 from 2.3% in 2016. The share of Kenya's imports from other African countries increased to 11.6% in 2017, after having recovered from a declining trend since 2012.

1.18. Kenya is a net exporter of services, owing to its tourism and air transportation subsectors. The surplus in trade in services increased to a peak of KES 251.9 billion in 2013, before declining in the following years. However, at 18.5% of GDP, the services surplus is relatively high. Travel and tourism recorded robust growth over the past three years thanks to improvements in infrastructure and security conditions.

[13] KNBS (2018), *Kenya Economic Survey 2018*. Viewed at: https://www.knbs.or.ke/download/economic-survey-2018/ [20.08.2018].

Chart 1.1 Composition of merchandise trade, 2011 and 2017



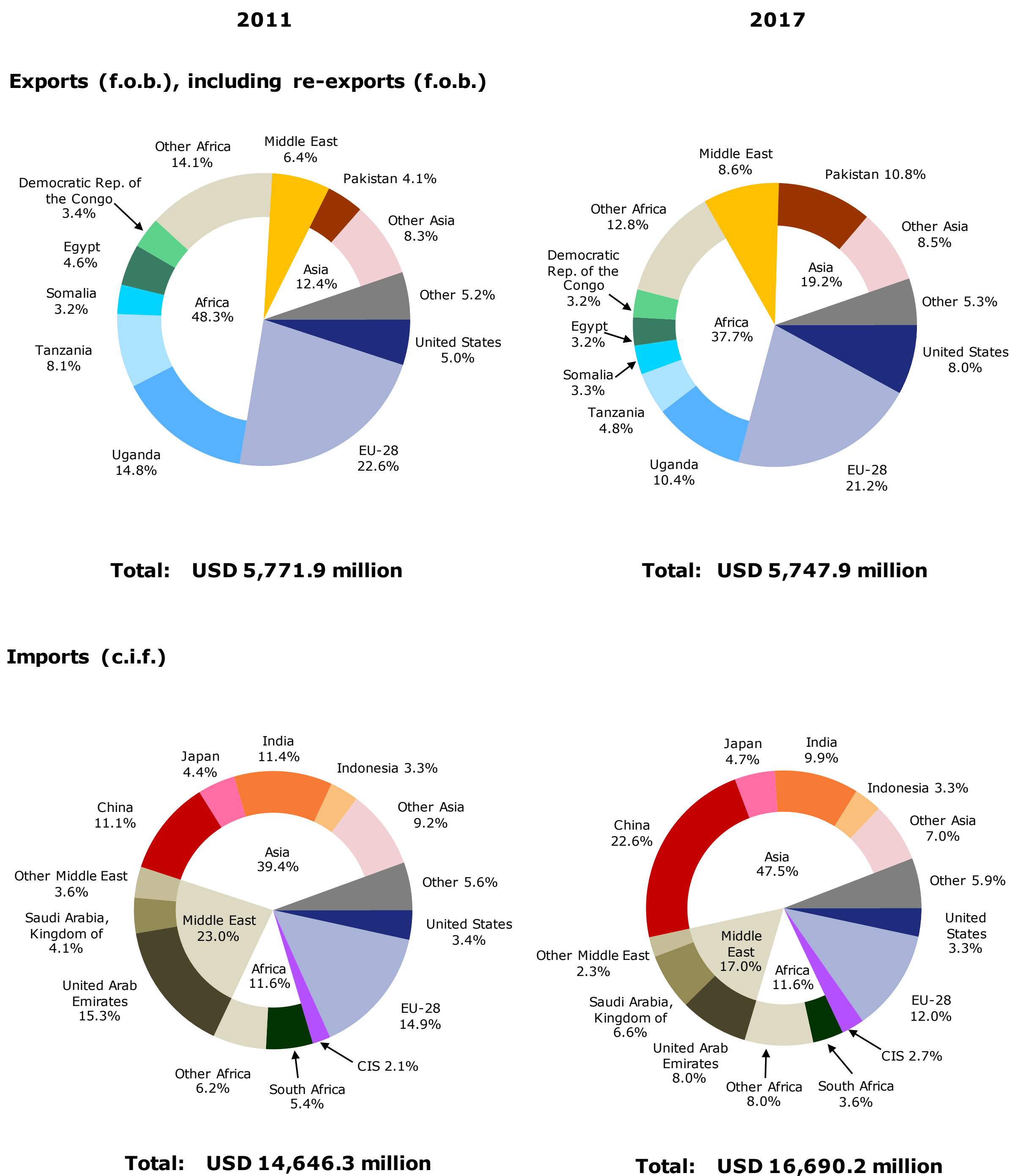


Total: USD 14,646.3 million | **Total: USD 16,690.2 million**

Note: SITC Rev. 3. for product groups.

Source: WTO Secretariat calculations, based on data provided by the authorities; and UNSD, Comtrade database.

Chart 1.2 Direction of merchandise trade, 2011 and 2017



Source: WTO Secretariat calculations, based on data provided by the authorities; and UNSD, Comtrade database.

1.3.2 Trends and patterns in FDI

1.19. Over the review period, the Kenyan authorities have embarked on various reforms (Section 2.4) with a view to positioning the country as a gateway to Sub-Saharan African markets. The country improved its Doing Business ranking by 28 positions, to 80th out of 190 countries in 2018.[14] However, this improvement is not reflected in the country's performance in attracting foreign

[14] World Bank Group (2018), *Ease of Doing Business Report 2018*. Viewed at: http://www.doingbusiness.org/reports/global-reports/doing-business-2018 [02.08.2018].

direct investments (FDI). Indeed, FDI inflows declined steadily from a high of USD 1.4 billion in 2011 to a mere USD 390 million in 2016 (Table 1.3). They rebounded by 71% in 2017 to USD 672 million, driven by the information and communications technology (ICT) sector. According to UNCTAD, the availability of new tax incentives under the Special Economic Zones Act of 2015 has contributed to this performance.[15]

Table 1.3 FDI, 2011–17

(USD million)

	2011	2012	2013	2014	2015	2016	2017
FDI inflows							
Flow	1,450.5	1,380.2	1,118.8	820.9	619.7	394.0	672.0
% of GDP	3.5	2.7	2.0	1.3	1.0	0.6	0.8
Stock	6,899.2	8,279.4	9,398.2	10,219.1	10,838.9	11,232.9	11,904.0
% of GDP	16.4	16.4	17.1	16.6	16.9	15.8	15.0

Source: UNCTAD (2018), *World Investment Report 2018 – Investment and new industrial policies.* United Nations Conference on Trade and Development, Geneva; and information provided by the Kenyan authorities.

1.20. The main sources of FDI inflows are South Africa, China, the United Kingdom, and the United States of America. These inflows were mainly in the form of long-term debt instruments, equity and investment fund shares. Telecommunications, tourism, and agro-processing are among the top recipient sectors. FDI from China was largely channelled into the construction, mining and quarrying sectors.

1.21. Kenya is a non-negligible source of outward investments, mainly to its EAC partners. In 2016, Kenya contributed 46.2% to the USD 254 million of intra-EAC FDI flows (Common Report, Table 1.4). An increasing number of Kenya-based firms are expanding into the rest of the EAC and other countries such as Ethiopia, Mauritius, and South Africa. The main destination sectors for Kenya's cross-border investments in the EAC are: banking and insurance; oil distribution; and wholesale and retail trade.[16]

[15] UNCTAD (2018), World Investment Report 2018 – Investment and New Industrial Policies. Geneva.
[16] KNBS (2016), *Kenya Foreign Investment Survey 2016*. Viewed at: https://www.knbs.or.ke/foreign-investment-survey-2016-report/ [20.08.2018].

2 TRADE AND INVESTMENT REGIMES

2.1 General Framework

2.1. Under the 2010 Constitution, Kenya has a presidential regime, with the separation of power between the Executive, the Legislative, and the Judiciary. A major development during the period under review was the implementation of the devolved system of governance, which establishes two-tier distinct levels of governments: the national Government and 47 county governments.

2.2. At the national level, the Executive power is vested in the President, the Deputy President, the Attorney General, and Cabinet Secretaries (heading ministries). The President is Head of both the State and the Government. He is elected directly with the Deputy President as a running mate, for a five-year term, renewable once. He appoints the Attorney-General and Cabinet secretaries, subject to National Assembly approval. The latest presidential election was held in October 2017.[1] At county level, the Executive power is exercised by governors and their deputies. The last gubernatorial elections were held as part of the general elections in August 2017.

2.3. The legislature exists at both national and county levels. The national legislative authority is vested in a Parliament of two chambers: the National Assembly, with 349 members, and the Senate, with 67 members. Members of both chambers are elected for a five-year term. The National Assembly enacts legislation and represents Kenya's constituencies and special interests, whereas the Senate represents the interests of counties and their governments. The legislative authority of counties is exercised by county assemblies.

2.4. The national legislative authority prevails in areas such as national and international economic policy, environment protection, norms and standards, and security interests. Income tax, VAT, customs duties and excise tax are exclusively the national Government's responsibility. Counties can establish their own law over matters under their responsibility, including domestic trade development and regulation. In particular, county governments are responsible for issuing business permits and licences, and can impose local taxes, such as property tax and entertainment tax, under the guidelines provided by the Constitution.

2.5. The legislative process involves many stages, including public consultations. Bills are drafted mainly by the Attorney General in collaboration with the Commission for the implementation of the Constitution, and the Kenya Law Reform Commission (KLRC).[2] After public consultation and possible amendments, the bill is introduced to the relevant chamber of the Parliament (or both chambers). If the bill passes the Parliament stage, it must be assented to within 14 days by the President, to become an Act of Parliament. It is then published in the Kenyan Gazette.

2.6. The Legislative process involves, *inter alia*, public consultation, as provided for by in the Constitution. A government ministry, department or agency (MDA), a Member of Parliament, or a private interested party may initiate a bill on an issue of public interest. The drafted legislative proposal is forwarded to the Cabinet for approval by the relevant Cabinet Secretary. The approved proposed bill is forwarded to the Attorney General for legal drafting, after which it is published for public participation. The bill is then introduced to the relevant chamber of the Parliament and, if passed, it must be assented to within 14 days by the President, to become an Act of Parliament. After Presidential assent, it is then published in the Kenyan Gazette as law.

2.7. The Judiciary power is exercised through superior courts (Supreme Court, Court of Appeal, and High Court); and subordinate courts (Magistrates' Courts, Kadhi's Courts,[3] and Courts Martial).[4] The

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[1] General elections were held in Kenya on 8 August 2017. The Opposition did not recognize the result of the presidential election, and appealed to the Supreme Court. After investigation, the Court overturned the verdict and ordered a new presidential election, which was held in October 2017.

[2] KLRC (2015), *Guide to the Legislative Process in Kenya 2015*. Viewed at: http://www.klrc.go.ke/images/images/downloads/klrc-a-guide-to-the-legislative-process-in-kenya.pdf [07.03.2018].

[3] Khadi's courts have jurisdiction over issues involving questions of Muslim law relating to personal status, marriage, divorce or inheritance.

[4] Apart from these courts, the Constitution, in Article 162(2), empowers the Parliament to establish special courts on disputes related to employment and labour relations, and land issues. These special courts can be equal in status to the High Court or the subordinate courts.

Supreme Court is headed by the Chief Justice, who is appointed by the President. Economic and commercial matters are dealt with primarily by commercial courts. Labour matters are dealt with by the Kenyan Employment and Labour Relations Court. In 2013, Kenya established the Nairobi Centre for International Arbitration (NCIA) as an alternative independent structure for international commercial arbitration.[5] At the Kenya Revenue Authority, an Alternative Dispute Resolution (ADR) mechanism has been established to handle tax disputes; it is operational.[6]

2.8. The Constitution is the supreme law of Kenya. It provides that all international laws, treaties and conventions (including WTO agreements) must be ratified by the Parliament to form part of Kenya's laws. During the review period, Kenya reviewed or enacted many laws, mainly to align them with the 2010 Constitution (Table 2.1).

Table 2.1 Selected trade-related laws enacted or amended, 2012-17

Law	Year
Business environment	
Private Security Regulation Act (No. 13 of 2016)	2016
Bribery Act (No. 47 of 2016)	2016
Business Registration Service Act (No. 15 of 2015)	2015
Companies Act (No. 17 of 2015)	2015
Micro and Small Enterprises Act (No. 55 of 2012)	2012
Land Registration Act (No. 3 of 2012)	2012
Competition Act, 2010; last amended in 2016	2016
Taxation	
Finance Act, No. 15 of 2017	2017
Customs and Excise Act (Cap. 472); last amended in 2013	2013
Value Added Tax Act (No. 35 of 2013); last amended in 2016	2016
Tax Procedures Act (No. 29 of 2015)	2015
Excise Duty Act (No. 23 of 2015)	2015
Miscellaneous Fees and Levies Act (No. 29 of 2016)	2016
Contingency measures	
Sanitary and phytosanitary measures	
Kenya Trade Remedies Act (No. 32 of 2017)	2017
Health Act (No. 21 of 2017)	2017
Alcoholic Drinks Control Act (No. 4 of 2010); last amended in 2015	2015
Fertilizers and Animal Foodstuffs Act (Cap. 345); last amended in 2015	2015
Kenya Plant Health Inspectorate Service (No. 54 of 2012)	2012
Investment	
Companies Act (No. 15 of 2015); last amended in 2017	2017
Companies and Insolvency Legislation (Consequential Amendments) Act (No. 19 of 2015)	2015
Insolvency Act (No. 18 of 2015)	2015
Special Economic Zones Act (No. 16 of 2015)	2015
Capital Markets (Derivative Markets) Regulations Act (2015)	2015
Public Private Partnerships Act (No. 15 of 2013)	2013
Capital Markets Act (No. 48 of 2013)	2013
Partnerships Act (No. 16 of 2012)	2012
Privatization Act (No. 2 of 2005); last amended in 2017	2017
Government procurement	
Public Procurement and Asset Disposal Act, (No. 33 of 2015)	2015
Justice	
Access to Information Act (No. 31 of 2016)	2016
Nairobi Centre for International Arbitration Act (No. 26 of 2013)	2013
Tax Appeals Tribunal Act (No. 40 of 2013)	2013
Foreign Judgments (Reciprocal Enforcement) Act No. Cap. 43, revised in 2012	2012
Agriculture and related activities	
Land Act (No. 3 of 2012); last amended in 2016	2016
Fisheries Management and Development Act (No. 35 of 2016)	2016
Forest Conservation and Management Act (No. 34 of 2016)	2016
Agriculture and Food Authority Act (No. 13 of 2013); last amended in 2013	2013
Crops Act (No. 16 of 2013)	2013
Kenya Agricultural and Livestock Research Act (No. 17 of 2013)	2013
Wildlife Conservation and Management Act (No. 47 of 2013)	2013
The Fisheries Act (Cap. 378), revised in 2012	2012
Financial services	
Nairobi International Financial Act, (No. 25 of 2017)	2017
Insurance Act (Cap. 487); last amended in 2017	2017
Banking Act (Cap. 488); last amended in 2016	2016
National Payment System Act (Cap. 493e)	2014
Microfinance (Amendment) Act (No. 41 of 2013)	2013

[5] Nairobi Centre for International Arbitration Act (No. 26 of 2013).

[6] Online information. Viewed at: http://www.revenue.go.ke/index.php/notices/speeches/cgs-speech-on-launch-of-alternative-dispute-resolution-adr-framework [07.03.2018].

Law	Year
Central Bank of Kenya Act (Cap. 491); last amended in 2012	2012
Mining, energy and water	
Mining Act (No. 12 of 2016)	2016
Scrap Metal Act (No. 1 of 2015)	2015
Natural Resources (classes of transactions subject to ratification) Act (No. 41 of 2016)	2016
Water Act (No. 43 of 2016)	2016
Transport	
Civil Aviation Act (No. 21 of 2013); last amended in 2016	2016
International Interests in Aircraft Equipment Act (No. 27 of 2013)	2013
National Transport and Safety Authority Act (No. 33 of 2012)	2012
Postal, information, and communication services	
Kenya Information Act (No. 2 of 1998); last amended in 2013	2013

Source: Information provided by the authorities.

2.9. During the review period, Kenya strengthened its anti-corruption framework, through the enactment of the Bribery Act, 2016 and the creation of specialized anti-corruption and economic crimes courts, which are operational.[7] The Act reinforces corruption fighting by criminalizing bribery acts, including those committed outside Kenya. It requires companies to establish bribery prevention mechanisms, and includes obligations on individuals holding a "position of authority" to report knowledge or suspicion of bribery within 24 hours to the Kenyan Ethics and Anti-Corruption Commission, the institution responsible for the administration of the Act.

2.10. The enactment of the Insolvency Act in 2015 is another development in Kenya's legal framework. The Act applies to the insolvency of natural persons, and incorporated and unincorporated bodies, including government-owned enterprises. With the adoption of the legislation, Kenya became the 40th State in the world to implement the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross-Border Insolvency. The legislation allows foreign creditors access to courts in Kenya.

2.2 Trade Policy Formulation and Objectives

2.11. The Ministry of Industry, Trade and Cooperatives (MITC) is the main ministry in charge of trade policy formulation and implementation in Kenya. According to the Constitution, the MITC develops trade policy in consultation with county governments and other stakeholders. The MITC consults with the county governments through the council of governors, which meets twice a year. Ministries dealing with sectoral policies and strategies touching upon trade include: the Ministry of Foreign Affairs; the Ministry of East African Community (EAC) and Regional Development, for the overall coordination and monitoring of EAC activities; the National Treasury and Planning, regarding fiscal and financial matters; and the Ministry of Agriculture, Livestock, Fisheries and Irrigation. In fulfilling its mandate, the MITC also collaborates with other agencies, such as: the Kenya Revenue Authority; the Export Promotion Council; the Special Economic Zones Authority; and the Kenya National Chamber of Commerce and Industry (KNCCI).

2.12. The private sector, through the Kenya Private Sector Alliance (KPSA), the Kenya Association of Manufacturers and the KNCCI, is involved in trade and investment policy formulation, both at the national and county levels. The Presidential Round Table is the main public-private dialogue forum. It is a platform where the President and various arms of the Government meet bi-annually with key private sector players to discuss the general economic climate in the country and areas of concern. Other public-private dialogue frameworks include the Ministerial Stakeholders' Forum, the Speaker's Round Table Meetings, and the Council of Governors' Forum.

2.13. Launched in 2017, Kenya's National Trade Policy (NTP) aims to enhance the efficiency of domestic markets and increase the competitiveness of the exports sector.[8] In the domestic market,

[7] Online information. Viewed at: http://www.statelaw.go.ke/anti-corruption-courts-launched [07.03.2018].

[8] MITC (2017), *National Trade Policy 2017: Transforming Kenya into a competitive export-led and efficient domestic economy.* May. Viewed at: http://www.trade.go.ke/sites/default/files/Kenya%20National%20Trade%20Policy%20%282016%29_0.pdf [28.08.2018].

the NTP focuses on revitalizing wholesale and retail trade, and micro, small and medium enterprise (MSME) trade. Regulatory developments in the retail sector are to be supported by law.

2.14. On the external trade side, the Government's objective is to further enhance market access through, *inter alia*, the elimination of export restrictions; and negotiations with trade partners for the removal of non-tariff barriers (NTBs) against Kenyan exports. Under the CET, the following are to be established: a duty-free regime for raw materials and intermediate inputs not available regionally; and rules of origin that may further promote regional trade.

2.15. Market and product diversification is another pillar of Kenya's NTP. This is to be achieved through the promotion of value chains, the establishment of an export/import financing bank, and the promotion of bilateral agreements with target markets. In the area of trade facilitation, the objective of the Government is to improve customs procedures and enhance the domestic capacity for compliance with international standards. Specific measures include: establishing a national enquiry point for trade-related information; enhancing the functioning of the single window for trade; and expanding and modernizing Kenya's points of entry and exit. With regards to trade in services, the Government is seeking to expand its share in the regional and global markets. This entails: aligning domestic legislation with commitments at the regional and multilateral levels; establishing a unit dedicated to trade in services; and adopting a tax regime that is conducive to the expansion of trade in services. The NTP is complemented by various sectoral policies.

2.3 Trade Agreements and Arrangements

2.16. Kenya is a member of the WTO and several regional agreements (Common Report, Section 2).

2.3.1 WTO

2.17. Kenya has been a WTO Member since 1 January 1995, and a contracting party to GATT since 5 February 1964.[9] It has been reviewed three times under the WTO Trade Policy Review Mechanism: first in 2000, and then twice, jointly with all the EAC WTO Members, in 2006 and 2012. Kenya has not been directly involved in any dispute at the WTO. It has been a third party in three disputes cases.[10]

2.18. Kenya participates actively in the WTO at several levels. It was the coordinator of the Africa-Caribbean-Pacific (ACP) Group in 2014. It currently leads the WTO Accession negotiations for the Greater Horn of Africa, and hosted a regional dialogue in this regard in August 2017.[11] It ratified the WTO Trade Facilitation Agreement in December 2015 and notified its category A commitments.[12]

2.19. Kenya hosted the 10th WTO Ministerial Conference (MC10) from 15 to 19 December 2015. At the MC10, Kenya asserted its commitment to the multilateral trading system; it supports developing countries and especially LDCs in negotiations. At MC11, it called for the full implementation of the "Nairobi Package".[13] For Kenya, the elimination of agricultural export subsidies by more-developed Members remains a priority.

2.20. During the review period, Kenya submitted a large number of notifications, covering mainly its TBT measures (Table 2.2). Notifications in many other areas remain outstanding. According to the authorities, efforts are being made to submit the outstanding notifications.

[9] Online information. Viewed at: https://www.wto.org/english/thewto_e/countries_e/kenya_e.htm [20.02.2018].

[10] Online information. Viewed at: https://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm, 20 February 2018.

[11] Online information. Viewed at: https://www.wto.org/english/news_e/news17_e/acc_29aug17_e.htm [20.02.2018].

[12] Online information. Viewed at: https://www.wto.org/english/news_e/archive_e/country_arc_e.htm?country1=KEN [21.02.18].

[13] The "Nairobi Package" contains a series of six Ministerial Decisions adopted at MC10 on agriculture, cotton, and issues related to LDCs.

Table 2.2 Latest notifications to the WTO by area, 2012-July 2018

Area	Symbol	Date	Title
Anti-dumping (1)	G/ADP/N/193/KEN	2.07.13	Notification under Arts. 16.4 and 16.5 of the Agreement
Rules of origin (1)	G/RO/N/85	28.09.12	Notification under paragraph 4 of Annex II of the Agreement on Rules of Origin
Sanitary and phytosanitary measures (45)	G/SPS/N/KEN/32	24.07.18	Notification - animal welfare
Services (1)	S/C/N/655	1.10.12	Council for Trade in Services- Notification of Regional Trade Agreement
Subsidies and countervailing measures (1)	G/SCM/N/202/KEN	27.06.13	Notification under Arts 25.11 and 25.12 of the Agreement on SCM
Regional trade agreements (1)	WT/COMTD/N/14/Add.2	15.10.12	Notification of the Accession of the Republic of Rwanda and the Republic of Burundi to the EAC
Trade facilitation (1)	WT/PCTF/N/KEN/1	13.05.15	Notification of category A commitments under the TFA
Technical barriers to trade (418)	G/TBT/N/KEN/593	31.07.18	Notification – food and animal welfare

Source: WTO Secretariat.

2.3.2 Regional and preferential agreements

2.21. Kenya is a member of the East African Community (EAC), the Common Market for Eastern and Southern Africa (COMESA), the Intergovernmental Authority on Development (IGAD), and the Indian Ocean Rim - Association of Regional Cooperation (IOR-ARC). Kenya was among the first countries to ratify the African Continental Free Trade Area Agreement (AfCFTA).[14] Kenya views these regional blocs as market opportunities.

2.22. Kenya has been part of the negotiations for an Economic Partnership Agreement (EPA) between the EAC and the European Union (Common Report, Section 2.4), which were concluded in 2014. Kenya ratified the EPA on 20 September 2016, and maintains its preferential access to the EU market. Subject to ratification by other EAC members, reciprocal preferences between Kenya and the European Union have not yet taken place. Kenya benefits from trade preferences under the United States' African Growth and Opportunity Act (AGOA), under which it exports mainly apparel and accessories, coffee, tea, and nuts.

2.4 Investment Regime

2.23. Over the review period, Kenya's ranking on the World Bank's Ease of Doing Business Index improved from 109 (out of 183 economies) in 2012 to 80 (out of 190 economies) in 2018.[15] This reflects the numerous reforms undertaken in areas such as business creation, resolving insolvencies, tax payments, and trading across borders. The Government's priority sectors for investment promotion include: e-commerce, energy, the extractive industry, manufacturing, financial services, health care, infrastructure, construction, transportation, tourism, and housing. Local and foreign investors receive the same treatment in terms of incentives, promotion, and research funding. However, limited access to financing, and a heavy tax burden remain among the most problematic constraints facing investors.[16]

2.24. The core laws steering investment are: the 2010 Constitution; the Investment Promotion Act, 2004; and the Foreign Investment Protection Act, last revised in 2012. The Constitution provides

[14] The AfCFTA will come into force once ratified by at least 22 parties.
[15] World Bank (2018), Ease of Doing Business Report 2018. Viewed at: http://www.doingbusiness.org/reports/global-reports/doing-business-2018 [02.08.2018].
[16] World Economic Forum (2018), *The Global Competitiveness Report, 2017-2018*. Switzerland. Viewed at: http://www3.weforum.org/docs/GCR20172018/05FullReport/TheGlobalCompetitivenessReport2017%E2%80%932018.pdf [20.08.2018].

guarantees to foreign investors with respect to the protection of private property, capital repatriation, and the remittance of dividends and interests. Investors can also insure against political risks through the World Bank's Multilateral Investment Guarantee Agency (MIGA), or the Africa Trade Insurance Agency. Investors in Kenya have recourse to the International Centre for Settlement of Investment Disputes (ICSID) and UNCTAD's international network of transparent investment procedures. Kenya has signed bilateral investment promotion or protection treaties with about 50 countries.[17]

2.25. The Investment Promotion Act aims to promote and facilitate investment by assisting investors obtaining the applicable licences and access various incentives.[18] The Kenya Investment Authority (KenInvest) is the investment promotion agency. In 2015, KenInvest launched "eRegulations", an online step-by-step guide on investment-related procedures in Kenya. A number of government agencies are involved at different stages in the investor's establishment, regarding various permits and licensing requirements at the national and county levels.

2.26. There are four main steps for establishing a business in Kenya: company name reservation and registration with the Registrar of Companies; request for a personal identification number (PIN) from the tax authorities; issuance of the relevant business permit by host county authorities; and registration with social security institutions (the National Hospital Insurance Fund and the National Social Security Fund). Opening a local company takes between 11 and 24 days, and costs KES 34,700 (about USD 343).

2.27. Kenya has a two-tier tax system, reflecting the two levels of the Government (Section 2.1). Under the 2010 Constitution, the national Government has authority over taxes, such as the income tax; VAT; customs duties and other charges on imports and exports; and excise tax. County governments have prerogative over property and entertainment taxes, and they also obtain revenues from issuing business permits and licences.

2.28. In addition to indirect taxes collected at the border (Sections 3.1.4 and 3.1.5), the other main taxes collected by the national Government are: the 30% corporation tax (37.5% for non-resident companies); personal income tax, which is progressive, with five brackets (10%, 15%, 20%, 25%, and 30%); and withholding tax, levied on a wide range of payments, at rates varying from 3% to 25%. Kenya reintroduced capital gains tax in 2015 after three decades of suspension. It applies to transfers of property (land, buildings and shares) at a rate of 5% of the profit or capital gain made during the transaction.

2.29. There are two mandatory social security contributions for employed persons in Kenya: the National Social Security Fund (NSSF), which is a pension fund; and the National Hospital Insurance Fund (NHIF), destined to subsidize hospitalization costs. In 2014, the rate of contributions to the NSSF was raised from 10% to 12% of the pensionable remuneration, and is divided equally between employers and their employees.[19] Contributions to the NHIF were also revised upwards in 2015, and range from a monthly payment of KES 150 to KES 1,700. Self-employed persons pay KES 500 per month.

2.30. In 2015, Kenya introduced a Special Economic Zones (SEZ) regime, which is open to both manufacturers and service providers, unlike the Export Processing Zones regime (Section 3.2.4), which is open to manufacturers only. There are three types of SEZ licences: the SEZ operator licence, the SEZ developer licence, and the SEZ enterprise licence. All SEZ operators are required to incorporate in Kenya, regardless of whether they are fully or partly owned by Kenyan citizens.

2.31. In addition to the various business-enabling policies and facilities, SEZ operators are eligible for a host of tax and non-tax incentives, including: a full exemption from, or preferential rates for, most taxes and duties; work permit facilitation; and a guarantee for the protection and repatriation of profits. SEZ operators are exempted from all border and internal taxes on their SEZ transactions;

[17] China, Finland, France, Germany, Iran, Italy, Libya, Mauritius, the Netherlands, Switzerland, and the United Kingdom. Kenya 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.

[18] Online information. Viewed at: http://www.kenyalaw.org/lex//actview.xql?actid=No.%206%20of%202004 [26.02.2018].

[19] NSSF Act No. 45, 2013.

and can deduct 100% of the cost of investments in buildings and machinery within the first year of utilization. They are also exempted from acquiring certain licences specific to their businesses that would otherwise apply under the common regime. They are exempted from the import declaration fee and various export taxes. Their workforce can contain up to 20% expatriates.

3 TRADE POLICIES AND PRACTICES BY MEASURE

3.1 Measures Directly Affecting Imports

3.1.1 Registration, customs procedures and documentation

3.1. Customs procedures in Kenya are governed mainly by the provisions of the EAC Customs Management Act (Common Report, Section 3.1.1). The Kenya Revenue Authority (KRA), through its Customs Services Department (CSD), is responsible for customs administration. At the border, KRA enforces various import and export controls in collaboration with other government agencies: Kenya Bureau of Standards, Kenya Plant Health Inspectorate Service, Directorate of Veterinary Services, National Biosafety Authority, Port Health Services, Kenya Police Services, and Kenya Fisheries Service.

3.2. Any registered business can import goods for commercial purposes, upon registration with KRA. An Export/Import Code Number is issued to the trader. Excisable goods and products that are subject to a licensing requirement can only be imported by licensed traders (Section 3.1.7).

3.3. The importer is required to fill an import declaration form (form C17). A simplified form is available for informal traders and small cross-border traders. The C17 form is filled and submitted electronically together with the other required documents which may include a certificate of conformity, for goods subject to technical regulations; an import permit and/or licence may be required for the importation of some goods (Section 3.1.7).

3.4. Customs procedures are to be carried out by licensed customs clearing agents. There are two categories of agents: those who can operate nationwide only, and those who can operate in any other EAC country too (Common Report, Section 3.1.1). National-level clearing agents are licensed by the Commissioner of Customs. Licences are valid for one year and renewable. KRA maintains and updates regularly the list of clearing agents licensed to operate at national and regional levels. As at end 2017, there were 868 clearing agents licensed to operate at the national level.

3.5. Most of customs declarations are processed through the 2005 SIMBA system. A new system, the Integrated Customs Management System (iCMS), was introduced in 2017 but is still limited to air cargo clearance. Modules include risk assessment for Pre-Arrival Clearance and Authorized Economic Operators (AEOs).

3.6. Customs declarations are assigned to one of the following channels: the red lane for cargos to be subjected to a full examination and document verification; the yellow lane for cargos destined to undergo a partial physical verification and scanning; the green lane for cargos to be cleared without any inspection; the blue lane for cargos to be subject to an expedited document clearance; and the purple lane for cargos to be released immediately. Assignment to the first three lanes is performed randomly with 60% of consignments going to the red channel, 20% to the yellow channel, and 20% to the green channel. The blue and purple channels are reserved for importers with the Authorized Economic Operator (AEO) status. The blue channel is for consignments for which both the importer and the clearing agents are registered AEO. The purple channel is for consignments for AEOs that are registered for pre-clearance. Exceptionally, consignments with high risk are manually directed into the red channel.

3.7. Customs documents are submitted through the *TradeNet System*, a single window for customs-related procedures. Launched in 2013, the platform also allows traders to track and monitor the status of their cargo, receive approved documents and make electronic payments. Since July 2015, all import and export related documents have been processed through *TradeNet*. The National Electronic Single Window System Draft Bill is currently at the stage of public consultation. The bill aims to provide the legal framework for the National Electronic Single Window System (Kenya TradeNet) in Kenya through an Act of parliament. Currently, the System is supported by a legal notice which is a subsidiary legislation compared to an Act of Parliament. To date there are thirty-five Partner Government Agencies (PGAs) using the System to process and approve cargo clearance documents. The KenTrade is working with the National Quality Control Laboratory (NQCL), Agriculture and Food Authority (AFA), the Food Crop Directorate and the AFA Pyrethrum Directorate to automate their import/export processes. A progressive programme is in place to bring other stakeholders under the Single Window System. A separate portal (Port health Services e-Portal) has

been established for the processing of import and export health certificates. The portal is connected to *TradeNet*. According to the authorities, the portal has contributed to reducing the processing time of health permits from six days to 12 hours on average.

3.8. Kenya's Authorized Economic Operator (AEO) programme was implemented in 2010. There are two categories of AEOs: national AEOs whose benefits are limited to the jurisdiction of Kenya, and East African Regional AEOs (Common Report, Section 3.1.1). National AEOs' benefits may include: expedited customs clearance; self-assessment and audit based controls; client relationship management; and self-management. As at July 2018, there were 65 importers/exporters, 44 clearing agents, and one transporter with the AEO status.

3.9. Kenya ratified the WTO Trade Facilitation Agreement (TFA) in December 2015 and has notified its category A commitments, which represent around 7.1% of the total measures under the TFA.[1] The authorities indicated that they were in the process of selecting category B and C measures. In 2017, the authorities launched two trade portals: *KenyaTradePortal*, providing information on market access requirements for exports and imports; and *InfoTradeKenya*, providing information on applicable trade procedures. *InfotradeKenya* was launched to ensure compliance with provisions under Article 1.2 of the TFA regarding the availability and publication of information.

3.10. According to the authorities, Kenya's pre-shipment inspection programme is not for customs purposes, but rather used to verify conformity with national standards and technical regulations (Section 3.3.2). Since December 2015, the programme has applied to virtually all finished goods imported into Kenya. The programme is operated by six companies on behalf of the Kenyan Bureau of Standards (KEBS) and covering different regions. They issue a Certificate of Conformity, which is mandatory for customs clearance. The inspection is subject to a fee ranging from 0.35% to 0.75% of the f.o.b. value of the consignment, with a minimum charge of USD 265. In general, goods delivered to Kenya without a Certificate of Conformity are denied entry into the country. The KEBS may, at its own discretion, subject such consignments to a destination inspection at a fee of 15% of their c.i.f. value.

3.11. In 2014, Kenya enhanced the management of its borders through the establishment of a Border Control and Coordination Committee. The Committee brings together the main agencies involved in the management of borders.[2] Its functions include the formulation of policies and programmes for border control, and the exchange of information between the agencies.

3.12. An advanced ruling scheme is in place for tariff classification. Complaints related to customs issues are handled internally by the Customs and Information Centre. Complaints can escalate successively to the Valuation Section, the Policy Division, an internal appeal committee, and the alternative dispute resolution (ADR) division which was established in 2016. Further appeal can be brought before the court. According to the authorities, most disputes are on valuation and tariff classification issues. The authorities indicated that the ADR mechanism has contributed to reducing the number of cases that went to courts.

3.13. Kenya's Northern Corridor which runs from the Port of Mombasa to the Ugandan border is a major route for cargos in transit to hinterland countries. Procedures and delays for cargos destined to other EAC countries such as Burundi, Rwanda and Uganda have been greatly facilitated with the implementation of the Single Customs Territory and the regional bond system (Common Report, Section 3.1.1). For these cargos, the importer is required to lodge the customs declaration in the destination countries. For goods in transit, customs duties are assessed at the first point of entry in Kenya. The Kenyan authorities release the cargo for transit once the payment is made in the country of destination. The cargo is monitored by a tracking system and remains under the regional bond system. Cargos in transit to other hinterland countries (mainly the Democratic Republic of Congo and South Sudan) continue to be regulated under the Northern Corridor Transit and Transport Agreement. Under the Agreement, the importer is required to secure a customs bond equivalent to

[1] WTO document WT/PCTF/N/KEN/1, 13 May 2015 and WTO Trade Facilitation Agreement Facility website. Viewed at: https://www.tfadatabase.org/notifications/list?notificationtype=a.

[2] The Committee is established under the Security Laws Amendment Act, 2014. It comprises the heads of the following institutions: Ministry of Interior and National Coordination; Kenya Revenue Authority; National Police Service; National Intelligence Service; Immigration Department; Kenya Plant Health Inspectorate; Kenya Wildlife Services; Kenya Ports Authority; Ministry of Health; Kenya Maritime Authority; and Kenya Airports Authority.

the value of applicable customs duties and charges in Kenya. The bond may be issued by an insurance company. A bank guarantee or cash deposit rather than a bond is required for cargos containing goods considered as "sensitive" (clothes, wines and spirits, tyres and tubes, shoes, electronic goods, second-hand clothes, sugar and rice). The bond is cancelled upon presentation of the transit document stamped by customs officers at the post of exit.

3.14. Kenya acceded to the International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention) in May 2010.

3.1.2 Customs valuation

3.15. According to the authorities, customs valuation rules are based on the provisions of the EAC Customs Management Act, which are aligned on the WTO CVA (Common Report, Section 3.1.2). Customs duties are assessed on the c.i.f. value of goods. Although import insurance is not mandatory, a surcharge of 2% of the f.o.b. value of goods is added to the dutiable base in absence of insurance costs. For conversion purposes, KRA uses the selling exchange rate notified by the Central Bank of Kenya at the time it approves the customs declaration.

3.16. KRA maintains a database of reference values constituted from previously accepted transactions. The database is used only for risk management purposes, according to the authorities.

3.17. The valuation of used cars is based on retail selling prices assessed by KRA. They are updated twice annually. KRA derives its selling prices from the retail price of vehicles of the same model or similar models on the domestic market, adjusted for profit margins and depreciation. The depreciation rates range from 5% for vehicles of less than 6 months old to 70% for vehicles aged between 7 and 8 years.

3.1.3 Rules of origin

3.18. Kenya does not apply non-preferential rules of origin, according to its notification to the WTO Committee on Rules of Origin.[3] Kenya applies EAC preferential rules of origin agreed to under the EAC Customs Union Protocol (Common Report, Section 3.1.3).

3.19. As a member of the Common Market for Eastern and Southern Africa (COMESA), Kenya applies preferential rules of origin to goods originating in any other member country. A product qualifies for COMESA's preferential treatment if it falls under any of the following five criteria[4]: (i) goods wholly produced in a member country; (ii) goods with foreign materials accounting for less than 60% of their import content; (iii) goods with a local value-added of at least 35% of their ex-factory cost; (iv); goods from processes involving a change of tariff heading; or (v) goods with a local value-added of at least 25% (for goods designated as of "particular importance to the economic development of a member state"[5]).

3.20. KRA is responsible for issuing preferential certificates of origin (i.e. EU, COMESA, EAC, AGOA, GSP certificates of origin). KRA collects a fee of KES 200 per certificate issued. A simplified certificate of origin is available free of charge for small cross-border traders exporting goods worth KES 2,000 or less.

3.21. The Kenya Revenue Authority issues certificates of origin that are used for preferential trade under agreements, while the Kenya National Chamber of Commerce and Industry issues certificates of origin for non-preferential trade.

3.1.4 Tariffs

3.22. Over the review period, the contribution of import duties to total tax revenues in Kenya remained stable, at around 7% annually. Kenya's tariff is based on the EAC Common External Tariff (Common Report, Section 3.1.4). Under the EAC waiver regime, Kenya was allowed, for the fiscal

[3] WTO document G/RO/N/9, 19 April 1996.
[4] COMESA Protocol on the Rules of Origin.
[5] The list of goods designated by the COMESA Council of Ministers as of "particular importance to the economic development of the Member States" is available in the Appendix VI of COMESA Protocol on the Rules of Origin.

year 2017-18, to deviate from CET rates on 48 tariff lines (Common Report, Table 3.5). Most of these tariff lines consist of iron, steel and related articles (HS chapters 72 and 73); this reflects the country's strategy to spearhead the development of iron and steel industries as part of its Vision 2030 projects (Section 4.3). For 26 tariff lines, the deviation consists of a switch from *ad valorem* to mixed duties, further complicating the tariff structure.

3.23. Kenya applies duty and tax exemptions and concessions schemes harmonized at the EAC level (Common Report, Section 3.1.4.3). Kenya may also take unilateral decisions to suspend tariffs on certain goods for specific purposes. In 2017 for instance, import duties on white maize were suspended for four months to address domestic shortages. In general, import duties on dates are suspended during the month of Ramadan.

3.24. Kenya grants duty-free preferential access to products originating from its EAC partners. As a member of the Common Market for Eastern and Southern Africa (COMESA), Kenya grants a preferential tariff treatment to products originating from the other 18 COMESA member countries.[6]

3.25. During the Uruguay round, Kenya bound 16.1% of all its tariff lines (at HS 6-digit level) at rates ranging from 18% on some waste pharmaceutical products to 100% on all agricultural products (Common Report, Table 3.4). Kenya bound six tariff headings at the HS four-digit level for non-agricultural products (1.6% of all non-agricultural tariff lines) at rates ranging from 18% to 100%. The applied CET rate of 25% on some pharmaceutical wastes (i.e. wastes from pharmaceutical goods under HS heading 3006) exceeds Kenya's bound rate of 18% on these goods. In addition, 19 agricultural tariff lines are subject to mixed duties while all the tariff bindings are *ad valorem*. The transposition of Kenya's schedule of tariff concessions into HS2007 has been certified effective as of 2 December 2014.[7]

3.1.5 Other charges affecting imports

3.1.5.1 Border taxes

3.26. Kenya has bound its other duties and charges at zero. However, in practice, it collects, on imports, some fees that have been harmonized at the regional level (Common Report, Section 3.1.4.5).

3.27. Kenya also collects an import declaration fee (IDF) on all imports destined for consumption in Kenya. In 2016, the IDF rate was lowered from 2.25% to 2% of the c.i.f. value of the goods, with a minimum charge of KES 5,000.[8] Goods imported under a duty remission scheme are charged a specific fee at the time they are entered for consumption in Kenya; the fee was doubled to KES 10,000 per declaration in 2016. Imports from EAC and COMESA partners are exempted from the IDF. Proceeds from the IDF are partly used to meet the country's financial obligations towards international organizations. Kenya is not yet collecting the African Union levy.[9]

3.28. A railway development levy (RDL) was introduced in 2013 to finance the construction of a new railway between Mombasa and Nairobi (Section 4.4.2.2). The levy applies to goods imported for consumption in Kenya at the rate or 1.5% of their c.i.f. value. Imports from other EAC and COMESA members are exempted from the levy. Raw materials imported for the development of industrial parks outside the municipalities of Nairobi and Mombasa are also exempted from the RDL.

3.29. Kenya collects a sugar development levy with the purpose of financing the activities of the sugar industry. The levy is charged at the rate of 7% on the ex-factory price (for locally manufactured sugar) or the c.i.f. value (for imports).

3.30. Service-based fees are collected at the border by agencies such as the Kenya Plant Health Inspectorate Service (KEPHIS) and KEBS for inspections.

[6] These are: Burundi, Comoros, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Eswatini, Ethiopia, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Uganda, Zambia, and Zimbabwe.
[7] WTO Document WT/Let/1021, 2 December 2014.
[8] Miscellaneous Fees and Levies Act, 2016.
[9] In 2016, African Union members decided to introduce a 0.2% levy on non-African imports to finance its activities, including its peace and security operations.

3.1.5.2 Internal taxes

3.1.5.2.1 Value added tax

3.31. The value-added tax (VAT) is the second largest contributor to tax revenue in Kenya, accounting for about 28% of total tax revenue during the fiscal year 2016-17 (Table 1.1). The VAT applies to goods and services delivered in or imported into Kenya at a standard rate of 16%.[10] The taxable value of goods and services is generally the price at which they are provided. For imported goods, the taxable value comprises their c.i.f. value, applicable customs and excise duties, and any other charges such as packaging, financing, warranty and commissions fees.

3.32. In 2013, the Value Added Tax Act was amended to streamline the regime through, *inter alia*, a reduction in the number of zero-rated and exempted goods and services; a reduction in the number of institutions that are allowed to import some specific goods without paying VAT; and the removal of provisions related VAT-remission. The new legislation also includes electronic services under the scope of the VAT.

3.33. Exports are zero-rated and thus eligible for the refund of VAT paid on their inputs. In 2017, the legislation was further amended to revise the list of zero-rated goods and supplies. The revised list includes: the supply of maize, flour, cassava flour, wheat or meslin flour, ordinary bread; taxable goods supplied to marine fisheries and fish processors; milk and cream products; inputs for the manufacture of agricultural pest control products; agricultural pest control products; and right-hand drive vehicles imported to replace a left-hand drive vehicle. VAT-exempted goods include: seeds of various kinds; live animals, fish and birds; unprocessed meat and milk; fertilizers; fruits and vegetables; cereals; and plant and machinery. Some products such as petroleum oils and fuels remain exempt under a three-year transitional arrangement.

3.1.5.2.2 Excise duty

3.34. Excise duties account for about 13.6% of total tax revenue in Kenya during the fiscal year 2016-17 (Table 1.1). During the review period, Kenya reformed its excise duty collection regime by shifting from a system where the duties were charged mostly at *ad valorem* and or mixed rates, to a system based largely on units of quantities (Table A3.1).[11] The scope of the excise tax was also reviewed to remove some goods deemed not to have a harmful effect. These include: petroleum jelly, deodorants, body lotions, and certain food preparations. On the other hand, beer and wines manufactured from locally grown agricultural products (excluding barley) are included in the excise duty base. Other newly excisable goods include: plastic sacks and bags (tariff line 3923.21.00 and 3923.29.00); and illuminating kerosene (tariff line 2710.19.22).

3.35. Under the excise duty regime, only licensed operators can import or manufacture excisable goods, or supply excisable services. Licences are granted by the KRA Commissioner for a duration that depends on the activity and product category. As an enforcement tool, licensed operators are required to affix excise stamps on every package of an excisable good. Stamp fees were adopted in 2017 (Table 3.1).

Table 3.1 Excise stamps fees

Category of excisable goods	Fees (KES/stamp)
Cigars, cheroots, cigarillos, or cigarettes containing tobacco or tobacco substitutes Other manufactured tobacco and manufactured tobacco substitutes; "homogenous" and "reconstituted tobacco"; tobacco extracts and essences	2.8
Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits	2.8
Compounded spirits of alcoholic strength exceeding 10%	2.8
Spirituous beverages of alcoholic strength not exceeding 10%	1.5

[10] Until 2013, a reduced rate of 12% applies to diesel oils, residual fuels, and electrical energy.
[11] Excise Duty Act, 2015. The act repeals the Customs and Excise Act, Cap 472.

Category of excisable goods	Fees (KES/stamp)
Beer, cider, Perry, mead, opaque beer and mixtures of fermented beverages with non-alcoholic beverages	1.5
Mineral water and aerated water (tariff line n°2201.10.00)	0.5
Fruit juices (including grape must), and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter	0.6
Sweetened or flavoured water and non-alcoholic beverages not including fruit or vegetable juices of tariff heading 2202	0.6
Cosmetics and beauty products of tariff headings n°3303, 3304, 3305 and 3307	0.6

Source: Schedule of the Excise Duty (Excisable Goods Management System) Regulations, 2017.

3.36. With effect from January 2018, excise duty rates are, in principle, adjusted for inflation every two years.[12]

3.1.6 Import prohibitions, restrictions, and licensing

3.37. Kenya's import control regime is governed mainly by regional provisions (Common report, Section 3.1.6). However, the Minister in charge of trade may amend the list of goods that are subject to import prohibitions, restrictions or licensing. In 2017, the authorities subjected the importation of gaming equipment, machines and related devices to an express clearance from the Ministry of Interior and Coordination of National Government.[13]

3.38. A number of goods are subject to an import licensing, permit and/or registration requirements (Table 3.2). Applications for import and export permits can be lodged electronically through *TradeNet*, the single window system.

Table 3.2 Products subject to an import permit and/or licence, or registration, 2018

Product	Type of restriction	Licensing body
Livestock and livestock products	Permit	Directorate of Veterinary Services (DVS)
Fish and fish products	Permit	Directorate of Veterinary Services
Sugar and its by-products	Licence and permit	Agriculture and Food Authority
Dairy products	Permit	Agriculture and Food Authority and DVS
Coffee	Licence	Agriculture and Food Authority
Tea	Registration	Agriculture and Food Authority
Drugs	Licence	Pharmacy and Poisons Board
Petroleum Products	Licence	Energy Regulatory Commission
Ozone depleting substances	Licence and permit	National Environment Management Authority
Fireworks	Licence and permit	Department of Mines & Geology
Irradiating devices and radioactive materials	Licence	Radiation Protection Board
CITES products	Permit	Kenya Wildlife Services (KWS)

Source: Information provided by the Kenyan authorities.

3.39. Kenya maintains some import controls and prohibitions under the Animals Diseases Act (Table 3.3). An absolute import prohibition applies to certain meat and meat products: products from animals raised with animal growth promoters, beta agonist and chloramphenicol; products from animals bred through genetically modified inputs; and products with levels of lead, mercury, cadmium and arsenic exceeding the maximum residue limits, or with residues of mycotoxins exceeding the recommended limits. The importation of fish and fish products derived from toxic species is prohibited. Other prohibited fish products include: fish and fishery products that have been

[12] Finance Act, 2017.
[13] Kenya Revenue Authority Public Notice. Accessed at: http://www.kra.go.ke/notices/pdf2017/Public%20Notice%20%20Restriction%20on%20Importation%20of%20Gaming%20Equipment,%20Machines%20and%20Devices.PDF [02.08.2018].

fed with genetically modified/engineered feedstuff, and prohibited animal proteins such as meat, bone meal and greaves.

Table 3.3 Import prohibitions and restrictions on SPS grounds

Product	Type of restriction/requirements	In force since
Live sheep and goats from countries infected with scrapie, caprine arthritis/encephalitis and bovine spongiform encephalopathy.	Prohibition	2011
Live poultry, birds, captive wild birds, carcasses, meat, meat products, bone meal, feathers and other poultry products	Prohibition	2017
Live rabbits	Prohibition	..
Birds and eggs	Prohibition	..
Swedish landrace pigs	Authorization	..
Semen of animals	Authorization	..
live organisms capable of setting up infections in animals	Authorization	..
vaccines and biological products intended for use in control of animal diseases	Authorization	..
Birds and eggs for hatching purposes	Further test may be required (Products must be tested for bacillary white diarrhoea, tuberculosis, and certified free from the fowl paralysis	..

.. Not available.

Source: Information provided by the Kenyan authorities.

3.40. The importation of excisable goods is subjected to a licensing requirement (Section 3.1.3). A list of licensed agents and brands is published by the Kenya Revenue Authority.

3.41. Kenya prohibits the importation of left hand drive vehicles[14], and used vehicles of more than eight years old. For vehicles shipped without a certificate of roadworthiness, KEBS carries out a destination inspection and applies a penalty of 15% of their c.i.f. value. An import ban on plastic carrier bags has been effective since 28 august 2017. An exemption may be granted for flat plastic bags for industrial packaging.

3.1.7 Anti-dumping, countervailing, and safeguard measures

3.42. The Trade Remedies Act of 2017 provides for the establishment of the Kenya Trade Remedies Agency (KETRA) as the national authority responsible for investigating and evaluating allegations of dumped or subsidized imports, and requests for the application of safeguard measures. Under the legislation, the power to impose anti-dumping and countervailing measures is vested in Cabinet Secretary responsible for international trade while safeguard measures are under the authority of the Cabinet Secretary responsible for finance. The Ministry of Industry, Trade and Cooperatives is in the process of establishing the agency as provided for by the Act.

3.43. In principle, investigations on dumping and subsidies may be initiated by the KETRA on its own initiative, or upon an application by or on behalf of a domestic industry. An investigation is triggered only if it is supported by producers accounting for at least 50% of the production of the concerned product. When an investigation is launched, the KETRA must notify the government of the exporting country, and domestic interested parties through a notice in the *Gazette*. Investigations must be completed within twelve months of the date of initiation. However, provisional measures may be applied 60 days after the initiation of the investigation, and for a duration not exceeding six months in the case of alleged dumping, and four months in the case of alleged subsidies.

3.44. KETRA may launch safeguard investigations on its own initiative or upon a request from a domestic industry. It should conclude the investigation within six months from the date of initiation.

[14] Kenya Bureau of Standards KS 1515:2000.

Provisional measures may be imposed between 30 and 45 days after the initiation of the investigation. The duration of safeguard measures may not exceed six years.

3.45. Kenya has not applied any anti-dumping, countervailing of safeguard measures under the WTO.

3.1.8 Other measures affecting imports

3.46. Kenya applies trade sanctions adopted by the United Nations and regional organizations to which it belongs. Kenya does not participate in countertrade, and has not signed any agreement with a foreign government or firm to influence the quantity or value of goods and services exported to its market.

3.47. Kenya adopted a Buy Kenya Build Kenya Strategy in 2017 with the overall objective of increasing the competitiveness and consumption of locally produced goods and services.[15] Key interventions include measures aiming at giving preferences for public procurement, providing an enabling business environment, and enhancing market access for locally produced goods and services (Table 3.4). For goods to obtain the local status, they must be wholly produced in Kenya or contain at least 35% of local value added. Services provided through any of the four modes of supply qualify as locally provided services.

Table 3.4 Key interventions under the Buy Kenya - Build Kenya Strategy

Area	Selected strategies and activities
Public procurement policy framework	Reservation by ministers, departments and agencies of: • 40% of their public procurement budget for local goods and services; • 30% of their procurement budget to youth, women, and the disabled.
Enabling business environment	• Provision/enhancement of: subsidies and incentives related to agricultural inputs, machinery, utilities; duty and tax exemptions, and other rebates to manufacturers using locally sources raw materials; • Enhancement of the quality infrastructure (enforcement of standards, certification of products, accreditation of industries and plants…); • Safeguard of intellectual property rights (development of an IP policy, restructuring of the IP Tribunal, institutional capacity building); • Promotion of industrial research and development, innovation and technology transfer.
Market access	• Establishment of trade finance facilities and promotion of credit guarantee system; • Support to packaging industries; • Strengthening the implementation of trade remedies and safeguard measures; • Other measures (promotion of the Kenya brand, exhibitions and trade fairs; provision of working spaces and shelf spaces).
Advocacy	• Awareness and communications campaigns; • Sensitization to voluntary labelling; • Advertising, publicity.

Source: Government of Kenya (2017), *Buy Kenya – Build Kenya Strategy.* Ministry of Industry, Trade and Cooperatives, June 2017.

3.48. Local content requirements are in place in the construction industry; for public procurement under the *Buy Kenya - Build Kenya Strategy*; in the mining and energy sectors (Section 4.2); and in the manufacturing sector (Section 2.4). In the construction industry, projects worth KES 500 million or less are not open to foreign contractors.[16] To be eligible for projects above this threshold, they are required to enter into a joint-venture involving at least 30% of Kenyan

[15] Government of Kenya (2017), *Buy Kenya – Build Kenya Strategy.* Ministry of Industry, Trade and Cooperatives, June 2017. Accessed at: http://www.trade.go.ke/sites/default/files/BUY_KENYA_BUILD_KENYA_STRATEGY_v2_1.pdf [05.05.2018].

[16] National Construction Authority Act, 2011.

ownership, or subcontract at least 30% of the value of the work to local contractors. They are also required to implement a plan to transfer technical skills not available locally to a local firm or person.

3.49. The Brand Kenya Board was established in 2008 to build and enhance the country's image and national identity. The Board issues a mark of identity to companies which accept to participate in the Brand Kenya initiative which is carried out in collaboration with the Kenya Association of Manufacturers and the Kenya Bureau of Standards. Companies voluntarily participate in the scheme.

3.2 Measures Directly Affecting Exports

3.2.1 Customs procedures and requirements

3.50. Registration formalities for export activities are similar to those applying to imports (Section 3.1.1). Required documents may include a commercial invoice, a packing list and a bill of lading (or airway bill). Depending on the product and/or destination market, the following may be required: a certificate of origin, a phytosanitary certificate, a sanitary certificate, a fumigation certificate, and a quality assurance certificate. Export declarations are submitted to the customs administration through the single window (*TradeNet*). For customs purposes, export values are assessed on an f.o.b. basis.

3.2.2 Taxes, charges, and levies

3.51. Kenya levies an export tax on raw hides and skins to promote the domestic leather processing industry. In 2014, the tax rate was doubled to 80% of the f.o.b. value of exports (or USD 0.52 per kg whichever is higher). Raw hides and skins are also subject to a 2% export levy for the Veterinary Service Development Fund. Export taxes on wet blue and crust are respectively at the rate of 1% and 0.5% of their f.o.b. value.

3.52. Export taxes are also levied on raw macadamia nuts. In 2017, the 20% export tax on ferrous scrap metals was replaced by a ban.

3.2.3 Export prohibitions, restrictions, and licensing

3.53. In addition to measures decided at the EAC level (Common Report, Section 3.2.3), the authorities may take measures to prohibit or restrict the exportation of some goods.

3.54. With effect from January 2017, the exportation of scrap metals is prohibited.[17] The measure aims at ensuring a sufficient supply to the domestic industry. Between 2009 and 2014, an export ban applied to used automobile batteries, lead scrap, crude and refined lead. In 2015, the export ban was replaced by the requirement of an approval by the Scrap Metal Council. In 2017, Kenya banned the exportation of maize to guarantee its supply to domestic markets.

3.55. Kenya prohibits the exportation of counterfeit goods, pirated goods, and goods bearing false indication of origin.

3.56. Some agricultural, veterinary and mining products are subject to specific export documentation requirements (Table 3.5).

Table 3.5 Product-specific export requirements, October 2018

Product	Documentation requirement
Honey	• Analysis certificate for pesticides, heavy metals and antibiotics • Health certificate from the Directorate of Veterinary Services (DVS)
Horticulture products	• Licence and permit from the Horticultural Crops Development Authority • Phytosanitary Certificate from the Kenya Plant Health Inspectorate Services

[17] Scrap Metal Act, 2015.

Product	Documentation requirement
Tea	• Registration with the Agriculture and Food Authority (AFA) and the East Africa Tea Trade Association
Coffee	• Licence from AFA • Membership to the Mild Coffee Trade Association • Performance bond of KES 500,000 in favour of the Board
Live birds	• Import permit from the country of destination • Licence and export permit from the DVS
Live animals	• Health Certificate from the DVS • Certificate of origin
Processed meat	• Processing licence and Health Certificate from the DVS • Certificate of origin from the Kenya Revenue Authority
Quail	• Health certificate and movement (within Kenya) permit from the DVS • Non-CITES export permit • Importation and exportation from Kenya Wildlife Service
Fish	• Permit from the Fisheries Department • Health certificate and Field Inspection report (for live fish) from the DVS
Dairy products	• Health certificate from the DVS • Permit from the Kenya Dairy Board
Minerals	• Licence and export permit from the Commissioner of Mines and Geology

Source: Export Promotion Council, online information. Viewed at: http://epckenya.org/index.php?option=com_content&task=blogcategory&id=208&Itemid=295.

3.2.4 Export support and promotion

3.57. Kenya does not grant any export subsidy, according to the Kenyan authorities. The country's National Trade Policy aims to unleash the country's potential in international trade to turn it into an "export-led globally competitive economy".[18] However, Kenya's export performance is hindered by challenges related to, *inter alia*, poor infrastructure and high costs of inputs, high costs of export finance, increased competition in key markets, stringent and changing market entry requirements, and some non-tariff barriers. [19]

3.58. There has not been any major change to the country's export promotion activities since the last TPR. The Export Promotion Council (EPC) is responsible for export promotion activities. Other agencies in export promotion include the Export Processing Zone Authority, the Kenya National Chamber of Commerce and Industry, and some producers' associations.

3.59. During the review period, export promotion activities were implemented mainly under the EPC's Strategic Plan 2012-2017, which targets a 20% annual growth in exports of goods and services.

3.60. A new export development strategy was adopted in 2017 and identified priority subsectors in agriculture, manufacturing, and services.[20]

3.61. Kenya also applies export promotion schemes agreed upon at the community level (Section 3.2.3).

3.62. The export processing zones (EPZs) regime remains an important component of Kenya's strategy to diversify its exports. In 2016, EPZ enterprises accounted for 11% of total exports and 17.4% of the employment in the manufacturing sector (Table 3.6). There are close to one hundred

[18] Government of Kenya (2017), *National Trade Policy – "Transforming Kenya into a Competitive Export-led and Efficient Domestic Economy,* May 2017.
[19] EPC (2018), Monthly Economic and Export Review. Export Promotion Council, December 2017. Viewed at: http://epckenya.org/images//monthly%20economic%20and%20export%20review%20report-%20dec%202017.pdf [05.05.2018].
[20] Government of Kenya (2017), *The National Export Development and Promotion Strategy for Kenya 2017-2022.* June 2017.

enterprises operating in seven distinct EPZs. EPZ exports consist mainly of textile and apparels, and the U.S. is the main market for their exports.

Table 3.6 Selected EPZ performance indicators 2012-16

Indicator	2012	2013	2014	2015	2016
Number of gazetted EPZs	47	50	52	56	65
Number of EPZ enterprises	82	85	86	89	92
Employment (% of manufacturing employment)	12.8	14.1	16.1	17.0	17.4
Exports					
Total (K Sh. million)	39,962	44,427	51,377	60,879	63,005
Total (in % of total exports)	7.7	8.8	9.6	10.5	10.9
EAC countries (KES million)	..	..	..	..	..
Domestic Sales (KES million)	3,322	4,601	4,211	1,793	3,687
Imports by SEZs (KES million)	24,973	27,413	29,461	31,370	30,160
Investment (KES million)	38,535	48,004	44,218	48,128	56,960

.. Not available.

Source: Information provided by the Kenyan authorities.

3.63. EPZs are established under the Export Processing Zones Act, 1990, and regulated by the Export Processing Zones Authority (EPZA). They may be fully foreign owned. There are four types of EPZ licences: the Developer Operator Licence; the Manufacturing Enterprise Licence, for businesses engaged in manufacturing and processing activities; the Commercial Enterprise Licence, for businesses engaged in activities such as brokerage, consultancy and repair services; and the Business Service Permit, for firms providing business services to EPZ enterprises.

3.64. Production from EPZs is destined primarily for exports. Companies engaged in commercial activities are required to generate the totality of their turnover from exports, while those engaged in manufacturing activities and export-oriented services may sell up to 20% of their output on the regional customs territory. They are required to seek the approval of the Ministry in charge of trade, to follow normal import procedures and pay applicable import duties.

3.65. EPZ Enterprises enjoy many tax incentives such as: a 10-year corporate income tax holiday and a 25% tax rate for the following ten years; a 10-year withholding tax holiday on dividends and other remittances to non-residents; a perpetual exemption from the payment of VAT and customs duties on inputs, and stamp duty on legal instruments; and a 100% investment deduction on new investment in buildings and machinery. EPZ companies also benefit from a variety of non-tax incentives. They enjoy faster administrative procedures as the EPZ Authority carries out all licensing and regulatory activities on behalf of the government. They are not subject to any exchange controls, and have access to facilities that are built to international standards. Since 1 January 2018, EPZ enterprises have been exempted from the payment of any applicable export duty and levy, and the payment of import declaration fees.[21] There are no plans to phase out the EPZs.

3.2.5 Export finance, insurance, and guarantees

3.66. The authorities indicated that the government does not operate any export finance, insurance or guarantee schemes. These are provided by commercial entities at market prices. The Africa Trade Insurance Agency is the main provider of export credit in Kenya.[22]

[21] Finance Act 2017 Section 59.

[22] Kenya is a founding member of the African Trade Insurance Agency. The other members of the ATI are: Burundi, Eritrea, Malawi, Madagascar, Rwanda, Tanzania, Uganda and Zambia.

3.3 Measures Affecting Production and Trade

3.3.1 Incentives

3.67. Besides the various duty rebate and suspension schemes available at the EAC level (Common Report, Section 2.4.2), Kenya offers fiscal incentives in the form of tax holidays, reduced tax rates, and investment deduction allowances. Incentives are available under the Export Processing Zones regime (Section 3.2.4) and the newly adopted Special Economic Zone regime (Section 3.2.4). Sector-specific incentives are available for mining activities (Section 4.2.1); the manufacturing sector (Section 4.3); and the capital markets industry (Section 4.4.2.3).

3.3.2 Standards and other technical requirements

3.68. There has been no major change to the legal and institutional framework governing standards and technical regulations in Kenya. The Standards Act, Cap 496, is the main legislation governing standardization activities in Kenya. The institutional framework comprises the Kenya Bureau of Standards (KEBS) as the agency responsible for standardization and certification activities; the National Standards Council as the oversight body; and, the Standards Tribunal to hear appeals to decisions by the other institutions. KEBS is the national enquiry point under the TBT Agreement. The MITC is the national notification Authority.[23]

3.69. Kenya is a member of the International Organization for Standardization (ISO), the International Electrotechnical Commission (IEC), and the African Regional Organization for Standardization (ARSO).

3.70. In Kenya, any interested party can launch the initiative for setting a standard, and revising or amending an existing one. The relevant technical committee evaluates the request in consultation with stakeholders and may decide to launch the standardization process. When the process is launched, KEBS is required to publish a notice in the Gazette informing the public of the standard development process. The draft standard prepared by the technical committee is then published in the *KEBS Standards Work Programme Bulletin*. Interested parties, including from any WTO Member, have 60 days to make written comments.[24] The draft standard becomes a national standard once declared as such through a legal notice by the MITC.

3.71. A standard becomes a technical regulation upon declaration through a legal notice by the Cabinet Secretary responsible for Standards and Technical Regulations. The authorities may exempt some importers and manufacturers from complying with a technical regulation; the decision is taken on a case-by-case basis.[25] Standards are in principle reviewed after three years for the first time, and every five years thereafter. As at October 2018, Kenya has 9 150 standards, of which 65.2% derive from international standards. These are: ISO standards (45.3% of national standards), IEC (7.7%), East African Standards (6.5%), and Codex (4.6%).

3.72. Kenya operates a pre-shipment inspection programme on the conformity of imported goods with applicable standards, specifications or regulations. For products not subject to Kenyan standards, the verification is carried out against the relevant international standards or those applicable in the country of origin. Five companies are operating the verification programme on behalf of KEBS: Société Générale de Surveillance SA; Intertek International Ltd.; China Certification and Inspection (Group) Co. Ltd.; Bureau Veritas; and Cotecna Inspection SA.[26] Each company is appointed for 36 months and has monopoly over inspection activities in countries assigned to it by the authorities.

3.73. The verification may include: physical inspection of goods; sampling, testing and analysis; audit of the production process; documentary check; and conformity assessment to Kenyan standards. The requirement was notified to the WTO in November 2015.[27] Since December 2015,

[23] WTO document G/TBT/2/Add.86, 28 April 2005.
[24] WTO document G/TBT/2/Add.86, 28 April 2005.
[25] Section 9 (iii) of the Standards Act Cap 496, as revised.
[26] KEBS Public Notice – Inspection of imported goods in the country of supply. Viewed at: https://www.kebs.org/images/pdf/13331841R - Public Notice.pdf [20.08.2018].
[27] WTO document G/TBT/N/KEN/122/Rev.1, 9 November 2015.

the verification programme has covered virtually all finished goods imported into Kenya. The list of exempted goods includes: products regulated by other government agencies; raw materials, machinery and spare parts imported by registered manufacturers; Completely-knocked-down (CKD) motor vehicles and motor bikes imported for local assembly; courier parcels; printed and copyrighted digital materials; and goods certified by KEBS under the Diamond Mark of Quality scheme.[28] Goods manufactured in another EAC country are accepted based on the certification issued by the respective national standards bodies.

3.74. There are four possible routes for obtaining the certification (Table 3.7). Owing to their risks of fraud, the following products can only be certified through route A, which requires testing and physical inspection: sugar, cereals and pulses, fertilizer, animal and fishery products, fresh dairy products, fresh horticultural produce, used and second-hand goods. A registration and/or licensing is required for route B, C and D. Registration and licensing fees are calculated on a case-by-case basis by each inspection company and apply to its area of operation. Depending on the outcome of the assessment, the company may issue a *Certificate of conformity*, a *Non- conformity report*, or an *Uncompleted process report*. The *Certificate of conformity* is required for customs clearance.

Table 3.7 Routes of certifications and fees, June 2018

Options	Eligible shipments/traders	Verifications	Fees
Route A	One-off shipments of goods	• Testing and physical inspection	0.60% of the f.o.b. USD 265 – USD 2,700
Route B	Registered frequent shippers of homogeneous goods	• Physical inspection • Regular testing throughout the registration period	0.55% of the f.o.b. USD 265 – USD 2,700
Route C	Licensed manufacturers and their authorized representatives	• Annual factory audit • Random testing and physical inspection	0.35% of the f.o.b. USD 265 – USD 2,700
Route D	Registered importers of consolidated cargos	• Physical inspection	0.75% of the f.o.b. USD 265 – USD 2,700

Source: Kenya Bureau of Standards, online information. Viewed at: https://www.kebs.org/index.php?opt=qai&view=new_pvoc_requirments [10.03.2018].

3.75. Goods imported without a certificate of conformity are subject to a destination inspection by KEBS at a fee of 15% of their c.i.f. values. The importer is required to post a bond of a similar value pending the verification. Depending on the certification route, the inspection fee may range from 0.35% to 0.75% of the f.o.b. value of the consignment, with a minimum perception of USD 265 and a maximum of USD 2,700. Due to their *ad valorem* nature, the fees charged may not be commensurate with the cost of the inspection service. Furthermore, the application of a minimum perception may result in higher charges for small traders.[29]

3.76. The Kenya Accreditation Services (KENAS) is the body mandated by the government to provide accreditation services. KENAS is a member of the International Laboratory Accreditation Cooperation, the International Accreditation Forum, and the African Accreditation Cooperation. It provides accreditation services to certification and inspection bodies; calibration, testing and medical laboratories; and proficiency tests providers. Accredited bodies are subject to an initial assessment fee of KES 250,000, and an annual fee of KES 192,500.

3.77. Kenya maintains labelling requirements for foodstuffs and excisable goods. All foodstuffs must be labelled in English and/or Swahili. Packaged goods must be marked with a batch number, the dates of expiration and/or production. For products with limited shelf live, 50% (for non-food items) to 75% (for food items) of the shelf live must be valid from the date of expected arrival in Kenya.

3.78. Since November 2017, operators have been required to affix an excise stamp on all excisable goods manufactured or imported into Kenya (Section 3.1.5). Depending on their end use, excisable

[28] The Diamond Mark of Quality is a voluntary certification scheme for manufacturers who can demonstrate to KEBS a high degree of excellence in their product manufacturing process and quality. The certification is valid for three years.

[29] For instance, a one-off importer with a consignment value of USD 4,416 or less must pay the minimum perception, and faces an effective rate that is higher than the prescribed 0.60% fee.

goods must be labelled with one of the following mentions: "For use in Kenya", "Duty free", "Kenya Defence Forces", or "National Police Service".

3.79. Food and feed containing at least 1% (by weight) of genetically modified organisms are subject to labelling and traceability requirements.[30] Operators are required to ensure that the words "genetically modified *'name of ingredient or food'* " appear on the label. They are also required to inform any subsequent operator in the production or distribution chain that the product contains or consists of genetically modified organisms.

3.3.3 Sanitary and phytosanitary requirements

3.80. There has been no major change to Kenya's sanitary and phytosanitary (SPS) legal and institutional framework since the last Review in 2012 (Table 3.8). National enquiry points under the WTO SPS Agreement are: the Kenya Plant Health Inspectorate Service, for plant health issues; the Department of Veterinary Services for animal health; and the Department of Public Health for food safety issues. Veterinary medicines and poisons are regulated by the Veterinary Medicine Directorate, established in 2016.[31]

Table 3.8 Main elements of Kenya's SPS legal framework

Area	Main agency	Main legislation
Plant health	Kenya Plan Health Inspectorate Service	Plant Protection Act, Cap 324 Suppression of Noxious Weeds Act, Cap 325 Agricultural Produce (Export) Act, Cap 319 Seeds and Plants Varieties Act, Cap 326
Animal health	Directorate of Veterinary Service	Animal Diseases Act, Cap 364 Meat Control Act, Cap 356 Veterinary Surgeons and Veterinary Para-professionals Act, 2011
Food safety	Department of Public Health	Food, Drugs and Chemical Substances Act Public Health Act Meat Control Act Dairy Industry Act Pharmacy and Poisons Act
Genetically modified organisms	National Biosafety Authority	Biosafety Act, 2008

Source: Information provided by the Kenyan authorities.

3.81. During the review period, Kenya submitted five notifications to the WTO Committee on SPS Measures.[32] Kenya did not raise any specific trade concern (STC). However, it supported two concerns: *European Union revised proposal for categorization of compounds as endocrine disruptors* (STC N°382); and *India's fumigation requirements for cashew nuts* (STC N°427). Kenya is a member of *Codex Alimentarius*, the World Organization for Animal Health, and the International Plant Protection Convention. Kenya is party to the Cartagena Protocol on Biosafety, and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

3.82. Kenya ratified the EAC Protocol on SPS measures in July 2016.

3.83. Plant health is governed mainly by the Plant Protection Act. The importation of any plant product is subject to an import permit from the Kenya Plant Health Inspectorate Service (KEPHIS), and a phytosanitary certificate from the relevant authority in the exporting country.[33] Plants are inspected upon arrival at the port of entry, and laboratory tests may be carried out.

[30] Biosafety (Labelling) Regulations, 2012.
[31] Veterinary Surgeons and Para-professional Act, Cap 366.
[32] The notifications cover specifications of basic requirements for slaughter houses, as well as testing and sampling methods for cream cheese, roasted macadamia, macadamia kernels, and virgin coconut oil (G/SPS/N/KEN/31 to 35).
[33] Plant Protection (Importation of Plants, Plant Products and Regulated Articles) Regulations, 2009.

3.84. Live animals and other veterinary goods are subject to an import permit by the Directorate of Veterinary Services (DVS).[34] The permit is issued electronically through the single window system (Section 3.1.1). The Directorate also issues the international veterinary certificate for exports. In some cases, the application must be lodged with the relevant institutions such as: the Kenya Dairy Board, for milk and milk products; the Pharmacy and Poison Board for veterinary drugs and vaccines; the Fisheries Department for fish and other aquatic products; and the Kenya Wildlife Service, for game animals and their products. For genetically modified animals and feedstuffs, the importer must obtain the approval from the National Biosafety Council before applying for the import permit. Consignments are inspected at the port of entry by relevant institutions.

3.85. Between 2014 and 2017, KEPHIS received technical assistance under the Standards and Market Access Programme (SMAP) to enhance market access and the competitiveness of the country's animal and plant-based products.

3.86. Drugs and medical supplies are under the purview of the Kenya Medical Supplies Agency. It is responsible for procuring, warehousing and distributing drugs and medical supplies to health institutions.[35] It is also responsible for maintaining the national strategic reserve stock defined as equivalent to six months stocks of a list of prescribed medical supplies.

3.3.4 Competition policy and price controls

3.87. There is no regularly published data on concentration in industries in Kenya. According to the Competition Authority of Kenya (CAK), the cement industry, the fertilizer market and the downstream petroleum industry are among those with high levels of concentration.[36]

3.88. Competition issues are regulated under the Competition Act, 2010. The Competition Authority of Kenya is the enforcement agency. The legislation has been amended in 2016 to address issues related to, *inter alia*, the abuse of buyer power[37] and the abuse of dominance. Thresholds were adjusted with a view to excluding mergers with benign competition effects from the provisions of the legislation.

3.89. The CAK deals with anti-competitive practices through a number of measures, including investigations, advocacy and awareness campaigns, trainings, and guidelines. Investigations may be initiated by the Authority on its own or based on complaints from stakeholders. CAK also publishes guidelines to support its advocacy campaigns. In 2017, the Authority has issued guidelines on the following issues: block exemption, search and seizure, abuse of buyer power, fining and settlements, and restrictive trade practices.

3.90. Over the past years, the Authority has dealt with cases involving a range of sectors and activities, the most frequent being alcoholic beverages, air transportation, and telecommunication services.[38] It also handled cases of exclusive agreements relating to alcoholic beverages, education services and sports goods. CAK has not dealt with any import or export cartel.

3.91. Price controls are in principle abolished with the repeal of the Restrictive Trade Practices, Monopolies and Price Control Act, Cap. 504. Exceptions may be granted for a specific period. Sector-specific legislation (e.g. energy) may also provide for tariff-settings.

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[34] Such goods include: live animals (both domestic and game), eggs, semen, embryos, hides & skins, unprocessed leather, animal feedstuffs, ingredients, fertilizers, incubators, hives, milk and other milk products, meat and meat products, aquatic products, honey, veterinary drugs, vaccines and accessories, genetically modified animals and micro-organisms.

[35] The Authority replaced the Kenya Medical Supplies Agency, and it was established under the Kenya Medical Supplies Authority Act, 2013.

[36] In the cement industry for instance, there were six players in 2016 with market shares between 32.5% and 10.5%. Similarly, the Kenya Petroleum Refineries Limited and the Kenya Pipeline Company detain jointly more than half of the storage capacity for petroleum products.

[37] These abuses take the form of non-compliance with credit terms, discrimination in the allocation of shelf-space, and margin squeezing. According to the authorities, these have contributed to a low survival rate of small and medium enterprises.

[38] CAK (2016), *Annual Report 2014/2015*. Competition Authority of Kenya.

3.3.5 State trading, state-owned enterprises, and privatization

3.92. According to its notification to the WTO, Kenya does not have any state-trading enterprise within the meaning of Article XVII of GATT 1994.[39]

3.93. State-owned enterprises remain an important feature of the Kenyan economy. In 2013, there were about 262 state corporations operating in various sectors of the economy.[40] Receipts from State corporations and government-linked enterprises, mostly dividends and surplus funds, amounted to KES 35.9 billion during the 2016-17 fiscal year. The Kenya National Trading Corporation Limited (KNTC) is a state-owned enterprise involved in wholesale and retail trade. In wholesale and retail trade, the company operates a network of depots and its portfolio includes the following products: cement, salt, lime, sugar, soda ash, sheets, fertilizers, nails, and other hardware items.

3.94. There is no overarching legal framework for the establishment and regulation of state-owned entities in Kenya. They are established either under the State Corporation Act Cap 446, the Public Finance Management Act, or their individual enabling legislation. There has been no major change to the legislation during the review period. Each state corporation is under the oversight of a line ministry, which is responsible for ensuring its proper management. According to the authorities, the main challenges facing parastatals in Kenya are budgetary constraints and poor governance.

3.95. A parastatal reform programme was launched in 2013 to review the governance of SOEs. Key elements of the reform include[41]: the enactment of the Government Owned Entities Bill, 2015, an overarching law guiding the establishment and regulation of state corporations; the adoption of *Mwongozo,* a code of governance for SOEs; and the establishment of the Government Investment Corporation, a holding to exercise ownership and oversight of commercial state corporations. Oversight offices were established at the national and county levels to oversee state agencies such as regulatory authorities and public universities.

3.96. The Government of Kenya is in the process of establishing a Sovereign Wealth Fund through the Kenya National Sovereign Wealth Fund Bill (2014). The objective of the proposed Fund is to shield the economy from cyclical changes in commodity prices, to save for future generations and to support infrastructure investment. The bill is still undergoing internal review and stakeholder consultations.

3.97. Kenya's privatization programme covers 31 state-owned companies operating in various sectors of the economy, including banking, hotel, and port services.

3.98. Privatizations in Kenya are governed by the Privatization Act, 2005.[42] The Privatization Committee is responsible for identifying assets to be included in the privatization programme. The privatization programme is reviewed on a needs basis. Once approved by the Government, the privatization programme is gazetted. The Privatization Commission then undertakes to prepare privatization proposal for each of the item included in the Programme. Each detailed privatization proposal needs approval from the Cabinet and the Parliament before its implementation. Privatisations are to be conducted in an open and competitive way. Privatization methods include: public offering of shares; negotiated sales resulting from the exercise of pre-emptive rights; and sales of assets. The implementation of any of these methods is to follow public procurement procedures (Section 3.3.6).

[39] WTO document G/STR/N/11/KEN, 27 March 2006.

[40] Republic of Kenya (2013), *Report of the Presidential Taskforce on Parastatal Reforms – Current Inventory of State Corporations.* Executive Office of the President, 9 October 2013. Viewed at: http://www.scac.go.ke/2015-02-16-09-56-36/reports?download=3:current-inventory-of-state-corporations-9th-oct-2013.

[41] Following recommendations by the Presidential Taskforce on Parastatal Reforms, the authorities adopted a policy on the management of Government-owned entities in October 2013.

[42] The first schedule of the Privatization Act of 2005 went through amendment and became the privatization amendment Act, 2015. In order to effectively and efficiently handle matters of privatization, the Government is in the process of further amending the Act through the Privatization Bill of 2016. The object of this Bill is to amend the Privatization Act, 2005, to address the reappointment of serving members of the Commission upon the expiry of their first term of office.

3.99. In principle, privatization proceedings are open to any business registered to operate in Kenya. However, the authorities may restrict some proceedings to nationals, or take measures to ensure a minimum level of participation by nationals. As of June 2018, the privatization programme covers about 30 institutions and public-sector projects.[43] Privatization proceeds arising from the sale of direct Government equity holdings are generally paid into the Government budget.

3.100. The Privatization Act establishes a Privatization Appeals Tribunal to hear and determine appeals against privatization-related decisions. The Tribunal is not yet operational. During the review period, the legislation was amended twice to, *inter alia*, strengthen the governance of the Privatization Commission and take into account the newly enacted public-private partnership legislation.

3.101. Under the Public-Private Partnerships Act of 2013, private sector entities may participate in public infrastructure or development projects through concessions and other contractual arrangements. The Public-Private Partnership Committee is responsible for the implementation of the legislation. The Committee is assisted in its duties by the Public-Private Partnership Unit, within the Ministry in charge of finance.

3.102. The PPP Act (2013), revised in 2015, establishes the following organs to support implementation of PPP projects: the PPP Committee includes PSs for Finance (chair), Planning, Lands, County governments, Transport, Infrastructure, Energy, Agriculture (or his nominee), four non-public officers and a director (acting as secretary) appointed for a five year term (renewable once); and the PPP Unit headed by the director and acting as the secretariat and providing technical support to the committee and contracting agencies.

3.103. A government institution or agency may enter into a project agreement or a public-private partnership with a private entity, upon approval by the PPP Committee. Procurements are to be carried out through competitive bidding process. Public-private partnership arrangements may take many forms, including: management contracts and output performance-based contracts, for up to ten years; leases, for up to thirty years; and concessions. As of September 2017, there were about 70 projects in the pipeline for PPP arrangements.

3.3.6 Government procurement

3.104. According to the World Bank's Benchmarking Public Procurement scale, Kenya scores relatively high in the areas of bid opening, evaluation and award; and content and management of the procurement contract.[44] Areas of low performance include the delay for payments to suppliers (between 31 and 90 days) and the level of unsolicited proposals for PPP's (only 5% of PPP investments during the last five years).

3.105. Under the 2010 Constitution, public procurement and asset disposal are to rest on the principles of fairness, equity, transparency, competitiveness, and cost-effectiveness. They are governed by the Public Procurement and Asset Disposal Act, 2015 (PPAD Ac)[45] and the Public Private Partnership Act, 2013. The implementing regulations of the PPAD Act are yet to be enacted. In the meantime, the Public Procurement and Disposal Regulations (under the PPAD Act of 2005) are still in use.[46]

3.106. The PPAD Act applies to purchases by all public entities, including the defence and national security organs. Government-to-government procurements, i.e. projects financed through concessional loans and grants from foreign governments are exempted from the procurement law.

3.107. The institutional framework comprises the National Treasury in charge of policy formulation; and the Public Procurement Regulatory Authority (PPRA), in charge of enforcing the legislation and

[43] Kenya Privatization Commission, online information. Viewed at: http://www.pc.go.ke/images/documents/APPROVED%20PRIVATIZATION%20PROGRAMME.pdf [03.08.2018].
[44] World Bank Group, online information. Viewed at: http://bpp.worldbank.org/data/exploreeconomies/kenya/2019 [03.08.2018].
[45] It replaced and repealed the Public Procurement and Disposal Act, 2005.
[46] WTO (2012).

monitoring the procurement system.[47] The Public Procurement Administrative Review Board is the internal appellate system. Appeals to the decisions of the Board can be brought before the High Court.

3.108. Open tendering is the preferred procurement procedure for awarding contracts. Other methods include: two-stage tendering, design competition, restricted tendering, direct procurements, requests for quotations, electronic reverse auction, low value procurement, force account, competitive negotiations, request for proposals, and framework agreements (Table 3.9). Procurement materials are to be made publicly available online.

Table 3.9 Procurement methods used, Fiscal year 2017-18

Procurement method	Characteristics and selected requirements
Main procedure	
Open tendering	One phase procedure, advertisement on government portals, websites and in at least two national dailies. May be open internationally
Alternative procedures	
Two-stage tendering	Tenders submit their proposals without a tender price; successful tenders are then invited to provide detailed bids.
Restricted tendering	May be used if there is only a few know suppliers, or if the specialized nature of the procurement requires so. The approval of the Tender Committee is required.
Direct procurement	Can be used if there is only one able supplier or in case of an urgent need. The approval of the Tender Committee is required.
Request for proposals	Can be used for procurements including services which are advisory or predominately of intellectual nature. May be open internationally
Request for quotations	Can be used for the procurement of goods for which there is an established market, subject to maximum thresholds.
Low value procurement	Can be used if the estimated value of the procurement is below some prescribed thresholds.
Specially permitted methods	
Design competition	Used for services which are creative in nature (e.g. architectural, engineering, fine arts).
Electronic reverse auction	Sellers compete to obtain the procurement by undercutting each other (the procuring entity must have a procurement portal with electronic procurement capabilities and functionalities).
Force account	A procuring entity may directly make recourse to public officers and use public assets, equipment and labour if the quantities of work involved are small and scattered, and construction firms are unlikely to tender at a reasonable price.
Framework agreement	Can be used if the required quantity of goods, works or services cannot be determined at the time of entering into the agreement. The term of the agreement cannot exceed 3 years.

Source: Information provided by the Kenyan authorities.

3.109. In general, bidders offering locally produced goods can benefit from a 15% price preference margin in the evaluation of tenders. Some specific groups (small and micro enterprises, disadvantaged groups, citizen contractors, and local contractors) are eligible for a 10% preference margin.[48] A foreign contractor can benefit from the preference if it enters into a joint venture or subcontracting arrangement with an eligible local contractor. For joint ventures, the preference margin is 10% if the national shareholding is above 51%; 8% if the national shareholding is between 20% and 51%; and 6% if the national shareholding is below 20%. The legislation also provides for reservation schemes in favour of the above-mentioned specific groups. Local citizens have exclusivity for procurements with a value of up to KES 50 million (KES 500 million for road works, and KES 200 million for other works). Local contractors have exclusive preference in the constituency or county where they are based when participating in procurements that use funds from the Constituency Development Fund, or the Local Authority Transfer Fund. Public entities are required to grant exclusive preference to local contractors offering locally made goods and locally assembled equipment.

3.110. Under the Buy Kenya Build Kenya Strategy, ministries, departments and agencies are required to reserve 40% of their public procurement budget for local goods and services, and 30% for youth, women and the disabled.

[47] Under the 2005 legislation, these functions are carried out by the Public Procurement Oversight Authority.
[48] Public Procurement and Disposal (Preference and Reservations) Regulations, 2011.

3.3.7 Intellectual property rights

3.111. Except for patents, applications for industrial property rights are generally on an increasing trend over the review period (Table 3.10). As at end 2017, there were 410 registered patents, 115 industrial designs, and 29 utility models. Trademark registrations by residents grew during the review period, driving the total number of registered trademarks to 5,917 in 2017.

Table 3.10 Registration of intellectual property rights in Kenya, 2012-17

IPRs	2012	2013	2014	2015	2016	2017
Patents (total)	**255**	**301**	**263**	**382**	**406**	**410**
- by residents	4	2	4	1	4	11
- by non-residents (via PCT)	72	69	49	23	20	31
- via ARIPO	179	230	210	358	382	368
Industrial designs (total)	**83**	**145**	**247**	**140**	**163**	**115**
- by residents	38	30	31	52	37	60
- by non-residents	12	8	3	5	15	12
-via ARIPO	33	107	213	83	111	43
Utility models (total)	**1**	**4**	**31**	**25**	**22**	**29**
- by residents	1	4	31	22	22	79
- by non-residents	0	0	0	0	0	0
-via ARIPO	0	0	0	3	0	6
Trademarks (total)	**4,771**	**4,821**	**5,037**	**5,268**	**5,919**	**5,917**
- by residents	1,924	1,883	2,123	2,350	2,781	2,783
- by non-residents	1,031	1,175	1,036	1,142	1,047	1,144
Trade marks (Madrid designations)	1,816	1,763	1,878	1,776	2,091	1,990

Source: Information provided by Kenya Industrial Property Institute.

3.112. There has been no major change to Kenya's intellectual property rights (IPR) regime since its last TPR in 2012. The institutional framework comprises the Kenya Industrial Property Institute (KIPI), responsible for industrial property matters; the Kenya Copyrights Board (KEKOBO), in charge of copyrights issues; and the Kenya Plant Health Inspection Service (KEPHIS), in charge of plant breeders' rights. The Anti-counterfeit Agency (ACA) handles matters relating to enforcement of intellectual property rights.

3.113. Kenya is party to the main treaties on IPRs, including 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).

3.114. Patents, industrial designs and utility models are protected under the Industrial Property Act, 2001. The duration of protection is twenty years for patents, ten years for utility models, and five years (renewable twice) for industrial designs. An annual fee is payable for the duration of the protection. The Industrial Property Tribunal has jurisdiction to hear contentious matters under the Industrial Property Act. Its decisions may be appealed to the High Court.

3.115. The legislation allows for compulsory licensing and parallel imports. Kenya did not grant any compulsory licence during the review period. Parallel imports concern essentially pharmaceutical products, and are restricted to operators registered as "parallel importers" with the Pharmacy and Poisons Board. An import permit is required. The duration of a parallel importer's licence is one year.

3.116. Trademarks are protected under the Trade Mark Act Cap 506. The legislation incorporates well known trademarks as well as marks that are protected under the Paris Convention, the Madrid Agreement and the Madrid Protocol. Trademarks are protected for renewable ten year period. Grievances about decisions by KIPI can be brought before the Registrar of Trademarks whose decisions are appealable to the High Court. The total fee for application, publication and grant is KES 9,000 (approximately USD 90) and renewal fee is 4,000 (approximately USD 40) for national applications, and respectively USD 410 and 200 for foreigners.

3.117. Plant breeder's rights are regulated under the Seeds and Plants Varieties Act (Cap 326). Rights are granted by KEPHIS for 20 to 25 years. The prescribed minimal duration of protection is 18 years for varieties such as fruit trees and their root-stocks, forest and ornamental trees, and grape vines. The Seeds and Plants Tribunal has jurisdiction over appeals from KEPHIS decisions and matters relating to the infringement of plant breeder's rights. The Tribunal is operational.

3.118. Trade in counterfeit goods is prohibited and can be prosecuted under the Anti-Counterfeit Act, 2008. Established in 2010, the Anti-Counterfeit Agency was tasked with the mandate of combatting counterfeiting, trade in counterfeit goods and other related dealings. Under the legislation, any holder of an intellectual property right with valid grounds may lodge a complaint with the Agency to seize and detain the suspected goods. According to the authorities, since its inception, the Agency has seized suspected counterfeit goods worth about KES 1.6 billion are filed and prosecuted over one thousand cases. Most frequently counterfeit goods include: electrical and electronic goods, plumbing items, cigarettes and alcoholic drinks, and motor vehicle spare parts. The legislation is being amended to increase the penalties and broaden its scope to include unbranded goods and labels.

3.119. Amendments to the Anti-Counterfeit Act are proposed in the Statute Law (Miscellaneous Amendments), Bill 2018 and is in Parliament pending approval. The bill introduces a number of changes such as: the possibility for a consumer to be a complainant on issues relating to intellectual property infringements, expansion of the meaning of counterfeiting to include counterfeit marks (such as labels), expansion of the powers of inspectors to investigate related offences, and introduction of new offences in relation to counterfeit marks.

4 TRADE POLICIES BY SECTOR

4.1 Agriculture, Forestry, and Fisheries

4.1.1 Overview

4.1. The sector of agriculture, forestry and fisheries remains the backbone of the Kenyan economy, contributing to about one-third of the country's output, two-thirds of its exports earnings, and a substantial part of inputs to the manufacturing sector. In 2017, the agricultural sector accounted for 31.5% of GDP.

4.2. Food crops account for about a third of the agricultural GDP but only a marginal share of Kenya's exports, as they are mainly for domestic consumption. Maize is the main staple food, and many farmers depend on it as their main source of income. In 2017, about 2.3 million hectares of land was under maize cultivation for a total production of 3.3 million tonnes (Table 4.1). Maize is used mainly for human consumption and for manufacturing animal feeds. Domestic production does not meet domestic demand and the deficit is offset by imports, mainly from neighbouring countries. The other major food crops are wheat, rice and Irish potatoes. Production fluctuates according to the weather conditions since production relies on rain-fed agriculture. Kenya is a net food importer.

4.3. Tea, horticulture and coffee are Kenya's major industrial crops which are also exported. (Section 4.1.3.2). Other industrial crops include sugar cane, cotton, sunflower, pyrethrum, and barley. None of these crops are exported.

Table 4.1 Kenya's main agricultural crops: area, production and exports, 2012-16

	2012	2013	2014	2015	2016
Area under cultivation (000' ha)					
- Maize	2,159.3	2,123.1	2,116.1	2,267.2	2,337.6
- wheat	148.8	149.5	147.3	145	153.1
- Rice	29.6	31.3	28.3	29.4	29.5
- Coffee	109.8	110	113	114	114.7
- Tea	0	198.6	203.1	209.4	218.5
- Horticulture	..	..	..	..	..
- Irish potatoes	99.5	104.6	115.6	176.6	171.2
Production (thousands of tonnes)					
- Maize	3,749.9	3,592.7	3,513.2	3,972.6	3,339.2
- Wheat	444.6	390.7	328.7	439.9	395.1
- Rice	138.1	125.2	86.2	110	99.5
- Coffee	39.8	49.5	42	46.1	40.8
- Horticulture	..	..	..	..	..
- Tea	369.6	432.5	445.1	399.2	473
- Irish potatoes	1,436.7	1,667.7	1,626	1,172.3	1,150.1
Exports (thousands of tonnes)					
- Coffee	..	..	..	..	..
- Tea	430.2	499.4	443	480.3	285.4
- Horticulture	0.205	0.214	0.220	0.238	0.261
Memorandum items:					
- Agricultural[a] GDP (% of GDP)	..	**26.4**	**27.5**	**30.2**	**32.1**
- Agricultural exports (% of total)	..	..	..	..	..

.. Not available.

a This includes agriculture, forestry and fisheries.

Source: State Department of Crop Development/Ministry of Agriculture, Livestock, Fisheries and Irrigation.

4.4. The sector remains dominated by small-scale farmers, operating on about 2 hectares of land on average and producing 75% of the total agricultural output. Large-scale farmers (with farm sizes of 20 hectares or more) account for 20% of the cultivated area. Kenya's agricultural productivity remains constrained by many factors, including low-level technology, insufficient investment, and changing weather patterns. A significant portion of the production is wasted/spoiled due to poor storage, transportation and market infrastructure.

4.5. Under the Constitution of 2010, lands in Kenya are classified as follows: public land, vested in the national or county governments; private lands, held by individuals under leasehold tenure or registered and held under any freehold tenure; and community lands. Public lands are managed by the National Land Commission, on behalf of national and county governments. The decision to allocate any part or parcel of public land is to be made by the relevant government. The communal land ownership system is based on traditional customary rights, and all individuals born in the community have a right to use but not sell it. Privately owned lands are registered; the owner holds the title under a freehold or leasehold system, and can use it as collateral to access credit. Non-citizens may hold land on the basis of leasehold tenure not exceeding ninety-nine years.

4.6. During the review period, Kenya pursued its land reform[1] through the revision and consolidation of related laws into three pieces of legislation: The Land Act, 2012; the Land Registration Act, 2012; and the National Land Commission Act, 2012.

4.1.2 Agricultural policy

4.7. The Ministry of Agriculture, Livestock, Fisheries and Irrigation is responsible for the formulation, implementation and monitoring of agricultural policy. Other departments of key importance to the sector include the Ministry of Water and Sanitation; the Ministry of Industry, Trade and Cooperatives; and the Ministry of Environment and Forestry. In line with the 2010 Constitution, county authorities have power in matters related to crops and animal husbandry, livestock sale yards, county abattoirs, plant and animal disease control, and fisheries.[2]

4.8. The main objectives of Kenya's agricultural policy are to enhance food security, increase agricultural productivity and output, and improve market access and trade. During the review period, the implementation of the Agriculture Sector Development Strategy 2010-2020 aims at achieving a shift of the sector from smallholder subsistence farming to a commercially-oriented one.[3]

4.9. Food security is enshrined in the Constitution[4], and a food and nutrition security policy was adopted in 2011 with the following key objectives[5]: improving food availability and access through increased production, better storage and processing, and improving the efficiency of markets; ensuring food safety, standards and quality control; and supporting improved nutrition. Thus, as of 2014, the government introduced subsidies to increase the use of fertilizer and increase the yields of food crops. The fertilizer was specific for promoting food production. The government also continues with the National Accelerated Agricultural Inputs Programme (NAAIP) to provide inputs for promoting food security to the resource poor farmers.

4.10. Strategic reserves stockholding is part of Kenya's strategy for food security. Since 2015, the National Cereals and Produce Board (NCPB) has been responsible for maintaining a strategic reserve. The prescribed quantities are eight million bags of 90 kilograms of maize equivalent to be held in reserve at any given time. This can be in the form of grains, pulses, rice, powdered milk or cash equivalent. Replenishment is through buying from farmers during harvest time. The stocks are offloaded during drought or when there is a shortage in the market. The Stock can also be offloaded after two years to ensure fresh supplies and avoid wastage due to pest infestation or expiry. NCPB currently provides storage and grain maintenance services, and distributes farm inputs, including the fertilizers procured by the Government under its agricultural development support programme.

4.11. The agricultural sector enjoys a higher protection under the EAC common external tariff. The average applied tariff on agricultural products (WTO definition) is 20.7%, while the overall average tariff rate is 12.9% (Common Report, Table 3.2). Although constrained by the CET, Kenya's 100% bound rate on agricultural products leaves ample room for an increase in applied tariff rates. Many

[1] The land reform was derived from the National Land Policy of 2009 and the Constitution of 2010.
[2] Constitution of the Republic of Kenya, Fourth Schedule.
[3] *Kenya Vision 2030*.
[4] The Government shall ensure that every Kenyan has a right to be free from hunger, to have adequate food of acceptable quality, uninterrupted supply of clean and safe water in adequate quantities (Article 43 (1) (c) of the Constitution of Kenya).
[5] Government of Kenya (2011), *National Food and Nutrition Security Policy*.

agricultural inputs can be imported free of duty, under the EAC duty exemption regime. Some agriculture-related products and services are exempted from the VAT.[6]

4.12. During the review period, Kenya undertook a significant consolidation of the sector's legal and institutional frameworks through the enactment of three pieces of legislation: the Agriculture and Food Authority (AFA) Act, 2013; the Crops Act, 2013; and the Agricultural Research Act 2013.

4.13. The AFA Act consolidates the main laws on the regulation and promotion of agriculture (excluding livestock).[7] The legislation clarifies the respective roles of the central government and county governments in the sector, and establishes the Agriculture and Food Authority as the main agency in charge of regulating agricultural products.[8] Its responsibilities cover the production, processing, marketing, grading, stocking, collection, transportation, and warehousing of the agricultural products identified under the Crops Act.

4.14. The Crops Act of 2013 replaces many other laws governing the agricultural sector.[9] It applies to a list of crops identified as "scheduled crops" that are to be promoted. There are two categories of "scheduled crops", depending on whether they are or not under a breeding programme. Crops under breeding programmes are subject to either a compulsory certification (it is the case for crops such as tea, coffee, maize, and wheat), or a voluntary certification (bananas and pyrethrum) for instance.

4.15. Every dealer in a scheduled crop is required to register with the Agriculture and Food Authority. Only operators licensed by AFA are allowed to process any scheduled crop. Licences are issued in consultation with county authorities. In general, county governments may impose fees for the development of agricultural crops or the regulation of scheduled crops markets. County governments are also responsible for the issuance of licences to individuals and cooperatives trading in or dealing with schedules crops.

4.16. Under the Crops Act of 2013, a Commodities Fund is to be established to provide credit and advances at subsidized rates in areas and activities such as: farm improvement, farm inputs, farming operations, and price stabilization. According to the authorities, the Fund is yet to be established.

4.17. The incentives and facilities specifically available to growers and dealers of scheduled crops include: establishment of institutional linkages to coordinate provision of credit, farm inputs and marketing; credit assistance; credit guarantee; affordable farm inputs; technical support; infrastructural support; fertilizer cost reduction investment projects; pest and disease control; and post-harvest facilities and tax exemptions.

4.18. Kenya's budget allocation to the agriculture sector reached 10% in the 2011-12 Budget, meeting for the first time the target of the Maputo Declaration. About 35% of the budget is spent on development expenditures.

4.19. The Biosafety Act, 2008 and its implementing regulations make up the main legal framework for activities related to genetically modified organisms (GMO). Established in 2009, the National Biosafety Authority (NBA) is responsible for regulating research and commercial activities involving GMOs. It carries out its mandate in collaboration with the other regulatory agencies involved in GMO

[6] First Schedule of the Value Added Tax Act, 2013.

[7] The following Acts are repealed: the Agriculture Act (Cap 318); the Suppression of Noxious Weeds Act (Cap 325); and the Grass Fires Act (Cap 327).

[8] The Agriculture and Food Authority replaces the following institutions: the Coconut Development Authority; the Kenya Sugar Board; the Tea Board of Kenya; the Coffee Board of Kenya; the Horticultural Crops Development Authority; the Pyrethrum Regulatory Authority; the Cotton Development Authority; and the Sisal Board of Kenya.

[9] The Crops Act of 2013 repealed the following: Agricultural Produce (Export) Act (Cap 319); Agricultural (Produce) Marketing Act (Cap 320); Crop Production and Livestock Act (Cap. 321); Canning Crops Act (Cap. 328); Cereals and Sugar Finance Corporation (Cap. 329); Coconut Industry Act (Cap. 331); Coconut Preservation Act (Cap. 332); Cotton Act (Cap. 335); Pyrethrum Act (Cap. 340); Sisal Industry Act (Cap. 341); Tea Act (Cap. 343); Coffee Act (No. 9 of 2001); and Sugar Act (No. 10 of 2001).

products.[10] Under the Biosafety Act, NBA's approval is required for any activity involving a genetically modified organism. This includes their importation, exportation or transit. The approval process may involve a risk assessment to identify and evaluate the potential adverse effects of the GMO on human health and the environment. Appeals to the Authority's decisions can be brought before the Appeals Board, established under the High Court of Kenya. All decisions by the NBA are to be registered in the National Biosafety Clearing House.

4.20. Kenya does not yet produce genetically modified crops or seeds at commercial scale. Kenya introduced a ban on the importation of genetically modified foods in 2012, but repealed the measure in 2015. Research in GMO products is allowed. A number of GM crops have been approved by the National Biosafety Authority[11]: corn, cotton, cassava, sorghum, and sweet potatoes. A few operators have applied for the open field cultivation of genetically engineered corn and cotton.

4.21. Imports of GMO products are subject to approval from the Kenya Plant Health Inspectorate Service (KEPHIS), a phytosanitary certificate, and a declaration from the country of origin stating the GMO status of the product. In line with the Cartagena Protocol on Biosafety, Kenya established a Biosafety Clearing House in 2010 to facilitate information exchange on GMO products and assist in complying with its related obligations.

4.22. Kenya's agricultural sector is impacted by climate change but is also the largest contributor to the country's greenhouse gas emissions. Therefore, the agricultural policy is impacted by the country's measures to adapt to climate change and reduce greenhouse gas emissions. Under the Climate Change Act of 2016, national and county authorities are required to mainstream climate change into their policies and development strategies. A Kenya Climate Smart Agriculture Framework Programme (KCSAFP) was adopted in 2017 with the objective of promoting "climate resilient and low carbon growth sustainable agriculture".

4.23. As part of the overhaul of the sector, the four main research institutions dealing with agricultural matters were merged in 2013 to form the Kenya Agricultural and Livestock Research Organization (KALRO).[12] Sixteen semi-autonomous institutes were created under KALRO to carry out focused research in their fields.[13] Other agricultural research institutions include: the Kenya forestry Research Institute; the Kenya Marine and Fisheries Research Institute; and the Kenya Industrial Research and Development Institute. There are also some regional and international institutions undertaking agricultural research in Kenya. The main regional and international agricultural research institutions operating in Kenya are the International Lifestock Research Institute (ILLRI) and International Centre for Research on Agro Forestry (ICRAF).

4.24. Access to agricultural credit remains a major challenge despite the country's relatively well-developed banking system (Section 4.4.2.1). Agricultural credit are provided mainly by cooperatives, NGOs and community-based lending institutions. In addition to risk associated with agricultural business, the cost of bank credit and the limited number of banks in rural areas contribute to restricting farmers' access to credit. The Agricultural Finance Corporation (AFC) is a government-owned financial institution that seeks to fill this gap. The land reform has enabled farmers to get title deeds to their farms which they can use as collateral to secure credit for agricultural development. AFC provides agricultural loans on commercial terms.

4.25. Kenya's seed industry is relatively well developed, with close to one hundred of registered seed companies operating in the country. However, the Kenya Seed Company, a government owned entity, holds about 70% of the seed production market share. The main players in the seed industry include Monsanto, Western Seed Company and Seedco Limited. The Kenya Plant Health Inspectorate

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[10] These are: the Kenya Plant Health Inspectorate Service; the Department of Public Health; the Kenya Bureau of Standards; the National Environment Management Authority; the Pest Control Products Board; the Kenya Wildlife Service; the Kenya Industrial Property Institute; and the Department of Veterinary Services.

[11] Online information. Viewed at: http://ke.biosafetyclearinghouse.net/approvedgmo.shtml.

[12] These were: the Kenya Agricultural Research Institute; the Tea Research Foundation; the Coffee Research Foundation; and the Kenya Sugar Research Foundation.

[13] These are: Agricultural Mechanization Research Institute; Food Crops Research Institute; Dairy Research Institute; Arid and Range Land Research Institute; Horticultural Research Institute; Genetic Resource Research institute; Biotechnology Research institute; Beef Research Institute; Apiculture Research Institute; Non –Ruminant research Institute; Sheep and Goat Research Institute; Veterinary Science Research Institute; Industrial Crop Research Institute; Tea Research Institute; Coffee Research Institute; and Sugar Research Institute.

Service is the regulatory authority for seeds. It issues licences to seed importers and exporters, provides seeds certification services, and administers related phytosanitary matters.

4.26. Seed production and certification is regulated through the Seeds and Plant Varieties Act (Cap 326). For a new variety to be released and registered, it must successfully undergo national performance trials for at least two seasons according to UPOV protocols; be proven to be distinct, uniform and stable in its essential characteristics; and have a valid descriptor. Once officially released, the variety is gazetted and entered into the national variety list. It takes between three and four years for a variety to be released, from the time it is registered for certification. The vetting process is under the oversight of the National Variety Release Committee.

4.27. Kenya has a relatively well-developed feed industry. However, feed producers and raw material suppliers are concentrated in and around urban areas. Several regulations by the Kenya Feed Manufacturers are using the standards already in place. Fertilizer and Animal Foodstuffs Act 2015 regulates feed industry. According to producers, the industry is adversely affected by some regulations and access to raw materials.

4.1.3 Policy by subsector

4.1.3.1 Food crops

4.28. Food crops in Kenya consist mainly of cereals (maize, wheat, sorghum, millet, and rice); legumes (beans, pigeon peas, cowpea, chickpea, green grams, turtle beans, dolichos); and roots and tubers (potatoes, sweet potatoes, cassava, yams and arrow roots). The subsector accounts for about one third of agricultural GDP but contributes marginally to exports. It is essentially rain-fed and its performance is highly vulnerable to weather shocks. Kenya is a net importer of food. Major imported food products include wheat, rice, edible oil, and sugar. Imports of maize, wheat, sorghum, and millet are subject to the import duty at 25%; rice imports attract an import duty of 75%.

4.29. A Food Crops Research Institute was created in 2013, under the umbrella of the Kenya Agricultural and Livestock Research Organization. The Institute conducts research aiming at developing technologies and innovations for food crops. The National Rice Development Strategy aims at improving food security and farmers income through sustainable rice production, marketing and utilization of rice, both rain-fed and irrigated.

4.30. According to the authorities, under normal circumstances food crops can be imported at any time on payment of applicable customs duties and taxes and compliance with relevant standards and sanitary and phyto sanitary regulations. However, during times of scarcity and drought, customs duties and taxes may be waived for a specific period and quantities until the situation stabilizes. This is provided for through a legal gazette notice.

4.1.3.2 Industrial crops

4.1.3.2.1 Tea

4.31. Kenya is the fourth largest tea exporter in the world, behind India, China and Sri Lanka. Kenya cultivates mainly the black tea which is the country's main export crop, and the second largest source of foreign exchange earnings, after remittances. Tea production was 473 thousand tonnes in 2016, an 18% increase compared to 2015 (Table 4.1). Exports, which include re-exports from neighbouring countries, dropped by 40% to only 285 thousand tonnes. Pakistan, Egypt, and some EU countries (Great Britain, France and Germany) are the major destinations of Kenya's tea. Kenya has been experimenting the purple tea, a new variety in the foothills of Mount Kenya. The authorities expect this new variety to account for up to 5% of the country's tea exports within the next three to five years.[14]

4.32. The tea industry is divided in two segments: the small-scale segment comprising about 260 000 farmers, and a few large estates. Small-scale farmers account for about 60% of the

[14] World Bank online information. Viewed at: http://www.worldbank.org/en/news/feature/2017/08/29/creating-kenyas-purple-tea-market---markets-and-competition-policy-in-action.

production, and are managed by the Kenya Tea Development Agency (KTDA). Tea processing factories are owned by farmers and managed by the KTDA. According to the authorities, the factories comply with international standards such as the ISO 22000, HACCP Food Safety Standard, Rain Forest Alliance, and Fair Trade and Good Manufacturing Practices (GMP).

4.33. Local consumption and processing account only for a marginal share of Kenya's tea production (about 5%). The bulk of the tea is either directly exported (about 14%) or traded through the Mombasa Tea Auction.[15] At the Mombasa marketplace, auctions are held twice a week, and attract sellers from the region, including other EAC members, Malawi, the Democratic Republic of the Congo, Mozambique, and Madagascar. The Tea Research Institute (TRI) was created under the KALRO Act of 2013, to contribute to the overall production, processing and marketing of tea.[16] The TRI is operational and funded through the normal government budgetary process under KALRO as well as development partners.

4.34. The CET rate on tea imports is 25%. In 2012, the authorities introduced a 1% levy on Kenyan tea exported through the Mombasa Tea Auction. The purpose of the levy is to fund the regulators and some investment in the infrastructure. According to the authorities, the levy was removed into 2016 after complaints from the tea farmers. There are no crop specific incentives except the general agricultural extension service that is provided by the government.

4.1.3.2.2 Horticulture

4.35. The horticulture subsector continues its export-driven expansion and contributed 33% to the agricultural GDP in 2017. The vegetable sub-segment (Irish potatoes, tomatoes and cabbages) is the major contributor to the production, and an important source of livelihood in rural areas. Only about 5% of the total horticultural production is exported but it is still among the major foreign exchange earners. Kenya's horticultural exports consist mainly of vegetables and cut flowers; the EU (Netherlands, United Kingdom, Belgium, and France) is the main destination.

4.36. The objective of the Government's policy is to accelerate and sustain growth and development of the horticultural industry. During the review period, developments in the industry were guided mainly by the National Horticulture Policy, adopted in 2012. An electronic traceability system for horticulture produce was launched in March 2015 on a pilot basis, to monitor the supply chain processes from farm to distribution.

4.37. The industry players can benefit from various incentives available under the Special Economic Zones regime (Section 2.4.), and the export processing zones regime (Section 3.2.4). Charges and fees on horticultural exports include a levy of KES 0.2 per kilogram of produce; a phytosanitary service fee of KES 0.2 per kilogram; and a fee of KES 400 for the issuance of the phytosanitary certificate.

4.1.3.2.3 Coffee

4.38. Coffee is Kenya's third largest agricultural export (after tea and horticultural produce). In 2017, coffee exports earned about USD 235 million in foreign exchange. Kenya produces mainly the Arabica variety. The subsector is dominated by smallholder farming (65% of the production). There are about 700 000 growers involved in coffee production. Coffee covers a land area of about 160 000 hectares, a third of which is under plantation and the rest managed by smallholders. Virtually all coffee produced in Kenya is exported, mainly to the EU (Germany, Belgium and Sweden) and the United States.

4.39. The coffee sub-sector faces many challenges, including erratic weather conditions and a high incidence of pest and diseases. Government's intervention in the sub-sector includes: conducting research on new species, and controlling pests and diseases; constructing feeder roads; and providing loans to farmers.

[15] Mombasa Tea Auction is the second largest tea auction marketplace, after Dubai.
[16] The Tea Research Institute replaces the Tea Research Foundation of Kenya.

4.40. New regulations were adopted in 2017 to implement the AFA Act and the Crops Act.[17] The Coffee Directorate (formerly the Coffee Board of Kenya) is responsible for regulating the sales and marketing of coffee. The Nairobi Coffee Exchange (NCE) is the central coffee auction marketplace. It operates under the oversight of AFA through its Coffee Directorate, but is funded by market participants. The new regulations clarify the various licences to be issued by AFA and county governments. There are seven licensed commercial coffee mills. Under the legislation, millers are required to enter into contractual arrangements with farmers and cooperatives. Milling contracts typically last one year.

4.41. Coffee beans are wet-processed and graded by the size of the beans (AA for the largest beans, A, and B for smaller beans). After milling, coffee beans are further graded mechanically into various categories depending on their size, shape and weight. Coffee beans are then packaged in 50kg jute bags and mostly exported in their raw form (about 98% of the production).

4.42. Coffee farmers can either sell their coffee directly to international buyers, or on the coffee exchange marketplace managed by the Kenya Coffee Producers and Traders Association. Coffee auctions are conducted every Tuesday, and are open to dealers licensed by the Coffee Directorate. The coffee exchange marketplace is also open to sellers and dealers from neighbouring countries. A direct sale typically involves a marketing agent negotiating directly with a foreign buyer. The sales contract must be registered with the Coffee Directorate.

4.43. The Coffee Development Fund has been the main source of funding for the subsector. It provides affordable credit for farm inputs, farming operations, and income stabilization. In 2015, the Fund was replaced by the Commodities Fund.

4.44. According to the authorities, the government does not operate any specific price support or subsidy programme for the coffee sector. Coffee imports are subject to the CET at the rate of 25%. However, coffee imported to be sold at the NCE is exempted. The industry is burdened by several levies and high intermediary costs. Numerous levies by the authorities used to account for up to 4% of the coffee value.[18] In 2016, the authorities abolished these levies and capped the cost of services at 15% of the coffee sales.

4.45. In 2010, the former Coffee Board of Kenya launched an initiative to promote the distinctiveness of Kenyan coffee. It developed a national logo that applies to Kenyan coffee meeting minimum standards of quality defined by the Kenya Bureau of Standards.

4.46. The subsector receives no specific incentives.

4.1.3.2.4 Sugar

4.47. Kenya's sugar industry supports about 16% of the population, and contributes on average to 15% of the agricultural GDP. Sugar cultivation is dominated by small-scale farmers, and covers a land area of over 191,215 hectares in 2017. The country produces annually about 600 000 tonnes of sugar against a domestic demand estimated at 800 000 tonnes. The resulting deficit is filled through imports, mainly from the COMESA region (Egypt and Swaziland among others).

4.48. The industry comprises twelve operational sugar mills, of which five have a substantial government shareholding: South Nyanza Sugar company (98.8%), Nzoia Sugar Company (97.93%), Chemelil Sugar (96.21%), Miwani Sugar (49%), and Muhoroni Sugar (16.9%). Sugar mills have a combined processing capacity of 24 000 tonnes of cane per day. However, many of them are operating at 55% to 60% of their capacity due to technical difficulties and the availability of raw materials. In 2015, the Government announced plans to sell its stakes in the sugar companies. The privatization process has not yet started.

4.49. The sugar production value chain is one in which millers, through contractual arrangements, support farmers in the cane development process in exchange of the harvest. The support typically includes land preparation, supply of seed cane and fertilizer, and the provision of extension services.

[17] Coffee (general) Regulations Act, 2016.

[18] There used to be a 2% levy for Coffee Research Fund, 1% for the Coffee Directorate, a 0.8% by the Kenya road Board, and a 0.2% levy for counties.

Sugar distribution is performed by wholesalers, retailers and importers. The by-products of the processed sugarcane are either reused for planting, for energy generation, or sold for animal feed production. During the review period, Kenya's sugar industry continues to struggle with high production cost, poor transport infrastructure, and weak corporate governance.[19] According to the authorities, Kenya has the highest production costs compared to EAC and COMESA countries.

4.50. The sugar industry is regulated by the Sugar Directorate under the Agriculture Fisheries and Food Authority. The Sugar Directorate is responsible for issuing licences to importers and exporters of sugar and its by-products, and managing related imports and exports restrictions. Sugar import and export licences are valid for one fiscal year, and issued for a fee of KES 100,000. Prior to the importation, any registered importer is required to apply for a pre-approval permit for the quantity it intends to import over the following one to three months.

4.51. Under the Crops Act of 2013, sugarcane is classified as a "scheduled crop" under a breeding program, and is subject to a compulsory certification. Sugarcane growers and millers are required to register with the Sugar Directorate. Sugarcane prices are to be based on their sucrose content rather than their weight. Prices are set each season by a committee comprising representatives from the government, cane growers and millers.

4.52. Sugar is heavily protected in the EAC: the CET rate on raw sugar is either 100% of the c.i.f. value or USD 200 per tonne, whichever is higher. As a member of COMESA, Kenya's sugar imports from COMESA partners attract a duty-free treatment. However, Kenya has been applying a safeguard measure under which any importation above the allowable quota of 350 000 tonnes is subject to a 5% import duty. The safeguard measure has been introduced in 2002, and is set to expire in February 2019.

4.53. In 2016, the authorities scrapped the sugar development levy which used to be collected at the rate of 4% on the value of locally produced sugar and imports.

4.1.3.3 Livestock

4.54. Kenya's livestock population is diverse and includes cattle, goats, sheep and poultry. The subsector contributes to about 40% of the agricultural GDP and employs half of the agricultural labour force. Milk and beef are the two major livestock products with total production worth about KES 404 billion in 2017. The production of the livestock subsector is destined mainly to the domestic market. Products such as wool and ostriches are geared towards specific niche markets. The sector relies largely on natural vegetation and water for pasture, and is vulnerable to weather conditions. Disease outbreaks with related export restrictions are among the major constraints the subsector is facing.

Table 4.2 Livestock Production, 2013-17

(Metric tonnes)

	2013	2014	2015	2016	2017
Milk (Cattle)	3,174,175	3,306,432	3,444,200	4,115,473	3,560,702
Beef	296,765	442,571	489,065	528,990	481,799
Goat/Chevon	45,312	68,191	68,016	50,468	33,678
Mutton	18,852	19,410	18,286	27,901	17,767
Pork	18,160	22,804	26,002	20,768	12,989
Poultry Meat	28,692	60,504	62,754	64,309	106,978
Camel Meat	8,856	11,221	18,361	18,715	29,086

Source: Data provided by the authorities.

4.55. Pending the adoption of new legislation, the subsector is regulated by the Crop Production and Livestock Act, Cap 321, the Dairy Industry Act, the Meat Commission Act, the Animal Diseases Act, and the Public Health Act. The Kenya Agricultural and Livestock Research Organization is responsible for the promotion, coordination and regulation of research in livestock. The Kenya

[19] Monroy L., Mulinge W., Witwer M. (2012), *Analysis of incentives and disincentives for sugar in Kenya.* Technical notes series, MAFAP, FAO, Rome.

Veterinary Vaccines Production Institution (KEVEVAPI) is a state-owned institution tasked with the production and supply of veterinary vaccines and services.

4.56. The National Livestock Policy is the main framework governing livestock production in Kenya. It aims at increasing the productivity of livestock farming by interventions in the following key areas: breeding, nutrition and feeding, animal health, processing and marketing. Some of the key achievements in implementing the livestock policy are increasing production and earnings in meat, milk and eggs; establishing of livestock institutions to support livestock breeding and tsetse and trypanosomiasis control; expanding capacity of livestock training institutions; and increasing investment in the milk value chain.

4.57. In 2017, the authorities launched an electronic single window system for the processing of permits related to exports and imports of animals and animal products. Other achievements include the development of: guidelines on the inspection of hatchery facilities; standards for imports and exports of animal genetics; and codes of inspection for rabbits and donkeys. Kenya also took steps to expand its markets by inviting risk assessment missions from the United Arab Emirates, Saudi Arabia, and the Seychelles.

4.58. Raw hides and skins are subject to an export tax of 80%, and a 2% export levy for the provision of veterinary services. Wet blue and crusts attract lower rates of 1% and 0.5% respectively. The purpose of the export tax is to encourage further domestic processing. According to the authorities, the export duty has increased the number of tanneries in the country from nine in 2005 to 15 in 2017; 7000 new jobs have been created in the industry (1000 direct, 6000 indirect). As a result, incomes for 40,000 people have increased as well as earnings in the sector by USD 9.28 Million.

4.1.3.3.1 Dairy

4.59. The dairy industry supports approximately 1.8 million rural households and 700,000 jobs along the dairy value chain. Dairying is predominantly practiced by smallholders who produce over 80% of the milk. Annual milk production in 2017 is estimated at 3.6 billion litres. Cattle produce about 88% of this milk, while camels and goats contribute to the rest. It is projected that milk production will continually grow by between 4.5 and 5 % annually in the next ten years and by the year 2030. It is envisaged that the annual milk production in Kenya will increase to about 12 billion litres. About 648 million litres of milk is processed through the formal channels representing approximately 16% of the total milk produced. The rest is marketed through milk bars and directly to consumers.

4.60. The major constraints facing dairy production are poor breeds; high cost of feed, inputs and services; limited value addition; poor marketing infrastructure; and high post-harvest losses especially during the rainy season.

4.1.3.3.2 Beef

4.61. Beef production is largely concentrated in the Arid and Semi-Arid land (ASAL) areas which accounts for 70% of total production. Approximately 13 million Kenyans living in the ASALs derive their livelihood largely from livestock. The population of beef cattle is approximated at 14 million. Of the entire beef produced from the ASAL areas, 50% comes from the extensive pastoral production systems, 25% from the commercial ranches and the remainder is produced from agro-pastoral beef production systems. About 70% of beef produced in the country is mainly from the Zebu cattle population, while the rest is from dairy herd culls.

4.62. While pastoralists account for the majority of Kenya’s meat supply (approximately 70%), a significant portion comes from livestock raised in neighbouring countries (Ethiopia, Somalia, Tanzania and Uganda); Kenya is a meat deficit country. Beef production output was approximately 487,000 tonnes in 2017.

4.1.3.4 Fisheries

4.63. The fisheries sub-sector had an annual production estimated at 147,916 tonnes in 2016, and contributed to about 0.5% of GDP.[20] Fish exports were valued at USD 45 million in 2016. Inland fisheries, primarily from Lake Victoria, are the largest source of catches; marine catches account for a mere 5% of the overall production. Marine fish stocks are exploited essentially by distant water fishing vessels. There is one processing company that transforms tuna supplied by purse seiners into cooked and frozen tuna loins. The production is sent to the EU for further processing.

4.64. The fisheries sub-sector is hampered by an unsustainable utilization of its resources in some water bodies such as Lake Victoria due to limited surveillance capacity. In the Marine Sector, Kenya has a domestic fleet composed of industrial and semi-industrial fishing vessels in its Exclusive Economic Zones (EEZ).

4.65. Kenya faces threat from Illegal, Unregulated and Unreported (IUU) fishing. However, the incidences have declined following the installation of a vessel monitoring system (VMS) to monitor vessels fishing in its EEZ. According to the authorities, the VMS is functioning and is able to monitor both local as well as foreign vessels operating in Kenyan waters. This is complemented by the vessel Automatic Identification System (AIS) and Long-Range Identification and Tracking System (LRIT) operated by the Kenya Maritime Authority (KMA) in the Regional Maritime Rescue Coordination Centre (RMRCC). The country also recently acquired a patrol vessel with the capability to patrol its EEZ.

4.66. The objective of the fisheries policy is to contribute to the wellbeing of the people and national economic growth through sustainable management and development of fisheries and aquaculture. The Ministry of Agriculture, Livestock, Fisheries and Irrigation, through its State Department for Fisheries, Aquaculture and the Blue Economy, is responsible for policymaking in the subsector. Other institutions include: the Kenya Fisheries Advisory Council, to advise the national government on fishery issues; the Kenya Fisheries Services, responsible for the conservation, management and development of fishery resources; and the Kenya Fish Marketing Authority responsible for marketing fish and fisheries products from Kenya.

4.67. The Fisheries Management and Development Act No.35 of 2016 provides for the conservation, management and development of aquatic resources in Kenya. A licence is required in the following cases: using an industrial or semi-industrial fishing vessel in Kenya fishery waters; artisanal fishing vessel for commercial purposes; and commercial aquaculture. County governments are responsible for issuing licences with respect to recreational fishing and the operation of a fish processing facility within their jurisdiction. Licenses are valid for up to one year, and subject to the payment of an annual fee.

4.68. Operators of licensed vessels are required to ensure that at least 45% of the crew members are citizens of Kenya. Operators of industrial fishing vessels are required to land a portion of their catches and bycatches at designated domestic fish landing stations. They cannot retain more than 30% of their bycatches. The minimum quantities of catches to be landed for sale in the local market is 30% for purse seiners, 30% for long liners, and 5% for shrimp trawlers. For semi-industrial fishing vessels, the requirement applies to 100% of the catch for undecked vessels and 50% for decked vessels. Transhipment activities at sea are prohibited.

4.69. During the review period, Kenya has also been implementing the Kenya Tuna Fisheries Development and Management Strategy, which focuses on the Development of the tuna industry to ensure optimal economic benefits from the country's tuna fisheries by facilitating their sustainable development and management, value addition, and equitable access to them. Kenya is currently negotiating a fisheries agreement with the EU. Kenya is a member of the Indian Ocean Tuna Commission (IOTC) and the South West Indian Ocean Fisheries Commission (SWIOFC).

[20] Online information. Viewed at: http://www.industrialization.go.ke/index.php/media-center/blog/346-kenya-outlines-measures-to-lift-fisheries-sector.

4.1.3.5 Forestry

4.70. Forest covers 3.5 million of hectares in Kenya, which is about 6% of the land area.[21] The country is endowed with a range of forest ecosystems including rainforests, savannah woodlands, dry forests, and mangroves. The 2010 Constitution mandates the authorities to maintain a forest cover of at least 10% of the country's land area. A forest policy was adopted in 2014 to implement this constitutional requirement and promote investments in commercial tree growing, forest industry and trade.

4.71. The main policy measures for the forestry sub-sector includes supporting forestry research in critical areas to ensure generation of appropriate technologies for forestry development; increasing forest cover through sustainable utilization and conversion of other land to forest land uses; and harmonization of the forest law and other sectorial legislations in order to achieve national development objectives.

4.72. Under the Constitution, forests may be classified into three categories: public forests, community forests, and private forests. Forest resources are regulated by the Forest Conservation and Management Act, 2016.[22] The Kenya Forest Service (KFS) was established in 2016 to manage all public forests and regulate the allocation of licences and permits for exploitation of forest resources.

4.73. Imports and exports of forest products are subject to a permit issued by the KFS. The import and Export of forest products are governed by the Forest Act (Cap 385, laws of Kenya) which grants the Minister powers to issue licenses for the use of forest produce. Trade in forest products is subject to "*Forest Produce Movement Permit*" (FPMP) issued by authorized officials as established by law. A certificate of origin issued by the local forest office helps to identify the source of the material and to confirm that it is not contraband in accordance with the law. Imports of timber may enter into Kenya on production of necessary import permits indicating that the produce is allowed for export to Kenya and certificates of origin. They must also be accompanied by appropriate Certificates indicating they are disease and or pests free.

4.74. Restrictions on Exports and Imports are provided by the Forest Act which states that no person shall export or enter for export of any timber (a) of Kenya origin, except under and in accordance with the terms of an export permit issued by the Conservator or by a person authorized by him in writing in that behalf; (b) of Tanzania or Uganda origin, unless it is accompanied by a document issued in the country concerned allowing such exports; (c) in respect of which an export permit has been issued, until a certificate of grading has been obtained or in a state other than that in which such timber was when such a certificate was issued; (d) through any place or port in Kenya which has not been declared by the Conservator of Forest through a Legal Gazette, as a place or port of export of timber.

4.75. Local communities are also involved in forest management through the formation of Community Forest Associations. The Kenya Forest Research Institute is responsible for forestry research and development. Investors willing to invest in the Forestry sector in Kenya benefit from general investment incentives such as customs and excise waiver in respect of imported capital goods, or tax rebates to forest industries and other establishments investing in plants; exemptions from payment of part of the land taxes; income and other tax deductions to land owners in exchange for establishment of forest conservation.

4.2 Mining and Energy

4.2.1 Mining products

4.76. Kenya's mining industry remains small (about 1% of GDP) but is poised to expand further with recent discoveries and current exploration activities. Kenya's main mineral resources include soda ash, fluorspar, titanium minerals, rare earth elements, gold, and gemstones. Between 2012 and 2017, the country's mineral exports nearly doubled to 11.7% of its total exports. In 2014, Kenya

[21] FAO (2010): *Forest Resources Assessment Report*.
[22] The Act repeals the Forests Act, 2005 and the Timber Act.

started exporting additional ores and other minerals such as: ores and concentrates of molybdenum, niobium, tantalum, titanium, vanadium and zirconium.

4.77. The Mining Act, 2016 regulates mining activities in Kenya. According to the authorities, the legislation is well aligned with the aspirations of the African Mining Vision and other international extractive industry transparency initiatives; it is poised to invigorate the mining sector as it has provided transparency in concession management and regulation. The sector's institutional framework includes: the State Department for Mining through the Directorate of Mines as the regulator; the Online Transactional Mining cadastral portal that aims to facilitate transparent licencing and concessions management, the Mineral Rights Board as an advisory institution; the Directorate of Geological Survey; the National Mining Corporation as the investment arm of the Government; and the Mineral and Metal Commodity Exchange, as the marketplace for minerals.

4.78. Mineral rights are granted either through a license (for large scale operations) or a permit (Table 4.3). Licenses and permits are granted by the Cabinet Secretary, upon recommendation by the Mineral Rights Board. Artisanal mining operations are reserved for citizens and local cooperatives, associations or groups. County authorities are responsible for issuing artisanal mining permits.

Table 4.3 Mining licences

Licence type	Eligibility/Rights conferred	Terms
Large scale operations		
Reconnaissance licence	Non-exclusive rights to carry out reconnaissance operations	2 years non-renewable term Up to 5 000 contiguous blocks Area-based annual fees Not transferrable
Prospecting licence	Exclusive rights to carry out prospecting operations	3 years term, renewable twice for up to 3 years Up to 1 500 contiguous blocks Not transferable
Retention licence	Exclusive right to conduct prospecting operations and apply for a mining licence	2 years renewable term
Mining licence	Exclusive right to carry out mining operations	Up to 25 years, renewable for up to 15 years
Small-scale operations		
Prospecting permit	Citizen or body corporate with at least 60% shareholding by citizens	5 years term, renewable once for up to five years Up to 25 contiguous blocks
Mining permit	Rights: exclusive	5 years term, renewable once for up to five years Up to two contiguous blocks
Artisanal mining	Kenyan citizens	3 years term Up to one block

Source: Mining Act, 2016.

4.79. With a view to strengthening the governance of the sector, mineral agreements above USD 500 million are subject to ratification by Parliament.[23] For large scale mining operations, the Government is entitled to a 10% interest in the share capital of the right. The Government may also choose to enter into a mineral agreement with a holder of a mining licence, if the proposed investment is above USD 500 million. Mining companies are required to have local equity participation of at least 35% of the mining rights. Investors with capital expenditures over a certain threshold are required to offer a minimum of 20% of their shares to the public on a local stock exchange. This provision may be exempted upon application to the Cabinet Secretary.

4.80. Some mineral resources and deposits may be declared as "strategic" and subjected to more stringent regulations. The Government has pre-emptive rights over them. Currently, all radioactive minerals are strategic minerals. Currently, only radioactive minerals have been declared strategic minerals.

[23] Natural Resources (Classes of Transactions Subject to Ratification) Act, 2016.

4.81. Royalties on mineral resources are assessed on their gross sales value at the rate of 5% for gold and silver; 8% for manganese and iron ore; 8% for coal; 10% for titanium ores and rare earths; and 12% for diamonds.[24] Additional royalties apply on gold and gemstone exports. An export royalty is levied on gold at the rate of 2% of the gross value. The dealership royalty is assessed on the f.o.b. value of the exportation of gemstones at the rate of 5% for raw gemstones and 1% for semi-processed gemstones. Royalties are to be divided between the national government (70%), the host county government (20%), and the local community (10%).

4.82. Holders of mineral rights are required to implement an environmental management plan, and contribute to the development of local communities by entering into Community Development Agreements with them. These agreements typically cover development projects, including special programmes for youth, women and marginalized groups; they may not result in the imposition of any additional rent or fee on the mining company. The licence holder is required to spend at least 1% of its gross revenue from the sale of minerals on projects under the agreement.

4.83. Local content requirements have been in force in the mining sector since 2017.[25] Under the Mining (Use of Local Goods and Services) Regulations of 2017, licence holders and their sub-contractors are required to use to the extent possible locally produced goods and services. As part of the licence or permit application process, operators are required to submit a procurement plan for the purchase of local goods and services. In practice, licence holders are required to give priority to companies with a majority ownership by Kenyans when calling for tenders. For international procurement, companies are required to give preference to locally registered suppliers.

4.84. In addition to general incentives (Section 3.3.1), specific incentives are available to businesses operating in the mining industry. Goods imported for the construction of LPG storage facilities are exempted from the payment of import declaration fees and the railway development levy.[26] Additionally, imports of machinery and equipment meant for mining and prospecting activities are exempt from import duties upon confirmation by the State Department to the revenue authority.

4.85. Operators in the mining industry are required to insure risks related to their local business or operations with companies licensed by the Insurance Regulatory Authority of Kenya. Kenya does not participate in the Extractive Industries Transparency Initiative (EITI).

4.2.2 Petroleum products

4.86. The Ministry of Petroleum and Mining through the State Department for Petroleum is responsible for the formulation of petroleum policy; strategic petroleum stock management; management of upstream petroleum products marketing; oil and gas exploration policy development; oil and gas sector capacity development; trade policy in petroleum products; licensing of petroleum marketing and handling; and quality control of petroleum products. The upstream petroleum subsector is regulated mainly by the Petroleum (Exploration and Production) Act (CAP, 308). Downstream Regulatory functions are carried out by the Energy Regulatory Commission (ERC). The Energy Tribunal has jurisdiction to hear and determine matters referred to it.

4.2.2.1 Upstream activities

4.87. As at September 2018, there were 14 International Oil Companies (IOCs) and the National Oil Corporation of Kenya undertaking exploration and appraisal activities in the 27 petroleum exploration blocks with valid Petroleum Sharing Contracts (PSCs). The remaining 36 blocks were available.

4.88. Proven oil reserves currently stand at approximately 760MM Barrels with a potential of 1.6 billion barrels. The reserves have been confirmed as commercially viable. The number is expected to rise with more appraisal drilling. Production of the first oil is expected in the year 2022. However, the Government, Tullow Oil and Joint Venture partners are undertaking an Early Oil Pilot Scheme (EOPS). The project will allow comparatively small quantities of crude oil to be delivered to Mombasa. EOPS will help by establishing logistical infrastructure (road upgrades), and provide for important technical well data. It will enable national and county governments to gain more technical

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[24] Mining (Prescription of Royalties on Minerals) Regulations of 2013.
[25] The Mining (Use of Local Goods and Services) Regulations, 2017.
[26] Finance Act 2017 Section 59.

experience and also to test the international market for Kenyan Crude Oil as the Kenya Joint Venture transitions from exploration and appraisal, to development and production. Kenya is yet to export crude. There are plans to build an 820 km-long pipeline to transport crude from production fields in the Lokichar Basin to the Lamu port for storage and onward export to international markets.

4.89. Upstream petroleum activities are regulated mainly through the Petroleum (Exploration and Production) Act (CAP, 308) and related regulations. The legislation was last revised in 2007, and does not comprehensively cover exploration and production activities. It covers petroleum operations which consist of activities such as exploration and production. The legislation also covers natural gas processing operations but not petroleum refining. Under the legislation, petroleum operations are subject to licensing by the related ministry. Once a license is granted, the operator must enter into a petroleum agreement with the Government. The Government also engages directly in petroleum upstream and downstream operations through its own entity, the National Oil Corporation of Kenya Ltd (NOCK).

4.90. Recent oil discoveries increased the urgency of an updated legal framework, prompting the launch of a revision process in 2012. The Petroleum (Exploration, Development and Production) Bill was introduced into Parliament in January 2018. If passed, the Bill would, *inter alia*, transfer regulatory activities to the proposed Petroleum Regulatory Authority and retain NOCK as the government's investment arm in upstream activities. The bill, like the Petroleum Act (CAP, 308), includes a production sharing contract model to be used in all negotiations related to petroleum rights. A minimum of 5% local equity participation is required for production sharing contracts. The proposed bill introduces specific licences and permits relating to activities such as drilling, underground injection, control well plugging and abandonment. In general, once the petroleum bill is enacted, any licensing of petroleum exploration activities will be subject to ratification by Parliament. The bill is with the Senate awaiting third reading.

4.91. Incentives in the upstream sub-sector include negotiable terms of the production sharing contracts and possible exemptions from VAT on goods for oil and gas operations.

4.2.2.2 Downstream activities

4.92. Kenya's downstream oil and gas sub-sector comprises: the Kenya Petroleum Refineries Limited, fully owned by the Government[27]; the Kenya Pipeline Company Limited, dealing mainly with storage and pipeline transportation of petroleum products; Oil Marketing Companies; and the National Oil Corporation of Kenya Limited which has an active downstream business segment with a growing retail network of over 99 service stations spread throughout the country. The Corporation also serves a cross-section of resellers, industrial and government businesses from its modern Nairobi National Terminal. The Kenya Petroleum Refineries Limited (KPRL) no longer processes crude oil and is used as a storage facility for refined petroleum products imported into the country. Some of the tanks at KPRL are used to store crude for the Early Oil Pilot Scheme (EOPS) Project. The refined petroleum products are meant for both the local and transit markets. Products are transported mainly through the pipeline system managed by the state-owned Kenya Pipeline Company Limited. The pipeline network is about 1,342 km long and runs from Mombasa to Eldoret and Kisumu, through Nairobi.

4.93. Downstream petroleum activities are regulated by the Energy Regulatory Commission (ERC). Only licensed oil marketing companies can import petroleum products. As of 2018, there were 102 oil marketing companies operating in the country. Kenya no longer imports crude oil as all imports are in the form of refined petroleum products. The importation of petroleum products is through a monthly open tender system centrally coordinated by the State Department of Petroleum. There is an agreed Price Build Up for the Refined Products. The Price is based on the FOB cost, Freight and Premium plus Local Currency components. The tendering process is based on the freight and premium quoted by sellers for refined petroleum products. Currently, Kenya has about 75 licensed importers of petroleum products.

4.94. In addition to excise duty and import declaration fee (Section 3.1.5.2), petroleum products are subject to a merchant shipping levy at the rate of KES 0.02 per litre for super petrol, diesel and

[27] In 2016, the Kenyan Government purchased the 50% stake owned by Essar Energy in Kenya Petroleum Refineries Limited, taking full ownership of the company.

kerosene; road maintenance levy at the rate of KES 18 per litre for super petrol and diesel[28]; anti-adulteration levy at the rate of KES 18 per litre for kerosene; petroleum development levy at the rate of KES 0.40 per litre for super petrol, diesel and kerosene; petroleum regulatory levy at the rate of KES 0.25 per litre for super petrol, diesel and kerosene; and the railway development levy (1.5% of the landed cost).

4.95. Petroleum products are subject to price controls. Maximum wholesale and retail pump prices are determined by the ERC and are published on 15th of every month.[29] The price structure comprises the following: landed cost, distribution and storage costs, margins set by the regulator, and various taxes and levies.[30]

4.96. The legislation provides for the establishment of petroleum strategic stocks to protect the country from any disruption in the supply chain.[31] Equivalent to ninety days of consumption, the strategic reserves are to be procured by the National Oil Corporation of Kenya, and stored by the Kenya Pipeline Company Limited.

4.97. With the devolved structure of governance, county governments are responsible for regulating and licensing retail petroleum service stations and gas reticulation systems.

4.2.3 Electricity

4.98. The energy mix in Kenya is mainly from geothermal and hydropower sources. They account on average respectively for 28.8% and 35.5% of electricity generation in the country. The high reliance on hydro resources is a source of concern as power availability is dependent on the level of rainfalls. As of August 2018, Kenya's installed capacity was 2 341 MW against a demand of 1 832 MW. However, not all the installed capacity is available all the time due to scheduled maintenance. Kenya does not export any its surplus of electricity.

4.99. The East African Rift is the main source of geothermal energy in Kenya. The Kenyan authorities intend to harness this potential to achieve their objective of eliminating fossil fuel-powered electricity generation by 2025. The Geothermal Development Corporation (GDC) has the mandate to fast track development of geothermal resources in the country. Since the last review, GDC added six power plants with a total capacity of 410.6 MW.

4.100. Wind power and nuclear energy are also part of the energy mix required to achieve the country's *Vision 2030*. In 2018, Kenya completed the Lake Turkana Wind Power projects which added 310 MW to the country's installed capacity. Ngong wind operated by KenGen has an installed capacity of 25.5MW bringing total installed capacity for wind to 335.5MW. Kenya established the Nuclear Electricity Board in 2012, to fast track the development of nuclear energy.[32] The construction of a 1 000 MW nuclear power plant is planned to start in 2022. A draft nuclear bill and policy have been developed. Identification of an appropriate site for the nuclear power plant is ongoing. Furthermore, the government mobilizes resources in funding drilling and steam development of geothermal resources.

4.101. Electricity generation is carried out mainly by the Kenya Electricity Generating Company Limited (KenGen). KenGen has a government shareholding of 70% and contributes to about 70% of the installed capacity. The Kenya Electricity Transmission Company Limited (KETRACO) is responsible for the development of the infrastructure. It is fully owned by the Government and has monopoly over electricity transmission. The distribution segment is under monopoly by the Kenya Power and Lighting Company Limited (KPLC) and Rural Electrification Authority (REA). Independent power producers (IPPs) play an increasing role in the sector, accounting for about 30% of the

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[28] Road Maintenance Levy Fund (Imposition of Levy) (Amendment) Order, 2016.

[29] The Energy (Petroleum Pricing) Regulations, 2010.

[30] For instance, the maximum retail price for super petrol in Nairobi is set at KES 113.73 per litre from 15th August to 14th September 2018. Its structure is as follows: 52% of landed cost; 3.9% of distribution and storage costs; 9.6% of margins for importers, dealers and marketing companies; and 34.6% of taxes and levies. Source: ERC online information. Viewed at: https://www.erc.go.ke/addendum-to-the-maximum-retail-petroleum-pump-prices-released-on-14th-august-2018-2/ [20.08.2018].

[31] Energy (Petroleum Strategic Stock) Regulations, 2008 (Legal Notice No. 43 of 2008).

[32] It replaces the Nuclear Electricity Project Committee which was established in 2010.

installed capacity in 2018. KenGen and IPPs are required to enter into power purchase agreements with KPLC.

4.102. The electricity sub-sector is regulated by the Energy Regulatory Commission (ERC). ERC licenses IPPs and sets the tariffs, including feed-in tariffs. The Rural Electrification Authority (REA) is responsible for electricity access in rural areas. The Government's strategy consists in connecting to the grid public institutions such as trading centers, secondary schools and health centers. For areas that are difficult to reach through the conventional grid, the Authority supplies solar kits to public institutions. As at August 2018, the REA had connected 60,617 public facilities representing 68.4% of the total and 23,886 primary schools (100%).

4.103. The consumer electricity tariff structure is composed of an energy charge and other applicable charges that include: 16% VAT; 5 cents per kWh levy for the Water Resource Management Authority; 30 cents per kWh levy to cover the operational costs of the Energy Regulatory Authority; and a 5% Rural Electrification Programme levy. The authorities indicated that there was no direct subsidy from the Government to the sub-sector. There is however some cross-subsidization, as low consumers (up to 50 kWh monthly) are charged at rates below the production cost. In July 2018, the electricity tariffs were reviewed (for the first time since 2013) to account for the growing importance of renewable energy and accommodate a KES 11 billion increase in revenue requirement by KPLC. The revised tariffs resulted in a 7% average drop, due mainly to the removal of a KES 150 fixed charge on low consumers. After this review, the lifeline tariff was adjusted downwards from KES 50 per KWh monthly to KES 10 per KWh monthly. Electricity prices are adjusted for inflation every six months. ERC reviewed its feed-in tariffs policy in 2012 to include energy from renewable sources (geothermal, solar, and bio gas generated electricity). ERC guarantees power purchase agreement with the KPLC and tariffs are valid for 20 years. A Renewable Energy Auctions Policy was developed and would be used to procure solar and wind projects above 10MW; it is yet to be approved.

4.104. Electricity is subject to the VAT at the standard rate of 16%. However, power generation equipment and solar panels can be imported free of VAT and import duties.

4.2.4 Water

4.105. About a half of the Kenyan population lacks access to safe and reliable water and basic sanitation. The Government's objective under the Vision 2030 is to provide a universal access to water and sanitation by 2030. Water related functions are a shared responsibility between the national and county governments. The national government has responsibility over policy formulation and the regulation of water services and resources, as well as the management of national public water works. County governments are responsible for the provision of water and sanitation services, and the development of water works at county levels. At the national level, the Ministry of Water and Irrigation is responsible for policy formulation.

4.106. The sector is regulated mainly through the Water Act and the Water Services Act, both enacted in 2016. In the regulatory framework, water resources management functions are separated from the provision of water services. The Irrigation Bill is currently at the National Assembly for review. The Water Act, 2016 provides for the regulation, management and development of water resources, water and sewerage services.

4.107. The Water Resources Authority is responsible for the regulation, the management, and use of water resources. Under the law, a permit is required for any of the following activities: any use of water from a water resource except for domestic use; the drainage of any swamp or land; and the discharge of a pollutant into any water resource. There are four classes of permits and they depend on the volume of water allocated annually: 122.5 million m3 for class A permit; 203.3 million m3 for class B permit; 1.2 billion m3 for class C permit; and 29.4 billion m3 for class D permit. Permits are issued for five years and are subject to an application fee ranging from KES 1,000 (class A) to KES 400,000 (class D). Class A permits are issued and renewed free of charge. The issuance and renewal fees are as follows: KES 7,000 for class B; KES 25,000 for class C; and KES 45,000 for class D. Water use charges apply to categories B, C and D permit holders at a rate that depends on the use of water and the volume used. For hydropower generation plants, the charge is 5 cents per KWh

of electricity generated in excess of 1 MW.[33] Domestic water use and water use for smallholder irrigation schemes are subject to authorizations. From 2013 to June 2018, the number of permits granted was 5,982.

4.108. Providers of water services are regulated through the Water Services Act, 2016. The Water Services Regulatory Board (WASREB) has the mandate to approve water tariffs, enforce water services standards, and issue licences to water services providers. The transition of National Water Conservation and Pipeline Corporation (NWCPC) to National Water Harvesting and Storage Authority (NWHSA) as per Water Act 2016 is ongoing.

4.109. A fund (Water Service Trust Fund) has been established to finance the provision of water and sanitation services to underserved communities in rural and urban areas. The fund is financed mainly by the Government and development partners. Up to June 2015, the Fund has disbursed over KES 7 billion for projects benefiting about five million people.[34]

4.110. The Water Sector Trust Fund disbursed a total KES 9.34 Billion in the period 2013-2017. Apart from funding community water and sanitation projects and activities in the sub-catchment areas (under Water Resource Users Associations), the fund also gives grants to registered water service providers country-wide.

4.3 Manufacturing

4.111. During the period under review, the manufacturing sector's contribution to GDP declined from 10.7% in 2013 to 9.2% in 2016. The drop is partly attributed to, among others, high costs of doing business and competition from imports. Manufacturing output increased from KES 1,619,622 million in 2013 to KES 2,132,259 million in 2016. The sector's performance was mainly driven by the textiles and apparels industry, which grew by 15%; pharmaceutical products by 17%; beverages by 13%; wood and wood products by 10%; and basic metals by 11%. Over the same period, the assembly of motor vehicles declined by 5%, rubber products by 41%, tobacco products by 5%, fish processing by 38%, and fabricated metals by 5%.

4.112. The Ministry of Industry, Trade and Cooperatives (MITC) is the main policymaking institution for industrial development in Kenya. Other institutions include: the Micro and Small Enterprise Authority; the Kenya Investment Authority; and the Industrial Development Bank. The Kenya Association of Manufacturers (KAM) is the representative body for manufacturers in Kenya.

4.113. Under Kenya's Vision 2030, the manufacturing sector is projected to be a major source of employment and wealth creation, contributing about 15% to GDP by 2020. In 2012, Kenya adopted an industrialization policy that aims at turning the country into a leading industrialized nation with a "robust, diversified and globally competitive manufacturing sector".[35] The policy framework outlines strategies to be implemented to achieve the following objectives: strengthening the domestic production capacity and the local content of the manufactured goods; increasing the generation and use of Research and Development; raising the country's regional market share from 7% to 15%; and developing niche products.

4.114. The Special Economic Zones Act was enacted in 2015 and its regulations developed in 2016. The land for the establishment of SMEs industrial parks was identified in Eldoret and Taita Taveta: in each, 135 and 20 acres of land were identified respectively. The master plans and structural designs for the SME industrial parks were finalized; construction of basic infrastructure facilities for the Leather Park and industrial warehouses for textiles and apparels manufacturing were initiated in Athi River. Value chain studies on leather, textiles, wood, furniture and agro-processing were also completed; the Scrap Metal Act 2015 was enacted and a feasibility study on the establishment of the integrated steel mill was completed. The Construction of Kisumu Industrial Research, Technology

[33] Shurie, Mohamed M; Boniface Mwaniki; and Patricia Kameri-Mbote (2017), *Water Permit Systems, Policy Reforms and Implications for Equity in Kenya.* Pegasys Institute, IWMI and Reach Project Country Report, March 2017.

[34] Water Sector Trust Fund online information. Viewed at: http://www.waterfund.go.ke/brief [23.07.2018].

[35] Government of Kenya (2012), *National Industrialization Policy Framework for Kenya 2012-2030.* Sessional Paper N°9 of 2012.

and Innovation Laboratory was completed and leather laboratory equipped. The construction of KIRDI Research, Technology and Innovation Laboratory in South B (Nairobi) is ongoing.

4.115. The authorities identify the iron and steel as one of the industries that would drive industrial growth. The government's strategy is to build on the country's existing iron ore and coal deposits to establish an integrated iron and steel industry. The Integrated Steel Mill project has not been started; it will be undertaken during the next medium-term plan (2018 – 2022). In this context, the government strengthens the regulation of the scrap metal industry to guarantee a sufficient supply to the domestic industry. The Scrap Metal Act was adopted in 2015 to regulated activities related to scrap metals. The legislation prohibits the exportation of scrap metals. Furthermore, Kenya uses the EAC waiver regime to afford more protection to the industry. Indeed, Kenya is allowed to deviate from CET with higher rates on 48 tariff lines, mostly iron, steel and related articles (HS chapters 72 and 73).

4.116. Some incentives are specific to vehicle assemblers. Since January 2018, the corporate tax on motor vehicle assemblers has been halved to 15% for a period of five years.[36] The reduced rate would be extended for another five years if the assembler achieves a local content of at least 50% of the ex-factory value of the vehicle.

4.117. In 2015, the authorities launched the Kenya Industrial Transformation Programme (KITP). The Programme seeks to develop the country into an industrial hub through specific projects in areas where it is deemed to have a comparative advantage. These include: growing traditional exports; building a food processing hub; promoting non-industrial sectors such as IT, tourism, wholesale and retail trade; and supporting SMEs.

4.118. Micro, small and medium enterprises (MSMEs) are an important component of Kenya's manufacturing sector, particularly in terms of job creation. According to estimates, they account for about 80% of jobs and 45% of GDP; they fall mostly under the informal sector. The Micro and Small Enterprises Act, 2012 regulates micro and small enterprises and provides for their promotion. MSEs are regulated by the Micro and Small Enterprises Authority. The legislation provides for the establishment of the Micro and Small Enterprises Development Fund to provide credit and finance capacity building of MSEs.

4.119. The assistance available to Micro, Small and Medium Enterprise (MSMEs) includes: development of Micro and Small Enterprises Centres of Excellence (MSE COE); provision of worksites; incubation, innovation and technology transfer; provision of financing; productivity and promotion of quality improvement of MSMEs products; intellectual property right registration; and branding and market access to MSMEs products. The One-Village-One-Product initiative as one of the strategies for promotion of value addition to local resources will be implemented in partnership with the county governments.

4.120. Manufacturers can benefit from preferential treatment under the Special Economic Zones regime (Section 2.4), and the Export Processing Zones regime (Section 3.2.4). Under the SEZ regime, manufacturers can benefit from additional incentives (e.g. tax incentives, discounted utility rates, lower licensing fees) by establishing their production units closer to their sources of raw materials.

4.4 Services

4.121. The services sector is the largest contributor to Kenya's GDP, accounting for about half of the GDP in 2017 (Table 1.1). Transport and storage, wholesale and retail trade, real estate, financial and insurance are among the largest components, accounting for over 8% of the GDP each.

4.122. Under the General Agreement on Trade in Services, Kenya maintains specific commitments in five subsectors: communication, financial services, tourism and travel-related services, transport services, and other services (meteorological data information). Kenya has horizontal commitments in commercial presence and movement of natural persons, with limitations covering market access for commercial presence: foreign providers are required to incorporate or establish their business

[36] Finance Act, 2017.

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.[37]

4.4.1 Financial services

4.123. Kenya's financial services sector is relatively diverse and encompasses the following sub-sectors: banking, insurance, credit unions (Saccos), Capital markets and retirement benefits/pensions. The National Treasury is responsible for the overall oversight of the financial system. Each segment is however under the purview of an independent regulator.

4.124. One of the objectives of Kenya's Vision 2030 is the development of "an efficient and globally competitive financial services sub-sector". To achieve this, the country enacted a number of laws, including: the Movable Property Security Rights Act of 2017, which contributed to facilitating the use of movable assets as collateral for credit facilities; the Nairobi International Financial Centre Act of 2017 and the Financial Services Bill of 2016, which provides for the merging of the main financial services regulators.[38]

4.125. The Financial Services Bill 2016 provides for establishment of uniform norms and standards in relation to the conduct of providers of financial products and services, the establishment of Financial Services Authority (FSA); the financial Sector Ombudsman and Tribunal; and the promotion and maintenance of a fair and efficient financial sector. The aim of establishing FSA is to enhance the effectiveness of prudential oversight of the non-bank financial sub-sectors and improve the overall efficiency of the regulation structure. The key initiatives under the proposed Bill include enactment of the new legislative framework, operationalization of the new FSA, merger of regulatory agencies and establishment of an integrated market conduct framework. The Bill is still under consideration in Parliament.

4.126. Fees charged by banks, money transfer agencies and other financial service providers are subject to the excise duty at the rate of 20% of their value. However, excise duty on fees charged on money transfers by cellular phone service providers is 12% of their value.

4.4.1.1 Banking and other credit institutions

4.127. As at end 2017, Kenya's banking sector comprises: 42 commercial banks of which 15 are fully foreign-owned; 1 mortgage finance company; 8 representative offices of foreign banks; 13 microfinance institutions; 3 credit reference bureaus; 17 money remittance providers; and 77 foreign exchange bureaus. Three banks are fully owned by the Government: the Consolidated Bank of Kenya Ltd.; the Development Bank of Kenya Ltd.; and the National Bank of Kenya Ltd. To increase efficiency, resolve overlaps and make better use of resources to achieve economies of scale, the Government is in the process of consolidating six financial institutions namely: Kenya Industrial Estates, Development Bank of Kenya, Industrial Development of Kenya, Uwezo Fund, Youth Fund and the Women Enterprise Development Fund into Kenya Biashara Bank.

4.128. During the review period, Kenya's banks and financial institutions pursued their expansion in the region, with nine banks having subsidiaries operating in other EAC countries. From 211 in 2011, the number of branches of Kenyan banks abroad increased to a peak of 333 in 2015, and declined to 297 in 2016. The decline is mainly attributed to the exit of Bank of Africa (BOA) Kenya, with its 59 branches (36 in Uganda and 23 in Tanzania), following the change of ownership of the Uganda and Tanzania branches. As of 31st December 2016, Equity Group had the largest number of branches in the region (89). It was followed by Diamond Trust Bank with 68 and KCB Group with 63. A total of 306 branches were in operation as at December 31, 2017 compared to 297 branches in December 2016. The increase is mainly attributed to the increase in Equity Group branches in DRC. Uganda had the highest number of branches in the region at 102, compared to 99 the previous year, followed by Tanzania at 81, and Rwanda at 55 branches. As of 31st December 2017, Equity Group had the highest number of branches in the region at 104. It was followed by Diamond Trust

[37] GATS/SC/47, 15 April 1994.

[38] These are: the Retirement Benefits Authority (RBA), the Insurance Regulatory Authority (IRA), the Capital Markets Authority (CMA) and the Sacco Societies Regulatory Authority (SASRA).

Bank with 70 and KCB Group with 60. The increasing number of branches demonstrates potential for banking services within the region.

4.129. The banking industry's total assets were valued at KES 3.7 trillion as at end December 2017. Foreign commercial banks account for 30.1% of the total assets while the three public commercial banks account for 3.9%. High interest rate spreads and the prevalence of non-performing loans are among the main challenges to the banking sector. The ratio of gross non-performing loans to gross loans was 9.2% in December 2016.

4.130. The banking industry is regulated by the Central Bank of Kenya (CBK) under the provisions of the Banking Act Cap 488. Banking business is subject to licensing by the CBK. Licences must be renewed annually. Financial institutions are subject to a minimum capital requirement set at KES 1 billion for commercial banks and mortgage companies, and KES 200 million for other financial institutions. In 2013, the CBK issued revised guidelines on prudential capital adequacy ratios. According to the revised guidelines, banks are required to maintain a minimum capital requirement (Tier II) of 14.5% instead of 12%; a capital conservation buffer of 2.5% over the prevailing minimum ratios; a minimum core capital to risk weighted assets of 10.5%; and the total capital to risk weighted assets levels at 14.5%. In practice, Kenyan banks are relatively well capitalized with core and total capital to risk weighted assets averaging 15.8% and 18.4%, against regulatory minimum requirements of 10.5% and 14.5% respectively.

4.131. In November 2015, CBK imposed a moratorium on new licences for commercial banks. The restriction on licences was intended to give the regulator time to enhance its supervisory capacity after two banks; Imperial Bank and Dubai Bank were placed under receivership. The two banks were experiencing weak internal governance controls leading to fraud. The moratorium was lifted in April 2017 and a new commercial bank, the Dubai Islamic Bank, has since been licenced bringing the number of commercial banks to 43.

4.132. High interest rates were perceived as one of the main factors limiting access to credit. In 2016, the Banking Act was amended to cap interest rates applied by commercial banks on credits and deposits. With the amendments, the maximum interest chargeable for credit facilities by commercial banks is capped at 4 percentage points above CBK's policy rate, which stood at 9% as of July 2018. Similarly, interests on interest-earning deposits are to be at least 70% of the policy rate. The authorities expect the measure to lower the cost of credit and increase access to credit. In practice, the measure caused commercial banks to prioritize large corporate borrowers and government bonds at the expense of smaller and riskier customers. Furthermore, monetary policy's transmission channel was weakened as the caps move with any change in the policy rate.[39]

4.133. Kenya reformed its deposit insurance system and established a Deposit Insurance Fund (to replace the Deposit Protection Fund).[40] The Fund is managed by the Kenya Deposit Insurance Corporation. All deposit-taking licensed institutions are required to contribute an annual premium of 0.15% of their total deposit to the fund, with a minimum contribution of KES 300,000. The Fund provides protection to each depositor for an amount of up to KES 100,000 per financial institution.

4.134. Credit unions (known in Kenya as Savings and Credit Cooperative Societies (SACCO) are an important feature of Kenya's financial ecosystem. As at end 2017, there were a total of 177 licensed deposit taking over 4,000 non-deposit taking SACCOs in Kenya. The total assets of deposit taking institutions amounted to USD 3.4 billion in 2017. They are regulated under the SACCO Societies Act, 2008. SACCOs are required to maintain a core capital of at least KES 10 million, representing at least 10% of their total assets and 8% of their total deposits. The SACCO Societies Regulatory Authority (SASRA) is responsible for granting licences, regulating and supervising the Saccos.

4.135. Kenya's mobile banking transfer segment continues its expansion. M-PESA, a subsidiary of Safaricom, remains the leading player, servicing about 19 million users with about USD 150 million transacted daily. Services offered have been expanded to include loans and saving products. Mobile

[39] Central Bank of Kenya (2018), *The Impact of Interest Rate Capping on the Kenyan Economy*. Nairobi, March 2018. Viewed at: https://www.centralbank.go.ke/wp-content/uploads/2018/03/Interest-Rate-Caps_-March-2018final.pdf [02.08.2018].

[40] Kenya Deposit Insurance Act, 2012.

money services providers are under a special licensing system managed by the Central Bank of Kenya. Under the system, funds are held by a trust and deposited in several commercial banks.

4.4.1.2 Insurance

4.136. As at end 2016, there were 52 insurance companies and 3 reinsurance companies in Kenya.[41] The non-life insurance business accounted for 63% of total insurance premiums, with motor and medical insurance comprising of over two thirds of the non-life premiums. The industry premiums grew by 13.5%, the life business growing faster by 20% compared to the non-life segment growth rate of 9.9% between 2015 and 2016. The industry also comprises 204 insurance brokers; 10 reinsurance brokers; 32 medical insurance providers, and 7 720 insurance agents. During the review period, the total assets of the industry increased steadily to 584.84 billion in 2017 (Table 4.4). Similarly, gross premiums rose to about KES 207.6 billion in 2017. The insurance penetration, which is the ratio of gross premiums to GDP, remained stable at around 2.8, indicating that premium collected are increasing at the same rate as the economic growth. According to IRA annual insurance report of 2016, there were 26 general insurers, 15 long-term insurance companies, 11 composite insurers and 3 reinsurers operating in Kenya.

Table 4.4 Evolution of some insurance indicators, 2012-17

Indicator	2012	2013	2014	2015	2016	2017
Assets (KES billion)	311.2	366.2	430.5	478.8	528.7	584.84
Gross premium (KES billion)	111.9	129.2	155.8	172.5	195.2	207.6
Net premiums written (KES billion)	87.5	105.0	126.3	140.0	158.4	154.45
Direct expenses (KES billion)	20.2	24.8	30.5	36.3	40.0	54.86
Penetration ratio (premium/GDP)	2.6	2.7	2.9	2.8	2.7	2.8
Density (KES per capita)	2,749	3,090	3,623	3,903	4,300	..
Number of policies/population (%)	..	..	9.1	6.1	7.5	..

.. Not available.

Source: IRA (2017), Annual Insurance Industry Report for the Year Ended 31st December 2016. Insurance Regulatory Authority, July 2017.

4.137. The Insurance Regulatory Authority (IRA) has the mandate to regulate, supervise and develop the insurance industry in Kenya. The Insurance Act is the main legal framework for insurance business. Minimum capital requirements are set at KES 150 million for long term insurance businesses, KES 300 million for general insurers, and KES 800 million for reinsurers. The legislation requires that at least one-third of ownership of any insurance company be held by EAC citizens.

4.138. In line with the 2010 amendment, composite insurance companies are required to have separate entities dealing with life insurance and non-life insurance. The demerging has been completed in 2015. The Insurance Act was further amended (in 2014 and 2016) to, *inter alia*, increase capital requirements, regulate bancassurance activities, and provide for insurance based on Islamic sharia law (*Takaful* insurance business). Banks offering insurance services are considered as insurance intermediaries, and their intermediation activities are under the supervision of IRA.

4.139. There are four reinsurance companies: Kenya Reinsurance Company (Kenya Re) which is 60% owned by the Government; Zep Re (PTA Insurance Company), which is owned by the 19 COMESA member countries; Africa Reinsurance Company (Africa Re), which is owned jointly by African countries; and Africa Trade Insurance Agency (ATI). Kenya Re, Zep Re, and Africa Re receive mandatory cessions of respectively 20%, 10%, and 5%of all reinsurance business in Kenya. Africa Re, Zep Re and ATI are regional insurance organizations, and are not subject to domestic regulations.

[41] IRA (2017), *Annual Industry Report, 2016*. Viewed at: https://www.ira.go.ke/images/docs/Annual-_Industry_Report_2016.pdf [02.08.2018].

4.140. Fraud seems to be prevalent in the insurance industry: about 40% of insurance claims are fraudulent.[42] In 2011, IRA established a fraud unit to investigate and prosecute fraudulent activities. In Kenya, third-party liability insurance for automobile, vessels and aircrafts are mandatory.

4.4.1.3 Capital markets

4.141. Kenya's capital markets rank among the top five in Africa, according to Barclays Africa Group's Financial Markets Index.[43] Kenya is particularly praised for its contract enforcement policies, the market depth, and the capacity of local investors. Capital Markets (Nairobi Securities Exchange (NSE) and All Share Index (ASI)) have shown strong asset growth; the market capitalization grew by 11.91% and 15.65% between 2016 and 2017 respectively. However, the level of new investment raised through public offerings remains limited with only 67 companies listed on the NSE in 2017. Indeed, as of October 2015, the NSE had already 65 listed companies with a total market capitalization of about USD 21.5 billion.[44] However, the market is highly concentrated as six of the largest firms account for about 75% of the total capitalization.

4.142. Under the 2030 Vision, the Government aims at establishing Nairobi as a leading international financial centre in Sub-Saharan Africa. The Nairobi International Financial Centre was established in 2014 through an executive order. The Nairobi Financial Act, 2017 provides for a legal framework to facilitate and support the development of an efficient and globally competitive financial services sector that generates high levels of national savings and investments through the establishment of the Nairobi International Financial Services Authority (NIFSA). NIFSA is in the process of being operationalized. The next steps involve development of a strategy, creation of a one–stop shop for incorporation, and developing the strategic incentives aimed at attracting investors and marketing of NIFC.

4.143. Capital markets are regulated under the Capital markets Act Cap 485A, last reviewed in 2016. The Capital Market Authority (CMA) is responsible for licensing and supervising capital markets intermediaries. These are: securities exchange; investment banks; stockbrokers; fund managers; dealers; investment advisers; and credit rating agencies. Licensing and renewal fees range from KES 50,000 for fund managers registered with Retirement Benefits Authority (RBA) to KES 250 000 for investment banks. However, the application fee for licence approvals or renewals is KES 2,500. The fees were set in the Capital Markets (Licencing Requirements) General Regulations of 2002.

4.144. The development of capital markets in Kenya is guided mainly by the Capital Markets Plan 2014 – 2023[45], which is part of the country's *Vision 2030*. Reforms implemented under the Plan include: the removal of the 75% cap on foreign ownership of companies listed on NSE; the repeal of the 30% local shareholding requirement for foreign companies[46], and of the requirement to have local boards of directors for locally registered branches of foreign entities. In 2012, legislation was taken to separate the Nairobi Stock Exchange's commercial functions from its regulatory functions.[47] The demutualization became effective in 2017, and was associated with a tenfold reduction in admission fees to KES 25 million.

4.145. The CMA manages an Investor Compensation Fund that provides compensation to investors who suffer pecuniary loss resulting from failure of a licensed stockbroker or dealers to meet their contractual obligations. Every buying or selling stock broker or dealer that is a trading participant of a securities exchange contributes to the compensation fund an amount prescribed by the CMA. The compensation is capped at KES 50,000.

4.146. Tax incentives are provided under the Stamp Duty Act, various editions of the Income Tax Act and the Finance Act, and capital markets regulations. Issuers are eligible for, *inter alia*, a three to five percentage point discount on the corporate tax rate; a reduced listing fee for offers of equity;

[42] Presentation by the Insurance Regulatory Authority. Viewed at: https://www.ira.go.ke/images/docs/THE_ROLE_OF_IRA1.pdf [02.07.2018].

[43] OMFIF (2018), *Barclays Africa Group Financial Markets Index 2017.* Official Monetary and Financial Institutions Forum.

[44] Oxford Business Group (2017), The Report, Kenya 2016.

[45] CMA (2014), *Capital market Master Plan 2014 – 2023.* Capital Markets Authority, Nairobi.

[46] Section 85 of the Finance Act, 2016.

[47] Capital Markets (Demutualization of the Nairobi Securities Exchange Limited) Regulations of 2012.

VAT exemption on transactions related to the transfer of assets into Real Estate Investment Trusts and Asset Backed Securities. Investors are no longer subject to the 5% capital gains tax, but rather a 0.3% levy on their sale transactions. Furthermore, they enjoy a host of incentives, including a reduced rate for withholding tax on dividend and interest incomes; tax exemption on income from asset backed securities, infrastructure bonds, and collective investment schemes such as retirement schemes; and stamp duty and VAT exemption on share capital.

4.4.2 Transport

4.4.2.1 Road transport

4.147. Road transport accounts for about 93% of Kenya's freight and passenger traffic.[48] The country has a road network of about 177 800 km, of which 63 575 km is categorized as the classified road network.[49] There are six categories of classified roads: international trunk roads (class A); national trunk roads (class B); primary roads (class C); secondary roads (class D); minor roads (class E); and, special purpose roads (class F). About 70% of the classified road network is considered as in good condition; paved roads account for 15.6% of the classified network.

4.148. Road transport activities are regulated mainly under the Roads Act, 2007; and the National Transport and Safety Authority Act, 2012.[50] The National Transport and Safety Authority (NTSA) is responsible for regulating the road transport system and implementing related policies. In Kenya, all goods and passenger vehicles with a tare weight of 3.4 tonnes or higher are to be licensed by the NTSA. There are three main categories of licences: a road service licence, for the carriage of passengers and goods; a "B" carrier's licence for the transportation of commercial goods; and a tourist service licence. The legislation also provides for the issuance of short-term licences, for a duration of up to three months. The Authority may also grant exclusive licences for specific areas or routes. Licences are issued for one year. Axle load limits are set under the Traffic Act.

4.149. Road infrastructure is managed by three separate entities: the Kenya National Highway Authority, the Kenya Urban Roads Authority, and the Kenya Rural Roads Authorities. The 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.

4.150. During the review period, the government's interventions in road transport were guided by the Road Sector Investment Plan 2010-2024. The Lamu Port-Southern Sudan-Ethiopia Transport (LAPSET) Corridor project is one of the key components of this Plan. Launched in 2012, LAPSSET is a USD 29.2 billion infrastructure project that involves the construction of ports, airports, a dam of a 32-berth port at Lamu (in Kenya); a railway, a highway, a pipeline and a fibre-optic cable connecting the three countries.

4.151. Road maintenance is financed mainly through the road maintenance levy, collected on imports of petroleum products at the rate of KES18 per litre of petrol or gas oil.[51]

4.4.2.2 Railway transport

4.152. Railway transport is increasingly playing a role in goods transportation in Kenya. The country has a network of about 2,778 km of lines connecting the Port of Mombasa to Nairobi, and to Malaba on the border with Uganda. Until 2016, it was operated by the Rift Valley Railways based on a concession.[52]

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[48] World Bank (2011), *Kenya Transport Sector Support Project*. Viewed at: http://documents.worldbank.org/curated/en/656501468048281802/pdf/600050PAD0P1241OFFICIAL0USE0ONLY191.pdf.

[49] Kenya Highway Authority online information. Viewed at: http://www.kenha.co.ke/index.php/road-network.

[50] The National Transport and Safety Authority Act repeals the Transport Licensing Act Cap 404.

[51] Road Maintenance Levy Fund (Imposition of Levy) (Amendment) Order, 2016.

[52] The concession was granted by Uganda and Kenya to the Rift Valley Railways for a period of 25 years. The Kenyan part of the concession was terminated in July 2017 due to the company's failure to meet some terms of the concession.

4.153. In 2014, Kenya launched a major railway project that aims at providing a high-performance railway infrastructure from the port city of Mombasa to Nairobi and the Ugandan border. To fund the project, the authorities introduced a railway development levy on imports for home use at the rate of 1.25% of their c.i.f. value. The first phase of the standard gauge railway project between Mombasa and Nairobi was completed in June 2017. Freight operations were launched in January 2018, but were suspended temporarily because of low cargo volumes.

4.154. An airport commuter rail project linking Nairobi to Jomo Kenyatta International Airport is also under way.

4.155. Since April 2017, the transportation of cargos to destination outside Kenya has been exempted from VAT.

4.4.2.3 Air transport

4.156. Air transport services contributed directly and indirectly (via tourism) to the generation of about 5.1% of Kenya's GDP in 2015.[53] Kenya Airways (KQ) is the designated national carrier. The government remains its largest shareholder with 48.9% of the shares.

4.157. The aviation infrastructure comprises four international airports[54] and six regional airports owned by the government, and over 400 airstrips privately owned. Located in Nairobi, Jomo Kenyatta International Airport is the busiest airport in Kenya. In 2017, the subsector carried about 10.3 million passengers and 291 million tonnes of cargo (Table 4.5). The Kenya Airport Authority (KAA) is responsible for the provision and management of the aviation infrastructure. Handling services at international airports are provided by Kenya Airways Ground Handling.

Table 4.5 Evolution of air traffic in Kenya, 2012-17

		2012	2013	2014	2015	2016	2017
Number of aircraft movements		**264,664**	**259,404**	**270,185**	**266,233**	**297,832**	**301,512**
Of which (%)	Domestic	66.5	65.9	65.4	67.4	68.8	69
	International	33.5	34.1	34.6	32.6	31.2	31
Number of passengers (million)		**8.6**	**8.2**	**8.9**	**9.0**	**10.0**	**10.3**
Of which (%)	Domestic	31.9	31.6	35.3	38	40	38.6
	International	51.2	51.7	50	46.4	45.3	47.1
	Transit	17	16.6	14.7	15.5	14.6	14.3
Freight (million tonnes)		**296.4**	**262.5**	**279.9**	**263.6**	**250.0**	**291.4**
Of which (%)	Domestic	0.6	0.8	1.3	1.8	0.7	0.5
	International	99.4	99.2	98.7	98.2	99.3	99.5

Source: Information provided by the Kenya Airport Authority.

4.158. Kenya is a signatory to the Yamoussoukro Decision which forms the basis for air-traffic rights allocation for signatories (African countries). Signatories to the Decision can mutually grant up to the fifth freedom air traffic right using a simple notification procedure. Kenya is among the 23 African countries that launched the Single African Air Transport Market in 2018. Traffic rights for carriers from other countries are based on bilateral agreements. Cabotage is permitted only for freight companies.

4.159. Kenya is party to the Chicago Convention of 1944.

4.160. During the review period, Kenya reformed the regulatory regime for civil aviation through the adoption of the Civil Aviation Act of 2013, and some implementing regulations.[55] The Civil Aviation Act re-established the Kenya Civil Aviation Authority (KCAA) as responsible for the

[53] IATA (2017), *The Importance of Air Transport to Kenya.* Viewed at: http://www.iata.org/policy/Documents/benefits-of-aviation-kenya-2017.pdf [05.06.2018].

[54] The four international airports are: Jomo Kenyatta International Airport located in Nairobi, Moi International in Mombasa, the Kisumu International (in Kisumu), and Eldoret International (in Eldoret).

[55] Key civil aviation regulations adopted during the review period cover the following areas: security; instruments and equipment; operation of aircraft; approved training organizations; air navigation services; aircraft nationality and registration marks; airworthiness; and personnel licensing.

regulation of civil aviation. This includes: licensing air services; providing air navigation services; certifying aircraft operators; and administering international agreements to which Kenya is party. The provision of internal air services is restricted to Kenya citizens and companies with at least 51% of local shareholding. Appeals to KCAA decisions can be brought before the Civil Aviation Administrative Review Tribunal.

4.161. Airfares are not regulated, and licensed providers determine their tariffs freely. Competition issues are dealt with jointly by the KCAA and the Competition Authority of Kenya.

4.162. All aircrafts must be insured against third-party liability risks. For aircraft registered in Kenya, the risk must be insured with a locally registered insurer.

4.163. An air passenger service fee is collected on air tickets at the rate of USD 50 for international flights and KES 600 for domestic flights.[56] The charge is used to fund the KCAA, the KAA, and the Civil Aviation Authority Fund.

4.4.2.4 Maritime transport

4.164. Kenya has seven main port facilities, located in Mombasa, Lamu, Malindin, Kilifi, Shimoni, Mtwapa, and Kiunga. The Port of Mombasa, the second largest port in Sub-Saharan Africa (after Durban), is the only international seaport in Kenya. It is the main entry and exit point for domestic cargo and goods in transit to the other hinterland countries (Uganda, Rwanda, Burundi, Democratic Republic of the Congo, and South Sudan). During the review period, the total cargo throughput, mainly imports, increased steadily to exceed 30,345 tonnes in 2017 (Table 4.6). Container traffic increased by about 32% 1.18 million of TEUs. The Kenya Port Authority is responsible for the management of all ports in Kenya. It has monopoly over cargo handling at the Port of Mombasa.

4.165. In 2017, Kenya has a national fleet of 21 ships with a combined carrying capacity of 8 600 dead weight tonnes.[57]

Table 4.6 Traffic handled at Mombasa Port, 2012-17

	2012	2013	2014	2015	2016	2017
Container traffic (TEUs)	903,463	894,000	1,012,002	1,076,118	1,091,371	1,189,957
Ships docking (number)	1,763	1,768	1,832	1,694	1,607	..
Port throughput (tonnes)	21,920	22,307	24,875	26,732	27,364	30,345
Of which (in %):						
Total imports	85.5	85.8	83.5	84.8	84.5	84.4
Total exports	13.9	13.4	13.5	13.2	13.4	12.5
Transhipment	0.7	0.8	2.9	1.9	2.2	2.7
Others (re-stowings)	0.0	0.0	0.0	0.0	0.0	0.2

.. Not available.

Note: TEU: Twenty-foot equivalent unit.

Source: Information provided by the Kenyan authorities.

4.166. Maritime activities are regulated by the Kenya Maritime Authority (KMA) in accordance with the provisions of the Merchant Shipping Act, 2009. KMA's responsibilities include: co-ordinating the implementation of maritime policies, regulating inland waterways shipping, and discharging Kenya's flag and port State controls.[58]

4.167. The provision of maritime services in Kenya is reserved to Kenyan citizens and companies with at least 51% of ownership by Kenyans. Licences are issued by KMA for up to one year. The registration fee is USD 300 for shipping lines (with a renewal fee of USD 1,000 annually), and USD 250 for the other marine services providers. Maritime service providers are free to establish

[56] Air Passenger Service Charge Act (Cap 475).
[57] Maritime Profile: Kenya. UNCTAD, viewed online at: http://unctadstat.unctad.org/CountryProfile/MaritimeProfile/en-GB/404/index.html [22.08.2016].
[58] Kenya is party to the Indian Ocean Memorandum of Understanding on Port State Control.

their tariffs, and may be required to file them with the KMA. Port charges are set by the Kenya Ports Authority and submitted to the approval of the line ministry. They were last reviewed in 2005.

4.168. Third-party liability insurance is mandatory for any vessel registered in Kenya or operating in Kenyan waters.

4.4.3 Telecommunications and postal services

4.169. Telecommunications and postal services are regulated under the Kenya Information and Communications Act, 1998. The legislation was amended in 2013 to, among others, align it with the provisions of the 2010 Constitution related to the freedom of expression and freedom of media. The Ministry of information, Communications and Technology is responsible for policymaking in the telecommunications and ICT sub-sector. The Communications Authority (CA) is the regulatory body for the information and communications industry, including: broadcasting, multimedia, telecommunications, electronic commerce, courier and postal services. The Communications Authority is also responsible for approving telecommunications and radio communication equipment: only registered vendors are allowed to market any equipment.

4.170. Its resources are mainly from spectrum fees (81.3% of its budget in 2017).[59]

4.4.3.1 Telecommunications

4.171. As at December 2017, there were four mobile network operators in Kenya: Safaricom, Airtel Kenya (which acquired the operator Yu in 2015), Telkom Kenya (formerly Orange), and the newly launched Faiba4G. Despite the presence of these four operators, the market remains dominated by Safaricom with a market share of 75% in 2017. Telkom Kenya is the sole fixed-line provider. It was managed by Orange Group until 2015, and then sold to Helios. Over the review period, the number of mobile telephony subscribers increased by about 30% to cross the bar of 40 million as at June 2017 (Table 4.7).

Table 4.7 Evolution of key ICT indicators in Kenya, 2012-17

Indicators	2012	2013	2014	2015	2016	2017
Number of subscribers (million)						
Mobile telephony	30.4	31.8	33.6	37.7	39.8	40.3
Mobile money transfer services	19.3	24.8	27.1	27.7	26.3	28.1
Internet	8.5	12.4	14.0	19.9	26.9	29.6

Note: Indicators are as at end June of each year.

Source: Information provided by Communications Authority.

4.172. The mobile money services segment pursued its rapid expansion during the review period, with about 27.5 million subscriptions in 2017 and a total volume of transactions reaching KES 1.2 trillion during the first quarter of 2018. The mobile money segment is dominated by M-PESA, a subsidiary launched by Safaricom in 2007. Mobile commerce-related operations accounted for about 54% of the total value of the transactions.

4.173. During the review period, Kenya switched to unified technology-neutral licensing framework comprising three main licences: network facilities providers, dealing with communications infrastructures; application service providers, providing any form of services using communications infrastructures; and content service providers, focused on services such as broadcast material and other information services (Table 4.8). Applicants for commercial licences are required to issue at least 20% of the shares to Kenyans within three years from the date the licence is granted. At least 30% of equity stakes in telecommunications investments must be Kenyan-owned.

Table 4.8 The telecommunications' unified licensing framework

Licence	Licence duration and fees	Number of licences
Network Facilities providers (NFP)		
Tier 1 (frequency spectrum for national utilisation)	Licence period: 15 years Application fee: KES 5,000	4

[59] Online information. Viewed at: https://www.itu.int/net4/itud/icteye/CountryProfileReport.aspx?countryID=125.

Licence	Licence duration and fees	Number of licences
	Initial operating fee: KES 15 million Annual operating fee: 0.4% of AGT or KES 4 million Spectrum fees	
Tier 2 (frequency spectrum for regional utilisation)	Licence period: 15 years Application fee: KES 5,000 Initial operating fee: KES 15 million Annual operating fee: 0.4% of AGT or KES 0.8 million Spectrum utilization fees	23
Tier 3 (frequency spectrum for exclusive utilisation within a county)	Licence period: 15 years Application fee: KES 5,000 Initial operating fee: KES 200,000 Annual operating fee: 0.4% of AGT or KES 160,000 Spectrum fees	25
Submarine cable landing licence	Licence period: 15 years Application fee: KES 5,000 Initial operating fee: KES 200,000 Annual operating fee: 0.4% of AGT or KES 4 million	3
International gateway licence	Licence period: 15 years Application fee: KES 5,000 Initial operating fee: KES 800,000 Operating fee: max of 0.4% of AGT and KES 4 million Spectrum fees	12
Applications service providers		
Applications service providers	Licence period: 15 years Application fee: KES 5,000 Initial operating fee: KES 100,000	207
Content services providers		
Electronic certification service providers	Licence period: 15 years Application fee: KES 5 000 Initial operating fee: KES 100,000 Annual operating fee: 0.4% of AGT or KES 80,000	323
Terminal equipment contractors	Licence period: 10 years Application fee: KES 1,000 Initial operating fee: KES 7,500 Annual fee: KES 3,000	517
Technical personnel	Licence period: 10 years Application fee: KES 500 Initial operating fee: KES 1,000 Annual fee: KES 500	502
VSAT operated through foreign hubs	Licence period: 10 years Application fee: KES 1,000 Annual fee: KES 100,000 per VSAT terminal	0
GMPCS landing rights authorization	Licence period: 15 years Application fee: KES 5,000 Initial operating fee: USD 12,500	3
Business Processes Outsourcing	Licence period: open One-time registration fee: KES 10,000	26
DOT ke subdomain registrars	Licence period: open One-time registration fee: KES 10,000	61

Note:
AGT Annual Gross Turnover
VSAT Very Small Aperture Terminals
GMPCS Global Mobile Personal Communications via Satellite

Source: Communications Authority of Kenya.

4.174. Operators are free to negotiate their interconnection agreements, including the rates, subject to the caps set by the regulators. The caps were reviewed last in 2010.[60] The Universal Service Fund was established in 2009.[61] It is financed primarily by a mandatory contribution of 0.5% of the annual gross revenues of all licensed operators, including postal and courier services providers.

[60] Determination No.2 of 2010 on pure Long Run Incremental Cost (LRIC) based Interconnection Rate regime.
[61] Kenya Information and Communications Regulations 2010.

4.175. Mobile cellular phone services and other wireless telephone services, including fees charged for mobile money transfers, are subject to the excise duty at the rate of 10%.

4.176. Broadcasting services are regulated by the Communications Authority of Kenya. There are three categories of licences: public broadcasting licence, with the Kenya Broadcasting Company as the only designated public broadcaster; commercial/private broadcasting licence; and community broadcasting licence. Licences are granted through open calls, depending on the availability of broadcasting resources. Broadcasters are required to achieve a quota of 40% of local content in their programming in the first year of licensing, and to maintain 60% of local content within four years. Kenya migrated from analogue to digital television broadcasting in 2015.

4.4.3.2 Postal services

4.177. Postal and courier services are regulated under the Information and Communications Act. There are three categories of licences: the public postal operator licence, valid for 25 years; the national operator licence, valid for 15 years; and the international operator licence, valid for 15 years. The Postal Corporation of Kenya (PCK) is the sole holder of a public postal operator licence. It is responsible for universal postal services obligations. PCK has also exclusivity in the provision of certain services such as: postal articles weighing up to 350 grams[62]; provision of private letter-boxes and bags; printing and issuance of postage stamps. As at end 2017, there were 144 operators with national licences and 41 international licensees.[63]

4.4.4 Tourism

4.178. Tourism is important for Kenya's economy. The main touristic attractions are business, holiday, wildlife, beach, adventure and transit travel. The tourism industry remains one of the major sources of foreign exchange earnings in Kenya. The sub-sector is recovering from the 2013 slump caused, among other things, by terrorist attacks at a shopping mall in Nairobi. International arrivals increased gradually to 1.4 million in 2017 despite uncertainties surrounding the 2017 general elections. The United States and the United Kingdom are the top sources of Kenya's visitors, accounting respectively for 17% and 11% of all the arrivals.

4.179. The tourism sector recorded improvements during the period under review despite a prolonged period with negative travel advisories issued by some countries. Improved performance of the sector was supported by enhanced security, and aggressive promotion in both the domestic and the international markets. International visitor arrivals and tourism earnings continued the recovery path witnessed since 2016.

4.180. The recovery was associated with measures put in place by the Government in the sector that resulted in tourist arrivals going up by 8.1% to 1,448.8 thousand in 2017. Consequently, earnings rose by 20.3% from KES 99.7 billion in 2016 to KES 119.9 billion in 2017. Hotel bed-nights occupancy increased by 11.3% from 6,448.5 thousand in 2016 to 7,174.2 thousand in 2017. The number of international conferences held contracted by 15.9% from 227 in 2016 to 191 in 2017. Local conferences held increased by 2.4% from 3,755 in 2016 to 3,844 in 2017. The number of visitors to national parks and game reserves rose by 2.6% to 2,345.2 thousand in 2017. However, visitors to museums, snake parks and historical sites decreased by 15.3% to 782.0 thousand in 2017 from 923.1 thousand in 2016.

4.181. The institutional framework comprises the Directory of Tourism (from the Ministry of Tourism) as the policy making institution; the Tourism Regulatory Authority; and the Kenya Tourism Board, as the marketing and promotion agency. A Tourism Tribunal has jurisdiction over complaints, appeals and conflicts arising from the implementation of the legislation. A tourism strategy was launched in June 2018 as part of efforts towards the attainment of Kenya *Vision 2030*.[64] It provides

[62] Other operators interested in providing postal services for letters weighting up to 350 g are required to charge at least five times the rates applied by the Postal Corporation of Kenya.

[63] Communications Authority of Kenya (2017), *2016-2017 Annual Report*.

[64] Ministry of Tourism (2018), *The Big 4 Tourism Strategy 2017-2030.* Viewed at: http://www.tourism.go.ke/wp-content/uploads/2018/05/The-Big4-Tourism-PLAN-Print-APPROVED-VERSION-4-launch.pdf [23.07.2018].

for interventions in the areas of product development, marketing, supporting infrastructure, and investment attraction.

4.182. Established in 1965, the Tourism Finance Corporation (TFC) has the mandate of identifying investment opportunities in the sub-sector, providing business advisory services, and providing loans and credit facilities to investors and entrepreneurs. The resources of the Corporation are essentially from the budget. TFC offers loans with favourable terms and conditions.

4.183. Tourism and tourism-related activities and services are regulated under the Tourism Act, 2011; and its implementing regulations.[65] Tourism activities are subject to licensing by the Tourism Regulatory Authority. Licences are issued for up to one year. Licensing fees are KES 1,000 for a first application, and range from KES 7,000 to KES 52,000 for setting up a hotel. Tourism operators are classified into eight classes, labelled from class A to class H (corresponding to eight types of licences): accommodation facilities (A); restaurants, other food and beverage services (B); tour operators, travel agents, and tourism services (C); curio vendors, professional photographers, tour guides, beach operators and other similar operators (D); nature reserves, parks, game ranches (E); entertainment facilities (F); conference and event services (G); and, tourism and hospitality training institutions (H). The main restriction for foreigners is a requirement for a valid work permit.

4.184. Hotels and accommodation facilities (class A and class B enterprises) can be further classified from one star to five stars according to the 2011 EAC Standards Criteria for Classification of Hotels and Restaurants (Common Report, Section 4.4.2). Classification activities are carried out by the Standardization and Classification Committee, or an external body on its behalf. The Tourism Regulatory Authority carried out the latest classification exercise. Classified operators are required to exhibit the classification plaque at the main entrance of the facility. Any operator may request to be re-evaluated upon payment of a KES 50,000 fee. The classification is reviewed every five years.

4.185. Employment in the tourism sector is restricted to Kenyan citizens. An expatriate (including a citizen from another EAC country) may be hired for up to 24 months if the operator demonstrates that there is no citizen qualified to fill the post. The operator is required to identify a suitable Kenyan citizen to undergo the necessary training to be able to take over the position at the end of the authorized period.

4.186. A tourism fund was established in 2015 to finance the development of tourism products and services.[66] The main source of funding is a 2% levy on the gross sales of accommodation, food, drinks and all other services (A and B operators). The levy applies to hotels charging a minimum of KES 250 per room and per night, and restaurants with gross annual sales above KES 3 million.

4.187. In addition to general incentives (Section 3.3.1), additional incentives may be provided in the form of customs and excise duties waivers and tax rebates. These include: a waiver of import duties and VAT for investment in hotels; a 100% investment allowance for new investments in hotels; and a 25% corporate tax rate (instead of 30%) for companies issuing initial public offers in the Nairobi Stock Exchange. Tourist operators can also obtain a VAT-exemption for specially designed motor vehicles for transportation of tourists.

4.188. The authorities may also institute some disincentives and fees to deter some undesirable tourism activities and services.

[65] The Tourism Regulatory Authority Regulations, 2014.
[66] It replaces the Catering and Tourism Development Levy Trustee, in existence since 1972.

5 APPENDIX TABLES

Table A1. 1 Merchandise exports by group of products, including re-exports 2011-17

	2011	2012	2013	2014	2015	2016	2017
Total exports (USD million)	5,772	6,126	5,832	6,114	5,918	5,695	5,747
	% of total						
Total primary products	61.9	60.7	60.6	65.7	68.3	68.3	71.3
Agriculture	55.3	54.0	54.8	51.6	53.8	56.6	60.4
Food	44.3	43.6	43.9	40.0	43.5	44.9	48.1
0741 - Tea, whether or not flavoured	20.0	19.7	20.9	17.5	21.2	21.6	24.8
0711 - Coffee, not roasted	4.1	4.3	3.3	3.7	3.5	3.7	3.9
0545 - Other fresh or chilled vegetables	3.7	3.4	3.2	3.0	3.0	2.5	2.3
0579 - Fruit, fresh or dried, n.e.s.	0.7	0.7	0.8	0.9	1.3	1.5	1.7
0577 - Edible nuts, fresh or dried	0.5	0.5	0.6	0.8	0.8	1.1	1.4
0989 - Food preparations, n.e.s.	0.3	0.3	0.5	0.4	0.8	1.0	1.3
1222 - Cigarettes containing tobacco	1.8	1.8	1.5	1.2	1.1	1.2	1.2
0589 - Fruit, nuts and other edible parts of plants otherwise prepared or preserved	0.9	0.8	1.2	1.0	1.3	1.1	0.9
4222 - Palm oil and its fractions	1.9	1.8	1.2	0.9	0.6	1.1	0.9
0622 - Sugar confectionery, not containing cocoa	1.0	1.1	1.1	1.0	0.9	0.8	0.9
Agricultural raw material	11.0	10.4	10.9	11.6	10.4	11.7	12.3
2927 - Cut flowers and foliage	7.7	7.4	8.2	9.1	8.1	8.9	9.4
2926 - Bulbs, tubers and rhizomes of flowering or of foliage plants	1.0	0.9	1.0	1.1	0.8	0.8	0.9
2929 - Materials of vegetable origin, n.e.s.	1.4	1.1	0.7	0.4	0.3	0.8	0.8
Mining	6.7	6.7	5.8	14.1	14.5	11.7	11.0
Ores and other minerals	1.8	2.0	1.6	3.5	3.8	4.1	4.6
2878 - Ores and concentrates of molybdenum, niobium, tantalum, titanium, vanadium and zirconium	0.0	0.0	0.0	1.6	2.1	2.5	3.0
Non-ferrous metals	0.5	0.5	0.4	0.4	0.3	0.2	0.2
Fuels	4.3	4.2	3.8	10.1	10.4	7.5	6.2
Manufactures	36.9	36.6	37.8	34.2	31.5	31.4	28.4
Iron and steel	3.6	2.9	3.2	2.5	2.1	2.3	2.1
Chemicals	10.4	10.7	9.8	9.0	8.1	8.2	8.0
5429 - Medicaments, n.e.s.	1.1	1.9	1.6	1.8	1.8	2.2	1.8
5237 - Carbonates; peroxocarbonates; commercial ammonium carbonate containing ammonium carbamate	2.5	1.9	1.9	1.5	1.1	1.0	1.2
Other semi-manufactures	7.8	7.2	7.9	6.5	5.7	4.6	4.3
Machinery and transport equipment	4.8	5.3	5.5	4.1	4.0	5.1	3.2
Power generating machines	0.2	0.3	0.4	0.1	0.1	0.2	0.2
Other non-electrical machinery	1.4	1.4	1.4	1.5	1.4	1.4	1.1
Agricultural machinery and tractors	0.3	0.1	0.2	0.1	0.1	0.1	0.1
Office machines & telecommunication equipment	1.0	1.3	1.1	0.4	0.5	1.6	0.4
Other electrical machines	0.8	0.9	0.9	0.7	0.8	0.7	0.5
Automotive products	0.9	0.8	0.9	0.7	0.8	0.9	0.7
Other transport equipment	0.6	0.6	0.7	0.5	0.4	0.3	0.3
Textiles	1.1	1.2	1.1	1.0	1.1	0.9	0.7
Clothing	4.3	4.0	4.9	5.4	4.9	5.3	5.5
8414 - Men's or boys' trousers, bib and brace overalls, breeches and shorts	0.3	0.6	0.7	0.9	1.0	1.4	1.3
8426 - Women's or girls' trousers, bib and brace overalls, breeches and shorts	0.8	0.9	1.3	1.6	1.4	1.5	1.1
Other consumer goods	4.9	5.3	5.5	5.6	5.5	4.9	4.6
8931 - Articles for the conveyance or packing of goods, of plastics	1.4	1.5	1.6	1.5	1.5	1.4	1.2
Other	1.2	2.7	1.5	0.1	0.2	0.3	0.2

Note: SITC Rev. 3 for product groups.

Source: WTO Secretariat's calculations, based on data provided by the authorities; and UNSD, Comtrade database.

Table A1. 2 Merchandise imports by product groups, 2011-17

	2011	2012	2013	2014	2015	2016	2017
Total imports (USD millions)	14,646	16,262	16,410	18,406	16,068	14,105	16,690
	% of total						
Total primary products	43.2	40.1	37.6	34.9	29.5	30.2	37.8
Agriculture	14.5	13.7	12.7	11.7	12.7	14.0	20.2
Food	13.1	12.3	11.3	10.5	11.3	12.4	18.9
4222 - Palm oil and its fractions	3.8	3.6	3.2	2.8	2.7	3.4	3.5
0412 - Other wheat (including spelt) and meslin, unmilled	2.4	2.2	2.1	2.1	2.3	2.0	2.5
0611 - Sugars, beet or cane, raw, in solid form	0.1	0.4	0.3	0.2	0.3	0.8	2.2
0449 - Maize, other	0.7	0.3	0.1	0.4	0.2	0.1	2.1
0423 - Rice, semi-milled or wholly milled	0.9	1.1	1.0	0.9	0.8	1.0	1.6
0612 - Other beet or cane sugar and chemically pure sucrose, in solid form	0.6	0.7	0.8	0.4	0.5	0.6	0.7
Agricultural raw material	1.4	1.5	1.3	1.2	1.4	1.6	1.3
2690 - Worn clothing and other worn textile articles; rags	0.5	0.6	0.6	0.5	0.6	0.9	0.8
Mining	28.7	26.4	24.9	23.2	16.9	16.2	17.6
Ores and other minerals	0.3	0.4	0.3	0.4	0.5	0.4	0.3
Non-ferrous metals	1.1	0.9	1.0	0.9	0.9	1.0	1.0
Fuels	27.3	25.1	23.6	21.9	15.4	14.8	16.3
334 - Petroleum oils and oils obtained from bituminous minerals (other than crude)	16.6	18.8	19.7	20.6	14.3	13.7	15.1
3425 - Butanes, liquefied	0.4	0.6	0.4	0.7	0.5	0.6	0.7
Manufactures	56.4	59.7	61.9	64.8	69.7	69.4	61.8
Iron and steel	4.8	4.1	5.7	4.7	5.6	5.3	4.8
6726 - Semi-finished products of iron or non-alloy steel	0.5	0.4	0.8	0.6	0.9	0.9	1.1
Chemicals	13.2	12.8	13.9	13.0	14.7	15.8	13.8
5429 - Medicaments, n.e.s.	2.0	2.0	1.9	2.2	2.7	3.0	2.3
5629 - Fertilizers, n.e.s.	1.0	1.0	1.4	0.9	1.1	1.1	1.2
5711 - Polyethylene	1.2	1.2	1.2	1.2	1.3	1.4	1.0
Other semi-manufactures	6.9	7.2	7.3	7.1	8.0	9.5	7.3
6911 - Structures and parts of structures	0.4	0.7	0.7	0.6	0.9	1.1	0.7
Machinery and transport equipment	25.2	29.3	28.2	33.5	34.0	31.1	28.2
Power generating machines	0.8	1.1	1.6	1.8	1.2	2.3	0.9
Other non-electrical machinery	7.5	8.2	8.1	9.2	9.4	8.4	8.5
7284 - Machinery and mechanical appliances specialized for particular industries, n.e.s.	0.4	0.5	0.6	0.5	0.5	0.5	0.7
Agricultural machinery and tractors	0.4	0.5	0.6	0.5	0.5	0.6	0.5
Office machines & telecommunication equipment	5.2	5.4	5.1	3.6	4.1	5.5	4.8
7522 - Digital automatic data-processing machines	0.0	0.0	0.0	0.3	0.0	0.9	1.1
Other electrical machines	2.5	3.0	2.9	2.5	3.3	4.9	3.2
Automotive products	5.5	6.0	6.6	6.9	8.2	6.8	5.6
7812 - Motor vehicles for the transport of persons, n.e.s.	2.1	2.5	3.0	3.0	3.4	3.4	3.0
7821 - Motor vehicles for the transport of goods	1.3	1.2	1.3	2.0	2.3	1.4	1.0
Other transport equipment	3.7	5.6	3.8	9.4	7.8	3.1	5.2
7918 - Railway or tramway freight and maintenance cars	0.0	0.0	0.0	0.0	0.3	0.0	1.2
7912 - Other rail locomotives; locomotive tenders	0.0	0.0	0.0	0.1	0.3	0.0	1.2
Textiles	2.5	2.1	2.3	2.2	2.6	2.5	2.4
Clothing	0.4	0.4	0.4	0.4	0.3	0.5	0.8
Other consumer goods	3.4	3.7	4.0	4.0	4.5	4.8	4.5
Other	0.5	0.2	0.5	0.3	0.8	0.4	0.4

Note: SITC Rev. 3 for product groups.

Source: WTO Secretariat's calculations, based on data provided by the authorities; and UNSD, Comtrade database.

Table A1. 3 Merchandise exports by destination, including re-exports 2011-17

	2011	2012	2013	2014	2015	2016	2017
Total exports (USD million)	5,772	6,126	5,832	6,114	5,918	5,695	5,747
	% of total						
Americas	5.4	5.5	6.7	8.5	8.7	9.1	9.2
United States	5.0	5.1	6.0	7.1	7.0	7.5	8.0
Other America	0.4	0.5	0.8	1.4	1.7	1.6	1.3
Europe	24.7	25.6	22.2	23.8	23.2	22.6	22.7
EU(28)	22.6	21.0	20.8	22.3	21.7	21.0	21.2
Netherlands	6.4	6.0	6.5	7.6	7.2	7.5	7.4
United Kingdom	9.2	7.8	7.5	6.7	7.0	6.5	6.5
Germany	1.5	1.9	1.6	2.0	2.2	2.1	2.0
France	1.1	0.9	1.1	1.1	1.0	1.1	1.4
EFTA	1.9	0.9	1.2	1.2	1.3	1.3	1.1
Other Europe	0.2	3.6	0.2	0.3	0.2	0.4	0.4
Commonwealth of independent states (CIS)	1.9	2.1	2.4	2.1	2.0	1.9	2.1
Russian Federation	1.1	1.3	1.4	1.3	1.4	1.2	1.3
Africa	48.3	44.9	46.1	45.0	41.7	40.6	37.7
Uganda	14.8	13.0	13.0	11.3	11.8	10.8	10.4
Tanzania	8.1	8.9	8.1	7.9	5.8	6.0	4.8
Somalia	3.2	3.7	3.4	2.5	2.6	3.1	3.3
Egypt	4.6	4.1	3.4	3.3	3.5	3.6	3.2
Democratic Republic of the Congo	3.4	3.6	3.7	3.9	3.6	3.5	3.2
Rwanda	2.6	3.1	2.7	2.7	3.1	3.0	2.9
South Sudan	0.0	0.0	3.3	3.7	2.9	2.8	2.8
Burundi	1.2	1.0	1.1	1.5	1.1	1.3	1.2
Ethiopia	0.9	0.9	1.0	1.3	1.2	1.4	1.2
Sudan	4.3	1.3	1.3	1.2	1.0	0.9	1.2
Middle East	6.4	8.1	7.9	6.7	7.8	8.7	8.6
United Arab Emirates	3.9	5.5	5.0	3.8	5.0	5.4	4.4
Saudi Arabia, Kingdom of	0.5	0.6	0.6	0.9	1.0	1.2	1.3
Yemen	0.9	0.9	1.0	0.8	0.7	0.8	1.1
Asia	12.4	12.6	14.1	12.6	15.3	16.6	19.2
China	0.7	1.0	0.8	1.2	1.5	1.7	1.7
Japan	0.5	0.5	0.5	0.7	0.7	0.7	0.8
Other Asia	11.2	11.1	12.7	10.7	13.1	14.2	16.8
Pakistan	4.1	4.6	4.8	4.1	6.1	7.0	10.8
Hong Kong, China	0.6	0.5	0.7	0.5	0.3	0.2	1.1
Other	0.9	1.2	0.7	1.5	1.4	0.4	0.4
Memo:							
EAC[a]	26.8	26.1	24.9	23.5	21.8	21.1	19.3

a Including all EAC WTO members.

Source: WTO Secretariat's calculations, based on data provided by the authorities; and UNSD, Comtrade database.

Table A1. 4 Merchandise imports by origin, 2011-17

	2011	2012	2013	2014	2015	2016	2017
Total imports (USD million)	14,646	16,262	16,410	18,406	16,068	14,105	16,690
	% of total						
Americas	6.1	8.7	6.0	11.6	9.3	4.6	7.4
United States	3.4	4.8	4.1	10.4	8.0	3.4	3.3
Other America	2.7	3.9	1.9	1.2	1.3	1.2	4.1
Brazil	1.6	1.8	1.1	0.4	0.4	0.3	1.6
Mexico	0.0	0.1	0.1	0.1	0.2	0.2	1.2
Europe	17.5	16.4	16.4	15.3	16.5	16.6	13.7
EU(28)	14.9	14.9	14.7	13.9	14.8	14.9	12.0
Germany	2.5	3.0	2.7	2.9	3.0	3.0	2.5
United Kingdom	3.3	3.2	3.5	2.9	2.7	2.3	1.7
France	1.5	2.0	1.5	1.4	1.3	1.5	1.6
Italy	1.1	1.5	1.4	1.2	1.4	1.7	1.3
Netherlands	1.7	1.3	1.8	1.2	1.3	1.2	1.1
EFTA	1.3	0.7	0.7	0.6	0.8	0.7	0.8
Other Europe	1.3	0.9	1.0	0.8	0.9	1.0	1.0
Commonwealth of independent states (CIS)	2.1	1.7	2.8	2.4	2.2	2.0	2.7
Russian Federation	1.8	1.1	1.6	1.4	1.8	1.7	2.1
Africa	11.6	10.2	10.5	9.0	9.5	9.8	11.6
South Africa	5.4	4.5	5.0	3.9	3.9	3.5	3.6
Uganda	0.8	1.1	1.1	1.1	1.4	1.3	2.4
Egypt	1.4	2.2	1.8	1.6	1.6	2.1	2.1
Tanzania	1.2	1.0	0.8	1.1	1.1	0.9	1.0
Middle East	23.0	20.7	15.6	14.1	11.3	13.6	17.0
United Arab Emirates	15.3	10.9	8.3	6.4	5.7	6.4	8.0
Saudi Arabia, Kingdom of	4.1	4.9	2.9	3.5	3.5	4.8	6.6
Asia	39.4	42.2	48.8	47.6	51.2	53.5	47.5
China	11.1	12.2	12.9	15.4	20.3	23.6	22.6
Japan	4.4	4.6	5.9	5.3	5.6	5.8	4.7
Other Asia	24.0	25.5	30.0	26.8	25.3	24.2	20.2
India	11.4	14.2	18.3	16.3	16.0	14.4	9.9
Indonesia	3.3	4.0	3.2	3.0	2.9	3.2	3.3
Pakistan	1.3	0.9	1.1	1.1	1.2	1.3	1.5
Thailand	0.9	0.8	0.9	0.8	0.8	0.8	1.2
Malaysia	0.8	0.5	0.7	0.7	0.7	0.9	1.0
Korea, Republic of	2.0	1.6	1.7	1.8	1.2	1.0	1.0
Other	0.2	0.0	0.0	0.1	0.0	0.0	0.0
Memo:							
EAC[a]	2.1	2.2	2.0	2.3	2.5	2.3	3.5

a Including all EAC WTO members.

Source: WTO Secretariat's calculations, based on data provided by the authorities; and UNSD, Comtrade database.

Table A3. 1 Products subject to excise duties, 2018

Tariff line	Product description	Old rate	New rate
Petroleum products (KES per thousand litre at 20°C)			
2710.12.30	Aviation spirit	19,895	unchanged
2710.12.20	Motor Spirit (gasoline), premium	19,895	unchanged
2710.12.10	Motor spirit (gasoline), regular	19,505	unchanged
2710.12.40	Spirit type jet fuel	19,895	unchanged
2710.12.50	Special boiling point spirit and white spirit	8,500	unchanged
2710.12.90	Other light oils and preparations	8,500	unchanged
2710.19.10	Partly refined (including topped crude)	1,450	unchanged
2710.19.21	Kerosene type jet fuel	5,755	unchanged
2710.19.22	Illuminating kerosene	7,205	unchanged
2710.19.29	Other medium petroleum oils and preparations	5,300	unchanged
2710.19.31	Gas oil (automotive, light, amber, for high speed engines)	10,305	unchanged
2710.19.32	Diesel oil (industrial heavy, black, for low speed marine and stationary engines)	3,700	unchanged
2710.19.39	Other gas oils	6,300	unchanged
2710.19.41	Residual fuel oils (marine, furnace and similar fuel oils) of a kinematics viscosity of 125 centistokes	600	Unchanged
2710.19.42	Residual fuel oils (marine, furnace and similar fuel oils) of a kinematics viscosity of 180 centistokes	600	unchanged
2710.19.43	Residual fuel oils (marine, furnace and similar fuel oils) of a kinematics viscosity of 250 centistokes	600	unchanged
2710.19.49	Other residual fuel oils	600	unchanged
Beverages			
	Fruit juices (including grape must), and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter	KES 10	10.5/litre
	Waters (excluding water of tariff No. 2201.90.00) and other non-alcoholic beverages not including fruit or vegetable juices	10%	5.20/litre
	Beer, cider, perry, mead, opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 10%	10%	105.20/litre
	Powdered beer	10%	100.20/kg
	Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits	10%	157.8/litre
	Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 10%	10%	210.40/litre
Tobacco			
	Cigars, cheroots, cigarillos, containing tobacco or tobacco substitutes	10,000/kg	10,520/kg
	Electronic cigarettes	3,000/unit	3,156/unit
	Cartridge for use in electronic cigarettes	2,000/unit	2,104.00/unit
	Cigarette with filters (Hinge lid and soft cap)	2,500/mille	2,630/mille
	Cigarettes without filters (plain cigarettes)	1,800/mille	1,893/mille
	Other manufactured tobacco and manufactured tobacco substitutes; "homogenous" and "reconstituted tobacco"; tobacco extracts and essences	7,000/kg	7,364/kg
Others			
	Food supplements	10%	Unchanged
	Cosmetics and beauty products of tariff heading No. 3303, 3304, 3305 and 3307	10%	Unchanged
	Motor vehicles excluding locally assembled motor vehicles and school buses for use by public schools of tariff heading 87.02, 87.03 and 87.04	20%	Unchanged
	Motor cycles of tariff 87.11 other than motor cycle ambulances and locally assembled motor cycles	10,000/unit	Unchanged
	Plastic shopping bags		120/kg
2709.00.10	Condensates	Not included	6,225/'000 l@20°C

Source: Excise duty Act, 2015; Finance Bill 2018, and Civil Aviation Act.